THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
1/25/18	SM	**Unfavorable**
1/31/18	JU	**Fav/CS**
2/12/18	GO	**Favorable**
	RC	

January 25, 2018

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 46** – Judiciary Committee and Senator Bill Galvano
HB 6545 – Representative David Santiago
Relief of Ramiro Companioni, Jr.

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR $17,828,800.00 OF LOCAL MONEY BASED ON A JURY AWARD AGAINST THE CITY OF TAMPA TO COMPENSATE RAMIRO COMPANIONI FOR THE PERMANENT INJURIES HE SUFFERED IN A COLLISION WITH A CITY WATER DEPARTMENT TRUCK.

FINDINGS OF FACT:

Generally - The Accident

On November 22, 1996, the City of Tampa Water Department directed three employees, each driving a separate department pick-up truck, to East Hillsborough Avenue for the purpose of restoring the access to water valve boxes, which had been paved over, along that road. Three trucks were parked eastbound one behind the other in the far right lane of E. Hillsborough Ave. just before Rose Lane, which intersects from the south, and between N. 48th and 50th Streets, intersecting from the north. East Hillsborough Ave. is a six-lane thoroughfare with an additional center lane designated for left turns from both directions.

According to the drivers' depositions taken December 1, 1998, the City trucks were parked in the outside lane in the

following order at the water valve: farthest west, at the rear of the line of trucks, was a truck driven by Mr. John Allen which pulled a large arrow sign that was set up to warn oncoming cars to merge left into the inner lanes. In front of the truck pulling the sign was a truck carrying tools and supplies driven by Mr. Foster. In front of Mr. Foster's truck was the water valve, and in front of the water valve was Mr. Faustino Pierola's truck which contained asphalt for the road repair.

The trial testimony of the drivers appears to conflict with the depositions as to the order of the two trucks driven by Mr. Foster and Mr. Pierola. At the trial, Mr. Pierola stated that he was in the middle truck, although he appeared to be uncertain. Mr. Pierola stated "okay -- I took off -- I think Foster -- wait a second -- I took off, okay, everything was clear and Foster was right beside me." Mr. Foster did not testify at the trial.

Just before noon, with repairs on the water valve completed, the crew of three left for lunch and intended to turn left onto North 50th Street. Mr. Allen, the driver of the rear truck pulling the arrow sign, testified that he pulled out first into the middle lane, going around the first two trucks, and returning to the outside lane as he was going to turn into a vacant lot to take down the arrow sign. While Mr. Allen was far enough down E. Hillsborough Ave. that it appears his truck did not factor into the accident, all drivers testified that the arrow sign was still erect and flashing.

In both the deposition and at trial, Mr. Pierola stated that before he pulled out from the outside lane, he checked his mirrors, looked over his shoulder, and seeing each of the eastbound lanes clear, pulled into the middle lane, straightened, looked again and seeing that it was clear, pulled into the inside lane. Mr. Pierola stated that he was traveling up to 20 to 25 miles per hour. During this time, all witness stated that no traffic was sighted traveling east on E. Hillsborough Ave. The posted speed limit for E. Hillsborough Ave. is 45 mph.

Just after entering into the inside lane and approximately 185 feet from the water valve, Mr. Pierola heard a crash and saw yellow pieces of plastic fly about. Thinking that a barricade fell from his truck, he immediately moved to the center turn

lane and stopped within 116 feet. When he looked back, he saw a man lying in the street, bleeding profusely. When he exited his truck, he saw a motorcycle wedged underneath the back of the truck. The driver of the motorcycle was Mr. Ramiro Companioni, Jr. He suffered severe and permanent injury as a result of the accident.

Accident Details

Mr. Companioni stated that he could not recall much about the accident. In his deposition dated December 1, 1998, he stated he was travelling 40 to 45 mph on the inside lane of E. Hillsborough Ave. He did not recall much traffic. Beyond that, Mr. Companioni stated that he could vaguely recall what happened in the accident. He further stated that it would be unfair to tell what he remembered about the accident due to the tremendous medication he was under after the accident. The last thing he remembered was turning left onto Hillsborough.

