



THE CITY OF KEY WEST

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TO: Mayor and City Commissioners
RE: Nancy Barta v. City of Key West
FROM: Ronald Ramsingh, Chief Asst City Attorney
DATE: August 4, 2017

EXECUTIVE SUMMARY

Background

Ms. Barta is a 63-year old woman from Beaver Falls PA. She has lived in Key West for 22 years. Ms. Barta has a high school education and an expired real estate license. She last worked in June 2016 and is supported by her husband's income. She lost one week of work at \$20.00/hr as a result of this fall.

Injury

Ms. Barta testified that after the 2013 Fantasy Fest parade, she was walking back to the Truman Waterfront with her husband, where their car was parked. They turned west on Petronia St. off of Duval. She says that she stepped into a depression in the asphalt and either tripped or rolled her ankle. She grabbed her husband with her right hand, and broke her fall with her left hand. Her husband and two passersby helped her up. Her left wrist was in pain. The passersby called out for an EMS who was in a golf cart. Barta refused

medical services because of a lack of health insurance, but the EMS guys took her and her husband on the golf cart to their car on Truman Waterfront. From there, they went to LKMC on their own. Plaintiff denies drinking any alcohol that night and the hospital records do not indicate any level of alcohol consumption. At the hospital, x-rays were taken, she was diagnosed with a Broken wrist requiring surgery (internal fixation), which was performed a few days later.

Prior Health History

Nothing relevant

Issues

I believe that the city has a defense in contributory negligence given the footwear that she was wearing at the time of her fall. For all intents and purposes, the medical records show a recovery with no projected future surgeries. There is no doubt that the city owns the street where the depression was. The city repaired the area. According to city witnesses who were deposed, the depression was likely caused from extreme heat softening the asphalt after a city utilities job had been performed in the distant past.

Damages

I received a statutory cap demand of \$200,000.00 from Barta's prior counsel, Mr. Marcos Gonzalez-Balboa in Miami Lakes. Bruce Wallace took the case as local counsel, but since he has retired, Frank Gonzalez from Miami is her current counsel. Gonzalez reports special damages in the amount of \$61,110.85. Since Barta does not have health insurance,

she negotiated those bills down to \$27,715.05. She and her husband paid them with credit cards. I estimate the allocation of negligence as being 50/50. There is no question that the depression belongs to the city. On the other hand, I would submit that someone who is dressed in such a costume has a higher duty of care to be more careful when walking; especially when walking in the roadway normally used by cars and not pedestrians. This is the basis for by 50/50 comparative negligence estimation. Using the lower, conservative numbers regarding the adjusted medical bills, and a 3.5 multiplier, a verdict can initially come back at 97,000.00. However, when apportioned under the doctrine of comparative negligence, the city can be responsible for half of that possible verdict, or approximately \$48,500.00.

The parties attended mediation on 7/14/17 where a settlement was reached of \$40,000.00 contingent upon city commission approval. Since plaintiff's attorney fees are capped at 25% for negligence cases against municipalities in FL, her attorneys will get \$10,000.00 of that amount. Plaintiff will net \$30,000.00, which basically reimburses her just for her adjusted medical expenses. I think that this is a fair result and I recommend approval. The insurance adjuster with Ascensions concurs.