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
10/23/14	SM	FAV/1 amendment
3/24/15	JU	Fav/CS
	CA	
	FP	

February 2, 2015 (Rev. 3/24/15)

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 66** – Judiciary Committee and Senator Legg
Relief of Ronald Miller by the City of Hollywood

SPECIAL MASTER'S FINAL REPORT

THIS SETTLED EXCESS JUDGMENT CLAIM FOR $100,000 AGAINST THE CITY OF HOLLYWOOD, WHICH WOULD BE PAID FROM LOCAL FUNDS, ARISES OUT OF AN AUTOMOBILE ACCIDENT CAUSED BY A MUNICIPAL EMPLOYEE WHOSE NEGLIGENT DRIVING ALLEGEDLY LEFT RONALD MILLER WITH INJURIES TO HIS KNEES.

CURRENT STATUS:

On November 17, 2008, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill. On February 1, 2011, for SB 64 (2011), the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported unfavorably. Since that time, the matter has been settled between Mr. Miller and the City of Hollywood. Subsequently, the special master's December 2, 2011, report for SB 8 (2012) reflected the settlement and recommended that the bill be reported favorably. The report reflecting the settlement is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Diana Caldwell. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and

determine whether any changes have occurred since the hearing, which if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

According to counsel for the claimant, Ronald Miller, changes have not occurred since the hearing which might have altered the findings and recommendations in the report.

Additionally, the prior claim bill, SB 8 (2012), is effectively identical to claim bill filed for the 2015 Legislative Session.

Respectfully submitted,

Diana W. Caldwell
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary on March 24, 2015:
The committee substitute corrects the spelling of the last name of the city employee who caused the accident leading to the claim bill.

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

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

DATE	COMM	ACTION
12/02/11	SM	Favorable

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 8 (2012)** – Senator Eleanor Sobel
HB 43 (2012) – Representative Evan Jenne
Relief of Ronald Miller

SPECIAL MASTER'S FINAL REPORT

THIS SETTLED EXCESS JUDGMENT CLAIM FOR $100,000 AGAINST THE CITY OF HOLLYWOOD, WHICH WOULD BE PAID FROM LOCAL FUNDS, ARISES OUT OF AN AUTOMOBILE ACCIDENT CAUSED BY A MUNICIPAL EMPLOYEE WHOSE NEGLIGENT DRIVING ALLEGEDLY LEFT RONALD MILLER WITH INJURIES TO HIS KNEES.

FINDINGS OF FACT:

At about 5:30 p.m. on July 30, 2002, Ronald Miller, a self-employed lawn service provider, was driving north on Federal Highway. As he approached Sheridan Street in the City of Hollywood, Florida, Miller encountered traffic congestion in both of the northbound lanes on Federal Highway; cars were backed up for several blocks south of Sheridan Street, where the light was red.

Miller planned to turn left and travel west on Sherman Street, which is one block south of Sheridan Street. Avoiding the lines of traffic waiting for the light to turn green at Sheridan, Miller maneuvered his pickup truck—which was pulling a trailer carrying his lawn equipment—into the center left-turn lane, which is a common lane providing for the two-way movement of traffic. Miller's speed was at least 20 MPH—within the posted limit but faster than the circumstances warranted, as

the left-turn lane is not meant to be used, as Miller was using it, for passing cars waiting at a red light.

Meantime, Robert Mettler, an employee of the City of Hollywood, was attempting to leave a Burger King restaurant which is located on the east side of Federal Highway, facing Sherman Street. (The Burger King thus was off to Miller's right as he approached from the south.) Mettler was on duty, behind the wheel of a City-owned pickup truck. He wanted to head south on Federal Highway, and thus needed to make a difficult left-hand turn across three lanes of rush-hour traffic: the two northbound lanes, where traffic was currently stopped, and the common turn lane, in which Miller (unbeknownst to Mettler) was presently moving north.

Drivers stopped on Federal Highway (in the northbound lanes) let Mettler out of the Burger King parking lot. As he edged his way between the parked cars, Mettler saw one of the drivers give him a hand signal, which he interpreted as a sign that the center lane was clear. Mettler himself could not get an unobstructed southward view of the turn lane because of the vehicles backed up on Federal Highway.

