



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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November 16, 1999

<u>SPECIAL MASTER'S FINAL REPORT</u>	<u>DATE</u>	<u>COMM</u>	<u>ACTION</u>
The Honorable Toni Jennings President, The Florida Senate Suite 409, The Capitol Tallahassee, Florida 32399-1100	11/19/99	SM CA FR	Favorable

Re: SB 28 - Senator Steven A. Geller
Relief of Earl Spencer

THIS IS AN EQUITABLE CLAIM AGAINST THE CITY OF FT. LAUDERDALE BASED UPON A SETTLEMENT AGREEMENT FOR \$600,000 FROM CITY FUNDS (\$200,000 HAS ALREADY BEEN PAID PURSUANT TO THE STATUTORY LIMITS) TO COMPENSATE EARL SPENCER FOR DAMAGES SUSTAINED AS A RESULT OF A CITY DETECTIVE'S NEGLIGENCE IN A CAR CRASH.

FINDINGS OF FACT:

THE ACCIDENT

1. On March 19, 1996, at approximately 12:20 a.m., Earl Spencer, a husband and father of five children, was operating a motor vehicle and was on his way home from visiting his sister at Plantation General Hospital.
2. Mr. Spencer was involved in an automobile accident with an unmarked police vehicle operated by Detective Ghalib Carmichael, an undercover agent for the City of Ft. Lauderdale.
3. Mr. Spencer was attempting to make a left-hand turn onto N.W. 26th Street from N.W. 31st Avenue in Lauderdale Lakes, Florida, when Detective

- Carmichael, traveling in excess of the posted speed limit of 45 mph, collided with Mr. Spencer's vehicle.
4. At impact, Detective Carmichael's braking speed was estimated at 56 mph.
 5. Detective Carmichael sustained some minor injuries but was released from the hospital that morning.

EARL SPENCER'S INJURIES

6. Mr. Spencer was not wearing a seat-belt when the accident occurred.
7. Nevertheless, the parties have entered into a written stipulation that, due to the level of intrusion into Mr. Spencer's vehicle, use of a seat-belt would not have mitigated Mr. Spencer's injuries.
8. As a result of the crash, Mr. Spencer suffered a severe closed head injury, known as "shearing."
9. Following the accident, Mr. Spencer was in a comatose state for approximately 3 months.
10. After a slow recovery from the coma, Mr. Spencer was left with permanent brain damage.

LEGAL PROCEEDINGS

11. Delores Facey, Mr. Spencer's mother was appointed plenary guardian of the property of Mr. Spencer on January 11, 1999.
12. Mr. Spencer settled his case with the City of Ft. Lauderdale for a total of \$800,000, of which \$200,000 was paid and the remaining \$600,000 is being pursued through this claim bill.
13. A Consent Final Judgment approving the Settlement was entered by the Court on January 21, 1999.
14. Mr. Spencer settled a separate claim against Detective Carmichael. The terms of that settlement are confidential.

CONCLUSIONS OF LAW:

1. This is a local bill that has been properly advertised.
2. **RESPONDEAT SUPERIOR DOCTRINE**--An employer may be held vicariously liable for the acts committed by an employee when the act occurs within the scope of the employment relationship. See, eg. Hennagan v. Department of Highway Safety and Motor Vehicles, 467 So.2d 748 (Fla. 1st DCA 1985).

Therefore, in order to find the City of Ft. Lauderdale liable for Mr. Spencer's injuries, there must be indicia that Detective Carmichael was acting within the scope of his employment relationship with the city at the time of the accident. Detective Carmichael:

- a. was on 24-hour call with the City of Ft. Lauderdale Police Department;
- b. requested and received worker's compensation benefits for injuries sustained in the accident;
- c. was subjected to an internal investigation regarding his actions in the accident;
- d. was issued a formal written reprimand from the city for his actions.

These factors indicate that Detective Carmichael was acting within the course and scope of his employment. Therefore, pursuant to the *respondeat superior* doctrine, the City of Ft. Lauderdale is vicariously liable for Detective Carmichael's negligence.

3. **DANGEROUS INSTRUMENTALITY DOCTRINE**--Although there is ample evidence in the record to support a finding of vicarious liability under the *respondeat superior* doctrine, it should also be noted that a party may be held vicariously liable for the negligence of others under the "Dangerous Instrumentality Doctrine." Under this doctrine, the owner of a vehicle may be held liable for the negligence of the driver. See, eg. Roth v. Old

Republic Ins. Co., 269 So.2d 3 (Fla. 1972); Hertz Corp. V. Jackson, 617 So.2d 1051 (Fla. 1993).

