



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
12/1/04	SM	Fav/2 amendments

December 1, 2004

The Honorable Tom Lee
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 32 (2005)** – Senator Walter G. “Skip” Campbell, Jr.
Relief of Anthony John Angelillo

SPECIAL MASTER’S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM BILL FOR \$250,000 PURSUANT TO A SETTLEMENT TO COMPENSATE ANTHONY JOHN ANGELILLO FOR INJURIES ARISING FROM A COLLISION BETWEEN MR. ANGELILLO’S MOTORCYCLE AND A POLICE CAR OWNED BY MIAMI-DADE COUNTY.

FINDINGS OF FACT:

On April 30, 2002, at about 3:30 p.m., the claimant, Anthony John Angelillo, age 35, was riding his motorcycle back to work, after having returned home to pick up some deposit slips for his employer. He was heading east on NW 58th St. in Miami and proceeded through the intersection of NW 107th Ave. Meanwhile, Miami-Dade County police officer, Barry Savage, during the course and scope of his employment, was heading west on NW 58th St. in his police vehicle, and was in the left-hand turn lane waiting at the traffic light to turn left (south) at the same intersection. Officer Savage pulled into the intersection and struck the rear of the motorcycle, throwing Mr. Angelillo off his motorcycle and causing him severe injuries.

Mr. Angelillo was traveling at about the posted speed limit of 35 mph and was in the far right hand lane as he proceeded through the intersection. He remembered that the traffic light

was green as he entered the intersection. He maintained a constant speed and direction and did not remember seeing the police car prior to it striking the rear of his motorcycle.

Officer Savage claimed that when he pulled up to the light it was green and that the turn arrow had already cycled off. He pulled into the middle of the intersection and waited for the traffic light to change to yellow and then to red as he proceeded through the intersection to complete his left-hand turn. Officer Savage stated that a dump truck in the eastbound, left-hand turn lane on 58th obstructed his view as he pulled through the intersection.

The traffic was moderate to heavy, the weather was clear or slightly overcast, and the pavement was dry.

Gregg Freeman was the only known witness of record to the accident. Mr. Freeman was two or three vehicles behind the police car, also waiting to make a left-hand turn. Mr. Freeman was unsure of the color of the light at the moment of the accident, but that it was green when he pulled into the turn lane and saw the police car stopped and partially turned left (south) in the intersection. He recalls eastbound and westbound traffic flowing continually a second or two before the impact. He said he believed that the motorcycle had the right of way but was not sure. He saw the police car slowly roll forward to make its turn and also saw the motorcycle coming down 58th. At that point he said to himself that the police car is going to hit the motorcycle. He saw the front left of the police car hit the rear of the motorcycle and throw Mr. Angelillo about 30 feet and the motorcycle about 20 feet. He estimates that the motorcycle was traveling about 35 to 45 mph prior to impact. He recalled seeing at least one vehicle in the left-hand turn lane heading east on 58th waiting to turn left (north) on 107th, but does not remember if it was a car, truck, or van. His "pure speculation" was that the officer's view of the through eastbound traffic may have been blocked. He also recalled one of the investigating officers indicating to him that Officer Savage was at fault.

The traffic crash report, prepared by the two initial investigating officers, stated that the police car entered the intersection with a green light and that the light turned red while the police car was still in the intersection. The narrative also stated that the motorcycle collided with the

police car, but the diagram drawn on the crash report shows the left front end of the police car colliding with the rear of the motorcycle, which is consistent with the pictures of the damaged vehicles. In the crash report, the code number for "vision not obstructed" was written, and the narrative did not mention a truck or vehicle blocking Officer Savage's view. But, another investigating officer said that Officer Savage told him that his view was blocked by an eastbound dump truck waiting to turn left. At the hospital, Mr. Angelillo told an investigating officer that the light was green when he entered the intersection and that he did not see an eastbound truck stopped to make a left turn.

