

November 24, 1997

SPECIAL MASTER'S FINAL REPORT

DATE

COMM.

ACTION

The Honorable Toni Jennings
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

CA
WM

Re: SB 52 - Senator Grant
HB 3051 - Representative Miller
Relief of Jemal Kurein and Family

THIS IS A VERDICT BASED EXCESS JUDGMENT CLAIM AGAINST THE CITY OF TAMPA TO COMPENSATE JEMAL KUREIN FOR PERMANENT DISABLING INJURIES HE SUSTAINED WHEN THE TAXI CAB HE WAS DRIVING WAS HIT BY A CITY OF TAMPA FIRE TRUCK AND TO COMPENSATE HIS WIFE, SEMIRA KUREIN, AND THEIR TWO MINOR CHILDREN, REMZU KUREIN AND NIMA KUREIN.

FINDINGS OF FACT:

On March 17, 1993, at the intersection of Howard Avenue and Main Street in Tampa, Florida, at approximately 10:00 a.m., Jemal Kurein was working as a taxi cab driver and driving northbound on Howard Avenue. He approached and traveled through the intersection at approximately 15 mph. A City of Tampa fire truck driven by Douglas Brant Cochran was traveling west on Main Street in route to an emergency. The fire truck, with its siren and emergency lights activated, was traveling between 25-35 mph. The fire truck traveled through the intersection and collided into the right side of Mr. Kurein's taxi cab with severe impact. Mr. Kurein's head was struck by the fire truck causing him to rebound back and strike the left side of his head on the left window or a pillar, rendering him unconscious and critically injured. Mr. Kurein remained in a coma for several days and was hospitalized for 2 months. He suffered severe and permanent injury.

Although there is conflicting evidence, it appears more likely that the City of Tampa fire truck ran the red light and caused

the accident in which Mr. Kurein was injured. Two bystanders witnessed the accident and testified that the fire truck ran the red light. Specifically, Mark Barroso and Geoffrey Shelley testified that they observed the light immediately before and after the accident and observed at both times that it was red for the fire truck and green for Mr. Kurein. Both testified that the fire truck never slowed or hit its brakes and was traveling extremely fast for that intersection, especially with a red light.

Additionally, physical evidence suggested that the fire truck entered the intersection on a red light. Specifically, the City of Tampa fire truck had responded to a previous call and was beginning to return to its station when it received a call to respond to another emergency. Mr. Cochran drove the fire truck to Main Street and turned west on Main Street. Before he reached the intersection of Howard and Main Street, Mr. Cochran either stopped or came to a near stop at the intersection of Albany and Main which ultimately resulted in him having a red light at the intersection of Howard and Main. When he either stopped or came to a near stop at the intersection of Albany and Main, Mr. Cochran stated that he observed the light ahead at Howard and Main was green for vehicles going west on Main.

The City of Tampa Police Department Accident Reconstruction Investigation results showed that it took Mr. Cochran's truck more than 18 seconds to travel from the intersection of Albany and Main to the intersection at Howard and Main. The light at the intersection of Howard and Main remains green for westbound Main for only 12 seconds, has a 4-second yellow light and turns red in 16 seconds with a 1-second interval of red for all traffic. Mr. Kurein had a green light northbound on Howard for 38 seconds. Acceleration tests on the truck demonstrate that it would have taken Mr. Cochran more than 18 seconds to travel to the intersection of Howard and Main, indicating that he had a red light when he arrived there. Furthermore, Adam Meid and Raul Gonzalez, passengers in the City of Tampa fire truck, testified that this particular truck, Engine No. 9, accelerated slowly; that it took in excess of 15-20 seconds to accelerate to 35 mph; and that the truck coasted for up to 15 seconds prior to Mr. Cochran attempting to make a panic stop prior to the accident. This

indicates that it took at least 20 seconds for the fire truck to accelerate to 35 mph and coast prior to the accident. With 16 seconds (or less) for the light to turn red for the fire truck, it is more reasonable to conclude that the fire truck entered the intersection on a red light and caused the accident.

Two City of Tampa police officers, Officer Donna Noblitt, a police officer with more than 10 years' experience and an expert in accident reconstruction, and Sergeant Kenneth Brogdon, a police detective with more than 10 years' experience and also an expert in accident reconstruction, both concluded, based on all the physical evidence including the skid marks, that Mr. Cochran entered the intersection on a red light. Officer Noblitt's testimony was based in large part on the fact that the skid marks began at the point where Mr. Cochran could not have seen Mr. Kurein's taxi cab, suggesting that he applied the brakes in a panic stop because he saw a red light, not the taxi. Sergeant Brogdon's accident reconstruction was based upon the physical evidence, the skid marks, the speed of the vehicles, the direction of the vehicles, the damage to the vehicles, the acceleration tests, the drag factor, the perception and reaction time, and the timing tests of a witness, Melissa Bates, as well as the timing of the lights.

