



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/31/14	SM	Favorable

December 31, 2014

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

Re: **SB 54** – Senator Montford
Relief of Mark. T. Sawicki and Sharon L. Sawicki

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$700,000, TO BE PAYABLE IN A LUMP SUM, BASED ON A STIPULATED FINAL JUDGMENT BETWEEN MARK T. SAWICKI AND SHARON L. SAWICKI AND THE CITY OF TALLAHASSEE. THE FINAL JUDGMENT RESOLVED A CIVIL ACTION ARISING FROM THE NEGLIGENT OPERATION OF A CITY OF TALLAHASSEE TRUCK WHICH INJURED MARK T. SAWICKI.

FINDINGS OF FACT:

This claim arises out of an accident involving a truck owned by the City of Tallahassee and a bicyclist, Mark Sawicki, which occurred on October 2, 2009, in Tallahassee, Florida. The city truck struck and ran over Mr. Sawicki as the truck driver turned north onto Monroe Street from Call Street. The intersection is controlled by a traffic signal, and has cross walks and stop bars on each road. Call Street does not have a dedicated bicycle lane. Call Street does, however, have painted symbols of a bicycle with two chevrons on top, informing drivers that the roadway is shared with bicycles.

On the morning of the accident, Mr. Paul Hudson was working as a commercial truck driver for the City of Tallahassee. The truck he was driving had a hydraulic arm attached to its right side which would allow Mr. Hudson to

load and unload containers on and off the truck. Also on that morning, Mr. Sawicki, an engineer for Florida State University, left his home by bicycle and headed to work. Mr. Sawicki and his bicycle were equipped with various forms of safety gear, including front and rear bicycle lights, a backpack with reflective stripes, and a helmet.

At about 7 a.m. that morning, Mr. Sawicki, on a bicycle, and Paul Hudson, driving the city truck, each headed West on Call Street approaching Monroe Street. It was still relatively dark, as sunrise did not occur until 7:31 a.m. on that day. Mr. Hudson in his truck reached the intersection first. Mr. Sawicki pulled up to the intersection within the crosswalk, to the right of the truck, believing Mr. Hudson to have turned on his left turn signal. As stated by Mr. Hudson in deposition, Mr. Hudson did not look before attempting to turn right on a red light from Call Street to North Monroe Street. Additionally, Officer B. Davis of the Tallahassee Police Department noted in the Florida Traffic Crash Report that Mr. Hudson turned right on red when it was not clear to do so.

As the truck made a right turn, its hydraulic arm struck Mr. Sawicki in the back of his head, causing him to fall and be pulled under the truck as the truck continued moving. As Mr. Hudson continued to drive forward, the rear tire of the truck ran over Mr. Sawicki's body.

Mr. Sawicki suffered a crushed pelvis, broken right leg, and twisted ankle. Upon transport to the hospital by ambulance, Mr. Sawicki remained there for 32 days. Since the accident, Mr. Sawicki endured three surgeries, including major pelvis reconstructive surgery. He also experienced complications from surgery, consisting of repeated Methicillin-resistant staphylococcus aureus (MRSA) infections.

Mr. Sawicki's medical bills to date total \$250,000, of which Mr. Sawicki owes \$23,566.66 through a subrogation lien. The subrogation lien is a contingent liability which is due and payable only if the Legislature approves the settlement.

FUTURE SERVICES REPORT: Dr. John McKay, a rehabilitation consultant, prepared a Future Services Report at the request of the claimant. The report describes how the injuries from the accident have affected Mr. Sawicki's lifestyle and limited his abilities. The

report also specifies and calculates the cost of future medical needs resulting from the accident.

Before the accident, Mr. Sawicki was a competitive triathlete, marathoner, and cyclist. Since the accident and recovery to date, Mr. Sawicki struggles to stand for lengthy periods of time. He is no longer able to run more than a very short distance, much less compete in triathlons or other races.

Mr. Sawicki did not return to work from the date of the accident, October 2, 2009, until January 1, 2010. For this and other medical reasons, Mr. Sawicki depleted his sick leave and annual leave. The report, however, does not place a specific monetary value on the loss of leave time.

Mr. Sawicki continues to suffer from chronic pain, a dropped foot, sexual dysfunction, and intermittent bladder incontinence. Due to these continuing conditions, he will incur ongoing costs for physician services, medication, diagnostic tests, and physical therapy.

