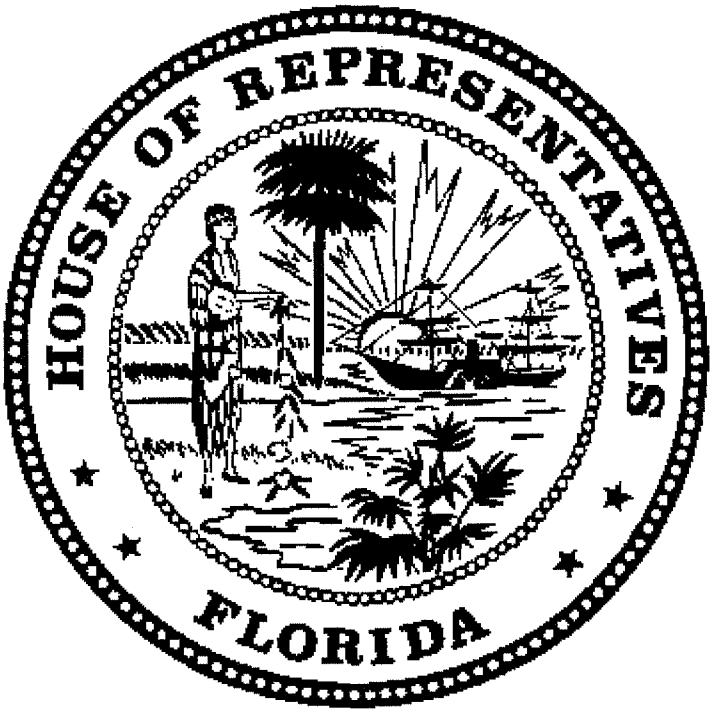

Civil Justice Subcommittee

Friday, February 17, 2012
8:00 AM
404 HOB

Dean Cannon
Speaker

Eric Eisnaugle
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time:	Friday, February 17, 2012 08:00 am
End Date and Time:	Friday, February 17, 2012 11:00 am
Location:	404 HOB
Duration:	3.00 hrs

Consideration of the following bill(s):

PCS for HB 43 -- Relief/Ronald Miller/City of Hollywood
PCS for HB 141 -- Relief/William Dillon/State of Florida
PCS for HB 293 -- Relief/Matute, Torres, De Mayne, Torres, and Barahona/Palm Beach County Sheriff's Office
PCS for HB 445 -- Relief/Eric Brody/Broward County Sheriff's Office
PCS for HB 457 -- Relief/Denise Gordon Brown & David Brown/North Broward Hospital District
PCS for HB 579 -- Relief/Lopez, Guzman, Lopez, Jr., Lopez-Velasquez, and Guzman/Miami-Dade County
PCS for HB 697 -- Relief/Don Brown/District School Board of Sumter County
PCS for HB 855 -- Relief/Carl Abbott/Palm Beach County School Board
PCS for HB 877 -- Relief/Odette Acanda and Alexis Rodriquez/Public Health Trust of Miami-Dade County
PCS for HB 909 -- Relief/Anais Cruz Peinado and Juan Carlos Rivera/School Board of Miami-Dade County
PCS for HB 965 -- Relief/Aaron Edwards, Mitzi Roden, and Mark Edwards/Lee Memorial Health System/Lee County
PCS for HB 967 -- Relief/Kristi Mellen/North Broward Hospital District
PCS for HB 969 -- Relief/Melvin and Alma Colindres/City of Miami
PCS for HB 985 -- Relief/Maricelly Lopez/City of North Miami
PCS for HB 1029 -- Relief/Thomas and Karen Brandi/City of Haines City
PCS for HB 1039 -- Relief/James Feurtado/Miami-Dade County
PCS for HB 1485 -- Relief/Monica Cantillo Acosta and Luis Alberto Cantilla Acosta/Miami-Dade County

NOTICE FINALIZED on 02/15/2012 16:06 by Jones.Missy

PCS for HB 43

STORAGE NAME: h0043.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 43; Relief/Ronald Miller/City of Hollywood
Sponsor: Representative Jenne
Companion Bill: SB 8 by Senator Sobel
Special Master: Tom Thomas

Basic Information:

