



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
3/23/17	SM	Favorable
3/28/17	JU	Fav/CS
4/18/17	CA	Favorable
4/25/17	RC	Favorable

March 23, 2017

The Honorable Joe Negrón
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 46** – Judiciary Committee and Senator Bill Montford
HB 6521 – Representative Evan Jenne
Relief of MARY MIFFLIN-GEE, an Incapacitated person, by and through
MARILYN JELKS, as Guardian of the Person and Property of MARY
MIFFLIN-GEE.

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM BASED ON A SETTLEMENT AGREEMENT WITH THE CITY OF MIAMI FOR \$2,500,000 FOR PERMANENT INJURIES SUSTAINED BY MARY MIFFLIN-GEE DUE TO THE NEGLIGENT TRANSPORTATION OF MS. MIFFLIN-GEE BY CITY OF MIAMI, DEPARTMENT OF FIRE-RESCUE EMPLOYEES. THIS IS A LOCAL BILL WHICH REQUESTS \$2,300,000 TO BE PAID TO MARILYN JELKS, AS LEGAL GUARDIAN OF MARY MIFFLIN-GEE.

FINDINGS OF FACT:

On October 25, 2012, at approximately 11:00 a.m., Ms. Mifflin-Gee was found in a vehicle, in a parking lot in Miami, Florida, unconscious, slumped over the steering wheel, and foaming from the mouth. A witness called 911 and the City of Miami, Department of Fire-Rescue, responded to assist Ms. Mifflin-Gee.

The City of Miami, Department of Fire-Rescue, records¹ reveal that paramedics/EMTs Eric Hough, Marc Alexandre, and Lt. Steve Mason responded to the call. Hough was driving, Mason was the officer in charge, and Alexandre was crew. They arrived at the scene at 11:15 a.m., and to Ms. Mifflin-Gee at 11:16 a.m.

Mason reached Ms. Mifflin-Gee first. He found her sitting in a vehicle, phone in her lap, eyes open, foaming at the mouth, and unconscious. He assessed her level of consciousness as a Glasgow Coma Scale of three.² She was not responsive to painful stimuli, her pupils were non-reactive, but her airway was open with shallow breath sounds.

At 11:20 a.m. Mason instructed Alexandre to check Ms. Mifflin-Gee's blood sugar, which was 196. At 11:22 a.m. Alexandre took her vital signs which were: Systolic Blood Pressure 240, Respirations 10, Pulse 126, and a SpO₂ 92%. Mason then made the decision to extricate Ms. Mifflin-Gee from the vehicle, and Hough brought the gurney from the Fire-Rescue truck.

Mason and Hough lowered the gurney to the low position, about 12 inches off the ground. Alexandre and Hough extricated Ms. Mifflin-Gee from the vehicle. Hough took Ms. Mifflin-Gee's torso by putting his arms under her armpits, and Alexandre took Ms. Mifflin-Gee's knees and feet. Hough and Alexandre then lifted Ms. Mifflin-Gee onto the gurney, put the head of the gurney up to a 45° angle, and put the side rails up.

None of the paramedics/EMTs remembered buckling the gurney lap belt prior to transporting Ms. Mifflin-Gee to the Fire-Rescue truck. All testified that it was standard practice for paramedics/EMTs to secure a patient with a lap belt before beginning to transport a patient on a gurney.

¹The City of Miami, Department of Fire and Rescue, reports for the events of October 25, 2012, include the Ambulance Report and the Incident Report. However, they are almost identical in content and are read in *pari materia*.

² The *Glasgow Coma Scale* is the most widely used neurological scale designed to give a reliable and objective way of recording the state of consciousness of a person. A score of 3 indicates the person does not open their eyes even in response to painful stimuli, does not verbally respond to commands or stimuli, and does not move in response to pressure stimuli. **Teasdale, Sir Graham**, *Forty years on: updating the Glasgow Coma Scale*, Nursing Times, October 15, 2014, Available at: <https://www.nursingtimes.net/Journals/2014/10/10/n/p/1/141015Forty-years-on-updating-the-Glasgow-coma-scale.pdf>, (last visited Feb. 22, 2017).

Alexandre and Hough rolled Ms. Mifflin-Gee toward the Fire-Rescue truck. They put the gurney in the high position, approximately 3 to 3-1/2 feet off the ground. Mason was at the back of Ms. Mifflin-Gee's vehicle taking witnesses' statements.

While at the foot of the gurney at the Fire-Rescue truck, Alexandre prepared to unlock the gurney to put the loading wheels onto the truck. Hough prepared to put Ms. Mifflin-Gee's head down in the low position. At this point Alexandre felt the angle of the gurney change, and Ms. Mifflin-Gee, while still with her head elevated to a 45 degree angle, came over the top of the side rail, rolled off the gurney, and hit her head on the ground. The gurney lap belt was not buckled. All three paramedics/EMTs confirm that Ms. Mifflin-Gee's head hit the ground, and that there was now an abrasion on her forehead, which was not present at the initial evaluation.

