THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/1/01	SM	Fav/1 amendment
01/10/02	AG	Fav/1 amendment
	FT	

December 1, 2001

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

Re: **SB 6 (2002)** – Senator Campbell
Relief of Laura D. Strazza

SPECIAL MASTER'S FINAL REPORT

THIS IS AN EXCESS JUDGMENT CLAIM FOR $877,319.62, PLUS INTEREST, BASED ON A JURY VERDICT RENDERED AGAINST THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES TO COMPENSATE LAURA STRAZZA FOR INJURIES AND DAMAGES SHE SUSTAINED IN A MOTOR VEHICLE ACCIDENT RESULTING FROM THE ALLEGED NEGLIGENCE OF THE DEPARTMENT.

FINDINGS OF FACT:

LIABILITY

On April 25, 1996, Laura Strazza was riding as a passenger in a motor vehicle driven by William Dixon, traveling on U.S. 1 in Juno Beach, Palm Beach County, Florida. At that same time a large transport truck owned by the Department of Agriculture, Division of Forestry, was being operated on U.S. 1 by Richard Denton, a Forestry employee. Denton was in the course and scope of his employment while operating the truck. The truck was carrying a large bulldozer. The vehicle driven by Dixon and carrying Ms. Strazza collided with the Forestry truck as it was stretched across the lanes of traffic during an attempted three-point turn. The accident occurred in an area where U.S. 1 has four lanes, consisting of two lanes going north and two lanes going south. The lanes are separated by a grass median. There are no businesses,

residences or intersecting roadways in the area where the crash occurred. The speed limit is 50 mph. The accident occurred on a clear, sunny day.

WITNESS TESTIMONY:

Richard Denton

Richard Denton, the Forestry employee, testified at trial that he had arrived earlier in the day at a lift station located off the roadway next to the accident site. At that time, Denton had pulled the truck into the area behind the lift station so that the bulldozer could be off-loaded from the truck. Denton then testified that there was nothing about the contour of the land in this area that would have prevented him from driving the truck out of the lift station area and onto the shoulder of the road so that the truck would be headed in the same direction as the adjacent lanes of travel.

After the bulldozer was loaded onto the truck later that day, Denton decided to pull out of the lift station area so that his truck faced northbound on the shoulder of U.S. 1. Denton testified he thought he had to pull out in that direction so as to avoid damaging the rear axle of the truck on a berm in the area and because his truck had been stuck in the sand in that area earlier in the day. Because he wanted to go south on U.S. 1, and he was facing north, Denton decided to make a three-point U-turn which would require him to block the two lanes of oncoming traffic during the process.

Denton admitted that obstructing traffic with the truck on a high-speed highway is a potentially dangerous situation. Denton also admitted that making this three-point turn was a potentially dangerous maneuver because he was going to be obstructing the highway. Denton testified that it would have been better to have the truck pointing south on the shoulder of the road because he simply could have pulled into the southbound lanes and never would have had to make the three-point turn and obstruct traffic.

Denton further testified that, while he was employed by the Division of Forestry, there had been occasions when other people had assisted him with traffic control while he maneuvered the truck. He also admitted that it would have been a safer procedure, prior to starting his three-point turn,

to have someone assist him with traffic control to make sure that all traffic was stopped. Denton admitted that, although there were several people at the location, he did not ask for any assistance.

Denton next testified that he waited for four cars to stop before proceeding into the first lane of traffic. He then stopped at the middle of the two lanes to check for oncoming traffic in the next lane. After seeing no oncoming traffic he then pulled into the median and stopped. Denton then looked once again for oncoming traffic and saw none.

As he started to back up, Denton saw Dixon's vehicle for the first time. Denton testified that Dixon was in the inside lane and approximately 100 feet away from him. Denton also observed Dixon looking at Strazza in the passenger seat. According to Denton, Dixon never turned his head away from looking at Strazza prior to crashing into the truck.

William Dixon

William Dixon, the driver of the vehicle in which Ms. Strazza was a passenger, testified that he was driving south on U.S. 1 in the right lane behind two other vehicles. The brake lights on the vehicle in front of Dixon came on and Dixon switched to the left lane to go around the vehicles. Dixon did not know why the vehicles in front of him were slowing down and he did not care why.

Dixon further testified that he did not have to take emergency action when the vehicle in front of him braked. He also testified that he could have stopped his vehicle but elected not to do so. Dixon passed the two vehicles in front of him but does not know whether or not there were any other vehicles stopped in front of the two vehicles he passed.

Dixon testified that, as soon as he was in the left lane, he noticed the Forestry truck for the first time. At this point, he was only a couple of car lengths away from the Forestry truck. From the time he first saw the Forestry truck, it was only a split second before the impact. Dixon tried to apply his brakes but was unable to do so before the accident.