According to the police report, Mr. Pierola travelled 116.5 feet from the time he was hit by the motorcycle until he came to a complete stop in the center turn lane. He travelled straight in the inside lane for approximately 54 feet before angling into the inside lane and travelled approximately 62 feet before coming to a complete stop. The police photos show scrape marks in the road made by the motorcycle being dragged under the truck which confirm Mr. Pierola travelled straight a distance in the middle lane before angling into the center turn lane. From the police report and the information provided by the City's expert, Dr. Charles Benedict, it can be determined that Mr. Pierola traveled east approximately 183 feet, during which he left his parking space and merged into the middle, then inside lanes.

Both in the depositions and at trial, each of the City drivers stated that they never saw a motorcycle on E. Hillsborough Ave. when initially pulling out or when changing lanes. Mr. Foster stated that he did see the motorcycle just as it hit the truck.

Expert Testimony

At the trial, both parties presented experts to reconstruct the accident.

Claimant's Expert: The Claimant offered Mr. Dennis Payne, an expert accident reconstruction specialist. He was a former Highway Patrolman and had attended numerous reconstruction courses at the Department of Highway Safety and Motor Vehicles, community colleges, and universities and attended other courses in conjunction with the private sector. He began reconstruction work as a private consultant in 1982. Mr. Payne stated he used Mr. Companioni's medical records, police photos of the City truck and of the accident, and an inspection of the motorcycle to reconstruct the accident.

Mr. Payne stated that the difference in speed between the truck and the motorcycle when it hit was 20 mph. He based this decision on the "way the bumper had been twisted." He "looked at the damage to the motorcycle . . . at the injury pattern, and the fact that the rider survived the collision." Mr. Payne discussed a federal government standard of a 30 mph barrier crash which is what is estimated the human body can withstand and still live. Because a motorcycle doesn't have the protections, Mr. Payne concluded that the difference in speed of travel between Mr. Companioni and the city truck was 20 miles per hour was reasonable because humans can survive that force and Mr. Companioni survived the crash. If Mr. Pierola was travelling 25 mph, then, stated Mr. Payne, Mr. Companioni was travelling 45 mph.

The police photographs show damage to the left half to the City truck's rear bumper. Mr. Payne opines that the damage is consistent with the motorcycle travelling in a straight line and the truck being at an angle when the motorcycle hit it.

City of Tampa's Expert: The City offered Dr. Charles Benedict as their expert witness. Dr. Benedict has a Bachelor's degree in mathematics with an engineering science minor from Florida State University (1963) and a Bachelors, Masters, and PhD in mechanical engineering with an emphasis on kinematics (kinematics is the study of motion of the path that something follows) and dynamics machine design (the study of the forces through acceleration or impact or whatever that cause the body or something such as the body to move in a given direction) from University of Florida (1971). Dr. Benedict is a registered engineer in Florida and Georgia (and was applying to South Carolina and Alabama). He has been a consultant since 1971. He participated in

motor dynamics training at Watkins Glenn, NY, riding numerous motorcycles, and has reconstructed motorcycle accidents for 35 years.

Dr. Benedict relied on depositions, accident reports, and photographs, and conducted a reconstruction on E. Hillsborough Ave. He stated he used the physical evidence of the accident and worked backward to determine what happened. At trial Dr. Benedict provided the following conclusions:

- Based on the reconstruction work, the time from when the trucks left their standing position to the point of impact was approximately 19 seconds.
- The motorcycle was traveling somewhere around 65 mph or faster and it was in the middle lane coming up behind the trucks.
- On E. Hillsborough Ave. there is a dip in the road where a motorcycle would not be visible nor could the rider see very far down the road. Once on the straightaway, visibility from that dip to the point of impact is 1050 feet.
- The motorcycle would have been in the dip west of where the accident occurred and would not be visible to the trucks at the time they were initially pulling out.
- Travelling the 1050 feet at 45 mph, a driver has 16 seconds to see the City trucks and react before time of impact. Travelling at 65 mph, a driver has 11 seconds.
- As the motorcycle approached the back of the trucks in the middle lane, it veered left toward the inside lane to go around the trucks at the same time that the truck in the front moved into the inside lane.
- The motorcycle was leaned over to the left as it was going around the trucks and it was also in the process of slowing down.
- Mr. Companioni thrust down on his brakes and his bike was going faster than the wheels were turning. He was veering to the left to get around the truck, but before he came back to the right, he released the rear brake causing an opposite reaction of the bike (known as "highsiding"[i]) to come back upright and throw Mr. Companioni off into the back end of the tailgate and the bumper.
- The motorcycle continued the highside rotation to come down on its right side with its wheels facing the

truck, caved in the bumper, and began sliding underneath the left side of the truck and at the same time swiveling front wheel first, to where the truck drug the motorcycle to a stop.

