



STORAGE NAME: h6555.CJC

DATE: 3/16/2017

March 16, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6555 - Representative Grant, M.
Relief/Thomas and Karen Brandi/Haines City

THIS IS A CONTESTED EQUITABLE CLAIM BASED ON A JURY VERDICT AWARDING DAMAGES IN THE AMOUNT OF \$1,807,330 TO THOMAS AND KAREN BRANDI FOR DAMAGES RECEIVED AS A RESULT OF A MOTOR VEHICLE ACCIDENT WITH A VEHICLE DRIVEN BY A POLICE OFFICER OF THE CITY OF HAINES CITY, FLORIDA. THE JURY REDUCED THE AWARD BY 40% AFTER FINDING THOMAS BRANDI CONTRIBUTORILY NEGLIGENT AND THE CITY OF HAINES CITY HAS PAID \$200,000 PURSUANT TO THE STATUTORY CAP. THE BILL SUBMITTED REQUESTS PAYMENT OF \$825,094.

FINDING OF FACT:

On the evening of March 26, 2005, Mr. Thomas Brandi was crossing U.S. 27 via Southern Dunes Boulevard. At the same time, Officer Pamela Graham was proceeding northbound on U.S. 27.¹ The two vehicles collided at the intersection of Southern Dunes Boulevard and U.S. 27; Officer Graham's police vehicle struck the driver's side of Mr. Brandi's vehicle sending Officer Graham's vehicle into the southbound lane of

¹ The Petitioners assert that Mr. Brandi was proceeding on a green light, and Officer Pamela Graham was proceeding on a red light when the accident occurred. However, one witness reported, in a letter and not under oath, that Officer Graham was proceeding northbound on U.S. 27 on a yellow light.

U.S. 27 and Mr. Brandi's vehicle northeast, off the road and into a Checker's parking lot.

After the accident Officer Graham stated that she was responding to a distress call at the time of the accident. An internal investigation by the Haines City Police Department later determined that there was no evidence to support Officer Graham's statement, and Officer Graham later stated that she misheard information over her police radio that led her to believe there was another officer in distress. The Haines City Police Department's internal investigation found Officer Graham to be at fault for the accident.² Following this finding, Officer Graham was suspended for three days with no pay and required to take a driving safety course through the Department.

As a result of the crash, both Officer Graham and Mr. Brandi sustained injuries. Officer Graham's ankle was injured. Mr. Brandi sustained multiple injuries including an aortic arch tear with contained hematoma and suggestion of active bleeding, a fractured rib, a right fibula fracture, a fractured sternum, a left acetabulum fracture, multiple right inferior pubic ramus fractures, and severe traumatic brain injury. On March 27, 2005, Mr. Brandi underwent a surgical repair of the descending thoracic aorta with grafting. He was also treated for a complete collapse of the upper lobe of his right lung and received a number of blood transfusions.

Following the accident Mr. Brandi spent ten days in the Lakeland Regional Medical Center and ten days at the Florida Hospital in Orlando.³ He was discharged from the Florida Hospital to an outpatient rehabilitation facility in Winter Haven, Florida, where he spent May through July of 2005 in rehabilitation. Mr. Brandi's medical care included physical therapy for his orthopedic injuries. Mr. Brandi was also treated for sexual dysfunction and for sleep deprivation due to chronic pain.⁴

The Claimants retained Dr. Craig Lichtblau, a rehabilitative pain medicine specialist, who prepared a life care plan outlining the therapies and medical treatments that Mr. Brandi would and

² The internal investigation was conducted by a Lieutenant against whom Officer Graham had previously filed a harassment complaint (not a sexual harassment complaint). The Lieutenant suggested that Officer Graham did not have her lights or sirens activated; however, one witness travelling in the same direction as Officer Graham submitted a written statement, not under oath, saying she observed Officer Graham's lights while another witness, operating a semi-truck, stated via telephone, not under oath, that he heard Officer Graham's sirens.

³ During this time, his family reports that Mr. Brandi had to relearn how to perform daily activities, including how to use utensils and how to verbally articulate his thoughts clearly and accurately.

