



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/16/07	SM	Fav/1 amendment
	CJ	

February 16, 2007

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

Re: **SB 72 (2007)** – Senator Dave Aronberg
HB 611 (2007) – Representative Susan Bucher
Relief of Jennifer Graham

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$850,000 BASED ON A SETTLEMENT AGREEMENT BETWEEN CLAIMANT JENNIFER GRAHAM AND THE PALM BEACH COUNTY SHERIFF'S OFFICE TO COMPENSATE MS. GRAHAM FOR THE INJURIES SHE SUFFERED WHEN SHE WAS STRUCK BY A VEHICLE DRIVEN BY A DEPUTY SHERIFF.

FINDINGS OF FACT:

On June 15, 2003, Jennifer Graham, then 29 years old, was sitting on a bench on the corner of Park Avenue and one of the driveway entrances into the parking lot of a shopping plaza in Palm Beach County. Ms. Graham had just been involved in an altercation outside a bar located in the shopping plaza. A Deputy Sheriff, Aaron Strong, was responding to the report of an altercation, but was traveling at such a high rate of speed (estimated at 70 MPH in a 20 MPH zone) that he failed to make the turn and his vehicle jumped the curb, crashed through a decorative pillar, and then struck the bench upon which Ms. Graham was sitting. The deputy received a suspension without pay for the incident.

The impact of the deputy's vehicle with the bench caused Ms. Graham to be thrown about 20 feet away, onto a paved sidewalk. She was taken to the emergency room of St. Mary's Medical Center where she underwent a series of surgeries to repair a ruptured bladder, fractured pelvis, fractured pubic bone, shattered left hip, and right sacroiliac dislocation. She was also treated for a long abdominal laceration. In addition to her surgeries, Ms. Graham spent 3 months as an in-patient in a physical rehabilitation facility.

Ms. Graham experiences chronic pain in her hip, back, and neck. She had a surgery for an abdominal hernia in 2005. She is incontinent due to the injury to her bladder and has a permanent limp. She is often unsteady on her feet and has difficulty kneeling or squatting. She cannot run or jump. Her physician determined that she sustained a 40 percent permanent functional impairment as a result of the injuries she received from the crash.

Ms. Graham's past medical costs exceed \$400,000. Her future medical costs were estimated to be \$298,205 in present value dollars, but the evidence was not sufficient to support the estimate. For example, the estimate includes \$107,520 for physical therapy even though Ms. Graham quit getting physical therapy and does not think it would benefit her.

Ms. Graham has not been employed since the crash. She lives with her sister, Julie, in Palm Beach Gardens and receives a monthly Social Security disability check of \$560.

Ms. Graham's work history before the crash consisted mostly of low-paying retail jobs that did not last very long. On the date of the crash she was unemployed. Her average annual income was \$11,212 for the 5 years preceding the crash. She claims a lifetime wage loss of \$454,321, but that estimate is too high. It assumes she would have worked full-time in the future, even though most of her jobs lasted just a few months and were separated by periods of unemployment. The estimate also assumes she will never work again, but the evidence did not persuade me that there is no paying work, even part-time, that she will ever be able to perform with her disabilities.

If all or part of this claim is paid, Ms. Graham will have to use

some of the money to settle a lien of \$97,382 (as of November 2006) held by the Palm Beach County Healthcare District. Ms. Graham also has other outstanding medical bills amounting to about \$20,000.

In 2001, two years before the crash, Ms. Graham was using crack cocaine and, as a consequence, lost custody of her three children. She sought treatment and there is no evidence that she has abused drugs of any kind since that time. The children lived with their father when they were first taken from Ms. Graham, but have recently been placed as foster children with Ms. Graham's other sister, Amy, who also resides in Palm Beach County.

Ms. Graham was under an obligation to pay child support for her children, which went unpaid for a period. When she received the \$100,000 sovereign immunity cap from Palm Beach County, she paid the child support arrearages. Ms. Graham is attempting to modify the child support order, but now owes about \$10,000. The sister that now has custody of Ms. Graham's children receives financial aid from the State's Relative Caregiver Program for their care.

LITIGATION HISTORY:

Ms. Graham filed a lawsuit against the Sheriff of Palm Beach County in September 2004, in the circuit court for Palm Beach County. The case was settled before trial based on a stipulation for judgment for \$950,000. The Sheriff has already paid the \$100,000 sovereign immunity cap, leaving \$850,000 to request through this claim bill. The agreement called for \$350,000 to be paid upon passage of the claim bill, \$250,000 to be paid one year later, and \$250,000 to be paid 2 years later.

CLAIMANTS' POSITION:

- Deputy Strong had a duty of due care in the operation of his vehicle. He breached that duty and the breach was the proximate cause of the injuries suffered by Ms. Graham. The Sheriff is liable as the deputy's employer.
- The settlement amount is fair and reasonable.

THE SHERIFF'S POSITION:

The Sheriff admitted liability and agreed not to oppose this claim bill.

CONCLUSIONS OF LAW:

The duty to use due care in driving a motor vehicle has been established by statute and case law. Subsection 316.1925(1), Florida Statutes, states:

Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person.

By driving at an excessive speed so that he lost control of his vehicle, Deputy Strong breached his duty of due care. He was acting within the scope and course of his employment and, therefore, the Sheriff of Palm Beach County shared the duty of care and the liability for Ms. Graham's injuries which were proximately caused by the breach of duty.

There are many reasons for entering into a settlement agreement other than the perceived merits of the claim and, therefore, I am not precluded from reviewing the terms of the parties' settlement agreement in this matter and determining whether they are reasonable under the totality of the circumstances.

Ms. Graham claimed that her economic damages resulting from the crash are \$1 million or more. However, this figure includes past medical costs that she did not pay and will never pay. It also includes estimates of lost future income and future medical costs for which there is inadequate supporting evidence. I believe a reduction of the claim bill amount by \$200,000, to \$650,000, would account for these discrepancies and would be more fair and reasonable under the circumstances.

ATTORNEY'S FEES AND LOBBYIST'S FEES:

In compliance with s. 768.28(8), F.S., Ms. Graham's attorneys will limit their fees to 25 percent of any amount awarded by the Legislature. Her attorneys reported that there are also costs of approximately \$1,500 that she will also have to pay. The lobbyist's fee will be an additional 5 percent of any award. If the claim is paid in the amount that I am recommending, Ms. Graham's attorneys will receive a fee of \$162,500, and her lobbyists will receive \$32,500.

LEGISLATIVE HISTORY:

A claim bill was first filed for Ms. Graham in 2005. A hearing was held before a Senate Special Master but a report was not issued.

OTHER ISSUES:

If my recommendation for a reduced payment is accepted, the installments should be changed to \$350,000 to be paid upon passage of the claim bill and \$300,000 one year later.

In 2005, at the request of the previous Senate Special Master for a plan to use some of the claim bill proceeds for the benefit of Ms. Graham's three children, the parties proposed the purchase of structured annuities that would make guaranteed payments to the children. Although the Senate Special Master did not issue a report in 2005, the House Special Master recommended that the companion House bill be reported favorably if it was amended to provide that \$120,000 be used to fund a \$40,000 annuity for each of Ms. Graham's three children to pay them monthly installments until they reach 18 years of age. I believe this an important condition and that Senate Bill 72 should be amended to provide for such annuities.

Because there is a Medicaid lien involved, the claim bill should also be amended to provide that the Florida Agency for Health Care Administration shall be paid an amount equal to all unreimbursed medical payments prior to disbursing any funds to the Claimant.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 72 (2007) be reported FAVORABLY, as amended.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

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