In addition, the City of Tampa Fire Chief, Aubrey Grant, conducted an independent internal investigation and concluded that Mr. Cochran had failed to use due care. Chief Grant found a Level III violation of the City's Standard Operating Procedures Rule, Section 501, by Mr. Cochran. Section 501 required City drivers to stop at all red lights if they cannot account for all traffic.

The testimony of Melissa Bates and the accident reconstruction of Sergeant Kenneth Brogdon of the City of Tampa also indicate that the fire truck entered the intersection on a red light. Ms. Bates was traveling east on Main when she stopped at a red light on Main at Howard in order to turn left (north) onto Howard. The light turned green and as it did, she saw the fire truck far back at the intersection of Albany and Main. Ms. Bates testified that she waited for two cars that were traveling westbound on Main to turn north onto Howard, then made her turn, pulled into a parking space in front of a drug store 600 feet up the road, turned off the

radio, turned off the ignition, took the keys out, then looked in her rear view mirror to see the accident. Sergeant Brogdon timed Ms. Bates actions; they took 16.5 seconds or longer. During his timing of her actions, Sergeant Brogdon did not account for two cars making a left hand turn or account for the time to park, turn the radio off, turn the ignition off, pull the keys out, and look in the mirror, which may add several seconds to Ms. Bates actions, meaning it probably took her at least 20 seconds to complete her turn and other actions before the accident occurred. It is undisputed that the light turned red for the fire truck and remained red for 42 seconds. Therefore, it is reasonable to conclude that the fire truck reached the intersection at Main and Howard with a red light. The light remained green for Mr. Kurein, northbound on Howard, for 42 seconds before turning red. Although Ms. Bates later changed her testimony to place the fire truck closer to the intersection of Main Street and Yoselina, that interpretation is less likely because if the fire truck was close to the intersection, with sirens and lights engaged, Ms. Bates would not have turned in front of it. The reasonable conclusion is that Ms. Bates, at Howard and Main, saw the fire truck at Albany and Main, which is supported by the testimony of Mr. Cochran and the acceleration tests performed by the city. Mr. Cochran confirmed, saying there was no traffic up ahead as he approached Howard and Main.

Although the city contends otherwise, the city's position is less likely unless one concludes that the two witness accounts, each test performed, and each investigation and reconstruction is flawed.

The city produced evidence to refute that the light was red. Mr. Cochran, the driver of the fire truck, stated that he had a green light and that he saw the light change to yellow after he saw the cab and while making his panic stop. He could not recall when he last looked at the light prior to the accident. He testified twice to an investigator for the City of Tampa that he stopped at the intersection at Albany, which places him at the intersection of Main and Howard on a red light. Although Captain Patricio, who was seated in the passenger seat of the fire truck, testified that he saw a green light, the evidence from independent eyewitnesses and the three

separate City Police and Fire Department investigations suggest otherwise.

The testimony and factual evidence regarding Mr. Kurein's severe injuries are without dispute and are not challenged by the City of Tampa.

Mr. Kurein sustained a massive head injury with an internal brain hemorrhage, was in a coma for several days, and had five separate surgeries. He sustained a right frontal lobe intracerebral hemorrhage and intra-ventricular hemorrhage extending to the fourth ventricle. He had a ventriculostomy and intra-cranial pressure monitor as well as intubation, a feeding gastrostomy and tracheotomy. He also sustained a fractured dislocation of his left elbow and left wrist, and several of his ribs were also fractured. He suffers from a closed head and brain injury and dementia. He sustained severe cognitive impairment and his cognitive deficits are so severe he has no ability to manage his own affairs and he needs 24-hour care. He currently resides in a nursing home and has an I.Q. of 56.

Mr. Kurein has two minor children, Remzu and Nima, ages 11 and 10, and a wife, Semira Kurein, who is 33 years old and they have been married for 16 years.

In January 1994, Mr. Kurein filed suit against the City of Tampa alleging negligence. The case proceeded to trial in December 1994, and lasted approximately 6 days. At the conclusion of the case but prior to reaching their verdict, the following question was presented to the Judge:

Any questions?

