



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/1/03	SM	Favorable
02/02/04	CP	Favorable
03/03/04	CJ	Favorable
03/11/04	FT	Favorable

December 1, 2003

The Honorable James E. "Jim" King, Jr.
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 32 (2004)** – Senator Evelyn Lynn
Relief of Cordell Davidson and Veronica Hensley Davidson

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$4.7 MILLION PREDICATED UPON A CONSENT AGREEMENT BETWEEN VOLUSIA COUNTY AND THE CLAIMANTS, CORDELL AND VERONICA HENSLEY DAVIDSON, TO COMPENSATE THE CLAIMANTS FOR THEIR INJURIES IN A COLLISION RESULTING FROM THE NEGLIGENCE OF A COUNTY FIRE ENGINE OPERATOR.

VOLUSIA COUNTY HAS PAID TO THE CLAIMANTS THE MAXIMUM AMOUNT OF \$200,000 ALLOWED UNDER THE STATUTORY WAIVER OF SOVEREIGN IMMUNITY, HAS APPROVED AN ADDITIONAL SETTLEMENT OF \$4.7 MILLION, AND WILL SUPPORT THE INSTANT CLAIM BILL IN THAT AMOUNT.

FINDINGS OF FACT:

The Accident

On or about 7:51 p.m., on Saturday, March 6, 1999, the claimants, Cordell Davidson and Veronica Hensley (now known as Veronica Davidson), were traveling South on US 1 in Oak Hill, Florida, approaching an intersection with Center Street. Cordell Davidson was operating his 1995 Yamaha motorcycle and his fiancée, Veronica, was a passenger. The motorcycle was traveling at the posted speed limit of 55

mph. Both riders were wearing helmets and the motorcycle's headlights were on.

At that time, John Berard, a county employee (volunteer firefighter) who was operating a Volusia County fire engine, was driving North on US 1 and proceeding to the intersection at Center Street. Mr. Berard was responding to a non-emergency call, had his running lights on, but did not have on the engine's emergency lights or siren.

Mr. Berard stopped in the paved center median area at the intersection of US 1 and Center Street. According to the Traffic Crash Report by the officer with the Florida Department of Highway Safety and Motor Vehicles (DHSMV), Mr. Berard proceeded to turn left toward Center Street and improperly turned into the middle of the two southbound lanes of US 1, directly into the path of Cordell Davidson's motorcycle. The left front steel bumper of the fire engine struck the left side of the motorcycle.

As the direct result of the negligent operation of the fire engine by John Berard, Mr. Davidson and Ms. Hensley sustained severe, life-threatening, and life altering injuries. According to the DHSMV report, the force of the collision threw Mr. Davidson approximately 65 feet and Ms. Hensley approximately 93 feet from the point of impact. Mr. Berard was cited by the officer for making an improper left turn in front of the motorcycle, in violation of §316.122, F.S.

After the accident, Mr. Davidson and Ms. Hensley were married on May 6, 2000, and she gave birth to a health baby boy on August 26, 2003.

Injuries Sustained by Cordell Davidson

Cordell Davidson was a 40 year-old computer consultant with Deltek at the time of the accident. He had health insurance and uninsured motorist coverage on his motorcycle.

As a result of the accident, Mr. Davidson sustained multiple rib fractures, bilateral pulmonary contusions, separation of the pubic symphysis, an open left femur fracture, a significant left heel degloving injury, and a deep laceration to the left upper forearm. He has had 20 major surgeries and currently has limited use of his left leg.

Mr. Davidson incurred medical bills which total \$1,103,119. Based on his loss of past earnings and loss of future earning capacity, it was estimated that these combined losses total \$1,365,511. Cordell Davidson's future life care needs total \$171,291. In summary, the total amount of the above noted bills, loss of past earnings and future earning capacity, and his future life care needs is approximately \$2,639,921.

Injuries Sustained by Veronica Hensley

Veronica Hensley was 24 years old and employed as a service associate by the Space Coast Credit Union at the time of the accident. Ms. Hensley did not have health insurance.

As a result of the accident, Ms. Hensley sustained severe blunt trauma to her lower left leg, fracture of the left femur, liver laceration, spleen laceration, fractured tibia, traumatic pneumothorax and fracture of the lumbar spine. Her left leg injury included an open grade III-C fracture to the mid-shaft of the femur with gross comminution to the knee. Due to these injuries, Ms. Hensley's left leg was amputated above the knee.

Due to the accident, Ms. Hensley incurred medical and other related bills of \$113,904. She had earned total wages of \$4,132 in 1999, \$5,006 in 1998, and \$9,210 in 1997. Based on her loss of past earnings and loss of future earning capacity, it was estimated that her total economic losses would be \$66,498. Further, it was estimated that the cost of her future life care needs would be \$1,101,200. The total amount of the above noted bills, loss of past earnings and future earning capacity, and her future life care needs is approximately \$1,281,602.

Collateral Sources

Cordell Davidson and Veronica Hensley each received \$50,000 in uninsured motorist coverage from USAA, Mr. Davidson's motorcycle insurance carrier. While not legally considered a collateral source, Cordell Davidson also has received \$150,064.95 to date from his disability insurance carrier.

Settlement Agreement

Prior to trial, the parties engaged in discussions which led to a settlement agreement dated May 8, 2003. The county agreed to pay Cordell Davidson and Veronica Hensley a total of \$4.9 million, of which \$200,000 has already been paid pursuant to §768.28(5), F.S., (sovereign immunity) leaving \$4.7 million to be paid in four equal installments pursuant to the instant claim bill. The amount of the settlement agreement includes costs and attorney's fees. In the agreement, the county agreed not to oppose the claim bill, and will in fact support, join in and assist the claimants in their efforts to effect enactment of the bill.

CONCLUSIONS OF LAW:

Liability

Section 316.1925, F.S., provides that any person operating a vehicle upon the streets shall drive in a safe and prudent manner.

Further, §316.122, F.S., provides that the driver of a vehicle intending to turn left within an intersection shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. A violation of this section is a noncriminal traffic infraction.

For the purposes of this claim bill, Volusia County admits that its employee, John Berard, operated the fire engine in a negligent manner and that the county is liable in this case.

Proximate Cause

Volusia County admits that the negligent actions taken by John Berard in the operation of his fire engine were the proximate cause of Cordell Davidson's and Veronica Hensley's injuries.

Damages

The collision resulted in serious and permanent injuries to Cordell Davidson and Veronica Hensley. Please refer to the Findings of Fact section above for past and future medical costs and costs related to loss of income.

Settlement Agreement

Because settlements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense, stipulations or settlement

agreements between the parties to a claim bill are not necessarily binding on the Legislature or its committees, or on the Special Master. However, all such agreements must be evaluated. If found to be reasonable and based on equity, then they can be given effect, at least at the Special Master's level of consideration. I find that the settlement agreement in this case is reasonable and equitable, and recommend that it be given effect by the Legislature.

ATTORNEYS FEES:

The attorney in this case submitted an affidavit affirming that his fees shall not exceed 25 percent of any recovery as required by §768.28, F.S. The settlement agreement amount is inclusive of the attorney fees and costs. Note: lobbying fees are included within this 25 percent amount.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that Senate Bill 32 (2004) be reported FAVORABLY.

Respectfully submitted,

Kathie Emrich
Senate Special Master

cc: Senator Evelyn Lynn
Faye Blanton, Secretary of the Senate
House Subcommittee on Claims