



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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December 9, 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		SM JU FR	Fav/1 amend Favorable/CS

Re: SB 38 - Senator Locke Burt
HB - Representative
Relief of Fred Fedorka

THIS IS AN EQUITABLE CLAIM FOR \$800,000, BASED ON A CLAIM AGAINST VOLUSIA COUNTY TO COMPENSATE MR. FRED FEDORKA IN HIS INDIVIDUAL CAPACITY AND AS EXECUTOR OF HIS WIFE'S ESTATE FOR INJURIES SUSTAINED AS A RESULT OF A COUNTY EMPLOYEE'S NEGLIGENT OPERATION OF A COUNTY VEHICLE ON U. S. A1A IN VOLUSIA COUNTY.

FINDINGS OF FACT:

On March 5, 1997, at approximately 1:45 p.m., Carol and Fred Fedorka were on their individual motorcycles traveling north on Ocean Shore Blvd., U.S. A1A, in Ormand By the Sea, in North Volusia County. The weather was clear and traffic conditions were moderate too heavy. The car in front of Mr. and Ms. Fedorka stopped to wait for a car to make a left turn and Mr. and Ms. Fedorka were slowing down in order to stop. A Volusia County public works truck, operated by Mr. Bonelli, a county public works employee, was also traveling north, and collided with the rear of Mr. and Ms. Fedorka's motorcycles.

The investigating highway patrol officer interviewed Mr. Bonelli and three witnesses at the scene of the accident.

Based on these statements the police report indicated that the county vehicle was traveling approximately 40 mph. It hit Ms. Fedorka first and then approximately 19 feet further down the road hit Mr. Fedorka's motorcycle. Ms. Fedorka and her motorcycle were pushed and dragged approximately 92 ft. and Mr. Fedorka and his motorcycle were pushed and dragged approximately 72 ft. After rear-ending the two motorcycles the county vehicle traveled over Mr. and Ms. Fedorka and the motorcycles before landing on the rear of the stopped vehicle in front of the motorcycles. That vehicle was then pushed down the highway before the county truck came to rest 126 ft from the initial point of impact.

The investigating officer found that Mr. Bonelli, the operator of the Volusia County vehicle, caused the accident by failing to stop when traffic in front of him came to a stop or was slowing to a stop. Mr. Bonelli was issued a citation for careless driving in violation of s. 316.1925, F.S. In his deposition, Mr. Bonelli's only explanation for the accident was: "shortly before the impact, I was looking through my rearview mirror. And then when I looked up, I saw them and I tried to stop. And I couldn't stop in time." No evidence of any other reason for the accident was offered. The officer stated in the report that weather was not a factor and there were no drugs or alcohol involved.

The only persons injured as a result of the accident were Mr. and Ms. Fedorka. Ms. Fedorka, who was 40 years of age, sustained 41 separate injuries in the accident. After five emergency surgeries and 13 days of hospitalization Ms. Fedorka died on March 18, 1997. Mr. Fedorka, then 48 years of age, suffered a fracture to his neck which required two operations to fuse the vertebra from C4 through C6. He sustained fractures of his left clavicle (shoulder), a rib, and nasal bone. Additionally, he sustained a lung contusion, tears in the urethra, and an open wound to his face and scalp which required a skin graft, tearing off of a portion of

his right ear, and multiple scrapes and abrasions. As a result of his injuries Mr. Fedorka was in the hospital in Daytona from the date of the accident until March 28, 1997.

Upon leaving the hospital Mr. Fedorka was transported by air ambulance to a rehabilitation hospital near his home in Pennsylvania. Mr. Fedorka received therapy until May 22, 1997. Upon discharge from the rehabilitation hospital Mr. Fedorka stayed with his brother to continue recovery. He now has returned to his own residence and is living independently.

At the hearing on this matter Mr. Fedorka testified that as a result of the accident he has significant scarring, continued pain, and physical limitations. He cannot lift his left arm above his shoulder. He has significant visible scarring and a noticeable dent from his scalp wound and the skin graft to his head. He has continued pain in his arm, back, and head as well as when urinating.

Prior to the accident Mr. Fedorka was retired from his job as a truck driver and spent his time assisting his wife with her antique business and maintaining rental properties. Shortly before the accident Ms. Fedorka had started an antique business with a friend. Up until the accident all proceeds from the antique business had been returned to the business. In addition to Mr. Fedorka's pension, the Fedorkas received rental income from duplexes and triplexes which Mr. Fedorka owned and maintained. Mr. Fedorka testified at the hearing that the monthly rental income from those properties was \$2000.00.

Mr. Fedorka testified that since the accident he has not been able to perform maintenance on the rental property and it has been placed on the market. All but one of the five rental properties has been sold and the last property was under a sale contract at the time of

the hearing. Mr. Fedorka testified he has taken mortgages on all of the properties sold and is receiving approximately \$1200 in payments each month for the lease of one property and mortgages on the others. If the mortgage payments are used to cover expenses for which he used the rental income in the past he will have no assets, when the mortgages are payed in 10 or 20 years, to provide the income he would have continued to receive from the apartments had he been able to continue to perform the maintenance.