⁴ Thomas Brandi also asserts that he developed or manifested facial motor tics as well as right-hand tremors and suffered from low back pain which radiated into his lower extremities. The Respondent disputes that Petitioner developed tics and tremors and points to the statement of one of Mr. Brandi's physicians that his back pain, first reported in 2007, is not a result of the accident.

might need over the remainder of his life. The Claimants also retained Dr. A.M. Gamboa Jr., Ph.D., M.D., an economic and vocational expert, to evaluate the financial losses associated with Mr. Brandi's injuries. Dr. Gamboa's determined, based in part on Dr. Lichtblau's evaluation, that the present money value of Mr. Brandi's future medical care is between \$836,260 and \$933,610 and that Mr. Brandi's loss of wages and diminution of earning capacity totals between \$787,519 and \$983,610.⁵

LITIGATION HISTORY:

On August 4, 2006, Thomas and Karen Brandi, as Plaintiffs, filed a Complaint in the 10th Judicial Circuit Court, in and for Polk County, Florida, against the City of Haines City, Florida, for Mr. Brandi's personal injuries resulting from the March 26, 2005, accident and for Mrs. Brandi's consortium damages resulting from the same accident. Haines City answered denying the Petitioners' claims and asserting that Mr. Brandi was comparatively negligent by failing to wear his seatbelt.⁶

Following a six day trial, the jury entered a verdict on November 17, 2009, finding the City of Haines City 60% responsible for Mr. Brandi's injuries and Mr. Brandi 40% responsible for his own injuries. The verdict included an award of past medical expenses and lost wages totaling \$279,330 and future medical expenses and lost earning ability in the future totaling \$903,000. Additionally, Thomas Brandi was awarded \$450,000 in past and future pain and suffering damages, and his wife, Karen Brandi, was awarded \$175,000 in past and future damages for loss of consortium. After the reduction for contributory negligence, the net award to the Petitioners was \$1,084,396.

The Respondent did not file an appeal.

The Honorable Karla Foreman Wright entered a Final Judgment on January 14, 2010, ordering Haines City to pay \$100,000 to Thomas Brandi and \$100,000 to Karen Brandi for a total of \$200,000. This Final Judgment was entered without prejudice acknowledging the Petitioners' right to pursue payment of the full jury verdict. On May 17, 2010, Judge Foreman Wright entered an order requiring Haines City to pay the stipulated cost judgment in the amount of \$94,049.84.

Post-verdict, the Respondent paid \$200,000 to the Petitioners in satisfaction of the sovereign immunity limits. Of the \$200,000, \$25,000 was paid to the Claimants and \$50,000 was used to satisfy attorneys' fees with the remainder used to

⁵ The Respondent contests the evaluation done by Dr. Lichtblau and asserts that Dr. Lichtblau's assessment of Mr. Brandi's future medical needs is excessive and includes treatments that Mr. Brandi may never need.

⁶ Whether or not Mr. Brandi was wearing a seatbelt at the time the accident occurred was heavily debated by both sides. The trial judge orally granted a directed verdict for the Petitioner concerning the seatbelt issue during the course of the trial.

satisfy costs.⁷ Additionally, Thomas Brandi received \$100,000 from his insurance carrier, Farm Bureau, pursuant to an uninsured motorist policy.

CLAIMANT'S POSITION:

The Thomas and Karen Brandi (Claimants) assert that as Officer Graham approached the intersection, she failed to operate her vehicle in a reasonably safe manner and conducted herself in direct violation of Haines City Police Department procedures. The Claimants assert that Officer Graham entered the intersection on a red light and failed to yield the right-of-way to Mr. Brandi who was proceeding on a green light.

The Claimants also dispute the Respondent's assertions that Mr. Brandi was not wearing his seatbelt at the time of the accident and assert that Mr. Brandi's alleged drinking prior in the day was not a factor in the accident.⁸

The Claimants retained Dr. Brown, a psychiatric expert, who determined that Mr. Brandi's functioning level is much lower than reported by other physicians. Dr. Brown diagnosed Mr. Brandi with seizures.⁹ Dr. Brown also states that Mr. Brandi suffered additional brain damage after the accident because of lack of oxygen to the brain.¹⁰ Additionally, Dr. Brown diagnosed Mr. Brandi with PTSD from the accident.¹¹ Additionally, Claimants retained an expert radiologist who found evidence of trauma in Mr. Brandi's brain.¹²

RESPONDENT'S POSITION:

The City of Haines City (Respondent) asserts that this claim bill does not comply with the statutory requirements of s. 768.28, F.S., because it is not based upon an unsatisfied judgment. Haines City asserts that the Petitioners' lawyers did not seek to have the jury verdict reduced to a judgment and that the only judgments entered following trial are a Final Judgment for \$200,000 and a Cost Judgment for \$94,049. Haines City asserts that because the Final Judgment of \$200,000 has been satisfied, Thomas and Karen Brandi have no standing to seek this claim bill.

