



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/1/01	SM	Fav/1 amendment
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December 1, 2001

The Honorable John M. McKay
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 24 (2002)** – Senator Walter “Skip” Campbell
HB 349 – Representative Jeff Atwater
Relief of Margaret B. Helm

SPECIAL MASTER’S FINAL REPORT

THIS IS AN EQUITABLE CLAIM FOR \$2,250,000 BASED ON THE ALLEGED NEGLIGENCE OF A VOLUNTEER FIREFIGHTER EMPLOYED BY MARTIN COUNTY, FLORIDA, WHO NEGLIGENTLY CONTROLLED AND OPERATED A MOTOR VEHICLE WHICH COLLIDED WITH MARGARET HELM AND CAUSED HER TO BECOME A PARAPLEGIC.

FINDINGS OF FACT:

LIABILITY: On March 21, 1999, Veronica Pochopin was driving on Dixie Highway in Martin County, Florida when an intoxicated bicyclist rode into the path of her vehicle. The Pochopin vehicle struck the bicyclist, propelling the bicyclist through the windshield of the Pochopin vehicle. Mrs. Pochopin then stopped her vehicle off the roadway in a grassy shoulder, with no part of the Pochopin vehicle remaining on the roadway. Mr. And Mrs. Pochopin both testified that Mrs. Pochopin put the car in park and turned the car off, leaving the keys in the ignition.

Prior to the collision between the Pochopin vehicle and the bicyclist, Margaret Helm was driving on Dixie Highway in the opposite direction as the Pochopin vehicle. The bicyclist was riding next to Ms. Helm and generally headed in the same direction as Ms. Helm. The bicyclist was riding very

erratically and ventured into Ms. Helm's lane on several occasions, causing Ms. Helm to eventually bring her vehicle to a complete stop. At that point, the bicyclist cut directly in front of Ms. Helm and into the path of the oncoming Pochopin vehicle. According to Ms. Helm and Mr. and Mrs. Pochopin, there was nothing Mrs. Pochopin could have done to avoid the collision with the bicyclist, as the impact was instantaneous. It was later determined that the bicyclist had a blood alcohol level of 0.28 percent, which is more than three times the legal limit.

Ms. Helm then parked her vehicle and went to the Pochopin vehicle to offer aid to the Pochopins. When she arrived at the vehicle, the bicyclist's body was partially resting on top of Mr. Pochopin, who was in the front passenger seat, and partially under the dashboard. Mrs. Pochopin was bleeding and hysterical and Ms. Helm helped Mrs. Pochopin out of the vehicle, then walked her to the back of the Pochopin vehicle where Mrs. Pochopin collapsed. Mr. Pochopin was able to exit the vehicle on his own and joined his wife and Ms. Helm at the rear of the vehicle.

At this point, numerous people began to arrive at the scene. Ms. Helm continued to provide aid and comfort to Mr. and Mrs. Pochopin. Testimony of several witnesses, including the Pochopins and Ms. Helm, indicates Ms. Helm and the Pochopins were anywhere from 6 to 15 feet behind the Pochopin vehicle.

Five to 10 minutes after Ms. Helm began assisting the Pochopins, Dan Gartley and Mark Perkins, Martin County volunteer firefighters, arrived at the scene. The firefighters were stationed at the Rio Volunteer Fire Department station, which was located near the accident scene.

Gartley was the first firefighter to arrive on the scene and Perkins arrived shortly thereafter. One of the firefighters instructed Ms. Helm to remain with Mrs. Pochopin while the two firefighters attempted to extricate the bicyclist's body from the Pochopin vehicle. Ms. Helm and the Pochopins remained approximately 6 to 15 feet behind the vehicle.

One of the firefighters entered the Pochopin vehicle from the driver's side door while the other entered from the passenger's side door. While they were attempting to

extricate the bicyclist's body, the Pochopin vehicle went into reverse and ran over Ms. Helm and the Pochopins. After the car ran over the Pochopins and Ms. Helm, one of the firefighters stopped the car, turned it off and removed the keys from the ignition.

Both firefighters testified they thought the Pochopin vehicle was not running when they attempted to extricate the bicyclist's body. Testimony from the Pochopins, Ms. Helm and one other witness also indicated the Pochopin vehicle was turned off when the firefighters arrived on the scene. Both firefighters denied starting the Pochopin vehicle and neither had an explanation as to how the vehicle backed up over the Pochopins and Ms. Helm.