Claimants:	Ronald Miller
Respondent:	City of Hollywood
Amount Requested:	$100,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	Agrees that the settlement in this matter and the passage of this claim bill are appropriate.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	House Bill 191 by Representative Gibson and Senate Bill 60 by Senator Rich were filed during the 2009 Legislative Session. Neither of these bills received a hearing. House Bill 519 by Representative Gibson and Senate Bill 44 by Senator Gelber were filed during the 2010 Legislative Session. Neither of these bills received a hearing. House Bill 569 by Representative Cruz and Senate Bill 64 by Senator Siplin were filed during the 2011 Legislative Session. The House Bill passed its only committee of reference (Civil Justice) but died on the Calendar. The Senate Bill was never heard in any Committee.

Procedural Summary: In January 2005, Mr. Miller filed suit in the Circuit Court of the 17th Judicial Circuit in and for Broward County. After trial, the jury found in favor of Ronald Miller and a final judgment was entered in the amount of $1,130,731.89, which included approximately $75,000 for past medical bills and $415,000 for future medical expenses, $200,000 for past pain and suffering, and $500,000 for future pain and suffering. A cost Judgment was entered in favor of Mr. Miller for $17,257.82. The City of Hollywood appealed and the Fourth District Court of Appeal affirmed the judgment per curiam. The City has paid $100,000 to Ronald Miller under the statutory limits of liability set forth in s. 768.28, F.S. The parties have now settled the matter and the City has agreed to pay Mr. Miller an additional $100,000 to resolve this claim.

Facts of Case: This case arises out of a motor vehicle accident that occurred on July 30, 2002. Mr. Miller was traveling northbound in his pickup truck on North Federal Highway, just south of Sheridan Street in the City of Hollywood, Florida. At approximately 5:30 p.m., Mr. Miller entered the center lane, planning on turning left at Sherman Street, the westbound street immediately south of Sheridan Street, traveling at approximately 15 miles-per-hour. At the same time, Robert Mettler, an employee of the City of Hollywood driving a City utilities truck, was exiting a Burger King Restaurant immediately to the right (on the east side of North Federal Highway). Stopped northbound traffic on North Federal Highway parted to allow Mr. Mettler to drive across the two northbound lanes into the center lane. As Mr. Mettler entered the center lane, he turned left in order to merge onto southbound North Federal Highway where he collided head-on into Mr. Miller. Mr. Miller was wearing his seatbelt and did not seek medical treatment at the scene of the accident. Though belted, Mr. Miller later testified that he banged his knees on the dashboard of his truck as a result of the crash impact. Later that night, Mr. Miller went to the emergency room to seek medical treatment.

In March of 2003, Dr. Steven Wender, M.D., performed extensive knee surgery on Mr. Miller (a right knee partial medial and lateral menisectomy and tricompartmental chondroplasty, and a left knee lateral menisectomy and chondroplasty of the medial compartment and lateral compartmental and patella with synovectomy). Mr. Miller developed post operative complications including pneumonia and deep vein thrombosis. Dr. Wender testified that Mr. Miller will need to have at least one bilateral knee replacement surgery in the future. Mr. Miller did have knee surgeries prior to the accident. The City's expert, Dr. Phillip Averbach, testified at trial that Mr. Miller did not sustain any permanent orthopedic or neurological injuries related to the accident. Dr. Averbach also testified that he believed at least 90 percent of Mr. Miller's current complaints and injuries were pre-existing to the accident. While there is testimony on both sides of how extensively Mr. Miller was injured as a result of the accident, the parties have agreed to settle the matter.

Recommendation: I respectfully recommend that House Bill 43 be reported **FAVORABLY**.