A Crash Review Panel determined that Officer Savage's crash was non-preventable and he was not disciplined. Officer Savage, age 51 and employed for 31 years with the Metro Dade Police Department, had 11 prior accidents in the line of duty, of which 5 were determined to be preventable, and was required to undergo counseling and to attend a driver training program, most recently in October of 2001.

Mr. Angelillo was driving his 1998 Honda 900cc motorcycle with a suspended license at the time of the accident, due to failure to pay a parking ticket. According to Mr. Angelillo, he had mistakenly believed that his license had been reinstated. His driving record indicates one accident that resulted in a citation for careless or improper driving. Mr. Angelillo stated that as a teenager, he had been certified by the American Motorcycle Association as a professional motocross racer. He was wearing his helmet at the time of the accident and stated that the motorcycle had no mechanical problems.

Related to Damages

The claimant was severely injured as a result of the accident. Mr. Angelillo's right shoulder and elbow were fractured, resulting in a permanent disability, scarring, and disfigurement. He has a steel plate connecting his upper shoulder to his arm and an 8 to 10-inch scar on his arm. He is unable to straighten his right arm to more than about a 45 degree angle and cannot lift more than about 25 to 30 pounds with that arm. He also broke his clavicle bone next to his shoulder. Mr. Angelillo has undergone therapy since the operation and has 50 percent use of his right arm and 50 percent use of his right shoulder.

The claimant's left foot was severed by the accident and was nearly lost. The physicians were able to graft a muscle from his inside thigh to his foot and then graft skin from his leg to save his foot. Initially, metal screws were placed in his foot, but the screws led to an infection and the need for a second surgery to remove the skin flap, remove the metal screws, and re-graft the skin. Mr. Angelillo has very little movement and no use of his foot and requires a cane to walk. He is not able to run, engage in sporting activities, or ride a motorcycle. His foot is severely disfigured and has a massive build-up of muscle and skin from the operation, requiring a specially enlarged shoe .

Mr. Angelillo also required open lung surgery after the accident, due to collapsed lungs. He had tubes inserted in five holes on his sides, under his right and left arms, to drain blood from his lungs. Scars remain from these surgical procedures.

In all, the claimant had six surgeries at Jackson Memorial Hospital (shoulder, arm, lung, leg, and two foot surgeries). He was initially hospitalized from April 30, 2002 until July 5, 2002 and, due to the need for a second foot operation, was re-hospitalized from September 28 until November 7, 2002. His medical bills totaled over \$470,000. He did not have health insurance and there was no workers' compensation claim. Jackson Memorial asserted a lien for the full amount of the medical expenses.

At the time of the accident Mr. Angelillo was working for Galardi South Enterprises as a general manager of Gold Rush, an adult entertainment club in Miami, earning about \$25,000 annually. He had worked for this employer for about 8 years, after working for 3 years as a corrections officer with the Florida Department of Corrections. Since the accident, Galardi has continued to employ Mr. Angelillo at his same base salary of \$1,640 (net) every 2 weeks, but he is only able to work part time at the regional corporate office for about 15 to 20 hours per week. At the time of the accident, he was under consideration for the position of assistant general manager for the regional corporate office. But he now believes that he does not have an opportunity for advancement with this employer and is unsure how long they will continue to employ him.

About one year ago, Mr. Angelillo qualified for Social Security Disability payments of about \$764 per month and for Medicaid coverage, due to the accident.

Mr. Angelillo had an infant son at the time of the accident who is now two years old. Mr. Angelillo is now married, but was not married at the time of the accident. Mr. Angelillo's quality of life has been substantially reduced as a result of his disability. He led an active life, including recreational sporting activities and motorcycle riding, which he can no longer do. Virtually every daily activity is limited by his severe foot, elbow, and shoulder injuries. He remains in constant pain from his injuries and takes pain medication about twice a week. There may be an option for further surgery to his arm and shoulder to allow for greater movement, but Mr. Angelillo has no immediate plans for such surgery.

