



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
11/27/02	SM	Favorable
	CP	
	FT	

November 27, 2002

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

Re: **SB 34 (2003)** – Senator Bill Posey
Relief of Howard and Donna Evarts

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM PREDICATED UPON A CONSENT AGREEMENT BETWEEN THE CLAIMANTS AND BREVARD COUNTY TO COMPENSATE THE CLAIMANT, HOWARD EVARTS, FOR INJURIES HE SUFFERED IN A MOTOR VEHICLE ACCIDENT AS A RESULT OF THE NEGLIGENT ACTIONS OF AN EMPLOYEE OF THE COUNTY. THE CONSENT AGREEMENT ALSO COMPENSATES MR. EVARTS' WIFE, DONNA EVARTS, FOR LOSS OF CONSORTIUM.

THE CLAIM WAS SETTLED FOR \$125,000 PURSUANT TO A CONSENT AGREEMENT BETWEEN THE PARTIES. BREVARD COUNTY HAS PREVIOUSLY PAID THE CLAIMANTS \$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., Howard Evarts was driving a 1991 Ford van in which Alan Hammer was a passenger. 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 26 - Alan Hammer v. Brevard County) which involves a passenger (Alan Hammer) in Mr. Evarts' van. Mr. Hammer and the County executed a settlement agreement identical to the agreement between the County and Mr. Evarts.)

Injuries sustained by Mr. Evarts: At the time of the accident, Mr. Evarts was a married 38-year-old self-employed carpet/vinyl floor installer. Mr. Evarts was without health insurance at the time of the accident, and remains uninsured. Mr. Evarts 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. However, Mr. Evarts did not have workers' compensation insurance.

As a result of the accident, Mr. Evarts suffered a concussion, decreased hearing in his left ear and dizziness, several herniated and bulging discs, thoracic spine pain, and depression. His past medical expenses total \$16,413.20.

Mr. Evarts is also a candidate for neck surgery, which would involve approximately 6 months recovery at an estimated cost of \$40,000-\$50,000. Mr. Evarts also needs continued chiropractic care along with treatment by an ear, eye, nose, and throat specialist and an orthopedic surgeon. He has not pursued any treatment because he has no health insurance.

Due to the accident, Mr. Evarts was unable to work for approximately 5 weeks. Prior to the accident, he made \$844.15 per week, for total lost wages of \$3,883.09. 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. Evarts would be able to continue to work at a restricted level, it was conservatively estimated that his future lost wages would total \$65,000.

Donna Evarts, Mr. Evarts' wife, initially had a claim for loss of consortium, which claim is included in her husband's claim and settlement. The claim bill provides for payment to both Howard and Donna Evarts.

Collateral sources: Mr. Evarts received \$10,000 from PIP (with a \$2,000 deductible).

Settlement agreement: Prior to trial, the parties engaged in mediation which led to a settlement agreement. The County agreed to pay Mr. Evarts 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 to support, join in and assist the claimants in their 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. Evarts' injuries.

Damages: The collision resulted in serious and permanent injuries to Mr. Evarts. 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 34 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