Mettler decided that the turn lane was clear and began nosing his truck forward. By this time, Miller was almost there; he was looking both forward and to his left and didn't see Mettler on his right. Mettler accelerated, pulling forward into the turn lane. In so doing, he failed to exercise reasonable care under the circumstances. Instantly, the trucks collided head-to-head.

Miller was not wearing his seatbelt. The force of the impact thrust him forward, and his knees struck the dashboard. Though hurt, Miller was not incapacitated; indeed, he walked away from the crash without assistance and later declined medical treatment at the accident site. Mettler was not badly injured.

The Hollywood Police Department was called, and an officer investigated the accident. Metter was given a ticket for failing to yield the right-of-way, in violation of s. 316.125(1), Florida Statutes. (Several months later, Mettler would be found guilty of this infraction.)

Hours after the crash, Miller's knees were painful and his neck was sore, so he sought treatment at Hollywood Medical

Center, checking into the emergency room at around midnight. The emergency room doctor prescribed painkillers and a cervical collar and sent Miller home.

Miller saw a chiropractor on July 31, 2002. After several visits, Miller switched to another chiropractor, Dr. Keith Buchalter, from whom he received treatment for neck and knee pain beginning August 12, 2002, and continuing until March 5, 2003. While under Dr. Buchalter's care, on September 16, 2002, Miller had magnetic resonance imaging (MRI) scans taken of his cervical spine, left knee, and right knee. These MRI scans, taken about one-and-a-half months after the crash, produced the first (and only) post-accident radiologic studies of Miller's knees and neck. The radiologist who read the scans believed the images showed, among other things, a torn anterior cruciate ligament (ACL) in both of Miller's knees.

On October 16, 2002, Miller was seen by Dr. Stephen Wender, an orthopedic surgeon. Dr. Wender prescribed a course of non-steroidal anti-inflammatory drugs for Miller's still-painful knees. On March 20, 2003, approximately eight months after the accident, Dr. Wender performed arthroscopic surgery on Miller's left and right knees. Dr. Wender did not repair the ACL in either of Miller's knees because, it turned out, Miller did not have ligament damage after all.

This was not the first time that an orthopedic surgeon had operated on Miller's right knee. It was, in fact, the *fourth* surgery on Miller's right knee, which had been damaged years earlier when Miller, as a pedestrian, had been hit by a car. The previous accident had led to three knee surgeries by two different doctors. Medical records from the prior surgeries were not produced at hearing, and the orthopedic surgeons who performed them did not testify.

The undersigned is persuaded, and finds, that Miller's right knee sustained some injury as a result of the July 2002 crash. Without information concerning the nature and extent of the previous injuries to Miller's right knee, however, it cannot be determined, with reasonable particularity, which damage was proximately caused by the accident in 2002, and which was present before this accident. That said, the evidence shows (and the undersigned finds) that, broadly speaking, roughly 80

to 90 percent of the damage to Miller's right knee existed before the 2002 accident.

Miller's left knee, too, was injured in the 2002 crash. While the left knee (unlike the right) had not previously suffered a traumatic injury, by July 2002 Miller's left knee already had begun to deteriorate due to degenerative arthritis. In other words, Miller's left knee had a chronic, preexisting condition. There is no evidence, however, that Miller's left knee was bothering him before the accident in question.

Miller incurred approximately $75,000 in medical expenses following the 2002 accident, beginning with the next-day treatment in the emergency room and continuing until he had knee surgery in March 2003. These medical expenses constitute an economic loss that was directly and proximately caused by the 2002 accident.

Miller wants to be compensated for "pain and suffering" (which category includes, in addition to pain and suffering, such noneconomic losses as mental anguish, inconvenience, and loss of capacity to enjoy life). At the trial on the civil suit in which Miller sued the City for negligence, the jury awarded Miller $700,000 for pain and suffering—$200,000 for past suffering and $500,000 for future suffering.