Mr. Sawicki previously performed numerous personal services around his house, including home repairs, yard work, and mechanical repairs. Due to physical limitations from his injuries, such as restricted climbing, standing, and walking, height restrictions, and light lifting only, he is unable to resume this work, and must rely on hiring outside help.

The report assumes that Mr. Sawicki will have a normal life expectancy but does not specify what that is. Although approximate costs are included in the report, as detailed in the table below, the report did not calculate the present value of the future medical costs. Additionally, Mr. Sawicki remains at risk for medical complications.

Still, future medical and personal services costs are estimated at several thousand dollars per year:

Cost	First Year	2nd thru 10th Year	11th Year +
Analgesics	\$30	\$30	\$30
Orthopedist	\$58	\$58	\$58
Urologist	\$98	\$98	\$98
Medical Care for Pain	\$90	\$90	\$90
Pills for Functioning	\$1,920	\$1,920	\$1,920
X-rays	\$42	\$42	\$21
Urology Tests	\$67	\$67	\$67
Physical Therapy	\$2,080	\$130	\$130
Exercise Mat	\$90	\$90	\$90
Exercise Equipment	\$100	\$100	\$100
Mileage Reimbursement	\$120	\$120	\$120
Personal Services	\$1,560	\$1,560	\$1,560
Total	\$6,255	\$4,305	\$4,284

The orthopedic surgeon who performed the reconstructive surgery on Mr. Sawicki's pelvis expects that Mr. Sawicki will have to have hip surgery sometime in the future. The cost of the hip surgery is not included in the table, but is estimated at \$62,000.

Florida State University has employed Mr. Sawicki as a mechanical engineer continuously since 1987. The claimant intends to retire three years early due to the accident. The report estimates this loss at about \$200,000 in present value.

LITIGATION HISTORY:

On June 3, 2010, Mr. and Mrs. Sawicki filed a Complaint for Damages against the City of Tallahassee in the Leon County Circuit Court. The complaint alleged that Mr. Hudson negligently operated his truck which caused Mr. Sawicki to have permanent injuries, suffer mental anguish, and incur considerable medical costs. The complaint also asserted that the accident caused Mrs. Sawicki to suffer from loss of companionship, society, and consortium.

After the plaintiffs filed complaint, the parties engaged in discovery, exchanged interrogatories and took depositions. Eventually, the Sawickis and the City of Tallahassee entered into a Mediation Contingent Settlement Agreement. The city agreed to pay the Sawickis \$900,000, of which the city would pay \$200,000 upfront. The agreement provided for the remainder to be paid upon the approval of a claim bill by the

Legislature. The agreement also provides that the Sawickis are responsible for their own attorneys fees and costs, and states that the city agrees to support the claim bill.

The court issued an order approving the settlement and final judgment on February 12, 2012.

The city paid the \$200,000 on or about March 1, 2012. The remaining \$700,000 is sought through the underlying claim bill.

CLAIMANT'S POSITION:

To prove a claim of negligence, a plaintiff must show that a defendant had a duty to the plaintiff, the defendant breached that duty, the defendant's action or inaction caused the plaintiff's injury, and the plaintiff incurred damages. The claimant argues each of these elements as follows. Mr. Hudson had a duty to Mr. Sawicki to safely operate his motor vehicle. Mr. Hudson breached that duty by turning right on a red light without looking to the right. Had Mr. Hudson looked to the right before making a right turn on a red light, he would have seen Mr. Sawicki and known to avoid running over him, as it was foreseeable that he could have hit someone. Therefore, Mr. Hudson caused the accident and the resulting damages to the Sawickis.

Mr. Sawicki suffered considerable physical damage from the accident. In addition to being required to have had three major surgeries and a liposuction, substantial rehabilitation, and long-term antibiotics for repeated MRSA infections, Mr. Sawicki is permanently injured. He continues to suffer from intermittent bladder incontinence. He will also most likely need a hip replacement surgery. He intends to shorten his career by retiring 3 years early, down from 66, to 63 years of age at retirement. His injuries now prevent him from participating altogether in activities he previously enjoyed, including triathlons, running events, and competitions. Walking, bicycling, and contributing to physical household tasks are now severely limited.

