



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
408 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

November 16, 2000

SPECIAL MASTER'S FINAL REPORT	DATE	COMM	ACTION
President of the Senate Suite 409, The Capitol Tallahassee, Florida 32399-1100	11/16/00	SM TR FR	Unfavorable

Re: SB 12– Senator Ron Klein
Relief of Russell Allen

THIS IS AN EXCESS JUDGMENT CLAIM FOR \$4,590,000 BASED ON A JURY VERDICT AGAINST THE FLORIDA DEPARTMENT OF TRANSPORTATION TO COMPENSATE RUSSELL ALLEN FOR INJURIES AND DAMAGES HE SUSTAINED IN AN ACCIDENT RESULTING FROM THE ALLEGED NEGLIGENCE OF THE DEPARTMENT.

FINDINGS OF FACT:

For the reasons discussed below, no Special Master hearing was conducted on this claim as it was not necessary at this juncture. Consequently, the following facts are taken from the Senate bill and are provided solely as background information.

On March 27, 1997, 37-year-old Russell Allen was operating a motor scooter in West Palm Beach, turning south onto U.S. Highway 1. U.S. Highway 1 was marked as a one-way street going south. While making his turn, another vehicle, which was traveling north in the wrong direction on the one-way street, struck Russell Allen's motor scooter. Russell Allen suffered extensive injuries including a closed head injury, a ruptured spleen, and a severe spinal fracture. As a result, Russell Allen is permanently paralyzed from the mid-chest down, has measurable cognitive deficits, suffers from debilitating pain, and will require several future operations and attendant care for the rest of his life. Additionally, Russell Allen is now unemployable.

The Department of Transportation was responsible for the signage on U.S. Highway 1 at or near the location of the accident. In 1989, the department changed a 1.2-mile strip of U.S. Highway 1 from a two-lane road going north and south to a one-way road heading south only. When the change was made, no barriers or other devices were erected to prohibit motorists previously traveling north from entering the southbound lane. Also, no signs, rumble strips, or other warnings were in place to alert motorists of the change. Additionally, although a "do not enter" sign was erected at the intersection by the department, the department's own design specifications for the placement of the sign were not followed, which resulted in confusion so that drivers still traveled the wrong direction onto the one-way street.

On July 21, 1999, a jury returned a verdict in favor of Russell Allen in the amount of \$7,000,000. The jury determined the department was 67 percent at fault for the accident and the motorist who was going the wrong direction was 33 percent at fault. On July 21, 1999, an amended Final Judgment was entered in favor of Russell Allen and against the department in the amount of \$4,690,000. After the department has paid Russell Allen \$100,000, the maximum allowable pursuant to s. 768.28, Florida Statutes, this claim bill would be for the remaining excess judgment of \$4,590,000.

CONCLUSIONS OF LAW:

Senate Rule 4.81 (f), states:

The hearing and consideration of a claim, any element of which is pending in litigation, shall be held in abeyance until all judicial activity thereon, including any appellate proceedings, shall have come to rest.

The department appealed the Final Judgment to the Fourth District Court of Appeal. On August 23, 2000, the Fourth District Court of Appeal issued an opinion concluding that sovereign immunity applied, thereby insulating the department from liability. The court reversed the trial court's denial of the department's motion for summary judgment and remanded the case to the trial court to enter a final summary judgment in favor of the department. The court based its decision on the finding that the department did not create a known dangerous condition rising to a level sufficient to vitiate its sovereign immunity under §768.28, F.S.

Russell Allen then filed motions with the Fourth District Court of Appeal requesting rehearing, rehearing en banc, and certification of the case to the Florida Supreme Court. The Fourth District Court of Appeal entered an order denying all of these requests. However, the Fourth District Court of Appeal has yet to issue a Mandate, which officially will allow the trial court to enter summary judgment in favor of the department.

ATTORNEYS FEES:

Not Applicable.

RECOMMENDATIONS:

Because the Fourth District Court of Appeal has yet to issue its mandate and the case is still pending, pursuant to Senate Rule 4.81 (f), as well as the fact that the Fourth District Court of Appeal ruled that the department is not liable to Russell Allen as it is protected by sovereign immunity, I recommend that Senate Bill 12 (2001) be reported UNFAVORABLY.

Respectfully submitted,

John A. Forgas, III
Senate Special Master

cc: Senator Ron Klein
Faye Blanton, Secretary of the Senate
House Claims Committee