



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
408 The Capitol

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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 CJ FR	Favorable

Re: SB 56 – Senator Walter “Skip” Campbell
Relief of Lawrence Bigney

THIS IS AN EQUITABLE CLAIM FOR \$75,000 IN DAMAGES, BASED ON A SETTLEMENT AGREEMENT FOR INJURIES SUSTAINED BY THE CLAIMANT DURING A COLLISION BETWEEN THE CLAIMANT'S MOTORCYCLE AND A PALM BEACH COUNTY SHERIFF DEPUTY'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. The Palm Beach County Sheriff's Office provided documentation pursuant to a subpoena to assist in the evaluation of the claim.

On January 28, 1998, around 2:20 p.m., the claimant, 49-year-old Lawrence Douglas Bigney (hereinafter “Mr. Bigney”) had just finished lunch at a local bar and restaurant in West Palm Beach. He was operating his 1997 Harley Davidson motorcycle westbound on Southern Boulevard when he pulled into a center turn lane to make a left-hand turn onto Haverhill Road at an intersection light. At about the same time, a Palm Beach County Sheriff Deputy, Frank Mayo (“Deputy Mayo”), had just finished going through a Burger King drive-through. Deputy Mayo was operating a sheriff office's unmarked 1995 Oldsmobile and was en route to the Palm Beach County Courthouse for a subpoena appearance when he crossed two lanes of stopped traffic to pull into the center turn lane to travel eastbound on Southern

Boulevard. Deputy Mayo unlawfully failed to yield the right-of-way in the center turn lane and pulled into the path of Mr. Bigney's motorcycle, striking it with the vehicle's front end.

Deputy Mayo suffered no injury and no workers' compensation claim was filed. Mr. Bigney suffered a severe compound comminuted fracture of the right distal tibia-fibula (right lower leg), which nearly resulted in amputation. He was repeatedly hospitalized. He underwent surgery four times between January 28, 1998 and April 21, 1999.

Due to the accident, Mr. Bigney became totally disabled until he was able to return to work in June 1999. Although released to return to light-duty work, he was not able to resume his employment as a police/public-safety officer and fire inspector for the Town of South Palm Beach.

No disciplinary action was taken against Deputy Mayo although an internal report found him to be partially at fault. The issue of alcohol was raised in this claim since Mr. Bigney admitted to consuming two beers for lunch prior to the accident and a hospital physician mentioned in her preliminary notes that Mr. Bigney might be intoxicated. However, the physician could not recall the basis for making the notation other than it might have been because Mr. Bigney acted intoxicated, smelled of alcohol or admitted to drinking or because she overheard some nurse or other individual say it. Neither law enforcement officers investigating the crash or any hospital professional treating Mr. Bigney ever ordered a blood alcohol test. No evidence exists to confirm the extent, if any, to which that might have played a role in the crash.

PROCEDURAL HISTORY:

In October 1998, Mr. Bigney sued the Palm Beach County Sheriff's Office and one of the van driver's who had signaled clearance to the deputy to pull into the center turn lane of Southern Boulevard. In April 1999, Mr. Bigney settled against the van driver for his \$10,000 policy limit, and the van driver was voluntarily dismissed from the suit.

On February 25, 2000, Mr. Bigney and the Palm Beach County Sheriff's Office settled for the amount of \$175,000. Mr. Bigney executed a release. Under the terms of the settlement agreement, Mr. Bigney has already been paid \$100,000 and the remaining \$75,000, will be paid upon

successful passage of the legislative claim bill. Additionally, the Palm Beach County Sheriff's Office agreed to neither support or oppose the legislative claim bill, influence or interfere with the process, or participate in any hearings unless subpoenaed to do so.

CONCLUSIONS OF LAW:

Duty: The deputy had a duty to exercise reasonable care. Under §316.121(3), F.S., the driver of a vehicle about to enter or cross a state maintained road or highway from a paved road and not subject to control by an official traffic control device must yield the right of way to all vehicles approaching on the road or highway.

