

RESOLUTION NO. 09-198

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING A SETTLEMENT BETWEEN THE CITY OF KEY WEST AND BARBARA MALLORY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Barbara Mallory suffered personal injuries allegedly due to the negligence of the City of Key West; and

WHEREAS, Barbara Mallory has agreed to accept the sum of \$25,000.00 in full and complete satisfaction of all claims and potential claims against the City;

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

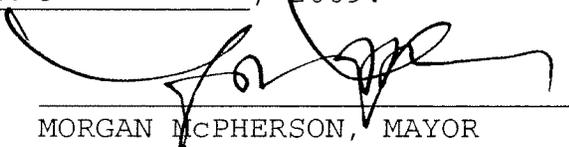
Section 1: That the City manager is authorized to expend the sum of \$25,000.00 in exchange for dismissal of all claims and a full release acceptable to the City Attorney in order to resolve Barbara Mallory's personal injury matter pending in Monroe County Circuit Court (CA-K-07-174).

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 4th day of August, 2009.

Authenticated by the presiding officer and Clerk of the Commission on August 5, 2009.

Filed with the Clerk August 5, 2009.


MORGAN MCPHERSON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

JOHNSON, ANSELMO, MURDOCH, BURKE, PIPER & HOCHMAN, P.A.

A PROFESSIONAL ASSOCIATION

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RETIRED
RONALD P. ANSELMO
BURL F. GEORGE

* BOARD CERTIFIED CIVIL TRIAL LAWYERS
† BOARD CERTIFIED APPELLATE LAWYERS

June 12, 2009

Via Email

Mark DeChellis
GALLAGER BASSETT
P.O. Box 279800
Miramar, Florida 33027

Re: Barbara Mallory vs. City of Key West, et al
Claim No. 010359-003203-GB-01
Our File No. 26-054 MTB

Dear Mark:

Enclosed please find a copy of a June 11, 2009 letter received from Plaintiff's attorney David L. Magidson in the above referenced matter. As you can see, Plaintiff Mallory has agreed to accept the total sum of \$25,000 in full and complete settlement of all claims asserted in the above matter. The enclosed letter is in response to my May 16, 2009 telephone conversation with attorney Magidson wherein I advised that the City had rejected his client's \$35,000 settlement offer and would not pay anymore than \$25,000 to settle the case.

By copy of this correspondence I am asking City attorney Shawn Smith to present the proposed settlement to the City commission for approval. Thank you for your continued cooperation and assistance.

Very truly yours,

/s/ Michael T. Burke
Michael T. Burke
For the Firm

MTB:npw
Enclosure
CC: Shawn Smith, Esq.



LEGAL CENTER OF HOMESTEAD
ABRAMSON & MAGIDSON, P.A.

A Private Law Firm

JOHN M. ABRAMSON
DAVID L. MAGIDSON
REBECCA MAGIDSON

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June 11, 2009

VIA FACSIMILE: (954) 463-2444
& Regular Mail

Michael T. Burke, Esquire
Johnson, Anselmo, Murdoch,
Burke, Piper & McDuff, P.A.
2455 East Sunrise Boulevard
Suite 1000
Ft. Lauderdale, Florida 33304

Re: Barbara Mallory vs. City of Key West
Your File Number: 27-054 MTB

Dear Michael:

After dotting all i's and crossing all t's and reducing my fee, my client is agreeable to settling her claim against the City of Key West for the gross sum of \$25,000.00 - a sum you have advised me you would recommend to the City of Key West.

I await the response of the City.

Please note that I cannot reduce the aforescribed sum any further.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Magidson", written over a circular scribble.

David L. Magidson

DLM/jed

JOHNSON, ANSELMO, MURDOCH, BURKE, PIPER & HOCHMAN, P.A.

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RETIREE
RONALD P. ANSELMO
BURL F. GEORGE

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December 8, 2008

Via Email

Shawn D. Smith
CITY ATTORNEY
CITY OF KEY WEST
P.O. Box 1409
Key West, Florida 33041-1409

Re: Barbara Mallory vs. City of Key West, et al
Our File No. 26-054 MTB

Dear Shawn:

Enclosed please find a copy of Plaintiff, Barbara Mallory's proposal for settlement in the above referenced matter. As you can see, Plaintiff mallory proposes to settle the case for the total sum of \$35,000.