Tom Thomas, Special Master Date: February 15, 2012

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

A bill to be entitled

An act for the relief of Ronald Miller by the City of Hollywood; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of the City of Hollywood; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on July 30, 2002, Ronald Miller was driving his pickup truck home from work, northbound on Federal Highway in the left-turn lane, and

WHEREAS, at that time, a City of Hollywood employee, Robert Mettler, who was driving a city utilities truck, cut across the lanes of northbound traffic and crashed into Mr. Miller's vehicle head-on, and

WHEREAS, the impact of the crash caused Mr. Miller to have corrective surgeries for damage to both knees, and

WHEREAS, the jury found in favor of Ronald Miller and a Final Judgment was entered in the amount of $1,130,731.89, and a cost judgment was entered in the amount of $17,257.82, and

WHEREAS, the City of Hollywood has paid $100,000 to Ronald Miller under the statutory limits of liability set forth in s. 768.28, Florida Statutes, and

WHEREAS, the parties have negotiated in good faith and have arrived at a stipulated resolution of this matter by the payment by the City of Hollywood of an additional $100,000 to Ronald Miller, 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 City of Hollywood is authorized and directed to appropriate from funds of the city and to draw a warrant, payable to Ronald Miller, for the total amount of $100,000 as compensation for injuries and damages sustained as a result of the negligence of the City of Hollywood.

Section 3. The amount paid by the City of Hollywood pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are the sole and final compensation for all present and future claims arising out of the facts described in this act which resulted in injuries to Ronald Miller. All expenses which constituted part of Ronald Miller's judgments described herein shall be paid from the amount awarded under this act on a pro rata basis. The total amount paid from all sources for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 15 percent of the amount awarded under this act.

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

PCS for HB 141

STORAGE NAME: h0141.CVJS
DATE: 22/15/2012

February 15, 2012

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 141 - Representative Crisafulli
Relief/William Dillon/State of Florida

THIS IS AN EQUITABLE CLAIM FOR $810,000 FROM THE GENERAL REVENUE FUND, PLUS 120 HOURS OF TUITION WAIVERS, TO COMPENSATE WILLIAM DILLON FOR HIS 27-YEAR WRONGFUL INCARCERATION FOR MURDER.

FINDING OF FACT:

William Dillon was convicted of first-degree murder on December 4, 1981, and imprisoned for 27 years, for killing James Dvorak. Mr. Dillon was released from prison on November 18, 2008, after the Circuit Court in the Eighteenth Judicial Circuit granted the state's motion to discharge Dillon based on DNA evidence that suggested Mr. Dillon was not guilty of the murder.

Mr. Dvorak, a 40-year-old man, was murdered at Canova Beach in Brevard County on August 17, 1981, between 1:30 a.m. and 3:30 a.m. Mr. Dvorak had multiple fractures to his head and was beaten to death with fists and/or a blunt instrument. A murder weapon was never found.

At approximately the same time Dvorak was being murdered, John Parker drove his truck to Canova Beach. While there, Parker observed a young man walking up from the beach area. Parker testified that the man was 21 to 27 years old, about 6

feet tall, had a "medium" mustache, was sweaty, had blood smears on his leg and pants, and appeared upset. The man was wearing shorts, was not wearing a shirt, but held a shirt in his hand. Parker pulled up to the man and inquired if he needed help. The man told Parker that he could not find his car and asked for a ride to the A-Frame Tavern. Parker gave the man a ride to the A-Frame Tavern and testified that the man said his name was Jim.

Later that same day, Parker learned about the murder from the news media and contacted the Brevard Sheriff's Office. He told them about the man he gave a ride and that the man had left a bloody shirt in his truck. Parker had found the shirt in his truck and threw it in a shopping center trash can. The shirt was yellow and had "SURF IT" printed on the front and back. The Brevard County Sheriff's Office retrieved the shirt and prepared a sketch of the man based on Parker's description.

As the investigation continued, Dillon became a suspect. It was suggested that the sketch of the hitchhiker looked like Dillon. It was reported to police that Dillon had bragged how he "rolled" homosexuals for money. Police were told that Dillon had a mustache that he recently shaved off and was dressing and acting differently after the date of the murder.

On August 22, 1981, Dillon was contacted and asked for an interview. At the interview conducted a few days afterward by Agent Thom Fair, Dillon said that he and Donna Parrish had spent the entire night of August 16 in Cocoa Beach at the home of Linda and George Plumlee. Dillon said that the next day, August 17, he and Parrish stayed with his friend Matt Bocci in Satellite Beach. Agent Fair said that Dillon had recently-healed scratches on his hands at the time of the interview.

