



STORAGE NAME: h1029.CVJS

DATE: 2/15/2012

February 15, 2012

SPECIAL MASTER'S FINAL REPORT

The Honorable Dean Cannon
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 1029 - Representative Rouson
Relief/Thomas and Karen Brandi/City of Haines City

THIS IS A CONTESTED CLAIM FOR \$825,094 BASED ON A JURY VERDICT AGAINST THE CITY OF HAINES CITY, IN WHICH THE JURY DETERMINED THAT THE CITY OF HAINES CITY WAS 60 PERCENT RESPONSIBLE FOR THE INJURIES TO THOMAS AND KAREN BRANDI DUE TO THE NEGLIGENT OPERATION OF A PATROL VEHICLE BY ONE OF ITS OFFICERS.

FINDING OF FACT:

Thomas Brandi was involved in a two-vehicle accident that occurred on March 26, 2005, on U.S. Highway 27 in Haines City, Florida. Mr. Brandi was traveling alone westbound on Southern Dunes Boulevard. After stopping for his red light, his light turned green, and he proceeded into the intersection. Upon entering the intersection, his vehicle was hit broadside on the driver's side by a Haines City police car operated by Officer Pamela Graham, an employee of the city of Haines City (the City). Officer Graham was travelling north on U.S. Highway 27 when she entered the intersection through a red light, in emergency mode with lights and siren on, and struck the driver's side door of Mr. Brandi's vehicle at a speed between 30 - 40 miles per hour. Mr. Brandi was going between 15 - 30 miles per hour.

Mr. Brandi was taken by helicopter to Lakeland Regional Hospital. As a result of the crash, Mr. Brandi sustained life-threatening injuries, including an aortic arch tear with contained hematoma and suggestion of active bleeding, a fractured rib, a right fibula fracture, a fractured sternum, a left acetabulum fracture, multiple right inferior pubic ramus fractures, and brain injury. Surgery was performed to repair the aortic tear. Mr. Brandi was at Lakeland Regional Hospital for ten days. He was then transferred to Florida Hospital in Orlando for rehabilitation, which included cognitive therapy. Mr. Brandi remained at Florida Hospital for ten days before being discharged for outpatient treatment.

Mr. Brandi's medical expenses as of August 1, 2011, are \$167,330, and as a result of those expenses, Aetna Health, Inc., has a lien on any recovery in from this claim bill in the amount of \$78,109. While his orthopedic injuries have substantially healed and do not present any significant difficulty to Mr. Brandi, he faces a lifetime of difficulties resulting from his brain injuries.

Officer Graham testified at trial that while she was at the station booking someone, she received an officer in distress call and rushed to her vehicle to respond, and entered the intersection in emergency mode while responding to that call. However, a review of the recordings of the radio calls at that time by the Police Department could not substantiate that any such call was made or that Officer Graham had authorization to respond to any call.

The Haines City Police Department concluded in its own investigation that the claim of Officer Graham could not be substantiated. The internal investigation found Officer Graham to have violated s. 316.072(5)(b), F.S., regarding standard operating procedures for the operation of emergency vehicles, by not operating her vehicle with due regard for the safety of all persons using the roadway. Officer Graham appealed the findings of the Crash Review Board to the Police Chief, but the Chief concurred with the Review Board and Officer Graham was suspended for three days without pay and was ordered to take an advanced driving course in emergency operations. Officer Graham appealed that decision unsuccessfully, as well.

The Haines City Police Department Vehicle Policy provides that:

an "agency vehicle engaged in emergency operations may... Proceed past a red or stop signal, but only after slowing or stopping as may be necessary for safe operation. Agency vehicles will not enter controlled intersections against the directional flow of traffic at a speed greater than 15 MPH and will be sure that cross-

traffic flow has yielded in each lane before attempting to cross that lane.”

Section 316.126, F.S., requires the driver of every vehicle to yield the right-of-way to an emergency vehicle while en route to an existing emergency when such emergency vehicle is giving audible signals by siren or visible signals by the use of displayed lights. However, the statute specifically states that its provisions do not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

Litigation History: The Claimants filed a complaint for damages in Polk County circuit court against the City. The complaint alleged that Officer Graham's operation of her police vehicle on March 26, 2005, was negligent, and that such negligence was the direct and proximate cause of injuries sustained by Mr. Brandi and consortium damages to Ms. Brandi.