One eyewitness, Richard Bailey, who was a friend of the bicyclist, testified he arrived on the scene and observed both doors of the Pochopin vehicle were open with the bicyclist's body laying half out of the passenger door. Bailey testified that the Pochopin vehicle was not running at that time. He knelt down next to the bicyclist and subsequently observed a firefighter jump in the driver's side of the car. According to Bailey, the firefighter started the Pochopin vehicle and, all of a sudden, the car lurched back. Bailey stated that everybody at the scene started yelling and screaming, at which point the firefighter "jammed" it back up in park. The other firefighter then went to the driver's side of the car and told the firefighter in the driver's seat to go back to the fire station.

Both firefighter Gartley and firefighter Perkins testified that Martin County Standard Operating Guidelines require firefighters to secure the scene of an accident, even before treating injured people, to ensure nobody else is injured. Both firefighters also testified that the guidelines require them to make sure a vehicle is turned off and in park before attempting to extricate someone from a vehicle. They also testified that it would be proper procedure to remove the keys from the ignition prior to extricating a body from a vehicle. The firefighters did not follow any of these procedures, as they believed the car was not running when they attempted to extricate the bicyclist from the vehicle.

DAMAGES: After the car ran over the left side of Ms. Helm's body, she passed out for a short period of time and

awoke screaming with excruciating pain. She had severe pain from her neck all the way down into her feet. She touched her legs and found she had no feeling in them. Ms. Helm was then transported by ambulance to the trauma emergency room at Martin Memorial North Hospital where she was stabilized in the critical care unit. The next morning she was flown by Lear jet to the University of Miami/Jackson Memorial Trauma Center.

Ms. Helm sustained a burst fracture at the L1 level of her spine, which is the lower portion of her back. The vertebral body was shattered so that bone fragments were expelled into the spinal canal. There was also significant compression of the spinal cord in this area of the spine. Ms. Helm also sustained four (4) broken ribs, a lacerated lung and multiple fractures of her right heel and right ankle.

On March 26, 1999, Ms. Helm underwent surgery that included an L1 corpectomy, L1-L2 discectomy, T12-L1 discectomy and decompression of the spinal cord. These areas of the spine were fused using a cage filled with vertebral body and rib autograft, supplemented by a Zplate extending from T12-L2. Because of the severed, collapsed lung she also underwent the placement of a chest tube.

Ms. Helm was then transferred to the step-down intensive care unit where she remained for approximately 2 weeks. She was then transferred to the Jackson Memorial Inpatient Rehabilitation Unit but was transferred back to the hospital for another surgery on April 6, 1999. This surgery was a reduction and internal fixation of a thoracolumbar burst fracture with SRH hooks, pedicle screws and quarter-inch titanium rods extending from T9 to L4, with fusion supplemented by vertebral autograft and right iliac crest autograft. Ms. Helm remained in the hospital for one week and was then transferred to the Inpatient Rehabilitation Unit, from which she was discharged on May 26, 1999.

Ms. Helm currently suffers from constant pain that becomes worse depending on her level of activity. She describes the pain in her back, which radiates into her hips, as being so severe that she cannot even turn herself over when she is in bed at night.

Ms. Helm is an “incomplete paraplegic” as she can ambulate for short distances with the use of bilateral orthotics, crutches, a gait belt, and the assistance of one person. However, Ms. Helm is wheelchair bound and requires a wheelchair for long and short distance mobility. She is independent in the use of the wheelchair and she has the ability to transfer on her own.

Ms. Helm also suffers from a neurogenic bowel and bladder. She must catheterize herself every 4 hours for bladder management and use suppositories every other day for bowel movements. As a result, Ms. Helm has been hospitalized on at least three occasions with urinary tract infections and has suffered the embarrassment of defecating on herself in public on numerous occasions.

Ms. Helm also becomes severely depressed at times because she does not feel that she is a normal functioning human being. She does not engage in sexual activities. She was a self-described health nut prior to the accident, enjoying activities such as running, swimming, and racquetball.

Currently, Ms. Helm is on eight different prescription medications for treatment of conditions ranging from depression to involuntary muscle spasms. The cost of her prescription medications and medical supplies totals approximately \$200 per month. She continues to treat with a family doctor, a pain management specialist, a urologist, an orthopedic surgeon, a neurosurgeon, and a psychologist.

