



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/3/14	SM	Fav/2 amendments
02/17/15	JU	Fav/CS
03/23/15	CA	Favorable
	FP	

December 3, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 42** – Judiciary Committee and Senator Oscar Braynon, II
Relief of Javier Soria

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$100,000 BASED ON A SETTLEMENT AGREEMENT BETWEEN JAVIER SORIA, ET. AL., AND PALM BEACH COUNTY, WHICH RESOLVED A CIVIL ACTION THAT AROSE FROM THE NEGLIGENT OPERATION OF A COUNTY TRUCK THAT CAUSED SERIOUS BODILY INJURY TO JAVIER SORIA.

FINDINGS OF FACT:

On April 17, 2007, Javier Soria was traveling on his motorcycle northbound on SR 807 (near the 200 block of S. Congress Avenue) in Delray Beach, Palm Beach County, Florida. According to the police report prepared by the Delray Beach Police Department and an eye witness, Mr. Soria was traveling approximately 35-40 miles per hour in a 45 mph posted speed zone in the center of three lanes of northbound traffic. The eye witness was driving an automobile in the right lane of northbound traffic, alongside Mr. Soria, prior to her attempt to make a right turn into the Palm Beach County Complex at or near 225 S. Congress Avenue.

Mr. Juan Sepeda Casas, an employee of Palm Beach County, was driving a Ford dump truck with a utility trailer in tow that is owned by Palm Beach County. Mr. Casas exited the Palm Beach County complex, at or near 225 S. Congress Avenue,

from the east, which is controlled by a stop sign. Mr. Casas traveled westbound crossing the northbound lanes, violating Mr. Soria's right-of-way and causing Mr. Soria to strike the door of the county dump truck. Mr. Casas continued forward, dragging Mr. Soria who was still on his motorcycle underneath the dump truck, approximately 12 feet. The initial impact occurred in the left lane of northbound traffic as Mr. Soria attempted to avoid the collision.

The accident occurred at approximately 8:06 a.m., on a clear, dry day. Mr. Casas was charged with the accident for failure to yield the right-of-way. Mr. Soria was not cited in the police report as a contributing cause of the accident.

As a result of the collision, Mr. Soria suffered serious injuries, despite wearing a helmet. These injuries include: head trauma including a subarachnoid hemorrhage; right elbow fracture which required irrigation debridement with surgical placement of a temporary external fixator across the elbow joint, subsequent removal of the external fixator, and open reduction internal ulnar fixation; right arm swelling and deep lacerations requiring wound debridement; multiple abrasions to his face, hands, legs, and arms; upper back pain; aggravated disc herniation in lower back at L5-S1,¹ left hip pain; right wrist pain; right shoulder pain; right knee medial meniscus tear and articular cartilage damage; and cognitive impairments.

Delray Beach Fire-Rescue responded and provided emergency treatment to Mr. Soria at the scene, then transported him to Delray Medical Center, where he was admitted to trauma ICU. Mr. Soria remained in Delray Medical Center from April 17, until April 26, 2007. During that time he received a series of diagnostic and surgical procedures, including CT scans of his brain and other body parts, additional radiological imaging, and multiple operations to address the right elbow fracture. Medical expenses through discharge totaled \$171,900.

Subsequent medical expenses through November 13, 2009, totaled \$28,354. These expenses primarily arise from orthopedic medical care relating to post-operative treatment on the right elbow; physical therapy; pain in the lower lumbar, thoracic spine, right elbow, right shoulder, right arm, right wrist, right knee, and right leg; and neurological treatment for

the after-effects of the accident and concussion, including mental health counseling for nightmares, flashbacks, hypervigilance, depression, anxiety, insomnia, headaches, panic attacks, ringing in ears, difficulty coping with physical limitations, irritability, and memory loss.

Overall, counsel for Mr. Soria documented medical expenses in Florida totaling \$200,254. According to counsel for Mr. Soria, these medical expenses have been satisfied, and no further medical bills have been incurred in Florida.