Hough and Alexandre then lifted Ms. Mifflin-Gee back on to the gurney in the flat position, and Mason buckled the lap belt. Ms. Mifflin-Gee was then lifted into the Fire-Rescue truck. According to the paramedic/EMT records, the transport to the Fire-Rescue truck and Ms. Mifflin-Gee's fall took place in the span of five minutes.

At 11:27 a.m., Ms. Mifflin-Gee was in the Fire-Rescue truck and Alexandre and Mason began to re-assess her condition. Her systolic blood presser had increased to 246 and pulse was up to 146, and SpO2 was down to 82%. At 11:28 a.m., an EKG was performed by Hough which showed a sinus tachycardia of 146.³ Alexandre started an IV at 11:31 a.m. in an attempt to stabilize Ms. Mifflin-Gee's condition, but the fluids failed to produce any change to her condition.

At 11:31 a.m., the City of Miami Fire-Rescue truck left the scene, headed for Jackson Memorial Hospital in Miami, Florida. While in route at 11:32 a.m., Ms. Mifflin-Gee remained unconscious and respirations were insufficient. Alexandre administered Versed⁴, and at 11:33 a.m., Mason attempted to intubate Ms. Mifflin-Gee. The records indicate that the

³ Sinus tachycardia is a heart rate of greater than 100 beats per minute in an average adult. The normal resting heart rate is of the average adult is 60 to 100 beats per minute.

⁴ Versed is the trade name for midazolam hydrochloride which is a sedative used for minor medical procedures. Versed (2010). In *Physicians' Desk Reference* (65th ed.), Montvale, NJ: PDR Network.

endotracheal tube was confirmed by Mason to have been successfully placed in the trachea.

Ms. Mifflin-Gee was admitted to the Jackson Memorial emergency room at 12:05 p.m. On admission, her blood pressure was 240/126 and blood sugar was 196. She was unresponsive and comatose. A small contusion and right frontal swelling were noted by emergency room personnel. Her pupils were fixed and dilated.

It was also noted by the emergency room physician that Ms. Mifflin-Gee had a distended abdomen and that her endotracheal tube had been improperly placed in her esophagus. The paramedics efforts to ventilate Ms. Mifflin-Gee during transport between 11:33 a.m. and 12:05 p.m. had actually been putting air in her stomach, not her lungs. The ER physician removed the endotracheal tube and properly placed a new one in the trachea. The abdomen was then decompressed with the placement of an NG tube.

An EKG, CT scan of the brain, lab work, and a neurosurgical consult were immediately ordered. All tests contained abnormal findings. The CT showed a brain midline shift to the right and a large left sided holohemispheric subdural hematoma and extension subarachnoid hemorrhage.

At 12:20 p.m., Ms. Mifflin-Gee was transitioned to the neurosurgery medical service and the care of Dr. M. Ross Bullock, M.D. At 12:40 p.m., Ms. Mifflin-Gee was taken for emergency neurosurgery. She underwent a left frontal-parietal craniotomy to remove a large subdural hematoma and the placement of a ventriculostomy.

Ms. Mifflin-Gee was taken from surgery to the neuroscience intensive care in a deep coma and with the endotracheal tube still in place. Ms. Mifflin-Gee remained at Jackson Memorial Hospital in a near vegetative state until February 12, 2013. During that time, her endotracheal tube was replaced with a permanent tracheotomy tube (T-piece). A feeding tube (PEG tube) was inserted. She developed post-operative hydrocephalus and underwent the placement of a right occipital ventricular-peritoneal shunt which required a revision for blockage and she underwent a cranioplasty to cover her brain where the bone had been removed.

February 12, 2013, Ms. Mifflin-Gee was transferred to Jackson Memorial Long Term Care Facility in a persistent vegetative state, with a tracheostomy, a feeding tube, and was totally unresponsive to her external environment.

On March 19, 2013, Ms. Mifflin-Gee's sister, Marilyn Jelks, was appointed guardian of Ms. Mifflin-Gee's person and property. Ms. Mifflin-Gee was not married and had no children.

On April 29, 2013, Ms. Mifflin-Gee returned to Jackson Memorial Hospital with a urinary tract infection, acute renal failure, bedsores and subsequent respiratory distress. She was treated aggressively with antibiotics and fluids, but developed respiratory failure and was placed on a ventilator. She also developed significant rectal and gastric bleeding, and a deep venous thrombosis (DVT) for which they inserted an inferior vena cava filter.

On May 28, 2013, Ms. Mifflin-Gee returned to the Jackson Memorial Long Term Care Facility, and remains there in a persistent vegetative state with a feeding tube, tracheostomy, chronic respiratory failure, and with periodic skin breakdowns. Her family resides in Georgia and wishes to transport her to a facility near them but Claimant's dependency on the tracheostomy has complicated any such plans.