Prior to the accident, Ms. Helm was a waitress earning \$15,000-\$20,000 per year. The accident has left her unable to return to that type of employment. She currently works with handicapped children at the local Goodwill. Ms. Helm works 15 hours per week earning \$5.45 per hour. Ms. Helm also voluntarily leads two support groups for people who have suffered spinal cord injuries.

Ms. Helm currently lives with her fiancé, Robert Dennis. Mr. Dennis has spent approximately \$15,000 of his own moneymaking modifications to his house to accommodate the necessary changes in Ms. Helm's lifestyle. In an effort to achieve independence, Ms. Helm plans to move into a condominium within the next few months. She also would

like to return to college and obtain a degree in social services so that she can pursue a career helping abused children.

Ms. Helm is currently 43 years old and has a life expectancy of 38.2 years. She earns approximately \$100 per month from her job at Goodwill and she receives \$696 per month in social security disability benefits.

As of this date, Ms. Helm has accumulated medical bills in the amount of \$293,441.40, of which there is a Medicaid lien of \$49,133.26, and a lien from the Brain and Spinal Injury Program through the Florida Department of Health in the amount of \$19,717.21

An economist hired by Ms. Helm, Dr. Bernard Pettingill, prepared an economic report that quantified Ms. Helm's economic losses as a result of the accident. Dr. Pettingill's opinion regarding the amount of past and future medical bills was based upon the opinion of Dr. Craig Lichtbau, a board certified medicine and rehabilitation specialist who was hired by Martin County to examine Ms. Helm and review her medical records. Dr. Pettingill's opinion regarding the amount of past and future lost earnings was based upon the assumption that she is permanently and totally disabled, which assumption has been verified by the Social Security Administration's determination that Ms. Helm should, and does, receive social security disability benefits. Dr. Pettingill's opinion is that Ms. Helm's past economic losses and future economic losses, as reduced to present value, total \$2,476,424.

An affidavit submitted by a board certified civil trial lawyer practicing in Palm Beach County, Florida, indicates the total value of Ms. Helm's claim ranges from \$5,000,000 to \$10,000,000 and is of the opinion that Ms. Helm's economic damages are worth more than \$3,000,000 and her noneconomic damages have a value in the range of \$2,000,000 to \$7,000,000.

MISCELLANEOUS MATTERS: Ms. Helm received \$10,000 in insurance proceeds from the automobile liability insurer of Mr. and Mrs. Pochopin. She also received \$8,000 in personal injury protection benefits from her own automobile insurer. Ms. Helm had a HMO health insurance

policy with SunStar, which went into receivership on February 1, 2000. As a result of the insolvency of SunStar, the Florida Department of Insurance has transferred Ms. Helm's coverage to Blue Cross/Blue Shield. As of this date, Blue Cross/Blue Shield has not paid any of Ms. Helm's medical bills.

The Board of County Commissioners of Martin County has approved the settlement with Ms. Helm and has already paid Ms. Helm, pursuant to the statutory limits of liability in §768.28, F.S., \$100,000 toward the agreed upon amount of \$2,350,000.

CONCLUSIONS OF LAW:

The decisions of how to properly fight a particular fire, how to rescue victims in a fire, or what and how much equipment to send to a fire, are discretionary judgmental decisions that are inherent in the public safety function of fire protection and are protected by sovereign immunity. See, *City of Daytona Beach v. Palmer*, 469 So.2d 121 (Fla. 1985). However, personal injury to a spectator resulting from the negligent handling of equipment at the scene is the type of conduct that does subject a governmental entity to liability pursuant to the waiver of sovereign immunity found in §768.28, F.S. *Id.* Since the conduct of the firefighters involved an injury to Ms. Helm in the operation of equipment at the accident scene, as opposed to a decision on how to rescue a victim at the scene, I conclude that sovereign immunity is waived and Martin County does have liability if the firefighter's actions were negligent.

