



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
4/13/09	SM	Unfavorable

April 13, 2009

The Honorable Jeff Atwater
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 52 (2009)** – Senator Ken Pruitt
HB 789 (2009) – Representative Rachel V. Burgin
Relief of Eric Brody

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$30,679,670.30 BASED ON A JURY AWARD AGAINST THE BROWARD COUNTY SHERIFF'S OFFICE TO COMPENSATE CLAIMANT ERIC BRODY FOR THE PERMANENT INJURIES HE SUFFERED WHEN THE CAR HE WAS DRIVING WAS STRUCK BY A DEPUTY SHERIFF'S CRUISER.

FINDINGS OF FACT:

On the evening of March 3, 1998, in Sunrise, Florida, 18-year-old Eric Brody was on his way home from his part-time job. He was making a left turn from Oakland Park Boulevard into his neighborhood when his AMC Concord was struck near the passenger door by a Sheriff's Office cruiser driven by Deputy Sheriff Christopher Thieman.

Deputy Thieman was on his way to mandatory roll call at the Sheriff's district station in Weston. He was exceeding the 45 mph posted speed limit. One estimate of his speed was 70 mph. Even the lowest credible estimate of his speed was in excess of the speed limit. It is estimated that the cruiser, after braking, struck Eric's vehicle at about 53 mph. The impact caused Eric to be violently thrown toward the passenger door, where he struck his head. He suffered

broken ribs and a skull fracture. Eric was airlifted to Broward General Hospital where he underwent an emergency craniotomy to reduce brain swelling. However, he suffered a brain injury that left him with permanent disabilities.

Eric was in the hospital intensive care unit for four weeks and then was transferred to a rehabilitation center. He was later transferred to a nursing home. He remained in a coma for about six months. Eric had to learn to walk and talk again. Eric is now 29 years old, but continues to live at home with his parents. He still has difficulty walking and usually uses a wheelchair or a walker. His balance is diminished and he will often fall. Eric has some paralysis on the left side of his body and has no control of his left hand. He must be helped to do some simple personal tasks. He tires easily. The extent of his cognitive disabilities is not clear. His processing speed and short-term memory might be impaired and his mother believes his judgment has been affected.

At the time of the collision, Eric had been accepted at two universities and was interested in pursuing a career in radio broadcasting. However, his speech was substantially affected by the injuries that he suffered and currently it is difficult for anyone other than his mother to understand him.

One of the main issues in the trial was whether Eric was comparatively negligent. The Sheriff's Office contends that Eric was not wearing a seatbelt and that, if he had been wearing his seatbelt, his injuries would have been substantially reduced. Eric has no memory of the accident because of his head injury, but testified at trial that he always wore his seatbelt. Immediately after the collision, Deputy Thieman got out of his cruiser to check on Eric, but he did not recall whether Eric's seatbelt was fastened. The paramedics who arrived at the scene testified that Eric's seatbelt was not fastened. However, the photographs of the vehicles show that the seatbelt was spooled out. There was evidence presented that the seatbelt could have become unfastened during the collision. Eric was a cautious driver and had a perfect driving record. It is concluded from the evidence presented that Eric was more likely than not wearing his seat belt.

The jury saw a crash re-enactment that was conducted with similar vehicles and using a belted test dummy. The results of the reenactment supported the proposition that the collision would have caused a belted driver to strike his or her head on the passenger door. The seatbelt shoulder harness has little or no effect in stopping the movement of the upper body in a side impact like the one involved in this case. The head injury that Eric sustained is consistent with injuries sustained by belted drivers in side impact collisions. Therefore, Eric's injury was not inconsistent with the claim that he was wearing his seatbelt at the time of the collision.

Deputy Thieman's account of the incident was conspicuously lacking in detail. Deputy Thieman did not recall how fast he was going before the collision. He could not recall how close he was to Eric's vehicle when he first saw it. He could not recall whether Eric's turn signal was on.

There is a curious aspect of the incident that was not clarified by the evidence. Deputy Thieman had been traveling in the left lane of Oakland Park Boulevard, which has three westbound lanes, but collided with Eric's vehicle in the far right lane. If Deputy Thieman had stayed in the left lane, the collision would not have occurred. Why Deputy Thieman would swerve to the right to avoid the collision was not adequately explained. It would seem that the natural response in seeing a vehicle moving to the right would be to try to escape to the left. At trial, Deputy Thieman testified that he did not turn to the left because that was in the direction of oncoming traffic. However, there was no oncoming traffic at the time. It is difficult to understand how Deputy Thieman could have perceived that turning to his right was his best chance to avoid a collision. It is concluded that the manner in which Deputy Thieman maneuvered his vehicle was unreasonable under the circumstances and that it was a contributing cause of the collision.

