



STORAGE NAME: h6551.CJC

DATE: 3/24/2017

March 24, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6551 - Representative Santiago
Relief/Ramiro Companioni/City of Tampa

THIS IS A CONTESTED CLAIM FOR \$17,828,800 BASED ON A JURY VERDICT AGAINST THE CITY OF TAMPA, IN WHICH THE JURY DETERMINED THAT THE CITY WAS 90 PERCENT RESPONSIBLE FOR INJURIES SUSTAINED BY RAMIRO COMPANIONI DUE TO THE NEGLIGENT OPERATION OF A CITY TRUCK BY ONE OF ITS EMPLOYEES.

FINDING OF FACT:

It is undisputed that on November 22, 1996, at approximately 11:57 AM, 33-year-old Ramiro Companioni was travelling on his motorcycle, wearing a helmet, eastbound on East Hillsborough Avenue, a major east-west road that has three lanes in each direction with a shared turn lane in the median. Somewhere on the far-right of the south side of the road, three City Water Department employees had been working on a water valve – with a large flashing sign behind the three trucks to notify drivers of their presence. The three city employees were driving separate city-owned pick-up trucks and had packed up to leave to break for lunch. The drivers were Mr. Pierola, Mr. Foster, and Mr. Allen. Mr. Pierola was driving the truck that was involved in the collision and Mr. Allen was driving the truck pulling the flashing sign board. All three drivers testified that they never saw or heard Mr. Companioni prior to

the collision.

There is conflicting evidence as to which lane Mr. Companioni was in, the speed he was traveling, whether the City trucks were in the far right lane or off the road on the shoulder, what order the trucks were parked, which truck pulled from the lane first, and where the trucks were heading. I find, by the greater weight of the evidence in the record that Mr. Companioni was driving in the lane closest to the median turn lane. Mr. Companioni has no memory from the collision other than he was in the median-side lane. The three City drivers all say they never saw the motorcycle.

I find that the three City Water Department trucks were parked in the far-right eastbound lane on the south side of the road, the lane closest to the shoulder, with the towed flashing sign-board – leaving only two available lanes for eastbound traffic. They were not parked on the shoulder as was assumed by the City's accident reconstruction expert, nor were they parked in the order assumed by the expert. Mr. Pierola's truck was parked furthest forward, Mr. Foster was parked in the middle, and Mr. Allen was parked furthest back (meaning furthest west) towing the flashing sign-board to warn approaching traffic.

It is unclear as to what order the trucks pulled away. The record supports a finding that Mr. Allen, the truck behind the other two, pulled out first into the center lane to pass the first two trucks, and then returned to the curbside lane in front of the other trucks – whereby he proceeded forward and pulled right into a vacant lot in order to lower the flashing sign-board he had in tow. Mr. Allen never saw the accident and was not aware of what the other trucks did as they pulled away.

The greater weight of the evidence is that Mr. Pierola pulled away next and was heading to the middle turn lane – thereby requiring that he cross from the curbside lane, across the middle lane, across the median-side lane in order to get in the median turn lane to make his left-hand turn at 50th street. This becomes apparent because Mr. Foster stated that he did not see the motorcycle until, while driving in the center lane, he saw the motorcycle crash into Mr. Pierola's truck – the crash occurring in the median side lane to his left and ahead of him. If Mr. Foster had pulled away prior to Mr. Pierola, he would not have seen the collision.

There is a wide range of evidence and testimony in the record as to the speed the motorcycle was traveling prior to the collision. Mr. Companioni claims he was traveling at the 45 miles per hour speed limit. Officer Thiel, with the Tampa Police Department, wrote a traffic report that stated Mr. Companioni was going 60 to 70 miles per hour. However, in the same report, Officer Thiel stated those numbers are not based on facts. Officer Thiel stated that based on the damage to the bike

and the victim lead him to believe that Mr. Companioni was speeding.¹ Mr. Foster testified they were going 5-10 miles per hour, no more than 15 mph. Mr. Pierola says he was going 20-25 mph.