The enclosed proposal for settlement is identical to the final demand Plaintiff communicated at the November 26, 2008 mediation conference. Unless you feel a different course of action should be pursued, I suggest that the facts of the case and the attached proposal for settlement be brought to the attention of the city commission at an executive session before one of their January 2009 meetings. Attached is a copy of my November 24, 2008 mediation summary. As you can see, I estimate that there is approximately a 25% chance of a defense verdict and more likely than not, the jury will find that both Plaintiff Mallory and the City engaged in negligence which contributed to cause the accident. The case can not be disposed of by way of summary judgment and the matter will either have to be settled or tried. I estimate a net verdict range of between \$15,000 and \$50,000 not including Plaintiff's taxable costs and future defense litigation expenses.

In summary, if the case is tried and the City wins, I estimate that future litigation cost will total between \$10,000 and \$15,000. We have already made a \$5,000 proposal for settlement and if the City obtains a complete defense verdict, it will be able to recover a cost judgment against Plaintiff Mallory in a range of between \$12,500 and \$17,500. If the case is tried and results in a comparative negligence verdict, I estimate that the net judgment amount together with taxable costs and defense litigation expenses will be in a range of between \$30,000 and \$80,000.

Shawn Smith, Esq.
December 8, 2008
Page 2

After you have had an opportunity to review the matter, please advise as to any questions, comments or instructions you have concerning further proceedings in the matter. The case is not currently set for trial. If the case is not settled, I estimate a trial date in late summer or fall of 2009.

Very truly yours,

/s/ Michael T. Burke
Michael T. Burke
For the Firm

MTB:npw
Enclosures
cc: Mark DeChellis (w/enclosures)

JOHNSON, ANSELMO, MURDOCH, BURKE, PIPER & McDUFF, P.A.

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November 24, 2008

Ms. Haydee Lopez
Claims Representative
Gallagher Bassett Services, Inc.
Post Office Box 279800
Miramar, FL 33027

Sent Via E-Mail

Re: Barbara Mallory vs. City of Key West
Claim No.: *Unknown*
Our File No. 27-054 MTB

Dear Haydee:

On August 17, 2007, I took the deposition of Plaintiff, Barbara Mallory in the above-referenced matter. Plaintiff Mallory is a 71 year old, white female who currently resides near her adult son in Cocoa Beach, Florida. She is a twice divorced, retired, psychologist who has three adult children and, in my opinion, makes a better than average appearance as a witness. A brief summary of her deposition testimony follows.

In January 2004, Plaintiff Mallory drove from Cocoa Beach, Florida to Key West for a brief vacation and to attend a sailing race. She stayed at the Navy Lodge near Truman Annex and, on January 21, 2004, went to lunch with a friend named Snow Phillip. Mallory denied consuming any alcoholic beverages at lunch and, following the noon meal, took a walk on Duval Street. Mallory tripped and fell on the sidewalk located in front of a store at 928 Duval Street. Mallory testified that the toe of her shoe got stuck in the pavement and that she fell forward on her chin. Attached is a copy of a photograph of Mallory being attended to at the scene of the accident by Key West Fire Rescue as well as another photo depicting the general appearance of the area. As you can see, it appears that the roots of an adjacent tree pushed a portion of the sidewalk up at an expansion joint and that Mallory tripped and fell forward as she walked along the sidewalk.

A couple of days after the fall, Mallory returned to the scene of the accident and observed that the City had, in the meantime, taken remedial measures to correct the defect. She also claims to have spoken with a man named Mr. Elfassy who owned the clothing store

located at 928 Duval Street. According to Plaintiff Mallory, Mr. Elfassy told her that a number of people had fallen on the sidewalk prior to her accident at that, while Elfassy had complained to the City about the condition, nothing was done until after Mallory's fall.

As a result of the fall, Mallory broke her jaw. According to Mallory, Key West did not have an oral surgeon who was able to repair the injury and, after waiting several days, she drove back to the Cocoa Beach area and came under the care of an oral surgeon named Lance Grenevicki. According to Mallory, Dr. Grenevicki attempted to repair the injury by putting metal on her teeth and closing her jaw with elastic bands. The repair was unsuccessful and Mallory eventually went to her daughter's home in Bethesda, Maryland where an oral surgeon named Dr. Ryan Kazemi attempted to repair the fracture by wiring her jaw. The jaw was wired shut for 5 weeks, during which time she was unable to eat. Thereafter, the wire was removed and, while the fracture has healed, Mallory has been left with a significant malocclusion. As a result, Mallory has difficulty chewing, hearing, and takes muscle relaxers, and sleeps with a mouth piece to help hold her jaw in place.

Mallory does not have a claim for lost wages or diminished earning capacity, but does have medical expenses of approximately \$20,000 and claims that she may need surgery in the future which will cost approximately \$10,000. After convalescing from this accident, Mallory spent two years in France (Paris and Provence) touring the area and pursuing a life-long ambition to learn the French language. She is a retired psychologist who spent her last working years with the American Red Cross and appears to enjoy traveling.