Laura Strazza

Ms. Strazza's testimony about the occurrence of the accident was essentially the same as Dixon's testimony. However, she added that Dixon was not looking at her when they changed lanes and he was not looking at her when the accident occurred.

Robert Deacy

Deacy was standing on the shoulder of U.S. 1, approximately 200 feet south of the Forestry truck, when he observed Dixon's vehicle. At that point, Dixon was near a trailer park and Deacy testified Dixon collided with the Forestry truck 8 to 10 seconds later after passing several vehicles in the right lane. According to Deacy, Dixon never slowed down during the 8 to 10 seconds prior to impact and Deacy thought Dixon was going to try to pass in front of the Forestry truck.

DAMAGES

Ms. Strazza suffered several severe injuries in the accident. Specifically, she sustained a displaced clavicle fracture, a fracture of the 5th metacarpal in the right hand, a severe laceration of the ulnar nerve along the right wrist, a compression fracture at L-1, a fracture along the lateral aspect of the distal fibula, a comminuted fracture of the cuboid bone on the right foot, and a comminuted fracture of the calcaneus bone in the right foot.

Ms. Strazza underwent the following surgeries as a result of these serious injuries:

- Placement of a pin in the 5th finger and subsequent removal of the pin;
- Placement of a clavicle splint consisting of a metal plate with six screws;
- Removal of the clavicle splint, re-alignment of the clavicle, and replacement of the plate and screws, along with a bone graft;

- Removal of the second plate and screws from the clavicle;

- Arthroscopic decompression of the right shoulder; and

- Internal fixation of the right foot with repair of surrounding ligaments and tendons and excision of bony material.

Currently, Ms. Strazza suffers from numerous permanent physical and mental problems. Ms. Strazza has persistent pain in her right leg, right shoulder, right arm, face and back. She also suffers from constant tremors in her right hand, pain over the scars on her clavicle and right wrist, difficulty sleeping, and distorted sensation over the entire right leg and right foot. Ms. Strazza also has significant muscle atrophy around her right shoulder, significant atrophy of the muscles of the right calf and right thigh. She also has significant reduction in muscle power to move the fingers in her right hand, significant motor weakness and ulnar sensory loss in the right hand, degenerative joint disease, and right foot drop.

Several of Ms. Strazza's treating physicians testified that she will need significant future medical treatment, including surgery and physical therapy. Additionally, her permanent injuries have left her with significant permanent impairments and functional limitations. Ms. Strazza cannot sit longer than 1.5 hours, cannot stand longer than 1 hour, cannot walk significant distances and cannot lift anything more than 5-10 pounds on an occasional basis.

Due to her physical problems and functional limitations, Ms. Strazza was forced to quit her job as a flight attendant for TWA airlines and she will not be able to return to work in that capacity. Ms. Strazza earned approximately $22,000 in the year before the accident.

Additionally, Ms. Strazza may be permanently unemployable. She is currently classified as permanently and totally disabled by the Social Security Administration and receives $854 per month in social security disability benefits. Ms. Strazza is currently 35 years old.

Ms. Strazza does have health insurance provided by her former employer, TWA.

Ms. Strazza incurred medical expenses of $174,232.44 prior to trial and has incurred $14,077 since trial. Her total medical bills to date are $188,309.44. An expert economist opined that Ms. Strazza's future damages for medical care and treatment, as expressed by her doctors as being necessary, have a present value of $328,779. The economist is of the opinion that the damages for future lost earning capacity, based upon a work life expectancy to age 65, have a present value of $1.1 million to $1.2 million.

PROCEDURAL HISTORY:

Ms. Strazza's lawsuit was first tried in November of 1998 and the case ended in a mistrial when the jury could not reach a unanimous verdict. The case was tried again in July of 1999. The jury returned a verdict in favor of Ms. Strazza finding the Department of Agriculture to be 25 percent at fault and William Dixon to be 75 percent at fault. The jury awarded Ms. Strazza past economic damages of $264,000, future economic damages of $700,000, past noneconomic damages of $150,000 and future noneconomic damages of $350,000. The damages totaled $1,464,000.

The trial court, after calculating set-offs for collateral sources and the department's joint and several liability for economic damages as set forth in s. 768.81, F.S., subsequently entered a final judgment against the department in the amount of $944,829, as well as a cost judgment of $32,490.62. The department filed post-trial motions contesting the verdict and the trial court denied the motions. The department then appealed the final judgment and the Fourth District Court of Appeal rejected the department's appeal and, on September 27, 2000, affirmed the final judgment entered against the department.

MISCELLANEOUS ITEMS:

The department has paid Ms. Strazza $100,000 pursuant to the limits of liability in s. 768.28, F.S. Ms. Strazza received a $10,000 settlement from William Dixon's insurer. She also received $10,000 in personal injury protection benefits. Ms. Strazza also received $50,000 in uninsured motorist benefits.

