THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/26/07	SM	Fav/1 amendment

December 26, 2007

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

Re: **SB 34 (2008)** – Senator Al Lawson
HB 201 (2008) – Representative Stan Mayfield
Relief of Laura Laporte

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR $5,500,647.81 BASED ON A JURY VERDICT FOR CLAIMANT LAURA LAPORTE FOR INJURIES SHE SUSTAINED WHEN THE VEHICLE SHE WAS DRIVING WAS STRUCK BY A VEHICLE DRIVEN BY AN EMPLOYEE OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.

FINDINGS OF FACT:

On October 9, 1999, Sandra Jackson, an employee of the Department of Agriculture and Consumer Services (Department), was driving her own truck in the course of her duties as a grove inspector for the Department. Ms. Jackson was traveling on 66th Avenue, west of Vero Beach in Indian River County, when she attempted to turn onto 65th Street. In doing so, she pulled into the path of and collided with the vehicle driven by Claimant, Laura Laporte, who was 42 years old. Ms. Jackson received a traffic citation for failing to yield the right of way.

The crash, which was nearly head-on, trapped Claimant in her vehicle so that firefighters had to use the "jaws of life" to remove her. Claimant suffered fractures to her left leg, right ankle, and pubic bone. She also suffered a puncture wound to her left knee, a laceration on her left heel, and a sprained

left ankle. Claimant underwent three surgeries on her left leg, which involved inserting a metal rod and screws to stabilize and align her leg, and subsequent surgeries to replace the hardware when it failed. A fourth surgery involved fusing her right ankle to the leg bone. In the future, she will require a knee replacement and possibly other surgeries to her left leg and right ankle.

The crash caused permanent injuries and disfigurement to Claimant's legs. Her left leg was shortened as a result of the reconstructive surgeries. Claimant now has a waddling gait and experiences pain when walking. She is unable to get up on her own when she falls and, because she lives alone, this has created situations in the past when she has had to wait a long time before a friend could come to help her up. On two occasions, she broke her left foot when she fell.

A significant factor in this case, and one that was apparently influential to the jury in making its damage award to Claimant, is her muscular dystrophy. Claimant was first diagnosed with muscular dystrophy in 1978. She has the least debilitating of the three main forms of muscular dystrophy, referred to as "limb-girdle" muscular dystrophy. The principal effect of the disease for Claimant is that she has diminished upper body strength. For example, Claimant is unable to raise her arms above her head and a task such as brushing her hair requires that she first lie down in a position where she does not have to lift her hands above her shoulders. Although Claimant's muscular dystrophy mostly affected her upper body, it had some effect upon her legs as well. She admitted that even before the accident she would occasionally fall down.

Commendably, Claimant remained as active as possible despite her muscular dystrophy, and helped to operate a petting zoo and related summer and after-school programs for kids. She even rode her horses.

Since 1990, Claimant has received Social Security disability payments based on 100 percent disability caused by her muscular dystrophy. A vocational rehabilitation counselor testified that Claimant's physical activities prior to the crash are not inconsistent with her qualification for 100 percent disability because Social Security disability determinations are based on one's ability to do work for an employer without

physical assistance and interruption. Claimant was only able to work for herself because she could get physical assistance and take rests when she needed.

Claimant's neurologist stated that her form of muscular dystrophy progresses slowly to further diminish strength and physical abilities until a point is reached when the victims will no longer be able to care for themselves and will need constant care from others. It was his opinion that Claimant's injuries suffered in the crash will likely cause the stages of lost strength and ability, including the stage at which she will need constant care, to arrive years earlier.

The cost for part-time, in-home care for Claimant was estimated at $18,000 per year. The cost of full-time care was estimated at $55,000 to $80,000 per year. Medicare, which has paid most of Claimant's past medical expenses is likely to pay for her future surgeries, but would not pay for in-home care.

In addition to the $100,000 sovereign immunity cap paid by the Department, Claimant received $100,000 from her own car insurance policy and $25,000 from the insurance carried by Ms. Jackson.

LITIGATION HISTORY:

Claimant sued the Department in 2000 in the circuit court for Indian River County. The Department admitted liability and the trial proceeded to determine Claimant's damages. At the conclusion of the trial in 2002, the jury verdict was $160,536.82 for past medical expenses, $422,240 for future medical expenses, $500,000 for past pain and suffering, and $4,500,000 for future pain and suffering. When costs were added, the final judgment for Claimant was $5,600,647.81. The Department paid the sovereign immunity cap of $100,000, leaving $5,500,647.81, which is the amount sought in this claim bill.

Following the judgment, the Department filed a motion for remittitur, arguing that the jury award was excessive. The motion was denied by the court.

CLAIMANT'S POSITION:

- The Department is liable for the negligence of its employee.

- The jury award is reasonable because Claimant, who already had disabilities in her upper body caused by muscular dystrophy, has now been burdened with significant disabilities in her lower body, and the combination has substantially destroyed her independence and quality of life.