Mr. Pierola testified that he pulled out behind Mr. Allen and was headed for a nearby park to eat his lunch he had brought with him that day. He stated that he wanted to cross the eastbound lanes on East Hillsborough Avenue to make a left-hand turn on 50th to go to the park. While crossing these lanes, he testified that he heard a noise and thought a barricade had fallen from the truck bed. Mr. Pierola drove his vehicle into the median turn lane and got out of his truck to retrieve the barricade. It was at this time that Mr. Pierola saw the motorcycle lodged under the truck's bumper. Mr. Pierola later testified that he never saw the motorcycle and he never heard a loud motorcycle noise before the collision but did feel the impact when he was changing lanes. The collision occurred in the median side lane.

Mr. Foster, who was driving the third vehicle, told the responding officer that after entering the roadway he looked forward and saw that a motorcycle had hit the back of Mr. Pierola's truck. Mr. Foster further testified that the motorcycle must have driven by him as he entered the roadway, but he did not see or hear it.

Responding Officer Thiel reported that, in his estimate, Mr. Companioni was traveling 25 miles per hour over the speed limit based on the damage he observed to the vehicles, but the officer could not accurately make this calculation without knowing the speed of the truck. His report found that Mr. Pierola had violated Mr. Companioni's right of way with an improper lane change. Tampa Detective Willenham also indicated that he believed both drivers contributed to the accident.

Mr. Companioni was rendered unconscious at the scene and taken to Tampa General Hospital where he was in an induced coma in ICU for nearly a month. In the months and years since the accident, Mr. Companioni has undergone more than 20 surgeries relating to his injuries sustained from the accident. His injuries include internal lacerations of his organs resulting in the loss of his large intestine, removal of his spleen, multiple fractures of his right hip and the loss of control of his right hip, leg and foot.

LITIGATION HISTORY:

Ramiro Companioni filed a lawsuit against the City of Tampa for negligence in the 13th Judicial Circuit, in and for Hillsborough County, Florida. In March of 2004, almost eight years after the accident, the case went to verdict and a Final

¹ However, no citations for excessive speed were issued regarding the accident.

Judgment was entered in favor of Mr. Companioni in the amount of \$19,932,000. The jury determined that the City was 90% negligent and Mr. Companioni was 10% comparatively at fault for the accident, reducing the amount owed by the City to \$17,928,800.

The City of Tampa has paid \$100,000 pursuant to the sovereign immunity limit imposed by s. 768.28, F.S., effective at the time of the accident, leaving the amount requested under the claim bill of \$17,828,800. From the \$100,000 already paid by the City, the attorneys collected \$25,000 in fees² and the following costs: \$33,194.08 in costs incurred by D. Russell Stahl, \$9,466.53 in costs incurred by Dominic O. Fariello, P.A., \$4,733.23 to satisfy medical liens, \$13,000 to Peachtree Settlement Services for post settlement advance/loan, and \$5,378.09 to satisfy other outstanding medical liens. Of the \$100,000 payment, the Claimant received \$14,504.54.

The City filed and argued two motions for new trial and remittitur. The first motion alleged improper conduct by Plaintiff's counsel, and the motion was denied. The record reflects numerous objections by the City as to Plaintiff's counsel's presentation; however, defense counsel did not move for a mistrial. The Court denied the City's motions to sanction Plaintiff's counsel and hold him in contempt but did sustain objections with regards to Plaintiff's counsel's conduct.

The trial court granted the City's second motion for a new trial concerning allegations of misrepresentations made by two jurors during voir dire. It was later determined that two of the six jurors were convicted felons, and they hid that information from the court. In a split decision, the Second District Court of Appeal reversed the trial court's grant of a new trial.³

Additionally, the City made attempts to have the judgment set aside or reduced on the grounds that the verdict was excessive, but those attempts were rejected.⁴

² \$15,000 was paid to D. Russell Stahl, \$5,000 was paid to Dominic O. Fariello, P.A., \$4,000 was paid to Podhurst Orseck – Joel Easton, Esq., and \$1,000 was paid to Web Brennan, Esq.

³ *Companioni v. City of Tampa*, 958 So. 2d 404, 417 (Fla. 2d DCA 2007)(Court held the City was not entitled to a new trial on the basis of the jurors' prior felony convictions because there had been no showing of actual bias or prejudice or that the City did not receive a fair and impartial trial.)

