

RESOLUTION NO. 09-222

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED WORKERS COMPENSATION SETTLEMENT AGREEMENT WITH FRANK LALAMA; PROVIDING FOR AN EFFECTIVE DATE

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

Section 1: That the attached Settlement Agreement between the City and Frank Lalama is hereby approved and the City manager is authorized to execute any necessary documents to effectuate its purpose.

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 1st day of September, 2009.

Authenticated by the presiding officer and Clerk of the Commission on September 2, 2009.

Filed with the Clerk September 2, 2009.



MORGAN MCPHERSON, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK

EXECUTIVE SUMMARY

RECOMMENDATION:

That the City Commission approve a total settlement of the Frank Lalama worker's compensation claim for the sum of \$249,990. This settlement resolves all outstanding claims, attorney's fees and costs. Out of this amount the claimant will net \$220,750. His attorney will receive \$27,249 in fees and costs. The claimant remains eligible for any vested retirement benefits, including his pension, but he agrees to execute a general release waiving any future employment rights with the City of Key West, however, it is specifically agreed that he is allowed to remain employed with the Police Athletic League as they are not a city employer. Furthermore, the city has the option of paying the \$249,999 in one lump sum, or may pay ½ of the total amount within thirty days with the remaining balance over a twelve month period from the time the JCC signs the order approving the settlement. If for some reason the claimant were to pass away during this twelve month period any remaining balance due under the settlement is payable to the claimant's heirs.

The claimant, Mr. Frank Lalama, is a police officer born on April 12, 1963. He first obtained employment with the City of Key West on June 3, 1985. His average weekly wage is \$1,468.15 and his compensation rate is \$746 per week.

On May 5, 2008 while the claimant was undergoing an exercise stress test they found a heart blockage which required immediate medical attention. On that day he underwent a left heart catheterization, left ventriculography, and coronary arteriography at the Heart Center of South Florida. This procedure was performed by Dr. Jonathan Roberts. The procedure revealed the claimant had three vessel coronary artery disease and several occluded arteries which required stenting. The claimant was then admitted to Baptist Hospital in Miami on May 6, 2008 where he underwent stenting to correct a 100% blockage of the left anterior descending artery as well as other blockages. It is important to note that the claimant previously had heart catheterization in August 2000 followed by four level bypass surgery in that same month.

The claimant filed a claim under Section 112.18, Florida Statutes, commonly referred to as the Heart and Lung Bill. Initially the claim was denied because the claimant failed to meet one element for the presumption, there was no evidence of the pre-employment physical. However, we subsequently confirmed the existence of a pre-employment physical which apparently disappeared from the file. The file contains a May 23, 1985 affidavit confirming the existence of a pre-employment physical and that in fact the claimant passed the pre-employment physical.

On or about July 24, 2008 the claimant filed a Petition for Compensability of his hypertension and heart disease conditions. It is important to note that it does not matter that the claimant had a long standing heart disease condition. What matters is that he had a progression of that condition on or about May 5, 2008. See Martin v. State Department of Corrections, 890 So. 2d 1238 (Fla. 1st DCA 2005), where the court ruled the presumption was applicable to a third heart attack even though the claimant had two pre-employment heart attacks.

In this particular case we faced indemnity exposure for impairment benefits based on a rating of 40% or more at 75% of the claimant's compensation rate. This entitles the claimant to at least

175 weeks of benefits with a minimum exposure of \$97,912.50, not counting penalties and interest.

Further indemnity exposure was also a significant potential primarily because heart disease conditions tend to get worse with age. Although the claimant is capable of working at the PAL at this time, there is a good chance that at some point his heart will disable him from employment. If the claimant was entitled to PTD benefits in the future we estimated the total present value, using a 6% discount factor, of approximately \$635,000. In considering this potential exposure it is important to note that the claimant was already accepted for In Line of Duty Disability on September 8, 2008.

We obtained an MSA outlining our potential future medical exposure which indicated catastrophic exposure of approximately \$615,542.95. It is important to note that this figure does not include potential non-Medicare/Medicaid covered items.

