



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

March 6, 2019

DATE	COMM	ACTION
03/06/19	SM	Report Submitted
03/11/19	JU	Fav/CS
04/02/19	GO	Fav/CS
04/10/19	RC	Favorable

The Honorable Bill Galvano
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/CS/SB 34** – Governmental Oversight and Accountability Committee;
Judiciary Committee and Senator Torres
HB 6517 – Representative McClure
Relief of Robert A. Smith

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$750,000 FROM ORANGE COUNTY FOR INJURIES AND DAMAGES SUFFERED BY MR. ROBERT A. SMITH, WHICH WERE PARTIALLY DUE TO THE NEGLIGENT OPERATION OF AN ORANGE COUNTY VAN.

CURRENT STATUS:

On February 10, 2017, Ms. Ashley Istler, serving as Senate special master, held a de novo hearing on a previous version of this bill (SB 300). After the hearing, Ms. Istler issued a report containing findings of fact and conclusions of law and concluded that the amount remaining to be paid from the verdict was reasonable. In SB 300 (2017), that amount was \$2,813,536.09 and the associated report is attached as an addendum to this report.

Since that time, the Senate President has reassigned the claim to the undersigned to review records and determine whether any changes have occurred since the hearing that, if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

Since the initial hearing, the undersigned has not received information that would have significantly altered the outcome of the underlying report.

However, updated information provides that the parties have reached a settlement in the amount of \$750,000, as opposed to the \$2,813,536.09 requested in SB 300 (2017) and SB 54 (2018).

OUTSTANDING COSTS
AND LIENS:

Claimant's counsel has confirmed the following outstanding costs and liens:

- Legal \$72,198.20
- Department of Veterans Affairs \$181,560.01
- Center for Medicare and Medicaid Benefits \$19,948.66
- Florida Medicaid Casualty Recovery Program \$42,147.35
- Florida Department of Education \$1,954.44

RECOMMENDED
AMENDMENTS:

A correction to the spelling of Mr. Smith's name is recommended. The bill currently reflects a spelling of "Allan" while submitted documents show the middle name spelled as "Alan."

The undersigned also recommends removing the intent language related to extinguishment or waiver of related liens. Intent language would not require the action to occur. Additionally, state and federal liens are involved in this matter and the State does not have the ability to extinguish or waive a federal lien.

Two amendments are attached to this report. The first amendment (357324) only corrects Mr. Smith's middle name. The second amendment (939218) corrects Mr. Smith's middle name and removes the intent language related to extinguishment or waiver of liens.

Respectfully submitted,

Christie M. Letarte
Senate Special Master

cc: Secretary of the Senate

CS/CS by Governmental Oversight and Accountability on April 2, 2019:

The CS clarifies that it is the intent of the Legislature that the state liens related to Mr. Smith's medical care are waived or extinguished.

CS by Judiciary on March 11, 2019:

The CS corrects the spelling of Mr. Smith's middle name. It has only one "l," not two.



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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515 Knott Building

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DATE	COMM	ACTION
1/10/18	SM	Favorable
	JU	
	GO	
	RC	

January 10, 2018

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 54** – Senators Torres and Stewart
HB 6517 – by Representative Cortes
Relief of Robert Allan Smith by Orange County

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF \$2,813,536 AGAINST ORANGE COUNTY FOR INJURIES AND DAMAGES SUFFERED BY MR. SMITH WHEN THE MOTORCYCLE HE WAS DRIVING WAS STRUCK BY AN ORANGE COUNTY VEHICLE ON SEPTEMBER 7, 2006.

FINDINGS OF FACT:

This claim arises out of a motor vehicle crash involving a motorcycle and a county-owned van which occurred on September 7, 2006, in Orlando, Florida, at the intersection of DePauw Avenue and Orlando Street. The intersection has a stop sign posted for vehicles traveling on Orlando Street. There is no stop sign on DePauw Avenue, which is a residential cross-street. The speed limit on both streets is 25 miles per hour.

The Accident

The accident occurred at approximately 1:43 p.m. Mr. Smith was driving his motorcycle from his residence on DePauw Avenue northbound toward Orlando Street. While at the same

time, an Orange County employee, Mr. Godden, was traveling westbound on Orlando Street toward DePauw Avenue. Upon approaching DePauw Avenue, Mr. Godden stopped at the stop sign and looked to the left and to the right on DePauw Avenue. Mr. Smith testified that he visibly saw the van slow down as it approached the stop sign and, therefore, believed that it was safe to travel through the intersection. Mr. Godden proceeded from the stop sign into the intersection and the front of the van collided with the right side of the motorcycle.

