



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/02/11	SM	Fav/1 amendment

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 38 (2012)** – Senator Rene Garcia
Relief of Donald Brown

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$2,551,375.83 OF LOCAL MONEY BASED ON A JURY AWARD FOR DONALD BROWN AGAINST THE SUMTER COUNTY SCHOOL BOARD TO COMPENSATE CLAIMANT FOR PERMANENT INJURIES HE SUFFERED IN A COLLISION WITH A SCHOOL BUS OWNED AND OPERATED BY THE SUMTER COUNTY SCHOOL BOARD.

FINDINGS OF FACT:

In the early morning of October 18, 2004, Donald Brown was driving his motorcycle to work, traveling east on County Road 470. He had his headlight on, and was not speeding. Directly in front of him was a Lincoln Town Car. As they approached the intersection with County Road 475, the Lincoln Town Car turned right, onto County Road 475. Mr. Brown next saw a school bus, driven by Patsy Foxworth, pull out in front of him. Ms. Foxworth had been stopped at a stop sign on County Road 475, preparing to turn left onto County Road 470. When she pulled the bus out onto County Road 470, Mr. Brown had just enough time to lay his motorcycle down, and slide into the front of the school bus. He suffered a traumatic, below-the-knee amputation of his right leg.

In order to save Mr. Brown's knee, tend to his injury, perform skin grafts, and treat ulcers, the doctors operated multiple times on Mr. Brown. One such procedure transplanted muscle from Mr. Brown's back to his right leg, in order to provide skin coverage for the prosthetic leg he had to learn to use.

After the jury trial, Mr. Brown underwent two more surgeries, ultimately resulting in an above-the-knee amputation. He will continue to need constant medical monitoring, as well as adjustment and replacement of his prosthesis. At the time of the trial, the jury was presented with evidence as to the cost of a prosthetic leg for a below-the-knee amputation, but his prosthetic device is now more expensive, as it involves an above the knee amputation.

At the time of the collision, Mr. Brown was 38 years old, and employed as a federal corrections officer, earning \$40,788 annually. As a result of his injury, he was awarded federal retirement disability benefits and health insurance. He received 60 percent of his income for the first year, and will receive 40 percent of his income until he reaches retirement age. Mr. Brown is currently 45 years old. Since the collision, Mr. Brown has been employed as a marketing representative, landscaper, a clerk at Wal-Mart, and a fingerprint analyst for the State of Kentucky. His current earnings, combined with his federal disability benefits, are higher than his pre-injury earnings.

All of Mr. Brown's medical bills have been paid by his federal health insurance, through Blue Cross and Blue Shield. His yearly deductible is \$5,000. He will continue to receive this health insurance benefit until he reaches retirement age, at which point he will be eligible for Medicare.

LITIGATION HISTORY:

In 2005, Mr. Brown brought a lawsuit against the Sumter County School Board. In November, 2008, after a trial, the jury found the School Board liable for Mr. Brown's injuries and awarded him damages in the amount of \$2,941,240.60. The jury found that the School Board was 100 percent negligent in causing Mr. Brown's injuries, and awarded the following in damages:

Past medical expenses: \$421,963
Past lost earnings: \$92,690
Future medical expenses: \$972,730
Future lost earnings: \$554,000
Past pain and suffering: \$630,00
Future pain and suffering: \$270,000

The jury was unaware of Mr. Brown's health insurance, and of his federal disability benefits. The circuit judge entered a final judgment reducing the final verdict to \$2,651,375.83 (offsetting the amount of medical bills that had been paid by the time of the trial, \$229,613.77, and the federal disability benefits that had been paid at the time of trial, \$60,251.00) plus taxable costs of \$31,674.12. The School Board appealed the final judgment in March 2009. The Fifth District Court of Appeal affirmed the judgment in February 2011. In August 2011, the School Board paid Mr. Brown \$100,000.

CLAIMANT'S POSITION:

Ms. Foxworth was 100 percent negligent in failing to yield to oncoming traffic. The School Board is vicariously liable for the negligence of its employee. At the claim bill hearing, Mr. Brown's attorneys reduced the amount they are seeking through this claim bill to \$2,000,000.

SCHOOL BOARD'S POSITION:

Mr. Brown failed to exercise due care for his own safety by riding his motorcycle too closely to the rear of the Lincoln Town Car, and therefore contributed to the collision and to his injury. The School Board is opposed to this claim bill.