Medical bills for Mr. and Ms. Fedorka totaled \$499,485.25. The medical bills for Ms. Fedorka totaled \$253,423.03. Mr. Fedorka's medical bills to date have totaled \$246,062.22. Medical insurance held by Mr. Fedorka will pay \$381,789.39 for these claims with Mr. Fedorka responsible for \$4,500 in co-payments and deductibles and \$75.53 in non-covered expenses. Additionally, Mr. Fedorka testified at the hearing that he may need additional surgery at some future date for his urethra as it is constricted by scar tissue.

Western Pennsylvania Teamsters and Motor Carriers Welfare Fund has asserted a right of subrogation for the \$381,789.39 they will pay. To date no settlement on the subrogation claim has been reached between Mr. Fedorka and the insurance company. According to the information provided by Mr. Fedorka's attorney, no other subrogation claims have been asserted.

In addition to the above expenses Mr. Fedorka and Ms. Fedorka's father incurred funeral expenses of \$6,950.99 for the burial of Ms. Fedorka.

CONCLUSIONS OF LAW:

Even where there is a settlement agreement, as there is here, each claim bill must be based upon facts sufficient to meet the preponderance of the evidence standard.

The claimants have argued that Volusia County is vicariously liable for the negligent acts of its employee in his operation of the county public works vehicle. Mr. Bonelli was authorized to drive the truck at the time of the accident and he was traveling between job sites. Mr. Bonelli was negligent under the common law where in a rear-end collision there is a rebuttable presumption that the driver of the rear vehicle was negligent. *Pierce v. Progressive American Insurance Co.* 582 So.2d 712 (Fla. 5th DCA 1991). In *Pierce* the 5th DCA went on to quote from *Baughman v. Vann*, 390 So. 2d 750 (Fla. 5th DCA 1980):

“This presumption provides a prima facie case which shifts to the defendant the burden to come forward with evidence to contradict or rebut the presumed negligence. If the defendant produces evidence that fairly and reasonably shows that he was not negligent, the effect of the presumption disappears and negligence then becomes a jury question. *Gulle v. Boggs*, 174 So.2d 26 (Fla.1965); *Shaw v. York*, 187 So.2d 397 (Fla. 1st DCA 1966). The burden on the defendant is not to come up with just any explanation, but one which is "substantial and reasonable."

Brethauer v. Brassell, 347 So.2d 656 (Fla. 4th DCA 1977).

Mr. Bonelli, operator of the county vehicle, rear-ended Mr. and Mrs. Fedorka thus raising the presumption of negligence. Mr. Bonelli did not provide “substantial and reasonable” evidence that he was not negligent in order to rebut the presumption.

It is my opinion that the claimant has provided proof of each of the elements sufficient to meet the requisite preponderance of the evidence standard.

Damages:

Mr. Fedorka's claim for damages includes \$253,423.03 in medical bills, pain and suffering from his injuries, and \$2000 per month for lost income from the rental properties.

Estate of Ms. Fedorka:

Section 768.16 - 768.27, F.S., is Florida's Wrongful Death Act. The act defines "survivors" to include the decedent's spouse. The act also defines the relevant damages that may be recovered under the act. These include:

- Each survivor may recover the value of lost support and services from the date of the decedent's injury to her or his death, with interest, and future loss of support and services from the date of death and reduced to present value. The statutes define "services" to include tasks, usually of a household nature, regularly performed by the decedent that will be a necessary expense to the decedent's survivors.
- Medical or funeral expenses due to the decedent's injury or death may be recovered by a survivor who has paid them.
- The surviving spouse may recover for loss of the decedent's companionship

and protection and for mental pain and suffering from the date of injury.

The parties settled this case in the amount of \$1,000,000. Volusia County has paid the amount of \$200,000 to Mr. Fedorka leaving \$800,000 in the claims bill which the county agreed to support. The parties have requested that SB 38 be amended to provide for payment of the claim after December 1, 2000. This would place the payment after the County prepares the FY 2000/2001 budget and can levy taxes to pay the amount authorized in a claims bill.

A company called Jury Verdict Research has collected, classified, and analyzed virtually all reported personal injury and wrongful death cases in the United States for many years. Using a formula based on an analysis of total medical expenses, wage loss, and verdicts which have demonstrated a reliable relationship to the injuries, the JVR editors have calculated and reported a probability range of expected verdicts for claims such as those in this case. Based on a review of the data reported in the JVR in relation to the specific facts of this case the settlement reached by the parties would be toward the low end of the range of verdicts which could be expected.

ATTORNEYS FEES:

Attorney fees are capped at 25% in accordance with §768.28, F.S.

RECOMMENDATIONS:

Based on the foregoing, I recommend that with an amendment to allow for payment of the claim after December 1, 2000, SB 38 be reported FAVORABLY.

This recommendation was adopted by the Senate Judiciary Committee.

Respectfully submitted,

December 9, 1999
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Dorothy S. Johnson
Senate Special Master

cc: Senator Locke Burt
Representative
Faye Blanton, Secretary of the Senate
Nathan Bond , House Special Master