



STORAGE NAME: h6537.CJC

DATE: 1/8/2018

January 8, 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 6537 - Representative Byrd
Relief/Erin Joynt/Volusia County

THIS IS A CONTESTED CLAIM FOR \$1.895 MILLION AGAINST VOLUSIA COUNTY FOR INJURIES AND DAMAGES SUFFERED BY ERIN JOYNT WHEN A VOLUSIA COUNTY TRUCK DROVE OVER HER ON JULY 31, 2011.

FINDINGS OF FACT:

Erin Joynt ("Claimant"), while sunbathing on the beach on July 31, 2011, was run over by a Volusia County pickup truck. She suffered multiple facial fractures and a perforated ear drum. On April 5, 2012, Claimant filed suit against Volusia County ("Respondent"). A trial was held in June 2014, in which a jury returned a verdict for \$2.6 million. On appeal, the Fifth District Court of Appeal reduced the verdict to \$2 million because economic and medical damages were not supported by the evidence presented at trial. After an amended final judgment was entered on January 12, 2016, the County paid the remainder of the statutory cap of \$85,000. Claimant seeks payment of the remainder of the amended final judgment in this claim bill.

On July 30, 2011, Claimant was on vacation with her husband and two children. They were traveling from their home in Wichita, Kansas to their final destination of Walt Disney World. On July 31, 2011, they arrived at Daytona Beach. Around 10

a.m., Claimant's husband and two children were playing in the water while Claimant rested on the sand, lying on her stomach and sunbathing.

That same morning, Thomas Moderie, a Volusia County beach patrol employee, was driving a Volusia County F-150 pickup truck on the same beach. Mr. Moderie was driving north on the beach when a pedestrian flagged him down to report broken glass on the beach. Mr. Moderie initiated a U-turn, but instead of steering his truck to the left and utilizing the other designated lane for vehicle traffic on the beach, he steered his truck to the right, towards beach patrons. As a result, his truck's left front tire ran over Claimant's head and torso. According to the Florida Highway Patrol Crash Report, Mr. Moderie was not operating his vehicle in emergency mode at the time the collision occurred.

Claimant's eight-year-old daughter witnessed the truck run over her mother. Another beach patron ran to Claimant and rendered first aid as an ambulance was called to the scene. Claimant was taken to nearby Halifax Medical Center, where she spent the next six days recovering from her injuries.

As a result of being run over by Respondent's pickup truck, Claimant suffered multiple cranial and facial fractures, multiple rib fractures, hearing loss, vision problems, and permanent facial paralysis. In the months following the incident, Claimant underwent two procedures. First, she had her perforated eardrum reconstructed in her left ear on August 27, 2011, in Wichita, Kansas.¹ Second, on September 26, 2011, Claimant had a gold weight sewn into her right eyelid to aid her in closing the eye.

LITIGATION HISTORY:

Claimant, along with her husband and two children, filed suit against Volusia County in circuit court alleging negligence by Volusia County for the actions of Mr. Moderie. Part of the suit involved a loss of consortium claim by Claimant's husband and two children. Prior to trial, Claimant's husband settled with the County for \$134,500 and the children's claims were settled for a total of \$15,000; and Respondent admitted liability and solely contested damages. The trial began on June 23, 2014, and lasted four days. Claimant presented evidence of the cost of her ongoing care, such as her deficient hearing ability that could eventually require a hearing aid. Claimant also presented evidence that she might not be able to continue her employment as a paraeducator, assisting elementary age students in reading. On June 27, 2014, the jury returned a verdict for \$2,600,000, broken down as follows:

- \$500,000 for past pain and suffering;
- \$1,500,000 for future pain and suffering;

¹ This procedure involved grafting a posterior superior tympanic membrane perforation and a placement of an ossicular prosthesis.

- \$500,000 for diminished earning capacity; and
- \$100,000 for future medical expenses.

Respondent appealed, challenging only the portion of the judgment awarding damages for lost earning capacity and future medical expenses. Respondent argued that Claimant failed to present evidence at trial that would allow the jury to quantify any diminished ability to earn money in the future or future medical expenses.² The Fifth DCA agreed and struck the jury's award of \$500,000 for diminished earning capacity and \$100,000 for future medical expenses.³ On January 12, 2016, the trial court entered a second amended final judgment reducing the award from \$2.6 million to \$2 million. Respondent has paid \$85,000—the remainder of the statutory cap—to Claimant.⁴

Following the imposition of the amended final judgment, Claimant's attorneys brought a declaratory judgment action against Volusia County and its insurer, Star Insurance Company, to force Star Insurance to pay the remaining amount of the judgment under the excess insurance policy. The action was removed to federal court, where it is still pending.

Declaratory judgment dispute

Section 768.28(5), F.S., provides that “[a]ny settlement or judgment in excess of the caps may be reported to the Legislature and be paid in part or in whole only by further act of the Legislature.” However, the same section provides that “the state, or an agency, or subdivision thereof” may pay a settlement or judgment without further action by the Legislature as long as the settlement or judgment is within the limits of their insurance. This allows local subdivisions to pay a settlement that exceeds the statutory cap with their insurance⁵ and avoid the legislative claim bill process.