- The motorcycle was going 55 mph when it struck the truck, and the truck was going 20 mph. The difference in velocity was 35 mph, which was consistent with the damage to the truck.
- Had Mr. Companioni been going 40 to 45 miles per hour, he would have been able to avoid the accident completely. If he stayed in the middle lane and applied brakes to the near maximum for that motorcycle, he could have slowed down to 20 mph before he got to the truck and avoided the accident.

At the special master hearing, Dr. Benedict further explained his interpretation of the evidence.

- In a police photograph of the back tire, a striation about 20 inches long and just left of center can be observed (this measurement was confirmed by Mr. Payne). Dr. Benedict states that this is an indication of the motorcycle being in a slight left turn and the back wheel turning very slowly, not locked. Mr. Payne stated this was caused by the tow truck hauling the motorcycle onto its truck while the wheel was in gear. However, the police photograph shows the striation present when the motorcycle was under the truck.
- Photographs of the muffler exhibited striations at angles consistent with sliding wheels first on its right side. At the point where the muffler enters the engine, the area shows evidence of pivoting (as it hits and slides under the truck) and then being ground down as the motorcycle front wheel wedges under the truck. At final rest, photographs show the muffler no longer touching the ground. Photographs also show striation in the road bed consistent with the grinding of the muffler end.
- Police photographs of the road bed area show the truck and motorcycle traveling a short distance in the same forward direction, just before and as the motorcycle hits the truck, and then moving to the left into the center turn lane.
- Police photographs of the truck tailgate indicate that Mr. Companioni was thrown off his motorcycle before he hit. Marks on the tailgate appeared to be a glove

print and indent made by the helmet. Injuries to Mr. Companioni were consistent with hitting the bumper of the truck.

- Dr. Benedict refuted claims that the motorcycle struck the truck head-on as the front tire was not damaged. He also refuted the idea that the motorcycle slid down on its right side as the driver would have road rash and grinding injuries.

Injuries

Mr. Companioni suffered devastating injuries. Upon arrival at the Trauma Unit at Tampa General, it was noted the Mr. Companioni's rectum was "fileted" through the scrotum. The primary physician was Dr. Michael Albrink, a board certified trauma and general surgeon who teaches at USF Medical School. Dr. Albrink testified that, "his legs were ripped apart, like breaking a wish bone apart." He suffered multiple open fractures of the pelvis, shoulder, elbow, lumbar vertebrae, and right knee. He sustained a bowel injury and a ruptured urethra. He lost portions of his colon and suffered massive bleeding and damage to his peritoneal cavity and organs. His anus was ripped and sphincter ruined, which has resulted in a permanent colostomy. He injured the nerves to his genitals, which destroyed sexual function. Both the femoral artery and sciatic nerve were severely injured. Mr. Companioni was in an induced coma in the ICU for approximately a month. He remained in ICU and the floor at Tampa General until the end of February 1997, and then was transferred to its inpatient rehabilitation center before being released to home health care months later. He battled with numerous complications, infections, and bed sores, and has had more than twenty surgeries since sustaining his injury.

Mr. Companioni underwent a tracheostomy and has tracheal scarring, and now has frequent difficulty with swallowing. With portions of his colon missing and the intestinal damage, his diet is limited. He has had hernias in his abdomen and is at risk to develop bowel blockages. He must use a colostomy bag and wear it at all times. He has bladder spasms and incontinence. He also has frequent, excruciatingly painful kidney stones. His core muscles were ripped apart in the crash and were further injured due to the multiple surgeries, leaving his core muscles scarred, atrophied, and weakened. His four lower vertebrae and coccyx have been fused.