Three of Mr. Soria's medical doctors assessed his injury-related disabilities as between 30% - 39% whole person impairment. The physician retained by Palm Beach County assessed Mr. Soria's physical disabilities at 39% whole person impairment, which is consistent with the assessments of the claimant's orthopedist. Mr. Soria's neurologist assessed Mr. Soria's neurological impairment (headaches, lumbar radiculopathy, insomnia, and anxiety) based on the combined values chart of the American Medical Association Guides to the Evaluation of Permanent Impairment as a 31 percent impairment to the body as a direct result of this accident.

Future medical care, with which the County's orthopedic physician concurs, is likely to include, among other things: surgery to address carpal tunnel syndrome in the right wrist, fusion or total elbow replacement in the right elbow, surgery on the lumbar spine, total knee replacement on the right knee, knee and shoulder arthroscopy, physical therapy, and medications for each of these joints.

A professional disability management specialist prepared a Life Care Plan based on a review of reports of the orthopedic and neurological medical specialists who had treated Mr. Soria, and concluded future medical expenses to be approximately \$641,905.

The disability management specialist also assessed Mr. Soria in order to perform a Vocational / Earning Capacity Assessment. She determined that his earning capacity had diminished by more than 50 percent as a result of his injuries and projected a loss of earning capacity of between \$474,104 and \$478,503 to age 67.

Mr. Soria is currently living in Argentina, his homeland, and receives minimal governmental medical care in Argentina. He is in the process of applying for more extensive state benefits due to his disability arising from this collision. However, according to counsel's representation, there are no assurances that Mr. Soria will obtain these additional benefits and he has not been provided with a definitive time frame on whether he will qualify for the supplemental medical coverage.

At the time of the accident, Mr. Soria was 36 years of age. Prior to the accident, Mr. Soria was employed in various manual-labor, physically demanding jobs, primarily as a construction worker. He was physically fit, having achieved the status of a master in taekwondo, enjoyed spending time with his children, and teaching them and others the art of taekwondo. Subsequent to the accident, he has not been able to resume these physical activities due to the injuries he suffered from the collision. Additionally, Mr. Soria is permanently cognitively impaired as a result of the accident.

Mr. Soria has three children. At the time of the accident, his eldest daughter was 17 years of age, less than one month from turning 18; his son was 13; and his youngest daughter was 7 years of age.

The third amended complaint, filed on March 23, 2009, alleged that Palm Beach County was vicariously liable for the negligence of its employee, Mr. Casas, in the operation of the county's truck; that Palm Beach County negligently retained Mr. Casas, and that Palm Beach County negligently supervised Mr. Casas. Mr. Casas had been involved in a series of prior motor vehicle accidents with county vehicles while employed with Palm Beach County as follows:

- August 28, 1989 – Palm Beach County determined the accident to be avoidable and serious. No specific facts of the accident were available.
- May 17, 1996 – Palm Beach County determined the accident to be avoidable. Mr. Casas had not thoroughly secured the trailer hitch onto the hitch ball. The trailer separated as equipment was loaded and the trailer struck the tailgate of the pick-up truck.
- July 7, 1997 – Palm Beach County determined the accident to be avoidable and a minor violation. The county truck Mr. Casas was driving struck a fixed object. No further details of the incident were provided.

- April 3, 2002 – Palm Beach County determined the accident to be avoidable and a minor violation. Mr. Casas was operating a loader, placing shellrock along the sidewalk and water's edge. He backed into an above ground hose bib.
- May 8, 2002 – Palm Beach County determined the accident to be avoidable. Mr. Casas struck a park entrance sign while backing a dump truck into a plant bed to dump mulch.

The complaint further alleged that in addition to the monetary damages suffered by Mr. Soria, as dependent children of Mr. Soria, the three children were deprived of the services, support, comfort, society, companionship and attention of their father as a result of the negligence of Mr. Casas.

