

## INTER-OFFICE CORRESPONDENCE

TO: City Commissioners  
Sam May, City Manager  
Laura Pastore, Risk Manager

FROM: James A. Cherof, Interim City Attorney  
Tracey DeCarlo, Interim Assistant City Attorney

DATE: September 14, 20018

RE: Potential Settlement Case of *Scott Tomasko v. City of Margate*, Case No. CACE-17-020893

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The Plaintiff, Scott Tomasko has filed a Complaint against the City of Margate related to an accident occurring on February 27, 2017 at the intersection of Margate Boulevard and State Road 7 at 6:00 a.m. The Plaintiff was traveling eastbound on Margate Boulevard when he collided with a police vehicle driven by Officer Jason Ginsberg. The accident was investigated by Officer Steven Randazzo. The Plaintiff claimed at the accident site that he was turning left (northbound) on to State Road 7 on a green light when he hit the rear passenger side of the police vehicle. The Plaintiff claimed that the Officer ran the red light causing the accident. Officer Ginsberg stated that he had a steady green when he entered the intersection, and that the Plaintiff was turning right, (or southbound) on to State Road 7. Due to the conflicting accounts as to how the accident occurred, the lack of physical evidence to determine fault, and the lack of any witness that was present at the scene, the investigating officer could not assign fault for the accident.

The Plaintiff sued the City for negligence. During discovery the Plaintiff identified a witness that had not previously provided any information to the City regarding the accident. This witness was deposed and testified that he was in front of the Plaintiff in the turn lane. He testified that he had a green light and proceeded to turn left through the intersection when he observed Officer Ginsberg's vehicle enter the intersection behind him on the red light. This witness did not see the accident. This witness is the Plaintiff's neighbor, but both deny any close relationship other than knowing each other.

The Plaintiff sought treatment after the accident for his injuries. He went to the emergency room the afternoon of the accident complaining of chest, neck and back pain. He was treated by an orthopedic physician for neck, back and bilateral shoulder pain over the next few months. He underwent 35 physical therapy sessions and had diagnostic testing in the form of x-rays and MRI's. The testing and treatment resulted in the following diagnoses:

- Left shoulder complete tear of the supraspinatus tendon and infraspinatus tendon
- Subacromial and subdeltoid bursitis
- Acromioclavicular hypertrophy and inflammation
- Right shoulder rotator cuff tear

- Complete tear of the right biceps tendon
- C3-4, C 4-5 bulging discs
- C5-6, C 6-7 disc herniation
- L2-3, L3-4 and L4-5 bulging discs

The Plaintiff's orthopedic physician rendered the opinion that the Plaintiff suffered an impairment of 16% to his whole body and that the Plaintiff need more invasive treatment for his back, shoulder tendon tears and his right biceps tear. The Plaintiff's physician opined that this surgery would cost between \$75,000 and \$90,000 for his shoulders and biceps and between \$90,000 and \$125,000 for his back. These estimates do not include any additional post-surgery physical therapy which the physician estimates at \$12,000- \$15,000. The Plaintiff also claimed damages for past medical expenses of \$35,000 and past lost wages of \$10,000.

This matter is set for trial on the Court's docket for November 26, 2018. Pursuant to the trial order the parties were required to mediate this case. Mediation was conducted on September 13, 2018. A proposed resolution of this claim was agreed to for a total sum of \$70,000 subject to approval of the Commission. The agreement is also subject to the Plaintiff's execution of the attached Release. This Release includes the understanding that by this settlement the City does not admit liability and that the Plaintiff would be responsible for any pending expenses related to this incident, including his attorney fees and costs.

Should this settlement not be approved, discovery would continue and the case would be tried before a jury.

Please feel free to contact our office anytime if you have any questions or if we can provide any additional assistance.