At the time of the accident there were two properly parked vehicles on DePauw Avenue; these cars may have obstructed the view of Mr. Godden and Mr. Smith, and possibly caused Mr. Smith to travel down the center of the lane on DePauw Avenue.

The crash was witnessed primarily by one individual, Mr. Dean. Mr. Dean was outside in close proximity to the accident, but his sight of the impact was obstructed by a large tree. Mr. Dean testified that he witnessed the motorcycle traveling northbound on DePauw Avenue and the van stopped on Orlando Street. Mr. Dean testified that he watched as the van proceeded straight into the intersection and witnessed Mr. Smith attempt to avoid the van by swerving into the left side of the road. While his vision was obstructed, Mr. Dean heard the sound of the impact.

The van hit Mr. Smith on the right side, causing his right leg to be partially torn from his body. On impact, Mr. Smith was not ejected from the motorcycle, but rather, remained on the motorcycle. The force of the impact shifted the motorcycle to the left, and the left peg of the motorcycle was damaged and the motorcycle continued forward until it made impact with a curb. Upon impact with the curb, Mr. Smith was ejected from the motorcycle and landed in the grass between the sidewalk and the curb.

Mr. Smith suffered extensive injuries including:

- A right leg above-the-knee amputation;
- A left leg dislocation and fracture;
- Lacerations on his face and right hand;
- A broken pelvis and sacrum; and
- Damage to his rectum and internal organs.

Mr. Smith has incurred over \$550,000 in medical bills, along with the cost of purchasing and maintaining his prosthetic leg. He continues to suffer the effects of his injuries with recurring infections in his leg. Having no health insurance, Mr. Smith's medical bills have been paid by Medicaid or the Department of Veteran Affairs. There are outstanding liens against any award Mr. Smith receives.¹

At the time of the accident, Mr. Smith was a motorcycle mechanic at Harley Davidson. Since the accident, Mr. Smith received a bachelor's degree in computer design. In August of 2017, Mr. Smith obtained employment doing graphic design work.

Traffic Citation

Mr. Godden was cited with a violation of s. 316.123(2), F.S., for failure to yield at a stop sign. A violation of which is a noncriminal infraction, punishable as a moving violation. The citation, however, was subsequently dismissed.

Civil Suit

The case was first tried in November of 2011, but a mistrial was declared because of issues relating to the jury. The case was retried in July of 2012, and the jury returned a verdict in favor of Mr. Smith for damages totaling \$4,814,785.37.

However, the jury found Mr. Smith to be comparatively negligent. Mr. Smith was found to be 33 percent at fault and Mr. Godden to be 67 percent at fault for the accident, so the damages were reduced accordingly. The verdict amount was also reduced due to collateral sources, which left a net verdict of \$2,913,536.09.

Section 768.28, F.S., limits the amount of damages that can be collected from a local government as a result of its negligence or the negligence of its employees. Funds in excess of this limit may only be paid upon approval of a claim bill by the Legislature. Thus, Mr. Smith will not receive the full amount of the judgement unless the Legislature approves this claim bill authorizing the additional payment.

¹ The Department of Veteran Affairs has a lien in the amount of \$181,560.04 and Medicaid has a lien in the amount of \$42,147.35. Both of which would be satisfied from any award passed by the Legislature.

CLAIMANT'S ARGUMENTS:

Mr. Smith argues that Orange County is liable for the negligence of its employee, Mr. Godden, when he failed to yield at a stop sign in violation of s. 316.123(2), F.S.

RESPONDENT'S ARGUMENTS:

Orange County argues that Mr. Smith was driving his motorcycle at speeds in excess of the posted speed limit. Therefore, Orange County argues that the claim bill should be denied because Mr. Smith's comparative fault for the accident was greater than Mr. Godden's.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine whether Orange County is liable in negligence for damages suffered by the Claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the Special Master prior to, during, and after the hearing.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence: duty, breach, causation, and damages. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010).

Mr. Godden, as an operator of a motor vehicle, had a reasonable duty of care to operate his vehicle at all times with proper care. A motorist's duty to use reasonable care includes a responsibility to enter intersections only upon a determination that it is safe to do so under the prevailing conditions. *Williams v. Davis*, 974 So. 2d 1052, 63 (Fla. 2007).

