



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
11/27/02	SM	Fav/2 amendments
04/08/03	HC	Fav/CS
	FT	

November 27, 2002

The Honorable James E. "Jim" King, Jr.
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 30** – Senator Victor Crist
Relief of James T. Edwards

SPECIAL MASTER'S FINAL REPORT

THIS IS A \$2.4 MILLION EQUITABLE CLAIM SUPPORTED BY A SETTLEMENT AGREEMENT IN WHICH HILLSBOROUGH COUNTY AGREED TO COMPENSATE THE CLAIMANT FOR SEVERE AND PERMANENT INJURIES SUSTAINED IN AN INCIDENT OF NEGLIGENCE.

FINDINGS OF FACT:

Beginning around 9:00 a.m. on May 31, 1997, James T. Edwards began drinking vodka at the home of a family friend, Ms. Honey Cotts. He continued to drink throughout the day.

Early in the afternoon, events lead to Mr. Edwards falling to the pavement: two times backwards, and one time forward, apparently hitting his head. At the time, it did not appear to Ms. Cotts that Mr. Edwards was injured.

According to Ms. Cotts, after Mr. Edwards fell, a friend assisted him into the house and put him in the bathtub in an attempt to sober him up. Mr. Edwards had been able to walk with assistance into the bathroom and get into the tub. With his clothes still on, the friends ran water on Mr. Edwards.

Mr. Edwards' sister, Susie Edwards, came over to talk to Mr. Edwards because he was distressed over his parents'

deaths. Mr. Edwards passed in and out of consciousness. This caused concern with Ms. Edwards and she requested that Ms. Cotts call 911, which she did.

After her conversation with the operator, Ms. Cotts told one of the friends that Mr. Edwards needed to be helped out of the tub. He was carried down the hallway by two men, one holding his legs and the other had Mr. Edwards around his chest, underneath his arms. Mr. Edwards was taken to a chair in the living room next to the doorway where he was able to sit unassisted.

Two paramedics both employees of Hillsborough County, Mr. Larry Ramos and his supervisor Mr. John H. Eaton, arrived at the scene at 5:08 p.m. Mr. Ramos performed the evaluation of Mr. Edwards. He then called Mr. Eaton who assisted in carrying Mr. Edwards out to a stretcher and then loaded him into the awaiting ambulance. The ambulance departed at 5:13 p.m. for the Brandon Hospital.

Mr. Ramos filled out the EMS report, which indicates a patient's condition. According to the report, Mr. Edwards reacted to pain and was not having problems with flexion of limbs, and movement was noted. Mr. Ramos explained that he twice tried to intubate Mr. Edwards but was not successful, so he applied a non-rebreather mask. An injury of the head was noted as an abrasion on the right side of Mr. Edwards' head with swelling to the right zygoma area (around the eye).

At the hospital, it was quickly determined that Mr. Edwards had no movement of his lower extremities. He was immediately placed in a Philadelphia collar. X-rays revealed subluxation of the C6-C7 vertebrae with spinal cord compromise. About 9:00 p.m. that evening, Mr. Edwards was transferred via helicopter to Tampa General Hospital, a trauma center within Hillsborough County, and placed in the spinal injury program. Mr. Edwards remained at Tampa General Hospital from May 31, 1997 through October 7, 1997.

Mr. Edwards sustained severe and permanent injury to his spinal cord with complete and permanent paralysis to each of his legs.

During the course of Mr. Edwards' extended hospitalization at Tampa General Hospital, he was placed on a ventilator for respiratory support and eventually required a tracheotomy for continued ventilation. Additionally, he required a gastrostomy feeding tube and rectal tube for bowel management. Mr. Edwards was also treated for recurrent pressure sores.

Expert Testimony: Dr. Henry E. Smoak, III, was presented as an expert in emergency procedures. Dr. Smoak had reviewed all of the medical records of Mr. Edwards and sworn depositions to form his opinion. Dr. Smoak also reviewed the Hillsborough County Fire Rescue Standing Orders and Protocols that mandate what procedures and treatments are approved and used to treat a patient and how a procedure or treatment is to be carried out. Dr. Smoak concluded that there was a departure in the standard of care outlined in the Standing Orders and Protocol by the county EMS for not immobilizing Mr. Edwards' neck, head, and spine prior to departure for the emergency room.

Dr. Smoak further opined at the hearing that standard protocol would mandate immobilization of the neck, head, and spine where the patient was intoxicated and unconscious precisely because it cannot be determined with certainty that no injury has occurred. Dr. Smoak further stated that even if the main concern was alcohol poisoning, standard protocol mandates immobilization.

Dr. Smoak also stated that if a patient has a history of falling, protocol requires that a patient not be moved. Therefore, the 911 Dispatch Operator should not have suggested Mr. Edwards be taken from the bath tub.

Finally, Dr. Smoak stated that the Protocol dictates that when a patient has less than 13 on the Glasgow Coma scale and trauma to the head, the patient should be taken to a trauma center. The EMS report indicates Mr. Edwards score was 9 of 15. Yet he was taken to Columbia Brandon Medical Center which is not a trauma center.

