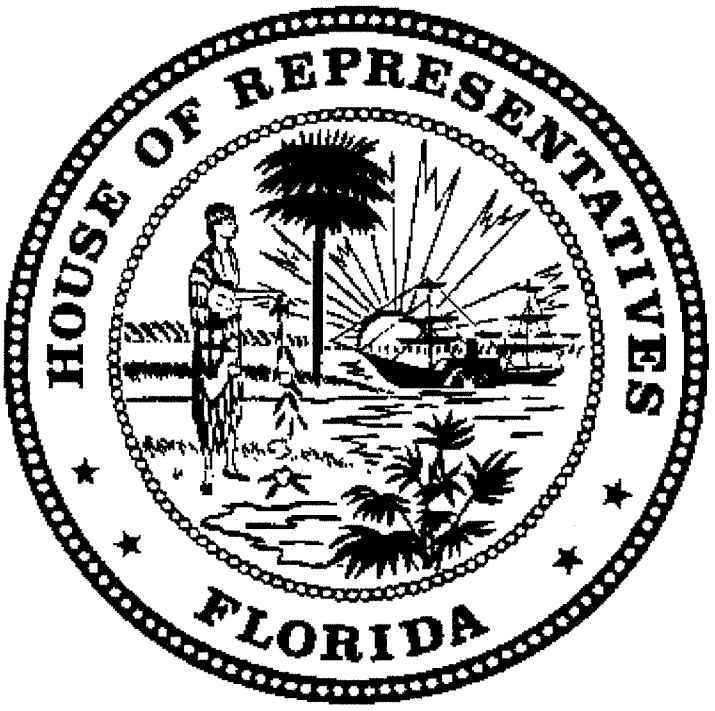

Civil Justice Subcommittee

Thursday, April 28, 2011
9:00 AM
Morris Hall (17 HOB)

Dean Cannon
Speaker

Eric Eisnaugle
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Thursday, April 28, 2011 09:00 am

End Date and Time: Thursday, April 28, 2011 10:30 am

Location: Morris Hall (17 HOB)
Duration: 1.50 hrs

Consideration of the following bill(s):

HB 1315 Relief/Melvin and Alma Colindres/City of Miami by Diaz

Consideration of the following proposed committee substitute(s):

HB 545 Relief/Estrada/USF Board of Trustees by Abruzzo
HB 1151 Relief/Eric Brody/Broward County Sheriff's Office by Grant

NOTICE FINALIZED on 04/27/2011 16:20 by Jones.Missy

PCS for HB 545

STORAGE NAME: h0545.CVJS
DATE: 4/27/2011

April 27, 2011

SPECIAL MASTER'S FINAL REPORT

The Honorable Dean Cannon
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 545 - Representative Abruzzo
Relief/Estrada/USF Board of Trustees

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR $24,823,212.92, BASED ON A JURY VERDICT THAT AWARDED THE PARENTS OF CALEB ESTRADA DAMAGES FOR INJURIES THEY SUFFERED DUE TO THE NEGLIGENCE OF AN EMPLOYEE OF THE UNIVERISTY OF SOUTH FLORIDA. THE UNIVERSITY HAS ALREADY PAID THE $200,000 CAP AS PROVIDED IN SECTION 768.28, F.S.

FINDING OF FACT:

Amara and Daniel Estrada's first child, Aiden Estrada, was born on June 28, 2002, at Tampa General Hospital with numerous birth defects. His condition was later determined to be Smith-Lemli-Opitz syndrome. Smith-Lemli-Opitz is a recessive gene and does not cause birth defects unless both parents carry the gene. The Estradas had no reason to believe they both might be carriers of the gene. Because the syndrome results in the lack of cholesterol in the body, it can be detected with a simple test.

On the date of his birth, a genetic consultation by Boris Kousseff, M.D., Director of Medical Genetics of the University of South Florida College of Medicine, was ordered for Aiden. Dr. Kousseff examined Aiden on July 1, 2002, but was unable

to diagnosis any particular syndrome. At all times relevant to this matter, Dr. Kousseff was an employee of the University of South Florida and all medical services he provided were at facilities owned by the University.

Dr. Kousseff followed the condition of Aiden as his treating geneticist and made an appointment for Aiden for him to be brought to his office at the University of South Florida Genetics Clinic on August 29, 2002. At the appointment, Dr. Kousseff again was unable to diagnosis any particular syndrome.

Dr. Kousseff next saw Aiden a year later at the University of South Florida Genetics Clinic on September 15, 2003, at which time it was apparent that Aiden was severely developmentally delayed, had severe psychomotor retardation, and was unable to take nutrition or hydration by mouth, requiring Aiden to depend on a gastrostomy tube in order to deliver nutrition and hydration to him. Dr. Kousseff again failed to make a diagnosis and did not suspect or diagnose Smith-Lemli-Opitz syndrome.

Dr. Kousseff told Daniel and Amara Estrada that he believed Aiden's problems did not indicate any genetic disorder and they could expect pregnancies with "normal" children and had no greater risk than any other parent for birth defects. The parents relied on Dr. Kousseff's advice and, after following all of the recommendations of Dr. Kousseff, conceived a second child.

Amara Estrada gave birth to Caleb Estrada on November 18, 2004, at Shands Teaching Hospital of the University of Florida. Caleb had similar symptoms as his brother, Aiden. Within two hours after Caleb's birth, the geneticist at the University of Florida diagnosed him as having Smith-Lemli-Opitz syndrome. The next day, the Estradas brought Aiden to Shands Hospital to meet with the geneticist who diagnosed Aiden as having Smith-Lemli-Opitz syndrome.

Caleb is severely impaired and is also reliant on a gastrostomy tube for nutrition and hydration. He requires 24-hour care and supervision. The anguish and demands on the Estradas, physically, emotionally, and financially, are enormous.

The Estradas gave sworn testimony that had they been told the actual risks facing them if they conceived a subsequent child, they would have chosen not to conceive again but to adopt. The experts at the trial below were in agreement that the care provided by Dr. Kousseff, was below the acceptable standard of care in his failure to recognize and diagnose Smith-Lemli-Opitz syndrome from Aiden Estrada's many symptoms. The record further establishes that Dr. Kousseff should not have told the Estradas that their chances of having a normal child were the same as anybody else's.