⁷ Pursuant to the Closing Statement submitted by the Claimants' counsel, of the \$50,000 paid to attorneys, \$35,000 was paid to Dellecker, Wilson, King, McKenna, & Ruffier, LLP to be held in trust with the remaining \$15,000 paid to Thomas Shafovaloff, Esq.

⁸ Haines City points to the fact that Mr. Brandi admitted to having consumed four beers earlier in the day and that he may not have been wearing a seatbelt at the time of the accident. The blood test done on Mr. Brandi two hours after the accident came back negative for alcohol, and the trial judge granted a directed verdict at trial for the Claimants regarding Mr. Brandi's seatbelt use.

⁹ The Respondent disagrees with this diagnosis and points to Dr. Cambridge, Mr. Brandi's treating neurologist/psychiatrist, who completed an EEG of Mr. Brandi's brain and saw no seizures. The Claimants rebut this asserting that the type of scans Dr. Brown performed are done at a different resolution and with more detail than an EEG.

¹⁰ The Respondents dispute this assertion.

¹¹ The Respondent disagrees with this diagnosis and states that Mr. Brandi's treating psychiatrist and neurologist have not diagnosed Mr. Brandi with PTSD.

¹² The Respondent disagrees with this conclusion.

Haines City further asserts that Officer Graham entered the intersection on a yellow light and that Mr. Brandi failed to yield right-of-way to her. Haines City also acknowledges that Officer Graham had previously filed a harassment complaint against the Lieutenant who led the investigation of Officer Graham following the accident.¹³

Respondent retained Dr. Hall, a psychiatrist, and Dr. Herkov, a neuropsychologist, both of whom disputed the Claimants' expert, Dr. Brown. Dr. Hall stated that in his opinion Mr. Brandi suffers from the same depression that he did before the accident and that preexisting depression, not the accident, is the reason for Mr. Brandi's memory issues. Dr. Herkov stated that he found no evidence of brain injury causing cognitive dysfunction or deficits in Mr. Brandi. Additionally, Haines City asserts that Mr. Brandi's insurer hired an accident reconstructionist who admitted assumptions he made during his reconstruction had no engineering or factual basis.

Haines City also contests the amount of the damages awarded. Haines City asserts that the jury had no basis to award past medical expenses and lost wages of \$279,330 because the medical bills presented at trial did not reflect payments or reductions due to insurance contracts or portions of bills written off by providers.¹⁴ Additionally, Respondents dispute Claimants' expert, Dr. Lichtblau's, estimate of the amount and costs of treatments Mr. Brandi will require in the future.¹⁵

Respondent further disputes the amount of past lost wages and claimed damages for the future. Haines City asserts that Mr. Brandi did not work for two years prior to the accident and therefore his lost wages should be \$0.00. Respondent also suggests that Dr. Gamboa, who created the Claimant's vocational report, relied too heavily on Dr. Lichtblau's assessment of Mr. Brandi.

CONCLUSION OF LAW:

I find that the Claimants are not barred from seeking a claim bill award on this issue. Judge Foreman Wright's Final Judgment ordering payment of \$200,000 was entered without prejudice and stated that it was entered without prejudice "to the

¹³ The harassment complaint was not a sexual harassment complaint, but Haines City suggests that the Lieutenant was not unbiased in his review of the accident and Officer Graham.

¹⁴ Respondent submitted a motion requesting the reduced amounts be submitted to the jury, but the trial judge held that, based on a Florida Supreme Court opinion, the total amount of the medical bills was admissible without reflection of previous payment or reduction.