The vehicle driven by the deputy was owned by the Palm Beach County Sheriff's Office. The deputy was operating the vehicle with the knowledge and consent of the sheriff's office. A governmental entity is liable to a third party for an employee's negligent acts if the employee was acting within the course and scope of employment and as long as the acts were not done in bad faith, with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Although the courts have held that the state has not waived sovereign immunity for purposes of cars issued 24-hours a day to a government employee, it is waived if the person operating the vehicle was operating the vehicle within the course and scope of employment at the time the injury occurred.¹

There is a three-part test for determining when an employee is initially within the course and scope of employment for purposes of §768.28, F.S. In Sussman v. Florida East Coast Properties, Inc.², the court held:

- The conduct must be of the kind the employee is hired to perform;
- The conduct occurred substantially within the time and specific limits authorized or required by the work to be performed; and
- The conduct activated at least in part by a purpose to serve the master.

¹ Rabideau v. State, 409 So.2d 1045 (Fla. 1982).

² 557 So.2d 74 (Fla. App. 3 Dist. 1990).

Deputy Mayo who was a homicide/crime detective was driving an unmarked sheriff's vehicle with a siren visible from the dashboard. Although Deputy Mayo was off-duty at the time and had stopped for lunch, he was en route to appear at a deposition as subpoenaed, at the Palm Beach County Courthouse. Under the Palm Beach County Sheriff's Office policy manual, an employee's court appearance for purposes of depositions, case file or testifying in trial constitutes a part of non-scheduled *work* hours and a minimum 2 hours of pay are guaranteed. According to records provided by the Sheriff's Office, he was scheduled to appear in court and did receive 2 hours of pay that day for the scheduled court deposition time between 2 and 4 p.m., the hours in which the crash occurred. Therefore, the deputy was within the course and scope of employment and the sheriff's office would be vicariously liable for his actions.

Breach: Deputy Mayo negligently operated his vehicle. Despite extremely limited traffic visibility, he exited a fast-food driveway, squeezed across two lanes of stopped traffic and attempted to pull out into the center turn lane of Southern Boulevard by relying on the waving hands of two van drivers in the stopped traffic lanes. He failed to exercise reasonable care in entering a highway where vehicles were approaching so close as to constitute an immediate hazard and where it was foreseeable for cars to be approaching under the particular traffic conditions. He failed to yield to traffic with the right of way.

Causation: Deputy Mayo's negligent operation of the vehicle was a direct and proximate cause of Mr. Bigney's injuries.

Damages: Medical records and expense itemization were provided. Mr. Bigney's most recent surgery to remove a metal tibial rod from his leg occurred in Bethesda Hospital in October 2000. At the final claim bill hearing, Mr. Bigney walked with the assistance of a walker and his leg was heavily bandaged. Recovery will take 4-6 weeks. Barring complications, Mr. Bigney will require, at a minimum, corrective footwear, semi-annual and annual office physical evaluations and physical therapy as needed. With the exception of the latest surgery which itemization is not yet available, all of Mr. Bigney's liens have been satisfied from

the \$100,000 proceeds already received from the Sheriff's Office and medical bills have been paid. There is no itemization of estimated future medical and health costs as this matter was settled without expert testimony and before trial. It should be noted that Mr. Bigney does have health insurance.

As to his past earnings, lost wages and loss of future earning capacity, Mr. Bigney was 49 years old at the time of the crash. He was earning almost \$40,000 annually as a police/public-safety officer and fire inspector for the Town of South Palm Beach. He had been employed in this post for 4 years prior to the crash. Mr. Bigney's current disability prevented him from resuming that post. He can no longer run, climb ladders, pass the police officer physical fitness test or otherwise perform job specific tasks. On March 6, 2000, he began employment as an Assistant Veteran Service Officer for the Division of Veteran Services of Palm Beach County (Mr. Bigney served as a military police officer in 1971-72 from which he was honorably discharged.) He currently earns \$24,356.80 annually. This represents a loss, at a minimum, of \$15,600 annually in lost wages. Similarly, there are no economist or vocational rehabilitation reports available since the matter settled before trial.

The damages have been evaluated 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 to a claim. 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. I find that the settlement amount represents a reasonable and equitable compromise to compensate Mr. Bigney and to limit the Sheriff's Office exposure to further litigation and liability under this claim. Therefore, the settlement agreement 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 56 be reported FAVORABLY.

Respectfully submitted,

Maria Isabel Matthews
Senate Special Master

cc: Senator Walter "Skip" Campbell
Faye Blanton, Secretary of the Senate
House Claims Committee