Prior to the Estrada's conceiving Caleb, they took Aiden to a

pediatrician in Orlando, Dr. Lynda Pollack. Dr. Pollack was also a geneticist, but was seeing Aiden as a pediatrician as part of the enrollment process for a health plan. Dr. Pollack suggested some tests, but she did not follow up to see if those tests were run. The Estradas told Dr. Pollack they had a geneticist, Dr. Kouseff. Dr. Pollack knew of Dr. Kouseff, that he had a great reputation, and had no reason to follow up on any genetic tests.

PROCEDURAL HISTORY: The Estradas filed a lawsuit for medical malpractice in February, 2006, in the Circuit Court for the 13th Judicial Circuit, in and for Hillsborough County, Florida. After the trial, the jury returned a verdict in favor of the Estradas, as parents and guardians of Caleb Estrada, in the amount of $23,553,000, for the cost of care for Caleb Estrada. The jury assigned the University of South Florida 90 percent liability for the wrongful birth of Caleb Estrada, and 10 percent liability against Dr. Lynda Pollack.

The judge found the evidence of malpractice so clear that he ordered a Directed Verdict on the issue at the close of trial. The University appealed and the verdict was upheld by the Second District Court of Appeal.

SOURCE OF FUNDS: The University of South Florida has a self-insurance fund to cover all claims each year for up to a total of $3 million through the Health Science Insurance Company. The University also has reinsurance for this fund through Lloyds of London in the amount of $15 million. The Health Science Insurance Plan provides that it will pay all costs taxed against the University.

CONCLUSION OF LAW:

The University and Dr. Kousseff owed a duty to the Estradas to perform medical care in conformity with the prevailing professional standard of care for similar health care providers in light of all the relevant surrounding circumstances. I find they breached this duty. Further, I disagree with the jury in finding the University and Dr. Kouseff only 90 percent liable. I don't see any duty on Dr. Pollack to have pursued genetic testing for Aiden – that she was not seeing him in that capacity and knew Aiden was seeing an expert geneticist.

Aiden's defects and conditions should have caused a geneticist to suspect and then confirm the diagnosis of Smith-Lemli-Opitz syndrome. Even if Dr. Kouseff could not identify the syndrome, the standard of care calls for a geneticist under this situation, when he or she does not know the diagnosis, to advise parents that there is at least a 25 percent chance of recurrence of the defects in the next child.

The breach of duty caused injury and serious damages to the Estradas. I find no reason to depart from the damages awarded by the jury that considered this matter at trial.

Economic experts justified the economic damages and, while a price cannot be placed on the pain and suffering the Estradas experience on a daily basis, the jury's award of $4,500,000 does not appear out of range.

ATTORNEY'S/ LOBBYING FEES:

The bill provides that the total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under the bill.

RECOMMENDATIONS:

Based on the record before me, I find that the Claimants have met their burden to demonstrate by a greater weight of the evidence that the damages sustained by Amara and Daniel Estrada were caused by the negligent act of the University of South Florida, through its employee, Boris Kousseff, M.D. I further find that the amount requested for this claim, the amount awarded by the jury, is justifiable. Therefore, I recommend that this claim bill be reported FAVORABLY.

Respectfully submitted,

TOM THOMAS
House Special Master

cc: Representative Abruzzo, House Sponsor
Senator Jones, Senate Sponsor
Judge John G. Van Laningham, Senate Special Master

A bill to be entitled

An act for the relief of Daniel and Amara Estrada; providing an appropriation to compensate Daniel and Amara Estrada, parents and guardians of Caleb Estrada, for the wrongful birth of Caleb Estrada and for damages sustained by Daniel and Amara Estrada as a result of negligence by employees of the University of South Florida Board of Trustees; providing a limitation on the payment of fees and costs; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

WHEREAS, Amara and Daniel Estrada's first child, Aiden Estrada, was born on June 28, 2002, at Tampa General Hospital, and

WHEREAS, Aiden Estrada was born with numerous birth defects, including 2-3 syndactyly, hypospadias, cryptorchidism, small for gestational age, cleft palate, simian creases in both hands, ears low set and rotated, micropenis, micronathia, intrauterine growth retardation, microcephaly, and dysmorphic face, and

WHEREAS, these defects and conditions should have caused a geneticist to suspect and then confirm the diagnosis of Smith-Lemli-Opitz syndrome, and

WHEREAS, on June 28, 2002, the newborn nursery of Tampa General Hospital called for a genetic consultation concerning Aiden Estrada by Boris Kousseff, M.D., Director of Medical Genetics of the University of South Florida College of Medicine,

and

WHEREAS, Dr. Kousseff examined Aiden Estrada in St. Joseph's Hospital on July 1, 2002, but failed to suspect or diagnose Smith-Lemli-Opitz syndrome, and

WHEREAS, Dr. Kousseff followed the condition of Aiden Estrada as his treating geneticist and made an appointment for the Estradas to bring Aiden Estrada to his office at the University of South Florida Genetics Clinic on August 29, 2002, and

WHEREAS, at the time of such appointment, Dr. Kousseff failed once again to suspect or diagnose Smith-Lemli-Opitz syndrome, and

WHEREAS, Dr. Kousseff next saw Aiden Estrada and his parents at the University of South Florida Genetics Clinic on September 15, 2003, at which time it was apparent that Aiden was severely developmentally delayed, had severe psychomotor retardation, and was unable to take nutrition or hydration by mouth, requiring Aiden Estrada to depend on a gastrostomy tube that was surgically implanted through the abdominal and stomach wall in order to deliver nutrition and hydration, and

WHEREAS, Dr. Kousseff again failed to suspect or diagnose Smith-Lemli-Opitz syndrome, and

WHEREAS, Dr. Kousseff told Daniel and Amara Estrada that he believed Aiden Estrada's problems did not indicate any genetic disorder and they could expect pregnancies with "normal" children, and

WHEREAS, the standard of care calls for a geneticist under this situation, when he or she does not know the diagnosis, to

advise parents that there is at least a 25 percent chance of recurrence of the defects in the next child, and

WHEREAS, if the Estradas been told the truth of the possibility of recurrence of the birth defects in a subsequent child, the Estradas would have chosen not to conceive again but to adopt, and

WHEREAS, instead, the parents relied on Dr. Kousseff's advice and, after following all of the recommendations of Dr. Kousseff, conceived a second child, and

WHEREAS, Amara Estrada gave birth to Caleb Estrada on November 18, 2004, at Shands Teaching Hospital of the University of Florida, and

WHEREAS, Caleb had the same or similar symptoms as his older brother, Aiden Estrada, and