Donna Parrish gave several different accounts of events. During Parrish's first interview, she stated at one point that she and Dillon spent the night of August 15 with Charles and Rosanne Rogers - but at another point she said it was the night of August 16. In a second interview, taken just a few minutes later with different investigators, Parrish said that she and Dillon went to the Bocci residence on August 16. Parrish subsequently gave many varying accounts of events, all of which must be discounted based on her unreliability. It was later disclosed that, following an interview of Parrish by Chief Homicide Investigator Charles Slaughter, he drove her to his residence and had sexual intercourse with her. The sexual encounter was reported by Parrish, who filed a complaint about it with the Sheriff's Office. Slaughter admitted the sexual contact and he was immediately suspended, demoted, and transferred out of the homicide unit.

Dillon also gave varying accounts of events. He agreed to take 2 polygraph tests, and the examiner concluded that Dillon

showed deception on both tests.

No fingerprints, blood samples, or hair samples taken from the crime scene were ever linked to Dillon. When John Parker was first asked whether he could identify Dillon as the hitchhiker, Parker was unable to make a positive identification. However, during one of Dillon's interviews, Dillon touched a piece of paper that was later given to John Preston, the handler of a scent-tracking dog. According to Preston, his dog then connected Dillon's scent on the piece of paper to the bloody T-shirt left in Parker's truck, indicating that Dillon's scent was also on the T-shirt.

Several people said that Dillon often wore a yellow "SURF IT" T-shirt like the one left in Parker's truck by the hitchhiker. Pictures of Dillon taken around the time of his arrest show him wearing a yellow T-shirt with "EAT IT RAW" printed on the front. The words "EAT IT" were on top and the word "Raw" was below. Dillon's "EAT IT" T-shirt could have been mistaken for the yellow "SURF IT" T-shirt.

Sometime after Dillon's arrest, Charles and Rosanne Rogers contacted the Sheriff's Office and said Dillon and Parrish had spent the night of August 16 with them in Cocoa Beach. Dillon also claimed to have stayed with the Rogers on August 16, although not until after the Rogers came forward with that account. Additionally, several witnesses, including Brevard County Sheriff Deputy George McGee, testified that Dillon was seen in the Canova beach area, at the Bocci house, and at the Pelican Bar on August 16 and the early morning hours of August 17.

After Dillon's arrest on August 26, 1981, he was placed in a jail cell with Roger Chapman. Agent Thom Fair met with Chapman at the jail and Chapman told Agent Fair that Dillon said he had "sucker punched" a guy at the beach and then beat him with his fists. Agent Fair said Chapman initiated the meeting. At the claim bill hearing held on November 2, 2009, Chapman testified that he had been coerced by Agent Fair to make up lies about Dillon or face harsh prosecution on his own charge of sexual battery. Chapman's charges were later dropped. Agent Fair submitted an affidavit in which he asserts that Chapman's statement was not coerced. The testimony of Chapman and Agent Fair on this point was not subject to cross-examination and is otherwise insufficient to resolve the conflicting claim about coercion.

Ultimately at Dillon's trial, the jury heard: Parker identify Dillon as the man he had given a ride and who left the T-shirt in his truck; Preston testify that his dog matched Dillon to the bloody T-shirt; Chapman testify about Dillon's "confession" to him when they were sharing a jail cell; testimony that Dillon often wore a yellow "Surf-it" T-shirt; and Parrish testify that she saw

Dillon at Dvorak's body. It is not surprising, therefore, that the jury found Dillon guilty of murder beyond a reasonable doubt.

However, long after Dillon's trial, John Preston the dog handler was discredited. It was established that Preston was falsely claiming that his dogs were matching crime scene evidence to suspects when in fact there was no match. Preston is the same discredited dog handler used in the wrongful conviction of Wilton Dedge who was compensated by the State in 2005.

At the time of the murder, Dillon was 22 years old and unemployed. Dillon's attorneys described his status as "between jobs" as a construction worker. His father said he was "destitute" and not working. Dillon was usually broke and spent his days and nights sleeping on the beach, in cars, or at the apartments of acquaintances or strangers. Dillon was often at the Pelican Bar, which is across Highway A-1-A from Canova Beach. A couple of weeks before the murder, he met Donna Parrish at the Pelican Bar and was spending a lot of time with her.

