



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/5/14	SM	Favorable
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December 5, 2014

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

Re: **SB 26** – Senator Miguel Diaz de la Portilla
Relief of Thomas and Karen Brandi

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF \$825,094 AGAINST THE CITY OF HAINES CITY FOR THE RELIEF OF THOMAS AND KAREN BRANDI FOR THE INJURIES AND DAMAGES SUFFERED BY THOMAS BRANDI WHEN HIS VEHICLE WAS STRUCK BY A HAINES CITY POLICE OFFICER'S VEHICLE ON MARCH 26, 2005.

FINDINGS OF FACT:

Liability

At approximately 8:50 PM on March 26, 2005, Thomas Brandi was travelling west on Southern Dunes Boulevard through the intersection of Southern Dunes Boulevard and U.S. 27. Mr. Brandi was in the center lane of three lanes. The right-hand lane was a "right turn only" lane, the left lane was a "left-turn only" lane and Mr. Brandi's lane could either turn right onto U.S. 27 north with the flow of the right-hand lane or proceed straight through the intersection.

Mr. Brandi was well into the intersection when a Haines City Police car being driven by Haines City Police Officer Pamela Graham northbound on U.S. 27 struck Mr. Brandi's vehicle broad-side at the driver door. Officer Graham was employed by the City of Haines City (the City) at the time of the crash.

The northbound lanes of U.S. 27 at Southern Dunes Boulevard consist of two northbound lanes, a left-turn lane and a right-turn lane. The police car was in the northbound lane closest to the left-turn lane.

The traffic lights at the intersection were working at the time of the crash. The posted speed limit was 45 MPH. The police car's emergency lights and sirens were activated. Both Mr. Brandi and Officer Graham were wearing seatbelts. There was construction occurring at the intersection but it was not an active construction site at the time of the crash.

Mr. Brandi was seriously injured in the traffic crash and was transported by helicopter to the trauma center at Lakeland Regional Medical Center. (Mr. Brandi's injuries and the damages from the crash will be discussed below in the **Damages** section.)

At a deposition taken in preparation for the jury trial of the negligence claim brought by Mr. Brandi against Haines City, Officer Graham testified that she believed she had heard a fellow officer request emergency help over the radio. Officer Graham then proceeded quickly from the jail to the point of impact with Mr. Brandi's vehicle, as she mistakenly responded to the call she thought she had heard. Officer Graham testified that she entered the intersection on a yellow light.

No other witnesses to the traffic crash gave sworn statements or testified at the trial of this matter, however three additional witness statements have been presented for review during the claim bill process.

One eyewitness reported that as she (the witness) approached the intersection heading east on Southern Dunes Boulevard the traffic light turned yellow. The witness judged that she could have made the light but decided to stop due to not being familiar with the area. As the witness stopped a police car came through the intersection "very fast" and collided with a car that came from directly across the intersection from the witness. The witness perceived that the car across from her, in the westbound flow of traffic, turned left at the intersection. The witness confirmed that the police car had its emergency lights on but she was unable to verify that the siren was on because the witness was listening to

music. The police car was heading from the witness' right to left.

The other two eyewitness statements were provided by a couple who observed the traffic crash from their semi-truck cab in the southbound lane of U.S. 27. He was driving while she was in the sleeping quarters, looking straight ahead. He was inching the semi forward so that he "wouldn't have to stop." There was one car ahead of the semi.

Both witnesses said that the police car had its emergency lights and sirens on. The police car "did not slow very much" and came on through the intersection, striking Mr. Brandi's vehicle that "had the light," heading westbound. One witness described the police officer as driving erratically. The other witness estimated the police car's speed to be about 35-40 MPH.

One witness explained that it looked like there was a van or SUV in the left turn lane on Mr. Brandi's side of the intersection which was quite likely to have blocked his view of the police car approaching the intersection from Mr. Brandi's left. This eyewitness stated that there was "no way" Mr. Brandi could have seen the police car coming.

The Florida Highway Patrol trooper who investigated the crash listed witnesses in his report but did not include any detailed witness statements. The report noted that "witnesses stated that the police vehicle proceeded through the intersection on a red light with blue lights and siren."