- The jury award is further justified by the fact that Ms. Jackson had a history of prescription drug abuse and her supervisors at the Department knew at the time of the crash that Ms. Jackson was unfit to drive.

DEPARTMENT'S POSITION:

- The Department admitted liability for negligence.

- Claimant's physical activities before 1999 show that she was dishonest when applying for disability payments from the Federal Government and, therefore, Claimant lacks credibility in her subsequent claims regarding her injuries from the 1999 crash.

- Alternatively, Claimant's muscular dystrophy was a significant preexisting disability that makes the jury's damage award for her 1999 injuries excessive.

- There is insufficient evidence to prove that Ms. Jackson was impaired by drugs at the time of the crash or that the Department should have prohibited her from driving a vehicle in the course of her duties.

CONCLUSIONS OF LAW:

Ms. Jackson had a legal duty to yield the right-of-way to Claimant. Because Ms. Jackson was acting in the course and scope of her employment at the time of the crash, the Department shared that duty. Ms. Jackson breached the duty by turning in front of Claimant's vehicle and the breach was the proximate cause of the collision and the injuries to Claimant that resulted from the collision.

Whether Ms. Jackson was impaired by drugs at the time of the crash was not an issue presented in the trial court because liability was admitted by the Department. I conclude that whether Ms. Jackson was impaired by prescription or other drugs at the time of the crash is also irrelevant in this claim bill proceeding and, even if it were relevant, the evidence is insufficient to make a finding on that issue.

I am persuaded that Claimant was not dishonest in her application for Social Security disability benefits and, therefore, there is no basis to doubt her credibility regarding the injuries she suffered in the crash.

However, I believe the jury award is too high in the context of this claim bill, even when Claimant's unique situation with muscular dystrophy is taken into account. Claimant's counsel argued before the trial court that the law in Florida is that a jury verdict should not be disturbed by the court unless "it is so inordinately large as obviously to exceed the maximum reasonable range within which the jury may reasonably operate," citing Kaine v. Government Employees Insurance Company, 735 So.2d 599 (Fla. 3d DCA 1999). He also emphasized that it was not the role of the judge to "assume the role of the seventh juror." However, that law is applicable to a trial judge's review of a jury award on a defendant's motion to reject or reduce the award. This claim bill process, on the other hand, involves a de novo proceeding in which I am rightfully assuming the role of a new jury. Furthermore, the payment of a claim bill is a matter of legislative grace and the Senate, unlike the trial court judge, is free to deviate from the jury award. It is reasonable for the Senate, in determining whether to pay a claim in excess of the sovereign immunity cap, to consider whether the jury award deviates substantially above or below the usual award for similar injuries.

Claimant's attorney presented a number of examples of jury awards in excess of $5 million, but almost all of the cases involved paraplegia or amputation. There might be cases involving severe leg fractures, like the one suffered by Claimant, in which the jury awarded $5 million or more to the plaintiff. However, while no calculation was attempted by the parties or by me to determine the average or median jury award in cases involving severe leg fractures, using the legal reference books that compile and discuss jury verdicts, it appears that the vast majority of jury awards for severe fractures are significantly less than $5 million and closer to $1 million.

Claimant made much of her determination before the 1999 crash to not let her muscular dystrophy prevent her from enjoying life fully. If Claimant dedicates herself just as

enthusiastically to making the most of her present physical predicament as she did in the past, I believe her future quality of life can be much better than the one she predicted for herself at the claim bill hearing.

Although Claimant deserves to be compensated for the injuries she suffered through the negligence of the Department's employee, I think a more reasonable award, taking into account the more common jury awards for severe limb fractures and the special circumstance of Claimant's muscular dystrophy, would be $3,000,000.

ATTORNEY'S FEES AND LOBBYIST'S FEES:

Claimant's attorneys agree to limit their fees to 25 percent of any amount awarded by the Legislature as required by s. 768.28(8), F.S. They object to the provision of the bill that limits attorney' fees, lobbying fees, and costs to 25 percent of the award. Claimant's attorneys report costs of $51,866. They propose a lobbyist's fee that would be an additional 6 percent of the award.

The Florida Supreme Court held in *Gamble v. Wells*, 450 So.2d 850 (1984) that the Legislature allows compensation pursuant to a claim bill "as a matter of grace" and it can determine the conditions to be placed on the appropriation. The Court specifically held that parties cannot enter into contracts, such as fee agreements, that bind the state in the exercise of its sovereign immunity.

LEGISLATIVE HISTORY:

Claim bills for Laura Laporte were first filed in the 2003 Session and have been filed in each session thereafter. A hearing was held before a Senate Special Master in 2002, but no report was issued.

RECOMMENDATIONS:

The claim bill should be amended to reduce the claim to $3,000,000.

For the reasons set forth above, I recommend that Senate Bill 34 (2008) be reported FAVORABLY, as amended.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Al Lawson
Representative Stan Mayfield
Faye Blanton, Secretary of the Senate
House Committee on Constitution and Civil Law
Michael Kliner, House Special Master
Counsel of Record