



STORAGE NAME: h3519.CJS

DATE: 4/3/2015

Florida House of Representatives Summary Claim Bill Report

Bill #: HB 3519; Relief/Joseph Stewart & Audrey Stewart/City of Jacksonville

Sponsor: Jones, M.

Companion Bill: CS/SB 22 by Judiciary, Bradley

Special Master: Ryan Cox

Basic Information:

Claimants: Joseph Stewart and Audrey Stewart on behalf of their son, Aubrey Stewart

Respondent: City of Jacksonville

Amount Requested: \$3,300,000.00

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

Respondent's Position: City of Jacksonville

Collateral Sources: None reported.

Attorney's/Lobbying Fees: The claimant's 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 fees, if any, will be included in the 25% fee cap.

Notwithstanding the attorney's affidavit, the bill specifically provides the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.

Prior Legislative History: House Bill 3513 by Representative McBurney and Senate Bill 30 by Senator Bradley were filed during the 2014 Legislative Session. Neither bill was ever heard in any committee.

Procedural Summary: A civil suit was filed in the Fourth Judicial Circuit in and for Duval County. The City of Jacksonville filed standard denials and affirmative defenses, but subsequently entered into a settlement agreement with the Claimants. The settlement agreement calls for \$200,000 to be paid immediately in accordance with the statutory limits of liability in s. 768.28, F.S., and support for a claim bill in the amount of \$3,300,000. The Court authorized the settlement agreement and

SPECIAL MASTER'S SUMMARY REPORT--

Page 2

entered its Stipulated Final Judgment on July 29, 2013, for \$3,500,000. The Jacksonville City Council passed the settlement agreement unanimously as enacted ordinance 2013-515 and subsequently passed Resolution 2014-231-A, urging the Legislature and the Governor to approve the claim bill.

Facts of Case: On June 27, 2011, Aubrey Stewart, age 15, was seriously injured when he stepped out of his home and was crushed by a large tree limb that fell from a tree. The tree in question was on the right-of-way on Dyal Street, which is owned by the City of Jacksonville (City). The City's records establish that the City was on notice regarding the dangerous condition of the trees lining the right-of-way on Dyal Street.

Residents on four separate occasions had contacted the City regarding multiple trees in poor condition and causing a hazardous condition. On September 7, 2010, Ms. Jacqueline Hagan, a neighbor, reported to the City that "several trees along (Dyal) street need to be trimmed due to falling limbs." On September 10, 2011, Mr. Joseph Stewart, the Claimant, reported to the City that a dead tree in the right-of-way needed to be checked for removal because it was dropping large limbs. Mr. Stewart also notified the City that a second tree may need to be checked out. The City responded to this call on September 27, 2010, but only removed a limb from the right-of-way. On January 6, 2011, Mr. Joseph Stewart made another report that the tree in front of his house was showing actual cracks in the trunk where it appears it is about to fall. Mr. Stewart informed the City that he would place a pink ribbon around the tree to identify it. He also informed the City that the tree was still dropping limbs, one which dented his vehicle. The C.A.R.E. report indicates that Mr. Stewart was "very concerned that the tree would fall any day now." In response to this report, the City conducted an investigation and the Risk Management Department paid \$856.21 to Mr. Stewart for the damage to his vehicle. On May 13, 2011, Ms. Joil Williams, another neighbor, reported that one of the previously reported trees had fallen in the middle of the road and was blocking traffic. The City sent a crew to the area to remove the downed tree, but failed to do anything about the other previously reported tree that was still in poor condition. Aubrey Stewart was injured by the remaining tree on June 27, 2011.

Aubrey Stewart was taken to Shands Jacksonville, where he spent five months in the pediatric intensive care unit. He was then released and spent a month at Brooks Rehabilitation Center. From June 27, 2011 through September 13, 2011, Aubrey went through approximately 12 surgeries, including, but not limited to, repair of anal laceration and rectum; insertion of chest tubes, inferior vena cava, and inferior vena cavogram; surgeries to repair spinal fractures; and debridement and irrigation of several septic abscess cavities. Aubrey was paralyzed as a result of the injuries sustained from the falling tree limb and is bound to a wheelchair for the remainder of his life. Additionally, Aubrey must wear diapers, use a catheter and a colostomy bag, and has permanent hardware in his body. Aubrey resides at home with his parents and is completely dependent on them and a part-time nurse for his daily living, including going to the restroom, eating, and getting around.

The known medical bills at the time of the settlement agreement amounted to \$1,647,937.57. Outstanding charges include: Jacksonville Fire and Rescue - \$685.00; Shands Jacksonville - \$1,419,119.24; University of Florida Jacksonville Physicians - \$153,494.45; Brooks Rehabilitation (Inpatient) - \$62,561.88; and Brooks Rehabilitation (Outpatient) - \$12,077.00. In addition, the future medical bills for Aubrey Stewart are sizeable. Mr. Lawrence Forman, with Comprehensive Rehabilitation Consultants, Inc., provided an extensive listing of the continuum of care that is required for the remainder of Aubrey Stewart's natural life based on the documented injuries. Two continuum of care plans were detailed in this report, one that included the use of a Baclofen Pump and the second which assumed Aubrey Stewart remains on Oral Baclofen for the remainder of his life. Economist Frederick A. Raffa, Ph.D., then used this continuum of care to calculate the future life care needs for Aubrey Stewart. The future care costs for the each plan were calculated at

SPECIAL MASTER'S SUMMARY REPORT--

Page 3

\$10,793,383.00 and \$9,052,435, respectively. These costs are separate from medical bills already incurred as a result of the injury.

The figures presented do not account for any loss of earning capacity or non-economic damages, which would likely have been substantial if this case had preceded to trial.

The bill directs the City of Jacksonville to pay: \$1.2 million the first November 1 after the claims bill becomes law; \$1 million one year later; \$600,000 a year later; and \$500,000 a year later. The monies to pay the settlement will come from the City's Risk Management Fund and was crafted in a manner to minimize any potential financial impact of the City of Jacksonville.

Recommendation: I recommend that House Bill 3519 be amended to direct payment of the funds, after deduction of costs and liens, to the special needs trust established for Aubrey Stewart. I respectfully recommend that House Bill 3519 be reported **FAVORABLY**.

Ryan Cox, Special Master

Date: April 3, 2015

cc: Representative Jones, M., House Sponsor
Senator Bradley, Senate Sponsor
Dan Looke, Senate Special Master