



STORAGE NAME: h6515.CJC h6515.CJC

DATE: 11/29/17 11/29/2017

November 29, 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 6515 - Representative Altman
Relief/Cathleen Smiley/Brevard County

THIS IS AN UNCONTESTED CLAIM FOR \$25,000 AGAINST BREVARD COUNTY FOR INJURIES AND DAMAGES SUFFERED BY CATHLEEN SMILEY WHEN A BREVARD COUNTY BUS CAUSED ANOTHER VEHICLE TO CRASH INTO HER TRUCK ON JUNE 18, 1998.

FINDINGS OF FACT:

Cathleen Smiley ("Claimant"), while driving a two-door, 1994 Ford Ranger pickup truck on June 18, 1998, was the victim of a severe chain reaction accident caused by a bus owned and operated by Brevard County ("the County").

On the day of the accident, Claimant's truck was momentarily stopped on a public roadway while waiting to make a left turn. A van approached Claimant's truck from behind in the same lane and began slowing down. Meanwhile, a County bus rapidly approached the van from behind at about 45 miles per hour. As the bus approached the slowing van, the bus failed to adequately brake and crashed into the van, which in turn crashed into Claimant's stopped truck. The crash resulted in disabling damage to each of the three vehicles. Claimant was wearing her seatbelt at the time of the crash.

When Claimant's truck was hit from behind, her head smashed into the back window, splintering the glass and knocking her unconscious. Claimant received 38 stitches as a result.

After the accident, Claimant required physical therapy and her medical bills accrued, causing substantial strain on her family. Moreover, due to the injuries sustained in the accident, as a certified nursing assistant Claimant was no longer able to fulfill the physically demanding requirements of her work.¹

Dr. Christopher Prusinski, a board-certified neurologist who examined Claimant the month after the car accident, opined that Claimant had suffered a "permanent impairment." He stated that Claimant would likely need periodic and lifelong chiropractic care or physical therapy.

After the accident, the County initiated disciplinary proceedings against the driver of the bus, ultimately terminating his employment for his actions relating to the accident.

LITIGATION HISTORY:

On or about February 29, 2000, Claimant and her husband filed suit against the County. However, they were not the only plaintiffs injured in the accident. Three other plaintiffs resolved their cases with the County first, and the County's payments to those plaintiffs have already reached the maximum sovereign immunity limit of \$200,000. As a result, the County has been unable to pay Claimant any recovery except for property damage compensation. Claimant's only remedy at this point is the passage of a claim bill.

Claimant entered into a settlement agreement with the County on May 27, 2014, for \$25,000. The Brevard County Board of County Commissioners has approved the settlement.

CLAIMANT'S POSITION:

Claimant argues the County is liable for the injuries she sustained from the accident and seeks the amount agreed upon in the settlement agreement.

RESPONDENT'S POSITION:

The County wholly admits fault for the accident and does not oppose the claim bill.

CONCLUSIONS OF LAW:

Regardless of whether there is a jury verdict or a settlement agreement, every claim bill must be reviewed *de novo* in light of the standard elements of negligence.

Duty & Breach

At the time of the accident, the County bus was being operated by a County employee in the scope of his employment with the County. The County owed a duty to Claimant and others upon the roadway to operate its bus in a reasonably safe manner and breached this duty to Claimant when it negligently failed to brake and rear-ended a van, causing the accident.

¹ Claimant now works in a less physically demanding job.

Causation

The County's breach of the duty of care caused Claimant's injuries when the County bus crashed into a van, causing the van to rear-end Claimant's truck.

Damages

The amount of damages for \$25,000 is wholly reasonable under the circumstances and supported by the evidence. As a result of the accident, Claimant was knocked unconscious and sustained injuries resulting in medical bills over \$22,000. Some of those bills are outstanding to this day, and Claimant continues to suffer pain and discomfort. Moreover, the accident caused Claimant to be unable to work for a time and caused significant stress and financial strain on her family life.

ATTORNEY'S/
LOBBYING FEES:

Claimant's attorney has agreed to take 25% of the total recovery, and there are no lobbying fees. Outstanding costs are \$2,343.12.

COLLATERAL SOURCES:

Claimant received \$10,000 from Allstate Insurance as a result of a personal injury protection (PIP) insurance plan. That money went towards medical bills as well as supporting Claimant while she was unemployed after the accident. Claimant also received from the County \$8,650 for the property damage to the truck.

RESPONDENT'S ABILITY
TO PAY:

The County states that it is able to pay the full amount of \$25,000 out of its self-insurance fund without affecting county operations.

LEGISLATIVE HISTORY:

SUGGESTED AMENDMENTS:

This is the first time this claim bill has been presented to the Legislature.²

The bill should be amended to reflect that Claimant's current married name is Cathleen L. Waller.

RECOMMENDATIONS:

I recommend that House Bill 6515 be reported **FAVORABLY**.

Respectfully submitted,

JORDAN JONES

House Special Master

cc: Representative Altman, House Sponsor
Senator Mayfield, Senate Sponsor

² The Legislature has previously paid claim bills arising out of this same accident to two other claimants. House Bills 797 and 799 (2003) were for the relief of the driver and a passenger of the van struck by the County bus.

Kellie Cochran, Senate Special Master