



THE CITY OF KEY WEST

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To: The Mayor and City Commissioners for the City of Key West

From: Ron Ramsingh, Chief Assistant City Attorney

DATE: July 29, 2019

RE: Cathy Pierce v. City of Key West

2018-CA-1142-K

Judge Timothy Koenig

Date of Accident: 3/6/2016

Ms. Pierce (Plaintiff) is a 66-year-old married woman who lives in Palm Beach County. She has 2 grandchildren that live in GA. Plaintiff has a high school education and does not hold any certifications or licenses. Plaintiff was born in CT and has lived in FL since 1968. Plaintiff is a retired letter carrier from the USPS for 27 years. Plaintiff is right hand dominant and enjoys puzzles, reading, and drawing.

Prior Medicals

Plaintiff was deposed by the undersigned on 4/29/19. Plaintiff reports several chronic health issues that are not necessarily related to this fall.

Accident History

Plaintiff came to Key West for a concert at the Key West Theater with a male friend from Ft. Lauderdale. Her friend drove them down and they stayed at the Hibiscus Hotel on Simonton St. They arrived on the afternoon of her fall. They checked into their hotel and went walking to sunset and dinner at the Key West Seafood Company prior to the concert that same night. After dinner, they were walking south on the west sidewalk on Simonton St. at the 200 block. The area in question is immediately adjacent to the paid parking lot. Plaintiff and her friend approached an area of the sidewalk that had one slab higher than the adjoining slab. There is a large tree in the private parking lot adjacent to the raised lip.

The large tree partially shades the street light above the lip. It is also believed that the roots from the large tree raised the slab of sidewalk without creating any obvious cracks or defects to the casual observer.

Plaintiff tripped and fell on her chin and right arm and knee at approximately 7:53 p.m. Her lip was punctured by her teeth and she fractured her left distal humerus (break in the lower end of the upper arm bone, one of the three bones that come together to form the elbow joint). KWPD was called and the police officer noted that Plaintiff had not been drinking and that the lip was approximately 1 inch high. Pictures were taken and Plaintiff was transported to LKMC by ambulance. Plaintiff's husband came down from Palm Beach County and took her home the next day. Plaintiff followed up with an orthopedic surgeon in Palm Beach and underwent an open reduction/internal fixation procedure (repair of a commuted fracture with metal hardware). She followed up with a couple of months of successful physical therapy.

Assessment

Plaintiff incurred \$103,957.46 in billed medical expenses. \$16,915.00 Of which was paid by her health insurance and they imposed a lien of \$16,915.00. Mediation was held at city hall on 7/16/19, conducted by Ret. Judge Taylor. Plaintiff's attorneys sent a pre-mediation demand in the amount of \$125,000.00. After a few hours of negotiating, I managed to secure a settlement of \$40,000.00 plus mediation fees of \$900.00; contingent upon approval by the City Commission.

Plaintiff will be able to board \$103k in special damages. Plaintiff testified that she can no longer pick up her younger 2 year old grandchild, she cannot reach upper cabinets in her kitchen, and she has difficulty brushing her hair by herself because of a weakened condition in her right arm due to this accident and surgery. I do not see any appreciable comparative negligence on the part of the Plaintiff because the sidewalk was intact (not cracked up like in other cases) and the lip was shaded by the large tree. Plaintiff was not consuming any alcohol (as verified by KWPD) and she otherwise presents as credible and sympathetic. Therefore, the negotiated settlement of \$40k is a very reasonable result. Florida statues limit attorney fees in personal injury cases against government at 25%, so in my estimation, Plaintiff will net approximately \$26k after fees and costs.

Recommendation

I recommend that the City Commission approve this mediation agreement.