Special Master's Final Report

The Honorable Daniel Perez
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6521 - Representative Weinberger
Relief/Jacob Rodgers/City of Gainesville

SUMMARY

This is a local, contested claim bill for $10,800,000 to compensate Jacob Rodgers ("Mr. Rodgers") for the injuries and other damages he sustained when a City of Gainesville ("the City") employee ran a stop sign in a City-owned vehicle and collided with the truck in which Mr. Rodgers was a passenger, causing Mr. Rodgers (who was not wearing his seatbelt) to eject from the truck and land in the roadway; Mr. Rodgers is now a paraplegic as a result of that accident. The amount in question comes from an $11,000,000 settlement agreement entered into by Mr. Rodgers and the City, $200,000 of which the City has already paid.

In reaching the settlement agreement, the City reserved the right to contest this claim bill, and now alleges that it should not be held liable for the negligence of its employee as he was not acting within the course and scope of his employment at the time of the accident. Alternatively, the City alleges that, should it be held liable for its employee's negligence, the damages award should be significantly reduced due to the comparative negligence of Mr. Rodgers and the driver of the truck in which he was a passenger at the time of the accident. For the reasons set out below, the undersigned Special Master recommends that HB 6521 be reported FAVORABLY.

FINDINGS OF FACT

Incident Overview

Around 8:00 p.m. evening of October 7, 2015, 20-year-old Jacob Rodgers ("Mr. Rodgers") rode in the right-side back passenger seat of a pickup truck driven and owned by his longtime friend and colleague, Hank Blackwell ("Mr. Blackwell"). Mr. Rodgers, Mr. Blackwell, and Addison Thomas ("Mr. Thomas"), a third friend and colleague seated in the truck's front passenger seat, had just come from Santa Fe Community College in Gainesville, Florida, where they were taking evening courses as part of an apprenticeship program for would-be electricians; with their classes completed for the day, the trio were returning to their place of employment to pick up their personal vehicles and head to their respective homes.[1]

[1] According to the record, Mr. Rodgers, Mr. Blackwell, and Mr. Thomas worked as apprentices for Blackwell Electric, an electric company owned by Mr. Blackwell's father, and Mr. Rodgers had worked there since shortly after completing high school. After work, the trio often carpooled from their place of employment to the Community College for their classes; who drove varied from day-to-day.

Around that time, City of Gainesville ("the City") employee William Stormont ("Mr. Stormont") left his office to head home in a vehicle owned and provided to him by the City for the purpose of completing his job duties, which included traveling between various power substations and other sites for which he had oversight; according to the record, Mr. Stormont had finished working around 6:00 p.m. and then spent some time at a gym before deciding to head home for the night. However, on his way home, Mr. Stormont decided to deviate slightly from his usual route along 39th Avenue[2] to 115th Terrace[3] to check on the gate at a particular power substation, as it was sometimes left open, leaving the substation vulnerable to copper thieves who had been active in the area; checking on the substation gates, his supervisor David Beaulieu (Mr. Beaulieu) later testified, fell within Mr. Stormont's job duties, and was something he could do "as necessary."[4]

After confirming that the substation gate was secured, Mr. Stormont proceeded back towards 39th Avenue, heading south on 115th Terrace; meanwhile, Mr. Blackwell, along with Mr. Thomas and Mr. Rodgers, proceeded northwest along 39th Avenue towards its intersection with 115th Terrace. Unfortunately, lights near the roadway diverted Mr. Stormont's attention;[5] staring at the lights, Mr. Stormont ran the stop sign at the intersection of 115th Terrace and 39th Avenue, colliding with the right side of Mr. Blackwell's truck as it attempted to pass through the intersection.[6] The force of the impact caused Mr. Blackwell's truck to overturn at least once before it finally came to rest upright in the south grass shoulder of 39th Avenue, facing north; the impact also caused Mr. Rodgers and Mr. Thomas, who were not wearing their seatbelts at the time of the accident,[7] to be ejected from the truck and land in the roadway.