Litigation and Settlement

On December 16, 2002, the claimant filed a lawsuit against Miami-Dade County. Discovery was taken and the matter was mediated on October 16, 2003. A settlement agreement was reached on April 12, 2004. The parties agreed to settle the claim for \$450,000, of which Miami-Dade County has already paid \$200,000. A resolution of the Jackson Memorial Hospital lien was an essential component of the settlement.

The \$200,000 that has already been paid by Miami-Dade County was distributed as follows:

- \$100,000 to Mr. Angelillo:
 - \$28,000 in partial resolution of the Jackson Memorial Hospital lien;
 - a reduced attorney's fee of 15 percent in the amount of \$15,000 plus costs of \$4,672; and
 - the remainder of \$51,827.86 to Mr. Angelillo.
- \$100,000 for the benefit of claimant's son, Anthony Jacob Angelillo:
 - an attorney's fee of 25 percent in the amount of \$25,000; and
 - the remainder of \$75,000 deposited in a court approved guardianship account for the sole benefit of Mr. Angelillo's son.

Miami-Dade County agreed not to object to a claim bill in the amount of \$250,000, to be distributed as follows:

- a 25 percent attorney's fee in the amount of \$62,500 (including a \$12,500 lobbying fee for the claim bill) plus additional costs to obtain a claim bill in the amount of \$2,500 (\$65,000 total); and
- the remainder of \$185,000 to be split evenly with \$92,500 to Mr. Angelillo and \$92,500 to Jackson Memorial Hospital in complete and final satisfaction of the lien.

Bill Drafting Error

Section 2 of the claim bill specifies that the \$250,000 is to be used for the benefit of the claimant's minor son, Anthony Jacob Angelillo. However, the claimant and his attorney state, and the settlement agreement confirms, that this amount is to be paid solely to the claimant as compensation for his injuries, to be distributed as specified above. The lobbyist for the claimant states that this was a bill drafting error.

CONCLUSIONS OF LAW:

The claimant bears the burden of proof for each element of the claim of negligence based on a preponderance of the evidence.

Duty

Officer Savage had a legal duty to enter the intersection and complete his left turn only when the way was clear, unless the traffic light had already turned red before he completed his turn.

Breach

Office Savage breached his duty by failing to yield the right of way to the claimant. Although there is contradictory evidence from the two parties as to whether the traffic light was still green as the motorcycle entered the intersection, the one witness saw that the light was green as he pulled behind the police car and that traffic was continually flowing east and west moments prior to the collision. Also, the claimant's motorcycle had already entered the intersection and was struck in the rear by police car, indicating the failure of Office Savage to yield the right of way.

Proximate Cause

The sole, direct cause of Mr. Angelillo's injuries was the accident due to Officer Savage's breach.

Damages

All of the damages under Findings of Fact, above, were caused by Officer Savage's breach.

ATTORNEYS FEES:

Attorney's fees are limited to 25 percent of recovery pursuant to §768.28(8), F.S. The claimant's attorney has submitted documentation that he will collect a 25 percent attorney's fee in the amount of \$62,500, which includes a \$12,500 lobbying fee for the claim bill. However, according to the claimant's attorney, an additional amount estimated at \$2,500 for additional costs to procure a claim bill "will be billed to Mr. Angelillo with his consent from his amount or included in the \$62,500, if not."

RECOMMENDATIONS:

I recommend an amendment that would delete the reference to any amount being for the benefit of the claimant's son, Anthony Jacob Angelillo. (See Bill Drafting Error, above.) As amended, the entire \$250,000 proceeds would be for the benefit of the claimant, Anthony John Angelillo, as compensation for his injuries.

Based on the foregoing, I recommend that Senate Bill 32 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Brian Deffenbaugh
Senate Special Master

cc: Senator Walter G. "Skip" Campbell, Jr.
Faye Blanton, Secretary of the Senate
House Claims Committee