Please don't hesitate to let me know if you have any questions or comments concerning the above or the status of the case in general. I will follow up to see if Mr. Elfassy is still in the area and whether there is any truth to Plaintiff Mallory's claim that the owner of the adjacent store witnessed a number of falls prior to the subject accident. I will also contact the Public Works Department concerning the sidewalk and any repairs made to the same.

Very truly yours,

/s/ Michael T. Burke

Michael T. Burke
For the Firm

MTB/jc
Encl.

cc: Larry Erskine, Esquire (via email)

Medical Summary
Mallory v. Key West
27-054

Dr. James H. Carraway
Plastic & Cosmetic Surgery Center of EVMS

- 5/7/99- Office Consultation, Level 1
- 9/23/99 - Office Consultation, Level 4
- 9/27/99 - Radiology shows scoliosis without active disease of lower thoracic and upper lumbar spine.
- 10/1/99 - Preoperative Diagnosis shows PL has a history of facial palsy, right facial area with ectropion left lower eyelid. The operation is a left lower eyelid ectropion correction with tarsal strip. (Ectropion is the turning out of the eyelid (usually the lower eyelid) so that the inner surface is exposed. Usually caused by the aging process and the weakening of the connective tissue of the eyelid, which causes the lid to turn out. Medicineplus.com)
- 1/27/00 - Office visit, Level 2
- 3/26/01 - Office visit, Level 2 (Dr. Weiss)
- 3/29/01 - Surgical Pathology Report shows PL is seen for a biopsy for lesions on right lower eyelid and nose

J. Siegel, M.D.
Jordan-Young Institute, P.C.

- 8/23/00 - PL seen for chronic right hip pain since 1995 when she sustained trauma. She was told she needed a hip replacement in '96 and PL has progressively worsened. PL has pain in her buttocks, groin, and down her leg laterally. X-rays show hip joint space on left is open and right hip space is completely obliterated with cystic and sclerotic changes, probable mild acetabular dysplasia, probable neck fracture and/or injury. Diagnosed with end-stage degenerative joint disease of the right hip.
- 11/15/00 - PL decided to do hip procedure and is scheduled for surgery this month. PL has end-stage degenerative joint disease of the right hip.
- 12/6/00 - Radiology reports show degenerative joint disease, rather marked arthritic change of the right hip.
- 1/23/01 - PL seen for 1st post-op visit following right total hip replacement. PL still using walker with TED hose. PL has minimal discomfort. Prescribed Celebrex and Percodan.
- 3/26/01 - PL seen for 2nd post-op visit following right total hip replacement. PL has some posterior pain and groin pain. PL is still using her cane. Percodan is prescribed. Doctor outline limitations and exercises with PL. PL stated she is having low back discomfort at S1 without radiation.
- 6/5/01: PL seen for post-op of hip. Doing well.
- 10/2/01 - PL seen to have hip checked radiographically because she has fallen a couple of

- times and is concerned that she may have damaged the implant. Doctor says it is unclear whether PL has been breaking her hip precautions, even though she feels she is abiding by them. She walks briskly and is warned about it.
- 10/1/02 - PL seen for annual followup, right total hip. PL is active and she is pleased with her hip. Doctor suggested that PL curtail some activities. Prescribed Flexeril for neck muscle tightness.
- 7/27/04 - PL seen for a followup, right total hip. PL says she has twinges of discomfort and has pins and needles down her right leg to just below her knee. PL seems to be somewhat noncompliant in followup precautions.
- 7/12/05 - PL seen for annual followup, right total hip. PL has intermittent pins and needles in the anterolateral aspect of her right thigh. Requested PL to come back in 2 years for another evaluation and x-rays.
- 12/01/06 - PL seen for annual followup for right total hip. PL has no hip pain, but right leg has weakness. General rotational movements are painful about the groin or lateral hip. Advised PL to have hip x-rayed in the next 2 years.

**Sentara Medical Group
Osteoporosis Evaluation Center**

- 2/10/03 - Bone Densitometry Report: PL assessed with Osteopenia. PL is at increased risk for the development of osteoporosis in the future.

Nora Siegrist, M.D.

- 8/19/03 - PL seen as a new patient because she wants a female physician. PL states she has 2 alcoholic drinks per day.
- 8/21/03 - Stress test shows shortness of breath and no endurance.
- 5/6/04 - PL seen for stomach problems.

**Suburban Hospital
Radiology Department**

- 9/28/03 - CT scans and x-rays show no definite fracture or dislocation of hand
- CT Scan of head found left occipital fracture. Old right frontal lobe encephalomalacia. Degenerative change of the cervical spine with fractures of the occiput and fractures of C6 on the right. Degenerative change of the cervical spine. Occipital and right C6 fractures not well-appreciated by plain film. No change in minor listhesis with flexion or extension.