The trooper cited Officer Graham for violating s. 316.126(5), F.S., by not operating her emergency vehicle with due regard for the safety of all persons using the highway. The trooper also cited Mr. Brandi for failure to yield to an emergency vehicle in violation of s. 316.126, F.S.

The Haines City Emergency Vehicle Operation Policy, adopted in accordance with s. 316.072, F.S., requires that an officer will not "enter controlled intersections against the directional flow of traffic at a speed greater than 15 MPH and will be sure that cross-traffic has yielded in each lane before attempting to cross that lane." Officer Graham testified that she looked both ways before entering the intersection.

The Haines City Police Department conducted its own investigation and found Officer Graham to have violated the Emergency Vehicle Operation Policy and that she had committed the traffic violation cited by the investigating FHP Trooper. Accordingly, Officer Graham was disciplined by the Department.

An accident reconstructionist, hired by Mr. Brandi's attorneys prior to the negligence trial in this matter, studied and reported on the traffic light sequence at the Southern Dunes Boulevard and U.S. 27 intersection where the crash occurred. He testified that, heading northbound like Officer Graham was driving, there was a 4.3 second yellow light followed by an "all-red." All-red is the period of time when all four sides of an intersection have a red light, in this case, a full second. This full second of all-red is designed to give traffic that may have entered an intersection late on a yellow light time to clear the intersection before the adjacent lanes get a green light.

Both at the scene and at the trauma center Mr. Brandi said that he had consumed 4 beers earlier in the day. Two hours after the traffic crash no alcohol or drugs were in his system according to blood and urine tests performed at the Lakeland Regional Medical Center trauma center.

On the Issue of Damages

Before March 26, 2005

A careful reading of the many reports and expert opinions about Mr. Brandi's psychological and emotional conditions, as well as his history with alcohol, indicate depression and alcohol abuse dating back to 2001. There are indications that he experienced issues with job dissatisfaction both before and after the traffic crash.

It appears that Mr. Brandi feels that his alcohol abuse is something he needs to control because the reports indicate that he has sought counseling and attended A.A. intermittently since at least 2003.

Prior to the traffic crash in March of 2005, Mr. Brandi's last employment was as a maintenance technician for Owens Illinois Plastics. This employment ended in May of 2003.

During this period of time in 2003 Mr. Brandi was suffering with depression and alcohol abuse. He sought treatment with

his family doctor who eventually referred him to a psychiatrist who treated Mr. Brandi's depression. Mr. Brandi seemed to be making good progress with the combination of medication and counseling.

Mr. Brandi began taking college courses but stopped taking those classes during the summer of 2004. Beginning that summer he assisted family members with post-hurricane housing issues. He did repairs on his own home and other projects around the house. Mr. Brandi also paid the household bills and did most of the cooking as his wife was employed full-time.

Mr. and Mrs. Brandi were pursuing the adoption of a child just prior to the traffic crash in 2005. They were undergoing a home-study as part of the adoption process. Both felt Mr. Brandi was doing much better with the depression and alcohol issues. In addition to pursuing the adoption of a child, Mr. Brandi had begun looking for work.

March 26, 2005 – Trial

The trauma center doctor testified at trial that witnesses at the scene indicated that Mr. Brandi was initially unresponsive after the crash. He was awake and talking when EMS arrived.

Mr. Brandi could not remember what happened before, during, or after the crash. He repeated the same questions over and over with the EMS personnel and the trauma room doctor.

The Life Flight crew suspected that Mr. Brandi was suffering from a closed head injury with altered mental status. The trauma center doctor suspected a concussion but Mr. Brandi's CAT scan came back normal.

The medical reports, and deposition and trial testimony presented for review in the claim bill process, show that as a result of the traffic crash Mr. Brandi suffered a potentially life-threatening aortic tear and numerous bone fractures. The aortic tear was repaired early in Mr. Brandi's ten day hospital stay at Lakeland Regional Medical Center.

Mr. Brandi's orthopedic injuries included a fractured sternum, rib, fibula, and multiple pelvic fractures.

He was discharged to Florida Hospital in Orlando for rehabilitation, both physical and cognitive. At the time of discharge from Florida Hospital one of Mr. Brandi's diagnoses was listed as "mild traumatic brain injury secondary to motor vehicle collision."

