



STORAGE NAME: h6517b.JDC

DATE: 2/9/2018

February 9, 2018

SPECIAL MASTER'S FINAL REPORT

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

Re: CS/HB 6517 - Representative Cortes
Relief/Robert Allan Smith/Orange County

THIS IS A SETTLED CLAIM FOR \$750,000¹ AGAINST ORANGE COUNTY FOR INJURIES AND DAMAGES SUFFERED BY ROBERT ALAN SMITH WHEN HIS MOTORCYCLE WAS STRUCK BY AN ORANGE COUNTY WORK VAN ON SEPTEMBER 7, 2006.

FINDINGS OF FACT:

This matter arises out of a motor vehicle crash that occurred on September 7, 2006, in Orlando, Florida, at the intersection of DePauw Avenue and Orlando Street. DePauw Avenue runs north/south and Orlando Street runs east/west. This intersection is located in a residential neighborhood where the speed limit is 25 miles per hour. It is a four-way intersection with Orlando Street having stop signs and DePauw Avenue having the right-of-way and no stop signs. The accident occurred during daylight hours on a dry day.

On the day of the accident, Robert Alan Smith ("Claimant"), who lived on DePauw Avenue, was repairing his motorcycle, which had recently idled out. He assembled and disassembled several parts and test-drove the motorcycle around the block twice. According to Claimant, the motorcycle would falter when changing gears and not accelerate. The accident occurred on

¹ The bill also seeks to extinguish certain lien interests for Claimant's treatment and care.

Claimant's third test drive around the block.

Around 1:45 p.m., Lynn Godden, an Orange County employee on duty at the time, was driving a county work van westbound on Orlando Street. Mr. Godden approached the intersection of Orlando Street and DePauw Avenue and stopped at the stop sign controlling Orlando Street. He looked to his left down DePauw Avenue and witnessed Claimant. According to Mr. Godden, he saw Claimant on a motorcycle but believed Claimant was heading in the opposite direction, away from the intersection of Orlando and DePauw. According to Claimant, he made eye contact with Mr. Godden and believed that Mr. Godden was aware of Claimant's presence. Mr. Godden, with parked vehicles partially blocking his view, crept forward a few feet into the intersection. Apparently believing the intersection to be clear, Mr. Godden continued driving west on Orlando Street.

At the same time, Claimant entered the intersection on his motorcycle traveling northbound. Seeing the van, Claimant attempted to steer his motorcycle to the left to avoid a collision, but to no avail. The front of the van struck Claimant, sending Claimant airborne about 23 feet.

Mr. Godden stopped after clearing the intersection and ran to Claimant's aid. Nelson Dean, a carpenter working at a nearby house, ran to the scene and called 911. Claimant, who apparently never lost consciousness, asked Mr. Godden for his cell phone and called his wife. The ambulance arrived and took Claimant to the hospital. The ambulance logs indicate Claimant stated he was traveling 50 miles per hour. Claimant denies ever stating he was traveling at that speed and Eric Miller, the paramedic attending Claimant, could not be sure who stated the speed. Claimant testified he was traveling 20 to 25 miles per hour and due to his motorcycle's deficiencies, he does not believe it possible that he could have been traveling faster. Mr. Dean, who witnessed Claimant on his motorcycle and Mr. Godden stopped at the stop sign, stated Claimant was traveling 35 or 40 miles per hour.

The front of the county van hit Claimant on his right side, requiring his right leg to be amputated above the knee. Claimant also fractured his left fibula, foot, and pelvis. He incurred over \$551,527.37 in medical bills, many (if not all) of which were apparently paid by third parties, including Medicaid and the U.S. Department of Veteran Affairs. There are outstanding liens (including liens by Veteran Affairs, Medicaid, the State of Florida, and Claimant's ex-wife) against any award Claimant may receive. Claimant has continued to experience the effects of his injuries, including a leg infection.

Claimant went on to complete his college degree but struggled to find employment until recently. He is currently employed at

Image Depot Express in Lakeland, Florida, earning twelve dollars an hour doing graphic design work. Claimant receives social security disability benefits of about \$800 per month, along with Veteran Affairs benefits from past military service.

The record indicates that Mr. Godden, the driver of the county van, has received multiple traffic citations, including failure to obey a stop sign. Mr. Godden is now retired from the county.