Prior to the case proceeding to trial the parties agreed to settle the matter. Staff of the Palm Beach County Board of County Commissioners recommended that the board approve the settlement agreement, inclusive of attorney fees and costs, in the total amount of \$300,000. Justification to support this recommendation noted that the County's medical experts agreed that Mr. Soria sustained multiple orthopedic injuries and the County's neurologist diagnosed a permanent nerve injury to Mr. Soria's right brachial plexus, which innervates his right upper extremity. Furthermore, the justification noted, "Based upon the totality of Mr. Soria's injuries, medical bills, potential future medical care, pain and suffering, as well as the consortium claims of his three (3) children, exposure from a jury verdict could exceed \$1,000,000." The justification also acknowledged that settlement would save the County a significant amount of money in terms of litigation costs, and the County would only be required to pay its sovereign immunity limit of \$200,000 absent the Florida Legislature passing a claim bill in favor of the Plaintiffs for the additional sum of \$101,800. On August 17, 2010, the Palm Beach County Board of County Commissioners approved the settlement agreement in the amount of \$300,000.

In the Settlement Agreement and Release, Plaintiffs Javier Soria, Pamela Soria (eldest daughter who had reached majority at the time of the settlement agreement), Lucas Soria, a minor, by and through his father and next friend, and Agustina Soria, a minor, by and through her father and next

friend, and Defendant Palm Beach County agreed to entry of a Consent Final Judgment in the amount of \$300,000.

The settlement agreement indicated that Palm Beach County had already paid Javier Soria the sum of \$1,800 in full and final satisfaction of the property damage claim and that Palm Beach County would pay a total sum of \$198,200, subject to satisfaction of any liens, under the settlement agreement as follows:

- \$100,000 to Javier Soria
- \$ 39,280 to Pamela Soria, adult daughter
- \$ 29,460 to Lucas Soria, minor son
- \$ 29,460 to Agustina Soria, minor daughter.

Prior to distributing the \$198,200, Palm Beach County would pay the outstanding liens of the Palm Beach County Health Care District (lien amount of \$11,015.12, resolved for \$5,948.11) and an attorney lien (\$3,000) asserted by the plaintiff's prior attorney. The County would allocate satisfaction of the liens on a pro-rata basis among the plaintiffs based on the above allocation.

Finally, the settlement agreement provided that in order for the plaintiffs to be entitled to receive the remaining sum of \$101,800, the plaintiffs must obtain a claim bill from the Florida Legislature. Palm Beach County agreed not to oppose a claim bill seeking \$101,800.

Accordingly, Palm Beach County does not oppose the claim bill in an amount up to \$101,800 and has a self-insured retention of \$500,000 on this claim in the Casualty and Property Self-Insurance Fund from which the claim bill, if enacted, will be paid.

Recommended Amendments

As previously noted, the settlement agreement for \$300,000 was in addition to the \$1,800 property claim previously paid by Palm Beach County.² Accordingly, the settlement agreement provided for \$101,800 to be paid through a claim bill. Senate Bill 42 as filed, provides for Palm Beach County to pay \$100,000. Claimant's counsel has indicated a willingness to stipulate to the amount in the claim bill as filed.

Under the settlement agreement, all four plaintiffs are defined as the "First Party". The settlement agreement provides, "In

order for First Party to be entitled to receive the remaining sum of \$101,800, First Party shall be required to ... obtain a claim bill from the Florida Legislature. Further, the Consent Final Judgment refers to plaintiffs (in the plural) when providing for the claim bill in the amount of \$101,800. One of the whereas clauses in Senate Bill 42 refers to the right of action for loss of consortium for Mr. Soria's three children. Another whereas clause refers to the settlement agreement reached between Mr. Soria only and Palm Beach County. Senate Bill 42 also refers to payment under the claim bill to Mr. Soria only. According to counsel for all four plaintiffs, the consortium claims of the three children were fully satisfied in the settlement agreement prior to the claim bill and that the compensation under the claim bill is to be directed to Mr. Soria only. In order to eliminate any ambiguity between the settlement agreement, consent final order, and the claim bill, the whereas clauses in the claim bill should be amended to reflect the fact that the three children were a party to the settlement agreement and that their claims have been fully compensated by Palm Beach County from the \$200,000 paid under the waiver of sovereign immunity limit.