I further conclude that the preponderance of the evidence in this claim indicates the firefighters were negligent in their operation and control of the Pochopin vehicle. Under Florida law, negligence is defined as the failure to use reasonable care. That is, negligence is the failure to do what an ordinary, reasonable person would have done under similar circumstances or doing something that an ordinary, reasonable person would not have done under similar circumstances. I conclude the following evidence establishes negligence on the part of the firefighters:

- 1) the undisputed testimony by both firefighters that the Martin County Standard Operating Guidelines (SOG) require firefighters to secure the scene so that no further injuries occur;

- 2) the undisputed testimony that the SOG require the firefighters to remove the keys from the ignition of a vehicle in a situation like the one the firefighters were confronted with when they arrived upon the scene in this accident;
- 3) the undisputed evidence that neither firefighter removed the keys from the Pochopin vehicle until *after* the vehicle backed up and ran over Ms. Helm;
- 4) the undisputed evidence that no witnesses observed the Pochopin vehicle to be running when the firefighters arrived on the scene; and
- 5) the testimony of Richard Bailey, the only eyewitness who does not have an interest in the outcome of the lawsuits filed as a result of this accident, that one of the firefighters started the Pochopin vehicle, backed up over Ms. Helm, and then put the Pochopin vehicle in park and turned it off.

The greater weight of the evidence clearly establishes that, but for the firefighters' failure to follow the county mandated procedures of securing the scene by removing the keys from the ignition of the Pochopin vehicle, the accident with Ms. Helm never would have happened.

The unrefuted evidence establishes that Ms. Helm has been rendered a paraplegic who suffers from numerous physical and emotional problems as a result of the accident. The evidence further establishes that Ms. Helm's economic losses alone, both past and future, approach \$3,000,000. The evidence also indicates Ms. Helm's noneconomic damages could be in the range of \$2,000,000 to \$7,000,000.

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. Therefore, the Legislature is not necessarily bound by them.

However, in this case, I believe that the parties, each represented by able counsel, acted in good faith and carefully assessed the merits of any valid defenses to this

case before reaching the settlement agreement. I find that the settlement amount represents a reasonable and equitable compromise to compensate Ms. Helm and to limit Martin County's 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:

The claimant's attorney has submitted an affidavit that, in accordance with §768.28, F.S., his attorney's fees will be 25 percent of any amount passed by the Legislature. The claimant also has costs of \$2,949.30.

LEGISLATIVE HISTORY:

SB 76 (2001) was filed by Senator Campbell. At that time the undersigned Special Master recommended the bill favorably and be amended to provide for reimbursement of any outstanding liens asserted by Medicaid and the Brain and Spinal Injury Program prior to the disbursement of any proceeds to the claimant. SB 76 (2001) was amended to that effect and passed favorably out of the Committees on Judiciary and Finance and Taxation. SB 76 (2001) subsequently died on calendar. Additionally, HB 881 (2001), which was the companion bill, was recommended favorably by the House Special Master, amended and passed favorably by the Committee on Claims, and died in the Procedural and Redistricting Council.

SB 24 (2002) is worded the same as CS/SB 76 (2001). No further Special Master hearings have been held. The parties have been given the opportunity to supplement the record. The following information was submitted:

- Ms. Helm is no longer employed at Goodwill Industries but continues to perform volunteer work for numerous entities.
- Ms. Helm has enrolled at Indian River Community College and is pursuing a degree in the field of human services.
- Ms. Helm no longer has health insurance and is currently insured by Medicare. Due to the \$50 monthly premium, Ms. Helm's social security benefits are now \$670 per month.

- The Florida Department of Education has asserted a lien for expenditures incurred through the provision of vocational rehabilitation services to Ms. Helm. The amount of the lien is unknown.
- Martin County has specifically earmarked monies from its general operating budget to fund this settlement and the funds have been set aside for this purpose.

RECOMMENDATIONS:

Based on the foregoing, I once again recommend the bill favorably and be amended to provide that Ms. Helm be paid \$2,250,000 under the following conditions:

- Martin County be directed to pay Ms. Helm a lump sum cash payment of \$1,750,000 and \$500,000 in the form of an annuity acceptable to Ms. Helm and Martin County;
- Prior to the distribution of the lump sum payment to Ms. Helm, the Medicaid lien, the Brain and Spinal Cord Injury Program lien, and the Department of Education lien are to be satisfied from the lump sum proceeds; and
- After satisfaction of the Medicaid, Brain and Spinal Cord Injury Program, and the Department of Education liens, Ms. Helm's attorney must satisfy any other pending liens before distribution of the proceeds to Ms. Helm.

Accordingly, I recommend that Senate Bill 24 (2002) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

John Forgas
Senate Special Master

cc: Senator Walter "Skip" Campbell
Representative Jeff Atwater
Faye Blanton, Secretary of the Senate
Stephanie Birtman, House Special Master