



## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/1/03	SM	Fav/4 amendments
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December 1, 2003

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

Re: **SB 24 (2004)** – Senator Tony Hill, Sr.  
Relief of Patricia Stolfi

### SPECIAL MASTER'S FINAL REPORT

THIS IS AN EXCESS-JUDGMENT CLAIM FOR \$2,380,889 BASED UPON A JURY VERDICT AGAINST THE ESCAMBIA COUNTY UTILITIES AUTHORITY (ECUA) TO COMPENSATE PATRICIA STOLFI FOR INJURIES AND DAMAGES SHE SUSTAINED IN A COLLISION BETWEEN HER VEHICLE AND AN ECUA GARBAGE TRUCK RESULTING FROM THE NEGLIGENCE OF THE ECUA GARBAGE TRUCK DRIVER. PAYMENT OF THIS AWARD WOULD COME FROM LOCAL FUNDS AND THE BALANCE OF ECUA'S GENERAL LIABILITY INSURANCE.

#### FINDINGS OF FACT:

##### **The Incident**

On October 9, 1997, around 11:45 p.m., the claimant, Patricia Stolfi, was driving home when a garbage truck operated by Escambia County Utilities Authority (ECUA) backed into her lane of traffic from a side street. Ms. Stolfi was unable to stop in time and she collided with the ECUA garbage truck causing her severe and permanent injuries, and extensive damage to her vehicle.

The driving conditions that night were clear, with no visibility problems. There were no roadway defects that contributed to the crash. However, the nearest streetlight was some distance down the side street from the intersection.

Ms. Stolfi attempted to avoid colliding with the ECUA garbage truck by braking, leaving 64 feet of skid marks. At the moment of impact, the ECUA garbage truck was blocking both lanes of traffic. The garbage truck's lights were not visible to Ms. Stolfi due to the angle of the truck and the foliage on the side street.

Richard Brown, the ECUA garbage truck driver, reported to work at 11:30 p.m., rather than his normal start time of 1:00 a.m., so he could attend a doctor's appointment the following morning. Mr. Brown testified that the 1:00 a.m. start time was used in order to avoid traffic. While following his normal route, Mr. Brown drove down the side street to a dumpster, unloaded the dumpster's contents into his truck, and then backed up 600 feet to the main roadway. He stated that he backed out, rather than turn around, because the side street was too narrow. Mr. Brown also stated that he stopped before entering the intersection and twice looked both ways before backing out. When Mr. Brown backed out into the roadway, Ms. Stolfi collided with his garbage truck. Mr. Brown admitted at trial that Ms. Stolfi had the right-of-way. Ms. Stolfi's vehicle headlights were on. Mr. Brown testified he was taking several medications at the time of the incident. The instructions for these medications caution against operating machinery, such as driving, and state that they may cause drowsiness, dizziness, or blurred vision. However, he also testified that he was not affected in those ways. Subsequent to the collision, ECUA suspended Mr. Brown 3 days for clocking in early. Mr. Brown was cited by a state Highway Patrol Trooper for improper backing.

Prior to the incident, Ms. Stolfi attended a hockey game with friends, Ellen and Sam Camiarates, whom she met at their restaurant prior to the game. The Camiarates drove her to the game, which started around 7:00 p.m., and back to the restaurant after the game concluded around 10:00 p.m. At the special master's hearing, Ms. Stolfi stated that conversation with Mrs. Camiarates regarding a wedding event Ms. Stolfi was working on the following day filled the time between the conclusion of the game and shortly before the incident occurred. Ms. Stolfi also stated that she did not drink any beverages with alcohol that evening because she had too much work to do the following morning. Mrs. Camiarates' testimony at the special master's hearing, not given at trial, agreed that she and Ms. Stolfi discussed

the wedding event and that Ms. Stolfi did not drink any beverages with alcohol that evening. However, Mrs. Camiarates stated that Ms. Stolfi left the restaurant just past 10:00 p.m., with her assumption that Ms. Stolfi was returning home. The drive takes approximately 20 minutes from the restaurant to Ms. Stolfi's home. The incident did not occur until 11:45 p.m. At the conclusion of the special master's hearing, the gap in timing remained unexplained.

