



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/15/14	SM	Fav/1 amendment
2/3/15	JU	Fav/CS
2/17/15	CA	Favorable
	FP	

December 15, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 22** – Judiciary Committee and Senator Rob Bradley
Relief of Joseph and Audrey Stewart on behalf of their son, Aubrey
Stewart

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$3.3 MILLION AGAINST THE CITY OF JACKSONVILLE FOR NEGLIGENCE IN CONNECTION WITH FAILURE TO REMEDY A DANGEROUS CONDITION CAUSED BY A TREE LIMB WHICH, ON JUNE 27, 2011, FELL AND INJURED AUBREY STEWART CAUSING SERIOUS AND PERMANENT PARALYSIS AND BODILY INJURY.

FINDINGS OF FACT:

On June 27, 2011, Aubrey Stewart, son of Joseph and Audrey Stewart, was struck and injured by a falling tree limb after briefly leaving his home to retrieve luggage from his car. His home, where he lives with his parents, is located at 1512 Dyal Street in Jacksonville, Florida. The tree from which the limb fell was located on a city right-of-way and was owned by the City of Jacksonville.

Leading up to the incident, the City had received several complaints about the dangerous conditions of trees in the area. On September 7, 2010, the Stewart's next door neighbor complained about "several trees along [Dyal] street that need to be trimmed due to falling limbs" and on

September 10, 2010, Joseph Stewart complained about a “dead tree on the City’s right-of-way needing to be checked for removal due to dropping large limbs along with a second [tree] next to it.” On January 6, 2011, a tree limb from one of the reported trees fell and struck a car and the City paid on a claim for the damage to the car. Finally, on May 13, 2011, one of the reported trees fell into the road and blocked traffic. The City responded and removed the downed tree, however, the City did not trim or remove the second tree which injured Aubrey.

The falling tree limb dealt a severe blow to Aubrey causing serious injuries. He was transported via ambulance to Shand’s Jacksonville, spent five months in the Shand’s Pediatric I.C.U., and spent one month at Brooks Rehabilitation Center. During that time, he underwent more than 10 surgeries and procedures. Presently, he is paralyzed from the waist down and confined to a wheel chair. He has permanent scars on his back, permanent hardware installed in his body, and requires the use of a catheter and colostomy bag.

At the time of the accident Aubrey Stewart was 15 years of age and a minor. He has since turned 19 years of age and still lives with his parents who care for him full time. Currently, Aubrey also requires the assistance of a home health aide who the family has hired for four hours a day, seven days a week.

Some other difficulties faced by the Stewart family include necessary and extensive modifications to their home to allow for Aubrey’s wheelchair to fit through doorways and to give Aubrey enough room to maneuver in his bedroom, the bathroom, and the kitchen. Some of these modifications have been completed, including modifications to Aubrey’s bedroom and the home’s kitchen. However some are still pending including a wheelchair ramp in the backyard.

It is also very difficult for Aubrey to travel since the family does not have a van with a wheelchair lift. This leaves Aubrey homebound most of the time and, when he is required to travel for doctor visits and other necessary trips, the family relies on public transportation that can have long wait times.

Total medical bills for Aubrey from Shands Jacksonville and Brooks Rehabilitation were \$1,647,937.57. Medicaid has paid

a portion of these medical bills and retains a lien. The parties involved in the litigation also hired Lawrence S. Forman, M.Ed., J.D., to create a continuum of care plan and Frederick A. Raffa, Ph.D., an economist, to create a life care plan for Aubrey. Dr. Raffa estimates that Aubrey's future life care needs will range from \$9,052,435 to \$10,763,383 above and beyond his current medical bills. To date, the city of Jacksonville has paid the statutory maximum amount of \$200,000. Of this amount, \$94,761.12 was used to pay for attorney's fees and case costs, \$27,000 is held in trust for the Medicaid lean pending the resolution of the claim, and \$78,238.88 was paid to the Stewarts.

The Stewarts have set up a special needs trust for Aubrey.

LITIGATION HISTORY:

On February 15, 2012, Joseph and Audrey Stewart filed a complaint against the City of Jacksonville on behalf of their son Aubrey Stewart. The complaint alleged that Aubrey's injuries were caused when a limb from a tree in a city owned right-of-way fell on him. The complaint also alleged that the City knew or should have known that the dangerous tree posed a hazard to the residents on Dyal Street and that the City breached its duty of care by failing to act.

The City and the Stewarts entered into a settlement agreement on June 28, 2013, which the Jacksonville City Council unanimously approved. The stipulated final judgment required the City to pay installment payments totaling a sum of \$3,500,000 to the Stewarts. On July 23, 2013, the City passed ordinance 2013-515-E, which stipulated to the City's responsibility for Aubrey Stewarts injuries. The ordinance also authorized an immediate payment of the statutory maximum of \$200,000 and to support a claim bill for the remaining amount to be paid in installments of \$1.2 million in year one, \$1 million in year two, \$600,000 in year three, and \$500,000 in year four after a claims bill is passed. These funds will be paid from the City's Risk Management Fund.

On March 26, 2014, the Jacksonville City Council passed emergency resolution 2014-231-A. The resolution fully supported and urged the passage of SB 30 (2014) and HB 3513 (2014). Senate Bill 30 is substantively identical to SB 22.

CONCLUSIONS OF LAW:

The City of Jacksonville had a duty of care to maintain city owned trees on Dyal street in a safe condition and to remedy any dangerous conditions that it knew or should have known existed. *City of Jacksonville v. Foster*, 41 So.2d 548, 549. The City was informed of the dangerous condition over a period of several months through multiple complaints by residents on Dyal Street. The City demonstrated knowledge of the dangerous condition by removing one of the two dangerous trees named in the complaints when that tree fell onto the road and by paying a claim for damage to an automobile which was caused by falling tree limbs. The City breached this duty by failing to remedy the second dangerous tree located on the city owned right-of-way on Dyal Street. This breach was the proximate cause of Aubrey's injuries.

ATTORNEYS FEES AND LOBBYIST'S FEES:

The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. Lobbyist's fees are included with the attorney's fees.

RECOMMENDATIONS:

The undersigned recommends that Senate Bill 22 be amended to direct payment of the funds, after deduction of costs and liens, to the special needs trust established for Aubrey Stewart. Otherwise, the undersigned recommends that Senate Bill 22 (2015) be reported FAVORABLY.

Respectfully submitted,

Daniel Looke
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

CS by Judiciary

Under the bill, the City of Jacksonville must pay compensation to the parents of the injured child. Under the committee substitute, the compensation must instead be used to pay any Medicaid liens. Then, the remaining funds must be paid into the injured child's special needs trust. A special needs trust will allow the trust beneficiary to remain eligible for means-tested government benefits, but upon the beneficiary's death, any remaining funds in the trust first

must be used to reimburse the government for the benefits provided during the beneficiary's life.