



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

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DATE	COMM	ACTION
12/04/09	SM	Favorable

December 4, 2009

The Honorable Jeff Atwater
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 12 (2010)** – Senator Mike Haridopolos
Relief of Stephen Hall

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$388,000 BASED ON A CONSENT FINAL JUDGMENT SUPPORTED BY A SETTLEMENT AGREEMENT IN WHICH THE DEPARTMENT OF TRANSPORTATION AGREED TO COMPENSATE STEPHEN HALL FOR INJURIES HE SUFFERED IN A COLLISION BETWEEN THE VEHICLE IN WHICH HE WAS A PASSENGER AND A VEHICLE OPERATED BY AN EMPLOYEE OF THE DEPARTMENT OF TRANSPORTATION.

FINDINGS OF FACT:

On June 30, 1997, Stephen Hall was 12 years old and was a belted, front-seat passenger in his father's 1954 Chevy pickup truck traveling on S.R. 500 near Melbourne in Brevard County. Stephen and his family lived in Kissimmee. David Eacker, a Department of Transportation (DOT) employee, was driving a DOT truck in the course and scope of his employment and attempted to make a U-turn on S.R. 500, from the shoulder. Mr. Eacker turned his truck into the path of the truck driven by Stephen's father and the vehicles collided. The Florida Highway Patrol cited Mr. Eacker for failing to yield the right-of-way.

The collision caused Stephen's face to violently strike the metal dashboard, which resulted in multiple fractures of his

jaws and lacerations to his face and mouth. He lost seven teeth. He was hospitalized for a week and underwent surgery to attempt to repair the extensive damage to his jaws. The surgical procedure required Stephen's jaws to be wired shut for a period. A second jaw surgery and several dental procedures followed. He now has a metal plate and screws in his jaw. The injury to Stephen's jaw and mouth caused a misalignment of his teeth and asymmetry in his jaw line which still exists today. Stephen continues to have frequent jaw and teeth pain and headaches associated with these injuries. However, it was the opinion of his doctors that further reconstructive work on his jaw and teeth should be put off until Stephen stopped growing. Stephen is now 24 years old and could have the surgeries that were postponed.

Stephen's knees were also injured in the collision. He suffered anterior cruciate ligament tears. Like Stephen's future jaw surgery, the orthopedic surgeon recommended that any necessary knee surgery be postponed until Stephen stopped growing. It is not clear that knee surgery would still be recommended, but Stephen claims that he still has some recurring pain in his knees.

The physical and psychological impacts of the accident seriously disrupted Stephen's life. He missed seventh grade. His schooling in the following years was often interrupted by illness and doctors' appointments. For a while he was placed in a program in which he received homebound schooling for half the school day. He did not graduate from high school, but pursued a GED. Stephen missed out on many sports and other physical activities because of his injuries.

A 2004 estimate of the cost of the future jaw and dental surgeries and procedures that Stephen will require was \$111,110 to \$257,860.

Stephen's initial medical bills were covered by the Hall's health insurance policy. There appears to be no lien for unpaid expenses. Stephen received \$100,000 from State Farm uninsured motorist coverage, \$10,000 in PIP coverage, and \$5,000 in Med Pay benefits.

LITIGATION HISTORY:

Stephen's parents filed a complaint against DOT in the circuit court for Brevard County. When Stephen turned 18,

he was substituted as the plaintiff. Ultimately, DOT admitted liability for the negligence of its employee and the parties entered into a settlement agreement which was the basis for the court's issuance of a Consent Final Judgment on February 5, 2004. The judgment awards \$500,000 to Stephen pursuant to the parties' settlement agreement. DOT has already paid \$112,000 to Stephen, from which he netted \$83,112. It appears that DOT erred in paying Stephen more than the \$100,000 sovereign immunity cap. This claim bill seeks the balance of the amount that Stephen was to receive under the parties' settlement agreement, which is \$388,000.

CLAIMANT'S POSITION:

DOT is liable for the negligent operation of a DOT vehicle by a DOT employee. The settlement amount is reasonable in light of the pain and suffering that Stephen endured and his future medical expenses.

DOT'S POSITION:

DOT supports the claim bill.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether DOT is liable in negligence for the injuries suffered by Stephen Hall and, if so, whether the amount of the claim is reasonable.

There are many reasons for entering into a settlement agreement other than the perceived merits of the claim and, therefore, I am not precluded from reviewing the terms of the parties' settlement agreement in this matter and determining whether they are reasonable under the totality of the circumstances.

Mr. Eacker had a legal duty to yield the right-of-way to the Hall vehicle. As his employer, DOT shared that duty. Mr. Eacker breached the duty by turning in front of the Hall vehicle and the breach was the proximate cause of the collision and the injuries to Stephen that resulted from the collision.

A large portion of the amount requested will be needed for Stephen's future medical expenses because he has no insurance coverage for future expenses. Stephen endured considerable pain and suffering as a result of the negligence of DOT's employee, especially as a young boy in the years

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immediately following the accident. The accident clearly disrupted his education and his childhood in general. Therefore, I find that the parties' settlement agreement for \$500,000 is reasonable and there should be no set-off for the amounts Stephen received from collateral sources.

LEGISLATIVE HISTORY:

Claim bills for Stephen were first filed in the 2004 Session and have been filed in each session thereafter.

ATTORNEYS FEES AND
LOBBYIST'S FEES:

In compliance with s. 768.28(8), F.S., Stephen's attorney agreed to limit his fees to 25 percent of any amount awarded by the Legislature. He has not yet acknowledged that SB 12 (2010) requires costs and lobbyist's fees to be included in the 25 percent figure.

OTHER ISSUES:

DOT reported that it can pay the claim from unappropriated trust funds without affecting its operations or any work program.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 12 (2010) be reported FAVORABLY.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Mike Haridopolos
R. Philip Twogood, Secretary of the Senate
Counsel of Record