Ms. Stolfi's speed and seatbelt use were issues discussed in trial and at the special master's hearing. Trial testimony showed that Ms. Stolfi, at the time of the incident, was likely traveling between 40 and 45 mph in a 35-mph zone. This speed estimate was not disputed. However, trial testimony and testimony at the special master's hearing did not clarify whether or not Ms. Stolfi was wearing her seatbelt. Ms. Stolfi testified at trial that she believed she was wearing her seatbelt because her habit was to wear one. Several incident reports by first responders note that Ms. Stolfi was found unbelted. However, several of these first responders testified at trial the belt may have been unbuckled before their arrival. Mr. Brown, the garbage truck driver, testified at trial that he could not say one way or the other if Ms. Stolfi was wearing her seatbelt. In the special master's hearing, Ms. Stolfi testified that she is now sure she was wearing her seatbelt because she always wore her seatbelt and she always reminded others to wear a seatbelt. The state Highway Patrol Trooper cited Ms. Stolfi for not wearing a seat belt and failure to use due care.

#### **Injuries Sustained by the Claimant**

The collision crushed Ms. Stolfi's car, and it took first responders almost an hour to extricate her from the vehicle. She suffered a mid-shaft femur fracture of her right leg and an extremely severe right wrist fracture that was described as a near amputation of her right hand. A rod was surgically placed into her right leg, and numerous surgical procedures were performed on her right wrist, including placement of an external fixation device. At least 14 surgeries overall were performed to correct her injuries. Ms. Stolfi's recovery regimen included more than 200 occupational therapy sessions. Her occupational therapist testified at the special master's hearing that, out of necessity for her recovery, these therapy sessions were excruciatingly painful and were conducted out of earshot so Ms. Stolfi's screams would not

disturb other patients. Her right forearm near her wrist is permanently disfigured. Her right wrist is not very flexible and she does not have full use of the fingers in her right hand. At the special master's hearing, she testified that working with her hands over a significant length of time has become more difficult and painful and that she has knee pain associated with the leg injury.

Prior to the incident, Ms. Stolfi operated a home-based seamstress business. After the incident, she returned to her seamstress work, but her injuries limit the types of jobs she can perform. She now accepts fewer, but higher-paying jobs. Prior to the incident, Ms. Stolfi was about to complete a medical transcriptionist course, but could not finish because of the injury to her right hand, which is her dominant hand. Prior to the incident in 1997, Ms. Stolfi's income tax returns show she made between \$8,000 and \$9,000. In 1998, following the incident, she made \$2,376. Her most recent tax return of 2002 shows an income of \$11,500.

#### **Judicial/Procedural History**

Ms. Stolfi filed a lawsuit against ECUA in which ECUA admitted negligence. ECUA proceeded at trial to try to demonstrate Ms. Stolfi's comparative fault. On August 30, 2001, an Escambia County jury returned a verdict of \$2,747,000 for Ms. Stolfi. The jury found her previous lost earnings to be \$100,000 and her future lost earnings to be \$500,000. The jury assessed ECUA comparative fault of 95 percent and assessed Ms. Stolfi 5 percent. ECUA made a motion for a new trial, based upon newly discovered evidence, but that motion was denied by the trial court. A final judgment was rendered against ECUA in a net amount of \$2,480,889.23. ECUA appealed to the First District Court of Appeal which affirmed the verdict without comment on April 30, 2003.

#### **Other Information**

In 1995, Ms. Stolfi was convicted of a felony count of bank fraud along with her then-husband, Marco Stolfi, who was convicted of two counts of bank fraud and one count of mail fraud. Mr. Stolfi served time for his conviction, during which he divorced Ms. Stolfi. Ms. Stolfi completed her sentence of probation of 2 years. At the special master's hearing, Ms. Stolfi accepted responsibility for her actions and stated

that the conviction resulted from her ex-husband's car dealership for which she signed bank papers for vehicles sold. Ms. Stolfi explained that Mr. Stolfi created more than one title for a vehicle for which Ms. Stolfi signed the papers.

CLAIMANT'S ARGUMENTS:

- There is a properly entered jury verdict, which was affirmed by the First District Court of Appeal. Any assessment of fault to Ms. Stolfi has already been made by the jury's assignment of 5 percent of the liability to Ms. Stolfi. No further reduction should be made.
- The judge found no merit in ECUA's motion for a new trial based on newly discovered evidence.

RESPONDENT'S ARGUMENTS:

- At the special master's hearing, ECUA asked the special master to recommend no further payment to the claimant other than the amount already tendered to the claimant. ECUA claimed that the jury's apportionment of fault was incorrect and should have been significantly higher for the claimant, as she was speeding and not wearing her seat belt.
- Information revealed by Ms. Stolfi's ex-husband after the verdict was entered alleged that Ms. Stolfi was drinking the night of the incident, that she was not wearing her seatbelt, and that she was trying to commit suicide.