In addition to Dillon's loss of freedom and the many other deprivations caused by his incarceration, he testified to having been gang-raped while in prison. He also says he has dental problems due to the poor dental care he received in prison. Dillon had a good record in prison with respect to work assignments and general behavior. He now lives in Raleigh, North Carolina.

PROCEDURAL HISTORY:

Dillon was tried in the circuit court for Brevard County in December, 1981. He was found guilty and sentenced to 25 years to life in prison.

A week after the trial, Dillon's attorney moved for a mistrial because Parrish wanted to recant her trial testimony. A hearing was held before the trial judge to consider the motion. Parrish said that she had lied about seeing Dillon at the body of the murder victim. She said she lied because Sheriff's deputies told her that, if she did not lie for them, she would "rot in jail for 25 years." Following the hearing, the trial court denied the motion for mistrial, and Dillon was sent to prison.

In 2005, Dillon learned about the Wilton Dedge case and Dedge's exoneration for a rape conviction based on DNA testing. Dillon filed a motion for DNA testing. In 2007, staff at the Innocence Project of Florida saw an interview of Dillon, and subsequently paid for DNA testing of the bloody T-shirt by a private laboratory that used testing methods not available at the state laboratory. The results demonstrated that while there was evidence of DNA on the shirt from two different males and the blood on the shirt was that of the victim, Mr. Dvorak, Dillon's DNA was not on the shirt. The DNA of the unknown males was too deteriorated to check against any database for

identification. A motion for a new trial was granted in November 2008, and Dillon was released from prison. In December 2008, the State Attorney for the Eighteenth Judicial Circuit, Norman Wolfinger, decided not to pursue a new trial. In a letter sent to the Special Master, Wolfinger explained that "meeting the State's burden of proof was going to be unrealistic in light of the nine witnesses who are now deceased and another key witness who has substantial medical issues."

Based on the publicity surrounding this claim bill during the 2010 legislative session, the Brevard County Sheriff's Office ("BCSO") re-opened the 1981 investigation. The Special Master received a redacted version of a June 2011 report providing a great deal of further information on this case. On June 9, 2011, BCSO announced its conclusion that Dillon had not murdered Dvorak, and that the murder was committed by four men who had not previously been suspects: James Johnstone, Phillip Huff, Daryl Novak, and Eric Novak. These four men have not been arrested and charged with the murder, but the State Attorney for the Seventh Judicial District (the case was specially assigned out of Brevard County to avoid any charge of partiality) is preparing the prosecution. The four men are innocent until proven guilty in a court of law.

The investigators found a telephone memo for a call that had been received by BCSO in 1981 from someone who had overheard Johnstone and Huff talking about having beaten a homosexual man at the beach. The Brevard County Public Defender's Office received a tip in 2010 from someone who had read about Dillon's release from prison, reporting to have heard the two Novak brothers in 1981 talking about beating up and possibly killing a gay man at the beach. In 1981, all four men lived in Satellite Beach, near the scene of the murder.

All four suspects originally denied involvement when questioned. However, in February 2011, Huff confessed that he was involved in the murder of Dvorak. Huff, who was only 17 at the time, stated that he, Johnstone and the Novak brothers were smoking marijuana at Canova Beach when they were joined by Dvorak, who was a stranger to them. At some point, Johnstone and Dvorak walked off into a wooded area. Huff and the Novak brothers later went looking for Johnstone and Dvorak and found them on the ground having sex. Upon being discovered, the two got up, and Johnstone began punching Dvorak. Then the Novak brothers chased and beat Dvorak as he pleaded for his life. Huff had no explanation for why the Novak brothers "went into a rage." Huff said Dvorak was hit in the head with a tree limb. The BCSO investigators found Huff's story to be credible because the details matched the crime scene investigation.

Johnstone, Huff, and Eric Novak volunteered DNA samples and a DNA sample was obtained from Daryl Novak without his

knowledge. Johnstone's DNA matched sweat found on the yellow T-shirt that had been used to convict Dillon. At the time of the murder, Johnstone was 20 years old, 5 feet, eleven inches tall, of slender build, with brown hair and a mustache. Those features match John Parker's description of the hitchhiker with the yellow T-shirt that Parker picked up the night of the murder. Parker said the hitchhiker told him his name was Jim, which is James Johnstone's nickname. The hitchhiker told Parker he was looking for his blue Dodge Dart. Johnstone owned a blue Dodge Dart. Therefore, the evidence implicating Johnstone is very strong. The hitchhiker told Parker that he had left some people who were still on the beach, which provides a link to the involvement of the other men.

