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DATE: 3/25/2009

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 797; Relief of Sheila & John Forehand v. City of Jacksonville

Sponsor: Representative McBurney

Companion Bill: SB 30 by Senator Hill

Special Master: Ryan Padgett

Basic Information:

Claimants: Sheila and John Forehand

Respondent: City of Jacksonville

Amount Requested: \$500,000

Type of Claim: Local equitable claim; result of a settlement agreement.

Respondent's Position: Agrees not to oppose and to fully cooperate with the claim bill process. The City has stated that payment of a claim bill in the amount of \$500,000 would not impair its ability to provide normal services.

Collateral Sources: Pursuant to injuries sustained as a result of a June 24, 2005 traffic incident, the claimant's health insurance tendered payment of \$200,522.59 for medical expenses. The insurance company is asserting a lien on the settlement proceeds of this claim.

Attorney's/Lobbying Fees: The claimants' attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.

Prior Legislative History: This is the first year that this claim bill has been brought before the Legislature.

Procedural Summary: Sheila and John Forehand sued the City of Jacksonville, Florida in the Circuit Court in and for Duval County, alleging negligence. Prior to trial, the parties agreed to a consent final judgment against the City of Jacksonville in the amount of \$700,000. Of this amount, \$200,000 has already been paid to claimants pursuant to the statutory cap on liability imposed by section 768.28, Florida Statutes. The remaining \$500,000 balance is stipulated to be paid in equal amounts of \$250,000 over two consecutive fiscal years.

Facts of Case: On June 24, 2005, Claimant Sheila Forehand was driving eastbound on Interstate 10 when her vehicle got a flat tire. She was accompanied by her nine year old daughter, Kelsie. Ms.

Forehand pulled the vehicle into the emergency lane next to the median. Mrs. Forehand exited the vehicle to check the tires. Two Jacksonville Police Officers approached the area in separate vehicles, one driving behind the other. Both vehicles were traveling at highway speeds. The first officer saw the Forehands' disabled vehicle, slowed down, and started to pull into the emergency lane to render aid. The second officer's vehicle, reacting to the first officer's vehicle slowing down, spun out of control and crashed into the Forehands' vehicle. At the time the crash occurred, Ms. Forehand was standing near the rear driver's side of the vehicle. Kelsie Forehand remained in the back seat of the vehicle. The crash propelled the Forehands' vehicle, causing it to strike Sheila Forehand. The vehicle was a total loss. Sheila Forehand and Kelsie Forehand suffered injuries as a result of the accident.

Sheila Forehand was transported to the hospital, where she underwent surgery to correct multiple cerebral hematomas. Ms. Forehand remained in a coma for two weeks and remained in the Surgical Intensive Care Unit for 27 days. Ms. Forehand was diagnosed with the following: closed head injury, left intraventricular hemorrhage, pelvic fractures, respiratory failure, and left pneumothorax status post left chest tube removal and replacement. Mrs. Forehand was transferred to a rehabilitation hospital upon discharge, where she remained for an additional 24 days. Upon discharge from the rehabilitation hospital, Mrs. Forehand was transferred to the outpatient rehabilitation program. Mrs. Forehand participated in outpatient rehabilitation therapy five times a week for approximately six weeks, followed by therapy three times a week for another four weeks.

Ms. 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. 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 Ms. Forehand's lost earnings and lost household services to be approximately \$566,000. These damages are reasonable.

The case was resolved prior to trial. The City of Jacksonville stipulated that the officer was acting in the course and scope of her employment, the officer was negligent, and there was no comparative fault or third-party liability that caused or contributed to plaintiffs' harms and losses. The City admitted the second officer was negligent because the officer was following the first officer too closely and the officer was exceeding the speed limit. The City stipulated to the entry of a judgment in the amount of \$700,000.00. The City agreed to pay the statutory \$200,000.00 allowed by law immediately. The \$500,000.00 balance is stipulated to be paid in consecutive fiscal years no sooner than the 2008 City of Jacksonville fiscal year. Provided these stipulations are met, the City agrees to remain neutral in the claim bill process.

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.

Ms. 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 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.

Ryan Padgett, Special Master

Date: March 25, 2009

cc: Representative McBurney, House Sponsor
Senator Hill, Senate Sponsor
Judge T. Kent Wetherell, II, Senate Special Master
Counsel of Record