



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/12/09	SM	Fav/1 amendment

March 10, 2009

The Honorable Jeff Atwater
President, The Florida Senate
Suite 406, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 30 (2009)** – Senator Tony Hill
HB 797 (2009) – Representative Charles McBurney
Relief of Sheila and John Forehand

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR \$500,000 AGAINST THE CITY OF JACKSONVILLE ARISING OUT OF A 2005 MOTOR VEHICLE CRASH CAUSED BY A CITY POLICE OFFICER THAT SERIOUSLY INJURED SHEILA FOREHAND.

FINDINGS OF FACT:

On June 24, 2005, Sheila Forehand was driving on I-10 in Jacksonville when her car had a flat tire. She pulled the car into the emergency lane next to the median and got out to check the tire. As Mrs. Forehand was standing next to her car, a City of Jacksonville police car crashed into the car and knocked Mrs. Forehand approximately 30 feet into the median.

The police car involved in the crash was being driven by Officer Dawn Blind, an employee of the City. Officer Blind lost control of her car when the car in front of her (another police car) slowed to assist Mrs. Forehand. Officer Blind was traveling 60 to 70 mph at the time of the crash, which was too fast for the wet road conditions. She also may have been following the police car in front of her too closely.

Officer Blind was issued a ticket for careless driving. She was also given a written reprimand by the City and required to undergo remedial driving instruction.

Mrs. Forehand was seriously injured as a result of the crash. Her injuries included a closed head injury, lung damage, and pelvic fractures. She was in a coma for two weeks and was in the intensive care unit at Shands-Jacksonville for 27 days. She spent an additional 24 days in an in-patient rehabilitation center. She also had approximately six weeks of daily outpatient physical, occupational, and speech therapy.

One of Mrs. Forehand's children (Kelsie, then aged 9) was in Mrs. Forehand's car when the police car crashed into it. Kelsie's injuries were minor.

Mrs. Forehand sustained permanent impairments as a result of the crash. Her cognitive dysfunction was characterized as mild to moderate with a 15 percent impairment rating. Her overall, whole-body impairment rating was placed at 41 percent. She is unable to drive because of blurred vision, and she continues to have difficulty performing household tasks. She also has memory problems and periodic emotional outbursts.

Mrs. Forehand was not employed at the time of the crash, but she was going to start a job as a data entry clerk for an insurance company the week after the crash. She had previously worked in that field, earning approximately \$24,000 per year.

Mrs. Forehand has not worked since the crash. She was declared permanently disabled by the U.S. Social Security Administration, and she has been receiving disability benefits in the amount of \$966 per month since December 2005.

The claimants' expert economist estimated the present value of Mrs. Forehand's lost earnings and lost household services to be approximately \$566,000. These damages are reasonable.

The economist estimated the present value of Mrs. Forehand's "life care expenses" to be approximately

\$767,000. Of that amount, approximately \$718,500 was attributable to full-time aide and attendant care based upon the assumption that Mrs. Forehand would not be able to function without such care.

The evidence was not persuasive that Mrs. Forehand requires full-time nursing care. At most, she needs part-time attendant care to make it easier for Mr. Forehand to work outside the home. Accordingly, the projected life care expenses are likely overstated.

Blue Cross/Blue Shield (BC/BS) paid approximately \$205,000 for Mrs. Forehand's medical care after the accident, and BC/BS is asserting a lien on the settlement proceeds. The BC/BS lien, and approximately \$10,000 of other unpaid medical bills, will have to be paid from the proceeds of the claim bill.

Mrs. Forehand is now 45 years old. She and her husband, John Forehand, have been married since 1985, and they have four children, ages 23, 20, 12, and 11. Only the two younger children still live at home.

Mr. Forehand worked as a union electrician prior to Mrs. Forehand's accident. He had to take a significant amount of time off work immediately after the accident to help take care of Mrs. Forehand, and he stopped working altogether in September 2006 because he felt that he needed to focus on his family. Mr. Forehand testified at the special master hearing that he has recently started looking for union electrical work because Mrs. Forehand is now better able to take care of the children.

Mrs. Forehand has no criminal history. Mr. Forehand was arrested for child abuse in 2000 after spanking his then 11 year old daughter with a belt and leaving marks on her legs and buttocks. The charges were "dropped," but Mr. Forehand was required by the Department of Children and Family Services to complete anger management and parenting classes as well as substance abuse treatment for his drinking and marijuana use before he could return to the marital home. Mr. Forehand testified at the special master hearing that he learned from this incident, that he no longer uses corporal punishment with his children, and that he no longer drinks or uses marijuana.

The City is self-insured. It has budgeted for, and set aside the funds necessary to pay this claim from its self-insurance risk management fund. The funds will be paid over two fiscal years -- 2008/09 and 2009/10 -- in order to minimize the adverse impact of the claim on the City. The 2008/09 fiscal year began on October 1, 2008; the 2009/10 fiscal year starts on October 1, 2009.

LEGAL PROCEEDINGS:

In March 2006, the claimants filed suit against the City in the Circuit Court in Duval County. The City denied liability in its answer to the complaint, and the case was subsequently set for trial in December 2007.