Bystanders called 911, and both Alachua County Fire Rescue and the Florida Highway Patrol responded to the scene; as he was driving a City-owned vehicle, Mr. Stormont called Mr. Beaulieu to report the accident, and Gary McKenzie, a safety training coordinator for the City, came to the scene to take Mr. Stormont's statement. Alachua County Fire Rescue ultimately transported Mr. Rodgers to the emergency department at Shands Hospital.

Investigation

Following a traffic investigation, The Florida Highway Patrol issued Mr. Stormont a citation for running a stop sign in violation of s. 316.123, F.S.; the City also suspended Mr. Stormont for five days for violating the City's internal policies and procedures. Mr. Blackwell was never cited for a traffic violation in connection to the crash.

Damages

As a result of the accident, Mr. Rodgers is paralyzed from the chest down; due to his injuries, Mr. Rodgers spent months at Shands before transferring to a rehabilitation facility, where he spent many additional months. According to the record, Mr. Rodgers incurred $484,181.24 in medical expenses for past care; he presently owes $4,814.57 in outstanding medical bills, and has outstanding medical liens totaling $285,683.88. Further, according to the Life Care Plan prepared for Mr. Rodgers, as well as his own testimony, the present value of his future anticipated accident-related medical expenditures totals approximately $4,200,000, while the

[2] 39th Avenue is a roadway in Alachua County, Florida, with a posted speed limit of 45 miles per hour.
[3] 115th Terrace is a roadway in Alachua County, Florida, with a posted speed limit of 30 miles per hour.
[4] According to the testimony of Mr. Beaulieu, who, at the time of the accident was the assistant general manager for energy delivery for the City of Gainesville and Mr. Stormont's direct supervisor, Mr. Stormont was responsible for the operation and maintenance of the electric substations, as well as their security.
[5] The record is unclear whether the lights in question were streetlights, lights on the property of a nearby school. In either case, Mr. Stormont testified that the lights caught his attention as he thought they might be new LED street lights, the installation of which he had been involved in as part of a former position he had held with the City.
[6] Mr. Blackwell's truck had the right of way, as no traffic control device governed vehicles traversing 39th Avenue at the intersection of 115th Terrace; instead, vehicles on this road had a continuous, uninterrupted roadway, while vehicles coming to the intersection on 115th Terrace had a stop sign directing them to stop before proceeding into the intersection.
[7] The record shows that, at the time of the accident, Mr. Blackwell's truck had functioning seatbelts for each seat, including the seat Mr. Rodgers occupied.

present value of Mr. Rodgers' loss of household services totals $738,817.[8]

Mr. Rodgers also testified that, before the accident, he was working towards becoming an electrician, and had hoped to one day open his own business; however, due to his paralysis, Mr. Rodgers is now unable to perform the duties of an electrician and has had to find an alternative career path. Fortunately, Mr. Rodgers has found gainful employment as an office manager and scheduler for Blackwell Electric, the electric company for which he worked at the time of the accident, and he testified that he has no present plans to leave this position; however, Mr. Rodgers presented evidence that his salary is less than it would have been had he been able to work as an electrician, and that he has reached the maximum salary he can reasonably expect for his current position. Mr. Rodgers then presented the opinion of a vocational expert who believes that, due to the salary gap between Mr. Rodgers' current position and the position towards which he was working at the time of the accident but now cannot now obtain, Mr. Rodgers sustained a loss of somewhere between $8,910 and $13,110 per year; assuming the Social Security retirement age of 67, this amounts to a total loss of future earnings between $392,040 and $576,840.[9]