Section 316.23, F.S. requires drivers after having stopped at a stop sign to yield the right-of-way to any vehicle which is approaching so closely as to constitute an immediate hazard during the time when the driver is moving across or within the intersection. While a violation of a statute governing motor vehicles does not constitute negligence per se, it does constitute prima facie evidence of negligence. *Gudath v. Culp Lumber Co.*, 81 So. 2d 742, 53 (Fla. 1955).

Where a statute governing motor vehicles prohibits specific conduct that likely will cause harm to others and the same conduct is alleged in a civil action as negligent conduct causing injury to another, the statute becomes a minimum standard of care as to that conduct, and a violation of such constitutes some evidence of negligence. *Estate of Wallace v. Fisher*, 567 So. 2d 505 (Fla. 5th DCA 1990).

Mr. Godden was acting within the course and scope of his employment with Orange County at the time of the accident. Orange County, as the employer of Mr. Godden, is liable for his negligent actions. See *Mercury Motors Express v. Smith*, 393 So. 2d 545, 549 (Fla. 1981).

Based on a preponderance of the evidence, it is established that Mr. Godden breached his duty to exercise reasonable care by failing to yield the right-of-way after having stopped at the stop sign in violation of s. 316.123(2), F.S. Mr. Godden by accelerating into the intersection before making sure it was safe to proceed breached his duty of care.

Mr. Smith's extensive injuries, including the loss of his right leg, were a natural and direct consequence of Mr. Godden's negligence. See *Railway Exp. Agency v. Brabham*, 62 So. 2d 713 (Fla. 1952). The accident would not have occurred but for Mr. Godden's negligence.

As a result of Mr. Godden's negligence, Mr. Smith suffered bodily injury and resulting pain and suffering, impairment, disability, mental anguish, and loss of earnings.

Collateral Sources

Under s. 768.76, F.S., damages owed by a tortfeasor can be reduced by the amount of collateral sources which have been paid to compensate the claimant. In this case, the jury's award was reduced by \$55,638 due to past Social Security Disability Income benefits and by \$325,865.58 due to amounts received by the Florida Department of Education, Medicaid, and the Veteran's Administration.

Comparative Negligence

Section 768.81, F.S., Florida's comparative negligence statute, applies to this case because both Mr. Godden and Mr. Smith were at fault in the accident.

Mr. Godden's Negligence

A stop sign that is established and maintained by lawful authority at an intersection of a street represents a proclamation of danger and imposes upon the motorist the duty to stop and look before proceeding into the intersection. *Tooley v. Marquillies*, 79 So. 2d 421, 22 (Fla. 1955).

The proximate cause of the accident was Mr. Godden's negligence in proceeding into the intersection in front of Mr. Smith's approaching motorcycle at such a time where it may have been impossible for Mr. Smith to avoid the collision.

Mr. Smith's Negligence

Mr. Smith as an operator of a motor vehicle also has the duty to exercise reasonable care. Such duty includes a responsibility to enter intersections only upon a determination that it is safe to do so under the prevailing conditions.

Williams v. Davis, 974 So. 2d 1052, 63 (Fla. 2007).

The verdict amount after the reduction of collateral sources and the reduction of \$84,720 in future medical expenses which was agreed to by the parties is \$4,348,561.79. This adjusted verdict amount was further reduced due to the jury's assessment of comparative negligence against Mr. Smith. The jury in the civil suit found Mr. Godden 67 percent at fault and Mr. Smith 33 percent at fault. Therefore, the net verdict is \$2,913,536.09.

Orange County has paid the \$100,000 statutory cap on liability. Mr. Smith requests that the remaining sum of \$2,813,536.09 be approved in this claim bill.

After consideration of all the facts presented in this case, I conclude that the amount of this claim bill is appropriate.

LEGISLATIVE HISTORY:

A claim bill for the relief of Mr. Smith was first filed for the 2017 Legislative Session. The Senate Bill, CS/SB 300, died in the Senate Committee on Community Affairs, and the House Bill, CS/HB 6509, died in Messages.

ATTORNEY FEES:

Mr. Smith's attorney has agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S.

FISCAL IMPACT:

Orange County at the time of the accident maintained a self-insured retention in the amount of \$1,000,000 with a \$10,000,000 excess liability policy. Orange County has stated that if the county is required to pay out any amount of this claim bill, there will be adverse impacts to the county's financial position as the funds would come from charge backs to various departments and, thereby, restrict each department's ability to provide services and conduct programs.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 54 (2018) be reported FAVORABLY.

Respectfully submitted,

Ashley Istler
Senate Special Master

cc: Secretary of the Senate