



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/5/07	SM	Fav/1 amendment
4/12/07	CA	Fav/CS

April 12, 2007

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 44 (2007) – Community Affairs and Senator Dave Aronberg**
Relief of Verlin C. Weaver

SPECIAL MASTER'S FINAL REPORT

THIS IS AN EQUITABLE CLAIM FOR \$400,000 BASED ON A CONSENT FINAL JUDGMENT AGAINST THE CITY OF FERNANDINA BEACH TO COMPENSATE VERLIN WEAVER FOR INJURIES AND DAMAGES HE SUSTAINED WHEN A CITY OF FERNANDINA BEACH GARBAGE TRUCK STRUCK MR. WEAVER'S VEHICLE, DUE TO THE NEGLIGENCE OF THE DRIVER OF THE GARBAGE TRUCK. THE CITY HAS AGREED TO THE PAYMENT OF THIS CLAIM FROM THE CITY'S LOCAL FUNDS.

FINDINGS OF FACT:

A brief hearing was held by video teleconference between sites in Jacksonville and Tallahassee, Florida, on January 8, 2007, to allow the claimants to present any supplemental information. Based on that hearing and my de novo review of the record, the findings of fact set forth in the report prepared by the prior Senate Special Master are, in substantial portion, adopted as set forth below.

On November 11, 2002, at approximately 10:10 a.m., at the intersection of Olive Street and 8th Street in the City of Fernandina Beach, Verlin Weaver was in the southbound traffic lane on 8th Street and was stopped for a red light. Mr. Weaver, 65 years old at the time, was returning to Jacksonville from a potential job-site for his pest control

service. A garbage truck owned by the City of Fernandina Beach and driven by the City's employee, Dexter Rainey, was traveling in the northbound lane when it struck the rear of a vehicle attempting to make a left turn across 8th Street. Mr. Rainey, according to witnesses, never slowed down prior to impact and apparently did not see the left-turning vehicle. After hitting the rear of that vehicle, Mr. Rainey lost control of the garbage truck causing it to veer across the median into the waiting line of southbound traffic at the red light. After hitting several cars, the garbage truck rolled over the top of Mr. Weaver's pick-up truck, and came to rest on top of another vehicle driven by Regina Lloyd, in which her 2-year-old son was a backseat passenger.

The driving conditions that day were clear. There were no roadway defects that contributed to the crash.

Following the incident, Mr. Weaver was taken by helicopter to Shands-Jacksonville Hospital Trauma Center, and was diagnosed with blunt force chest trauma, a ruptured spleen, seven fractured ribs, acute respiratory failure, and a fracture of the left shoulder. Mr. Weaver remained at Shands-Jacksonville from November 11, 2002 through December 16, 2002. During this stay at Shands-Jacksonville, Mr. Weaver underwent a tracheostomy, insertion of a tracheal tube, surgical repair of his left shoulder, and removal of the ruptured spleen. Following discharge from Shands-Jacksonville on December 16, 2002, Mr. Weaver was transferred to Kindred Rehabilitation Hospital for therapy to wean him off a respirator and to help him to learn to eat solid foods again. Mr. Weaver was discharged from Kindred on January 18, 2003. Upon discharge from Kindred, Mr. Weaver was transferred to Brooks Rehabilitation Clinic in Jacksonville where he received more physical and other therapies from January 18, 2003 to February 4, 2003. After discharge from Brooks, Mr. Weaver underwent 60 days of in-home care, then outpatient care. During the in-home and outpatient care he learned to walk and underwent therapy to strengthen the muscles in his legs.

Medical records document Mr. Weaver's hearing loss in his right ear, his continuing pain in his left arm and ribs, his permanent injury to his left arm and permanent limitation of motion. Mr. Weaver reported that he takes Hydrocodone at night for the pain. Mr. Weaver also stated that his voice has

not been the same since the tracheostomy. The scar from his surgery is also very painful. His doctor has also indicated that the loss of his spleen leaves him more vulnerable to infections.

Mr. Weaver has satisfied all medical liens.