Essentially, we decided it was in the best interest of the City of Key West to settle this worker's compensation claim because it is extremely difficult to rebut the presumption. We had some potential non-work risk factors that we could assert caused the claimant's heart disease condition, but the worker's compensation case law requires us to show/carry the burden of proof and prove a specific non-work cause or combination of causes for the claimant's heart disease and heart attack. Typically, this is an extremely difficult task because physicians are afraid to use the word "cause" when describing the etiology behind coronary atherosclerosis. Instead, they have a tendency to refer to associations instead of causes. In fact, in this case the claimant's treating physician, Dr. Jonathan Roberts, refused to use the word cause when we took his deposition. In this type of case we typically have less than 50% chance of prevailing at trial.

Our exposure on this claim is potentially catastrophic, approximately \$98,000 of impairment benefits, potentially \$635,000 in PTD benefits, and another \$615,542.95 in medical benefits. With less than a 50% chance of prevailing it is easy to see that we had to consider settling this case if the numbers were under \$400,000 (50% of total potential exposure actually exceeded \$600,000).

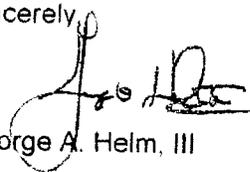
In this case we also face the problem of potential CMS/Medicare approval issues. If the claimant's condition worsens and he becomes a candidate for social security disability and Medicare, we wouldn't be able to settle this case unless we funded an MSA that would take at least the aforementioned \$615,542.95. Because the claimant is not currently receiving Medicare and working, and therefore, not likely to receive Medicare in next thirty months, as long as we don't settle this case for any figure higher than \$250,000 we don't need CMS/Medicare approval. In my settlement analysis I actually suggested that be prepared to pay as much as \$368,000 to settle this claim. However, any settlement above the aforementioned \$250,000 would have required CMS/Medicare approval and would have required us to fund the \$600,000, plus MSA. Accordingly, we wouldn't have been able to settle this case for less than the \$615,000. The point is, if we wait for the claimant's condition to worsen it will take significantly more money to get this case settled. In fact, the Medicare/CMS review limit of \$250,000 placed a "cap" on what we could pay to settle the claim at this time. In this case the cap was actually significantly less than what the case is worth. As a result, we were able to negotiate the \$249,999 figure.

Obviously, we need to get this approved as soon as possible. To date we have paid \$0.00 in indemnity benefits and \$2985.42 in medical benefits. I have attached a copy of my detailed

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settlement evaluation for your review dated January 15, 2009.

Sincerely,



George A. Helm, III

GAH/bas

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
Miami DISTRICT OFFICE

Frank Lalama
Claimant

OJCC Case No.: 08-019641CMH

DIA: 5/5/08

vs.
City of Key West
Employer

Gallagher Bassett
Carrier/Service Agent

MEDIATION SETTLEMENT AGREEMENT

Pursuant to the Court's Order, a Mediation Conference was conducted on 4/15/09 before HAYDEE PINO.

The parties have resolved the issues presented and stipulate and agree to the following matters and/or issues:

The parties agree to settle as to all past, present & future medical & indemnity benefits for the sum of \$ 249,999.00. Settlement is contingent upon City Council/Commission approval. Settlement is on a contracted basis.

On The Payout: \$ 249,999.00
less 27,249.00 fees + costs
\$ 222,750.00 - Net to Claimant

Claimant continues to be eligible for any vested benefits (incl. pension) but agrees to execute a general release & resignation, including

ff.

as police, isrection, of firefighter
JA

His employment w/

Future employment, ~~except as~~
Police Athletic League is not affected by this agreement
etc has the option to pay this settlement in a lump sum or if necessary, to pay 1/2 up front and the remaining balance over a 12 month period from the time the SCC signs the order. The parties agree & understand that any remaining unpaid amount are an asset of the Claimant & his heirs.

This is a binding and enforceable settlement on all parties to this agreement subject to the terms of this agreement.

The parties agree to promptly prepare and submit to the Court all documentation required of this Settlement, if any, and to perform all agreed acts.

The foregoing Mediation Settlement Agreement has been stipulated to and agreed to by the undersigned on behalf of themselves or their principals, in the presence of the Mediator and themselves on 4/15/09.

Frank Lafama
Claimant

Maria Ijaz, for Ransing, Sady and Maria Ijaz
Employer/Carrier/Serviceing Agent

[Signature]
Attorney for Claimant

[Signature]
Attorney for Employer/Carrier/Serviceing Agent

Respectfully Submitted,

Haydee Pino
HAYDEE PINO
MEDIATOR

INTERPRETER