CONCLUSION OF LAW:

The original criminal prosecution involved unreliable witnesses, faulty memories, and official misconduct, making it difficult to sort out the events of August 16 and 17, 1981. The trial certainly has attracted much of the attention and is a large part of Dillon's case before the Legislature. However, the conduct at the trial is not the issue before the Legislature. Rather, Dillon's actual innocence is the threshold concern. Furthermore, the burden here is on Mr. Dillon to prove his innocence – not that the trial below was mishandled. Accordingly, the next issue is what standard of proof must be met in order to carry that burden.

Burden of Proof

In the 2008 Session, the Legislature created Chapter 961, F.S., to compensate victims of wrongful incarceration. The relief provided under Chapter 961, F.S., is $50,000 for each year of wrongful incarceration; a tuition waiver for up to 120 hours at a career center, community college, or university in Florida; and reimbursement of court costs, attorney's fees, and expenses incurred in the criminal proceedings. Dillon is ineligible to seek relief under Chapter 961, F.S., because that law is only available to persons who have no felony conviction other than the conviction for which they were wrongfully incarcerated. Dillon has a felony conviction for possession of a controlled substance - a single Quaalude - for which he served no jail time, but paid a fine and served probation. However, if Dillon were eligible to use Chapter 961, F.S., he would not qualify for compensation unless he presented "clear and convincing evidence" that he "neither committed the act nor the offense that served as the basis for the conviction and incarceration" and he "did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense."

The requirement of Chapter 961, F.S., to prove "actual innocence" is substantially different than showing that guilt was not proved beyond a reasonable doubt. A jury's determination that a defendant is "not guilty" is not a determination that the defendant is actually innocent. Although the defendant is

presumed to be innocent in the eyes of the law, the jury does not determine actual innocence. In contrast, Chapter 961, F.S., does not presume innocence for the purposes of compensation, and so it is not enough for a claimant to show that the evidence was insufficient to prove guilt beyond a reasonable doubt. The claimant cannot be compensated unless there is clear and convincing evidence of his or her actual innocence.

On the other hand, Dillon's attorneys argue that a "preponderance of the evidence" standard should be applied (although they assert that the evidence of Dillon's innocence is also clear and convincing). They note that this is essentially a claim bill seeking compensation for damages arising from the tort of false imprisonment, and as a result should qualify for the usual *preponderance of the evidence* standard that is applied in other claim bills involving government torts.

Conclusion on the Burden of Proof.

There is no precedent to turn to in resolving the issue as to which standard to apply, because this is the first claim bill for wrongful incarceration since the enactment of Chapter 961, F.S. The Claimant's argument that the Legislature should apply a *preponderance of the evidence* standard is reasonable. However, the *clear and convincing* standard in Chapter 961, F.S., is a more relevant guide for legislative action on claim bills for wrongful incarceration.

Chapter 961, F.S., relates to wrongful incarceration, which is the subject of this claim bill. Chapter 961, F.S., applies the standard of "clear and convincing evidence" when an individual has no prior felony convictions. Thus, when an individual *does* have prior felony convictions, as is the case here, it should at least not counsel *lowering* the burden of proof, if Chapter 961, F.S., is to offer any meaningful guidance. Therefore, I believe the appropriate burden of proof should be "clear and convincing evidence" of innocence.

Applying the Burden of Proof.

Unlike the hitchhiker, credible evidence suggests that Dillon did not have a mustache. Parker described the hitchhiker as being about 6 feet tall. Dillon is 6 feet, 4 inches tall. The T-shirt left by the hitchhiker was a size "small." It is unlikely Dillon could have worn a size small T-shirt.

Additionally, it is clear that one must disregard the testimony of the dog handler, Parker's identification of Dillon as the man he gave a ride that night, Chapman's testimony that Dillon confessed to the crime in the jail cell, and all of Parish's testimony.

Further, it is clear from the BCSO investigation that Dillon is innocent of the murder of Mr. Dvorak.