The vehicle that Detective Carmichael was driving at the time of the accident was owned by the City of Ft. Lauderdale. Further, Detective Carmichael was authorized to operate the vehicle 24 hours a day. Therefore, pursuant to this separate and distinct theory of liability, the City of Ft. Lauderdale could be found vicariously liable for Detective Carmichael's negligence.

4. **DUTY**--Detective Carmichael had the duty to operate his motor vehicle in such a manner as to not create an unreasonable risk of injury to Mr. Spencer.
5. **BREACH**--Detective Carmichael breached that duty by driving at an excessive rate of speed through the intersection.
6. **CAUSATION**--Detective Carmichael's actions were a contributing cause of Mr. Spencer's injuries. Detective Carmichael had ample time to observe, slow down, and avoid colliding with Mr. Spencer's vehicle. He failed to take such precautions and also failed to yield to Mr. Spencer's vehicle which was already within the intersection completing a left turn.

Mr. Spencer's actions were a contributing cause of his own injuries. When making a left turn there exists the requirement that the person making the turn yield to oncoming traffic. Section 316.122, F.S.

7. **DAMAGES**--The collision resulted in serious and permanent injuries to Mr. Spencer.

Prior to the crash, Mr. Spencer had no physical or mental limitations. Mr. Spencer worked at an apartment complex as the maintenance man and was earning \$8.00 per hour. He could have expected to work to at least age 65.

As a direct result of the accident, Mr. Spencer suffered a massive brain injury which has left him

permanently confined to a wheelchair and unable to care for himself in any way. Mr. Spencer is 39 years old.

Since the time of the accident, Mr. Spencer has resided in various hospitals and rehabilitation facilities, and is currently residing with his mother in Lauderhill, Florida.

To date, Mr. Spencer has incurred approximately \$535,000 in medical bills.

A Life Care Plan was prepared for Mr. Spencer by Michael Morgenstern, M.Ed., C.R.C. The Life Care Plan provided by Mr. Morgenstern contemplates life-time need for continued medical care from a variety of medical specialists, further surgeries, medications, speech, physical and occupational therapies, medical equipment and attendant care.

Using the information contained in Mr. Morgenstern's report, David R. Williams, Ph.D., of the Florida Economics Consulting Group, provided a report on Mr. Spencer's economic damages reduced to present value at \$2.8 million.

Therefore, the \$600,000 contemplated by the Settlement Agreement represents an amount significantly less than Dr. Williams' estimate of Mr. Spencer's economic damages.

Nevertheless, Mr. Spencer bargained for and received important concessions from the City of Ft. Lauderdale regarding the pursuit of this claim bill, and avoided the prospect of protracted litigation and the uncertainty inherent in the jury trial system.

Mr. Spencer receives approximately \$543.00 per month in Social Security benefits.

As of April 23, 1999, the State of Florida, Agency for Health Care Administration issued acknowledgment of full payment of all amounts claimed by an

established lien. The lien was in the amount of \$193,966.

SPECIAL NEEDS TRUST:

An Irrevocable Special Needs Trust has been established for Mr. Spencer.

A Special Needs Trust is a vehicle that has been created by the Legislature for permanently injured individuals who need a lifetime of care who, if forced to pay for this care in the private sector, would consume the entire quantity of the settlement or recovery in a very short time. The creation of the Special Needs Trust obligates that the Medicaid lien that exists at the time of the settlement be negotiated and paid off, and the monies that remain in the Special Needs Trust are there to provide the medical care, treatment and equipment that Medicaid does not.

The Medicaid program will take a priority position upon Mr. Spencer's passing and will be entitled to reimbursement for any and all monies paid for Mr. Spencer's benefit for the remainder of his lifetime.

75 percent of the monies received through the claim bill process will be distributed to this Irrevocable Special Needs Trust. The remaining 25 percent will go in equal parts to Mr. Spencer's five children.

ATTORNEYS FEES:

Section 768.28(8), F.S., provides that no attorney may charge or receive legal fees in excess of 25 percent of any judgment or settlement. Claimant's counsel has filed a fee affidavit in accordance with this section.

RECOMMENDATIONS:

For the foregoing reasons, I recommend that Senate Bill 28 be reported FAVORABLY.

Respectfully submitted,

Gary D. Wimsett, Jr.
Senate Special Master

cc: Senator Steven A. Geller
Faye Blanton, Secretary of the Senate
Phillip Miller, House Special Master