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DATE: 1/30/18 1/30/2018

January 30, 2018

SPECIAL MASTER'S FINAL REPORT

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

Re: CS/HB 6545 - Representative Santiago
Relief/Ramiro Companioni, Jr./City of Tampa

THIS IS A SETTLED CLAIM FOR \$5,000,000 AGAINST THE CITY OF TAMPA FOR INJURIES SUSTAINED BY RAMIRO COMPANIONI IN 1996 DUE TO THE NEGLIGENT OPERATION OF A CITY TRUCK BY A CITY EMPLOYEE. THE CITY HAS PAID \$100,000 PURSUANT TO S. 768.28, F.S.

FINDINGS OF FACT:

On November 22, 1996, at approximately 11:57 a.m., Ramiro Companioni, Jr. ("Claimant") was travelling eastbound on his motorcycle on East Hillsborough Avenue in Tampa, wearing a helmet. East Hillsborough Avenue is a major east-west road that has three lanes in each direction with a shared turn lane in the median. On the far right of the south side of the road, three City of Tampa Water Department employees had been working on a water valve, with a large flashing sign behind the three trucks to notify drivers of their presence. The three city employees were driving separate city-owned pickup trucks and had packed up to leave for lunch. The drivers were Mr. Pierola, Mr. Foster, and Mr. Allen. Mr. Pierola was driving the truck that was involved in the collision with Claimant and Mr. Allen was driving the truck pulling the flashing sign board. All three drivers testified that they never saw or heard Claimant prior to the collision.

Mr. Pierola testified that he pulled out behind Mr. Allen and was headed for a nearby park to eat his lunch. He stated that he wanted to cross the eastbound lanes on East Hillsborough Avenue to make a left-hand turn on 50th Street to go to the park. While crossing these lanes, he testified that he heard a noise and thought a barricade had fallen from the truck bed. Mr. Pierola drove his vehicle into the median turn lane and got out of his truck to retrieve the barricade. It was at this time that Mr. Pierola saw Claimant's motorcycle lodged under the truck's bumper. Mr. Pierola later indicated that he never saw the motorcycle and never heard the typical loud motorcycle noise before the collision, but did feel the impact when he was changing lanes. The collision occurred in the eastbound leftmost lane.

Mr. Foster, who was driving the third vehicle, told the responding officer that after entering the roadway he looked forward and saw that a motorcycle had hit the back of Mr. Pierola's truck. Mr. Foster further testified that the motorcycle must have driven by him as he entered the roadway, but he did not see or hear it.

There is conflicting evidence as to which lane Claimant was initially travelling in, the speed he was travelling, whether the city's trucks were in the far right lane or off the road on the shoulder, in what order the trucks were parked, which truck pulled from the lane first, and where the trucks were heading. Claimant states he has no memory from the collision other than that he was in the leftmost lane. The three city drivers state they never saw the motorcycle. I find that Mr. Pierola's truck pulled out in front of Claimant's motorcycle, even though Claimant had the right-of-way, causing the accident.

There is disagreement about Claimant's speed at the time of the accident, and there is a wide range of evidence and testimony in the record. Claimant asserts he was travelling 45 miles per hour, the speed limit. Mr. Foster testified the city's trucks were driving 5 to 10, and no more than 15, miles per hour. Mr. Pierola states he was driving 20 to 25 miles per hour.

Responding Officer Thiel reported that, in his estimate, Claimant was travelling 25 miles per hour over the speed limit based on the damage he observed to the vehicles.¹ His report found that Mr. Pierola had violated Claimant's right-of-way with an improper lane change. Tampa Detective Willenham indicated that he believed both drivers contributed to the accident.

Claimant was rendered unconscious at the scene and was taken to Tampa General Hospital where he remained in an induced coma in ICU for nearly a month. In the months and

¹ No citations for excessive speed were issued in the accident.

years since the accident, Claimant has undergone more than twenty surgeries relating to his injuries from the accident, which included internal lacerations of his organs resulting in the loss of his large intestine, removal of his spleen, multiple fractures of his right hip, and the loss of control of his right hip, leg, and foot.