CONCLUSIONS OF LAW:

**Liability and Damages**

Escambia County Utilities Authority (ECUA) admitted negligence at trial and proceeded on the comparative fault of Ms. Stolfi. However, the claimant still bears the burden of proof for the four elements of a negligence claim. Sufficient competent and substantial evidence was presented to support the claim.

**Duty:** Richard Brown, the garbage truck driver, had a legal duty to respect the right-of-way for Ms. Stolfi and to enter only when the way was clear. ECUA shared that legal duty as Mr. Brown's employer because Mr. Brown was acting in the course and scope of his employment at the time of the crash.

**Breach:** Mr. Brown breached his duty by failing to yield the right-of-way, and ECUA shared in this breach of duty as his employer.

**Proximate Cause:** The force of the impact from the collision, brought on by Mr. Brown's breach, was the precipitating cause of Ms. Stolfi's injuries. The evidence regarding Ms. Stolfi's use of a seatbelt is inconclusive. It is notable that the traffic court found Ms. Stolfi not guilty of not wearing her seatbelt. Therefore, the special master finds that Ms. Stolfi should not be penalized based on this factor. However, considering the totality of the circumstances, including the trial testimony that Ms. Stolfi was exceeding the speed limit, the special master finds that the jury's apportionment to Ms. Stolfi of 5 percent comparative fault was justified.

**Damages:** Ms. Stolfi suffered several severe injuries and has a permanent disfigurement to her right arm. Proof of damages is supported by the medical records including various physicians' and other health care practitioners' reports, by other documentation, and by testimony at the special master's hearing. Ms. Stolfi's past conviction did not alter the special master's legal conclusion regarding her damages claim. Rather than the subjective, traditional "shock the conscience" standard used by courts, for purposes of a claim bill, a respondent that assails a jury verdict as being excessive should have the burden of showing the Legislature that the verdict was unsupported by sufficient credible evidence; or that it was influenced by corruption, passion, prejudice, or other improper motives; or that it has no reasonable relation to the damages shown; or that it imposes an overwhelming hardship on the respondent out of proportion to the injuries suffered; or that it obviously and grossly exceeds the maximum limit of a reasonable range within which a jury may properly operate; or that there are post-judgment considerations that were not known at the time of the jury verdict. ECUA failed to demonstrate any of these factors at the special master's hearing. The ex-husband failed to appear at the special master's hearing and his post-verdict allegations were given no weight as they lacked credibility.

ATTORNEYS FEES:

Section 768.28(8), F.S., limits attorney's fees to 25 percent of a claimant's total recovery by way of any judgment or settlement obtained pursuant to §768.28, F.S. The attorneys for the claimant have submitted documentation attesting to compliance with this limitation. The lobbying fees are also included in the 25 percent statutory cap.

**Costs**

The parties stipulated to costs, totaling \$10,421.57, and subsequently the trial court's jurisdiction over costs was dismissed with prejudice.

FISCAL IMPACT:

Escambia County Utilities Authority (ECUA) is insured by Coregis Insurance Company in the amount of \$1 million. Through Coregis, ECUA paid Ms. Stolfi its sovereign immunity limits of \$100,000. ECUA submitted a letter to the special master regarding the potential fiscal impact of this claim bill to Escambia County stating that, other than the ratepayers of Escambia County, it has no other means of generating revenue. Prior to the appeals court affirmation of the jury verdict, the claimant offered to settle within ECUA's policy limits. At the special master's hearing, the claimant's attorney made an open-ended offer to settle immediately and within the policy limits.

COLLATERAL  
SOURCES/LIENS:

The parties stipulated that past medical expenses totaled \$182,000 to date. However, almost all medical liens have been satisfied, including the Medicaid lien. Healthcare Recoveries, Ms. Stolfi's health insurer, reduced the amount it was willing to accept in payment, but the company will pursue additional payment pending the outcome of this claim bill.

TECHNICAL ISSUES:

Certain whereas clauses in the bill's title were drafted prior to all information being brought out in the special master's hearing and are in error. If the Legislature decides to pass the bill favorably, the special master recommends amending the title to remove where it states Ms. Stolfi was driving home from work, where it states she can no longer work as a seamstress, to amend the amount of insurance held by ECUA to state an amount of \$1 million, and to add that ECUA has paid \$100,000 to Ms. Stolfi.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that the technical amendments be adopted and Senate Bill 24 (2004) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Mark Kruse  
Senate Special Master

cc: Senator Tony Hill, Sr.  
Faye Blanton, Secretary of the Senate  
House Subcommittee on Claims