LITIGATION HISTORY:

On February 14, 2007, Claimant filed suit, alleging negligence by Mr. Godden and Respondent. Before trial, Claimant and his wife divorced, and she settled her claim against the county for \$85,000. A jury trial was held in November 2011. After the full case had been presented to the jury and after hours of jury deliberation, the judge sent the jury home for the weekend, with deliberations to resume the next Monday. One of the jurors indicated she would not return Monday. Ultimately, a mistrial was declared.

A year later, in November 2012, the case was tried again and resulted in a jury verdict of \$4,814,785.37, with the jury finding Respondent 67% at fault and Claimant 33% at fault. The jury's calculations of damages were as follows:

Past Lost Earnings	\$137,280.00
Past Medical Expenses	551,527.37
Future Medical Expenses	2,376,000.00
Past Pain & Suffering	228,258.00
Future Pain & Suffering	1,521,720.00
Total Damages	<u>\$4,814,785.37</u>

The court reduced the damages, in part for collateral sources of medical expenses and Claimant's portion of fault, and entered a final judgment for \$2,913,536.09. Respondent did not appeal and paid the statutory cap of \$100,000. Claimant's ex-wife has a lien against Claimant for about \$40,000 for half of Claimant's reduced award for past lost wages.

CLAIMANT'S POSITION:

Claimant argues Respondent is liable for the negligence of its employee, Mr. Godden, for failing to yield the right-of-way to Claimant. Claimant asserts he was traveling 25 miles per hour or slower at the time of the accident and that he was in no way negligent. Claimant states that he has not yet received any payout from the \$100,000 because that money is held in trust until the matter is resolved. At the Special Master hearing, Claimant argued that the entire amount of the jury verdict should be honored. After the hearing, Claimant and Respondent reached a negotiated settlement amount of \$750,000.

RESPONDENT'S POSITION:

Respondent initially opposed the claim bill, arguing that Claimant was comparatively negligent.² After the Special Master hearing, Respondent and Claimant reached a negotiated settlement amount of \$750,000, and the claim bill is no longer contested.

CONCLUSIONS OF LAW:

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

Duty & Breach

Respondent owed a duty to Claimant to stop and yield the intersection to Claimant. Under Florida law, a driver approaching an intersection with a stop sign must stop, and after stopping, must "yield the right of way to any vehicle" in the intersection or which is approaching so closely as to constitute a hazard.³ Respondent's employee, Mr. Godden, as he approached the intersection, owed a duty to Claimant, who had no stop sign and enjoyed the right-of-way. Mr. Godden was acting within the scope of employment with the county, and thus Respondent is liable for Mr. Godden's actions under the doctrine of respondeat superior. Respondent breached its duty to Claimant when its employee proceeded through the intersection without the right-of-way.

Causation

The primary point of contention between the parties at the Special Master hearing was whether, and to what extent, Claimant's own negligence contributed to the accident. Claimant argued that he bears zero fault, while Respondent argued that Claimant bears up to 75% of the responsibility for the accident.⁴

To support its argument at the hearing, Respondent made two main assertions: first, that Claimant was traveling at a speed of up to 50 miles per hour in a residential area when the crash occurred; and second, that Claimant may have been impaired by alcohol.

Claimant's speed at the time of the crash was closely contested at trial and at the Special Master hearing, with Claimant stating he was traveling at 25 miles per hour or less, and Respondent arguing Claimant was traveling at 35 to 50 miles per hour. Eyewitness Nelson Dean stated that Claimant was traveling at 35 to 40 miles per hour. Additionally, paramedic Eric Miller's

² At the Special Master hearing, Respondent argued Claimant was traveling at a speed of up to 50 miles per hour at the time of the accident and that Claimant may have had alcohol in his blood. Respondent suggested Claimant was up to 75% responsible for the accident, not 33% as the jury found. Respondent also objected to the calculation of medical damages.

³ S. 316.123(2)(a), F.S.

⁴ In Florida, the doctrine of comparative fault provides for apportionment of the loss among those whose fault contributed to the occurrence. *Hoffman v. Jones*, 280 So. 2d 431, 436 (Fla. 1973). A plaintiff's negligence diminishes the proportionality of the amount awarded but does not bar recovery. S. 768.81(2), F.S.

medical notes state that Claimant had said he was traveling about 50 miles per hour. Claimant denied at the Special Master hearing that he ever said this to Mr. Miller.