JUROR NO. 1: No, Your Honor. Oh, I do have a question.

THE COURT: Well, yes?

JUROR NO. 1: I don't know if I'm able to ask it, but I guess I'll go ahead and ask it anyway.

THE COURT: Is this something you have discussed?

JUROR NO. 1: Yeah, we were discussing it last night. Everything on this sheet pertains to any money, it is all directed at Mr. Kurein. We were wondering what is the percentage that actually goes to Mr. Kurein and what goes to the lawyers, because that might have an impact on our decision.

THE COURT: Approach the bench. . . .

THE COURT: The response is that you as jurors must base your decision on the evidence and the law that I have given you, and of course nothing in the evidence and nothing in the law that you have heard touches on that issue, so you are not to be concerned about that.

Now, are you ready to resume your deliberations?

JUROR NO. 1: Yes sir.

Moreover, there is evidence from an alternate juror, Jill Thomsen, that the jury discussed not making Mrs. Kurein a millionaire off their taxpayer dollars. They had been instructed not to consider such matters when they were selected as jurors.

After further deliberations, the jury returned a verdict in favor of Mr. Kurein. The jury determined that Mr. Kurein and his family sustained damages in the total amount of \$4.7 million, but also found that Mr. Kurein was 90 percent at fault in causing the accident and that an additional 3 percent of his damages were caused by his failure to use an available and fully operational seat belt. After set-offs for collateral source payments, a judgment was entered for \$489,930 including taxable costs.

After the jurors' verdict, motions for new trial were filed by the claimant and were denied by the trial court. The claimant then appealed the decision to the Second District court of Appeal. The claimant argued that he was entitled to a new trial based upon the following errors committed by the trial court:

1. That the trial court erred by allowing the city to elicit the fact that the driver of the fire truck was not ticketed.
2. That the trial court erred by excluding from evidence the city's administrative determination of Mr. Cochran's negligence.
3. That the jury verdict on comparative fault was contrary to the manifest weight of the evidence.
4. That the trial court erred by denying the claimant's motion to interview the jurors where there was some evidence that the jurors may have improperly considered matters extrinsic to the case, specifically including the effect of verdict on the city's taxpayers.

The Second District Court of Appeal did not consider any of these issues and affirmed the trial court PER CURIAM.

The City of Tampa has paid \$200,000 of the judgment pursuant to s. 768.28, F.S.

CONCLUSIONS OF LAW:

Based upon the record, the following Conclusions of Law are made:

1. A jury has determined that the City of Tampa was negligent and was 10 percent responsible for the collision and resulting injuries.
2. As a result of the city's negligence, the claimant sustained serious and permanent injuries.
3. The City of Tampa's contention that Mr. Kurein was solely responsible for the accident and subsequent injuries was rejected by the jury.
4. Mr. Kurein's contention that the City of Tampa should bear additional culpability and/or liability was rejected by the trial court, jury, and appellate court.

COLLATERAL SOURCES:

Mr. Kurein sustained medical bills and rehabilitation costs of \$250,899.93, which were paid by third parties, Medicaid, the Florida Department of Vocational Rehabilitation, and

Hillsborough County. Mr. Kurein has reimbursed them in an amount of \$52,510.92 and there is a balance owed of \$118,605.02, for which liens have been asserted.

ATTORNEYS FEES:

Limited to 25 percent pursuant to s. 768.28, F.S.

RECOMMENDATIONS:

Mr. Kurein claimed and provided reliable evidence that the City of Tampa fire truck entered the intersection of Howard and Main on a red light, thereby causing him to sustain serious injuries. After a week-long trial, the jury found that Mr. Kurein was 90 percent at fault in causing his own injuries. Because a traffic light cannot be 90 percent red or 90 percent green, it is apparent that the jury may have considered additional factors in determining fault, such as the presence of blaring sirens and flashing lights. Although the undersigned cannot accurately speculate as to the exact thought process of the jury, I have found no substantially compelling reason to recommend that the Florida Senate alter the jury's award.

Based upon my findings of fact and conclusions of law, it is my recommendation that Mr. Kurein's claim be approved in the exact amount of \$290,930.30, the amount of the claim for the excess judgment, and that SB 52 be reported FAVORABLY.

Respectfully submitted,

William R. Pfeiffer
Senate Special Master

cc: Senator Grant
Representative Miller
Faye Blanton, Secretary of the Senate
Richard Hixson, House Special Master