



STORAGE NAME: h3547.CJS

DATE: 4/3/2015

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 3547; Relief/Javier Soria/Palm Beach County

Sponsor: Raulerson

Companion Bill: CS/SB 42 by Judiciary, Braynon

Special Master: Parker Aziz

Basic Information:

Claimants: Javier Soria

Respondent: Palm Beach County

Amount Requested: \$100,000.00

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

Respondent's Position: Palm Beach County will not oppose, obstruct or delay the passage of the claims bill or direct its representatives, agents or lobbyist to oppose, obstruct or delay the passage of said claims bill in the amount of \$100,000.00.

Collateral Sources: None reported.

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.

Notwithstanding the attorney's affidavit, the bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.

Prior Legislative History: House Bill 3515 by Representative Raulerson and Senate Bill 50 by Senator Braynon were filed during the 2014 Legislative Session. Neither bill was ever heard in any committee.

House Bill 1363 by Representative Raulerson and Senate Bill 40 by Senator Braynon were filed during the 2013

Legislative Session. Neither bill was ever heard in any committee.

Procedural Summary: On March 23, 2009, Javier Soria filed a medical malpractice suit against Palm Beach County, Case No. 502008 CA 015296 MC AO, in the 15th Judicial Circuit, in and for Palm Beach County, Florida. This claim included a loss of consortium claim filed on behalf of Mr. Soria's children. Prior to trial, the case was settled in mediation in the amount of \$300,000.00. Pursuant to the settlement, the County paid the sovereign immunity limit of \$200,000.00, and the parties agreed that the plaintiff could seek an additional \$100,000.00 through an uncontested claim bill. Mr. Soria's children's claim for loss of consortium has been paid and satisfied with funds from the initial payment of \$200,000.00. The County has a self-insured retention of \$500,000.00 for this claim. As such, the \$100,000.00 requested would be paid with County funds.

Facts of Case: On April 17, 2007, 36 year old Javier Soria was travelling on his motorcycle in the center lane on SR 807 in Delray Beach. At the same time, Juan Sepeda Casas was driving a Palm Beach County dump truck. While exiting the Palm Beach County maintenance complex, Mr. Casas failed to stop at a stop sign, pulling out into the path of Mr. Soria causing a collision between the two vehicles. The dump truck continued forward dragging Mr. Soria for approximately twelve feet. The Delray Beach Police Department charged Mr. Casas in the accident.

Mr. Casas was employed by Palm Beach County and was driving a County truck at the time of the accident. Mr. Casas was clearly within the scope of his employment at the time of the accident. Under the doctrine of respondeat superior, the County is vicariously liable for Mr. Casas' negligence in failing to stop at the stop sign and pulling into the path of Mr. Soria.

As a result of the collision, Mr. Soria sustained severe head trauma, including a subarachnoid hemorrhage, a right-elbow fracture, deep lacerations requiring wound debridement, multiple abrasions to his face, hands, legs, arms, upper-back pain, low-back disc herniation, left-hip pain, right-wrist pain, right-shoulder pain, and a right-knee linear tear that required bracing, physical therapy, and surgery.

Mr. Soria has undergone numerous surgical procedures, including irrigation debridement with placement of a temporary external fixator across the elbow joint, subsequent removal of the external fixator, and open reduction internal fixation on the ulnar fractures. Mr. Soria will likely require additional surgery to his right elbow, including elbow fusion or total elbow replacement, surgeries to his right wrist and shoulder, arthroscopic surgery to his right knee, and is a candidate for total knee replacement in the future. Mr. Soria suffers from multiple neurological injuries that cause chronic headaches, low-back pain, vision problems, sleep disturbance, depression, memory loss, anxiety, dizziness, tiredness, buzzing in the ears, numbness, tingling, and knee pain, all of which limit his daily activities.

According to American Medical Association guidelines, Mr. Soria's treating neurologist, Dr. Waden Emery, has assigned him a 34 percent impairment rating with 5 percent for headaches, 14 percent for lumbar radiculopathy, 5 percent for insomnia, and 10 percent for anxiety. Mr. Soria's treating orthopedist, Dr. Fernando Moya, has assigned him a 53 percent orthopedic disability impairment rating, which includes 36 percent for injuries to the right elbow, 6 percent for injuries to the right knee, 6 percent for injuries to the lumbar spine, and 5 percent for injuries to the right wrist. The neuropsychological assessment of Dr. Robert Brick concluded that Mr. Soria suffers from post-traumatic stress disorder, memory loss, poor management and organization skills, mood swings, daily headaches, constant ringing in his ears, insomnia, panic attacks, and amnesia that require cognitive therapy. Mr. Soria continues to suffer from pain and instability in his head, neck, back, body, and limbs and, in addition, continues to suffer from severe depression brought about by his pain, suffering, disability, and limitations. Mr. Soria's injuries have resulted in permanent cognitive

SPECIAL MASTER'S SUMMARY REPORT--

Page 3

impairment.

Mr. Soria's medical expenses total approximately \$200,254.00. Experts in life care planning and economics have determined that his future medical expenses are approximately \$640,000.00, and past and future lost earnings total approximately \$478,000.00. Mr. Soria's total economic damages exceed \$1,300,000.00. This figure does not include damages for pain and suffering. Mr. Soria's damages clearly exceed the settlement amount.

It should be noted that at the time of the accident Mr. Soria was in the country illegally on an expired work visa. Mr. Soria has subsequently moved back to Argentina, where he presently resides.

Recommendation: The bill needs to be amended to increase the amount to \$101,800 to reflect the full amount of the settlement agreement. I respectfully recommend that House Bill 3547 be reported **FAVORABLY**.

Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Raulerson, House Sponsor
Senator Braynon, Senate Sponsor
Sandra Stovall, Senate Special Master