Eric has a normal life expectancy. One life care plan developed for Eric estimated the cost of his care will be \$10,151,619. There was other evidence that the life plan could be \$5 to \$7 million.

Eric received \$10,000 from Personal Injury Protection coverage on his automobile insurance. He receives Social Security disabilities payments of approximately \$560 each

month. He also received some vocational rehabilitation assistance which paid for a wheelchair ramp and some other modifications at his home.

Deputy Thieman was fired by the Broward County Sheriff's Office in 2006 for official conduct not related to the collision with Eric Brody.

LITIGATION HISTORY:

In 2002, a negligence lawsuit was filed in the circuit court for Broward County by Charles and Sharon Brody, as Eric's parents and guardians, against the Broward County Sheriff's Office. The jury found that Deputy Thieman was negligent and that his negligence was the sole legal cause of Eric's damages. The jury found that Eric was not at fault. The jury awarded damages of \$30,609,298. The court entered a cost judgment of \$270,372.30. The sum of these two figures is \$30,879,670.30.

The Broward Sheriff's Office recently paid the \$200,000 sovereign immunity limit under s. 768.28, F.S. The amount being requested through this claim bill is the balance of \$30,679,670.30.

CLAIMANTS' POSITION:

The Sheriff's Office is liable for the negligent operation of a motor vehicle by its employee. Eric Brody had no contributory negligence. The jury award is just and reasonable under the circumstances.

SHERIFF'S OFFICE POSITION:

The jury award is unjustified because it failed to assign comparative negligence to Eric Brody.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether the Broward County Sheriff's Office is liable in negligence for the injuries suffered by Eric Brody and, if so, whether the amount of the claim is reasonable.

Deputy Thieman had a duty to operate his vehicle in conformance with the posted speed limit and with reasonable care for the safety of other drivers. His speeding and failure to operate his vehicle with reasonable care were contributing causes to the collision and the injuries that Eric Brody sustained. The Broward County Sheriff's Office is liable as Deputy Thieman's employer.

Although Eric Brody was required to yield before turning left, the evidence does not show that a failure to yield was a contributing cause of the collision. Eric reasonably judged that he could safely make the left turn. He was well past the lane in which Deputy Thieman was traveling. The collision appears to have been caused solely by Deputy Thieman's unreasonable actions in speeding and swerving to the right.

LEGISLATIVE HISTORY:

This is the first claim bill presented to the Senate in this matter.

ATTORNEY'S FEES AND LOBBYIST'S FEES:

At the time this report was prepared, Claimant's attorney had not agreed that to limit attorney's fees, costs, and lobbying fees to 25 percent of the claim paid, as required by the bill. Claimant reports costs of \$1,115,772.

OTHER ISSUES:

Claimant's counsel urged the Special Master to determine that the liability insurer for the Broward County Sheriff's office acted in bad faith by failing to timely tender its \$3 million coverage in this matter and that, under Florida law, the insurer is liable for the entire judgment against the Sheriff's Office. However, because the insurer was not a party to the Senate claim bill proceeding, and because the bad faith claim is not a proper subject for determination in a claim bill hearing under the rules of the Senate, the Special Master did not take evidence nor make a determination regarding the bad faith claim.

The Broward County Sheriff's Office contends that it cannot pay this claim (beyond its \$3 million insurance coverage) without drastic reductions in governmental services. It asserts that the claim is equivalent to 300 law enforcement officers or five fire/rescue stations. Sovereign immunity from liability in tort effectively prevents the State and local governments from being bankrupted by damage awards. Despite the fact that Eric Brody deserves to be compensated for his serious injuries caused by the negligence of Deputy Thieman, I do not believe it is reasonable to waive sovereign immunity to the full extent of the claim made in this case so as to cause severe reductions in government services to the citizens of Broward County.

Claimant recently offered to enter into a forbearance agreement with the Sheriff's Office, whereby Claimant would agree not to require payment of the claim (if the claim bill

were passed by the Legislature) unless the Sheriff's Office is unsuccessful in obtaining full payment from its insurance company following a "bad faith" lawsuit against the insurance company. I do not believe the Senate should pass the claim bill under these terms because the future actions of the parties and of the court are beyond the Senate's evaluation and control, and if the Sheriff's Office were unsuccessful in its lawsuit against the insurer, it would have to pay the entire claim.

Unless the Senate is presented with a method to make the fiscal impact of this claim manageable for Broward County, this claim should not be paid in an amount greater than the Sheriff Office's \$3 million insurance coverage.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 52 (2009) be reported UNFAVORABLY.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Ken Pruitt
Philip Twogood, Secretary of the Senate
Counsel of Record