The record evidence shows that at no time has Ms. Mifflin-Gee ever regained conscious from the time she was found in the vehicle to the present.

No expert testimony was presented on the issue of whether it was a breach of duty, or the standard of care, for the paramedics/EMTs not to have buckled, the gurney's lap belt, prior to beginning to transport Ms. Mifflin-Gee to the Fire-Rescue truck. However, Hough, Mason and Alexandre, all trained paramedics/EMTs, testified that it was their understanding that buckling the gurney belt was part of proper procedure in transporting an unconscious patient and that it should have been done.

The record evidence also shows that Mason did not correctly insert Ms. Mifflin-Gee's endotracheal tube in the Fire-Rescue truck on the way to the hospital. This evidence does not require expert testimony to establish it as yet another breach

of the standard of care by City of Miami, Department of Fire-Rescue employees. It is within the realm of common knowledge and experience for one to know that if you are trained to perform a professional task, and you do it incorrectly without recognizing the error, you have breached the standard of care. This breach of the standard of care resulted in inadequate ventilation of Ms. Mifflin-Gee for at least 32 minutes during transport to the hospital. This inadequate ventilation more likely than not aggravated Ms. Mifflin-Gee's already compromised physical condition.

The affidavit of M. Ross Bullock, M.D., neurosurgeon, indicates that it is his opinion that Ms. Mifflin-Gee's large subdural hematoma was the result of trauma from her three-foot fall off the gurney, as there was no other history of prior trauma. He further concluded that her persistent vegetative state was caused by her traumatic subdural hematoma.

The report of Craig H. Lichtblau, M.D., a board certified physical medicine and rehabilitation specialist, was submitted as an expert opinion on the issues of Ms. Mifflin-Gee's life expectancy and future medical needs.⁵ Dr. Lichtblau's report is based on his evaluation of Ms. Mifflin-Gee on November 16, 2014, and a review of her social and medical history reported by her sister, a review her medical records, and research on costs of long-term institutional care in Florida.

It is Dr. Lichtblau's opinion, within a reasonable degree of medical certainty, that Ms. Mifflin-Gee is in a persistent vegetative state⁶ and that she will survive in that state for seven to 12 years. At the time of Ms. Mifflin-Gee's injury, she was a 64 years old, Afro-American, single, retired, with no prior history of debilitating health issues, and had a life expectancy of 21.0 years.⁷ Dr. Lichtblau further included with

⁵ There are no issues of pain and suffering or lost wages. Ms. Mifflin-Gee was unemployed at the time of her injury, and persons in a persistent vegetative state do not feel pain. *See footnote 6.*

⁶ Dr. Lichtblau describes a persistent vegetative state as a clinical condition of complete unawareness of self in the environment, accompanied by sleep/awake cycles, along with either complete or partial preservation of the hypothalamic and brain stem autonomic functions. Patients in a persistent vegetative state do not feel pain and have a substantially reduced life expectancy. For most patients in this condition, life expectancy ranges from 2 to 5 years. Survival beyond 10 years is unusual. He cites as authority, *The New England Journal of Medicine, Medical Aspects of the Persistent Vegetative State*, Vol. 330, No. 22, pp. 1572 - 1579, published June 2, 1994, available at <http://www.nejm.org/toc/nejm/330/22>, (last visited March 1, 2017).

⁷ U.S. Department of Health and Human Services, Center for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics System, *National Vital Statistics Report, United States Live Tables, 2012*, Vol. 65, No.8,

his report two cost estimates for Ms. Mifflin-Gee's future care in a long term institutional setting. Based on his comprehensive medical evaluation of Ms. Mifflin-Gee, both institutions concluded that to provide Ms. Mifflin-Gee with room, board, appropriate therapies, and case management would cost \$1,500 per day. Based on Dr. Lichtblau's life expectancy range for Ms. Mifflin-Gee, it is reasonable to calculate her future medical expenses as between \$3,960,250.00 and \$6,789,000.00.

August 13, 2013, a civil complaint for negligence was filed against the City of Miami, Department of Fire-Rescue by Marilyn Jelks, as Custodian of the person and property of Mary Mifflin-Gee, an incapacitated person.

A settlement was reached for \$2,500,000, and the Settlement Agreement was signed December 21, 2016. The City of Miami requests the approval of a claim bill for \$2,300,000, and Lloyds of London, the City of Miami's excess insurance company, will reimburse the City of Miami \$2,000,000.

Ms. Mifflin-Gee's past medical expenses paid by Medicaid were \$374,388.50, which were reduced to \$128,164.37, and the Medicaid lien has been satisfied.

