

September 10, 2013 - Regular Meeting
Agenda Item #9

Subject

Teresa Malone v. Manatee County Sheriff's Office and Owners Insurance Company, Case No. 2012-CA-2618, CAO File No. 5004

Briefings

None

Contact and/or Presenter Information

James R. Cooney, Assistant County Attorney
Trudy K. Morris, Legal Assistant, Ext. 3762

APPROVED in Open Session
September 10, 2013
Manatee County Board of County
Commissioners

Action Requested

Motion to approval settlement of pending litigation.

Enabling/Regulating Authority

Section 125.01 and 768.28, Florida Statutes.

Background Discussion

Facts of the Case: On June 10, 2010, a MSO Deputy was traveling southbound in the left lane at the 4700 block of 26th Street West. Plaintiff was stopped in the left lane waiting to turn left onto 47th Ave. West. The Deputy collided with the back of the Plaintiff's vehicle at approximately 40 mph.

Medical Treatment for Teresa Malone: MC EMS found the Plaintiff sitting on the curb in a parking lot complaining of toe pain with minor swelling on the right big toe. She stated that her toe hit the dashboard. She signed a waiver for transport and treatment. After the accident, Plaintiff went home and was later driven to the ER by a friend. She had some bruising to the right shin area, mild swelling, and pain in the right knee. Ms. Malone subsequently began treatment with the Natural Healing Arts Medical Center because of complaints of pain in her neck, mid back, low back, left foot and right leg radiation. An MRI was done which showed C4-5 and C5-6 disc protrusions with bulging at C3-4, degenerative changes and disc bulges at L2-3 and L4-5. The Plaintiff continued treatment of physical therapy, chiropractic and acupuncture treatment with continuing complaint of pain in her neck, thoracic and lumbar spine, shoulder, chest and right leg. Testing was done to evaluate complaints of bilateral radiating pain to both feet. Also some parasthesia on big toe extension. During final exam at Natural Health Arts Medical Center, doctor said patient has reached MMI with 10% whole person impairment (5% for lumbar and 5% for cervical), injuries causally related to June 10, 2010 motor vehicle accident. She will need occasional palliative care including chiropractic manipulation, physical therapy and neuromuscular therapy at the cost of \$1,000. to \$2,000. per year for the next year.

Plaintiff's damages: Based upon the review of Plaintiff's medical billing records, Plaintiff incurred a total of \$49,207.08 in medical treatment expenses related to this accident.

Mediation Settlement The County Attorney's office recently participated in a mediation conference in this matter and the following was stipulated to by the parties:

- Manatee County shall pay Teresa Malone the sum of \$75,000.00 in full settlement of the Plaintiff's cause

of action.

- Owners Insurance Company will pay the Plaintiff the sum of \$1,000.00 towards settlement.
- Payment of said sum is subject to approval of the Manatee County Board of Commissioners.
- Plaintiff shall dismiss with prejudice all pending actions and execute and deliver to the Defendants a General Release.
- Each side shall pay their own costs and fees.
- The cost of mediation shall be divided equally between the parties.

CAO Recommendation: CAO believes that this settlement agreement is in the best interests of the County in order to conclude the litigation and recommends its approval for the following reasons:

- The County Attorney's Office's investigation into the cause of this accident reveals that Manatee County Sheriff's Office would be held liable for the injuries to the Plaintiff.
- Plaintiff has been treated for injuries sustained in the accident and has undergone considerable medical treatment.
- This settlement is less than a likely jury verdict. This matter is set for a two week trial beginning on October 21, 2013.

County Attorney Review

Not Reviewed (No apparent legal issues)

Explanation of Other

Reviewing Attorney

N/A

Instructions to Board Records

Return a stamped copy of this agenda memorandum to Trudy Morris, Legal Assistant to James R. Cooney, Assistant County Attorney. 9/12/13 QA emailed to Trudy Morris at CAO

Cost and Funds Source Account Number and Name

N/A

Amount and Frequency of Recurring Costs

N/A

Attachment: [Mediated Settlement Agreement.pdf](#)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL DIVISION

TERESA MALONE,

Plaintiff,

v.

CASE NO. 2012-CA-002618

MANATEE COUNTY SHERIFF'S OFFICE
and OWNERS INSURANCE COMPANY,

Defendants.

_____ /

MEDIATED SETTLEMENT AGREEMENT

THIS MEDIATED SETTLEMENT AGREEMENT is executed by the parties, TERESA MALONE, MANATEE COUNTY SHERIFF'S OFFICE, and OWNERS INSURANCE COMPANY, on this the 4th day of September, 2013. The parties agree as follows:

1. The Defendant MANATEE COUNTY SHERIFF'S OFFICE shall pay and Plaintiff TERESA MALONE shall accept the sum of ~~\$75,000.00~~ SEVENTY FIVE THOUSAND AND NO/100 Dollars (\$ 75,000.00) as a full and complete settlement of all claims arising out of this cause of action. Said Settlement payment shall be made to TERESA MALONE and KALLINS, LITTLE & DELGADO, P.A. at 433 8th Avenue West, Palmetto, Florida 34221, on or before the 5TH day of OCTOBER, 2013.

