



**STORAGE NAME:** h6543.CJC

**DATE:** 3/16/2017

March 16, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran  
Speaker, The Florida House of Representatives  
Suite 420, The Capitol  
Tallahassee, Florida 32399-1300

Re: HB 6543 - Representative Santiago  
Relief/Erin Joynt/Volusia County

**THIS IS A CONTESTED CLAIM IN THE AMOUNT OF \$1.9 MILLION AGAINST VOLUSIA COUNTY FOR INJURIES AND DAMAGES SUFFERED BY ERIN JOYNT WHEN A VOLUSIA COUNTY TRUCK DROVE OVER HER BODY ON JULY 31, 2011.**

FINDING OF FACT:

Erin Joynt ("Claimant") was struck by a Volusia County ("the County") truck while sunbathing on Daytona Beach on July 31, 2011. She suffered multiple facial fractures and a perforated ear drum. On April 5, 2012, Claimant filed suit against Volusia County. A trial was held in June 2014, in which a jury returned a verdict in the amount of \$2.6 million. On appeal, the Fifth District Court of Appeal reduced the verdict to \$2 million because economic and medical damages were not supported by the evidence presented at trial. After an amended final judgement was entered on January 12, 2016, the County paid the statutory cap payment of \$85,000. Claimant seeks the remainder of the amended final judgment in this instant claim bill.

*The Incident*

On July 30, 2011, Claimant was on vacation with her husband and two children. They were traveling from their home in

Wichita, Kansas to their final destination of Walt Disney World. After a day of driving, on July 31, 2011, they arrived at Daytona Beach to enjoy the famous Florida beach. In the morning, around 10:00 AM, Claimant's husband and two children were playing in the water while Claimant rested in the sand, lying on her stomach and sunbathing.

That same morning, Thomas Moderie, a Volusia County beach patrol employee, was driving a Volusia County F-150 pickup truck on the same beach. Mr. Moderie was driving north on the beach when a pedestrian flagged him down to report broken glass on the beach from a two vehicle collision that occurred earlier that morning further south on the beach. Mr. Moderie initiated a U-turn, but instead of steering his truck to the left and utilizing the other designated lane for vehicle traffic on the beach, he steered his truck to the right and towards beach patrons. He was attempting to turn right and head south on the beach towards the reported broken glass when his pickup truck's left front tire ran over Claimant's head and torso. According to the Florida Highway Patrol Crash Report, Mr. Moderie was not operating his vehicle in emergency mode at the time the collision occurred.

Claimant's daughter, who was eight years old, witnessed the truck run over her mother. Another beach patron ran over to Claimant and rendered first aid as an ambulance was called to the scene. Claimant was taken to nearby Halifax Medical Center, where she would spend the next six days recovering from her injuries.

#### *Claimant's Injuries*

As a result of the impact with the Volusia County pickup truck, Claimant suffered multiple cranial and facial fractures, multiple rib fractures, hearing loss, vision problems, and permanent facial paralysis.

In the months following the incident, Claimant underwent two procedures to help her in her recovery. First, Claimant had her perforated eardrum reconstructed in her left ear on August, 27, 2011 in Wichita, Kansas. This procedure involved grafting a posterior superior tympanic membrane perforation and a placement of an ossicular prosthesis. Second, on September 26, 2011, Claimant underwent a procedure to aid her in closing her right eye by having a gold weight sewn into her eyelid.

#### LITIGATION HISTORY:

On April 5, 2012, Claimant along with her husband and two children, filed suit against Volusia County in the circuit court in the Seventh Judicial Circuit, in and for, Volusia County. Claimant alleged negligence by Volusia County for the actions of Mr. Moderie. Claimant's husband and two children brought loss of consortium claims against the County. Prior to trial, Claimant's husband settled with the County for \$134,500 and the children's claims were settled for \$15,000 (\$7,500/per

claim). Prior to trial, the County admitted liability and solely contested damages. The trial began on June 23, 2014 and lasted four days. Claimant presented evidence of the cost of her ongoing care, such as her deficient hearing ability that may one day require the assistance of a hearing aid. Claimant also presented evidence that she may not be able to continue her employment as a paraeducator, assisting elementary age students in reading. On June 27, 2014, the jury returned a verdict in the amount of \$2,600,000. The verdict was broken down as follows:

- \$500,000 for past pain and suffering;
- \$1,500,000 for future pain and suffering;
- \$500,000 for diminished earning capacity; and
- \$100,000 for future medical expenses.

