



**THE FLORIDA SENATE**  
**SPECIAL MASTER ON CLAIM BILLS**

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November 19, 1999

<u>SPECIAL MASTER'S FINAL REPORT</u>	<u>DATE</u>	<u>COMM</u>	<u>ACTION</u>
The Honorable Toni Jennings	11/19/99	SM	Favorable
President, The Florida Senate	12/07/99	CA	Favorable
Suite 409, The Capitol	02/09/00	FR	Favorable
Tallahassee, Florida 32399-1100			

Re: SB 8 - Senator Betty Holzendorf  
Relief of William and Susan Mock

THIS IS AN UNCONTESTED EQUITABLE CLAIM FOR \$170,000 IN THE FUNDS OF ST. JOHNS COUNTY TO COMPENSATE WILLIAM D. MOCK AND SUSAN G. MOCK FOR INJURIES WILLIAM MOCK SUSTAINED AS A RESULT OF A COLLISION BETWEEN A ST. JOHN'S AMBULANCE AND THE MOTORCYCLE DRIVEN BY MR. MOCK.

FINDINGS OF FACT:

On March 29, 1997, at approximately 3:00 p.m., William Mock and a friend were riding their motorcycles south on A1A in Ponte Vedra Beach, Florida. Mr. Mock was approaching a light at the intersection of Highway A1A and Ponte Vedra Lake Boulevard that had been red but had just changed to green. Traffic was stopped in three out of the four lanes in the south bound direction in which he was traveling. He entered the third lane, and proceeded through the intersection with the green light. At the same time as Mr. Mock was entering the intersection, a St. Johns County ambulance with its lights and siren on, and traveling in the opposite direction, attempted to make a left turn across the four lanes of traffic. The ambulance was en route to an apartment fire off of Ponte Vedra Lakes Boulevard. The first two lanes of traffic were stopped because they had a clear unobstructed view of the ambulance. However, the St. John's County ambulance driver could not see Mr. Mock

nor could Mr. Mock see the ambulance, due to the obstruction created by the lines of stopped traffic in the first two lanes.

Mr. Mock and the other motorcycle driver could not see or hear the ambulance as they approached the intersection.

The ambulance drove into the oncoming lane of traffic at a slow rate of speed. The ambulance driver stated that all the traffic that he saw had stopped, and that he was almost through the intersection when he saw a motorcycle coming toward the ambulance at what the driver thought was a high rate of speed. According to witnesses, the ambulance driver appeared to hesitate and peek down the right lane before turning left to make sure all traffic had stopped. Once the ambulance driver saw the motorcycles, he attempted to accelerate and get out of the way.

Mr. Mock did not have time to stop or maneuver and drove into the side of the ambulance. The second motorcycle also drove into the side of the ambulance, killing the driver of the motorcycle and severely injuring a passenger. Mr. Mock has no memory of the circumstances surrounding the accident.

Mr. Mock and the other motorcycle driver were driving within the posted speed limit at the time of the accident. The posted speed limit for the northbound traffic was 35 mph and posted 290 feet south of the site of the accident. The posted speed limit for the southbound traffic (the direction in which Mr. Mock was traveling) was 35 mph and posted .8 miles north of the crash scene.

A Florida Highway Patrol Traffic Homicide Report prepared for the accident concluded that all three vehicle drivers in the case contributed to cause of the collision. With respect to the ambulance driver, the investigator concluded that the driver violated s. 316.072, F.S., which provides that an emergency vehicle, when responding to an emergency call, may disregard regulations governing direction or movement or turning in specified directions, as long as the driver does not endanger life or property.

In the case of the motorcycle drivers, the investigator believed the drivers violated s. 316.126, F.S., which requires the drivers of vehicles to yield the right of way to emergency vehicles when the emergency vehicle is giving audible signals by siren, exhaust whistle, or other adequate device, or visible signals by the use of displayed blue or red lights. However, none of the parties were ever charged with a traffic infraction.