WHEREAS, within an hour after his birth, the geneticist at the University of Florida diagnosed Caleb Estrada as having Smith-Lemli-Opitz syndrome, and

WHEREAS, on the next day, November 19, 2004, Daniel and Amara Estrada brought Aiden Estrada to Shands Hospital to meet with the geneticist who diagnosed Aiden as having Smith-Lemli-Opitz syndrome, and

WHEREAS, the parents now had a second child who is severely impaired and who also would be totally reliant on a gastrostomy tube for nutrition and hydration and who would also require 24-hour care and supervision, and

WHEREAS, the physical, emotional, and financial resources of Daniel and Amara Estrada have been exhausted in trying to care for the severely impaired Aiden, who has needed 24-hour

care and supervision and could not survive without a gastrostomy tube, and

WHEREAS, the testimony of witnesses, testifying on behalf of the Estradas, as well as the witnesses testifying on behalf the University of South Florida, agreed that the care provided by Boris Kousseff, M.D., was completely below any acceptable standard in his failure to recognize and diagnose Smith-Lemli-Opitz syndrome from Aiden Estrada's many symptoms, and

WHEREAS, Robert Steiner, M.D., a leading geneticist in Smith-Lemli-Opitz syndrome, testified that he could not comprehend how Dr. Kousseff could possibly tell the parents on September 15, 2003, that their chances of having a normal child were the same as anybody else's, and

WHEREAS, Dr. Steiner testified that the conduct of Dr. Kousseff was egregious, and

WHEREAS, the rehabilitation experts testifying on behalf of the Estradas and the rehabilitation experts testifying on behalf of the University of South Florida agreed that Caleb Estrada needs one-on-one care 24 hours a day, 7 days a week, and

WHEREAS, after a trial, the jury returned a verdict in favor of Daniel and Amara Estrada, as parents and guardians of Caleb Estrada, in the amount of $23,553,000, for the cost of care for Caleb Estrada, and

WHEREAS, the jury assigned the University of South Florida 90 percent liability for the wrongful birth of Caleb Estrada, and

WHEREAS, the University of South Florida has a self-insurance fund of $3 million through Health Science Insurance

Company, and such funds have been paid into the plan or into premiums by the University of South Florida and can never be returned to the University of South Florida or to the State of Florida, and

WHEREAS, the University of South Florida procured insurance (reinsurance) from Lloyds of London in the amount of $15 million, and

WHEREAS, the Health Science Insurance Plan provides that it will pay all costs taxed against the University of South Florida and all interest on the entire judgment up to the time the University of South Florida tenders $200,000 under its waiver of sovereign immunity, leaving $26,994.87 in costs and $3,798,518.05 in interest, and

WHEREAS, the University of South Florida tendered $200,000 toward payment of this claim on April 2, 2009, and that payment should be credited toward payment of the judgment amount, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The sum of $7,500,000 shall be paid by the University of South Florida, to the maximum extent possible out of insurance proceeds, to Daniel and Amara Estrada, parents and natural guardians of Caleb Estrada.

Section 3. The amount paid pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to

provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the wrongful birth of Caleb Estrada. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

Section 4. This act shall take effect upon becoming a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Civil Justice Subcommittee
Representative(s) Abruzzo offered the following:

Amendment (with title amendment)

Remove lines 135-138 and insert:

Section 2. The sum of $7,500,000 shall be paid by the University of South Florida to Daniel and Amara Estrada, parents and natural guardians of Caleb Estrada.

T I T L E A M E N D M E N T

Remove lines 111-129 and insert:

WHEREAS, the University of South Florida tendered $200,000 pursuant to the statutory limits of liability set forth in s. 768.28, Florida Statutes, NOW, THEREFORE,

PCS for HB 1151

STORAGE NAME: h1151.CVJS
DATE: 4/27/2011

April 27, 2011

SPECIAL MASTER'S FINAL REPORT

The Honorable Dean Cannon
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 1151 - Representative Grant Relief/Eric Brody/Broward County Sheriff's Office

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR $30,760,372.30, BASED ON A JURY VERDICT THAT AWARDED THE PARENTS AND GUARDIANSHIP OF ERIC BRODY DAMAGES FOR INJURIES THAT HE SUFFERED DUE TO THE NEGLIGENCE OF AN EMPLOYEE OF THE BROWARD COUNTY SHERIFF'S OFFICE (HEREINAFTER REFERRED TO AS "BCSO"). THE BCSO HAS ALREADY PAID THE $200,000 STATUTORY LIMIT AS PROVIDED IN SECTION 768.28, F.S.

FINDING OF FACT:

THE ACCIDENT: This case arises out of a tragic motor vehicle accident that occurred on March 13, 1998, at the intersection of Oakland Park Boulevard and 117th Lane in Broward County, Florida. At approximately 10:36 p.m., Eric Brody was making a left-hand turn into a subdivision on 117th Lane when Deputy Sheriff Christopher Thieman, operating a BCSO cruiser, proceeding westbound on Oakland Park Boulevard, collided with the vehicle operated by Eric, causing Eric to sustain catastrophic

injuries. At trial, experts for the claimant and the defendant testified that Deputy Thieman was driving at a braking speed of between 53 mph and 70 mph when he struck the passenger side of Eric Brody's car. The lawful speed limit was 45 mph. Although he was out of his seat belt when emergency personnel arrived, the belt was photographed at the scene, fully spooled out with the retractor jammed. The greater weight of the evidence supports the conclusion that Eric Brody was buckled in his seatbelt at the time of the accident.

Eric was transported by helicopter to Broward General Hospital, where he was diagnosed with broken ribs, a skull fracture, blood clots in his brain, and a large accumulation of blood on the right side of his head. He underwent an emergency craniotomy to reduce the brain swelling. The surgery was successful; however, Eric remained in a coma.

Eric remained in the intensive care unit at Broward General Hospital for four weeks, and then was transferred to Health South Rehabilitation Facility, where there is a coma stimulation program. Thereafter, Eric was transferred to a nursing home where he remained in a coma for approximately six months. After regaining consciousness, Eric remains mostly confined to a wheelchair, with limited ability to speak, and with severe brain damage.

As a result of the closed head trauma Eric Brody received during the accident, he suffers from static encephalopathy, spastic quadriplegia, neuromuscular scoliosis, multiple contractions of the left upper and lower extremities, and abnormalities of gait and standing.

