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THE CITY OF KEY WEST

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To: The City Commission for the City of Key West
From: Ron Ramsingh, Chief Assistant City Attorney
Date: August 19, 2020
RE: Approval of Mediation Agreement in Aloma McCoy v. City of Key West 2018-CA-1404-K
Judge Timothy Koenig

**A MORE DETAILED SUMMARY IS PROVIDED TO THE CITY COMMISSION THAT
IS PRIVILEGED AND CONFIDENTIAL WORK PRODUCT/
ATTORNEY TRIAL NOTES/IMPRESSIONS PURSUANT TO F.S.119.071(1)(d) THAT
IS NOT FOR PUBLIC DISCLOSURE.**

Accident History

The Plaintiff is a 68-year old retired, widowed grandmother who was born and raised in Bahama Village (Maiden name is Aloma Rivas). Plaintiff worked as a telephone operator at LKMC for several years. Plaintiff lived in Orlando from 2006 to 2014. She moved back when her husband passed away. Plaintiff lives at 229 Amelia Street with her 43-year old daughter Lakeisha McCoy and her grandson. On 8/27/2017, Plaintiff was leaving the Elks Lodge at 1107 Whitehead Street and tripped and fell due to an elevated crack in the sidewalk. Plaintiff was being driven home by Deon Robinson and Monica Hernandez, friends of Plaintiff. Plaintiff denies consuming any alcohol on the day of her fall and the city has not been able to prove that alcohol played a part in her fall.

Plaintiff is alleging an aggravation to some preexisting injuries in her back, knees and hips.

Procedural History

Written discovery and depositions have been completed. Mediation took place on September 16, 2019; however, parties were unable to resolve the matter. Plaintiff's counsel's last demand at that time was for \$150,000 which the City declined. This matter has been set for trial on June 15, 2020 but due to COVID 19, has been postponed. With the postponement, settlement negotiations resumed without mediation. We agreed to settle at \$97,421.63, which after our costs, represents \$100,000.00 total experience for this case, therefore excess carrier money will not be used. The settlement of course is contingent on approval by the City Commission.

Prior Medicals

Plaintiff has treated with Drs. Catana and Gerth for many years. Plaintiff has a history of prior medical issues in her knees and other parts of her body that are more fully disclosed separately to the City Commission

Assessment

Overall, while the Plaintiff does present as a sympathetic local lady that fell on a sidewalk that has historically been in bad shape, she frequents the Elks Lodge and the condition should have been well known to her. Plaintiff's expenses thus far (boardables) totals \$53,806.66, plus whatever pain and suffering a jury might award, which can be a 3 times multiplier, which can possibly render a verdict in the \$139k range.

A Notice Ready for Trial has been filed. We have some surveillance on Plaintiff that shows her to be active, but nothing that would be helpful in terms of exceeding doctor restrictions. The Plaintiff will produce at least 3 witnesses to testify that sidewalk in front of the Elks club has been in poor condition for many years. Todd Stoughton and Richard Sarver were deposed, and it was established that this sidewalk has been on a list for repair for some time. Additionally, Ken Sullivan from the Elks has drafted a letter that indicates that he had been notifying the city of the condition of the sidewalk for years with no results. To my knowledge, we could not locate such letter. I think that we would be hard pressed to disprove knowledge (actual or constructive) of the condition of the sidewalk. Therefore, the proposed settlement of \$97,421.63 would be the

prudent choice to avoid a possible exposure of double that amount considering these facts and the Plaintiff.

The sidewalk in question has since been re-paved.

Recommendation

To approve the proposed settlement.