Dr. Michael Shahnasarian performed a rehabilitation evaluation of Mr. Edwards and developed a life care plan. Dr. Shahnasarian concluded that it is not probable that Mr. Edwards is capable of pursuing gainful employment. In

addition, he believes that Mr. Edwards will need assistance for living for the rest of his life.

Dr. G. Hartley Mellish, an economist, testified as to the present economic value of the life care plan as developed by Dr. Shahnasarian. Mr. Edwards is currently 33, has approximately a tenth grade education, and has been employed with a trucking company to load trucks. The present value of the life care plan ranged between \$5.6 and \$12.3 million.

The parties sought the opinion of Jerry L. Newnan, an attorney specializing in determining probable and reasonable jury verdicts for personal injury cases. Mr. Newnan concluded the probable values a jury would award for past-lost wages would be \$25,000, for future economic losses (wages, medical, life care plan) would be \$3 million, and for past and future non-economic losses would be \$1.5 million for a total award of \$4,525,000.

Mr. John W. Staunton, an attorney specializing in elder care law and special needs trusts, testified to the benefits of a special needs trust and provided a draft instrument prepared for Mr. Edwards' needs.

Negligence: There appear to be three allegations of negligence on the part of Hillsborough County and its agents. The first alleged act was by the 911-dispatch operator who, by telling the caller (Ms. Cotts) to take Mr. Edwards out of the bathtub, violated the county's emergency protocol. The second and third negligent acts are alleged to be the fault of the paramedics by their failure to immobilize Mr. Edwards on a backboard and their failure to transport Mr. Edwards to a trauma center.

911 Dispatch Operator Instruction: There appears to be conflicting testimony with regard to the 911 call. In her deposition, Ms. Cotts stated that when asked by the emergency operator what the emergency was, she stated that her friend "got exceptionally drunk. I tried to sober him up in the tub. He had fallen several times outside. They said, well, do you know if he is injured. I thought for sure it was alcohol poisoning. And they told me, well, get him up out of the tub and get him someplace where we can get to him."

In the transcript of the 911 call, the operator was told of the falling, and that the person was in the tub. The operator asked about Mr. Edwards breathing and was informed that it was "very shallow." The operator then asked "can you get him out of the bathtub?" Ms. Cotts responded "I don't know if we can or not. He is a very heavy person. We've got people here, but I don't know if we can get him out of the tub or not." The operator responded, "Okay, what you need to do is keep his head back and keep his airway open." The operator then stated someone was on the way and confirmed the location.

Based upon the transcript Ms. Cotts was only told to make sure Mr. Edwards' airway was kept open. However, while the operator did not specifically direct Ms. Cotts to remove Mr. Edwards from the tub, it was reasonable for her to infer from the operator's question that if those present could get Mr. Edwards out of the tub, they should do so. Based upon standard protocol, Mr. Edwards should not have been moved from the tub.

Paramedics Use of the Backboard: Ms. Cotts stated that the EMTs used smelling salts to see if they could awaken Mr. Edwards. When they did, Mr. Edwards flung his arms and legs. She testified that the attending paramedic had his medical bag with him, but did not have a stretcher. She stated she was not able to see all that the paramedic was doing at the time. When questioned in her deposition why she believed that Mr. Edwards needed to go to the hospital, she stated that she had never seen Mr. Edwards in such a state, that he had the look of fear on his face, and felt he needed to go to the hospital. She further stated that she thought he may have had alcohol poisoning and told the paramedic. She further stated she told the paramedic that Mr. Edwards had fallen several times but stated Mr. Edwards did not fall while in the tub. She stated that she did not see any facial injuries on Mr. Edwards. Finally, she stated that other than apply smelling salts, she did not see the paramedics do anything else.

Ms. Cotts described the removal of Mr. Edwards from her home. She stated that one grabbed Mr. Edwards under one arm, one grabbed him on the other arm and one grabbed his legs, and they carried him down the steps to the stretcher. She followed later to the hospital, but did not see Mr.

Edwards because she was not family and learned of Mr. Edwards' ultimate condition from the hospital's doctors who asked questions to determine the cause of his condition.

There were two paramedics on duty that answered the 911 call, Mr. Larry Ramos and Mr. John H. Eaton. Mr. Ramos was the paramedic that attended Mr. Edwards in the living room while Mr. Eaton waited outside.

Mr. Ramos testified that upon arrival at the scene, he was told that Mr. Edwards had fallen before, had been in the shower, and was dressed. He stated that he did not note any paralysis.

When asked, Mr. Ramos acknowledged that a backboard and all necessary equipment for head and spine immobilization were in the ambulance. Mr. Ramos could not recall any reason that a backboard could not be brought into the trailer. He admitted that there were no life-threatening symptoms that would prevent taking the time to immobilize Mr. Edwards on a backboard.