Mrs. Sawicki has suffered, and continues to suffer from loss of consortium as Mr. Sawicki has permanent sexual dysfunction.

RESPONDENT'S POSITION:

The City of Tallahassee admits liability and fully supports this claim.

CONCLUSIONS OF LAW:

Section 768.28 (2009), F.S., governs this matter. That statute generally allows injured parties to sue the state or local governments for damages caused by their negligence or the negligence of their employees. However, the statute limits the amount of damages that a plaintiff can collect from a judgment against or settlement with a government entity to \$100,000 per person and \$200,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the Legislature. Thus, the Sawickis will not receive the full benefit of their settlement agreement with the City of Tallahassee unless the Legislature approves a claim bill authorizing the additional payment.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damage. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010).

The driver of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injuring persons within the vehicle's path. *Gowdy v. Bell*, 993 So. 2d 585,586 (Fla. 1st DCA 2008). Reasonable care is the degree of care a reasonably careful person would have used under like circumstances. *Foster v. State*, 603 So. 2d 1312, 1316 (Fla. 1st DCA 1992). Mr. Hudson failed to use reasonable care by not looking to the right before turning his vehicle onto Monroe Street at a red light. Had Mr. Hudson looked properly, he would have seen Mr. Sawicki to the right of him, and avoided striking him with his vehicle.

Due to Mr. Hudson's breach of his duty of care, he caused the accident and the Sawicki's damages.

Florida's dangerous instrumentality doctrine imposes strict vicarious liability on an owner of a dangerous instrumentality who entrusts the instrument to a person who operates it negligently. *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000). Trucks in operation are considered to be dangerous instrumentalities. *Meister v. Fisher*, 462 So. 2d 1071, 1072 (Fla. 1985).

Municipalities are subject to the dangerous instrumentality doctrine. "When a municipality owns a motor truck, a

dangerous instrumentality when in operation, that is being operated with the knowledge and consent of the municipality through its officers or employees and used on the other streets for lawful street, sewer or other corporate purposes, the municipality may be liable for injuries ... caused by negligence of the truck driver in operating the truck" *Barth v. City of Miami*, 1 So. 2d 574, 577 (Fla. 1941).

The long-standing doctrine of respondeat superior provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013).

The City of Tallahassee employed Mr. Hudson at the time of the accident. On that day, Mr. Hudson drove a truck owned by the City of Tallahassee during the course of his normal workday. Therefore, the City of Tallahassee is liable for the negligence of Mr. Hudson and the damages caused to Mr. and Mrs. Sawicki.

The claimant has demonstrated significant economic damages. Mr. Sawicki owes \$23,566.66 in medical bills through a subrogation lien for past medical costs. As stated above, Mr. Sawicki has lost considerable leave time due to the accident. Expected costs for medical and personal services total, on average, a minimum of \$4,300 a year for the rest of his life. Mr. Sawicki is expected to undergo hip replacement, estimated at \$62,000. Mr. Sawicki's career is expected to be shortened by 3 years, which will cause him to lose about \$200,000 in income.

Noneconomic damages have not been calculated but clearly exist for both Mr. Sawicki and Mrs. Sawicki.

Additionally, should this case have proceeded to trial, Mr. Sawicki appears by all accounts to have presented as a sympathetic plaintiff and one who, if anything, achieved the positive physical recovery he had largely due to his own efforts and fit state preceding the accident.

For these reasons, the undersigned concludes that the settlement is both fair and reasonable.

LEGISLATIVE HISTORY:

Senator Montford, sponsor for the claim bill, also sponsored this bill in 2013 and 2014. The Senate did not hear the bill or

any other claim bill in any committee of reference in either year.

ATTORNEYS FEES:

The Sawickis' attorney has agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), F.S. The bill provides that the total amount paid for lobbying fees, costs, and other similar expenses relating to the claim are included in the 25 percent limit.

FISCAL IMPACT:

The City of Tallahassee is self-insured. If approved by the Legislature, the \$700,000 will be paid from the city's self-insurance fund. The city represents that they have reserved this amount for the claim.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 54 (2015) be reported FAVORABLY.

Respectfully submitted,

Cindy M. Brown
Senate Special Master

cc: Debbie Brown, Secretary of the Senate