PROCEDURAL HISTORY: In February of 2003, the parents of Eric Brody, as his natural parents and guardians, filed a negligence proceeding against the BCSO in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida. A trial was held in the Fall of 2005 and on December 1, 2005, the jury found that Deputy Thieman and the BCSO were 100 percent negligent and Eric Brody was not comparatively negligent. The trial lasted almost 2 months, including a 2-week break due to Hurricane Wilma.

Judgment was entered shortly after the jury verdict for the full amount of $30,609,298, and the court entered a cost judgment for $270,372.30, for a total judgment of

$30,879,670.30. The trial court denied the BCSO's posttrial motions for judgment notwithstanding the verdict, new trial, or remittitur. The BCSO appealed the final judgment but not the cost judgment. The Fourth District Court of Appeal upheld the verdict and the amount of the verdict in the fall of 2007. The BCSO subsequently petitioned the Florida Supreme Court, which denied the petition in April of 2008.

The BCSO has paid the $200,000 allowed under s. 768.28, F.S., and the remainder is sought through this claim bill.

DAMAGES: Eric Brody, who is now 31-years-old, has been left profoundly brain-injured and lives with his parents. His speech is barely intelligible, he has significant memory loss and cognitive dysfunction, and he has visual problems. Eric also has impaired fine and gross motor skills and has very poor balance. Although Eric is able to use a walker for short distances, he must mostly use a wheelchair to get around. The entire left side of his body is partially paralyzed and spastic, and he needs help with many of his daily functions. Eric is permanently and totally disabled. However, Eric has a normal life expectancy.

LEGAL ISSUES: Eric Brody alleged in his lawsuit that Deputy Thieman was negligent in the operation of his vehicle by driving too fast and by steering his vehicle two lanes to the right where the impact occurred.

At trial, the BCSO took the position that Deputy Theiman's driving was not negligent and was not the proximate cause of the accident; that Eric Brody acted negligently by making a left-hand turn into the path of the oncoming police vehicle and by not wearing a seat belt. The BCSO took the postion that Eric Brody's negligence was the proximate cause of the accident and his resulting injuries.

At the Special Master hearing, the BCSO took the position that Deputy Theiman's negligence was only simple negligence, not gross negligence; that the jury ignored compelling evidence of comparative negligence; that the jury was motivated by emotion; that all jury determinations must be questioned; and that payment of a claim bill in the requested amount would exceed by far the award in any prior claims awarded by the Legislature.

The BCSO further argued that this claim bill would impose

a draconian economic impact on the BCSO.

CONCLUSION OF LAW: Some see the Legislature's role in claim bills against the State of Florida as merely rubber stamping and "passing through" for payment those jury verdicts that have been reduced to judgment and survived appeal, if any. Others see the Legislature's role as a de novo responsibility to review, evaluate, and weigh the total circumstances and type of the state's liability in the case, and to consider those factors that might not have been perceived by or introduced to the jury or court.

Whichever of these two views each lawmaker holds, at the Special Master's level every claim bill, whether based on a jury verdict or not, must be measured anew against the four standard elements of negligence.

While the BCSO took several positions at the claim bill hearing, I did not find these positions persuasive in leading to a conclusion different from that of the jury's. The BCSO argued that the BCSO itself did not commit any negligent act, that it did not negligently hire Deputy Theiman, and that the Legislature should require more than the underlying facts in this case to justify what it sees as an unprecedented and unwarranted award. While reasonable minds could differ on whether Deputy Theiman's conduct was merely simple negligence or whether it exceeded that standard, simple negligence is all that is required to support the jury's decision.

The BCSO did not offer any evidence in support of its position that the jury ignored compelling evidence of comparative negligence. While the argument of comparative negligence was made at trial by the BCSO, there was no evidence presented that the jury ignored this argument. As mentioned above, while there was some conflicting expert testimony in the record, I find that the greater weight of the evidence supports the conclusion that Eric Brody was wearing his seatbelt when the accident occurred.

I do not find a comparison to past claim bills legally relevant in determining the outcome of the claim at hand. While members of the Legislature voting on this matter may want to consider such an argument, my role is to look at this claim independently, make findings based on this record, and to attribute liability and damages accordingly.

Finally, it is readily apparent that we are currently in very

difficult economic times and that the amount of the award in this claim is substantial. However, I find that while this argument may be relevant to Legislators, it is outside the scope of my review.

DUTY - Deputy Theiman had a duty to exercise reasonable care in operating his vehicle. See s. 316.183(1), F.S. BCSO is responsible for any negligence of Deputy Theiman in operating the BCSO vehicle. The verdict against the BCSO was based upon a stipulation by the parties that the BCSO was legally responsible for any negligence of Deputy Theiman.

BREACH OF DUTY – Deputy Thieman breached his duty to use reasonable care by negligently operating his BCSO issued cruiser.

PROXIMATE CAUSE - The greater weight of the evidence clearly points to the conclusion that the accident was caused by Deputy Theiman and that this was the proximate cause of the injuries to Eric Brody. There is competent and substantial evidence to support a finding of liability on the part of the BCSO. I find Deputy Theiman exceeded the posted speed limit in violation of section 316.183, F.S., and carelessly operated his vehicle in violation of s. 316.1925, F.S., causing the collision which resulted in the injuries to Eric Brody.

DAMAGES – The jury found BCSO to be 100% at fault for the accident and Eric Brody's injuries. The jury found damage amounts as follows:

Past medical expenses and lost earnings	$ 1,439,675
Future medical expenses and lost earnings	$ 9,656,541
Past Pain & Suffering	$ 2,703,627
Future Pain & Suffering	$ 16,609,455
Past expenses by his Parents	$ 200,000
TOTAL DAMAGES	$ 30,609,298

The judgment also awarded costs in the amount of $270,372.30. The total award was $30,960,372.30.

After conducting the hearing in this matter, and upon

review of the records made available by the parties and their submissions, I find the determination of economic damages and costs in the amount of $11,647,290.30 to be reasonable and supported by competent and substantial evidence.

The determination of damages for pain and suffering is more difficult. The record clearly demonstrates that Eric Brody and his family have had life as they knew it completely changed. No amount of money can quantify what they have lost and the pain they must endure. The record does not reveal how the jury came to its determination. Their award for pain and suffering is almost twice that of the economic damages.

