



STORAGE NAME: h6509d.APC

DATE: 2/17/2022

February 17, 2022

SPECIAL MASTER'S FINAL REPORT

The Honorable Chris Sprowls
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: CS/HB 6509 - Representative Fernandez-Barquin
Relief/Donna Catalano/Department of Agriculture and Consumer Services

THIS IS AN UNCONTESTED EXCESS JUDGMENT CLAIM FOR \$3,175,000 BASED ON A SETTLEMENT AGREEMENT IN WHICH THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AGREED TO COMPENSATE DONNA CATALANO A TOTAL AMOUNT OF \$3,375,000 RELATING TO THE INJURIES SHE SUSTAINED BECAUSE OF THE NEGLIGENCE OF AN EMPLOYEE OF THE DEPARTMENT. THE DEPARTMENT HAS PAID THE STATUTORY LIMIT OF \$200,000.

FINDINGS OF FACT:

On June 26, 2019, at approximately 3:20 p.m., a clear and sunny afternoon, Claimant was driving home¹ after completing her nursing shift at Tallahassee Memorial Healthcare. As she traveled eastbound on U.S. Highway 90, approximately ten minutes away from her home, a motor vehicle owned by the Department of Agriculture and Consumer Services (DACS) and operated by Donald G. Burthe (Burthe), a DACS employee, traveling westbound, crossed the centerline of U.S. Highway 90 and crashed head-on into Claimant's vehicle. In the seconds prior to impact, while trying to avoid the collision, Claimant applied her brakes and slowed her vehicle. Both the vehicle ahead of her and the vehicle behind her saw Burthe's vehicle

¹ Claimant was wearing her seatbelt and traveling the posted speed limit, which is 60 mph.

cross the centerline and avoided being hit by Burthe; both watched as his vehicle crashed into Claimant's and remained on scene until law enforcement arrived.

Claimant's vehicle traveled onto the south shoulder where it overturned before coming to rest. Burthe's vehicle began to overturn and came to rest in the eastbound lanes on its right side, partially on its roof. Claimant was trapped in her vehicle with the steering wheel against her chest and the dashboard pinning her legs. She had to be cut out of the vehicle.

Florida Highway Patrol Officer N.A. Hagedorn arrived on scene, interviewed witnesses, witnessed the damage caused to both vehicles as well as their final locations, and confirmed that what the witnesses reported had in fact occurred.

Claimant was transported to the emergency room at Tallahassee Memorial Healthcare, suffering from numerous fractures, including fractures of the femur bones in both legs, both knees, left ankle, the radius, ulnar, and proximal humerus in her left arm, and four ribs; rupture of both ear drums, and numerous abrasions and contusions. She underwent six surgeries over four days to repair the various injuries she sustained using cabling, screws, pins, plates and bone-grafting. She spent nine days in the hospital before being transported to Tallahassee Memorial Healthcare Rehabilitation Center, where she remained for approximately three months. She was discharged in September 2019 to continue physical therapy at home. As a result of her life-altering injuries, Claimant can no longer work as a nurse.

Burthe² was cited for failing to drive within a single lane, in violation of section 316.089, Florida Statutes. The fine associated with that citation was paid on October 8, 2019.

Expert Witnesses

Claimant's expert witness, G. Bryant Butcher, a Professional Engineer and expert in failure analysis and accident reconstruction, reviewed the information retrieved from the vehicle event data recorder from Claimant's vehicle and confirmed that she was traveling 60 mph five seconds prior to impact and slowed to 43 mph by the time of impact. Butcher also reviewed photographs of the DACS vehicle post-crash and observed that all electrical power in the vehicle had been severed, resulting in the electronically powered speedometer freezing at the speed it was being operated at the time of impact, which was 70 mph, ten miles over the posted speed limit.

A Life Care Plan was prepared for Claimant by Christopher M. Leber, MD, FAAPMR, CLCP. Dr. Leber is a licensed physician

² Burthe succumbed to the injuries he sustained as a result of the crash and passed away before he could be interviewed. Thus, no one has been able to determine what caused him to veer into Claimant's lane of travel.

in the State of Florida; board certified by the American Board of Physical Medicine & Rehabilitation; a Certified Life Care planner, certified by the International Commission on Health Care Certification; and a Board Member of the American Academy of Physician Life Care Planners Educational Committee. He opined that the total nominal value³ of Claimant's future medically necessary requirements,⁴ which relate to the injuries she sustained as a result of the crash, is \$861,325.91. Dr. Leber's review of Claimant's medical records led him to opine that Claimant "will have lifelong disfigurement, progressive symptoms, as well as physical and psychological impairments and disabilities, which require lifelong medical care," which he estimates to be another 22 years, the probable duration of care upon which the life care plan he authored is based. He further opined that these medically necessary requirements are attributable to the medical conditions which resulted from the crash.

An Economic Loss Report was prepared for Claimant by Benjamin S. Shippen, PhD⁵ with Economists Incorporated. At the time of the crash, Claimant was 60.24 years of age; Dr. Shippen calculated her remaining life expectancy to be 24.5 years. Based on Claimant's age at the time of the crash and her educational level (she has a graduate degree in nursing), he opined that she would have had a remaining work life of 7.5 years from the date of the crash, predicting that she would have worked until age 67.74. Claimant was expected to have earned, \$140,960 (net) in income and \$18,913 in benefits in between the time of the crash and September 30, 2021, for a total back-pay loss of \$159,873.⁶ Dr. Shippen estimated that Claimant was expected to earn \$509,490 in present-value income and benefits from October 1, 2021 through December 25, 2026; thus, the present value of the earnings and benefits Claimant would have been expected to earn during her lifetime is \$669,363. Finally, he estimated that Claimant will be unable to perform 694 hours of household production⁷ per year that she would have otherwise done. He estimated the present-value of household production to be \$211,615. In sum, Dr. Shippen calculated Claimant's loss of earnings and benefits to be \$669,363 plus \$211,615 in

³ Nominal value represents the value of Claimant's future medical expenses expressed in today's market and does not account for inflation.