LEGISLATIVE HISTORY:

SB 46 by Senator Montford is the first time this claim has been introduced to the Legislature.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine whether the City of Miami is liable for the negligence of its employees, acting within the course and scope of their employment, as paramedics/EMTs with the City of Miami's Department of Fire-Rescue; and if so, whether the amount of the claim is reasonable. This report is based on the record evidence presented to the Special Master prior to, during, and after the hearing at the request of the Special Master.

To prevail in a negligence case, a plaintiff must establish by a preponderance of the evidence that there was a standard of care or duty owed by a defendant to the plaintiff, that the defendant breached that duty or standard of care, and that the

breach was the cause of both the plaintiff's injuries and damages. The plaintiff must introduce evidence which affords a reasonable basis for the conclusion that, more likely than not, the conduct of the defendant was a substantial factor in bringing about the injury and damages.⁸

The terms of the settlement agreement between the City of Miami and Ms. Mifflin-Gee's guardian, establish that paramedics/EMTs Eric Hough, Marc Alexandre, and Lt. Steve Mason were employees of the City of Miami and were acting within the course and scope of their employment as Department of Fire-Rescue paramedics/EMTs, at the time they responded to the 911 call for Ms. Mifflin-Gee.

Ms. Mifflin-Gee's representatives presented no expert testimony on what duty or standard of care was required by the paramedics/EMTs when transporting an unconscious patient. However, all three paramedics/EMTs testified that, although they put the gurney's side rails up, it was part of the routine transport procedure to buckle the lap belt before transporting a patient in Ms. Mifflin-Gee's condition.

Section 70.702, F.S., qualifies a witness as an expert by knowledge, skill, experience, training, or education. Their testimony thus established their duty and standard of care required. The gurney's lap belt should have been buckled before attempting to transport Ms. Mifflin-Gee to their Fire-Rescue truck. That duty was clearly breached in this case,

As a result of the paramedics/EMTs breach of their duty to apply the gurney lap belt when transporting Ms., Mifflin-Gee, when the "angle of the gurney changed," the side rails alone were insufficient to hold Ms. Mifflin-Gee to the gurney. Without the lap belt properly buckled, securing Ms. Mifflin-Gee to the gurney, she rolled off, fell to the ground and struck her head.

The affidavit of Dr. Bullock provides an expert opinion on the cause of Ms. Mifflin-Gee's large subdural hematoma. He clearly states that it was the result of trauma from her three-foot fall off the gurney. He further concludes that her persistent vegetative state was caused by her traumatic subdural hematoma from the fall.

⁸ *Gooding v. University Hospital Bldg., Inc.*, 445 So. 2d 1015, 1984 Fla. LEXIS 2545 (Fla. 1984).

The report of Dr. Lichtblau's provides, within a reasonable degree of medical certainty, evidence of Ms. Mifflin-Gee's life expectancy and estimated cost of her future medical care. It is Dr. Lichtblau's expert opinion that Ms. Mifflin-Gee, with reasonable medical certainty, has a life expectancy of seven to 12 years and that medical costs that will result are between \$3,960,250 and \$6,789,000. This clearly makes the settlement amount of \$2,500,000 a reasonable compromise given the risks and cost of a jury trial.

After considering all of the facts in this case, I conclude that the defendant's employees had a duty to Ms. Mifflin-Gee to buckle the gurney lap belt before attempting to transport her, that they breached that duty, and that the breach caused her injuries and damages. The amount of the claim bill is reasonable and appropriate.

ATTORNEYS FEES:

Senate Bill 46 restricts the total amount of attorney fees, related to the claim to a maximum of 25 percent of the total amount awarded. The total attorney fees will be \$625,000 of the \$2.5 million dollar settlement.⁹ The claimant's attorney has not retained a lobbyist, and outstanding costs total \$17,110.39.

RECOMMENDATIONS:

The undersign recommends that Senate Bill 46 be amended to direct the Guardian for Mary Mifflin-Gee, Marilyn Jelks, establish a Special Needs Trust for the benefit of Mary Mifflin-Gee and that all payments of funds, after the deduction of attorney's fees, and costs, be made to the Mary Mifflin-Gee Special Needs Trust. Otherwise, the undersigned recommends that Senate Bill 46 (2017) be reported FAVORABLY.

⁹ See affidavit of Attorney Jason D. Weissner, dated November 17, 2016; and Searcy, Denney, Scarola, Barnhart, & Shipley, v State of Florida, 194 So. 3d 349 (Fla. 2017).

Respectfully submitted,

Tari Rossitto-Van Winkle, R.N., J.D.
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The CS provides for the proceeds of the claim bill to be placed in a special needs trust, which will protect Ms. Miffin-Gee's eligibility for means-tested government benefits. The CS also no longer includes references to the City's insurer, corrects an error in the whereas clauses, and revises the limit on fees to conform to a recent Supreme Court opinion.