Mr. Rodgers also presented evidence of significant non-economic damages. To that end, he testified about how he had to spend his time in the rehabilitation center relearning basic life skills, and about how challenging once-simple things like bathing and changing are now for him. He testified to the planning it takes to leave his home, ensuring he has necessary supplies for his outings, and how he now has to plan his days around a catheterization schedule so as to avoid accidents; frequent UTIs caused by the catheterization also cause him significant disruption, as does the frequent breakdown of his skin from pressure caused by sitting too long, and he risks shoulder wear from over-reliance on his arms to maneuver. Further, in recent years, he married and built a home for himself and his wife on property his family owns but had to customize it to meet his particular needs, and, though he drives, he has to use hand brakes to operate his vehicle. He is also unable to enjoy the physical side of his relationship with his wife, and they recently drained their savings to conceive a child through in vitro fertilization, which required Mr. Rodgers to undergo a surgery not normally required for this procedure. As his family grows, Mr. Rodgers worries about how he will provide for them should he lose his job or his health declining, preventing him from working, and he faces the reality that, due to his condition and the associated health challenges, his life expectancy is approximately ten years shorter than it was before the accident.

Litigation

In 2016, Mr. Rodgers sued the City, alleging that the City was liable for the negligence of its employee, Mr. Stormont, under the *respondeat superior* doctrine, which generally makes an employer liable for the negligent acts of its employees where such acts are done in the course and scope of the employee's employment; the City also sued Mr. Stormont in his personal capacity in case the *respondeat superior* argument failed.[10] Indeed, the City moved for summary judgment on the issue of its liability for Mr. Stormont's negligence, contending that the *respondeat superior* doctrine did not apply as Mr. Stormont was not, at the time of the accident, acting within the course and scope of his employment. In support of this argument, the City raised the "going and coming rule," which generally prevents the liability of an employee driving an employer-provided vehicle from extending to the employer when the employee causes an

[8] Mr. Rodgers also testified that he has health insurance, which covers some of his medical expenses; however, his rate is double what it once was, and future coverage is not guaranteed as his employment status may one day change.

[9] Note, however, that the vocational expert also determined that Mr. Rodgers's is intelligent and capable, and could, therefore, potentially embark upon an entirely new career path that pays more than he could have made as an electrician. Thus, it seems possible that any decrease in salary could be attributed, at least in part, to Mr. Rodgers' personal choice in remaining employed at Blackwell Electric rather than embarking upon a more lucrative career path. However, the challenge for Mr. Rodgers would be, according to his testimony, finding an employer willing to work around his various medical appointments, and the risk that complications relating to his condition will one day render him unable to work.

[10] *See* 2016-CA-000659, filed in Alachua County, Florida. Mr. Rodgers ultimately settled the matter as to Mr. Stormont's personal liability with a $100,000 insurance payment under Mr. Stormont's bodily injury liability coverage.

accident while going to or coming from work.

In ruling on this matter, the trial court found that, as a matter of law, Mr. Stormont was acting within the course and scope of his employment, and, thus, the City was liable for any negligence the jury might ultimately attribute to Mr. Stormont; in support of this argument, the trial court pointed to the "dual purpose exception" to the "going and coming rule," which allows an employee's liability to attach to his or her employer where the employee was driving an employer-provided vehicle for a dual purpose – that is, both a business and a personal purpose. The City then appealed the denial of its motion for summary judgment to the First District Court of Appeal ("First DCA"), but the First DCA affirmed the trial court's decision without comment.

The lawsuit then proceeded to trial, during which the City presented expert testimony that Mr. Blackwell was traveling at approximately ten miles per hour over the posted speed limit at the time of the accident, and that Mr. Rodgers was not wearing his seatbelt at the time of the accident, which likely contributed to his ejection from the vehicle and, ultimately, his paralysis. Mr. Rodgers presented no expert testimony to contradict these assertions, relying instead on the argument that Mr. Stormont's negligence was the sole cause of the accident and Mr. Rodgers' resulting injuries as, had Mr. Stormont not run the red light, Mr. Rodgers would be walking today, use of a seatbelt or not.