Here, Respondent is insured by Star Insurance Company for \$5 million. According to Claimant's attorneys, Star Insurance's policy for excess coverage in effect on July 31, 2011 does not mention the necessity of a claim bill, and Star Insurance must pay the remaining balance of the judgment. According to Star Insurance, its obligation to pay is not triggered until a claim bill is passed. A trial is set for the summer of 2017 to resolve this dispute.

² At the time of the incident, Claimant was on her husband's AETNA health insurance plan.

³ *Volusia Cnty. v. Joynt*, 179 So. 3d 448 (Fla. 5th DCA 2015).

⁴ Claimant's husband received \$100,000 and their two children received \$7,500 each. That left a remaining \$85,000 in the statutory cap towards Claimant's final judgment. Claimant's husband also received \$34,500 from Respondent's excess insurer, Star Insurance Company.

⁵ The Florida Supreme Court has defined insurance to not include self-insurance, which many local subdivisions rely on instead of purchasing commercial insurance. See *Hillsborough Cnty. Hosp. & Welfare Bd. v. Taylor*, 546 So. 2d 1055, 1057 (Fla. 1989).

CLAIMANT'S POSITION:

Claimant argues Respondent is liable for her injuries sustained when Respondent's truck drove over Claimant, and she seeks the remaining balance of the final judgment to compensate her for past and future pain and suffering.

RESPONDENT'S POSITION:

Respondent argues this claim bill is not ripe for consideration in that Claimant has not exhausted all her remedies related to the federal litigation. Respondent argues the award is excessive and unsupported by the facts and circumstances, and that Claimant and her family have already received a sufficient amount to compensate her for her loss.

CONCLUSIONS OF LAW:

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

Duty, Breach, & Causation

Respondent admits its employee, Mr. Moderie, was operating within the scope of his duties on July 31, 2011, owed a duty to Claimant, and was negligent when he drove the F-150 pickup truck over Claimant's body. I find Respondent owed a duty to Claimant and was negligent in operating the truck, and that this negligence caused Claimant's injuries.

Damages

The sole issue in this claim is damages. The Legislature is not bound by jury verdicts, appellate decisions or this report. Claim bills are an act of legislative grace.⁶ This claim seeks to compensate Claimant for \$1.895 million solely for her past and future pain and suffering.

Respondent argues Claimant has made a remarkable recovery and has been adequately compensated for any pain and suffering sustained. Claimant has received \$85,000. Respondent contends the settlements between the County and Claimant's husband and children should be seen as compensating her for her injuries. Additionally, Respondent argues Claimant was enriched by receiving \$20,000 from Mr. Moderie's own insurance policy. Through the settlement of her family's claims and collateral sources, Respondent argues Claimant has received \$254,500.

Despite Respondent's contention, I find the remaining final judgment amount to be a fair and just amount for Claimant's pain and suffering. Claimant has suffered disfigurement to her face and will never look the way she did prior to the incident. Dr. William Triggs, a medical doctor hired by Respondent to evaluate Claimant's damages, found Claimant suffers from a residual left facial palsy and that the facial weakness will never recover. This paralysis has taken an emotional toll on Claimant, and she will live with it the rest of her life.

⁶ *Gamble v. Wells*, 450 So. 2d 850, 853 (Fla. 1984).

Finally, Respondent argues the Legislature should not pass a claim bill consisting solely of pain and suffering damages. This contention and issue is outside the purview of this report and only for the individual members to decide.

ATTORNEY'S/
LOBBYING FEES:

Claimant's attorneys will limit their fees to 25 percent of any legislative award. Out of these fees, a lobbyist fee for 4% of the total award will be paid. Outstanding costs are \$74,094.75.

COLLATERAL SOURCES:

Claimant received \$20,000 from Mr. Moderie's personal insurance. Claimant's husband received \$134,500⁷ from Respondent to settle his claims. Respondent paid \$15,000 to settle Claimant's two children's claims. Claimant has received \$85,000.

RESPONDENT'S ABILITY
TO PAY:

Respondent has an excess liability insurance policy with Star Insurance for \$5 million. If the claim bill were to pass, Star Insurance would presumably pay the entirety of the award.

SUGGESTED AMENDMENT:

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

LEGISLATIVE HISTORY:

This is the second session this claim has been presented to the Legislature. Last session, the claim was filed by Representative Santiago as HB 6543, which was reported unfavorably by the Civil Justice and Claims Subcommittee by a vote of 7-8.

RECOMMENDATION:

I recommend HB 6537 be reported **FAVORABLY**.

Respectfully submitted,

JORDAN JONES

House Special Master

cc: Representative Byrd, House Sponsor
Senator Simmons, Senate Sponsor
John Ashley Peacock, Senate Special Master

⁷ Volusia County paid \$100,000 of this amount to Claimant's husband, and Star Insurance, the excess liability carrier, paid \$34,500.