Edward Aulisi, M.D.
Washington Brain & Spine Institute

- 10/1/03 - PL was seen and treated at Suburban Hospital when she fell and sustained a linear, left suboccipital skull fracture and right C6 laminar fracture. PL has been wearing a hard cervical collar since discharged from the hospital. PL seeing Dr. Desidario for her right arm. Doctor says that PL needs to stay immobilized for next 3-6 months.
- 10/8/03 - Dr. Desidario says there are no broken bones in PL's arm and the pain in her arm is due to related radiculopathy. PL has pain behind right shoulder blade with no neck discomfort. It is possible that the facet fracture may have injured the right-sided nerve root, or that she has a small herniated disc causing nerve root compression.
- 10/15/03 - PL is feeling better, right arm pain has improved, better flexibility in arm, with weakness in finger extensor. MRI reveals small left lateral disc herniation at C6-7. PL also has degenerative changes of the disc, but no herniation.. PL to remain in cervical collar.
- 11/25/03 - PL has mild problems with her right hand and thumb. Pain in PL's neck has greatly improved. Cervical spine x-ray shows evidence of early bony fusion and healing at the cervical fracture at C6-7 on the right side. No evidence of displacement or malalignment of spine. Fracture has healed well enough to place in a soft collar. Prescribed physical therapy.
- 2/18/04 - PL seen for followup. PL has no arm pain, but has discomfort in right trapezius which she has had before. Doctor did not notice evidence of instability or acute fracture, specifically at her previous fracture site, only noticed degenerative changes. PL's fall did not injure her previous fracture site and neck is in normal alignment.

James Jelinek, M.D.
Capital Imaging

- 10/14/03 - MRI of Cervical Spine for status post fracture of C7 and C6. Shows normal cervical cord with generous spinal canal, disc space narrowing at C4-5, C5-6, and C6-7, minimal retrolisthesis of C6 onto C7, small left lateral disc herniation at C6-7, fractures are very poorly seen on MRI and there is no evidence of epidural hematoma.

Lara B. Eisenberg
Doctors Goover, Christie & Merritt

- 11/24/03 - CT C-Spine W O Contrast and CT Reconstructions of PL. Report states that PL has history of cervical spine fractures. Shows some interval healing of the right C6 fractures. Left occipital fracture again faintly seen.

Lisa Barr, M.D.
DePaul Medical Center

- 12/10/03 - PL seen for evaluation of posttraumatic stress/chronic neck and shoulder pain, as well as right thumb pain. PL was seen 3 years ago for headaches related to right 7th cranial nerve palsy from car accident. Also in 9/03, PL fell down a full flight of stairs and suffered a right laminar and lateral mass fracture of C6 as well as a nondisplaced left occipital fracture. PL complains of constant aching and pain in posterior neck and upper shoulders, worse on right side, which PL associates with cervical fracture and prolonged use of cervical brace. PL also has headaches in the right suboccipital area which radiates around the right side of the temple region to the eye. Assessed with nondisplaced C6 fracture, right occipital fracture, myofascial pain syndrome, and osteoporosis.
- 3/8/04 - PL seen for followup and has suffered a fall in Florida. PL states that she was diagnosed with a fractured jaw and seen by an oral surgeon in Florida, but transferred her care to Dr. Kazemi in Maryland. PL now has wire clips and rubber band fixations of her mouth. PL states she is not utilizing her medications in liquid form. PL's neurosurgeon recommends continuation of physical therapy for recurrent neck and upper back pain related to previous immobilization and hard and soft collars for C6 fracture. PL is currently taking Fosamax and calcium, Mia-Calcin, and Flexeril. Assessed with cervicalgia with myofascial pain syndrome, history of C6 fracture, nondisplaced, recent jaw fracture with wiring/fixation. PL underwent in office trigger point injection at doctor's recommendation.
- 6/10/04 - PL seen for followup on headaches and cervicalgia symptoms. PL has continued treatment with physical therapy for TMJ and myofascial symptoms with recurrent posterior upper neck pain, which causes an associated headache. Also complains of posttraumatic arthritis symptoms in her right thumb and hand. Assessed with chronic cervicalgia with headache, myofascial pain syndrome, TMJ, and arthritis of the right hand/thumb. Doctor plans to proceed with diagnostic facet block procedure for recurrent cervical symptoms.
- 7/9/04 - **Procedure Note:** Right-sided C2 - C6 diagnostic medial branch blocks in order to treat persistent, predominantly right-sided neck pain and headaches.
- 6/23/05 - **Followup Questionnaire** shows PL is on cyclobenzaprine. PL says she has attended therapy since last seen, has problems with joint stiffness and swelling, her symptoms are better, she suffers from TMJ symptoms and headaches, has noticed tingling/numbness in her right leg.
PL seen for followup. PL asked for advice and recommendations for treatment of discomfort in upper and mid back. Cervical range of motion has improved. Assessed with myofascial pain syndrome with headaches, chronic cervicalgia, history of osteoporosis, history of right hip replacement, history of C6 fracture, resolved.
- 7/18/05 - PL seen for followup. PL is getting excellent relief of chronic neck and upper back pain with myofascial therapy. PL complains of paresthesias in the anterior portion of her right thigh, but no weakness in leg or foot. Assessed with cervicalgia with