However, the jury appeared to be confused about the meaning of "negligence" and what evidence they could or could not consider in apportioning fault, submitting numerous written questions to the trial court during deliberations in an attempt to obtain clarity. In response to these written questions, the trial court failed to give the jury a curative instruction, instead referring the jurors back to the written jury instructions they had received before deliberations began; the trial judge also failed to allow the parties to give a jury instruction explaining the manner in which Florida's seatbelt law could be considered in a negligence claim.[11] Ultimately, the jury found that Mr. Stormont was 100 percent at fault for Mr. Rodgers' injuries, while apportioning no fault to either Mr. Rodgers or Mr. Blackwell; this the jury did despite the evidence that, at the time of the accident, Mr. Rodgers was not wearing his seatbelt and Mr. Blackwell was speeding. The jury then awarded Mr. Rodgers $120,000,000 in damages, over $114,000,000 of which the jury awarded for non-economic damages; however, upon the City's motion for remittitur,[12] the trial court reduced Mr. Rodgers' damages to $18,319,181.20. The City also motioned for a new trial on the issue of comparative negligence, but the trial court denied this motion.

Meanwhile, the City appealed the final judgment to the First DCA, challenging again the court's determination on the course and scope question, as well as the jury verdict, arguing that it went against the manifest weight of the evidence in not apportioning any fault to Mr. Rodgers or Mr. Blackwell. Ultimately, the First DCA again upheld the trial court's findings on the course and scope question, but remanded the matter back to the trial court for a new trial on the issue of the comparative negligence of Mr. Rodgers and Mr. Blackwell. However, rather than relitigate the matter, the parties agreed to settle the dispute for $11,000,000; the City has since paid the $200,000 it was authorized to pay under Florida's sovereign immunity law, leaving in question the settlement balance of $10,800,000.

CONCLUSIONS OF LAW

House Rule 5.6(b)

[11] Under s. 316.614, F.S., all motor vehicle drivers, front-seat passengers, and back-seat passengers under the age of 18 must wear a seatbelt, but backseat passengers over the age of 18 are not required to wear a seatbelt. However, a jury may still consider a backseat passenger's failure to wear a seatbelt as evidence of that passenger's contributory negligence when the passenger is injured in a motor vehicle accident.

[12] A remittitur is a procedure by which a court reduces the amount of damages awarded by the jury, upon motion by a party asserting that the damages award was excessive. Typically, courts grant remittitur if an award is so unreasonably high that it amounts to a miscarriage of justice, and generally reduce excessive awards to the highest amount of damages that the jury reasonably could have awarded based on the evidence. Practical Law, *Remittitur*, https://1.next.westlaw.com/Glossary/PracticalLaw/I2bf1084ebe7e11e498db8b09b4f043e0?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1 (last visited Mar. 23, 2023).

Pursuant to House Rule 5.6(b), settlements are not binding on the Special Master or the House or any of its committees of reference. Thus, each claim is heard *de novo*, and the claimant has the burden to prove his or her claim by the preponderance of the evidence.

Negligence

In the instant matter, Mr. Rodgers raises a negligence claim, the elements of which are duty, breach, causation, and damages. Mr. Rodgers further argues that the City is liable for the negligence of its employee, Mr. Stormont, under the *respondeat superior* doctrine.

The City does not dispute Mr. Stormont's fault in causing the crash which paralyzed Mr. Rodgers.[13] However, the City contends that Mr. Rodgers is barred from recovering any damages from the City, as Mr. Stormont was not acting within the course and scope of his employment at the time of the accident. In the alternative, the City argues that the $10,800,000 settlement balance requested by Mr. Rodgers is excessive, as he was primarily at fault for his own injuries due to his failure to wear a seatbelt, and that Mr. Blackwell also contributed to Mr. Rodgers' injuries as he was speeding.

Duty

For a defendant to be liable for negligence, there must be either an underlying statutory or common law duty of care with respect to the conduct at issue; this is true whether the defendant is an individual, a private business, or a government entity.[14] For purposes of a negligence claim, a common law duty exists if a defendant's conduct creates a foreseeable zone of risk that poses a general threat of harm to others; more specifically, in the case of a motor vehicle's operation, a motorist has a duty to use reasonable care on the roadways to avoid accidents, including by entering intersections only after determining that it is safe to do so under prevailing conditions.[15] Further, s. 316.123, F.S., provides that, generally, every driver of a vehicle approaching an intersection with a stop sign must stop at the stop sign. Meanwhile, s. 316.123, F.S., provides that, after stopping at a stop sign, the driver must yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when the driver is moving across or within the intersection.