Generally speaking, there is no set rule for measuring damages for past, present, and future pain and suffering. The law declares that there is no standard for measuring pain and suffering damages other than "the enlightened conscience of impartial jurors . . . ."[1]

While the Legislature may determine that the amount awarded for pain and suffering in this matter should be adjusted, I cannot find any legal reason based on the record to depart from the jury's award.

Any award in excess of available insurance funds made in this claim would come from the general operating funds of the BCSO. The BCSO states that it has not set aside any funds to pay any award. At the time of the accident, the BCSO carried insurance coverage for vehicular negligence in the amount of $3 million that would be available to offset the award. The Claimants have also argued that the entire award would be paid by the insurance company through subsequent bad faith litigation.

ATTORNEY'S/ LOBBYING FEES:

The attorney for the claimant has provided an affidavit to the effect that his fees will be limited to 25 percent of all gross amounts paid to the Claimants as the result of a claim bill. The affidavit does not address the payment of costs. Outstanding costs are $1,115,771.69.

The affidavit states that costs for professional lobbying services, will be borne by the client in addition to the 25% for attorney's fees. The agreed upon lobbying fees for

[1] *Braddock v. Seaboard A. L. R. Co.*, 80 So.2d 662, 667 (Fla. 1955) (citing *Toll v. Waters*, 138 So. 393 (Fla. 1939)).

this claim are eight percent of any claim bill amount.

Regardless of the agreement between the guardianship of Eric Brody and his attorney and the lobbyists, the bill provides that the total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under the bill.

LEGISLATIVE HISTORY: House Bill 789 by Representative Burgin and Senate Bill 52 by Senate Pruitt were filed during the 2009 Legislative Session. House Bill 789 was discussed in the Civil Justice & Courts Policy Committee but a vote was not taken. Senate Bill 52 passed the Senate and died on the House Calendar.

House Bill 1597 by Representative Bogdanoff and Senate Bill 68 by Senator Fasano were filed during the 2010 Legislative Session. Neither of these bills received a hearing in any Committee.

RECOMMENDATIONS: Based on the record before me, I find that the Claimants have met their burden to demonstrate by a greater weight of the evidence that the injuries and damages sustained by Eric Brody were caused by the negligent act of the BCSO, through its employee, Deputy Theiman. I further find that the amount requested for this claim, the amount awarded by the jury, is justifiable. Therefore, I recommend that this claim bill be reported FAVORABLY.

Respectfully submitted,

TOM THOMAS
House Special Master

cc: Representative Grant, House Sponsor
Senator Benacquisto, Senate Sponsor
Judge Bram D. E. Canter, Senate Special Master

A bill to be entitled

An act for the relief of Eric Brody by the Broward County Sheriff's Office; providing for an appropriation to compensate Eric Brody for injuries sustained as a result of the negligence of the Broward County Sheriff's Office; authorizing the Sheriff of Broward County, in lieu of payment, to execute to Eric Brody and his legal guardians an assignment of all claims that the Broward County Sheriff's Office has against its insurer arising out of the insurer's handling of the claim against the sheriff's office; clarifying that such assignment does not impair the ability or right of the assignees to pursue the final judgment and cost judgment against the insurer; providing a limitation on the payment of fees and costs related to the claim against the Broward County Sheriff's Office and an exception to that limitation as to any assigned claims brought against the insurer; providing an effective date.

WHEREAS, on the evening of March 3, 1998, 18-year-old Eric Brody, a college-bound high school senior, was returning home from his part-time job at the Sawgrass Mills Sports Authority. Eric was driving his 1982 AMC Concord eastbound on Oakland Park Boulevard in Sunrise, Florida, and

WHEREAS, that same evening, Broward County Sheriff's Deputy Christopher Thieman, who had been visiting his girlfriend and was running late for duty, was driving his Broward County Sheriff's Office cruiser westbound on Oakland Park Boulevard. At the time he left his girlfriend's house, Deputy Thieman had less

than 15 minutes to travel 11 miles to make roll call on time, which was mandatory pursuant to sheriff's office policy and procedure, and

WHEREAS, at approximately 10:36 p.m., Eric Brody began to make a left-hand turn into his neighborhood at the intersection of N.W. 117th Avenue and Oakland Park Boulevard. Deputy Thieman, who was driving in excess of the 45-mile-per-hour posted speed limit and traveling in the opposite direction, was not within the intersection and was more than 430 feet away from Eric Brody's car when Eric Brody began the turn. Eric Brody's car cleared two of the three westbound lanes on Oakland Park Boulevard, and

WHEREAS, Deputy Thieman, who was traveling in the inside westbound lane closest to the median, suddenly and inexplicably steered his vehicle to the right, across the center lane and into the outside lane, where the front end of his car struck the passenger side of Eric's car with great force, just behind the right front wheel and near the passenger door, and

WHEREAS, Deputy Thieman testified at trial that although he knew that the posted speed limit was 45 miles per hour, he refused to provide an estimate as to how fast he was traveling before the crash, and

WHEREAS, despite the appearance of a conflict of interest, the Broward County Sheriff's Office chose to conduct the official crash investigation instead of deferring to the City of Sunrise Police Department, which had jurisdiction, or the Florida Highway Patrol (FHP), which often investigates motor

vehicle collisions involving non-FHP law enforcement officers so as to avoid any possible conflict of interest, and

WHEREAS, in the course of the investigation, the Broward County Sheriff's Office lost key evidence from the crashed vehicles and did not report any witnesses even though the first responders to the crash scene were police officers from the City of Sunrise, and

WHEREAS, the Broward County detective who led the crash investigation entered inaccurate data into a computerized accident reconstruction program which skewed the speed that Deputy Thieman was driving, but, nevertheless, determined that he was still traveling well over the speed limit, and

WHEREAS, accident reconstruction experts called by both parties testified that Deputy Thieman was driving at least 60 to more than 70 miles per hour when his vehicle slammed into the passenger side of Eric Brody's car, and

WHEREAS, Eric Brody was found unconscious 6 minutes later by paramedics, his head and upper torso leaning upright and toward the passenger-side door. Although he was out of his shoulder harness and seat belt by the time paramedics arrived, the Brody's proved that Eric was wearing his seat belt and that the 16-year-old seat belt buckle failed during the crash. Photographs taken at the scene by the sheriff's office investigators showed the belt to be fully spooled out because the retractor was jammed, with the belt dangling outside the vehicle from the driver-side door, providing proof that Eric Brody was wearing his seat belt and shoulder harness during the crash, and