According to discharge reports from Florida Hospital, after the ten-day rehabilitation he continued to exhibit "mild cognitive communicative disorder with decreased insight, decreased executive functioning, and decreased concentration."

Prior to discharge from Florida Hospital, Mr. and Mrs. Brandi advised the neuropsychologist on the case about Mr. Brandi's "pretty significant depression over the past two years." While he noted that Mr. Brandi's adjustment after the traffic crash was going extremely well, the neuropsychologist counseled Mr. and Mrs. Brandi about how "adjustment reactions can become more problematic in concussion with a history of depression prior to an incident."

The neuropsychologist's discharge orders recommended outpatient follow-up for occupational, physical, and speech therapy.

The many medical and specialist reports submitted for consideration in this matter indicate that Mr. Brandi was diligent in his follow-up treatment and was progressing well.

In fact, through the Fall of 2005 he participated in vocational rehabilitation, reporting no physical limitations. He was motivated at that time to pursue a two-year degree with an emphasis on biomedical engineering. Mr. Brandi's vocational rehabilitation counselor believed that Mr. Brandi could enter the job market in that field upon completion of the coursework.

The counselor recommended that Mr. Brandi continue on medication management for depression, with short-term counseling related to adjustment depression issues.

Mr. Brandi made some attempts to go back to work after the traffic crash. The first reported job was at an automotive garage where he was expected to perform tasks he had reportedly been good at and enjoyed doing prior to the crash. Mr. Brandi reported, however, that he was unable to figure out how to do more than simple tire and lube work. It seems to

have been during this period of time when he began to struggle with alcohol again.

Mr. Brandi started out strong with his outpatient therapy regimen after the crash and he seemed to be somewhat optimistic and enthusiastic about the future.

At some point, however, it is clear that things took a turn for the worse. Mr. Brandi began to report or exhibit anxiety, depression, confusion, forgetfulness, irritability, withdrawal, frustration, obsessive-compulsive behavior and even violence toward his wife.

There was a time when the Brandis separated about two years after the traffic crash. Mrs. Brandi reports that Mr. Brandi's personality has changed significantly since the traffic crash. He underwent in-patient intensive alcohol treatment from March through July of 2008.

Mr. Brandi has experienced aches and pains and some physical limitations in the last several years, most likely related to the physical injuries he received in the traffic crash.

Mr. Brandi has undergone neuropsychological, medical, and psychiatric testing and evaluations since the traffic crash in March of 2005.

The opinions of the experts vary largely as follows:

- Mr. Brandi's MRI shows damage to the brain and it was caused by the traffic crash;
- Mr. Brandi's brain injury is of a permanent nature and will require life-long coping skills to overcome the resulting cognitive impairment;
- Mr. Brandi did not suffer a closed head injury resulting from the traffic crash;
- If Mr. Brandi suffered such a trauma it was minor and did not cause any residual cognitive impairment;
- If Mr. Brandi suffers on-going cognitive impairment resulting from the crash, his ability to cope (or inability, at times) is exacerbated by his depressive disorder and occasional alcohol abuse;
- If Mr. Brandi suffers cognitive impairment it was not caused by the traffic crash but is the result of depression and alcohol abuse.

Mr. Brandi seems to have been able to find some joy and satisfaction in his work and hobbies from time to time. He has reported that he particularly enjoys fishing, being with family, and riding his motorcycle.

The monetary damages related to the traffic crash will be discussed below.

Litigation History

Thomas and Karen Brandi filed suit against the City of Haines City for damages they suffered as a result of the negligent actions of the City's employee, Officer Graham, on March 26, 2005. The trial lasted nearly a week.

In addition to the fact-issues that were in contention, the trial jury also heard evidence suggesting a continuation of care plan for Mr. Brandi's future.

Evidence was also presented on the matters of Mr. Brandi's loss of earning capacity, the cost of future medical care, lost wages from the date of the traffic crash to the date of the trial, medical costs incurred by the Brandis as a result of the crash, and past and future pain and suffering.

