

3/20/18

March 20, 2018 - Regular Meeting
Agenda Item #19

Subject

Daniel L. Kays. v. Manatee County Board of County Commissioners; Case No. 2017-CA-0757

Briefings

Briefing Provided Upon Request

Contact and/or Presenter Information

Christopher M. De Carlo, Assistant County Attorney, ext. 3750

Action Requested

Consideration and acceptance of Plaintiff's \$100,000.00 Proposal for Settlement to Manatee County in the matter of Daniel L. Kays v. Manatee County, Case No. 2017-CA-0757.

Enabling/Regulating Authority

Sections 125.01 and 768.79, Florida Statutes; and Florida Rule of Civil Procedure 1.442

Background Discussion

- This is a personal injury claim for damages allegedly sustained as a result of a motor vehicle accident. On April 6, 2016, a Manatee County Transit Department employee, who is now deceased for reasons unrelated to the subject accident, was involved in a motor vehicle accident while operating a County para-transit bus at the intersection of Town Center Parkway and University Parkway. Due to the facts and circumstances of the incident, the County has admitted negligence (fault) for the accident. Plaintiff, Daniel L. Kays, a 70-year-old Army Veteran and retired employee of the U.S. Postal Service, was a passenger when the MCAT bus struck the rear of a vehicle in front of it. Plaintiff, who was not wearing his seatbelt at the time of the accident, fell out of his seat and broke his upper right arm. Plaintiff is bringing a claim for alleged personal injuries related to this accident, including his broken right upper arm (spiral displaced fracture) which caused problems accessing the kidney dialysis port in his upper right arm, surgeries to repair his dialysis port and surgeries to locate a new dialysis port, and surgery to remove fluid from around his left lung.
- On January 4, 2018, Plaintiff served Manatee County with a formal written offer to settle the claim called a "Proposal for Settlement". The amount of Plaintiff's Proposal for Settlement was for \$200,000.00. At the January 23, 2018, Board of County Commissioners' meeting, the settlement offer was rejected upon the advice of the County Attorney's Office.
- On January 18, 2018, Manatee County served Plaintiff with a Proposal for Settlement for \$30,000.00, which was rejected by Plaintiff.
- On January 23, 2018, Plaintiff served Manatee County with a second Proposal for Settlement for \$125,000.00, which was rejected upon the advice of the County Attorney's Office.
- On March 1, 2018, Manatee County served Plaintiff with a second Proposal for Settlement for \$75,000.00.
- On March 2, 2018, Plaintiff served Manatee County with a third Proposal for Settlement for \$100,000.00. If the County does not accept the Proposal, then Plaintiff stands to recover his reasonable attorney's fees and costs from the County if the Plaintiff obtains a court judgment that is at least 25% more than the Proposal amount.
- Based on the facts and circumstances of the accident, Plaintiff's injuries, his documented medical and caregiver expenses, and potential claim for non-economic damages, the County Attorney's Office recommends the Board accept Plaintiff's third Proposal for Settlement to settle the case for \$100,000.00 in exchange for which Plaintiff will dismiss his claims against Manatee County with prejudice.

County Attorney Review

Other (Requires explanation in field below)

Explanation of Other

This is a County Attorney item.

Reviewing Attorney

DeCarlo

Emailed 3/22/18

Instructions to Board Records

E-mail an approved copy of this agenda item to:
Christopher M. De Carlo, Assistant County Attorney
christopher.decarlo@mymanatee.org;; and
Tracy Hanrahan, County Attorney's Office,
tracy.hanrahan@mymantee.org

Cost and Funds Source Account Number and Name

Fund: 5050001400; Object Code: 549102

Amount and Frequency of Recurring Costs

\$100,000.00 One Time

Attachment: [3rd OJ to MC 2018 03 02.pdf](#)

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

DANIEL L. KAYS,

Plaintiff,

vs.

CASE NO.: 2017-CA-757

MANATEE COUNTY, FLORIDA, a
Political Subdivision of the State of
Florida, and THE TRAVELERS HOME
AND MARINE INSURANCE
COMPANY, a Connecticut Corporation

Defendants,

PROPOSAL FOR SETTLEMENT

Pursuant to Florida Rule of Civil Procedure 1.442 and Florida Statute Section 768.79, Plaintiff, Daniel L. Kays ("Mr. Kays"), makes this proposal for settlement to Defendant, Manatee County, Florida ("Manatee County"), and states as follows:

1. This proposal is made by Mr. Kays and the party to whom the proposal is being made is Manatee County.
2. This proposal for settlement is in the total amount of \$100,000 to be paid by Manatee County to Mr. Kays within twenty days of acceptance of the proposal.
3. This proposal for settlement resolves all damages against Manatee County that would otherwise be awarded in a final judgment to Mr. Kays in this action.
4. If this proposal is accepted, Mr. Kays shall cause Manatee County to be dismissed by Mr. Kays as a party from the Litigation with prejudice.

5. Acceptance of this proposal will not fully compensate Mr. Kays for his injuries and damages and he specifically reserves the right to pursue his claim against The Travelers Home and Marine Insurance Company in the above-styled litigation.

6. This Proposal for Settlement includes attorneys' fees. Attorneys' fees are not currently part of Mr. Kays' legal claim.

7. There are no pending claims for punitive damages.

8. The proposal for settlement for present and future punitive damages is in the amount of zero dollars (\$0.00).

9. The proposal for settlement is in the total amount of \$100,000 and zero (0) percent of the total settlement amount is allocated for present and future punitive damages.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed with the Clerk of Court and served by e-mail pursuant to Fla. R. Jud. Admin. 2.516(b) to: Christopher M. De Carlo, Esquire and Anne M. Morris, Esquire, Manatee County Attorney's Office, 1112 Manatee Avenue West, Suite 969, Bradenton, Florida 34205, attorney for Defendant, Manatee County; and Sean Conahan, Esquire and Susan Mazuchowski, Esquire, Fulmer, Leroy & Albee, PLLC, 11300 4th Street North, Suite 100, St. Petersburg, Florida 33716, attorneys for Defendant, Travelers, on this 2 day of March, 2018.