LITIGATION HISTORY:

The parties did not enter into a pre-trial settlement because the insurance coverage available for this incident was nearly exhausted by the settlement reached with the City for the injuries sustained in the same collision by Regina Lloyd, who is now a quadriplegic. After discovery and depositions of the parties, witnesses, and medical experts, a bench trial was held on March 29, 2004, in the Nassau County Circuit Court. At the conclusion of the evidence, the parties requested that the court refrain from making its decision to allow the parties to engage in settlement negotiations. The City admitted liability and parties agreed to a \$500,000 settlement, which provided for an immediate \$100,000 payment by the City's insurance company and a Consent-Final Judgment for the remaining \$400,000 that was entered by the court on June 1, 2004. The terms of the Consent-Final Judgment require Mr. Weaver to seek payment of the remaining \$400,000 through a legislative claim bill, and the City of Fernandina Beach to consent to, and support the claim bill. The City has consented to and fully supports the claim bill.

CLAIMANT'S AND CITY'S POSITION:

In 2004, the City paid \$100,000 of the settlement through the insurance trust. To allow the City to accumulate the necessary revenue, the parties agreed to a structured set of payments to Mr. Weaver of \$200,000 after the expected enactment of the claim bill in 2004, \$100,000 in 2005, and \$100,000 in 2006. When the City sold its waste pick-up services to a private corporation, it set aside \$400,000 in an interest bearing escrow account for the payment of this claim. In a letter dated January 11, 2007, the Claimant's attorney confirmed that he and the City attorney now agree that the entire \$400,000 should be paid to Mr. Weaver upon enactment of the claim bill. An amendment has been prepared to authorize the entire payment, as agreed.

LEGISLATIVE HISTORY:

Senate Bill 40 (2005) and Senate Bill 62 (2006) were recommended favorably by prior Senate Special Masters.

Senate Bill 40 (2005) died in the Health Care Committee. Companion House Bill 23 received favorable votes in the Claims Committee and in the Justice Council but died on the House calendar.

Senate Bill 62 (2006) died in the Committee on Claim Bills. Companion House Bill 845 received a favorable vote in the Claims Committee, but died in the Justice Council.

CONCLUSIONS OF LAW:

Dexter Rainey, the garbage truck driver, had a legal duty and breached that duty to observe traffic and maintain control of the garbage truck, and was acting in the course and scope of his employment at the time of the collisions.

The force of the impact from the collision with his pick-up truck caused Mr. Weaver's injuries, even though Mr. Weaver was using his seatbelt.

Mr. Weaver suffered severe injuries and currently suffers from the effects of those injuries. Proof of damages is supported by the medical records and reports.

ATTORNEYS' FEES AND LOBBYISTS' FEES:

The attorneys for the claimant have submitted documentation attesting to compliance with in Section 758.28(8), Florida Statutes, and to the inclusion of lobbyists' fees in the 25 percent statutory limitation. In a letter to the House Special Master, dated November 16, 2006, the attorney for the claimant confirmed that there are no additional attorneys' nor lobbyists' fees, nor will there be any additional charges going forward.

OTHER ISSUES:

Mr. Weaver served honorably with the United States Navy for 24 years and retired in Jacksonville in 1977. He then worked as an instructor for Bell Helicopter in Iran until the Iranian revolution, and then worked various jobs until he started his own pest control business, which he continues to operate, although he has had to limit his accounts to residences. He has had to give up commercial accounts, such as restaurants that would require him to be on his hands and knees to service those properly.

Subsequent to this incident, Mr. Weaver's quality of life has deteriorated dramatically. Prior to the incident, Mr. Weaver enjoyed fishing on his boat and attending Jacksonville Jaguars games. Mr. Weaver testified that he cannot fish on

his boat because his balance has been affected by his injuries and he cannot attend football games because he is unable to climb the stairs at the stadium.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that Senate Bill 44 (2007) be reported FAVORABLY, as amended.

Respectfully submitted,

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Eleanor M. Hunter
Senate Special Master

cc: Senator Dave Aronberg
Faye Blanton, Secretary of the Senate
House Committee on Constitution and Civil Law
Counsel of Record

The CS made the following changes:

- Removes a provision providing for attorney's fees and expenses and provides a limitation on payment of fees and costs.