



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/1/04	SM	Favorable

December 1, 2004

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

Re: **SB 40 (2005)** – Senator Dave Aronberg
Relief of Verlin C. Weaver

SPECIAL MASTER'S FINAL REPORT

THIS IS AN EQUITABLE CLAIM FOR \$400,000 BASED ON A CONSENT-FINAL JUDGMENT AGAINST THE CITY OF FERNANDINA BEACH TO COMPENSATE VERLIN WEAVER FOR INJURIES AND DAMAGES HE SUSTAINED WHEN A CITY OF FERNANDINA BEACH GARBAGE TRUCK STRUCK MR. WEAVER'S VEHICLE, DUE TO THE NEGLIGENCE OF THE DRIVER OF THE GARBAGE TRUCK. THE CITY HAS AGREED TO THE PAYMENT OF THIS CLAIM FROM THE CITY'S LOCAL FUNDS.

FINDINGS OF FACT:

The Incident

On November 11, 2002, at approximately 10:10 a.m., at the intersection of Olive Street and 8th Street in the City of Fernandina Beach, Verlin Weaver was in the southbound traffic lane on 8th street and was stopped for a red light. Mr. Weaver, 65 years old at the time, was returning to Jacksonville from a potential job-site for his pest control service. A garbage truck owned by the City of Fernandina Beach and driven by the city's employee, Dexter Rainey, was traveling in the northbound lane when it struck the rear of a vehicle attempting to make a left turn across 8th Street. Witness testimony from the scene described that Mr. Rainey never slowed down prior to impact and that it was apparent that Mr. Rainey did not see the left-turning vehicle. After

hitting the rear of the vehicle, Mr. Rainey lost control of the garbage truck causing it to veer across the median into the waiting line of southbound traffic at the red light. After hitting several cars, the garbage truck rolled over the top of Mr. Weaver's pick-up truck, injuring Mr. Weaver, and finally came to rest on top of a vehicle driven by Regina Lloyd, in which her 2-year-old son was a backseat passenger.

The driving conditions that day were clear, with no visibility problems. There were no roadway defects that contributed to the crash.

Injuries Sustained by the Claimant

Following the incident, Mr. Weaver was life-flighted to Shands-Jacksonville Hospital Trauma Center, and was diagnosed with a flail chest (blunt force chest trauma), a ruptured spleen, seven fractured ribs, acute respiratory failure, and fracture of the left humerus (shoulder). Mr. Weaver remained at Shands-Jacksonville from November 11, 2002 through December 16, 2002. During his stay at Shands-Jacksonville, Mr. Weaver underwent a tracheostomy, insertion of an indo-tracheal tube, surgical repair of the left humerus, and removal of the ruptured spleen. Following discharge from Shands-Jacksonville on December 16, 2002, Mr. Weaver was transferred to Kindred Rehabilitation Hospital for the purpose of weaning him off the respirator and helping him to eat solid foods again. Mr. Weaver indicated at the Special Master hearing that the care he received at Kindred was very degrading and caused him to sink into depression. Mr. Weaver was discharged from Kindred on January 18, 2003. Upon discharge from Kindred, Mr. Weaver was transferred to Brooks Rehabilitation Clinic in Jacksonville where he received physical and other therapies from January 18, 2003 to February 4, 2003. Mr. Weaver indicated at the Special Master hearing that the care he received at Brooks was very good and helped to raise his spirits. After discharge from Brooks, Mr. Weaver underwent 60 days of in-home care and then outpatient care. During the in-home and outpatient care he learned to walk and underwent therapy to strengthen the muscles in his legs.

Mr. Weaver served honorably with the United States Navy for 24 years and retired in Jacksonville in 1977. He then worked as an instructor for Bell Helicopter in Iran until the

Iranian revolution, and then worked various jobs until he started his own pest control business, which he continues to run part-time. Subsequent to this incident, Mr. Weaver's quality of life has deteriorated dramatically. Prior to the incident, Mr. Weaver enjoyed fishing on his boat and attending Jacksonville Jaguars games. Mr. Weaver testified that he cannot fish on his boat because his balance has been affected by his injuries and he cannot attend Jaguars games because he is unable to climb the stairs at the stadium. Medical records document that Mr. Weaver has lost hearing in his right ear. Mr. Weaver reported at the Special Master hearing that he must use a headset when he attends a movie. He also reported that his left arm and ribs are painful at night. The medical testimony indicates that the left arm injury is a permanent injury and he will have a permanent limitation of motion. Mr. Weaver reported that he takes hydrocodone at night for the pain. Mr. Weaver also stated that his voice has not been the same since the tracheostomy that was necessary for his treatment in the hospital. The scar from his surgery is also very painful. His doctor has also indicated that the loss of his spleen leaves him more vulnerable to infections. Under the Florida disability guidelines, Mr. Weaver has sustained a permanent impairment of two percent of the whole person.