- myofascial pain syndrome, improved; and right thigh paresthesia, rule of neuropathy or neuralgia paresthetica.
- 7/22/05 - PL seen for followup after undergoing right C2 - C6 facet block procedure which gave her total relief of her headache and neck pain for 6 hours and significant relief for the next 2 days. They have now recurred. Assessed with chronic cervicgia with associated headache, myofascial pain syndrome, and muscle spasm
- 9/1/05 - PL seen for followup. PL's test of lower extremities showed no evidence of radiculopathy or femoral neuropathy. PL is continuing to see Kathy Bragg for I myofascial therapy and is making good progress with her cervical symptoms and improved range of motion. PL's posture and cervical range of motion have improved. Assessed with cervicgia, myofascial pain syndrome, osteopenia.

Lower Keys Medical Center
Dr. Victor Genchi

- 1/21/04 - Assessment shows right knee abrasion, chin laceration, and right jaw pain. Pain in jaw is 10 of 10 constantly. PL stated that she fell in City sidewalk and hit her jaw. Stated that she had a glass of wine prior to fall and is currently on Flexinol. PL's full C-spine is intact.
X-ray of cervical spine shows limited portable cervical spine with no gross evidence for acute fracture.
CT of Mandible shows a right mandibular condyle fracture with anteromedial displacement.
Prescribed percocet and oxycodine

Lance Grenevicki, Institute of Facial Surgery

- 1/26/04- PL seen for evaluation of mandible fracture because she fell on 1/21 in Key West. Referred by Cape Canaveral Hospital.
- Intake sheet** shows medical history of Reynard's disease, artificial hip, 7th cranial nerve decompression (1971), broken vertebrae. Family history of high blood pressure, glaucoma, osteoporosis and cancer. Showed medications of cyclobenzaprine, oxycodone, and cephalixin.
- Health Questionnaire** shows PL is currently under care of a physician for a broken C6 vertebrae.
- PL brought x-rays and CT scan taken on 1/21/04. PL says her bite is off and having difficulty opening her mouth. Has been on liquid Ensure diet since she fell. PL signed consent for closed reduction of fracture of condyle mandible with ortho brackets and elastics. Maxillary and mandibular orthobridges cemented. Dr. prescribed Keflex 500 mg, Lortab Elixir 100 cc, and Flexeril 10 mg.

Consent for Surgery signed by PL for mandibular fracture of right condyle - needs closed reduction. Procedure is a closed reduction of right mandible with placement of orthodontic brackets and elastics.

Operative Report diagnoses PL with chin hematoma and right mandible high condylar head fracture, impacted wisdom teeth. Performed closed reduction of right mandible angle fracture. Doctor says that PL has had many medical conditions and appears frail. PL was initially seen and evaluated for a malocclusion.

- 1/29/04 - PL called with concern that her bite is shifting. Dr. said she would be fine until her appointment on Monday.
- 1/30/04 - PL called because she thinks the doctor prescribed incorrect medication
- 2/3/04 - PL seen for followup and has no pain, but still has numbness. Additional brackets and elastics were applied. PL complains of spasms and pain up in the right side of her face. There is paresthesia in the midline just underneath the submental laceration. New panoramic radiograph reveals a fractured right condyle at the eminence of the right temporomandibular joint. PL assessed with right sided temporalis pain and neck pain, submental laceration. PL reassured that occlusion appears to be improved, re-cemented brackets in appropriate places, bonded and bracketed first molars, removed sutures.
- 2/4/04 - PL called and stated that the metal pieces came off the bottom.
- 2/10/04 - PL seen for followup to initial closed reduction of right mandible condular fracture on 7/26/04. PL has less pain and swelling. There is no deviation of mandible with opening. Occlusion is perfect. A few orthodontic brackets were lost. There is a definite VII nerve weakness in the left upper lip, as well as reanimation changed from her previous accident in the right face and eye. When she closes her right eye, the corner of her mouth elevates. Plan was for followup care, encouraged PL to see her neurosurgeon in D.C., to see Dr. Thorne Jet when she is in Portsmouth, and advised that she may never be where she was prior to trauma.
- 3/4/04 - Doctor wrote letter to PL regarding failure to show for followup appointment.
- 5/11/04 - Doctor wrote letter to PL requesting that she find another oral and maxillofacial surgeon to care for her.