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 Sumter County School Board was liable in negligence for the injuries suffered by Mr. Brown, and, if so, whether the amount of the claim is reasonable.

Ms. Foxworth had a duty to operate the bus at all times with consideration for the safety of pedestrians and other drivers. Pedigo v. Smith, 395 So. 2d 615, 616 (Fla. 5th DCA 1981). Specifically, it was Ms. Foxworth's duty to observe and yield to Mr. Brown's motorcycle as it approached the intersection. See § 316.123(2)(a), Fla. Stat. (2004) ("[E]very driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at a clearly marked stop line. After having

stopped, the driver shall yield the right-of-way to any vehicle which has entered the intersection from another highway"). Ms. Foxworth breached this duty of care, and the breach was the proximate cause of Mr. Brown's injuries.

The Sumter County School Board, as Ms. Foxworth's employer, is liable for her negligent act. Hollis v. Sch. Bd. of Leon Cnty., 384 So. 2d 661, 665 (Fla. 1st DCA 1980) (holding that a school board is liable for any negligent act committed by a public school bus driver whom it employs, provided the act is within the scope of the driver's employment); see also Aurbach v. Gallina, 753 So. 2d 60, 62 (Fla. 2000) (holding that the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another").

The jury's allocation of 100 percent liability to the School Board is a reasonable allocation and should not be disturbed. However, the payment of a claim bill is a matter of legislative grace. Since Mr. Brown's medical bills have all been paid, and will continue to be paid through his federal health insurance, it is unreasonable for the Legislature to compensate Mr. Brown for any medical costs. The evidence also establishes Mr. Brown's employability, and his entitlement, until retirement age, to federal disability benefits. His current income is more than his pre-injury income. Accordingly, it is unreasonable for the Legislature to compensate Mr. Brown for future lost wages.

Given the traumatic nature of the injury, and the change to his lifestyle, Mr. Brown has endured significant pain and suffering. The jury's award of past and future pain and suffering is reasonable and fair. Adding the amount of past lost wages, which is \$32,439, to the amounts awarded for past and future pain and suffering, which total \$900,000, results in a figure of \$932,439. Reducing this amount by the \$100,000 already paid to Mr. Brown, would leave a balance of \$832,439. This is the amount that I recommend be paid. I also recommend that the claim bill be amended to reflect that the amount paid to Mr. Brown is to compensate him only for lost wages and for pain and suffering.

LEGISLATIVE HISTORY:

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

ATTORNEYS FEES AND LOBBYIST FEES:

The Claimant's attorneys have agreed to limit their fees and lobbyist fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), Florida Statutes.

SOURCE OF FUNDS:

If Senate Bill 38 is approved, the Sumter County School Board will pay the claim from local funds. Sumter County School Board is a member of Preferred Governmental Insurance Trust, a governmental self-insured trust.

SPECIAL ISSUES:

Senate Bill 38 (2012) is no longer accurate, as it states that the School Board has not paid \$100,000 pursuant to sovereign immunity limits set forth in s. 768.28, Florida Statutes. The School Board has paid that amount to Mr. Brown.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 38 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,

Jessica Enciso Varn
Senate Special Master

cc: Senator Rene Garcia
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

Attachment



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LEGISLATIVE ACTION

Senate

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House

The Special Master on Claim Bills recommended the following:

1 **Senate Amendment (with title amendment)**

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3 Delete line 104

4 and insert:

5 to Donald Brown, in the amount of \$2,551,375.83, plus the

6

7 ===== T I T L E A M E N D M E N T =====

8 And the title is amended as follows:

9 Delete lines 33 - 41

10 and insert:

11 WHEREAS, Donald Brown seeks to recover damages for his

12 bodily injury, including a permanent injury to the



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13 body as a whole, past and future pain and suffering of
14 both a physical and mental nature, disability,
15 physical impairment, disfigurement, mental anguish,
16 inconvenience, loss of capacity for the enjoyment of
17 life, loss of earnings, and loss of ability to lead
18 and enjoy a normal life, and

19
20 Delete lines 91 - 95

21 and insert:

22 WHEREAS, the District School Board of Sumter County
23 has paid \$100,000 pursuant to the statutory limits of
24 liability set forth in s. 768.28, Florida Statutes,
25 and WHEREAS, the \$2,551,375.83 judgment is sought
26 through the submission of a claim bill to the
27 Legislature, NOW, THEREFORE,
28