Mr. Companioni has suffered life-long, severely disabling injuries to his right hip and leg. His right hip is fused, so it is without motion and he has limited range of motion in his knee and his ankle. One-third of the right quadriceps has been removed. Dr. Albrink stated that he has arthritis and bone calcification in his right knee and hip joint so severe that he may someday be forever wheelchair bound. A Greenfield filter was surgically inserted to prevent deep vein blood clots. Dr. Albrink testified that "[H]e's at risk to have problems where he could lose his leg . . . [d]ue to any number of combinations of things. Lack of innervation most of all."

Mr. Companioni wears a right leg brace, mostly for support and stability. He has constant burning pain throughout the right hip, buttocks, and all the way down his right leg. Due to his dependence on a cane, he has developed carpel tunnel syndrome in his left wrist. His current medical team includes a primary care/general internist, and specialists in general surgery, orthopedic surgery, gastroenterology, urology, podiatry, and occasionally neurology.

Mr. Companioni's quality of life has been catastrophically affected. He was an active, healthy man in his thirties. He was in top physical condition and served honorably in the Naval Reserve. He will never have children and meaningful female companionship is very difficult.

Although Dr. Albrink said at trial that Mr. Companioni's resulting injuries could reduce his life expectancy, the life table provides that he has a life expectancy of almost 44 years from the date of the accident (until 2040).

Economic Damages

Mr. Companioni is totally and permanently disabled. He had been an executive chef and ice sculptor, sometimes working up to 80 hours a week. He had earned $45,000 plus benefits while working for a year in Mexico, and was earning $30,000 annually just before the accident. He had hopes of one day opening his own restaurant. In addition, Mr. Companioni was in the Naval Reserves, earning $200 to $300 per week (averaging $13,000 annually). He has since retired from the Reserves as he was unable to continue service.

Mr. Companioni currently receives $980 monthly in Social Security disability and is eligible for Medicare benefits. Although difficult, he has tried to continue working part-time earning an average of $2,500 annually.

The Claimant submitted a closing statement dated August 21, 2012, pursuant to Court Order to disburse $100,000 of recovery per Sovereign Immunity limits of liability.

Medical liens that are related to a governmental entity or have a subrogation lien interest or right and letter of protection:

Creditor	**Amount due**	**Motion% pd**
Winn-Dixie (Employer health insurance provider)	$472,635.59	$4,641.46
Health and Social Services	$475.00	$9.25
ACS Recovery Group (Medicaid)	$0.00	$0.00
Humana Financial Recovery Reduced balance from $32,496.63 to benefit client	$0.00	$0.00
Vincent DiCarlo, M.D & Asso. (LOP 1/30/04 D.R.Stahl PA)	$4,851.76	$82.52
Total	**$477,962.35**	**$4,733.23**
Difference (amt. due - paid)	**$473,229.12**	

Medical liens that are not covered under a letter of protection and for which the Claimant has a due and outstanding balance:

Creditor	**Amount due**	**Motion% pd**
Tampa General (reduced from $21,522.29 to benefit client)	$0.00	$0.00
Tampa General (reduced from $14,098.359 to benefit client)	$0.00	$0.00

AR Resources - Acct. #9473 (Tampa Bay surgery)	$100.00	$2.60
Gulf Coast Collections - TGH/#2101299110 & 2073759249	$650.00	$10.74
Gulf Coast Collections - USF/#12105745, 14340454, 14562834	$187.00	$7.83
Preferred Group of Tampa - USF Physical Group	$3,974.34	$66.02
Preferred Group UCH - Carrolwood/Florida Hospital	$200.00	$7.83
FFCC - Columbus, Inc (Place MRI)	$114.75	$2.60
Merchant Associates - Tower - #7591102, 7559634, 12426722	$152.00	$4.00
TOTAL	**$5,378.09**	**$101.62**
Difference	**$5,276.47**	

The Claimant lists additional providers, but the closing statement indicates the balance owed them was unknown. Therefore, the remaining balance according to the closing statement is $478,505.59. Beyond the closing statement, the claimant has not provided any further medical lien information. The record states that future medical expenses may be $2,000 per year, and Mr. Companioni may require a hip replacement, if it is possible.