H. Ryan Kazemi, D.M.D
Center for Oral & Facial Enhancement

- 2/18/04 - Operative Report for closed reduction of fracture of right subcondyle via intermaxillary fixa for fracture of right subcondyle of mandible.
- 2/20/04 - Letter from doctor informing that PL is required to carry a wire removal instrument at all times in case of emergency.
- 3/26/04 - S/P closed reduction of mandibular condylar fractures. Arch bars were removed in 3/25/04. PL may continue with mandibular or TMJ Physical therapy at this time.

Dr. Carl Comer
The Therapy Network

- 3/31/04 - PL states that on 1/21/04 she broke her jaw when she fell. PL stated that she saw her oral surgeon because no local oral surgeon was in the area. PL flew to D.C. where they wired her jaw closed and the appliance was removed one month ago. PL states that her right molars come together sooner and she cannot open her mouth as wide. PL cannot currently bite with the front teeth and has difficulty tearing meat. PL has pain in her bilateral jaw on the right, intermittently on the left. PL sometimes drools out of the right lips. PL states that her teeth are closer together making it more difficult to floss.
- 4/2/04 - PL states there is no increase in pain but continues to have tender points throughout the intra and extraoral musculature bilaterally, also soft tissue restrictions noted in superior aspect of the bilateral SCMs and along the suboccipital musculature, and a significant amount of upper cervical extension. Doc prescribed moist heat to cervical spine and bilateral masseters./temporal musculature. Also 45 minutes of manual techniques to release restrictions, also ROM exercises of opening and closing mouth, etc.
- 4/7/04 - PL still has tender points previously noted. Reduced manual therapy to 30 minutes.
- 4/9/07 - PL has no increase in pain, but still has tender points. Same treatment plan.
- 4/12/04 - PL has significantly decreased headaches and jaw no longer clicks. PL still has soft tissue restrictions.
- 4/14/04 - PL has decreased headaches and jaw pain. PL able to actively open jaw 30 mm. Same treatment plan.
- 4/20/04- PL denies increase in pain. PL able to open her mouth 2 mm wider.
- 4/21/04 - PL has tender points previously noted and along the upper musculature of the cervical spine.
- 4/27/04 - PL states increased pain free function of bilateral TMJs. Able to open mouth another 1 mm. PL appears to have more prominence in left mandible v. right mandible with palpation of the joint in PL's ears. Still has tender points.
- 5/3/04 - PL reporting headaches and pain in bilateral TMJ. PL still has tenderness.
- 5/5/04 - PL states that she has not been doing her cervical ROM exercises. PL needs constant verbal and manual cuing regarding correct performance. PL requires reinstruction.
- 5/7/04 - PL has not had a headache within the past week. PL also reports improvement regarding TMJ symptoms but has continued tenderness to palpation/tightness.
- 7/13/04 - PL continues to have headaches and upper cervical spine pain/symptoms.

Neil Morrison

- 4/26/04 - PL seen for broken jaw.

Kathryn G. Bragg
Physical Therapist
Advanced Pain Management

- 6/9/04 - **Physical Therapy Progress Report:** PL reports significantly decreased pain in the TMJ and decreased headaches. PL has an opening of 38mm of the mouth.
- 6/24/05 - PL's symptoms increase with tension and decrease with medication, heat and massage. Pain is worse in the morning. PL has difficulty eating sandwiches and has to be careful how she eats and this sometimes affects her neck. PL's medical history shows a history of migraines since a car accident that left her with damage to the 4th cranial nerve, which caused a right facial part palsy for which she had surgery to the nerve to increase function. PL also states she had a trigger point injection about 1 year ago and benefitted from same. PL seems to ambulate properly around the office with some posture problems. PL shows facial weakness on the right and a significant deviation of the jaw to the left when talking and opening her mouth.
- 7/20/05 - PL has overall improvement in posture, but trouble with overall management over a long period of time.
- 8/30/05 - PL has difficulty with stabilization exercises.
- 9/6/05 - PL had to cancel last week's session because of a dental emergency which caused upper cervical pain. PL's right leg has also been more problematic.
- 9/9/05 - PL says exercises are becoming easier and notices that her shoulders are in a more neutral position on a regular basis.
- 11/28/06 - Physical Therapy Re-Evaluation shows PL was referred back to PT with a diagnosis of myofascial pain syndrome. PL has increased complaints of pain, decreased ROM, decreased flexibility/mobility, increased soft tissue restrictions, decreased function, and postural compensation.