In the instant matter, Mr. Stormont operated a City-owned vehicle on the roadways of Alachua County, Florida; in doing so, he owed a duty to persons on or in the roadways to use reasonable care to avoid accidents, and to enter intersections only after determining that it is safe to do so under prevailing conditions. Further, Mr. Stormont owed a legal duty under s. 316.123, F.S., to stop at the stop sign at the intersection of 115th Terrace and 39th Avenue, and to yield the right of way to Mr. Blackwell's oncoming truck. In light of the foregoing, the undersigned finds the first element of negligence is met.

Breach

The existence of a duty of care is alone insufficient to sustain a negligence claim.[16] Once the existence of such a duty has been established, it merely "opens the courthouse doors"; a plaintiff must still prove the remaining elements of negligence, the next of which is a breach of the duty of care.[17]

In the instant matter, the record is clear that Mr. Stormont ran a stop sign and failed to yield the right-of-way to Mr. Blackwell's truck; in doing so, Mr. Stormont failed to use reasonable care to

[13] Note that Mr. Stormont also does not dispute his own fault in causing the crash; he accepted responsibility in the testimony he gave during the litigation of this matter.
[14] *Trianon Park v. Condo Assoc. v. City of Hialeah*, 468 So. 2d 912 (Fla. 1985).
[15] *Williams v. Davis*, 974 So. 2d 1052 (Fla. 2007), citing *Bellere v. Madsen*, 114 So. 2d 619, 621 (Fla. 1959) and *Nelson v. Ziegler*, 89 So. 2d 780, 783 (Fla. 1956).
[16] *Whitt v. Silverman*, 788 So. 2d 210 (Fla. 2001).
[17] *Id.* at 221.

avoid accidents, and violated the requirements of s. 316.123, F.S. Thus, the undersigned finds that Mr. Blackwell breached the duty of care he owed to Mr. Rodgers.

Causation

Once a duty and a breach thereof are established, causation must be determined. In making such a determination, Florida courts follow the "more likely than not" standard, requiring proof that the negligence proximately caused the plaintiff's injuries.[18] In turn, in determining proximate cause, the factfinder must analyze whether the injury was a reasonably foreseeable consequence of the danger created by the defendant's negligent conduct.[19] This analysis does not require the defendant's conduct to be the exclusive, or even the primary, cause of the injury suffered; instead, the plaintiff must only show that the defendant's conduct was a substantial cause of the injury.[20]

In the instant matter, there is no dispute that Mr. Stormont ran a stop sign and collided with Mr. Blackwell's truck, causing the truck to flip over and Mr. Rodgers to eject from the truck; there is also no dispute that, in being ejected from the truck and landing in the roadway, Mr. Rodgers became paralyzed. Though the conduct of both Mr. Rodgers and Mr. Blackwell seemingly also contributed to Mr. Rodgers' injuries, the undersigned finds that Mr. Stormont's conduct was a substantial cause of such injuries as, but for Mr. Stormont's conduct, the accident and resultant injury would not have occurred.

Damages

To sustain a negligence claim, the plaintiff must prove actual loss or damages resulting from the injury, and the amount awarded must be precisely commensurate with the injury suffered.[21] Actual damages may be "economic damages" (that is, financial losses that would not have occurred but for the injury giving rise to the cause of action, such as lost wages and costs of medical care) or "non-economic damages" (that is, nonfinancial losses that would not have occurred but for the injury giving rise to the cause of action, such as pain and suffering, physical impairment, and other nonfinancial losses authorized under general law).[22]

In the instant matter, Mr. Rodgers presented evidence of economic damages in the form of past and future medical expenses, costs of future services, and lost wages. He also presented evidence of non-economic damages, including physical impairment, depression, and related difficulties in navigating the world and caring for himself. Based on the foregoing, the undersigned finds that Mr. Rodgers proved that he suffered actual damages due to Mr. Stormont's negligence.

