

**CITY OF MIAMI  
CITY ATTORNEY'S OFFICE  
MEMORANDUM**

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**TO:** Ana Gonzalez-Fajardo  
Assistant Director, Employee Relations

**FROM:** Alejandro Vilarello, City Attorney

**DATE:** September 19, 2003

**RE:** **Supplemental Opinion: FOP Demand for Payment of  
Health Insurance Premiums on Claimant Ricky Taylor  
(File No.: A# 01-00376) (MIA # 03-00014)**

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An opinion was issued on August 30, 2001 (copy attached) which noted the need for additional information to determine whether the Claimant met the remaining criteria for a catastrophic injury under 440.02(37), Florida Statutes. Supplemental documentation consisting of a Social Security Disability Review was thereafter provided, and the findings were informally discussed with the then-administration of Risk Management. Recently, you requested a formal response, so this opinion is being provided on the following question:

**WHETHER CLAIMANT TAYLOR MEETS THE CRITERIA OF  
A CATASTROPHIC INJURY PURSUANT TO SECTION  
440.02(37), FLORIDA STATUTES.**

**ANSWER**

The answer to your question is yes.<sup>1</sup>

During the research for this supplemental opinion, we discovered an additional issue concerning payment eligibility unrelated to the medical aspects, as follows:

**WHETHER THE FOP HEALTH TRUST CONSTITUTES THE  
"EMPLOYER'S HEALTH PLAN" FOR THE PURPOSES OF  
SECTION 112.19(2)(H)1, FLORIDA STATUTES.**

**ANSWER**

The answer to this question is a qualified no.

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<sup>1</sup> Note: This supplemental opinion and the previous opinion issued August 30, 2001, were originally limited to the medical components raised by the inquiry together with the supporting documentation that was provided.

## ANALYSIS

### Catastrophic Injury

Following the issuance of our initial opinion, Risk Management provided a Social Security Disability Review prepared by Sylva Case Management, Inc., which concluded as follows,

Based on the medical history of this injured employee, and statements by treating physicians that this patient is permanently and totally impaired from returning to suitable gainful employment, *it is the opinion of this consultant that Officer Taylor would be found medically disabled and eligible for social security disability benefits.*<sup>2</sup> (emphasis added)

Based on Ms. Silva's conclusion that Claimant Taylor meets the criteria for Social Security Disability, which is one of the factors in Section 440.02(37)(f), Florida Statutes, it is the opinion of this office that he would, therefore, satisfy the "catastrophic injury" requirement of Section 112.19(2)(h)(2), Florida Statutes.

### FOP Health Trust

While researching the first issue, this office was advised that there was a question as to whether the FOP Health Insurance Trust was part of the City's health insurance plan. Section 112.19(2)(h)1, Florida Statutes, provides in pertinent part,

Any employer who employs a full-time law enforcement, correctional, or correctional probation officer who...suffers a catastrophic injury...shall pay the entire premium of the *employer's health insurance plan...* (emphasis added)

Documentation from the initial Trust arrangements were obtained. In response to a proposal that the City also execute the FOP's Health Trust Agreement, the City had previously obtained an outside analysis of such a joinder. This analysis revealed several ramifications if the City were to execute the Agreement and, therefore, it was decided that the City would remain independent. Some noteworthy aspects of the Agreement included,

- the City was precluded from participation in the Trust Agreement's amendment process;

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<sup>2</sup> We also note that the inquiry asks whether eligibility would be retroactive to Claimant Taylor's retirement date of December 5, 1997. Given the findings on the second issue, the retroactivity issue is legally moot. Furthermore, the Disability Review did not address this issue. In prior discussions with Risk Management we learned that although the Claimant was determined to be permanently and totally disabled from a neuropsychological standpoint in October 1997, the opinions from a medical standpoint were inconsistent. The Disability Review also indicated the review of medical opinions, however they were subsequent to the Claimant's retirement date.

- the City did not have any power to monitor the Trust;
- there was no requirement on behalf of the Trust to provide benefits to each employee on whose behalf the City makes contributions;
- the trustees (none of whom included a City representative) could terminate the Trust or terminate any plan by which it provides medical or other benefits, without approval of the City, provided the action was not inconsistent with the bargaining agreement. If such termination were to occur, the disbursement of remaining funds would be within the sole discretion of the trustees consistent with the purpose of the Trust. (Articles IX and X)

Section 112.19(2)(h)1, Florida Statutes, requires payment of the “*employer’s* health insurance plan.” This language denotes a possessive relationship. Furthermore Article 24.4 of the FOP bargaining agreement states,

The FOP shall maintain *its own* group health, life, and accidental death and dismemberment insurance plan. All current, future, and retired sworn police bargaining unit members shall be eligible to participate in the FOP plan, but shall forfeit the right to participate *in the City’s plan*. (emphasis added)

This language clearly reveals that the FOP’s plan is “its own”. The FOP “plan” in question was, and is, “adopted, established, and maintained by the *Trust*,” and not by the City. (Article I, Section 8; emphasis added)<sup>3</sup>

We have found no case law, Attorney General Opinions, or other interpretative authority to provide instruction in this matter. As the issue presented is one of first impression, we are guided by the plain language of the statute. Therefore, given the language showing the intended independence of the two plans, considered with the plain language of Section 112.19(2)(h)1, it is our reasoned opinion that the City would only be obligated to pay the premiums if Claimant Taylor were covered under the City’s plan (i.e., CIGNA), not the FOP Health Trust’s plan.

You should also note that these health insurance arrangements were negotiated prior to the enactment of Section 112.19(2)(h)1, and, therefore, this particular situation was not contemplated by the parties. Given that the legislative intent of this provision is to assist law enforcement officers who have been catastrophically injured in the line of duty, and that the statute does not preclude the City from voluntarily undertaking such payments, the City can voluntarily issue these payments. However, if the City so decides, it should be made clear to the Union that the payments are gratuitous, that they are not pursuant to the statutory provision, and that they are not precedent-setting

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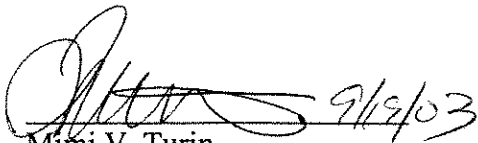
<sup>3</sup> We also note the City’s contractual funding obligation. However, this alone does not confer ownership rights of possession to the City, particularly when viewed in conjunction with the language of the bargaining agreement and the Trust agreement.

## CONCLUSION

The Social Security Disability Review of Claimant Taylor's medical, functional and vocational factors concluded that he meets the criteria for Social Security Disability, which is one of the qualifying factors for a catastrophic injury under 440.02(37)(f), Florida Statutes. Therefore, based on Ms. Sylva's findings, the Claimant has a catastrophic injury for purposes of Section 112.19(2)(h), Florida Statutes.

However, the FOP Health Trust's insurance plan does not qualify as the "employer's [City's] health insurance plan", and Section 112.19(2)(h)1.b, provides that it is a misdemeanor to obtain these benefits by any false, fraudulent or misleading statement. If this benefit is voluntarily granted, it should be made clear that the payments are not being awarded pursuant to this statute, and that the payments are not precedent-setting.

Prepared by:



Mimi V. Turin  
Assistant City Attorney

Enclosure

c: Diane Ericson, Administrator, Risk Management