LEGAL PROCEEDINGS:

The accident occurred on November 22, 1996. A trial was held March 23 through 26, 2004 in the Circuit Court of the 13th Judicial Circuit, in and for Hillsborough County, Civil Division, before Judge Herbert Baumann, Jr. The jury found the City of Tampa 90 percent negligent, Ramiro Companioni, Jr., 10 percent negligent, and total damages of $19,932,000. The damages were not separated into any categories.

In April 2004, the City moved for a new trial. The trial court issued a final judgment order on April 5, 2004. The City filed a motion to amend its motion for a new trial, and to alter the judgment on April 15, 2004. On May 6, 2004 the City filed its amended motion for new trial and a hearing was held October 5, 2004. The motion stated grounds relating to counsel

misconduct, jury misconduct, the verdict being against the weight of the evidence, a misperception by the jury of instructions, and the jury verdict being excessive based on undue sympathy. An order granting a new trial was issued by the court on January 6, 2005.

On March 30, 2007, the Second District Court of Appeal (Second DCA) reversed the order granting a new trial and remanded the matter to the trial court for reinstatement of the jury verdict. The trial court was to conduct further proceedings to dispose of the City's motions for remittitur, to alter or amend judgment, and other grounds raised for the new trial. On October 19, 2007, the trial court heard the issues on remand, and on January 22, 2008, issued its order denying motions for new trial and remittitur. On October 28, 2009, the Second DCA again reversed the trial court, but this time the DCA ordered the trial court to conduct a new trial.

On December 16, 2010, the Florida Supreme Court quashed the Second DCA opinion (51 So. 3d 452, Fla. 2010) and remanded it for consideration of whether the trial court abused its discretion in denying a new trial. On remand, if the Second DCA were to conclude that the City is not entitled to a new trial, then the DCA was to consider any other remaining claims not reached in its prior opinion, including the City's claim that the verdict was excessive.

On November 23, 2011, the Second DCA affirmed the trial court's order denying the City's motion for a new trial and remittitur. On August 12, 2012, the trial court issued an order granting the plaintiff's petition for equitable distribution of the proceeds to Peachtree Settlement Services, to the plaintiff, and to medical providers.

CLAIMANT'S ARGUMENTS: The Claimant argues that on November 22, 1996, the City of Tampa, through its employee, Mr. Faustino Pierola, negligently entered into the inside lane of E. Hillsborough Avenue into the path of Mr. Ramiro Companioni, Jr. Claimant argues that Mr. Companioni was unable to stop his motorcycle in time to avoid crashing into the rear of the City's pick-up truck. Mr. Companioni suffered severe injuries that required multiple operations and continual medical attention. Mr. Companioni is permanently and severely disabled and is unable to sustain long term employment.

RESPONDENT'S POSITION: Respondent City of Tampa argues that Mr. Companioni had a record of reckless driving before and after the accident implying that he was at fault; that he has received just compensation; and that the City did not receive a fair trial.

CONCLUSIONS OF LAW: The Claimant relies on s. 316.085(2), F.S. (1996), that the City of Tampa had a duty to not enter the inside lane occupied by Mr. Companioni. That subsection states:

> No vehicle shall be driven from a direct course in any lane on any highway until the driver has determined that the vehicle is not being approached or passed by any other vehicle in the lane or on the side to which the driver desires to move and that the move can be completely made with the safety and without interfering with the safe operation of any vehicle approaching from the same direction.

Mr. Pierola stated that before he pulled into the second lane, he straightened, then looked again and seeing that it was clear, pulled into the third lane. He stated he was travelling between 20 and 25 mph. If Mr. Companioni was travelling in the inside lane, and Mr. Pierola moved from the middle lane to the inside lane where he was struck by Mr. Companioni, the City would have breached its duty to safely operate a vehicle. However, it appears that the City's liability could be diminished if Mr. Companioni was not operating his vehicle safely as the statute provides: "and without interfering with the safe operation of any vehicle approaching from the same direction."