Respondeat Superior

Under the common law *respondeat superior* doctrine, an employer is liable for the negligence of its employee when:

- The individual was an employee when the negligence occurred;
- The employee was acting within the course and scope of his or her employment; and
- The employee's activities were of a benefit to the employer.[23]

For conduct to be considered within the course and scope of the employee's employment, such conduct must have:

- Been of the kind for which the employee was employed to perform;
- Occurred within the time and space limits of his employment; and

[18] *Gooding v University Hosp. Bldg., Inc.*, 445 So. 2d 1015 (Fla. 1984); *Ruiz v. Tenent Hialeah Healthsystem, Inc.*, 260 So. 3d 977 (Fla. 2018).
[19] *Ruiz*, 260 So. 3d at 981-982.
[20] *Id.* at 982.
[21] *McKinley v. Gualtieri*, 338 So. 3d 429 (Fla. 2d DCA 2022); *Birdsall v. Coolidge*, 93 U.S. 64 (1876).
[22] FLJUR MEDMALP § 107.
[23] *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353 (Fla. 3d DCA 2001).

- Been due at least in part to a purpose serving the employment.[24]

In the instant matter, there is no dispute that, at the time of the accident, the City employed Mr. Stormont, and that he was driving a City-owned vehicle; however, the record also shows that Mr. Stormont was, at the time of the accident, heading home after having left his office and spending some time at a gym. Under the "going and coming rule" in s. 440.092, F.S., a person going to or coming from work is not generally considered to be a person acting in the course and scope of his or her employment, even where the employer provided transportation, if such means of transportation was available for the employee's exclusive, personal use. Thus, the City argues, Mr. Stormont was not acting within the course and scope of his employment at the time of the accident, and the City cannot, therefore, be held liable for his negligence under the *respondeat superior* doctrine.

As discussed above, in ruling on this matter, the trial court determined, as a matter of law, that Mr. Stormont was, in fact, acting within the course and scope of his employment. In support of her ruling, the trial court judge cited to the "dual purpose exception" to the "going and coming rule," under which an employer may be found liable for an employee's negligence where a business purpose was a concurrent cause of what would have otherwise been an employee's personal trip in an employer-provided vehicle; such a business purpose existed in this case, the trial court found, as Mr. Stormont stopped to check on the power substation's gate during his drive, which conduct fell within his job duties. The First DCA ultimately upheld the trial court's determination twice on appeal, and noted in the second order that there was "ample evidence that Stormont was acting within the course and scope of his employment with the City at the time of the crash."

At the Special Master hearing held in this matter, counsel for the City presented no new information on the course and scope issue and, indeed, stated that the facts surrounding the accident were not in dispute; thus, the undersigned was left to consider only that evidence which the trial court considered in making its determination on the *respondeat superior* doctrine's application. Based on such evidence, the undersigned believes that a reasonable factfinder could reach the same conclusion the trial court did – that is, that Mr. Stormont was acting with the course and scope of his employment at the time of the accident; the undersigned also notes that the First DCA felt that such evidence was sufficient to affirm the trial court's ruling on the issue twice. In light of the foregoing, the undersigned does not feel it would be appropriate to disturb the lower court's ruling on the *respondeat superior* doctrine's application, and, thus, finds that it is appropriate to hold the City liable for any negligence attributable to its employee, Mr. Stormont.

Contributory Negligence

Negligence liability in Florida is governed by the "comparative negligence doctrine"; under this doctrine, as it stands today, a defendant sued for negligence can generally diminish or even eliminate his or her liability to the plaintiff based on the comparative fault of others, including the plaintiff.[25] Specifically, under s. 768.81, F.S., in an ordinary negligence action, a jury determines each party's percentage of fault and, where a party's percentage of fault is 50 percent or less, he or she may recover damages commensurate to such percentage; meanwhile, any party found to be greater than 50 percent at fault for his or her own harm may not recover any damages.[26] In 2015, however, the comparative negligence doctrine instead allowed the court, after a jury determined each party's percentage of fault, to apportion damages according to

