



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

DATE	COMM	ACTION
11/27/02	SM	Favorable
02/04/03	CP	Favorable
02/20/03	FT	Favorable

November 27, 2002

The Honorable James E. "Jim" King, Jr.
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 26 (2003)** – Senator Bill Posey
Relief of Alan S. Hammer

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM PREDICATED UPON A CONSENT AGREEMENT BETWEEN THE CLAIMANT AND BREVARD COUNTY TO COMPENSATE THE CLAIMANT, ALAN HAMMER, FOR INJURIES HE SUFFERED IN A MOTOR VEHICLE ACCIDENT AS A RESULT OF THE NEGLIGENT ACTIONS OF AN EMPLOYEE OF THE COUNTY.

THE CLAIM WAS SETTLED FOR \$125,000 PURSUANT TO A CONSENT AGREEMENT BETWEEN THE PARTIES. BREVARD COUNTY HAS PREVIOUSLY PAID THE CLAIMANT \$49,295, AND HAS AGREED TO SUPPORT THE INSTANT CLAIM BILL IN THE AMOUNT OF \$75,705.

FINDINGS OF FACT:

The accident: On June 18, 1998, at approximately 11:54 a.m., Alan Hammer was a passenger in a 1991 Ford van being driven by Howard Evarts. The Evarts' van was traveling westbound on Hibiscus Boulevard near the intersection of Gateway Street in Melbourne (Brevard County). As the van was slowing down, traveling at approximately 5 mph to turn south into a construction area, a Brevard County transit bus, weighing 21,400 pounds and traveling at 45 mph, rear-ended the van leaving 76 feet of skid marks. The collision caused Mr. Evarts' van to rear-end

a pick up truck which was directly in front of the van.

The driver of the County bus, Dale McKale, was charged with failure to use due care, adjudicated guilty and ordered to pay a fine. He was subsequently dismissed from County employment as a result of this accident and other violations of County policy.

(Note that this bill is factually similar to another claim bill (Senate Bill 34 - Howard and Donna Evarts v. Brevard County) which involves the driver of the van, Howard Evarts. Mr. Evarts and the County executed a settlement agreement identical to the agreement between the County and Mr. Hammer.)

Injuries sustained by Mr. Hammer: At the time of the accident, Mr. Hammer was a 38-year-old self-employed carpet/vinyl floor installer. Mr. Hammer was without health insurance at the time of the accident, and remained uninsured until he recently married his current wife.

Mr. Hammer did have compulsory no-fault automobile coverage (Personal Injury Protection (PIP) in the amount of \$10,000 which compensates the policyholder without regard to fault for bodily injury sustained in a motor vehicle accident. That coverage pays 80 percent of reasonable medical expenses and 60 percent of loss of income. He also had Uninsured Motorist Coverage for \$10,000. However, Mr. Hammer did not have workers' compensation insurance.

As a result of the accident, Mr. Hammer suffered a herniated nucleus pulposus; a bulging disc and a herniated disc; significant decreased memory; left carpal tunnel syndrome; left ulnar neuropathy at the elbow; and decreased range of motion in the right shoulder. His past medical expenses total \$23,366.31.

Mr. Hammer had surgery on his right shoulder in June 2002, and received subsequent follow-up treatment at the Brevard Pain Management, Inc. which was covered by his wife's health insurance plan.

Mr. Hammer is a candidate for future surgery to his cervical spine and to his lumbar spine, involving two separate surgeries, up to a year recovery for each surgery, at an

estimated cost of \$75,000 to \$85,000 for the first, and \$60,000 to \$70,000 for the second surgery.

Due to the accident, Mr. Hammer was unable to work for approximately 9 weeks. Prior to the accident, he made \$984/week, for total lost wages of \$8,856.08. Future lost wages are difficult to calculate because it is unknown how his symptoms will respond to treatment and possible surgical intervention. Based on his work life expectancy of 23 years (to age 65) and on the assumption that Mr. Hammer would be able to continue to work at a restricted level, it was conservatively estimated that his future lost wages would total \$67,500.

Collateral sources: Mr. Hammer received \$12,000 (\$10,000 plus \$2,000 in medical payments coverage) from PIP as well as \$10,000 in uninsured motorist coverage.

Settlement agreement: Prior to trial, the parties engaged in mediation which led to a settlement agreement. The County agreed to pay Mr. Hammer a total of \$125,000; of which \$49,295 has already been paid pursuant to s. 768.28(5), F.S., (sovereign immunity) leaving \$75,705 to be paid pursuant to this claim bill. The amount of the settlement agreement includes costs and attorney's fees. In the agreement, the County agreed not to oppose the claim bill, and in fact will support, join in and assist the claimant in his efforts at seeking a claim bill.

A consent judgment was entered approving the terms and conditions of the settlement agreement.

CONCLUSIONS OF LAW:

Liability: Section 316.1925, F.S., provides that any person operating a vehicle upon the streets shall drive in a safe and prudent manner.

Further, s. 316.0895, F.S., requires drivers not to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon, and the condition of, the highway. Florida courts presume negligence of the driver who runs into the rear of another automobile which is lawfully stopped in traffic. *Chiles v. Beaudoin*, 384 So.2d 175 (Fla. 2nd DCA 1980).

For the purposes of this claim bill, Brevard County admits that its employee, Dale McKale, operated his bus in a negligent matter and that the county is liable in this case.

Proximate Cause: Brevard County admits that the negligent actions taken by Dale McKale in the operation of his bus were the proximate cause of Mr. Hammer's injuries.

Damages: The collision resulted in serious and permanent injuries to Mr. Hammer. Please refer to the Findings of Fact Section above for past and future medical costs and costs related to loss of income.

Settlement agreement: Because settlements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense, stipulations or settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature or its committees, or on the Special Master. However, all such agreements must be evaluated. If found to be reasonable and based on equity, then they can be given effect, at least at the Special Master's level of consideration. I find that the settlement agreement in this case is reasonable and equitable, and recommend that it be given effect by the Legislature.

ATTORNEYS FEES:

The attorney in this case submitted an affidavit affirming that his fees shall not exceed 25 percent of any recovery as required by s. 768.28, F.S

RECOMMENDATIONS:

Based upon the foregoing, I recommend that Senate Bill 26 be reported FAVORABLY.

Respectfully submitted,

Katherine A. Emrich
Senate Special Master

cc: Senator Bill Posey
Faye Blanton, Secretary of the Senate
House Subcommittee on Claims