Jonathan Jacobs, DMD, MD, FACS
Associates in Plastic Surgery, Inc.

Patient intake shows chief complaint is lips. Wants plastic surgery due to fall and metal braces/wires from broken jaw.

Alan Cohen, M.D.

- 3/2/99: PL has been referred to Lisa Barr for pain management and wants to defer surgery.
- 3/2/00: Bilateral Mammography shows dense fibroglandular tissue was noted in both breasts without findings suggestive of malignancy.
- 2/13/01: Bone Densitometry Report shows Osteopenia at the hip. At risk for the development of osteoporosis.
- 3/26/01: PL seen for followup of right hip arthroplasty completed in 12/00 by Siegel. PL has done well, undergoing physical therapy and has moved from walker to a cane.
- 5/17/01: Bilateral Mammography shows dense fibroglandular tissue was noted in both breasts without significant interval of change. No signs of malignancy.
- 6/21/01: PL seen for osteopenia, osteoarthritis with leg pain and spasms, degenerative arthritis.

- 10/1/01: PL seen for 5-6 pickers' papule-type areas on her legs. Also an area which looks more like dermatitis, medial to the left knee.
- 6/20/02: Bilateral Screening Mamogram shows stable. Recommend routine annual followup.
- 9/20/02: PL seen for annual reassessment of medical problems and Coast Guard Physical for Captain's License. Illnesses: Osteopenia. Chronic Leg Pain: Osteoarthritis, osteonecrosis, Avascular necrosis. Degenerative disc disease: chronic back pain. Accident in July 1970: Skull fracture and decompression required, 7th nerve, **traumatic facial nerve paralysis, multiple reconstructive plastic surgery re: car accident 1970, bike accident 1998**, exposure to keratitis (2nd to facial trauma). History of varicose veins. Raynaud's syndrome. Urinary incontinence. Risk of IBS. Hepatitis B. Surgeries: Multiple reconstructive surgeries to face for car accident in 1971 with 7th nerve decompression on the left. Also a bicycle accident with further facial surgery in 1998. Review: Eyes have exposure to keratitis of the right eye secondary to surgery from her facial injuries. Breast: complains of right breast pain for the past year. Complains of urinary incontinence. Has recurrent right hip and back pain and has been told she will need hip replacement in near future. Skin: Has persistent exzematous dermatitis as a result of long exposure to sun while sailing.
- 9/20/02: Chest X-ray shows an ill-defined subtle asymmetric density in the left apex. Slight hyperinflation of the lungs.
- 10/2/02: Addendum to Chest X-ray of 9/20/02 shows focul density of the left apex that was not present on the previous film although the density appearance has the characteristic of an irregular pleural thickening or pleural parenchymal linear streaking density.
- 10/15/02: CT of the chest shows no definable active disease in the chest.
- 10/21/02: PL notified she needs colonoscopy (due for screening).
- 10/30/02: PL seen to go over CT report. PL has had cough for many years. Tried to treat with sinus sprays which didn't work. Cough is possibly functional and doesn't appear to be reflux or related to allergies. Ordered pulmonary tests.
- 10/31/02: PL seen for cough. Diagnosed with mild obstructive ventilatory defect as manifested by a reduced ratio. Maximum voluntary ventilation is reduced. Does not meet established criteria for a positive bronchodilator response.
- 1/29/03: X-ray of Left ribs with Chest shows fracture involving 7th, 8th, and 9th left lateral ribs. Calcification of aortic arch is present. Dextroscoliosis of the thoracolumbar junction is present.
- 2/6/03: PL suffered rib fractures in lower thoracic ribs 8-11 on 1/28/03. She slipped on a boat that she was sailing in the Bahamas and was thrown against the railing rather than going overboard in "shark infested waters". Flown to Miami and treated in Broward County hospital. She was then driven to Norfolk. Problem list includes, osteopenia, chronic leg pain, osteoarthritis, osteonecrosis right femoral head, DDD, chronic back pain, under Dr. Barr's care, car accident 1970, skull fracture, multiple other fractures, Raynaud's syndrome, urinary incontinence, long history of cough. Assessed: traumatic rib fractures which may take several months before she is back to baseline. Increased pain at night. Osteopenia. Abdominal protrusion which is most likely postural. Chronic pain is stable.