⁴ *City of Tampa v. Companioni*, 74 So. 3d 585, 587 (Fla. 2d DCA 2011). ("The verdict against the City is indeed substantial; however, the record reflects that Mr. Companioni sustained horrific injuries that, as noted by the trial court, are extensive and permanent. We also note that while the City challenges the award as excessive at trial it offered no suggestion to the jury as to what would be a proper award for injuries it acknowledged were 'serious.' In fact, the City recognized that for the remainder of his life, Mr. Companioni 'was going to have problems' because of his disability which caused him 'discomfort and pain and suffering.' When it went to deliberate, the jury had only the damage figures suggested by Mr. Companioni's counsel, and given the nature of the injuries Mr. Companioni sustained, it is not surprising the jury picked a figure at the high end of the range counsel suggested.").

CLAIMANT'S POSITION:

Claimant testified at trial that he was going the speed limit, 45 miles per hour, at the time of the accident. Additionally, at trial, Claimant offered the testimony of former Highway Patrolman and accident investigator Dennis Payne who reviewed medical records, the motorcycle, and photographs of the truck and opined that Mr. Companioni was traveling at 45 miles per hour. Mr. Payne further noted that, based on scientific data, it was highly unlikely that Mr. Companioni struck the truck at a speed of 55 miles per hour and survived an impact speed of greater than 30 miles per hour.

Further, Claimant posited that regardless of his speed, he had the right-of-way in the outside lane, and had Mr. Pierola not improperly entered Mr. Companioni's lane and cut him off, the accident might have been avoided.

RESPONDENT'S POSITION:

Both before and after the accident Mr. Companioni was cited for violations of excessive speed and reckless driving. He was cited for driving while his license was suspended five times before and up to the accident and two times after the accident. On the day of the accident, Mr. Companioni was driving with a suspended license but has stated that he did not know his license was suspended at the time.

In the accident report from the crash, the police estimated Mr. Companioni was traveling 70 miles per hour at the time of the crash.⁵ The City offered testimony of accident reconstructionist, Dr. Charles Benedict, who testified that based on his reconstruction of the scene Mr. Companioni was traveling far above 45 miles per hour and but for the excessive rate of speed at which he was traveling, Mr. Companioni could have avoided the accident. Dr. Benedict stated that Mr. Companioni was traveling between 60 and 70 miles per hour and, before the impact, braked to slow down to an impact speed of 55 miles per hour at the time of the crash, resulting in an impact speed of 35 miles per hour.

CONCLUSION OF LAW:

Liability

Like any motorist, Mr. Pierola had a duty to operate his vehicle with consideration for the safety of other drivers.⁶ By pulling in front of Mr. Companioni, Mr. Pierola breached his duty of care, which was the direct and proximate cause of Mr. Companioni's injuries. The City, as Mr. Pierola's employer, is liable for Mr. Pierola's negligent act.⁷

⁵ The officer investigating the scene noticed what appeared to be marks left from Mr. Companioni's leather gloves and leather plastered to the truck's paint. Additionally, the officer noted that there were dents in the tailgate from Mr. Companioni's body striking it. The officer determined that the damage done would require Mr. Companioni to have been traveling at least 70 miles per hour. No citations were issued in connection to this accident.

⁶ *Pedigo v. Smith*, 395 So.2d 615, 616 (Fla. 5th DCA 1981).

⁷ *Mercury Motors Express v. Smith*, 393 So.2d 545, 549 (Fla. 1981)(holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope

As discussed above, the jury determined that Ms. Pierola, based upon the negligent operation of his vehicle, was 90 percent at fault in this accident. This conclusion by the jury is supported by the greater weight of the evidence and is affirmed by the undersigned Special Master.

The City argued that it was not liable whatsoever for the accident. However, the record does not support this conclusion. Mr. Companioni had the right of way, had no reason to think Mr. Pierola would come into his lane, and was unable to avoid the accident once Mr. Pierola unlawfully pulled in front of him. This is supported by the record, as well as by the City Traffic Report and the Jury's Verdict.