WHEREAS, accident reconstruction and human factor experts called by both the plaintiff and the defendant agreed that if Deputy Thieman been driving at the speed limit, Eric Brody would have easily completed his turn, and

WHEREAS, the experts also agreed that if Deputy Thieman simply remained within his lane of travel, regardless of his speed, there would not have been a collision, and

WHEREAS, in order to investigate the seat-belt defense, experts for Eric Brody recreated the accident using an exact car-to-car crash test that was conducted by a nationally recognized crash test facility. The crash test involved vehicles identical to the Brody and Thieman vehicles, a fully instrumented hybrid III dummy, and high-speed action cameras, and

WHEREAS, the crash test proved that Eric Brody was wearing his restraint system during the crash because the seat-belted test dummy struck its head on the passenger door within inches of where Eric Brody's head actually struck the passenger door, and

WHEREAS, when Eric Brody's head struck the passenger door of his vehicle, the door was crushing inward from the force of the impact with the police cruiser while at the same time his upper torso was moving toward the point of impact and the passenger door. The impact resulted in skull fractures and massive brain sheering, bleeding, bruising, and swelling, and

WHEREAS, Eric Brody was airlifted by helicopter to Broward General Hospital where he was placed on a ventilator and underwent an emergency craniotomy and neurosurgery. He began to

recover from a deep coma more than 7 months after his injury and underwent extensive rehabilitation, having to relearn how to walk, talk, feed himself, and perform other basic functions, and

WHEREAS, Eric Brody, who is now 31 years old, has been left profoundly brain-injured, lives with his parents, and is mostly isolated from his former friends and other young people his age. His speech is barely intelligible and he has significant cognitive dysfunction, judgment impairment, memory loss, and neuro-visual disabilities. Eric Brody also has impaired fine and gross motor skills and very poor balance. Although Eric is able to use a walker for short distances, he mostly uses a wheelchair to get around. The entire left side of his body is partially paralyzed and spastic, and he needs help with many of his daily functions. Eric Brody is permanently and totally disabled; however, he has a normal life expectancy, and

WHEREAS, the cost of Eric Brody's life care plan is nearly $10 million, and he has been left totally dependent on public health programs and taxpayer assistance since 1998, and

WHEREAS, the Broward County Sheriff's Office was insured for this claim through Ranger Insurance Company and paid more than $400,000 for liability coverage that has a policy limit of $3 million, and

WHEREAS, Ranger Insurance Company ignored seven demand letters and other attempts by the Brody's to settle the case for the policy limit, and instead chose to wait for more than 7 years following the date of the accident until the day the trial judge specially set the case for trial before offering to pay the policy limit. By that time nearly $750,000 had been spent

preparing the case for trial, and Eric Brody had past due bills and liens of approximately $1.5 million for health and rehabilitative care services. Because so much money had been spent preparing the case for trial, the exorbitant costs of Eric Brody's medical bills and liens, and the costs of future care continued to escalate, settlement for the policy limit was no longer feasible, and

WHEREAS, on December 1, 2005, after a 2-month trial, a Broward County jury consisting of three men and three women found that that Deputy Thieman and the Broward County Sheriff's Office were 100 percent negligent, and Eric Brody was not comparatively negligent, and

WHEREAS, the jury found Eric Brody's damages to be $30,609,298, including a determination that his past and future care and other economic damages were $11,326,216, and

WHEREAS, final judgment was entered for $30,609,298, and the court entered a cost judgment for $270,372.30, for a total of $30,879,670.30, and

WHEREAS, the court denied the Broward County Sheriff's Office post-trial motions for judgment notwithstanding the verdict, new trial, or remittitur, and

WHEREAS, the insurer of the Broward County Sheriff's Office retained appellate counsel and elected to appeal the final judgment but not the cost judgment, and

WHEREAS, the Fourth District Court of Appeal upheld the verdict in the fall of 2007, and

WHEREAS, the insurer of the Broward County Sheriff's Office subsequently petitioned the Florida Supreme Court to seek

another appeal, but the petition was denied in April of 2008, and

WHEREAS, all legal remedies for all parties involved have been exhausted and this case is ripe for a claim bill, and

WHEREAS, upon the passage of a claim bill for any amount in excess of the insurance policy limit of $3 million, the Broward County Sheriff's Office may have a cause of action pursuant to state law against its insurer for bad-faith-claims practices, breach of fiduciary duty, breach of contract, and other possible legal remedies which may result in a recovery from the insurer to pay all outstanding sums owed to the guardianship of Eric Brody, and

WHEREAS, the Broward County Sheriff's Office has paid $200,000 pursuant to s. 768.28, Florida Statutes, and the final judgment and cost judgment remainder is sought through the submission of a claim bill to the Legislature, and

WHEREAS, Eric Brody is willing to accept an assignment of all claims the Broward County Sheriff's Office may have against its insurer in lieu of the sheriff's office making any payment on this claim, and

WHEREAS, if the Broward County Sheriff's Office assigns all of its claims against its insurer to Eric Brody, the guardians of Eric Brody have offered to not hold the Broward County Sheriff's Office responsible for any payment, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The Sheriff of Broward County is authorized and directed to appropriate from funds of the Broward County Sheriff's Office not otherwise appropriated and to draw a warrant payable to Eric Brody in the sum of $7,500,000. In lieu of payment, the Sheriff of Broward County may assign to Eric Brody and his legal guardians all rights it may have against its liability insurance carrier for breach of contract, breach of fiduciary duty, bad faith, and any similar or related claims that may exist pursuant to state law. If the Sheriff of Broward County makes an assignment to the claimant as provided for in this section, the Broward County Sheriff's Office is not responsible for any further payment to the claimant.

Section 3. If the Sheriff of Broward County makes the assignment permitted under section 2 of this act, the protection given to the Broward County Sheriff's Office does not impair in any respect the ability or right of the assignees to pursue the final judgment and cost judgment against the insurer of the Broward County Sheriff's Office, less the $200,000 already paid, pursuant to state law.

Section 4. The amount paid by the Broward County Sheriff's Office pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all claims against the Broward County Sheriff's Office arising out of the facts described in this act which resulted in the injuries to Eric Brody. The total amount of attorney's fees, lobbying fees, costs, and other similar

expenses relating to the claim against the Broward County Sheriff's Office may not exceed 25 percent of the total amount awarded under section 2 of this act. Any attorney's fees, costs, and related expenses awarded by a court or earned pursuant to the prosecution of an assigned claim are not limited by this section and shall be earned in accordance with state law.

