



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/27/07	SM	Favorable

February 27, 2007

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

Re: **SB 486 (2007)** – Senator Steve Oelrich
HB 237 (2007) – Representative Joe H. Pickens
Relief of Sheryl Allen and George Allen

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR \$775,000 TO COMPENSATE SHERYL ALLEN AND HER HUSBAND, GEORGE ALLEN, FOR INJURIES AND DAMAGES THEY SUSTAINED IN 2001 WHEN MRS. ALLEN WAS HIT BY A CITY OF TALLAHASSEE TRUCK/TRAILER AFTER A CITY PARADE.

FINDINGS OF FACT:

A full hearing on this claim was held by a prior Senate Special Master in connection with the bill filed in the 2005 Session. I held an abbreviated hearing on this year's bill, and I also reviewed the documents submitted by the parties to the prior Special Master. Based upon my de novo review of this claim, I agree with the findings set forth in the prior Special Master's report, and I adopt them as my own with only minor modifications as set forth below.

On December 8, 2001, at approximately 8:44 p.m., Sheryl Allen was standing in a parking lot in downtown Tallahassee as her daughter's high school band loaded onto a bus to be transported back to their home town of Keystone Heights, Florida. The band had just finished marching in the Winter Festival of Lights parade in Tallahassee and Mrs. Allen was

one of several parents who had chaperoned the band on the trip.

Mrs. Allen was struck by a City truck and trailer that was pulling out of the parking lot. The trailer had been used as a float in the parade and its back-end apparently swung wider than its driver had expected. The driver of the truck was an employee of the City's Parks and Recreation Department acting within the course and scope of his employment at the time of the accident.

The impact knocked Mrs. Allen backwards and down, causing her head to strike the cement curb. She was knocked unconscious at the scene and subsequently transported to Tallahassee Memorial Hospital by ambulance. Several other parents were "brushed" by the trailer, but no one else was injured.

Mrs. Allen suffered 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.

The accident left Mrs. Allen permanently impaired. She has a seizure disorder which prevents her from driving and keeps her homebound much of the time. She feels that she is a burden to her family and she suffers from depression. She also 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.

At the time of the accident, Mrs. Allen was 51 years old. She worked in the laundry and auto parts businesses that she and her husband, George Allen, owned. Mrs. Allen performed a variety of tasks ranging from clerical and secretarial duties to handling the business affairs of the Allens' companies.

After the accident, Mrs. Allen was no longer able to work and her responsibilities in the family business had to be performed by Mr. Allen and the Allens' 15-year-old daughter.

The increased workload caused Mr. Allen a great deal of stress and related health problems, and it forced the Allens' daughter to give up many of her after-school activities, including marching in the band, to care for Mrs. Allen.

Prior to trial, the claimants' experts estimated that present value of Mrs. Allen's total economic damages would be \$816,076. That figure included \$225,956 in lost earning capacity and \$590,120 in future medical and rehabilitative expenses. Those figures did not include non-economic damages such as Mrs. Allen's pain, suffering, and loss of her ability to enjoy life, or the value of Mr. Allen's loss of consortium claim.

According to the claimants' attorney, the non-economic damages alone could have exceeded \$1 million if this case had proceeded to trial. The City agrees that a jury verdict would likely have exceeded the settlement amount.

Updated damage projections were presented at the Special Master hearing, showing that the present value of the total economic damages will be approximately \$1.07 million (rather than the \$816,076 estimated prior to trial). The updated projections take into account the current medications that Mrs. Allen is taking as well as the future services that she will likely need based upon her medical condition now that it has stabilized.

Mrs. Allen is now 56 years old. Her medical condition has stabilized, but she continues to have seizures and other significant medical problems that diminish her quality of life. She is essentially homebound and requires constant supervision because she cannot care for herself.

The Allens recently sold their laundry business, which gives Mr. Allen more time to care for Mrs. Allen. They are living primarily off the proceeds of the sale of the business. Those funds had been set aside for their retirement.

