



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
408 The Capitol

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November 16, 2000

	DATE	COMM	ACTION
President of the Senate Suite 409, The Capitol Tallahassee, Florida 32399-1100	11/16/00	SM CJ FR	Favorable

Re: SB 26 – Senator Tom Rossin
Relief of Rosemary Falkinburg

THIS IS AN EXCESS JUDGMENT CLAIM FOR \$500,000 AGAINST THE CITY OF WEST PALM BEACH ARISING FROM A JURY VERDICT AND A SETTLEMENT AGREEMENT BASED ON AN AMENDED FINAL JUDGMENT FOR INJURIES SUSTAINED DURING A COLLISION BETWEEN A PASSENGER VEHICLE AND A LAW ENFORCEMENT OFFICER'S VEHICLE.

FINDINGS OF FACT:

The claimant bears the burden of proof based on a preponderance of the evidence. The Special Master considered documentation provided by the parties, held a final hearing and conducted a visit of the accident site.

On August 11, 1994, around 7:45 a.m., the claimant, Rosemary Falkinburg (Ms. Falkinburg), a then 34-year-old petite woman, sustained injuries in a vehicular crash in West Palm Beach. Ms. Falkinburg was en route to work at Belvedere Animal Hospital and driving eastbound in a 1979 Chevrolet Camaro on Belvedere Road and about to turn into the hospital driveway from a center turn lane. In the interim, a City of West Palm Beach Police Officer, Fred Naranjo (Officer Naranjo), who was on road patrol, was pulling out of a Sun Bank parking lot to cross two lanes of stopped traffic to travel westbound on Belvedere Road. With limited visibility, Officer Naranjo pulled his 1991 Ford car out into the center turn lane and his vehicle struck Ms. Falkinburg's vehicle on the right passenger side somewhere between the center turn lane and a westbound lane on Belvedere Road.

Ms. Falkinburg experienced neck, back and buttock pain within days of the incident. The pain persisted and became severe enough to require major back surgery. In February 1999, a laminectomy and a bilateral fusion were performed.

Ms. Falkinburg's injuries are permanent and continuing. She is still under medical care and medication. Although the initial surgery appeared to a success, it has been shown that future lumbar surgery is no longer an option for Ms. Falkinburg who will be incurring additional medical costs arising from the second surgery, physical therapy, rehabilitation and follow-up care. Her permanent disability is set at 13 percent but may go higher after the surgery.

After the first surgery, the incident eventually cost Ms. Falkinburg a higher paying position as a veterinary technician where she had worked for many years. Although currently working at another veterinary hospital, she is earning less and has difficulty performing the tasks required. There is a strong probability that she will not be able to continue her job after the second surgery.

PROCEDURAL HISTORY:

In December 1997, Ms. Falkinburg filed suit against the City of West Palm Beach, alleging negligence by the police officer and seeking damages for pain and suffering, lost wages, and future earnings. No claim for punitive damages was sought.

In January 1999, one month prior to Ms. Falkinburg's surgery, the City of West Palm Beach offered to settle for \$14,500, which was not accepted by Ms. Falkinburg. In January 2000, the plaintiff made a demand for judgment for \$65,000, which was not accepted by the City of West Palm Beach.

On February 14, 2000, the jury rendered a verdict for \$1,601,600 against the City of West Palm Beach for Ms. Falkinburg's medical expenses, pain and suffering, lost wages and loss of future earnings, awarding over \$1,390,00 for past and future pain and suffering, disfigurement, and loss of enjoyment of life. The jury apportioned 98 percent fault to the law enforcement officer and 2 percent fault to Ms. Falkinburg. A final judgment was entered on February 17, 2000, for \$1,559,568, plus interest. On February 20, 2000, the City of West Palm Beach filed a Motion for New Trial and

a Remittitur (i.e., a reduction in the amount of the final judgment). Those motions were subsequently withdrawn based on a settlement agreement entered into by the parties on August 11, 2000, for \$600,000. Under the terms of the agreement, the City of West Palm Beach agreed not to oppose the claims bill process. The City of West Palm Beach Commission approved the settlement. Ms. Falkinburg received \$100,000, the first installment of the settlement agreement. On August 15, 2000, the Court entered an Amended Final Judgment reflective of the stipulated settlement agreement.

CONCLUSIONS OF LAW:

The City of West Palm Beach is vicariously liable for any negligence of its law enforcement officer acting in the course and scope of his employment. Officer Naranjo was on road patrol in his general assigned area. He was driving an unmarked car owned by the City of West Palm Beach. He negligently operated his vehicle and caused his vehicle to strike Ms. Falkinburg's vehicle. Officer Naranjo's negligence was a direct and proximate contributory cause of Ms. Falkinburg's injuries.

Ms. Falkinburg's damages have been evaluated also within the context of the settlement agreement. Sometimes parties may enter into stipulations and settlements for reasons other than the merits of a claim or the validity of a defense. Therefore, the Legislature is not necessarily bound by them. However, in this case, I believe that the parties, each represented by counsel, acted in good faith and carefully assessed the merits of and valid defenses to this case before reaching the settlement agreement. The settlement amount represents almost \$1 million less than the final judgment amount. I find that the settlement amount represents a reasonable and equitable compromise to compensate Ms. Falkinburg and to limit the City of West Palm Beach's exposure to further litigation and liability under this claim. Therefore, the settlement agreement amount should be given effect as requested in the claim bill.

ATTORNEYS FEES:

Section 768.28(8), F.S., provides that no attorney may charge or receive legal fees in excess of 25 percent of any judgment or settlement. Claimant's counsel has filed a fee affidavit in accordance with this section.

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RECOMMENDATIONS:

For the foregoing reasons, I recommend that Senate Bill 68 be reported FAVORABLY.

Respectfully submitted,

Maria Isabel Matthews
Senate Special Master

cc: Senator Tom Rossin
Faye Blanton, Secretary of the Senate
House Claims Committee