



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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| DATE | COMM | ACTION |
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December 1, 2004

The Honorable Tom Lee
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 26 (2005)** – Senator Evelyn Lynn
Relief of Sheryl D. Allen and George F. Allen

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED EQUITABLE CLAIM FOR \$775,000 PREDICATED UPON A CONSENT AGREEMENT BETWEEN THE CLAIMANTS, SHERYL ALLEN AND HER HUSBAND, GEORGE ALLEN, AND THE CITY OF TALLAHASSEE. THIS BILL COMPENSATES SHERYL ALLEN FOR INJURIES AND DAMAGES SHE SUSTAINED WHEN INJURED BY A CITY TRACTOR-TRAILER DRIVEN BY A CITY EMPLOYEE. THIS BILL ALSO COMPENSATES GEORGE ALLEN FOR THE LOSS OF CONSORTIUM AS A RESULT OF HIS WIFE'S INJURIES.

THE CITY OF TALLAHASSEE HAS PREVIOUSLY PAID TO THE CLAIMANTS THE MAXIMUM AMOUNT OF \$200,000 ALLOWED UNDER THE STATUTORY WAIVER OF SOVEREIGN IMMUNITY, HAS APPROVED AN ADDITIONAL SETTLEMENT OF \$775,000, AND SUPPORTS THE INSTANT CLAIM BILL IN THAT AMOUNT.

FINDINGS OF FACT:

The Accident

On December 8, 2001, at approximately 8:44 p.m., Sheryl Allen was standing in a parking lot assisting her daughter, Samantha, age 15, and other high school band members while they loaded onto their bus to be transported back to

their home town of Keystone Heights, Florida. Mrs. Allen, along with other parents, had chaperoned the band to play in the Winter Festival of Lights parade in Tallahassee, Florida.

As Sheryl Allen was waiting in a downtown parking lot, a semi-tractor pulling a flatbed trailer (total length of approximately 65 feet) owned and operated by the City of Tallahassee and used in the parade to carry a float, proceeded past her and made a turn out of the parking area. Unknown to Sheryl Allen, and other band parents standing in the area of the curb, when the tractor-trailer made its right turn onto Suwannee Street, the rear of the trailer swung wide, far outside its lane of travel, and into the parking area where Mrs. Allen and other parents were standing. The trailer struck Sheryl Allen, knocking her down and causing her head to strike the cement curb. She was knocked unconscious at the scene and subsequently transported to Tallahassee Memorial Hospital. Four other pedestrians were hit by the trailer, but did not sustain any injuries.

The driver of the tractor-trailer, Clinton Gurley, was an employee of the Tallahassee Parks and Recreation Department at the time of the accident and was acting within the course and scope of his employment.

Injuries Sustained by Sheryl D. Allen

Sheryl Allen is now 54 years old. At the time of the accident she was 51, and employed in the family laundry and auto parts business she owned with her husband of many years, George Allen. She carried out a variety of tasks ranging from clerical and secretarial duties to handling the business affairs of the companies.

When she was admitted into the hospital, Ms. Allen was diagnosed with a traumatic brain injury, hemorrhagic intracranial contusions (bleeding within the skull), traumatic subdural and subarachnoid hemorrhage (bleeding in the space between the membranes of the brain), a skull fracture, and traumatic vestibulopathy (abnormality of the receptor organ of the entrance to the 8th cranial nerve). She spent 5 days in intensive care and a total of 11 days in the hospital.

As a result of this accident, Sheryl Allen is permanently impaired. She has lost personal mobility because her seizure disorder prevents her from driving and keeps her

homebound much of the time. She has memory deficiencies so that she can no longer work in the family businesses or even read books because she cannot remember the story line. Mrs. Allen suffers from debilitating headaches, has lost much of her sense of smell, walks with a cane much of the time due to balancing problems related to her injuries, and is required to be on continuous medication.

Sheryl Allen no longer cooks or cleans around the house and is described by Dr. McKay, a vocational rehabilitation specialist, as being often depressed and fatigued, has periodic episodes of suicidal thoughts, and has irregular sleep patterns. Since she is no longer able to be employed, she is reduced to rolling coins for an hour or two per week for the family coin laundry business.