Section 5. This act shall take effect upon becoming a law.

STORAGE NAME: h1315.CVJS
DATE: 4/27/2011

April 27, 2011

SPECIAL MASTER'S FINAL REPORT

The Honorable Dean Cannon
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 1315 - Representative Diaz
Relief/Melvin and Alma Colindres/City of Miami

THIS IS A CONTESTED LOCAL CLAIM FOR $2,550,000 AGAINST THE CITY OF MIAMI BASED ON A FINAL JUDGMENT FOR MELVIN AND ALMA COLINDRES AND THE ESTATE OF THEIR SON, KEVIN COLINDRES, TO COMPENSATE CLAIMANTS FOR THE DEATH OF KEVIN COLINDRES, WHICH OCCURRED WHILE IN POLICE CUSTODY.

FINDING OF FACT:

Kevin Colindres, an intellectually disabled and severely autistic 18-year-old, died on January 5, 2007, as the result of injuries he incurred while in custody of City of Miami police officers on December 12, 2006. Kevin was 5'9 and weighed approximately 210 pounds. Kevin would occasionally throw temper tantrums and the family sometimes required the assistance of law enforcement to control his behavior.

On the evening of December 12, 2006, Mrs. Alma Colindres, Kevin's mother, asked Kevin to get dressed and said she would take him to school, which he hated, unless he cooperated with her. In response, Kevin became violent and struck Alma in the face, put his hands around her neck, and threw a chair at her. These actions prompted Nerania Colindres, Kevin's sister, to call 911 at approximately 6:45 p.m.

Officer Kimberly Pile was the first law enforcement officer to

respond to the call. Upon Officer Pile's arrival at the Colindres residence, Kevin had calmed down and was no longer engaged in violent behavior. Officer Pile told Kevin that she was there to help and Kevin sat down on the couch next to his mother.

Officer Pile remained on the scene and several backup officers arrived at the home a short time later. Although Kevin initially remained calm, he again became agitated when Nerania mentioned that he should be taken to the hospital to treat his ear, which was infected. At that point, Kevin stood up and began to run in the direction of his bedroom. As he did so, Kevin tripped and fell to the floor, which resulted in a laceration to his head. Officer Pile radioed for medical assistance at 7:15 p.m. Due to a miscommunication between the police department and fire rescue dispatchers, "cut to the head" was misinterpreted as "cut to the hand," which resulted in the call being assigned an "Alpha response," the slowest response level with the least priority.

While Kevin was still on the floor, the backup officers immediately handcuffed Kevin's wrists behind his back and removed him to the front yard. Kevin struggled against the officers' efforts, which resulted in the officers placing Kevin face-down on the ground. The officers then proceeded to attach a hobble restraint device to Kevin's ankles.

With his wrists handcuffed behind his back and his ankles hobbled, Kevin remained face-down in a prone position while being held in place by three officer, contrary to procedures of the Miami Police Department providing that handcuffed and hobbled subjects should be moved to a sitting position as quickly as possible to avoid the risk of asphyxiation. Positional asphyxiation and the procedures regarding the proper use of a hobble device are subjects that the Miami Police Department includes as part of officer training. However, testimony of the three officers revealed they were unaware of the relevant procedures regarding the hobble device and the positioning of subjects in custody.

The officers continued to hold Kevin in a prone position with at least one of the officers applying pressure to Kevin's back making it even more difficult for him to breathe. After being improperly held in the prone position for 10 to 12 minutes, Kevin stopped breathing. The officers did not notice, again violating department procedures by neglecting to adequately monitor Kevin. Kevin's mother advised the officers that she did not believe that Kevin was breathing. In response, one of the officers placed an ammonia tube in Kevin's nose, with no effect.

Notwithstanding the obvious fact that Kevin was no longer moving and in distress. The officers kept Kevin in the prone position until the arrival of the paramedics at 7:30 p.m. By that time, Kevin had been face-down for a total of 15 minutes, and

had not been breathing for approximately three to five minutes.

One of the responding paramedics instructed the officers to remove Kevin from the prone position and examined Kevin and discovered that his pupils were fixed, his facial complexion was blue, and he was not breathing. Although Kevin initially exhibited a pulse of 30 beats per minute, he went "flatline" moments later. CPR was then administered and Kevin was transported to the hospital. The prolonged period of respiratory arrest resulted in anoxic encephalopathy (brain death), and Kevin subsequently passed away at Coral Gables Hospital on January 5, 2007.

The Miami-Dade County Medical Examiner concluded that the use of the prone restraint position contributed to Kevin's cardiorespiratory arrest, which in turn caused Kevin's brain death. The Medical Examiner found that the "prone restraint position, and any position that restricts abdominal excursion, will interfere with breathing." The report identified Kevin's agitated emotional state as an additional factor contributing to his death.

Notwithstanding the plain language of the Medical Examiner's report, the Respondent argues that Kevin's cardiorespiratory arrest resulted not from positional asphyxia (i.e., suffocation caused by the prone position), but rather from "excited delirium." However, the undersigned is not persuaded by the opinions of Respondent's expert witnesses, Drs. Dimaio and Mash, and instead credits the conclusions of Dr. Werner Spitz, the Claimant's expert. Dr. Spitz opined that Kevin's brain death was the result of cardiac arrest initiated by compression of the chest, which in turn was caused by the use of the prone position and the application of force to Kevin's back.

Litigation History: Alma and Melvin Colindres, as the personal representatives of Kevin's estate, filed a wrongful death action against the City of Miami in May of 2007. Following extensive discovery, non-binding arbitration was held on March 25, 2010. The arbitrator found that if "the City of Miami Police Officers had been more attentive to Kevin Colindres after they restrained him, there is a strong likelihood that he would be alive today." The arbitrator concluded that the City of Miami was negligent in its treatment of Kevin. Acknowledging that it was difficult to assess the appropriate amount of damages to compensate parents for the pain and suffering associated with the loss of a child, the arbitrator determined that a judgment of $2.75 million was warranted.

The City of Miami was not bound by the abitration, and could have proceeded with a de novo jury trial. Instead, the City of Miami decided to limit further litigation costs by agreeing to the entry of a final judgment for $2.75 million, with the intention of opposing a claim bill.

The Respondent has paid $200,000 towards the final judgment, leaving a balance of $2,550,000 sought through this claim bill.