The matter proceeded to a jury trial. On November 17, 2009, the jury entered a verdict assessing the City 60 percent liability for the injuries sustained by Mr. Brandi in the accident, and assessing Mr. Brandi 40 percent liability for the accident. Future medical expenses and lost earning ability in the future totaled \$903,000, and the verdict included an award for past medical expenses and lost wages in the amount of \$279,330. Mr. Brandi was awarded \$450,000 in damages for past and future pain and suffering and Karen Brandi, his wife, was awarded \$175,000 in damages for past and future loss of consortium. After reduction for comparative negligence, the net award to Thomas and Karen Brandi was \$1,084,396. In addition, a stipulated cost judgment in the amount of \$94,049 was entered by the trial court against the City.

The City did not make a motion for new trial or for remittitur, and no appeal was taken. The City paid \$200,000 to Thomas and Karen Brandi in satisfaction of sovereign immunity limits pursuant to s. 768.28, F.S.

CONCLUSION OF LAW:

Standing: The City made arguments in this matter that the Claimant's have not exhausted their judicial remedies and do not have an excess judgment from the trial court. The City cites House Rule 5.6(c) requiring the exhaustion of judicial remedies and s. 768.28(5), F.S., which provides that the “portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature.”

The City's argument is based on a hyper-technical-reading of the final judgment entered by the trial judge. While the final judgment is for only \$200,000, that is the limit allowed to be paid by the City due to the immunity provisions of s. 768.28,

F.S. The judgment goes on to say that the "judgment is entered without prejudice to the Plaintiff's right to pursue payment of the full verdict through passage of a claims bill." It is my opinion that the Claimants clearly have an excess judgment for which they may pursue a claim bill before the Legislature.

On the Merits: The greater weight of the evidence indicates that Mr. Brandi had the right-of-way and Officer Graham ran through a red light in emergency mode. This is my finding and is implied as the finding of the jury since Mr. Brandi was attributed less fault for the accident than that of Officer Graham. Had Officer Graham had a yellow light, the jury would not have attributed any fault to her. It was also part of the Florida Highway Patrol report that reads: "[w]itnesses stated that the police vehicle proceeded through the intersection on a red light with blue lights and siren." While finding that Mr. Brandi failed to yield to an emergency vehicle, the report also found that Officer Graham did not operate her emergency vehicle with due regard for the safety of all persons using the highway (meaning she did not have the right-of-way).

Ms. Graham clearly violated the Police Department's own policy on entering intersections in emergency mode, which prohibits entering the intersection "against the directional flow of traffic at a speed greater than 15 MPH and [ensuring] that cross-traffic flow has yielded in each lane before attempting to cross that lane." She also violated the provisions of s. 316.072(5)(b), F.S., regarding standard operating procedures for the operation of emergency vehicles, by not operating her vehicle with due regard for the safety of all persons using the roadway.

Officer Graham failed to operate her vehicle in a reasonably safe manner and conducted herself in direct violation of procedures of the Haines City Police Department. Although she claimed that she was responding to a distress call, there is no evidence to support this statement and the internal investigation conducted by the Haines City Police Department concluded that she was neither called nor dispatched to the location where she was headed.

While contested by the City, the greater weight of the evidence supports a finding that Mr. Brandi was wearing his seatbelt at the time of the accident and that he was not under the influence of drugs or alcohol at the time of the crash.

The jury found Mr. Brandi 40% at fault. This appears to be more liability than is justified by the facts, but I will defer to the jury's judgment on this issue. Since Officer Graham was not even on an authorized emergency call, this accident never should have occurred. As to damages, I find that the jury's award is reasonable and will not be disturbed.

Collateral Sources: Mr. Brandi received a payment of \$100,000 from his uninsured motorist insurance coverage.

Source of Funds: The City has an automobile insurance policy that will pay up to \$2,000,000 of a covered claim bill, such as this claim. This policy is with the Preferred Governmental Insurance Trust.

Prior Legislative History: HB 1339 by Representative Rouson and SB 280 by Senator Norman were filed during the 2011 Legislative Session. HB 1339 was never considered in the House and died in the Civil Justice Subcommittee. SB 280 was never considered in the Senate.

ATTORNEY'S/
LOBBYING FEES:

The Claimants' attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), Florida Statutes. Lobbyist's fees and costs are included with the attorney's fees.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that House Bill 1029 be reported FAVORABLY.

Respectfully submitted,

TOM THOMAS
Special Master

cc: Representative Rouson, House Sponsor
Senator Norman, Senate Sponsor
Judge Claude B. Arrington, Senate Special Master