



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location

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DATE	COMM	ACTION
12/04/09	SM	Favorable

December 4, 2009

The Honorable Jeff Atwater
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 54 (2010)** – Senator Andy Gardiner
Relief of Erskin Bell

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$150,000 BASED ON A SETTLEMENT AGREEMENT IN WHICH THE CITY OF ALTAMONTE SPRINGS AGREED TO COMPENSATE ERSKIN BELL FOR INJURIES HE SUFFERED IN A COLLISION BETWEEN THE VEHICLE IN WHICH HE WAS A PASSENGER AND A VEHICLE OPERATED BY A ALTAMONTE SPRINGS POLICE OFFICER.

FINDINGS OF FACT:

Just after midnight on November 30, 2008, Erskin Bell was returning home from a church function. He was a front seat passenger in a 2001 Honda Civic being driven by friend. Erskin was 20 years old and was attending the EIG-Watson School of Aviation in Miami, pursuing his interest in becoming a pilot or an aviation control officer. Erskin and his friend had been traveling west on Maitland Boulevard (SR 414) in Orange County, but were stopped at the traffic light at the Maitland Boulevard/Bear Lake Road intersection, waiting to turn south on Bear Lake Road. Mr. Bell was wearing his seat belt. The weather was clear. While still stopped in the left turn lane at the intersection, the Honda Civic was struck from behind by a 2006 Chevrolet patrol car driven by Mark Maupin, a police officer with the Altamonte Springs Police Department. It is estimated that Officer

Maupin was approaching the intersection at about 116 mph. He evidently lost control of the patrol car, which slid sideways for over 230 feet and struck the Honda at about 104 miles per hour.

Officer Maupin was not using his emergency lights or siren. As he approached the Maitland Boulevard/Bear Lake Road intersection, he passed signs advising of an approaching construction zone and imposing a temporary lower speed limit. Officer Maupin has no recollection of the accident because of the head injury he sustained in the wreck. He claimed afterward to have been conducting speed enforcement, but he was outside of his jurisdiction and there was no corroborating evidence such as dispatch records or other radio communications to indicate that Officer Maupin was engaged in a pursuit or other police action. There was no evidence that Officer Maupin was under the influence of alcohol or drugs.

The impact crushed both vehicles and pushed the Honda 250 feet through the intersection. Erskin was airlifted to Orlando Regional Medical Center. He sustained fractures to his skull and face, intracranial hemorrhaging, bi-lateral brain damage, and numerous internal injuries. Erskin was comatose. He was discharged from Orlando Regional Medical Center and sent to the Florida Institute for Neurologic Rehabilitation (FINR). After being weaned off a respirator and ventilator, he was discharged from FINR to the care of his family. The consulting neurosurgeon described his injury as “a devastating traumatic brain injury with a Glasgow coma scale of 3. He has some primitive brainstem reflexes at this time, but he shows no evidence of supratentorial function. MRI findings consistent with diffuse shearing type of injury of brain with injury to deep nuclear structures including brain stem.”

Erskin's prognosis is poor. The probability that he will have a functional recovery that allows him to be independent is less than one percent. No surgery is likely to provide any benefit. He is expected to remain in a persistent vegetative state. His life expectancy is not certain. Erskin is under the care of several physicians, and receives constant nursing care at home. He is still in a coma.

Officer Maupin was issued citations by the Florida Highway

Patrol for failure to use due care and for failure to wear a seat belt. An Internal Affairs investigation conducted by the Altamonte Springs Police Department determined that Officer Maupin violated policies and procedures for operating a police vehicle and the wreck was preventable. Officer Maupin's record with the Police Department included numerous vehicle-related incidents and several disciplinary actions for a variety of misconduct. He retired shortly after the wreck.

LITIGATION HISTORY:

Erskin's legal claim against the City was settled out of court for \$2.1 million without the filing of a lawsuit. Because the City participated in the Florida League of Cities' insurance program, the City could pay tort claims against it in excess of the sovereign immunity limit, pursuant to s. 768.28(5), F.S. The City has already paid Erskin the limits of its insurance coverage of \$1,950,000. This claim bill seeks the balance (\$150,000) of the \$2.1 million settlement. The City has the funds to pay the claim if the claim bill is passed.

After the deduction of attorney's fees and costs from the initial payment, Erskin received \$922,649.22, which was placed in a Special Needs Trust to pay for Erskin's medical and nursing care. \$500,000 was placed in escrow to pay for health insurance liens. Of this amount, \$200,000 has already been disbursed to resolve liens. Any funds remaining after the liens are paid will be placed in the Special Needs Trust.

CLAIMANT'S POSITION:

The City is liable for the negligent operation of a City vehicle by its employee. The settlement amount is reasonable.

THE CITY'S POSITION:

The City admits liability for negligence and supports the claim bill.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether the City is liable in negligence for the injuries suffered by Erskin Bell and, if so, whether the amount of the claim is reasonable.

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.

Officer Maupin had a legal duty to operate his vehicle safely, including driving at a speed appropriate for the conditions on the road. As his employer, the City of Altamonte Springs shared that duty. Officer Maupin breached the duty by operating his vehicle at a reckless speed and the breach was the proximate cause of the collision and the injuries to Erskin that resulted from the collision.

A Life Care Plan was prepared for Erskin. Even if non-essential components of the plan are disregarded, the cost of Erskin's future care far exceeds the settlement amount. Therefore, I find that the settlement amount is reasonable.

LEGISLATIVE HISTORY:

This is the first claim bill filed for Erskin Bell.

ATTORNEY'S FEES AND
LOBBYIST'S FEES:

In compliance with s. 768.28(8), F.S., Erskin's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature. They have acknowledged that SB 54 (2010) requires costs and lobbyist fees to be included in the 25 percent figure.

OTHER ISSUES:

The City can pay the claim from existing funds without affecting its operations.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 54 (2010) be reported FAVORABLY.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Andy Gardiner
R. Philip Twogood, Secretary of the Senate
Counsel of Record