The County appealed the jury's award for diminished earning capacity and future medical expenses. The County argued that Claimant failed to present evidence at trial that would allow the jury to quantify any diminished ability to earn money in the future or future medical expenses. At the time of the injury, Claimant was unemployed and taking care of her youngest child.<sup>1</sup> After her injury, she was able to return to full time employment as a paraeducator, a position she held in the years prior to her injury. At trial, Claimant's supervisor testified that Claimant has performed satisfactory and that none of Claimant's physical limitations would affect Claimant's ability to be promoted. The Fifth District Court of Appeal, in an opinion filed on November 13, 2015, held there was "absolutely no testimony presented to indicate Joynt was completely disabled from further gainful employment as the result of her injuries or was unable to work to the same age she would have otherwise."<sup>2</sup> Accordingly, the Fifth District Court of Appeal struck the jury's award of \$500,000 for diminished earning capacity.

The County also challenged the jury award of \$100,000 for future medical expenses as there was no reasonably certain basis for such an award. The County argued the testimony presented at trial showed Claimant may need future care but it was only a possibility. At trial, Claimant presented doctors who stated Claimant possibly would need to continue pain medication and it was possible she would need a hearing aid but it was Claimant's choice. The Fifth District Court of Appeal held Claimant's injuries are either not reasonably certain to be incurred or evidence was not presented at trial to determine the amount of future expenses. The jury award of \$100,000 for future medical costs was reversed and the final judgment was reduced from \$2.6 million to \$2 million.

On January 12, 2016, a second amended final judgment was

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<sup>1</sup> At the time of the incident, Claimant was on her husband's AETNA health insurance plan.

<sup>2</sup> *Volusia Cnty. v. Joynt*, 179 So. 3d 448, 449 (Fla. 5th DCA 2015).

entered against the County for \$2,000,000. The County paid the remainder of its statutory cap of \$85,000 to Claimant.<sup>3</sup>

Following the imposition of the amended final judgment, Claimant's attorneys brought a declaratory judgment action against Volusia County and its insurer, Star Insurance Company, to force Star Insurance to pay the remaining \$1.9 million. The action was removed to the United States District Court for the Middle District of Florida where it currently is pending. Volusia County has filed a motion to dismiss and Claimant's attorneys have filed a motion to remand to state court.

As a backdrop to the declaratory judgment dispute, it is worthwhile reviewing how the parties arrived here. Section 768.28(5), F.S., provides "Any settlement or judgment in excess of the caps may be reported to the Legislature and be paid in part or in whole only by further act of the Legislature." However, the same section provides "the state, or an agency, or subdivision thereof" may pay a settlement or judgment without further action by the Legislature as long as the settlement or judgment is within the limits of their insurance. This allows local subdivisions to pay a settlement that exceeds the statutory cap with their insurance<sup>4</sup> and avoid the legislative claim bill process.

Here, the County is insured by Star Insurance Company for \$5 million. According to Claimant's attorneys, Star Insurance's policy for excess coverage in effect on July 31, 2011 does not consider a claim bill and the insurer is required to pay the remaining balance of the final judgment. According to Star Insurance, its obligation to pay is not triggered until a claim bill is passed. A trial is set for June 2017 to resolve this dispute. Claimant's attorneys state that if this claim bill is passed and enacted they will subsequently move to dismiss the request for a declaratory judgment.

CLAIMANT'S POSITION:

Claimant argues the County is liable for the injuries sustained from the County's truck driving over Claimant and seeks the remaining final judgment to compensate her for the past and future pain and suffering.

RESPONDENT'S POSITION:

The County argues the claim bill award is excessive and unsupported by the facts and circumstances of this case. The

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<sup>3</sup> The County had a \$200,000/occurrence statutory cap under s. 768.28(5), F.S. (2011) and Claimant's husband received \$100,000 and their two children received \$7,500 each. That left a remaining \$85,000 in the statutory cap towards Claimant's final judgment. Note that Claimant's husband received \$34,500 from the County's excess insurer, Star Insurance Company.

<sup>4</sup> The Florida Supreme Court has defined insurance to not include self-insurance, which many local subdivisions rely on instead of purchasing commercial insurance. See *Hillsborough Cnty. Hosp. & Welfare Bd. v. Taylor*, 546 So. 2d 1055, 1057 (Fla. 1989).

County argues that Claimant and her family have already received a sufficient amount to compensate her for her loss and the Legislature should not pass claim bills for non-economic damages.