- 2/10/03: Bone Densitometry Report shows risk of intrinsic estrogen deficiency of postmenopausal state.
- 2/26/03: Surgical Pathology Report shows screening and diagnosis of descending sigmoid colon biopsy. Hyperplastic polyp.
- 6/13/03: PL seen for followup on rib fractures due to boating accident on the 1st of the year which have healed nicely. Also assessed with diverticulitis, skin tag on right neck, request for exercise program, osteopenia, colonic polyps, intermittent cough.

Sentara Leigh Hospital

- 11/29/00: PL seen for right total hip replacement
- 12/13/00: PL seen for right total hip replacement. Discharged 12/19/00. Hip replacement due to complaints of right hip pain. Has had long standing right hip pain since 1995 when she sustained trauma to the right hip. Has been recommended to have total hip replacement, but elected to wait. She has progressively worsened. Has pain in her buttocks, groin, and down her leg laterally. Surgical history shows 7th cranial nerve decompression, full ear surgery/skull fracture, toe surgery in 84 and 95, fractured nose in 95 and facial reconstruction as cosmetic surgery in 97. Family history shows mother had osteoporosis, glaucoma and cataracts. PL has history of migraine headaches, cataracts. Xrays show right hip joint space is completely obliterated with cystic and sclerotic changes, probable previous neck fracture/injury.
- 12/13/00: Operation report shows diagnosis of endstage osteoarthritis of the right hip. Right total hip arthroplasty. Repair and reconstruction of posterior capsule and short external rotators.

Steven Macht, M.D.

- 3/31/95: PL referred by daughter and friend for evaluation of face after bike accident. Brought picture showing multiple abrasions on right cheek, forehead, and malar area. Also has history of 7th nerve compression which she relates to the right. Appears to have hemifacial asymmetry with less innervation of the left rather than the right and more prominent skin and folds on the right.

Patient Intake shows nose surgery in 1994.

- 10/4/96: PL returns and was seen over 1 ½ years ago for face lift. There has been considerable communication with insurance companies and PL regarding which side was accident related coverage, etc. PL informs that she is interested in blepharoplasty as well and perioral peel. Reviewed face lift procedure. PL has asymmetry and appearance as though part of the 7th nerve on the right is weak and in other parts of the face appearance as though other parts are weak and the clinical picture is confusing. The surgery for decompression she relates was on the right but there is no scar visible in the mastoid or occiput.

- 11/7/96: Operative Report shows Facial asymmetry secondary to 7th cranial nerve injury and aging face with blepharoptosis. Procedure is a bilateral cervicofacial facelift with mass plication and bilateral upper and lower blepharoplasty with perioral chemical peel. Facial nerve damage in aging face. Facelift, bilateral blepharoplasty, upper and lower, chemical peel and peri-oral.
- 11/11/96: Post-op facelift. Moderate swelling. Doing well. Has minor problems. Swelling is symmetric.
- 11/15/96: Post-op complaints are minor.
- 11/22/96: PL doing well. Some asymmetry commensurate with her nerve injury which is of the right upper branch and the left lower, but there is reasonable symmetry, redness around the perioral area. Left earlobe is a concern to her which is just the conglomeration of scars that are expected to resolve.
- 3/13/97: PL calls with minor complaints. No drastic changes.
- 5/28/97: PL seen for 6+ month followup post-facelift. PL looks good and she is pleased with results. She is concerned that she doesn't laugh and smile like the right. A slight tightening of the lower lid may improve situation. Earlobe situation appears slightly drawn down, right greater than left. Left commissure has slight weakness of the orbicularis muscle of the corner of the mouth and the area might be improved with static sling or active muscle transfer.
- 6/3/97: PL seen for excision of comedo/scar of face. Right upper lip, left upper lip, right cheek.
- 6/5/97: All areas healing well. Right cheek, right upper lip, and left upper lip were excised.
- 10/27/97: Correspondence from PL to Steven Macht regarding growth resulting from surgery and her anxiousness to have it removed.
- 12/1/97: PL seen for pre-op evaluation for revisional surgery.
- 12/3/97: PL seen for revisions to left earlobe and left lateral canthus.
- 12/8/97: PL seen for followup. All areas look good. Sutures removed around eye. PL is pleased with results.
- 12/12/97: Remaining sutures removed. Healing well. Pleased with results. Still some slight asymmetry which Dr. expects will improve. No further treatment.
- 3/12/99: PL returns complaining of drying condition of the eye and left earlobe. Was given Dr. Carroll Ray's number for evaluation in order for him to review and consider treatment.
- 5/21/99: PL seen regarding left earlobe.
- 5/24/99: Sutures removed from earlobe. Doing well, contour reasonable. NO problems. Area is still retracted. Also seeing Dr. Carraway re: eye and will return to reassess outcome of surgery.