⁴ Claimant's future medical requirements can be divided into nine major areas: physician services; routine diagnostics; medications; laboratory studies; rehabilitation services; equipment and supplies; environmental modifications and essential services; nursing and attendant care; and acute care services.

⁵ Dr. Shippen received his PhD in Economics with a special interest in labor economics and econometrics at Florida State University. He has worked as an economical consultant and expert witness in statistical analysis of employment practices since July 2000.

⁶ This back-pay calculation accounts for the mitigating income and benefits Claimant earned while working for the Department of Health (DOH) during this period. Claimant was able to work from home briefly in an OPS position with the DOH answering a COVID hotline from August 12, 2020 through June 30, 2021, when the position ceased to exist. The position paid \$25 per hour.

⁷ Household production refers to the normal household duties Claimant performed prior to the crash, such as food preparation, cleaning the house, yard maintenance, etc.

household production, for a total of \$880,978. This combined with the value of her life care plan is \$1,742,303.91.

LITIGATION HISTORY:

On July 10, 2020, Claimant filed a civil suit against DACS, alleging negligence.

On July 15, 2021, during mediation, the parties reached a settlement for \$3,375,000 and DACS paid the statutory limit of \$200,000 under section 768.28, Florida Statutes. As terms of the Settlement and Release Agreement, DACS acknowledged that Claimant would be presenting a claim bill for payment of the additional \$3,175,000 to the legislature for passage and DACS agreed to support the claim bill authorizing the additional payment of \$3,175,000.

CLAIMANT'S POSITION:

Claimant argues she is entitled to the remaining amount of \$3,175,000 under the settlement agreement.

RESPONDENT'S POSITION:

As stated in the settlement agreement, DACS "agrees to support a Claims Bill filed by Plaintiff."

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

The driver of a vehicle has a duty to take reasonable care and to follow all applicable laws to prevent injury to others within the vehicle's path.

Section 316.089(1), F.S. (2019) requires a vehicle being operated on a roadway that has been divided into two or more lanes to "be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." Under this statute, Burthe had a duty to maintain a single lane. His failure to do so was a breach of that duty. As an employee of DACS in the course and scope of his employment while driving a DACS-owned vehicle, his negligence is attributable to DACS under the doctrine of respondeat superior.

Causation

I find that Burthe's failure to maintain a single lane, veering head-on into the vehicle being operated by Claimant was the direct and proximate cause of Claimant's injuries.

Damages

Claimant was a 60-year old emergency room charge nurse prior to the crash. Because of the injuries she sustained she can no longer work as a nurse.⁸ Additionally, she suffers from chronic pain, stress and anxiety, incontinence, and she must walk with a cane, walker, or use a wheelchair. She has decreased grip,

⁸ Prior to the crash, she was earning \$70,000 annually as a registered nurse.

difficulty climbing stairs, difficulty ambulating, decreased range of motion and decreased strength. If she were to fall, she would not be able to get up on her own. She has difficulty doing things she once took for granted, such as sitting on and getting up from the toilet and brushing her hair. She has intermittent headaches that she did not have prior to the crash. She feels tired, fatigued and, on some days, depressed or anxious. She can no longer do the things she once did and enjoyed, such as gardening, yard work, fishing, boating and walking and playing with her grandchild.

Since the accident, Claimant has had to make some improvements to her home including adding a ramp to the back of the house and having concrete poured for a walkway and ramped driveway; she also had a wheelchair lift installed on her vehicle.

State Farm has an outstanding medical payments lien in the amount of \$5,000.00. Claimant owes \$22,697.76 in outstanding charges to Tallahassee Memorial Hospital.⁹

Expert witnesses have calculated Claimant's loss of earnings and benefits to be \$669,363; her loss of household production to be \$211,615; and the value of her life care plan to be \$861,325,¹⁰ for a total economic loss of \$1,742,203. Adding Claimant's past medical expenses of \$676,935.26 to this results in total losses of \$2,419,238.36.

The amount of damages sought in this claim bill is reasonable considering the outcome of the crash and the devastation it has had on Claimant. As she continues to age, the pain and suffering from her injuries will increase. She has been robbed of the ability to support herself and enjoy the things she once enjoyed.

ATTORNEY'S/
LOBBYING FEES:

If the claim bill passes, the attorney fee will not exceed \$635,000 and the lobbyist fee will not exceed \$158,750. Outstanding costs are \$29,059.94

COLLATERAL SOURCES:

Claimant has received the following from collateral sources: \$10,000 in personal injury protection (PIP) benefits and \$5,000 in medical payments coverage; and \$40,215 in Social Security disability benefits (\$1915 per month since January 2020).

RESPONDENT'S ABILITY
TO PAY:

Because any award will come from the General Inspection Trust Fund, it would not affect Respondent's operations.

LEGISLATIVE HISTORY:

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

⁹ Total past medical expenses total \$676,935.26.

¹⁰ There is no guarantee that Medicare will cover expenses associated with the crash as Medicare can deny pre-existing conditions and Claimant has not yet applied for Medicare benefits.

RECOMMENDATIONS:

Based on the foregoing, I recommend that Committee Substitute for House Bill 6509 be reported FAVORABLY.

Respectfully submitted,

Carine Mitz

CARINE MITZ
House Special Master

cc: Representative Fernandez-Barquin
Senator Rouson
Shirley Sharon, Senate Special Master