CONCLUSION OF LAW:

Whether or not there is a settlement agreement or a jury verdict, as there is here, every claim bill must be based on facts sufficient to meet the preponderance of the evidence standard. Here, the County admits their employee, Mr. Moderie, was operating within the scope of his duties on July 31, 2011, owed a duty to Claimant and was negligent when he drove the F-150 pickup truck over Claimant's body. However, even without the County's admission, I find Mr. Moderie owed a duty to Claimant and was negligent in operating the truck.

The sole issue in this claim is damages. While a jury found damages for both pain and suffering and economic damages (future economic and future medical), the Fifth District Court of Appeal reduced the jury's award and the final judgment was amended. The Legislature is not bound by jury verdicts, appellate decisions or this report. Claim bills are an act of legislative grace.<sup>5</sup> As such, this Legislature may choose to honor the full jury verdict, the reduced final judgment or even less. The bill as filed and presented before this Special Master seeks only the reduced final judgment amount of \$1.9 million. At the special master hearing, Claimant's attorneys admitted this claim seeks only to compensate the Claimant for her past and future pain and suffering.

The County argues Claimant has made a remarkable recovery and has been adequately compensated for any pain and suffering sustained. From the final judgment of \$2 million, Claimant has received \$85,000. The County contends the settlements between the County and Claimant's husband and children should be seen as compensating her for her injuries. Additionally, the County contends Claimant was enriched by receiving \$20,000 from Mr. Moderie's own insurance policy. Through the settlement of her family's claims and collateral sources, the County argues Claimant has received \$254,500.

Despite the County's contention, I find the remaining final judgment of \$2 million to be a fair and just amount for Claimant's pain and suffering. Claimant has suffered disfigurement to her face and will never look the way she did prior to the incident. Dr. William Triggs, a medical doctor hired by the County to evaluate Claimant's damages, found Claimant suffers from a residual left facial palsy and that the facial weakness will never recover. This paralysis is an emotional toll on Claimant, of which she will live with for the rest of her life.

Finally, the County argues the Legislature should not pass a

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<sup>5</sup> *Gamble v. Wells*, 450 So. 2d 850, 853 (Fla. 1984).

claim bill consisting solely of pain and suffering damages. This contention and issue is outside the purview of this report and only for the individual members to decide.

ATTORNEY'S/  
LOBBYING FEES:

Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 4% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total \$74,094.75.

COLLATERAL SOURCES:

Claimant received \$20,000 from Mr. Moderie's own insurance. As previously mentioned, Claimant's husband received \$134,500 from the County to settle his claims. Additionally, the County paid \$15,000 to settle Claimant's two children's claims. Claimant received \$85,000 of the amended final judgment of \$2 million.

Though this claim is for Claimant's past and future pain and suffering, Claimant was and is covered by her husband's health insurance.

RESPONDENT'S ABILITY  
TO PAY:

The County has an excess liability insurance policy with Star Insurance in the amount of \$5 million. If the claim were to pass, Star Insurance would pay the entirety of the award.

LEGISLATIVE HISTORY:

This is the first time this instant claim has been brought before the Legislature.

SUGGESTED AMENDMENTS:

The amended final judgment is in the amount of \$2,000,000. The County exhausted the statutory caps of \$200,000 when it paid \$100,000 to Claimant's husband<sup>6</sup>, \$15,000 for Claimant's children's claims, and \$85,000 to Claimant. Since the trial was over Claimant's claim only, there still remains an outstanding final judgment in the amount of \$1,915,000. However, the bill as filed is in the amount of \$1,900,000. Additionally, Volusia County is entitled to a setoff of the settlement amount (\$20,000) paid by Thomas Moderie to Claimant.<sup>7</sup>

The bill should be amended to reflect the correct amount of \$1,895,000.

Furthermore, lines 50-51 inaccurately states that Volusia County supports passage of the claim bill.

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<sup>6</sup> Star Insurance paid the additional \$34,500 to resolve his claim.

<sup>7</sup> See s. 768.041(2), F.S.; *Honeywell Int'l, Inc. v. Guildler*, 23 So. 3d 867, 871 (Fla. 3d DCA 2009).

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RECOMMENDATIONS:

I recommend that House Bill 6543 be reported **FAVORABLY**.

Respectfully submitted,

**PARKER AZIZ**

House Special Master

cc: Representative Santiago, House Sponsor  
Senator Simmons, Senate Sponsor  
Ashley Peacock, Senate Special Master