Excessive speed is not a safe operation of a vehicle. *See* s. 316.183, F.S. (1996). Mr. Companioni testified that he was travelling between 40 and 45 mph and knew that the speed limit for E. Hillsborough Ave. was 45 mph. His expert, Mr. Payne, testified that Mr. Companioni was travelling 45 mph because the velocity of the City truck (25 mph) plus his estimated crash impact (20 mph) equaled 45 mph. Mr. Payne's explanation of his crash impact estimate does not appear to be supported by any fact. Although Mr. Steve Aguilar, who was interviewed at the scene, stated that he saw the motorcycle just before it hit and estimated that it was travelling around 40 mph, he later testified at trial that he looked up just as he heard the crash.

Moreover, it is not clear that the accident occurred with Mr. Companioni travelling in the inside lane, even though he testified so. Dr. Benedict provided compelling testimony as to how the accident happened. If Mr. Companioni was travelling in the middle lane, the testimony explains why the drivers never saw him when they looked into their side or rear view mirrors. When the trucks moved out and into the middle lane, it appeared that E. Hillsborough Ave. was clear because Mr. Companioni was in the dip 1050 feet east. If Mr. Pierola was in the middle lane and looking in his side mirror for traffic in the inside lane, he would not have seen Mr. Companioni, as he would have been behind Mr. Foster's truck in the middle lane. Nor would Mr. Companioni have seen Mr. Pierola as he moved to the inside lane as it was probably at the same time, and at that point, too late to stop.

Section 316.185, F.S. (1996), provides in part:

> The fact that the speed of a vehicle is lower than the prescribed limits shall not relieve the driver from the duty to decrease speed when . . . special hazards exist or may exist with respect to other traffic, . . . and speed shall be decreased as may be necessary . . . to avoid colliding with any . . . vehicle in compliance with legal requirements and the duty of all persons to use due care.

Evidence was presented that Mr. Companioni was not travelling at an excessive speed. Mr. Payne opined that Mr. Companioni could have been going 45 mph. However, the slower speed does not account for the damages incurred by the truck and motorcycle or the injuries suffered by Mr. Companioni.

The police report, made at the time of the accident, estimated Mr. Companioni's speed at 70 mph based upon the damage observed. City expert Dr. Benedict estimated that Mr. Companioni was travelling 65 mph, and had slowed to 55 mph at the time of impact. Dr. Benedict based his estimation on the damage to the truck, motorcycle, and Mr. Companioni's injuries. The weight of the evidence suggests that excessive speed appears to have been a factor in this accident.

Section 316.1925(1), F.S. (1996), states:

> Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such a manner shall constitute careless driving and a violation of this section.

At trial, Mr. Companioni stated, ". . .I was going down the far left lane which is my habit. . . . I got to go over the bridge. And I may have been -- there may have been some trucks on the right-hand side. I didn't pay attention too much to them because they were two lanes over from me. At that point I didn't consider them any threat because they weren't nowhere near me and I had no intentions of going over to them. . . . So I was basically looking forward, no traffic around me, just minding my business going forward." Finally, Mr. Companioni recalled, ". . . all I remember is trying to just brace myself because it seemed like I just stopped and that was it. . . . Just putting my hands out because I was -- I hit a wall." It appears that Mr. Companioni was not paying attention to the circumstances of a flashing arrow sign and the City trucks moving onto the highway.

The motor vehicle statutes require that all drivers drive in a careful and prudent manner in order to avoid accidents. Each driver must act in a manner that does not create a hazard. It appears that Mr. Companioni did not exercise sufficient caution as he approached the City trucks. He saw them and chose to ignore them. Dr. Benedict's testimony showed that Mr. Companioni had ample time to assess the situation and put himself in a more defensive posture to avoid the accident, but did not.

This claim is very complicated. The transcripts of the trial reveal complex reconstruction theories confused by the questions and legal wrangling by both attorneys. There were essentially no reliable witnesses to the accident as none could testify that they at any time saw the motorcycle before impact. Mr. Companioni stated he did not remember much about the accident, and he did not trust the memories he does have because of the heavy medication he was on after the accident. The drivers of each of the City trucks said they never saw the motorcycle approaching, although Mr. Foster

stated he saw the moment of impact. Two other witnesses saw the City trucks pull away and looked up after they heard the motorcycle strike the truck, but the witnesses never actually saw the motorcycle moving down E. Hillsborough Ave. Finally, there are the injuries that are horrific. It is impressive that Mr. Companioni lived through the accident and is able to walk today. His quality of life, no matter how impressive his recovery, is one that few would want.