Shortly before trial, the parties entered into a Settlement Agreement and Stipulation to resolve the case. The City admitted in the settlement agreement that its police officer was acting in the course and scope of her employment, that the officer was negligent, and that there was no comparative fault or third-party liability. The City further agreed that Mrs. Forehand suffered permanent injuries from the crash and that the "harms and losses in this case far exceed the statutory limit of \$200,000 and would likely garner a multi-million verdict."

The City agreed to the entry of a judgment in the amount of \$700,000, with \$200,000 to be paid immediately and the remaining \$500,000 to be paid upon passage of a claim bill. The City agreed to "remain neutral" in the claim bill process.

The parties agreed in the settlement agreement that upon passage of a claim bill, the remaining \$500,000 would be paid "(1) no sooner than the City of Jacksonville's 2008/2009 fiscal year and (2) in equal amounts over two consecutive fiscal years, beginning, for the first installment, no earlier than 20 October 2008."

A Final Judgment for \$700,000 was entered by the Circuit Court on January 7, 2008.

The City paid the claimants \$200,000 in accordance with the settlement agreement. The claimants received \$120,668.05 of the initial payment. The remainder of the funds went to costs (\$36,330.11) and to the repayment of a loan (\$43,001.84) that the claimants had to get after the accident

in order to keep their home. No attorney's fees were taken out of the initial \$200,000 in order to maximize the amount paid to the claimants.

CLAIMANT'S POSITION:

- The negligence of the City's police officer was the sole, direct, and proximate cause of the serious injuries sustained by Mrs. Forehand.
- The amount of the settlement is reasonable and the parties' settlement agreement should be given full effect.

CITY'S POSITION:

- The City stipulated that its police officer was negligent, and it does not oppose the bill.

CONCLUSIONS OF LAW:

The City police officer, Officer Blind, was acting within the scope and course of her employment at the time of the crash. Therefore, her negligence is attributable to the City.

Officer Blind had a duty to exercise reasonable care in operating her vehicle. See ss. 316.0895(1), 316.183(1), 316.185, F.S. She breached that duty when she lost control of her police car by driving too fast for the wet road conditions and by following the police car in front of her too closely. Officer's Blind's negligent operation of her vehicle was the sole, direct, and proximate cause of the crash that injured Mrs. Forehand.

The amount of damages agreed to by the parties is reasonable in light of the extent of Mrs. Forehand's injuries. Indeed, even though the projected "life care expenses" were likely overstated, the economic damages alone (i.e., medical bills, lost wages) exceed the \$700,000 settlement. Moreover, as recognized by the City in the settlement agreement, this case may have garnered a multi-million verdict as a result of the Forehands' non-economic damages (e.g., pain and suffering, loss of consortium, etc.).

LEGISLATIVE HISTORY:

This is the first year that this claim has been presented to the Senate.

ATTORNEYS' FEES AND LOBBYIST'S FEES:

The claimants' attorney provided an affidavit stating that the attorney's fees will be capped at 25 percent in accordance with s. 768.28(8), F.S., and that the lobbyist's fees related to the bill, if any, will be included in the 25 percent fee cap.

The bill limits attorney's fees, lobbyist's fees, and costs to 25 percent of the amount paid by the bill, which the Legislature is free to do. See Gamble v. Wells, 450 So. 2d 850 (Fla. 1984); Noel v. Schlesinger, 984 So. 2d 1265 (Fla. 4th DCA 2008).

If this limitation remains in the bill, the claimants will receive \$375,000, and the remaining \$125,000 will go to attorney's fees, costs, and lobbyist's fees.

If this limitation was not in the bill, the claimants would receive \$325,000 from the claim bill. The remainder of the funds (\$175,000) would go to attorney's fees, consisting of the \$50,000 "deferred fee" from the initial payment and \$125,000 related to the proceeds of claim bill. The lobbyist's fees, if any, will be paid from the attorney's fees.

OTHER ISSUES:

The bill is not consistent with the settlement agreement with respect to the phasing of the payments. The parties agree, and I recommend that the bill be amended to require the claim to be paid in two equal amounts of \$250,000, with the first payment due upon the bill becoming law and the second payment due on October 1, 2009, which is the first day of the City's 2009/2010 fiscal year.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 30 be reported FAVORABLY, as amended.

Respectfully submitted,

T. Kent Wetherell, II
Senate Special Master

cc: Senator Tony Hill
Philip Twogood, Secretary of the Senate
Counsel of Record

Attachment



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LEGISLATIVE ACTION

Senate

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House

The Special Master on Claim Bills recommended the following:

1 **Senate Amendment**

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3 Delete lines 74 - 78

4 and insert:

5 Section 2. The City of Jacksonville is authorized and
6 directed to appropriate from funds of the city not otherwise
7 appropriated and to draw warrants, payable to Sheila and John
8 Forehand, as compensation for injuries and damages sustained, as
9 follows:

10 (1) \$250,000 upon this act becoming a law; and

11 (2) \$250,000 on October 1, 2009.

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