¹⁵ Haines City posits that Mr. Brandi's treating doctors disagree with his hired experts and that any depression, psychiatric/psychological treatment and/or annual cardiac monitoring would have been required prior to the accident for pre-existing conditions Mr. Brandi had. Haines City further assert that Mr. Brandi does not suffer from brain damage or cognitive disability from this accident and points to his consistent grades as evidenced in school records before and college records after the accident as well as his ability to drive his motorcycle and perform mechanical repairs after the accident.

[Claimants'] right to pursue payment of the full jury verdict." This language contemplates that the Claimants could pursue a claim bill and therefore, it is my conclusion that the Final Order does not preclude Mr. or Mrs. Brandi from pursuing this claim bill.

I find that Officer Graham was an employee of the City of Haines City, Florida, and was in the course and scope of her employment when the accident occurred. I find that Officer Graham had a duty to follow protocol and the law which requires an officer to operate his or her emergency vehicle with due regard for the safety of all persons using the highway.¹⁶ Furthermore I find that, pursuant to Haines City Police procedures, Officer Graham had a duty to slow or stop her vehicle when entering the intersection on a red light to allow vehicles proceeding lawfully to clear the intersection.¹⁷ I find that in failing to follow both s. 316.126, F.S., and Haines City Police Department procedures, Officer Graham negligently operated her vehicle on the night of the accident and that her negligence was the direct and proximate cause of Mr. Brandi's injuries.

The damages awarded by the jury are based on sufficient evidence and will not be disturbed.

COLLATERAL SOURCES:

Mr. Brandi received \$100,000 from his insurance carrier, Farm Bureau, pursuant to an uninsured motorist policy.

RESPONDENT'S ABILITY TO PAY:

The City of Haines City, Florida, is a member of Preferred Governmental Insurance Trust, a governmental self-insuring trust. State National Insurance Company has the excess indemnity coverage at \$2,000,000 per occurrence.

ATTORNEY'S/ LOBBYING FEES:

Claimants' attorney has an agreement with Claimants to take a fee of 25% of Claimants' total recovery. Claimants' attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total \$ 27,202.07.

LEGISLATIVE HISTORY:

This is the seventh session this claim has been introduced to the Legislature. Senate Bill 28 by Senate Diaz de la Portilla was filed during the 2016 Legislative Session. It was not heard in any committee.

¹⁶ Section 316.126(5), F.S.

¹⁷ Sergeant R. B. Brannon of the Florida Highway Patrol conducted an accident investigation at the scene on the day of the accident. In his report, Sergeant Brannon noted that witnesses stated that the police vehicle proceeded through the intersection on a red light with its blue lights and siren activated. Although Officer Graham testified that she entered the intersection on a yellow light, I find that the statements of the witnesses at the accident site and Sergeant Brannon's report are sufficient to support a conclusion by the preponderance of the evidence that Officer Graham proceeded through the intersection on a red light.

House Bill 3525 by Representative Rouson and Senate Bill 26 by Senator Diaz de la Portilla were filed during the 2015 Legislative Session. The Senate Bill was reported favorable out of the Judiciary Committee but was reported unfavorably out of the Committee on Community Affairs. The House Bill died in the Civil Justice Subcommittee.

House Bill 3509 by Representative Rouson and Senate Bill 26 by Senator Diaz de la Portilla were filed during the 2014 Legislative Session. The bills died in the Civil Justice Subcommittee and the Judiciary Committee, respectively.

House Bill 809 by Representative Rouson and Senate Bill 34 by Senator Diaz de la Portilla were filed during the 2013 Legislative Session. The bills died in the Civil Justice Subcommittee and the Judiciary Committee, respectively.

House Bill 1029 by Representative Rouson and Senate Bill 60 by Senator Norman were filed during the 2012 Legislative Session. The House Bill was laid on the table, and the Senate Bill died in the Special Master on Claims Bills.

House Bill 1339 by Representative Rouson and Senate Bills 36 and 280 by Senators Smith and Norman, respectively, were filed during the 2011 Legislative Session. The House Bill died in the Civil Justice Subcommittee. Senate Bill 36 was withdrawn prior to introduction, and Senate Bill 280 died in the Special Master on Claims Bills.

RECOMMENDATIONS:

I recommend that the bill be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Grant, M., House Sponsor
Senator Steube, Senate Sponsor
Connie Cellon, Senate Special Master