Mr. Ramos stated that Mr. Edwards' Glasgow Coma Scale was below normal. The EMS report indicated a score of 9 out of 15. Mr. Ramos stated that the low level could be due to intoxication. He recalled he was worried more about some sort of overdose and the trauma from the fall which seemed secondary to the possible intoxication problems including going comatose. He stated that he was more concerned about alcohol intoxication depressing the center in the brain that regulates respiration. He stated airway control is important.

When asked, Mr. Ramos stated that in hindsight, it would have been appropriate to immobilize Mr. Edwards. Mr. Ramos stated that he found Mr. Edwards in an altered state of consciousness and with a head injury. Mr. Ramos agreed that the Hillsborough County Fire Rescue Standing Orders and Protocols states "if in doubt, immobilize."

Mr. Eaton then reviewed and signed the EMS evaluation form. Mr. Eaton stated that he remained outside while Mr. Ramos was inside. Mr. Eaton testified that based upon what was on the EMS report, Mr. Edwards could have and should have been immobilized on the back board.

While it appears that some of the testimony is conflicting such as the number of people moving Mr. Edwards, it is clear that Mr. Edwards could use his arms and legs up to the point that the paramedics moved Mr. Edwards to the ambulance.

Hospital v. Trauma Center: Mr. Ramos admitted to using trauma transport protocols to make a determination as to which hospital to take a patient. He understands that when one or more criteria are met, the protocols dictate when a patient should be taken to a trauma hospital. One of the criteria is if the Glasgow Coma Scale score is less than 13. Mr. Edwards' score was nine. County Protocol dictates that Mr. Edwards be taken to a trauma center rather than a local hospital without a trauma center. However, the testimony clearly indicates that Mr. Edwards should have been taken to a trauma center.

Mr. Ramos reiterated that the alcohol intoxication would lower the Glasgow Coma Scale and that was why it was decided that Mr. Edwards not be taken to a trauma center.

Procedural History: On September 22, 1998, Mr. Edwards sued Hillsborough County alleging negligence in case no. 98-7136, Division B. On October 13, 1998, the county filed its response. A Jury trial was scheduled for August 5, 2002. On June 5, 2002, Mr. Edwards and the county entered into a settlement agreement. Special Masters for the House and Senate held a joint hearing on October 15, 2002.

Stipulated Agreement: On June 5, 2002, Mr. Edwards and the county entered into a settlement agreement. Under the settlement agreement, the county agreed to pay \$2.5 million as a compromise settlement of any and all claims against Hillsborough County in the lawsuit and/or arising out of the incident that occurred May 31, 1997. The county further agreed to pay Mr. Edwards its sovereign immunity limit of \$100,000 (and has done so). The remaining \$2.4 million is conditioned upon passage of a claim bill by the Florida Legislature. There is no other pending litigation in this case.

Medicaid Lien: The Agency for Health Care Administration (AHCA) stated that as of July 20, 2002, the total amount of the Medicaid lien was \$216,117.02. AHCA agreed to a

payment of \$17,930.29 from the \$100,000 already paid by Hillsborough County. AHCA states that the balance due is \$198,186.73 and requests that the claim bill include direction that the balance be paid directly to AHCA from the county as full settlement of its claim to date.

Collateral Sources: Mr. Edwards attests that there are no collateral sources of payments to him other than Medicaid and payments in the amount of \$565.00 per month from Social Security.

LEGISLATIVE HISTORY:

Senate Bill 70 was filed by Senator Crist for the 2002 legislative session. At that time, there was no settlement agreement nor had all judicial remedies been exhausted as required by Senate Rule 4.81(8), thus the Special Master recommended unfavorably and the bill was withdrawn. Similarly, HB 637 was withdrawn prior to introduction.

CONCLUSIONS OF LAW:

The 911 dispatch operator and paramedics Larry Ramos and John H. Eaton were all employees of the County of Hillsborough which is liable for the negligent acts of its employees. I find that the claimant has established to my satisfaction and by a preponderance of the evidence, that these employees owed a duty of care to Mr. Edwards, that the duty was breached, and the injuries were a proximate and foreseeable result of that breach.

As in many cases of this nature, various persons could be held partially responsible for the result, and although reasonable people may disagree with the allocation of the responsibility among the various persons, I find the sum to be paid by Hillsborough county is supported by the evidence, in light of all the circumstances.

ATTORNEYS FEES:

Section 768.28(8), F.S., limits claimant's attorneys' fees to 25 percent of claimant's total recovery by way of any judgment or settlement obtained pursuant to s. 768.28, F.S. Claimants' attorneys have acknowledged this limitation and verified in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorneys' fees.

RECOMMENDATIONS:

I recommend that Senate Bill 30 be amended to direct a payment to the Agency for Health Care Administration in the amount of \$198,186.73 on behalf of Mr. James T. Edwards for outstanding Medicaid claims and to direct the remainder to be paid into the James Thomas Edwards special needs trust as outlined by Mr. John W. Staunton.

For the foregoing reasons, I recommend that Senate Bill 30 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Diana Caldwell
Senate Special Master

cc: Senator Victor Crist
Faye Blanton, Secretary of the Senate
House Subcommittee on Claims