2. The Defendant OWNERS INSURANCE COMPANY shall pay and Plaintiff TERESA MALONE shall accept the sum of ONE THOUSAND AND NO/100 AND WAIVER OF SUBROGATION RIGHTS Dollars (\$ 1,000.00) as a full and complete settlement of all claims arising out of this cause of

action. Said Settlement payment shall be made to TERESA MALONE and KALLINS, LITTLE & DELGADO, P.A. at 433 8th Avenue West, Palmetto, Florida 34221, on or before the 5TH day of OCTOBER, 2013.

3. Upon the closing of the settlement and payment of all sums herein, Plaintiff shall dismiss her Complaint, with prejudice, each party to bear their own fees and costs.

4. MUTUAL GENERAL RELEASE. Except as to any claims arising under this Agreement, the parties do hereby release each other from any and all claims, demands, suits and causes of action which they have or may have against the other party arising out of the allegations in the Complaint.

5. The Plaintiff agrees to satisfy or otherwise resolve any lien or subrogated interest for Medicare, Medicaid, workers' compensation and health care benefits paid or payable to or on behalf of the undersigned as a consequence of the occurrence settled pursuant to this agreement.

6. Plaintiff agrees that she is responsible for all past and future Medicare, Medicaid, workers' compensation liens and health care expenses, set asides, as well as any related fines, fees or costs.

7. The Plaintiff acknowledges that regardless of the County's issuance of any IRS Form 1099, she will obtain her own advice on the taxable status of the payments listed in paragraph 1 above, and be responsible for any tax liability related thereto. Plaintiff agrees to furnish an IRS Form W-9 if required by Manatee County.

8. The Plaintiff hereby warrants and represents that she has not relied upon any representations by Manatee County, its counsel, or insurers in deciding to settle this litigation. In entering into this agreement, the Plaintiff represents that she has relied solely upon the advice of

her attorney, who is the attorney of her own choice, concerning all legal and tax consequences of this settlement; that the terms and effects of this settlement have been completely read and explained to her by her attorney; and that the terms and effects of this settlement are fully understood and voluntarily accepted by her.

9. This agreement may be submitted to the Court for an Order approving same and reserving jurisdiction to enforce the terms of the settlement agreement.

10. The Mediator's fee shall be divided equally between the parties.

11. In the event either party breaches this agreement and it becomes necessary for the other party to incur attorneys fees to enforce this agreement, the non-defaulting party shall recover from the breaching party his or her reasonable attorney's fees and costs.

12. BINDING AGREEMENT/SCRIVENER. This agreement is intended to be a valid and binding agreement under the laws of the State of Florida, effective upon its execution despite the need for any further documentation. By executing this Mediated Settlement Agreement, each party hereto acknowledges that they have read and understand the terms of this agreement; that they have freely and voluntarily entered into this agreement; and, that they have been represented in this matter by legal counsel of their own selection or have voluntarily declined said representation. In the event that the mediator has typed or written the text of any part of this agreement, the parties acknowledge that he has done so solely as an accommodation to them and solely as a scrivener recording the terms which they have agreed upon in language which they have read and approved.

13. COUNTERPARTS/FACSIMILE SIGNATURES. This agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of

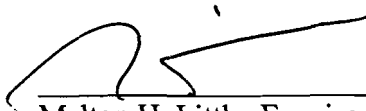
which together shall constitute a single instrument. Facsimile signatures shall suffice to bind the parties.

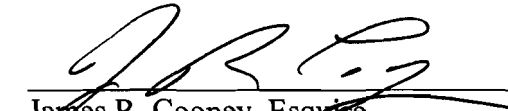
14. This agreement is subject to approval by the Manatee County Board of County Commissioners.

15. Additional provisions: COUNSEL FOR DEFENDANT SHERIFF'S OFFICE WILL RECOMMEND APPROVAL TO BOCC.



TERESA MALONE

FOR MANATEE COUNTY SHERIFF'S OFFICE


Melton H. Little, Esquire
Kallins, Little & Delgado, P.A.
433 8th Avenue West
Palmetto, Florida 34221
Telephone (941) 749-1446
Facsimile (941) 746-6903
Florida Bar No. 0603015
Attorney for Plaintiff


James R. Cooney, Esquire
Assistant County Attorney
1112 Manatee Avenue West, Suite 969
Bradenton, Florida 34205
Telephone: (941) 745-3750
Facsimile: (941) 749-3089
Florida Bar No. 0471615
Attorney for Manatee County Sheriff's Office

FOR OWNERS INSURANCE COMPANY


James L. Price, Esquire
Price Hamilton Price Chartered
2400 Manatee Avenue West
Bradenton, Florida 34205
Telephone (941) 748-0550
Facsimile: (941) 795-1391
Florida Bar No. 0316570
Attorney for Owners Insurance Company