The trial jury rendered its verdict on November 17, 2009. The jury assigned 60% negligence to the City and 40% to Mr. Brandi. It should be noted that the jury did not have the benefit of the three impartial eyewitness's testimony at trial.

The jury found that Mr. Brandi suffered permanent injury in the crash. It awarded Mrs. Brandi \$175,000 for loss of Mr. Brandi's comfort, society and attentions, and services.

For Mr. Brandi's medical expenses and past lost earnings, the jury awarded \$279,330 in damages. Future medical expenses and lost earning ability for the next 25 years (Mr. Brandi was 39 years old at the time of the crash) were compensated in the amount of \$903,000. The jury awarded past and future pain and suffering in the amount of \$450,000. The verdict total is \$1,807,330.

CONCLUSIONS OF LAW:

On The Merits

The testimony of three impartial eyewitnesses to the crash, none of whom the jury heard from at trial, shows that Officer Graham did not have the right of way nor did she proceed with

sufficient caution approaching and coming into the intersection of U.S. 27 and Southern Dunes Boulevard.

Officer Graham was employed by the City of Haines City and acting within the scope of her employment at the time of the traffic crash. Officer Graham was operating a city vehicle in an unsafe manner, her actions amounted to negligence on the part of the City and were the cause of the traffic crash that injured Thomas Brandi as described in this report.

Although Mr. Brandi has abused alcohol for years, the undersigned finds that there is insufficient evidence to conclude that he was impaired by alcohol or drugs at the time of the vehicle crash. This finding is based upon two primary factors: the toxicology results which were obtained so soon after the crash and eyewitness testimony that Brandi did not run a red light as an impaired person might do.

Additionally, eyewitness testimony leads one to conclude that Mr. Brandi did not see or hear the police car before he entered the intersection. A van or SUV was blocking his view in the "left turn only" lane, therefore even if Mr. Brandi entered the intersection on a yellow light, that decision would not indicate impaired or even abnormal driving behavior.

At the trial of this matter the judge ruled that the City had not presented sufficient evidence on the matter of whether Mr. Brandi was wearing his seat belt at the time of the crash. Having reviewed the trooper's crash report, the crash scene photographs, and the testimony of the Trooper, as well as considering the trial court's ruling, the undersigned finds that Mr. Brandi was wearing his seat belt.

Out of respect for the sanctity of the trial jury's verdict, the undersigned will not suggest a reallocation of comparative negligence between the parties although one wonders what the verdict might have been if the impartial eyewitnesses had been heard from at trial.

The damages awarded by the jury are based on sufficient evidence and will not be disturbed.

The City of Haines City, as a municipality, is covered by the provisions of s. 768.28, Florida Statutes. The statute waives the City's sovereign immunity from tort actions with monetary

limits within which the City is liable to pay a claim or a judgment, not to exceed the sum of \$200,000.

On January 14, 2010, the trial court entered a Final Judgment in the case allowing Thomas and Karen Brandi to recover a total of \$200,000 from the City. This sum has been paid by the City's insurance carrier, Preferred Governmental Insurance Trust (PGIT).

The court stated as follows in the Final Judgment: "This judgment is entered without prejudice to the Plaintiff's right to pursue payment of the full jury verdict."

The full outstanding amount of the verdict and the amount of the claim bill is \$825,094. The Claimants have provided the undersigned with the computation that supports this amount. The Claimants have also provided the required Proof of Publication in order to lawfully proceed with the claim bill.

On May 17, 2010, the court entered its Order granting the Brandi's January 26th Motion to Tax Costs against the City in the amount of \$94,049.84. The costs were clearly enumerated and attached as Exhibit D to the Motion.

Also attached to the Motion, as Exhibit F, was a form entitled "Common Agreement Declarations" in which PGIT names the City of Haines City as a "covered party" during the time of the traffic crash. Under "Supplementary Payments – Coverages A and B" the form also appears to indicate that the insurance trust will "pay, with respect to any claim or suit we defend...[a]ll costs taxed against the covered party in the suit...[t]hese payments will not reduce the limits of coverage." The costs of litigation set forth in the court's Order have not been paid to date.

The Brandi's Motion also asked the court for the joinder of the City's liability insurance carrier (PGIT) as a party defendant for the purpose of including the insurance carrier in the judgment for costs. The record before the undersigned does not show how the court ruled on that part of the Brandi's Motion.