LITIGATION HISTORY:

Claimant sued the City of Tampa ("Respondent") for negligence in circuit court. In March 2004, the case went to trial and a final judgment was entered for Claimant for \$19,932,000. The jury determined Respondent was 90 percent at fault and Claimant was 10 percent at fault for the accident, and the amount owed by Respondent was reduced to \$17,928,800. Respondent has paid \$100,000 pursuant to the sovereign immunity limit of s. 768.28, F.S., effective at the time of the accident, leaving the amount requested under the claim bill at \$17,828,800.²

Respondent filed two motions for new trial and remittitur. The first motion alleged improper conduct by Plaintiff's counsel, and the motion was denied. The trial court granted Respondent's motion for new trial based on allegations of misrepresentations made by two jurors during voir dire who were convicted felons but hid that information from the court. In a split decision, the Second District Court of Appeal reversed the trial court's grant of a new trial.³ Additionally, Respondent attempted to have the judgment set aside or reduced on the grounds that the verdict was excessive, but those attempts were rejected.⁴

CLAIMANT'S POSITION:

Claimant testified at trial that he was going the speed limit, 45 miles per hour, at the time of the accident. Additionally, at trial, Claimant offered the testimony of former highway patrolman and accident investigator Dennis Payne who reviewed medical records, the motorcycle, and photographs of the truck and opined that Claimant was travelling 45 miles per hour. Mr. Payne further noted that, based on scientific data, it was highly unlikely that Claimant struck the truck at a speed of 55 miles per hour and survived the resulting impact speed. Claimant argued that regardless of his speed, he had the right-of-way, and had Mr. Pierola not improperly entered Claimant's lane and cut him off, the accident might have been avoided.

² From the \$100,000 paid by Respondent, Claimant has received \$14,504.54. The remaining amount went to attorney's fees, costs, medical liens, and a post-settlement advance.

³ *Companiononi v. City of Tampa*, 958 So. 2d 404, 417 (Fla. 2d DCA 2007) (holding the City was not entitled to a new trial on the basis of the jurors' prior felony convictions because there was no showing of actual bias or prejudice or that Respondent did not receive a fair and impartial trial).

⁴ *City of Tampa v. Companiononi*, 74 So. 3d 585, 587 (Fla. 2d DCA 2011) ("The verdict against the City is indeed substantial; however, the record reflects that Mr. Companiononi sustained horrific injuries that, as noted by the trial court, are extensive and permanent. We also note that while the City challenges the award as excessive at trial it offered no suggestion to the jury as to what would be a proper award for injuries it acknowledged were 'serious' . . . When it went to deliberate, the jury had only the damage figures suggested by Mr. Companiononi's counsel, and given the nature of the injuries Mr. Companiononi sustained, it is not surprising the jury picked a figure at the high end of the range counsel suggested").

RESPONDENT'S POSITION:

Respondent and Claimant have agreed to a settlement for \$5,000,000.⁵

Up until the case was settled, Respondent argued that Claimant, an untruthful, reckless person, should not be the beneficiary of a claim bill. Respondent contended it did not receive a fair trial because two of the six jurors were convicted felons who concealed this fact.

Respondent argued that both before and after the accident Claimant was cited for violations of excessive speed and reckless driving. Respondent pointed out that on the day of the accident, Claimant was driving with a suspended license (though Claimant has stated he did not know his license was suspended at the time).

In the accident report from the crash, the police estimated Claimant was travelling 70 miles per hour at the time of the crash. Respondent offered testimony of accident reconstructionist Charles Benedict, who testified that based on his reconstruction of the scene, Claimant was travelling far above 45 miles per hour and but for that speed, Claimant could have avoided the accident. Dr. Benedict stated that Claimant was travelling between 60 and 70 miles per hour and, before the impact, braked to slow down to 55 miles per hour at impact.

CONCLUSIONS OF LAW:

Regardless of whether there is a jury verdict or a settlement agreement, each claim bill is reviewed *de novo* in light of the standard elements of negligence.

