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Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 363; Relief of Erskin Bell, II/City of Altamonte Springs
Sponsor: Representative Adams
Companion Bill: SB 54 by Senator Gardiner
Special Master: Nicole DeZego

Basic Information:

Claimants: Erskin Bell, II

Respondent: City of Altamonte Springs

Amount Requested: \$150,000

Type of Claim: Local equitable claim; result of a settlement agreement.

Respondent's Position: Agrees that the settlement in this matter and the passage of this claim bill is appropriate. The City has agreed not to oppose and to fully cooperate with the claim process.

Collateral Sources: Personal health insurance paid approximately \$100,000 of the \$500,000 in medical bills.

Attorney's/Lobbying Fees: The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.

Prior Legislative History: This is the first year that this claim bill has been brought before the Legislature.

Procedural Summary: On April 20, 2009, Mr. Bell, Sr., as guardian of Mr. Bell, II, entered into a settlement agreement with the City of Altamonte Springs for \$2,100,000. This settlement was approved by the court on April 21, 2009. Of the settled amount, \$1,950,000 has already been paid, which includes the statutory cap of \$100,000 under s. 768.28, F.S. The money was paid by the Florida League of Cities, which provided insurance coverage to the City of Altamonte Springs at the time of the accident.

A Special Master hearing was held on this claim bill on October 9, 2009, via video-teleconference between Tallahassee and Orlando. The Claimant's father was present at the hearing as guardian, and both parties were represented by counsel. Special Masters were present on behalf of both the House of Representatives and the Senate.

Facts of Case: On November 30, 2008, at 12:15 a.m., Erskin Bell, II, was the front-seat passenger in a 2001 Honda Civic driven by Jennifer Hernandez. The vehicle was stopped at a red light in the left turn lane at the intersection of Maitland Boulevard and Bear Lake Road. While stopped, the vehicle was struck from behind by an Altamonte Springs police vehicle driven by Officer Mark Maupin. Officer Maupin struck the Civic at an estimated speed of 100 mph with the right side of his vehicle. The impact crumpled the back seat of the Civic and pushed it an estimated 250 feet through the intersection.

The accident occurred at night on a slightly curved road. The vehicles were traveling west on Maitland Boulevard, and at the time of the accident, signs were posted east of the site of impact advising of a construction zone ahead. These signs included a temporary speed limit and a warning that speeding fines would be doubled in the construction zone. These signs would have been visible to Officer Maupin prior to losing control of his vehicle.

Prior to the accident, Officer Maupin had been conducting speed enforcement. However, there was no proof that Officer Maupin was pursuing an alleged or suspected violator at the time of the accident. He did not have on his lights or siren; he did not report that he was in pursuit of a violator; and he did not receive instructions to pursue anyone at the time of the accident. Officer Maupin is unable to recall the events surrounding the accident due to a head injury he suffered as a result of the impact.

Mr. Bell and Ms. Hernandez were airlifted to Orlando Regional Medical Center following the accident. Mr. Bell lost consciousness and was in a coma upon arrival at the hospital, where he was diagnosed with multiple injuries. These included in part an open skull fracture with pneumocephalus¹, scalp and facial lacerations, intercranial hemorrhage, diffuse axonal injury, and left L1 to L5 fractures. Mr. Bell never regained consciousness after the accident and is still comatose.

A consulting physician at Orlando Regional Medical Center found Mr. Bell's prognosis to be extremely poor and the likelihood of him having a functional recovery to be less than one percent. An independent Life Care Plan estimated that he will remain dependent throughout the remainder of his life. Mr. Bell's parents have retrofitted their home to accommodate his special needs. Constant care is provided by home care nurses and Mrs. Bell, who is a registered nurse. The estimated present value of Mr. Bell's loss of income and the cost of continual care was determined to be between \$21,000,000 and \$26,000,000.

An investigation by the Florida Highway Patrol estimated that Officer Maupin was driving 104 mph at the time of impact. A separate internal investigation by the Altamonte Springs Police Department estimated that Officer Maupin was driving 102 mph at the time of impact. Based on its investigation, the Florida Highway Patrol issued Officer Maupin two citations: one for failure to drive with due care² and one for failure to wear a seat belt.³ An internal inquiry by the Altamonte Springs Police Department found that Officer Maupin had violated internal police policies and concluded that he had demonstrated a reckless disregard for the safety of others and a failure to drive with due regard.

Officer Maupin owed a duty under s. 316.183(1), F.S., to use due care and not drive "at a speed greater than is reasonable and prudent under the conditions...having regard [for] the actual and potential hazards then existing."⁴ Officer Maupin breached this duty by driving above 100 mph, and that breach was the proximate cause of the accident and Mr. Bell's injuries.

¹ Pneumocephalus is the presence of air or gas within the cranial cavity.

² Section 316.183(1), F.S.

³ Section 316.614(4)b., F.S.

⁴ Officer Maupin was not pursuing an alleged or suspected violator at the time of the accident; therefore s. 316.183(1), F.S., applies. However, even if Officer Maupin had been pursuing a violator at the time of the accident, he still owed a duty to drive with due regard for the safety of all persons under s. 316.072(5), F.S.

Damages: As a result of the settlement agreement between Mr. Bell's estate and the City of Altamonte Springs, \$1,950,000 was paid by the Florida League of Cities. The City of Altamonte Springs had a contract with the Florida League of Cities at the time of the accident for \$2,000,000 in insurance coverage, which paid for the settlement amount to date. Of that amount, \$527,350 was paid to the Claimant's attorney for costs and fees, and \$500,000 was set aside to settle health care liens. The Claimant received \$922,649, which was deposited into a special needs trust to pay for medical expenses not covered by Medicaid. After the settlement of the liens, Mr. Bell, Sr., estimates that the trust will be funded with a total of \$1,280,000.

There is no reason to believe that Mr. Bell would not have led a long and productive life. I find that the settlement in this case is a reasonable amount.

Source of Funds: Any funds paid by the City of Altamonte Springs for this claim bill will come from the City's General Fund. The settlement agreement between the parties and the bill as filed call for \$150,000 to be paid under this claim bill.

Drafting Comments: While Mr. Bell had previously attended a church function on the day of the accident, he was not returning from a church function at the time of the accident. The bill should be amended to reflect this.

Recommendation: Accordingly, based on the foregoing, I recommend this claim be reported FAVAORBLY, with the changes suggested above.

Nicole DeZego, Special Master

Date

cc: Representative Adams, House Sponsor
Senator Gardiner, Senate Sponsor
Judge Bram D. E. Canter, Senate Special Master