



STORAGE NAME: h6527.CJC

DATE: 1/26/2018

January 26, 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: HB 6527 - Representative Alexander
Relief/Christopher Cannon/City of Tallahassee

THIS IS AN UNCONTESTED SETTLED CLAIM FOR \$500,000 AGAINST THE CITY OF TALLAHASSEE FOR INJURIES AND DAMAGES SUFFERED BY CHRISTOPHER V. CANNON WHEN HIS MOTORCYCLE WAS STRUCK BY A CITY BUS ON DECEMBER 16, 2015. THE CITY HAS PAID \$200,000.

FINDINGS OF FACT:

This claim arises out of a motorcycle accident that occurred on December 16, 2015, in Tallahassee, Florida, at the intersection of Old Bainbridge Road and Capital Circle Northwest. At the intersection, Old Bainbridge Road runs north/south and dead-ends into Capital Circle, which runs northeast/southwest at the intersection. Vehicles traveling north on Old Bainbridge are only able to turn either right or left onto Capital Circle. The left turn off Old Bainbridge is especially sharp.

As the single northeast-bound lane of Capital Circle nears the intersection with Old Bainbridge, it splits into two lanes—one for turning right at the intersection and one for continuing straight through the intersection. Crucially, drivers on Capital Circle have the right-of-way at the intersection. Old Bainbridge is controlled by a stop sign, while Capital Circle has no traffic controls.

Around 5:15 p.m. on December 16, 2015, during busy traffic flow, a Dial-A-Ride¹ passenger bus owned and operated by the City of Tallahassee ("Respondent") was traveling north on Old Bainbridge Road, approaching the intersection with Capital Circle. At the same time, 20-year-old Christopher Cannon ("Claimant") was riding his motorcycle on his way home from work, traveling northeast on Capital Circle, approaching the same intersection with the right-of-way. It was cloudy at the time of the accident, and although it was not visibly raining, the roadway was wet. Claimant was wearing a helmet and protective clothing.

The ensuing collision was caught on tape by the internal cameras on board Respondent's bus. The video footage shows Respondent's bus stopping well behind the stop bar at the intersection, waiting about one minute, and then proceeding into the intersection, turning left across traffic. When the bus had completed about half of the turn, Claimant's motorcycle can be seen swerving to try to avoid the bus, and then being obliterated upon impact. Claimant was catapulted off his motorcycle and sent airborne across the other lane of traffic and over the guardrail.

Claimant was stabilized and transported to the emergency room at Tallahassee Memorial Hospital. He was treated for pulmonary contusion, a rib fracture, right renal/kidney laceration and hematomas, adrenal gland contusion, a right tibia fracture, a right fibula fracture, a right mid-shaft femoral fracture, and a tiny spleen laceration. While at the emergency room, Claimant went into atrial fibrillation and had to be defibrillated in order to be stabilized.

Claimant underwent a closed displaced right tibia and right fibular shaft fracture procedure. A rod was placed in his leg and secured with four screws. Claimant later had another procedure where a plate was secured to his humerus in his arm with eight screws. About two weeks after that surgery, Claimant suffered from a leg infection that required another five-day stay in the hospital. About eight months after the accident, Claimant followed up with physical therapy.

Claimant lost his job after the accident. His accident and post-accident medical bills totaled about \$211,000. His property damage was about \$5,500 and lost wages about \$4,500. At the time of the accident, Claimant did not have any medical insurance or insurance for his motorcycle. The hospital imposed medical liens that have since been reduced through negotiation.

On April 4, 2016, a county judge found Respondent's bus driver

¹ Dial-A-Ride refers to an on-demand bus service for mobility-impaired persons.

guilty of failing to yield to oncoming traffic when making a left turn, in violation of s. 316.122, F.S., and guilty of causing serious bodily injury to the victim. The court suspended the bus driver's CDL license for 90 days.

Claimant is now 22 years old. Although he can walk, running and jumping are difficult, and when he tries to run, he begins to limp. Claimant still experiences some numbness on his shin and has some ongoing issues with the nerves in his foot.

LITIGATION HISTORY:

On January 11, 2017, Claimant filed an amended complaint against Respondent in the Second Judicial Circuit, alleging two counts: first, that Respondent was negligent in its hiring, training, discipline, supervision, and retention of its bus driver; and second, that Respondent was responsible under the doctrine of respondeat superior for the negligence of its bus driver.

On March 3, 2017, the parties filed an agreed motion for partial summary judgment on liability against Respondent. Respondent admitted liability based on the negligent operation of the bus by its driver; and Claimant agreed to dismiss its first count alleging negligent hiring, training, discipline, supervision, and retention. The issue of damages was subsequently mediated and settled for \$700,000. Respondent has paid \$200,000 to Claimant, and pursuant to the settlement agreement, Respondent supports the claim bill for the additional \$500,000.

CLAIMANT'S POSITION:

Claimant argues Respondent is liable for the injuries he sustained from the accident and seeks the unpaid portion of the settlement agreement.

RESPONDENT'S POSITION:

Respondent acknowledges that it is liable for Claimant's damages in the full amount sought by Claimant under the doctrine of respondeat superior. Respondent does not oppose the claim bill. However, Respondent does not agree that it was negligent in its hiring, training, disciplining, supervision, and retention of the bus driver who caused the accident.

CONCLUSIONS OF LAW:

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

Duty, Breach, & Causation

It is clear that Respondent breached a duty 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.² The driver of the city bus owed a duty to Claimant, as Claimant's motorcycle had no stop

² S. 316.123(2)(a), F.S.

sign and enjoyed the right-of-way. The driver of the bus breached her duty to Claimant when she proceeded through the intersection even though she had a stop sign and did not have the right-of-way.

When the city's bus driver breached this duty, she was driving a Tallahassee Dial-A-Ride bus as a city employee on her bus route. Thus, Respondent is liable for its bus driver's actions under the doctrine of respondeat superior. Claimant's injuries, which he sustained at the scene of the accident as well as in the months afterward due to an infection, were the proximate causes of Respondent's breach of duty.

Damages

The accident caused about \$211,000 in medical bills (though some of that amount was negotiated down), \$5,500 in property damage, and \$4,500 in lost wages. Moreover, Claimant has undergone multiple procedures and had an additional five-day hospital stay due to an infection that formed after his surgery. The accident also caused Claimant to have to undergo defibrillation at the emergency room. In light of Claimant's economic and noneconomic damages, including the residual negative effects of his injury, which Claimant still lives with to this day, I find that the amount agreed upon by Claimant and Respondent and sought in the claim bill is reasonable.

ATTORNEY'S/
LOBBYING FEES:

Claimants' attorneys will limit their fees to 25 percent of any legislative award. Out of these fees, a lobbyist fee for 5 percent of the total award will be paid. There are no outstanding costs.

RESPONDENT'S ABILITY
TO PAY:

Respondent states that it has no insurance and that any funds paid to Claimant will be paid out of Respondent's self-insurance fund. Respondent states that the amount sought by Claimant is "fully funded and reserved" in Respondent's fund.

LEGISLATIVE HISTORY:

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

SUGGESTED AMENDMENTS:

The section addressing the limitation on attorney's fees should be amended to provide for specific fee amounts.

RECOMMENDATION:

I recommend that House Bill 6527 be reported **FAVORABLY**.

Respectfully submitted,

JORDAN JONES

House Special Master

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cc: Representative Alexander, House Sponsor
Senator Montford, Senate Sponsor
Cindy Brown, Senate Special Master