Mr. Mock acknowledges drinking a beer during the afternoon of the accident. A blood alcohol test was performed on the blood of the deceased driver of the second motorcycle, John Ronald Evans, which is required for every traffic fatality. The test result of .049 G/DL, is below the legal threshold of 0.05 G/DL or less for which there is presumption that the person is not under the influence of alcoholic beverages. There is no evidence in the record that Mr. Mock was under the influence of alcohol at the time of the accident.

At the time of the accident, Mr. Mock was wearing a helmet, but the helmet was not one approved by the Department of Transportation. A collision expert testified that an approved helmet would not have prevented Mr. Mock from suffering the serious head injuries he sustained in the accident.

Mr. Mock was transported by life flight helicopter to University Medical Center where he was hospitalized in the intensive care unit for over 2 weeks. He suffered the following injuries as the result of the accident:

- fractured neck and back
- broken collar bone
- fractured jaw requiring titanium plates
- fractured left shoulder which has resulted in a permanent loss of range of motion and strength
- shattered left side of face requiring titanium plates
- blind in left eye
- skull fracture
- loss of sense of smell and taste
- brain injuries

After Mr. Mock's condition stabilized, he was transferred to Genesis Rehabilitation Center for comprehensive inpatient brain rehabilitation, where he remained for 6 weeks.

**DAMAGES:**

1. Medical Expenses: Mr. Mock incurred medical expenses totaling \$194,569.54. There is a potential subrogation by Mr. Mock's health carrier for the reimbursement of the carrier in the amount of \$79,636.36. However, the group health carrier failed to comply with a statutory deadline for asserting its claim.
2. Lost Wages: At the time of the accident, Mr. Mock was Vice President of Bryan & Associates, an employment consulting firm. He started his employment with Bryan & Associates in January 1997, and during the first 3 months of the year earned \$13,500. His annual salary for the 5 years prior to the collision was approximately \$51,835.03.

While he attempted to return to his pre-accident job, he was unable to perform at the same level as prior to the accident. He is currently unemployed, other than working sporadically as a bartender. An occupational expert estimated Mr. Mock's total economic losses over the remainder of his lifetime, based on a pre-injury annual salary of \$75,000, and post-injury of \$25,000 is approximately \$679,493.59.

3. Loss of Consortium: William and Susan Mock have been married for the past 13 years. Prior to the accident, they enjoyed riding motorcycles together, vacations and family outings. As a result of the accident, Mr. Mock is uncomfortable around people and has lost the self-confidence he displayed before the accident. In addition, Mrs. Mock has had to shoulder the stress of financial problems Mr. and Mrs. Mock have faced because of Mr. Mock's inability to work.

**PROCEDURAL HISTORY:** The claimants filed a lawsuit against St. John's County on November 12, 1997. The

case was set for trial on August 24, 1998. Mediation was conducted on July 30, 1998, during which a tentative settlement agreement was reached. On September 20, 1998, the settlement agreement was entered. The settlement agreement provides that the county's insurance carrier, FACT Risk Services Corporation agrees to pay a total of \$190,000 to William and Susan Mock. Of that amount, \$100,000 is to be paid to William Mock in compensation for his injuries and damages, and \$90,000 is to be paid to Susan Mock in compensation for her claim of loss of consortium. The Mock's have been paid \$190,000 by St. John's insurance carrier.

The settlement agreement includes a "Full and Complete Release" in which William and Susan Mock agree to seek no more than the additional \$170,000 of compensation from St. John's County which the parties agreed in the Settlement Agreement to seek in a claims bill.

St. John's County agrees in the Settlement Agreement to "declare in writing that the County concurs with passage by the Florida Legislature of a claims bill in the amount of \$170,000."

**CLAIMANTS' BACKGROUND:** At the time of the accident, Mr. Mock was 49 years old and in good health. Mr. and Mrs. Mock were married in 1988 and live together in Jacksonville, Florida. Prior to the collision, their favorite past time was riding motorcycles.