Sheryl Allen incurred medical bills which total \$47,016.89. The estimated loss of her earnings capacity is approximately \$225,956 (\$35,735 for past losses and \$190,221 for future losses). The amount for her future medical and rehabilitative needs is estimated to be \$590,120, for a total amount of \$816,076. These estimates are based on Sheryl Allen's life expectancy of 82 years.

These figures do not include pain, suffering, loss of the ability to enjoy life, and loss of consortium which could have exceeded an estimated \$1 million if this case had proceeded to trial, according to the claimant's attorney.

Loss of Consortium Claim by George F. Allen

George Allen is 57 years old and has been married to Sheryl for 32 years. He filed a consortium claim for his loss of the services, comfort, companionship, and society of his wife. This claim essentially amounts to the loss Mr. Allen has suffered by virtue of having his healthy wife become seriously and permanently injured and be replaced with a virtual invalid who requires continual care and medication.

See discussion above under injuries sustained by Sheryl D. Allen.

CONCLUSIONS OF LAW:

Liability

Section 316.1925, F.S., provides that any person operating a vehicle upon the streets shall drive in a safe and prudent manner.

For the purposes of this claim bill, the City of Tallahassee admits that its employee, Clinton Gurley, operated the tractor-trailer in a negligent manner and that the city is liable in this case.

Proximate Cause

There is substantial, competent evidence to support a finding that the negligent actions taken by Clinton Gurley in the operation of his tractor-trailer were the proximate cause of Sheryl Allen's injuries.

Damages

Sheryl Allen received serious and permanent injuries as a result of the accident. Please refer to the "Findings of Fact" section above for past and future medical and rehabilitation costs and costs related to loss of income.

Settlement Agreement

Because settlements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense, stipulations or settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature or its committees, or on the Special Master. However, all such agreements must be evaluated. If found to be reasonable and based on equity, then they can be given effect, at least at the Special Master's level of consideration. I find that the settlement agreement in this case is reasonable and equitable, and recommend that it be given effect by the Legislature.

ATTORNEYS FEES:

The claimant's attorney has submitted an affidavit certifying that attorney's fees are limited to 25 percent of the award in accordance with s. 768.28(8), F.S., and that lobbying fees of \$20,000 will be paid from the 25 percent attorney's fee. Except for \$1,529.63, there are no outstanding costs, as \$18,121.14 in costs was paid out of the initial \$200,000.

COLLATERAL SOURCES:

At the time of the accident, Mrs. Allen was covered by motor vehicle insurance (Allstate Insurance paid \$11,000 for personal injury protection and medical payment benefits) and health insurance (Blue Cross/Blue Shield has paid and continues to pay her medical bills which at this point in time total \$7,897.01. The Allen's have paid BC/BS in the amount of \$4,661.24 to settle the subrogation claim). Also, Veteran's

Life Insurance paid \$1,300 in supplemental hospital benefits and they waived their right to subrogation.

Mrs. Allen currently receives \$780 a month in Social Security Disability payments.

Settlement Agreement

Prior to trial, the parties engaged in discussions which led to a settlement agreement dated April 7, 2004. The Tallahassee City Commission unanimously approved the settlement agreement on April 28, 2004.

Pursuant to the settlement, the city agreed to pay Sheryl Allen and George Allen a total of \$975,000, of which \$200,000 has already been paid pursuant to §768.28(5), F.S., (sovereign immunity) leaving \$775,000 to be paid pursuant to the instant claim bill. The amount of the settlement agreement includes costs and attorney's fees.

Under the agreement, the city stated that it would support the passage of the claim bill, and instructs its lobbyists or attorneys to appear at any legislative proceeding related to the claim bill. The claimants have executed a general release of all claims against the city and its employees and secured a dismissal of the Circuit Court suit with prejudice.

The city is self-insured and will pay the amount of the claim from its self-insurance fund.

RECOMMENDATIONS:

Accordingly, I recommend that Senate Bill 26 be reported FAVORABLY.

Respectfully submitted,

Katherine A. Emrich
Senate Special Master

cc: Senator Evelyn Lynn
Faye Blanton, Secretary of the Senate
House Claims Committee