



Pinellas County

315 Court Street, 5th Floor
Assembly Room
Clearwater, Florida 33756

Staff Report

#25

File #: 16-008A, **Version:** 1

Agenda Date: 1/12/2016

Subject:

Proposal for settlement served by Plaintiff's counsel in the case of Shannon Baker, as Personal Representative of the Estate of Andrew James Cavanaugh, deceased, v. Board of County Commissioners, Pinellas County, Florida, State of Florida, Department of Transportation, and Depositors Insurance Company - Sixth Judicial Circuit Case Number 10-16223-CI-15.

Recommended Action:

Approval to reject the proposal for settlement in the case of Shannon Baker, as Personal Representative of the Estate of Andrew James Cavanaugh, deceased, v. Board of County Commissioners, Pinellas County, Florida, State of Florida, Department of Transportation, and Depositors Insurance Company.

Strategic Plan:

N/A

Summary:

Recommendation that the Board of County Commissioners reject the proposal for settlement in the above-referenced case as outlined in the confidential memo of January 12, 2016.

Background Information:

N/A

Fiscal Impact:

Unknown

Staff Member Responsible:

James L. Bennett, County Attorney
John A. Powell, Jr., Sr. Assistant County Attorney

Partners:

N/A

Attachments:

N/A



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EXEMPT FROM PUBLIC RECORDS
UNTIL CONCLUSION OF LITIGATION
(Ch. 119, Fla. Stat.)

Staff Report

File #: 16-008A

Agenda Date: January 12, 2016

Subject:

Proposal for Settlement served by Plaintiff's counsel in the case of Shannon Baker, as Personal Representative of the Estate of Andrew James Cavanaugh, deceased, v. Board of County Commissioners, Pinellas County, Florida, State of Florida, Department of Transportation, and Depositors Insurance Company - Sixth Judicial Circuit Case Number 10-16223-CI-15.

Recommended Action:

Approval to reject the proposal for settlement in the amount of \$100,000.00 in the case of Shannon Baker, as Personal Representative of the Estate of Andrew James Cavanaugh, deceased, v. Board of County Commissioners, Pinellas County, Florida, State of Florida, Department of Transportation, and Depositors Insurance Company.

Strategic Plan:

N/A

Summary:

This is a wrongful death action arising out of a motor vehicle accident between private parties at the intersection of SR 580 and Bayview Blvd., Oldsmar, FL, occurring on June 16, 2009.

Plaintiff has asserted a single count alleging negligence on the part of FDOT and Pinellas County, contending that the defendants failed to provide an adequate traffic control device, failed or neglected to give warning of the latent or unrevealed dangers of intersection, failed or neglected to properly inspect the traffic control device, and failed to make reasonable provisions for the safe condition of the streets in the county.

At issue is the length of the timing sequences set for the traffic lights which controlled the intersection. Plaintiff's theory is that the length of time available to Mr. Cavanaugh to safely transit the intersection was inadequate for the speed limit of Bayview Blvd.

The intersection and the traffic lights belong to FDOT. FDOT contracted with the City of Oldsmar to install and maintain the traffic lights at this intersection. The City of Oldsmar entered into an Interlocal Agreement with Pinellas County for Pinellas County to provide the maintenance for these traffic lights.

Witnesses to the accident were interviewed by the investigating officers of the Pinellas County Sheriff's Office. The police accident report indicated that the traffic lights were working for vehicular traffic and the Sheriff's Office timed the traffic light sequences for the intersection, finding that the light timing was within hundredths of a second of the FDOT plan sequence timings below. FDOT plans, dated 1997, provide that the yellow light for northbound Bayview Blvd shall be illuminated for 3.2 seconds. The plans provide that the "all red" timing shall be 3.1 seconds. Records of periodic inspections of the timing sequence of these traffic lights by Pinellas County, Traffic Engineering department personnel, for the period of time following the initial installation up to the accident, as well as approximately six (6) months after the accident, reveal that the timing of these two sequences was 3.2 and 3.1 seconds, as required by the FDOT plans.

A recipient of a Proposal for Settlement has thirty (30) days from service of the proposal to accept the proposal, reject the proposal, or do nothing and at the expiration of the thirty (30) days the proposal is deemed rejected. This proposal was served upon the County on January 2, 2014. The County has until February 1, 2014, to affirmatively accept, reject, or failing either affirmative act, the proposal will be deemed rejected.

The proposal is in the amount of \$100,000.00. Florida Statute Section 768.79 provides that should the proposal be rejected, and the plaintiff obtain a final judgment in her favor for an amount in excess of 125% of the proposal (\$125,000.00), then the plaintiff would be entitled to an award of her attorney's fees incurred from and after the date of the proposal.

This is a negligence action brought under the provisions of Florida Statute Section 768.28, waiver of sovereign immunity, by which an injured party may pursue a civil action for damages sounding in negligence against a governmental entity. That statute provides a cap for the amount of damages a plaintiff may recover from a governmental entity. At the time of this accident, the cap was \$100,000.00 per claimant, and \$200,000.00 per incident. Plaintiff's counsel may argue that the \$200,000.00 cap is applicable; however, it is our contention that the \$100,000.00 cap is applicable in this matter.

It is also our contention that the legal theory of the plaintiff, as applied against the County, is unsupported. The decision to determine the appropriate length of the timing sequence of the traffic lights at this intersection was a matter within the sole discretion of FDOT. There is no genuine issue of material fact that the traffic lights were in working order with respect to the illumination of the traffic lights, and the timing of each sequence was as set forth in the plans submitted to the County by FDOT, and were confirmed by periodic inspection by the County for more than a decade prior to the accident. The issue of the appropriateness of the length of each timing sequence was a planning level decision solely within the discretion of the FDOT, and was not a matter over which the County had any control.

It is our intent to vigorously pursue the defense of the County and to file the proper dispositive motions when appropriate.

It is therefore recommended that the Board of County Commissioners reject the plaintiff's Proposal for Settlement.

Background Information:

N/A

Fiscal Impact:

Unknown.

Staff Member Responsible:

James L. Bennett, County Attorney
John A. Powell, Jr., Sr. Assistant County Attorney

Partners:

N/A

Attachments:

N/A