[24] *Spencer v. Assurance Co. of Am.*, 39 F.3d 1146 (11th Cir. 1994) (applying Florida law).
[25] *Birge v. Charron*, 107 So. 3d 350 (Fla. 2012).
[26] For example, under current law, if the plaintiff in a negligence suit is found to be 40 percent at fault for his or her own harm and the defendant is found to be 60 percent at fault for the plaintiff's harm, the plaintiff may recover 60 percent of his or her damages from the defendant. However, if those numbers are reversed, such that the plaintiff is found to be 60 percent at fault for his or her own harm and the defendant is found to be 40 percent at fault for the plaintiff's harm, the plaintiff recovers nothing. S. 768.81, F.S. (2025).

each party's respective fault regardless of any party's specific degree of culpability.[27]

In the instant matter, the City contends that, even if it is held liable for Mr. Stormont's negligence, the $10,800,000 settlement balance should be significantly reduced to reflect the contributory negligence of both Mr. Rodgers and Mr. Blackwell.[28] In support of this argument, the City notes that Mr. Rodgers was not wearing his seatbelt at the time of the accident, and that one of the City's trial experts testified that, had he been properly restrained by his seatbelt, Mr. Rodgers would likely be walking today. The City also notes that another of its trial experts opined that, based on an accident reconstruction, Mr. Blackwell was going about ten miles per hour over the speed limit at the time of the crash; according to this expert, had Mr. Blackwell been travelling at the speed limit, the crash may not have happened as he may have been elsewhere in the road, or he may have had sufficient time to brake to avoid the collision. However, the undersigned notes that the City had the opportunity to raise these arguments at the new trial which the First DCA ordered in this case and, in doing so, potentially reduce the amount of damages awarded to Mr. Rodgers accordingly; instead the City chose to settle the matter for $11,000,000, which amount is more than $7,000,000 less that the damages awarded to Mr. Rodgers in the first trial. Thus, the undersigned finds that the settlement amount can reasonably be said to weigh the time and expense of a new trial against any contributory negligence of Mr. Rodgers and Mr. Blackwell, and consequently sees no reason to disturb the agreed-upon amount.

POSITIONS OF CLAIMANT AND RESPONDENT

Claimant's Position: Mr. Rodgers asserts that the City is liable for the negligence of its employee, Mr. Stormont, and that, thus, he is entitled to the $10,800,000 balance of the settlement amount.

Respondent's Position: Though the City settled this matter, it reserved the right to contest the passage of this claim bill. In exercising this right, the City asserts, first, that it is not liable for the negligence of its employee, Mr. Stormont, as Mr. Stormont was not acting within the course and scope of his employment at the time of the accident. Alternatively, the City asserts that the $10,800,000 settlement balance should be reduced to account for the comparative negligence of Mr. Rodgers and Mr. Blackwell.

ATTORNEY AND LOBBYING FEES

Pursuant to the terms of the claim bill, attorney fees paid in connection to this matter may not exceed 25 percent of the total award (that is $2,700,000). Further, by agreement of Mr. Rodgers, lobbying fees may not exceed 5 percent of the total award (that is $540,000).

RECOMMENDATION

Based on the foregoing, the undersigned recommends that HB 6521 be reported FAVORABLY.

Respectfully submitted,

[27] For example, in 2021, if the plaintiff in a negligence suit was found to be 40 percent at fault for his or her own harm and the defendant was found to be 60 percent at fault, the plaintiff could recover 60 percent of his or her damages from the defendant. However, if those numbers were reversed, such that the plaintiff was found to be 60 percent at fault for his or her own harm and the defendant was found to be 40 percent at fault for the plaintiff's harm, the plaintiff could recover 40 percent of his or her damages from the defendant. S. 768.81, F.S. (2021).

[28] When asked discussing the percentages of fault of each party, the City asserted that Mr. Rodgers was 80 percent at fault for his own harm, while Mr. Stormont and Mr. Blackwell were each 10 percent at fault for such harm.

CAITLIN R. MAWN,
House Special Master