CONCLUSIONS OF LAW:

CLAIMANT'S POSITION

Ms. Strazza is willing to accept the jury's apportionment of fault and the jury's award of damages. Ms. Strazza also contends she is entitled to post-judgment interest at the rate of 10 percent per year. She bases this claim on the contention that the department's appeal was simply for the purpose of delaying that to which Ms. Strazza was entitled. Ms. Strazza argues that the appellate court's refusal to hear oral argument, and the court's per curiam opinion affirming the judgment, support her claim that the appeal was frivolous and instituted solely for the purpose of delay.

RESPONDENT'S POSITION

The department continues to advance the position that its driver was not at fault and that William Dixon was the sole, proximate cause of the accident and Ms. Strazza's resulting injuries and damages. The department also contends that, even if its driver was negligent, its liability should be capped at the statutory limit of $100,000 as found in s. 768.28, F.S. In a worst case scenario, the department contends that the maximum extent of its liability should be 25 percent of the damages awarded by the jury and that it should not be subject to joint and several liability for the economic damages as reflected in the final judgment. The department does not dispute the amount of damages awarded by the jury.

FINDINGS

The jury found the department's driver was negligent and his negligence was one of the causes of the accident. The jury apportioned 25 percent of the fault to the department's driver. The trial court did not disturb the jury's findings and neither did the Fourth District Court of Appeal. The Legislature typically accords great deference to a jury verdict upheld on appeal. I find that the jury's findings of negligence, the 25 percent apportionment of fault, and the damages awards were supported by competent, substantial evidence.

Additionally, I conclude that the department's position on the limitation of its liability to $100,000 or, alternatively, 25 percent of the total damages, is an equitable argument that

is contrary to the legal liability of the department.

Under the sovereign immunity doctrine, governmental agencies cannot pay any judgment in excess of the statutory cap of $100,000 set forth in §768.28, F.S. Generally, it has been legislative policy not to award interest on money awarded in excess of the cap. Although the claimant contends she is entitled to interest in this case because the department filed a frivolous appeal solely to delay payment to the claimant, I find that there is no evidence to support this position. Specifically, the department was legally entitled to appeal the judgment and exercised its legal right to do so. Also, although Rule 9.410 of the Florida Rules of Appellate Procedure provides for sanctions in the event of the filing of any brief that is frivolous or in bad faith, the claimant never moved the appellate court for any sanctions against the department. Additionally, the appellate court never entered any orders finding the department filed a frivolous brief or engaged in any other bad faith actions.

ATTORNEYS FEES:

The claimant's attorney has submitted an affidavit indicating his attorney's fee will be limited to 25 percent of any recovery. The affidavit also indicated total costs of $37,490.62 have been incurred.

LEGISLATIVE HISTORY:

SB 40 (2001) was filed by Senator Campbell. At that time the undersigned Special Master recommended that the bill be amended to provide for the payment of $882,322.22, which represented the amount set forth in the bill, plus $5,002.60 in additional costs. However, it did not include any interest as requested in the bill. SB 40 (2001) was amended to reflect the Special Master's recommendations and it passed favorably out of all committees of reference. SB 40 (2001) died on the Senate Calendar. Additionally, HB 1061 (2001), which was the companion bill to SB 40 (2001), received the same recommendation from the House Special Master. HB 1061 (2001) was passed favorably by the Committee on Claims, but died in the Procedural and Redistricting Council.

No further Special Master hearings have been held. The parties were given the opportunity to supplement the record for this claim. The following information was submitted:

- Laura Strazza has remained fully disabled and unable to work.

- Laura Strazza's health insurance was provided by her former employer, TWA. However, since American Airlines has purchased TWA, it is anticipated that Ms. Strazza will be forced to pay her own health insurance, as American Airlines requires all employees to pay for their health insurance.

- The Department of Agriculture and Consumer Services has not been provided with a Satisfaction of Judgment on the $100,000 paid to Ms. Strazza pursuant to the limit of liability provisions of s. 768.28, F.S.

RECOMMENDATIONS:

Based on the foregoing, I again recommend this bill be amended to provide for the payment of $882,322.22, which represents the amount set forth in the bill, plus $5002.60 in additional costs and less the allocation of accrued interest at the rate of 10 percent per annum.

Accordingly, I recommend that Senate Bill 6 (2002) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

John A. Forgas, lll
Senate Special Master

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

Amendment #1 by Agricutlure and Consumer Services Committee:
This amendment, recommended by the Special Master, changes the dollar amount of the claim from $877,319.62 to $883,322.22 to reflect additional costs and strikes any claim for accrued interest.