The Allens' daughter (who Mrs. Allen was chaperoning on the night of the accident) is now 20 years-old. She is a student at Santa Fe Community College, but she also has to help take care of Mrs. Allen.

Mrs. Allen is not employed. She receives approximately \$800 per month in Social Security disability payments. Her medical expenses are covered by Blue Cross/Blue Shield (BC/BS). The Allens pay approximately \$1,000 per month in premiums for the BC/BS health insurance.

In addition to payment of medical expenses by BC/BS, the Allens received \$11,000 in PIP benefits from their insurer after the accident, as well as \$1,300 in supplemental hospital benefits. All outstanding medical liens have been paid.

The Allens are current on all of their medical bills arising out of the incident. They had to use some of the funds set aside for their daughter's college education and their retirement in order to pay Mrs. Allen's medical bills.

LITIGATION HISTORY:

In October 2002, the Allens filed suit against the City in the circuit court in and for Leon County. The City initially denied liability for Mrs. Allen's injuries, but it subsequently admitted liability. The parties then mediated the issue of damages.

In April 2004, the parties entered into a mediated settlement agreement that required the City to pay the Allens a total of \$975,000, including costs and attorney's fees. The City agreed as part of the settlement to support the passage of a claim bill.

The City has already paid \$200,000 in partial satisfaction of the settlement agreement pursuant to s. 768.28, F.S. The claim bill is for \$775,000, which is the balance of the settlement.

The net amount received by the Allens out of the initial \$200,000 payment by the City was \$124,644.95. The remainder of the funds went to attorney's fees, costs, and outstanding medical liens. There are approximately \$2,500 of additional outstanding costs that will be paid out of the proceeds of the claim bill.

The City is self-insured and will pay the amount of the claim from its self-insurance fund. The fund includes an "existing case reserve" that is sufficient to cover the amount of the claim. Thus, payment of the claim will have no adverse impact on the operation of the City.

CLAIMANTS' POSITION:

- The negligence of the City's employee was the sole and proximate cause of Mrs. Allen's injuries which are severe and permanent.
- The settlement reached by the parties was fair and reasonable and should be given effect by the Legislature.

CITY'S POSITION:

The City supports the bill, and it has sufficient funds available to pay the claim in accordance with the settlement agreement.

CONCLUSIONS OF LAW:

I conclude, as did the prior Special Master, that the settlement agreement entered into by the parties in this case is reasonable and supported by the evidence, and that it should be given effect by the Legislature.

Specifically, I conclude that the City employee driving the truck/trailer that struck Mrs. Allen had a duty to operate the vehicle in a safe and prudent manner, see s. 316.1925, F.S.; that the driver breached that duty when he struck Mrs. Allen who was standing in the parking lot outside of the truck's lane of travel; that the City is legally responsible for the negligence of the driver; that the negligent operation of the truck was the direct and proximate cause of Mrs. Allen's injuries; that Mrs. Allen received serious and permanent injuries as a result of the accident; and that the damages agreed to by the parties are supported by the evidence.

ATTORNEY'S FEES AND LOBBYIST'S FEES:

The claimants' attorney 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.

The lobbyist's fees are \$20,000 and will be paid from the 25 percent attorney's fee.

LEGISLATIVE HISTORY:

This is the third year that this claim has been submitted to the Senate. Claim bills were filed in the Senate in the 2005 (SB 26) and 2006 (SB 48) sessions. Both bills died in committee.

A Special Master hearing was held on the 2005 bill. The report prepared by the prior Special Master recommended that the bill be reported favorably. No Special Master report was prepared on the 2006 bill.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 486 (2007) be reported FAVORABLY.

Respectfully submitted,

T. Kent Wetherell, II
Senate Special Master

cc: Senator Steve Oelrich
Representative Joe H. Pickens
Faye Blanton, Secretary of the Senate
House Committee on Constitution and Civil Law
Counsel of Record