Mr. Weaver's emotional state has also been affected by the incident. He suffers depression not only from the incident but also from the effect the experience had on his business and his credit rating since he was unable to have his bills paid while he was hospitalized. In general, he feels that he is unable to do the things he did prior to the incident, and his future seems bleak.

Judicial/Procedural History

The parties did not enter into a pre-trial settlement because the insurance coverage available for this incident was nearly exhausted by the settlement reached with the city for the injuries sustained in the same incident by Regina Lloyd, who is now a quadriplegic. After discovery and depositions of the parties, witnesses, and medical experts, a bench trial was held on March 29, 2004, in the Nassau County Circuit Court. At the conclusion of the evidence, the parties requested that the court refrain from making its decision pending settlement negotiations of the parties. The parties did agree to a \$500,000 settlement, which provided for a \$100,000

payment to be made immediately by the city's insurance company. A Consent-Final Judgment for the remaining \$400,000 was entered by the court on June 1, 2004. The terms of the Consent-Final Judgment require Mr. Weaver to seek payment of the remaining \$400,000 through a legislative claim bill, and that the City of Fernandina Beach must consent to, and support such a claim bill. The city has consented to and fully supports the claim bill.

CONCLUSIONS OF LAW:

Liability and Damages: The City of Fernandina Beach admitted liability in this incident. However, the claimant still bears the burden of proof for the four elements of a negligence claim. Sufficient competent and substantial evidence was presented to support the claim.

Duty: Dexter Rainey, the garbage truck driver, had a legal duty to observe traffic and maintain control of the garbage truck. The City of Fernandina Beach shared that legal duty as Mr. Rainey's employer because Mr. Rainey was acting in the course and scope of his employment at the time of the crash.

Breach: Mr. Rainey breached his duty by failing to observe traffic and maintain control of the garbage truck, and the City of Fernandina Beach shared in this breach of duty as his employer.

Proximate Cause: The force of the impact from the collision, brought on by Mr. Rainey's breach, was the precipitating cause of Mr. Weaver's injuries. The evidence that Mr. Weaver was using his seatbelt is conclusive.

Damages: Mr. Weaver suffered several severe injuries and currently suffers from the effects of those injuries. Proof of damages is supported by the medical records including various physicians' and other health care practitioners' reports, by other documentation, and by testimony at the Special Master's hearing.

FISCAL IMPACT:

The City of Fernandina Beach has made payment of the first \$100,000 of the \$500,000 settlement through Preferred Governmental Insurance Trust. However, any possible future insurance payments were exhausted in the settlement for another victim of the accident, Regina Lloyd. The city, through action taken in a specially convened meeting of its

City Commission, has agreed to structure the payments to Mr. Weaver over two fiscal years after passage of the claim bill. The first payment of \$200,000 will be made 20 days after the Governor approves the claim bill; the second payment of \$100,000 will be made on October 10, 2005; and the final payment of \$100,000 will be made on January 9, 2006. The city has made arrangements to use the proceeds from the sale of its garbage service to a private corporation and to fund a line item in its budget for the next fiscal year to fulfill its obligation to make the payments to Mr. Weaver. Funds in the line item will come from taxes and other usual methods of revenue collection for local governments.

COLLATERAL
SOURCES/LIENS:

The parties stipulated that past medical expenses totaled \$391,096.86 to date. However, almost all medical liens have been satisfied, including the Medicaid lien. One remaining bill will be paid upon passage of the claim bill. Mr. Weaver has received \$10,000 from uninsured motorist coverage.

ATTORNEYS FEES:

Section 768.28(8), F.S., limits attorney's fees to 25 percent of a claimant's total recovery by way of any judgment or settlement obtained pursuant to §768.28, F.S. The attorneys for the claimant have submitted documentation attesting to compliance with this limitation. The lobbying fees are also included in the 25 percent statutory cap.

Costs

All costs have been paid to date and any remaining costs from the claim bill process will be paid from the proceeds of the claim bill.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that Senate Bill 40 be reported FAVORABLY.

Respectfully submitted,

Mark Kruse
Senate Special Master

cc: Senator Dave Aronberg
Faye Blanton, Secretary of the Senate
House Claims Committee