The first whereas clause in SB 42 indicates that Mr. Soria was traveling on SR 807 in West Palm Beach. The accident occurred in Delray Beach and the claim bill should be amended to correct this fact. Other technical corrections are necessary to conform the facts in the whereas clauses to the evidence presented to the Special Master.

CONCLUSIONS OF LAW:

Section 316.123, F.S., requires a driver of a vehicle approaching a stop intersection indicated by a stop sign to stop before entering the intersection. After stopping, the driver is to yield the right-of-way to any vehicle which ... is approaching so closely on the highway as to constitute an immediate hazard during the time when the driver is moving across or within the intersection. Mr. Casas had a statutory duty to yield the right-of-way to Mr. Soria's vehicle, which he negligently failed to do. This breach was the direct cause of the collision between the two vehicles and the serious bodily injuries suffered by Mr. Soria as a result of the collision. Furthermore, the serious bodily injuries suffered by Mr. Soria as a result of the collision, support the claim for loss of consortium by Mr. Soria's three children pursuant to s. 768.0415, F.S.

Under the doctrine of respondeat superior, Palm Beach County is vicariously liable for the negligence of its agents and employees, when such acts are within the course and scope of the agency or employment. See Mallory v. O'Neil, 69 So.2d 313 (Fla.1954), and s. 768.28, F.S. At the time of the accident, Mr. Casas was an employee of Palm Beach County who was acting within the course and scope of his employment and operating a county vehicle which caused the collision and resulting injuries. Accordingly, the negligence of Mr. Casas is attributable to Palm Beach County.

This Special Master is not persuaded that the evidence supports the remaining two counts, relating to Palm Beach County negligently retaining and supervising Mr. Casas. Nevertheless, the evidence does support a claim upon which relief may be granted as discussed above and the parties have reasonably and thoughtfully executed a settlement agreement to resolve the matter.

Palm Beach County, as respondeat superior, is 100 percent responsible for the damages suffered by Mr. Soria and his three children. The sum of \$300,000 in the settlement agreement, which was agreed to prior to lengthy litigation, is a reasonable and responsible resolution for all parties given the medical expenses incurred prior to settlement and the probable medical expenses and other financial exposure the county might face upon an adverse trial verdict and judgment.

As provided in s. 768.28, F.S. (2010), when the settlement agreement was executed, sovereign immunity shields Palm Beach County against tort liability in excess of \$200,000 per occurrence, absent Legislative enactment of a claim bill. Unless a claim bill is enacted, Mr. Soria will not be able to realize the full benefit of the settlement agreement.

ATTORNEYS FEES:

Section 768.28(8), F.S., states that no attorney may charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of any judgment or settlement. Claimant's counsel, Diana Santa Maria, Esq., has submitted an affidavit that her fees, as well as the lobbying fees, costs, and other similar expenses relating to this claim will not exceed 25 percent of the total amount awarded under the claim bill.

RECOMMENDATIONS: Based upon the foregoing, I recommend that Senate Bill 42 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Sandra R. Stovall
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

CS by Judiciary on February 17, 2015:

The committee substitute corrects several factual errors in the “whereas clauses” of the original bill based on information presented to the special master. Specifically, the committee substitute:

- Corrects the location of the accident, which occurred in Delray Beach, not West Palm Beach.
- Corrects the claimant’s disability impairment ratings.
- Clarifies that the consortium claims of the claimant’s three children have been fully satisfied and that the claim bill is for the relief of Javier Soria only.

The committee substitute also increases the amount of the appropriation in the underlying claim bill by \$1,800 for a total appropriation of \$101,800. According to the special master, the increased amount reflects the full amount of the settlement between the claimant and Palm Beach County.

¹ Mr. Soria had a pre-existing L5-S1 injury due to a motor vehicle accident (not a motorcycle) that occurred approximately one year earlier. According to counsel, Mr. Soria had sought chiropractic care and was doing well at the time of this accident.

² All payments made by Palm Beach County, prior to a Legislatively enacted claim bill, totaled \$200,000, in accordance with the waiver of sovereign immunity limit per occurrence.