Legal analysis for a claim requires that the claim satisfy the elements of a negligence case: duty, breach of duty, causation, and damages.

The City has a duty to make sure the inside lane was clear before merging into it, but is not liable if the accident was caused by Mr. Companion's failure to safely operate his motorcycle. Florida law makes all drivers responsible for the safe operation of their vehicles. Based upon the evidence presented, it appears that Mr. Companioni was not driving in a safe manner considering the congestion being created by the City trucks. He had ample opportunity to assess conditions ahead and failed to modify his speed to avoid the accident.

Based upon the foregoing, I find that the City met its duty to merge safely into the next lane and by driving in a safe manner and was not the legal cause of Mr. Companion's damages. I further find that Mr. Companioni drove at an excessive speed and failed to pay attention to the traffic ahead of him. Thus, Mr. Companioni failed to meet his burden to prove that the City is liable for his injuries.

SPECIAL ISSUES:

Before and after the accident, Mr. Companioni had numerous moving traffic violations and also received many speeding tickets. Additionally, he has had other experiences as a defendant within the criminal justice system. In contrast, Mr. Pierola has no record of traffic citations.

INDEMNITY:

The City of Tampa has no commercial insurance that could be used to fund this claim bill. The City is self-insured and maintains a general liability reserve for the purpose of satisfying all City-wide lawsuits, claims, and associated costs. As of October 1, 2014, the general liability reserve balance was $9,733,630 (unaudited). This amount is

designated for the purpose of satisfying all City-wide lawsuits and claims.

Since October 1, 2014, (the beginning of its fiscal year), the City has spent $687,629 for settlements and expenses from the budgeted amount stated above. The City fully expects to continually satisfy additional pending City-wide claims. To the extent that the funds in the general liability reserve are insufficient to pay City-wide claims and this claim bill, the City will need to use general fund revenue which have been previously budgeted for general governmental operations.

ATTORNEYS FEES: The bill provides that all fees and related costs are to be capped at 25 percent. The claimant's attorneys and lobbyists agree that they will follow the law of the enacted claim bill.

After the Final Judgment was upheld on appeal, attorney fees were paid on the underlying claim in accordance with the statutory cap of 25 percent pursuant to s. 768.28, F.S.

RECOMMENDATIONS: Based upon the foregoing, I recommend that SB 46, be reported UNFAVORABLY.

Respectfully submitted,

Diana Caldwell
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute replaces the detailed descriptions of the claimant's motor vehicle accident and resulting injuries with a more general description of the accident and a statement that the claimant and the City of Tampa have agreed to settle the claim for $5 million. Additionally, the committee substitute waives all "lien interests relating to the treatment and care" of the claimant except the federal portions of any of those liens.

[i]"Highsiding" is best understood by beginning with the contrasting "lowside" crash. In a lowside crash, the bike's rear tire loses traction, or friction; the rear end begins to slide sideways; it begins to move forward at an angle to the front tire, but, due to the loss of friction, moves faster than the front tire; the bike and rider tend to lean away from the direction of the slide; if this continues, the bike falls over on its side, with the rider falling with it.

The highside begins with a lowside situation (with a loss of rear tire traction and a sideways skid), which is followed by a recovery of traction and an ejection of the rider off the top of the bike. Assume, for example, that the rider has applied the rear brake hard, with the rear tire losing traction and sliding to the rider's right, with the rear wheel moving forward faster than the front wheel and with the bike and rider leaning to the rider's left. If the rider releases the brake, the back tire regains traction and grabs the road, abruptly ending the slide of the rear tire. Momentum, however, causes the upper part of the bike to continue forward at a higher speed, and the bike not only comes upright, it continues on and is thrown onto its right side, throwing the rider in the process.

All Things (Safety Oriented) Motorcycle, *Highside Dynamics, What happens and how to prevent it*, James R. Davis, Jan. 04, 2006, http://www.msgroup.org/forums/mtt/topic.asp?TOPIC_ID=2192 .
Steve Munden, Math & Science Tutoring, Motorcycling, Skiing, & Shooting Instruction., *Traction Management for Motorcyclists- and what happens when you blow it*, http://stevemunden.com/sides.html