Both parties presented extensive expert testimony as to Claimant's speed. Orion Keifer, a mechanical engineer and Claimant's expert witness, testified that Claimant was traveling 25 miles per hour or less based on where Claimant's body and motorcycle landed after the crash. The distance from impact to the resting place of Claimant's body was between 45 and 50 feet. Mr. Keifer opined that if Claimant had been traveling 50 miles per hour, he would have been thrown 160-180 feet.

Respondent's expert, Dr. James Ipser, opined that Claimant was traveling about 50 miles per hour when the accident occurred. Dr. Ipser opined that Claimant went airborne upon impact with the van and then hit guide wires on a nearby telephone pole, causing Claimant's body to stop traveling as far as it would have otherwise gone. Dr. Ipser also opined that if Claimant had been traveling at 25 miles per hour, he would have had opportunity to avoid the accident.

At the Special Master hearing, Respondent cited Claimant's two prior DUI convictions⁵ as evidence that he may have been drinking and driving the day of the accident. Claimant denied alcohol impairment on the day of the accident, and the two paramedics who stabilized and transported Claimant did not report any signs of alcohol impairment.

I find that the jury's determination that Claimant was 33% responsible and Respondent was 67% responsible is wholly reasonable. The jury evaluated the evidence presented at trial and decided that Claimant's percentage of fault lay at 33%—that is, between the 0% argued by Claimant and the 75% argued by Respondent. No testimony or arguments presented at the Special Master hearing have shown any reason to disturb the jury's apportionment of liability.

Damages

Claimant's damages are severe and life-altering. His right leg was amputated above the knee, and that loss continues to plague him. His left leg was fractured, and his pelvis was broken. The parties presented different estimates for the cost of purchasing and maintaining a prosthetic leg—Claimant's expert estimated the average annual cost at \$55,164, and Respondent's expert estimated the cost at \$44,400.

In the years following trial, Claimant has had his prosthetic

⁵ Claimant was convicted of driving under the influence twice, apparently in 2000 and 2001. Additionally, Claimant had not had his license for about six years and received his reinstated license about a week before the accident. While he did not have a motorcycle endorsement, Claimant stated he took the written test and was allowed to ride without passengers until he passed the driving test.

replaced and continues to suffer from complications from the amputation. In December 2016, he was hospitalized for an infection in his right leg. Claimant is overweight and diabetic.⁶

I conclude the jury's award and resulting final judgment of \$2.9 million is an appropriate amount to compensate Claimant for his losses. In the claim bill, Claimant seeks \$750,000, plus the extinguishment of certain medical lien interests, which is reasonable.

ATTORNEY'S/
LOBBYING FEES:

Claimant's attorneys will limit their fees to 25 percent of any amount awarded by the Legislature, of which 5 percent will go to lobbyist fees.

RESPONDENT'S ABILITY
TO PAY:

At the time of the accident, Orange County maintained a self-insured retention fund for \$1,000,000 with an excess insurance policy for \$10 million. According to Respondent, if the claim bill were to pass, \$670,510.74 would be paid from the self-insured retention fund, and the remaining amount would purportedly be paid from the excess policy.

LEGISLATIVE HISTORY:

This is the second session this claim has been presented to the Legislature. CS/HB 6509 (2017)—which sought the full excess jury verdict amount of \$2,813,536.09—passed the House by a vote of 109-4, but died in the Senate Judiciary Committee. CS/HB 6517 seeks \$750,000 plus the extinguishment of certain medical lien interests.⁷

RECOMMENDATION:

I recommend that Committee Substitute for House Bill 6517 be reported **FAVORABLY**.

Respectfully submitted,

JORDAN JONES

House Special Master

cc: Representative Robert Cortes, House Sponsor
Senator Torres and Senator Stewart, Senate Sponsors
Ashley Istler, Senate Special Master

⁶ At the Special Master hearing, before the parties had settled the claim, Respondent suggested that many, if not all, of the medical costs had been paid by third parties, including the U.S. Department of Veteran Affairs and Medicaid. Respondent also suggested Claimant needs a new prosthetic every ten years instead of every five years.

⁷ SB 54 (2018) seeks \$2,813,536.09, but does not include a lien interest extinguishment provision.