As for the City's contention of Mr. Companioni's speed, the jury rightfully considered this matter and found Mr. Companioni to be 10% at fault. At trial, the jury heard the testimony of Dennis Payne, a former highway patrol trooper and accident reconstructionist. Mr. Payne testified that if Mr. Companioni was traveling at the speeds listed in the traffic report, then the impact would have killed Mr. Companioni. The City presented the testimony of Dr. Charles Benedict, a mechanical engineer, who estimated Mr. Companioni was traveling at 65 miles per hour. Certainly, speed was a factor in this accident but even if Mr. Companioni was traveling at excessive speed, it does not bar his recovery.⁸ The jury weighed his actions and found him to be 10% at fault. This special master finds no reason to disturb the jury's finding of fault.

Damages

The City argued that the damages awarded were too high. However, the undersigned finds that the damages, as found by the Jury, are supported by a preponderance of the evidence in the record. As stated by the doctors in the record – it is amazing Mr. Companioni survived this accident. The suffering caused by the numerous and lengthy medical procedures is incalculable. His loss of use of his bowels, resulting in the lifetime use of the colostomy bag, is daily reminder of the accident.

Upon his arrival at the Trauma Unit at Tampa General, it was noted that Mr. Companioni's rectum was fileted through the scrotum. Dr. Michael Albrink, his primary physician, testified

of their employment); see also *Aurbach v. Gallina*, 753 So.2d 60, 62 (Fla. 2000)(holding that the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another"). Also, see s. 768.28(9)(a), F.S., which provides that "[t]he exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity... of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property."

⁸ s. 768.81(2), F.S.

that Mr. Companioni's legs were ripped apart, like breaking a wish bone and that he suffered from multiple open fractures of the pelvis, shoulder, elbow, lumbar vertebrae, and right knee. Additionally, Mr. Companioni sustained a bowel injury and a ruptured urethra, lost portions of his colon, and suffered bleeding and damage to his peritoneal cavity and organs. His anus was ripped and sphincter ruined which has resulted in a permanent colostomy. Additionally, he injured the nerves to his genitals which has permanently damaged his sexual function. Both the femoral artery and sciatic nerve were severely injured.

Mr. Companioni underwent a tracheostomy and has tracheal scarring resulting in difficulty swallowing. He must use a colostomy bag to defecate and has bladder spasms and incontinence. He has frequent kidney stones. His core muscles are scarred, atrophied and weakened as a result of the accident and the more than twenty surgeries he has undergone since the accident.

Additionally, his four lower vertebrae and coccyx have been fused; his right hip is fused, and he has arthritis and bone calcification in his knee and hip joint. Mr. Companioni wears a right leg brace and one-third of his right quadriceps has been removed. He is dependent on a cane.

Neither side engaged a life planner or economist to determine the monetary amount necessary to sustain Mr. Companioni. Dr. Albrink, however, did testify that Mr. Companioni will need a lifetime amount of future medical care for his injuries.

Nothing has been presented to this special master to disturb the jury's determination of damages.

ATTORNEY'S/
LOBBYING FEES:

Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 7% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total \$4,512.32.

SOURCE OF FUNDS:

The City of Tampa has no insurance in connection with the claim bill. The City of Tampa has not specifically appropriated funding to pay the final judgment which is the subject of this claim bill. Any funds paid by the City for this claim bill will come from the City's self-insurance reserve fund or other funds legally available to the City for this purpose.

PRIOR LEGISLATIVE HISTORY:

This is the fourth session this claim has been introduced to the Legislature. In the 2016 Legislative Session, the claim was introduced as Senate Bill 42 by Senator Braynon and House Bill 3533 by Representative Rooney. Neither bill was heard in any committee of reference.

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In the 2015 Legislative Session, the claim was introduced as Senate Bill 56 by Senator Braynon and House Bill 3537 by Representative Rooney. Neither bill was heard in any committee of reference.

In the 2014 Legislative Session, the claim was introduced as Senate Bill 48 by Senator Braynon and House Bill 3517 by Representative Rooney. Neither bill was heard in any committee of reference.

In the 2013 Legislative Session, the claim was introduced as Senate Bill 42 by Senator Braynon and House Bill 1053 by Representative Workman. Neither bill was heard in any committee of reference.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that House Bill 6551 be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Santiago, House Sponsor
Senator Galvano, Senate Sponsor
Diana Caldwell, Senate Special Master