Mettler's failure to use reasonable care to avoid colliding with Miller's pickup truck unquestionably constituted negligence. Miller, however, was negligent too, for he drove too fast for the circumstances and failed to pay reasonable attention to all of the traffic on the road. The jury in the civil trial was asked to compare the negligence of Mettler to that of Miller and apportion the fault between them by percentages. The jury determined that Mettler's negligence comprised 95 percent of the cause of Miller's injuries, while finding Miller himself five percent at fault.

While the undersigned might have placed a bit more blame on Miller, he nonetheless considers the jury's apportionment of the fault to be consistent with the evidence and will defer to the jury's collective wisdom in the matter. It is found, therefore, that Metter was 95 percent responsible for the crash, Miller five percent.

LEGAL PROCEEDINGS:

In January 2005, Miller brought suit against the City. The action was filed in the Broward County Circuit Court.

The case was tried before a jury in June 2006. The jury returned a verdict awarding Miller a total of $1.19 million in damages, broken down as follows: (a) $200,000 for past pain and suffering; (b) $500,000 for future pain and suffering; (c) $75,000 for past medical expenses; and (d) $415,000 for future medical expenses. The trial court entered a judgment against the City in the amount of $1.13 million—or 95 percent of the total damages, in accordance with the jury's apportionment of fault. (All of the foregoing numbers were rounded for ease of reference.)

The City appealed the adverse judgment. The Fourth District Court of Appeal affirmed, per curiam, without issuing an opinion.

On August 16, 2007, the City paid $100,000 to Miller, satisfying so much of the judgment as falls outside the protection of sovereign immunity. The City previously (in 2002) had compensated Miller in full for his property damage, which consequently is not in issue here.

The proceeds recovered on the judgment were distributed to Miller in February 2008. His net recovery, after paying attorney's fees ($30,000), litigation costs ($21,000), and medical bills ($6,400), was $43,000. (These numbers have been rounded for convenience.)

CLAIMANT'S ARGUMENTS:

The City is vicariously liable for its employee's negligent operation of a municipal vehicle, which negligence caused an accident wherein Miller suffered severe and permanent bodily injuries.

RESPONDENT'S POSITION:

In a letter dated September 23, 2011, counsel for the City stated that "the parties involved have agreed on the amounts requested in SB 8/HB 43, as well as the 'whereas' clause findings. Accordingly, it is the parties' intent to ask members to pass this bill as a stipulated matter."

CONCLUSIONS OF LAW:

As provided in s. 768.28, Florida Statutes (2010), sovereign immunity shields the City against tort liability in excess of $200,000 per occurrence.

Under the doctrine of respondeat superior, the City is vicariously liable for the negligent acts of its agents and employees, when such acts are within the course and scope of the agency or employment. See Roessler v. Novak, 858 So. 2d 1158, 1161 (Fla. 2d DCA 2003). Metter, a City employee, was acting within the course and scope of his employment when he negligently collided with Miller. The City, therefore, is liable for Mettler's negligence.

Miller was negligent, too, and his negligence was a contributory cause of the accident. Therefore, it is necessary to determine the extent of Mettler's fault as compared to Miller's. As noted above, the jury's allocation of 95 percent of the fault to the City (through Miller) is reasonable. The undersigned accordingly concludes that the City was 95 percent to blame for the accident.

Miller proved that Mettler's negligence proximately caused acute injuries that resulted in Miller's incurring $75,000 in medical expenses. An award for these past medical expenses is factually and legally justified (apart from sovereign immunity considerations). Miller established, as well, that he is entitled to an award for pain and suffering.

LEGISLATIVE HISTORY: This is the fourth year that this claim has been presented to the Florida Legislature.

ATTORNEYS FEES: Section 768.28(8), Florida Statutes, provides that "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." Miller's attorney, Winston & Clark, P.A., has submitted proposed distribution statement showing that the attorneys' and lobbyist's fees would be limited, in the aggregate, to 25 percent of the compensation being sought.

SPECIAL ISSUES: The parties have agreed to settle this claim for the payment by the City of $100,000. This amount is reasonable and responsible.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 8 (2012) be reported FAVORABLY.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Eleanor Sobel
Representative Evan Jenne
Debbie Brown, Interim Secretary of the Senate
Counsel of Record