Duty, Breach, & Causation

Mr. Pierola, as a motorist, had a duty to operate his vehicle in a reasonable manner and in compliance with the rules of the road. By pulling in front of Claimant—who had the right-of-way—Mr. Pierola breached his duty of care, which was the direct and proximate cause of Claimant's injuries. Respondent, as Mr. Pierola's employer, is liable for Mr. Pierola's negligent act based on the legal doctrine of respondeat superior, since Mr. Pierola was acting in the scope of his employment when the accident occurred.

The jury determined that Mr. Pierola, based upon the negligent operation of his vehicle, was 90 percent at fault for the accident. This allocation of fault is supported by the evidence, and I find no reason to disturb the jury's finding on this matter.

Here, Claimant had the right-of-way, had no reason to think Mr. Pierola would come into his lane, and was unable to avoid the accident once Mr. Pierola unlawfully pulled in front of him. This is supported by the city's traffic report and the jury's verdict.

⁵ CS/HB 6545 also seeks the extinguishment of state and local government lien interests relating to the treatment and care of Claimant.

As for Respondent's argument about Claimant's speed, the jury considered this matter and found Claimant 10 percent at fault. At trial, the jury heard the testimony of Mr. Payne, a former highway patrolman and accident reconstructionist, who testified that if Claimant was travelling at the speed listed in the traffic report, the impact would have killed him. Respondent presented the testimony of Dr. Charles Benedict, a mechanical engineer, who estimated Claimant was travelling at 65 miles per hour. Even if Claimant was travelling at excessive speed, it does not bar recovery.⁶ I find no reason to disturb the jury's determination that Claimant was 10 percent liable and Respondent was 90 percent liable.

Damages

It is clear that Claimant has suffered severe and horrific injuries as a result of this accident. Upon his arrival at the Trauma Unit at Tampa General, it was noted that Claimant's rectum was fileted through the scrotum. Dr. Michael Albrink, his primary physician, testified that Claimant's legs were ripped apart like a wishbone and that he had multiple open fractures of the pelvis, shoulder, elbow, lumbar vertebrae, and right knee. Additionally, Claimant sustained a bowel injury and a ruptured urethra, lost portions of his colon, and suffered bleeding and damage to his peritoneal cavity and organs. His anus was ripped and his sphincter was ruined, which has resulted in a permanent colostomy. Additionally, his genital nerves were injured, permanently damaging his sexual function. Both the femoral artery and sciatic nerve were severely injured.

Claimant underwent a tracheostomy and has tracheal scarring resulting in difficulty swallowing. He must use a colostomy bag to defecate and has bladder spasms and incontinence. He has frequent kidney stones. His core muscles are scarred and atrophied as a result of the accident and the more than twenty surgeries he has undergone since the accident. Claimant's four lower vertebrae and coccyx have been fused; his right hip is fused, and he has arthritis and bone calcification in his knee and hip. Claimant wears a leg brace and part of his right quadriceps has been removed. He is dependent on a cane.

Neither party used a life planner or economist to determine the monetary amount necessary to sustain Claimant. Dr. Albrink, however, testified that Claimant will need a lifetime amount of future medical care for his injuries.

Based on the horrific nature of Claimant's injuries, I find that the settled amount of \$5 million is reasonable.

⁶ S. 768.81(2), F.S. ("In a negligence action, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant's contributory fault, but does not bar recovery").

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ATTORNEY'S/
LOBBYING FEES:

Claimant's attorneys will limit their fees to 25 percent of any amount awarded by the Legislature. Outstanding costs are \$7,204.25.

RESPONDENT'S ABILITY
TO PAY:

Respondent has no insurance in connection with the claim bill and has not specifically appropriated funding to pay the final judgment which is the subject of this claim bill. Respondent states that any required amount in excess of its general liability fund will have to be paid out of general revenue, which will adversely affect Respondent.

LEGISLATIVE HISTORY:

This is the fifth session this claim has been presented to the Legislature. Last session, HB 6551 was temporarily postponed in the Civil Justice and Claims Subcommittee.

RECOMMENDATION:

I recommend that Committee Substitute for House Bill 6545 be reported **FAVORABLY**.

Respectfully submitted,

JORDAN JONES

House Special Master

cc: Representative Santiago, House Sponsor
Senator Galvano, Senate Sponsor
Diana Caldwell, Senate Special Master