CONCLUSION OF LAW: The City clearly owed a duty of care to Kevin Colindres while he was in their custody. The City of Miami police officers breached this duty of care, as it should have been obvious to any reasonable person that restraining Kevin for 15 minutes while he was face-down, handcuffed, and hobbled, was dangerously and needlessly interfering with his ability to breathe. The officers further breached their duty of care when they failed to adequately monitor Kevin's breathing. The greater weight of the evidence supports the conclusion that Kevin would be alive today had the officers not committed these breaches of duty. Accordingly, the Claimants have demonstrated that the negligence of the officers was the proximate cause of Kevin's death.

Damages in the amount of $2,550,000 are reasonable and appropriate.

Source of Funds: Should this claim bill be approved, the first $225,000 would be paid by Respondent from its Self Insurance Trust Fund. The remaining $2,325,000 would be provided by Respondent's excess insurance coverage through State National Insurance Company.

ATTORNEY'S/ LOBBYING FEES: The Claimants' attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), Florida Statutes. Lobbyist's fees and costs are included with the attorney's fees.

RECOMMENDATIONS: For the reasons set forth above, the undersigned recommends that House Bill 1315 be reported FAVORABLY.

Respectfully submitted,

TOM THOMAS.
Special Master, House of Representatives

cc: Representative Diaz, House Sponsor
Senator Storms, Senate Sponsor
Judge Edward T. Bauer, Senate Special Master

A bill to be entitled

An act for the relief of Melvin and Alma Colindres by the City of Miami; providing for an appropriation to compensate them for the wrongful death of their son, Kevin Colindres, sustained as a result of the negligence of police officers of the City of Miami; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on December 12, 2006, Melvin and Alma Colindres called the City of Miami police department seeking help with their severely autistic and intellectually disabled son, Kevin Colindres, and

WHEREAS, the police officers who arrived at the Colindres' home were supposed to have been trained on interaction with and restraint of the mentally ill, such as Kevin Colindres, along with appropriate monitoring of an in-custody suspect's vital signs and the administration of cardiopulmonary resuscitation (CPR), and

WHEREAS, at the time of the first police officer's arrival to the Colindres' home, Kevin Colindres was calmly seated on the couch in the living room, and

WHEREAS, the initial police officer who arrived at the Colindres' house followed her training and the City of Miami's policies and procedures and approached Kevin Colindres in a quiet and nonthreatening manner and the situation remained stable, and

WHEREAS, the backup police officers violated their training

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

and the City of Miami's policies and procedures by aggressively approaching Kevin Colindres, causing Kevin Colindres to attempt to leave the room, and

WHEREAS, the police officers then placed Kevin Colindres into custody, handcuffing him behind the back and taking him out of the house, where the police officers placed him prone on the ground and applied a hobble restraint to his ankles, and

WHEREAS, in violation of their training and the City of Miami's policies and procedures, the police officers left Kevin Colindres prone on the ground and applied weight to his back, and

WHEREAS, in violation of their training and the City of Miami's policies and procedures, the police officers left Kevin Colindres in this position in excess of 10 minutes, and

WHEREAS, in violation of their training and the City of Miami's policies and procedures, the police officers failed to appropriately check Kevin Colindres' vital signs, and

WHEREAS, in violation of their training and the City of Miami's policies and procedures, upon realizing that Kevin Colindres had stopped breathing, the police officers failed to administer CPR, and

WHEREAS, in violation of their training and the City of Miami's policies and procedures, the police officers failed to advise the fire rescue department of the urgency of the matter, thereby delaying the response by fire rescue personnel, and

WHEREAS, Kevin Colindres asphyxiated, causing him to suffer anoxic encephalopathy, and

WHEREAS, on January 5, 2007, Kevin Colindres died as a

result of his injuries, and

WHEREAS, the police officers of the City of Miami were negligent in their actions, which directly resulted in the death of Kevin Colindres, and

WHEREAS, a tort claim was filed on behalf of Melvin and Alma Colindres, as personal representatives of the Estate of Kevin Colindres, Case Number 07-13294 CA 01, in the Circuit Court for the Eleventh Judicial Circuit, and

WHEREAS, the City of Miami filed a Motion for Arbitration that was granted by the court, and

WHEREAS, an arbitration was held and the arbitrator awarded the Estate of Kevin Colindres $2,750,000, and

WHEREAS, the City of Miami chose not to seek a de novo trial, and

WHEREAS, the court granted final judgment in favor of the Estate of Kevin Colindres in the amount of $2,750,000, plus interest at the rate of 6 percent per annum, and

WHEREAS, the City of Miami has agreed to pay $200,000 to Melvin and Alma Colindres, as personal representatives of Estate of Kevin Colindres, pursuant to its statutory limits of liability, and

WHEREAS, the City of Miami has a private insurance policy to pay all claims in excess of $500,000, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. <u>The facts stated in the preamble to this act are found and declared to be true.</u>

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

Section 2. The City of Miami is authorized and directed to appropriate $2,550,000 from funds of the city not otherwise appropriated, as well as insurance, and to draw a warrant in the sum of $2,550,000, plus interest at the rate of 6 percent per annum, payable to Melvin and Alma Colindres, as personal representatives of the Estate of Kevin Colindres, as compensation for the wrongful death of Kevin Colindres due to negligence by police officers of the City of Miami.

Section 3. The amount paid by the City of Miami pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the death of Kevin Colindres. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

Section 4. This act shall take effect upon becoming a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Civil Justice Subcommittee
Representative(s) Diaz offered the following:

Amendment (with title amendment)

T I T L E A M E N D M E N T

Remove lines 28-53 and insert:

WHEREAS, the police officers then placed Kevin Colindres into custody, handcuffing him behind the back and taking him out of the house, where the police officers placed him prone on the ground and applied a hobble restraint to his ankles, and

WHEREAS, in violation of their training and the City of Miami's policies and procedures, the police officers left Kevin Colindres prone on the ground and applied weight to his back, and

WHEREAS, in violation of their training and the City of Miami's policies and procedures, the police officers left Kevin Colindres in this position in excess of 10 minutes, and

Amendment No. 1

WHEREAS, in violation of their training and the City of Miami's policies and procedures, the police officers failed to appropriately check Kevin Colindres' vital signs, and

WHEREAS, in violation of their training and the City of Miami's policies and procedures, upon realizing that Kevin Colindres had stopped breathing, the officers failed to advise the fire rescue department of the urgency of the matter, thereby delaying the response by fire rescue personnel, and