



## THE CITY OF KEY WEST

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### SETTLEMENT SUMMARY & RECOMMENDATION

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To: The City Commission for the City of Key West

From: Ron Ramsingh, Assistant City Attorney

Date: August 16, 2010

Re: Settlement recommendation of Amy & James DeMatteo vs. The City of Key West

**Background:** On January 10, 2007, Amy and James DeMatteo were vacationing in Key West for Amy's brother's wedding. The Plaintiffs live in Massachusetts. The Plaintiffs parked on Whitehead Street near the corner with Angela Street; directly in front of the AME Zion Church. They were going to walk to Duval Street. Once parked and partially on their way, Amy forgot her cell phone and walked back the way she came to retrieve it. When she was walking back to rejoin her party, she tripped over a plastic strapping that was attached to a recently planted tree that was within a planter on the sidewalk. Amy fell face first onto the sidewalk and sustained 3 intruded/ displaced teeth. She was treated at the scene by an ambulance and decided to leave Key West the next day to get medical treatment in Massachusetts. Once at Mass General, Amy received treatment by several doctors over several months comprising 3 dental implants, 3 crowns/ prosthetics. The total out of pocket expenses are \$16,882.00; which included loss of earnings while attending medical treatment, health insurance liens and travel penalties for leaving Key West early. Amy works for a government contractor in MA for 25 years.

**Exposure:** The Complaint for Damages were for past, present and future medical treatment, lost wages, pain, suffering and disfigurement. James also filed a

Complaint for Loss of Consortium (lost services of his spouse). The City's adjuster, E.M.I. estimated the settlement value the claim at \$50,000.00 to \$60,000.00 based on the "hard specials" of \$16,882.00 with multiplier of 3 that is further aggravated by the fact that Amy will need a revision of her dental work once; if not twice during her lifetime as she is 43 years old. Liability was estimated by EMI as 80% City 20% Plaintiff. This is based on the fact that the strapping was within the square planter and done according to industry standards. Also, the Plaintiff had traversed that same area seconds before and arguably was on notice of its existence. However, this did occur at night, the strap was black in color, it was in a 45 degree angle beginning at the ground and attaching to the tree at about the 4' mark, so the portion extending the farthest was the least visible. Most importantly, from a litigation standpoint, the Landscape Dept did attach short pink flagging tape to make the strap more visible, but acknowledged in deposition that they were aware that the flagging tape was not there at the time of the incident and that it had been pulled off in the past. This creates an argument for the Plaintiff that the City knew it was a dangerous condition and did nothing to eliminate the dangerous condition. In addition, there are other accepted methods of securing a new planting recognized by A.N.S.I. (the governing body for arborists) that were known to the City but were not used. These two issues would create a significant issue for the City at trial and in my opinion significantly raised the value of the claim.

**Recommendation:** Mediation was held on Friday, August 13 where a settlement was reached for \$52,500.00. This settlement is contingent upon approval by the City Commission. I recommend that the City approve this settlement considering the facts that were discovered during depositions and our resulting increased exposure at trial.

Respectfully,



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Ron Ramsingh  
Assistant City Attorney