The Claimant suggests that the City is a named insured of an excess policy issued by State National Insurance Company.

The City characterizes the relationship as “excess indemnity coverage” at \$2,000,000 per occurrence.

No matter the nomenclature the amount of the claim bill, if passed by Legislature, should not have a direct effect on the coffers of the City. It appears that the amount of the claim bill should be paid by the City’s insurer.

Finality for Purposes of a Claim Bill

The City argues that the claim bill is not ripe for consideration by the Legislature because the Claimants do not have an enforceable excess judgment. The City’s position seems to be based upon the fact that the court’s Final Judgment in the trial of the matter does not complete the computations for reaching an outstanding net Judgment amount.

From a litigation standpoint, the case has been fully litigated through the jury trial process and the jury has spoken.

For reasons unknown to the undersigned the trial court did not perform the reduction in the total verdict amount to allocate 40% negligence to Mr. Brandi. Likewise the court did not assign credit to the City for collateral sources of payment to the Brandis.

The trial court entered a simplified Final Judgment in the case allowing Thomas and Karen Brandi to recover a total of \$200,000 from the City. The court also stated as follows in the Final Judgment: *“This judgment is entered without prejudice to the Plaintiff’s right to pursue payment of the full jury verdict.”*(emphasis added)

The City argues that absent a request from the Brandis for the court to reduce the verdict amount by 40% that the court was “unable to apply any reduction based on comparative negligence.” While it is true that the court did not make the reduction and was evidently not asked to do so by the Claimant, nor did the City make the request.

The City further argues that Mr. Brandi’s failure to ask the court to clarify its Final Judgment “prevented the trial court from considering collateral sources” or setoffs of funds Mr. Brandi received from sources besides the City. The Claimant did not seek such clarification from the trial court, however neither did the City.

In this Special Master's view the City's argument affixes "blame" solely upon the Claimant for a lack of clarity in the Final Judgment, but the City had the ability to request further clarity from the court as well.

The undersigned finds nothing in the Florida Rules of Civil Procedure that prevents either party from seeking clarification from the trial court in these matters.

The Senate Rule related to claim bills (Rule 4.81) states that "[t]he hearing and consideration of a claim bill shall be held in abeyance until all available administrative and judicial remedies have been exhausted."

The question of whether "all available...judicial remedies have been exhausted" is the heart of the City's argument that the claim bill is not ripe for consideration by the Senate.

While it is the view of the undersigned that the court's Final Judgment in the trial of this matter lacks clarity as to the specific amount of damages (above the \$200,000 waiver of sovereign immunity limits) due Mr. Brandi, the judgment is a Final Judgment nonetheless. The case was fully litigated and a jury reached a verdict.

This Special Master finds that the computations submitted by the Claimant, which reduce the verdict (\$1,807,330) by collateral source payments (\$88,922) then further reduce that amount by the 40% comparative negligence assigned to Mr. Brandi, the \$100,000 paid by Claimant's auto insurance and the \$200,000 paid by the City, and then adds the taxable costs (\$94,049) as ordered by the court, are accurate. Therefore, the resulting amount of the claim bill is \$825,094.

The Senate's interpretation of the Senate Rule's application to the claim bill can only be determined by the members of Senate. The undersigned believes that the Senate can find that all judicial remedies have been exhausted in this matter without violating the Rule 4.81.

ATTORNEYS FEES:

Counsel for the Claimants has submitted an affidavit stating: "I have complied with Florida Statute s. 768.28(a) and all lobbying fees related to this claims bill will be included as part

of the above statutory cap on attorney's fees." Although the affidavit incorrectly cites the statute, it appears that Counsel's intent is to comply with s. 768.28(8), Florida Statutes and that Counsel will not "charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement."

The undersigned suggests that a corrected affidavit be submitted prior to the consideration of the claim bill.

RECOMMENDATIONS:

For the reasons set forth herein, the undersigned recommends that Senate Bill 26 be reported FAVORABLY in the amount of \$825,094.

Respectfully submitted,

Connie Cellon
Senate Special Master

cc: Debbie Brown, Secretary of the Senate