Mr. Mock has a daughter from a prior marriage for whom he has a child support obligation which Mr. Mock stated was approximately \$50 every 2 weeks. The daughter was born in 1985. During the October 26, 1999, hearing before the Special Master, Mr. Mock admitted that he was behind in his child support payments because of the financial difficulties he has experienced as a result of the accident. Subsequent to the hearing, the claimant provided the Special Master with a Payment of Child Support Purge receipt dated November 2, 1999, indicating that he paid \$11,590.20 to purge an outstanding child support obligation.

CLAIMANT'S ARGUMENTS: The claimant's position is that the driver of the St. John's County ambulance violated s. 316.072, F.S., which allows the driver of an emergency vehicle to disregard traffic regulations as long as the driver does not endanger life or property. The claimant maintains that it is a violation of federal, state and county vehicle operating procedures to make a left hand turn in front of on-coming traffic, even if the lights and sirens of the ambulance are on. In addition, federal and St. John's County ambulance driving training procedures provide that the driver of an emergency vehicle should not take the right-of-way until eye contact is made with the other drivers and the other drivers yield the right-of-way.

RESPONDENT'S ARGUMENTS: Respondent's position is that it concurs with the passage of a claims bill in the amount of \$170,000. If the case had gone to trial, St. John's County would have argued that Mr. Mock was himself negligent in the operation of his motorcycle and that such negligence was the cause of the collision and Mr. Mock's resulting injuries.

CONCLUSIONS OF LAW: From my review of the evidence, I find that St. John's County, through its ambulance driver, had a heightened duty of care to exercise extreme caution when turning into an intersection against oncoming traffic. The county breached that duty and that breach was a proximate cause of the crash that resulted in Mr. Mock's injuries. While Mr. Mock should have perhaps questioned, by slowing down, why the left inside lane, the center lane and the right turn lanes of traffic were stopped during a green light, the evidence that he could neither see nor hear the ambulance, and that he was not violating the speed limit, leads me to conclude that his actions did not contribute to the cause of the accident.

CONCLUSION ON DAMAGES: The Settlement Agreement entered into between St. John's County and William and Susan Mock provides that the Mock's receive \$190,000 from St. Johns' insurance carrier. Of that amount, \$100,000 was attributed to the compensation of William Mock for his injuries and damages, and \$90,000 for Susan Mock for loss of consortium.

The Settlement Agreement does not attribute the \$170,000 sought by the claims bill to a particular type of damage.

Mr. Mock incurred medical bills of \$194,569.54. Of this amount, \$79,634.36 of the medical expenses were paid by his HMO. While the HMO may be entitled to reimbursement pursuant to s. 768.76, F.S., it failed to meet the statutory deadline for asserting the claim.

The economic loss attributable to Mr. Mock's inability to work at his pre-accident capacity based on a pre-injury earnings capacity of \$75,000 year and a post-injury capacity of \$25,000 per year is estimated to be \$679,493.59.

Given the above, the Claimant's documented damages are well above the \$170,000 sought through the claims bill and well above the total damages of \$360,000 provided for in the settlement agreement with St. John's County.

It is my conclusion that the amount of damages sought by the claimant is justified and should be confirmed by the Legislature.

LEGISLATIVE HISTORY:

A similar claims bill, HB 2175, passed the House during the 1999 legislative session. A claims bill hearing was held by House Special Master Stephanie Birtman and the bill received a favorable recommendation. The claims bill was not heard in the Senate as the claimant missed the Senate bill filing deadline for the 1999 session.

ATTORNEYS FEES:

Section 768.28(8), F.S., limits claimant's attorneys' fees to 25 percent of claimant's total recovery. Claimant's attorneys have acknowledged this limitation and verified in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorneys' fees.

RECOMMENDATIONS:

Accordingly, I recommend that Senate Bill 8 be reported FAVORABLY.

Respectfully submitted,

SPECIAL MASTER'S FINAL REPORT--SB 8

November 19, 1999

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Janet Bowman  
Senate Special Master

cc: Senator Betty Holzendorf  
Faye Blanton, Secretary of the Senate  
Stephanie Birtman, House Special Master