I find that William Dillon has proven his innocence with clear and convincing evidence.

ATTORNEY'S/ LOBBYING FEES: Dillon's attorneys are representing him pro bono. However, the Innocence Project of Florida reported $27,611.85 of costs incurred in obtaining the release of Dillon from prison and assisting him thereafter. There is no lobbyist's fee.

OTHER ISSUES: Should the Legislature find that Dillon was wrongfully incarcerated and entitled to compensation for the 27 years he spent in prison, I believe the amount should be similar to the amounts paid to prior claimants for wrongful incarceration and to the amounts provided in the statutory process of Chapter 961, F.S. Therefore, should the claim be awarded, the amount should be $50,000 for each of the 27 years (a total amount of $1,350,000). This payment should be in addition to the waiver of tuition and fees for up to a total of 120 hours of instruction at a state career center, community college, or university.

In addition, there are statements in the "whereas" clauses of the bill that go beyond facts supported by the record. Clauses of the bill alleging prosecutorial misconduct should be removed. There is not sufficient evidence in the record to support these statements and were not part of my consideration.

RECOMMENDATIONS: For the reasons set forth above, I recommend that with the suggested changes, House Bill 141 be reported **FAVORABLY**.

Respectfully submitted,

TOM THOMAS.
Special Master

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

A bill to be entitled

An act for the relief of William Dillon, who was wrongfully incarcerated for 27 years; providing an appropriation to compensate Mr. Dillon for his wrongful incarceration; directing the Chief Financial Officer to draw a warrant for the purchase of an annuity; providing for a waiver of certain tuition and fees; providing conditions for payment; providing that the act does not waive certain defenses or increase the state's liability; providing a limitation on the payment of fees and costs; providing that certain benefits are void upon any future finding that Mr. Dillon is not innocent of the alleged crime; providing an effective date.

WHEREAS, William Dillon was arrested on August 27, 1981, indicted by a Grand Jury on September 3, 1981, and convicted of First Degree Felony Murder on December 4, 1981, and

WHEREAS, William Dillon has maintained his innocence, and

WHEREAS, on November 14, 2008, the Circuit Court in the Eighteenth Judicial Circuit granted a motion for post conviction relief and vacated the Judgment and Sentence of William Dillon as entered on March 12, 1982. The Court additionally ordered a new trial, and

WHEREAS, William Dillon was released pending a new trial on November, 18, 2008, and

WHEREAS, on December 10, 2008, the State filed a Nolle Prosequi as related to the retrial of William Dillon, and

WHEREAS, on November 3, 2009, the Sheriff of Brevard County directed the 1981 homicide investigation of James Dvorak be re-opened and actively investigated in a comprehensive manner, and

WHEREAS, the Sheriff of Brevard County has formally announced that the re-opened investigation has determined with certainty that William Dillon did not participate in the aggravated battery that most likely led to the death of James Dvorak, and

WHEREAS, the Legislature acknowledges that the state's system of justice yielded an imperfect result that had tragic consequences in this case, and

WHEREAS, the Legislature acknowledges that, as a result of his physical confinement, William Dillon suffered significant damages that are unique to William Dillon and all of those damages are due to the fact that he was physically restrained and prevented from exercising the freedom to which all innocent citizens are entitled, and

WHEREAS, William Dillon, before his conviction for the above-mentioned crime, pled guilty to an unrelated felony, and

WHEREAS, because of his prior felony conviction, William Dillon is ineligible for compensation under chapter 961, Florida Statutes, and

WHEREAS, the Legislature is providing compensation to William Dillon to acknowledge the fact that he suffered significant damages that are unique to William Dillon, and

WHEREAS, the Brevard County Sheriff's Office comprehensive re-investigation of the matter has determined verifiable and substantial evidence of William Dillon's actual innocence of

First Degree Felony Murder, and

WHEREAS, the compensation provided by this act is the sole compensation from the state for any and all present and future claims arising in connection with William Dillon's arrest, conviction and incarceration, and

WHEREAS, William Dillon may not seek any future compensation against the state or any agency, instrumentality, or political subdivision thereof, or any other entity subject to the provisions of s. 768.28, in state or federal court requesting compensation arising out of the facts in connection with his arrest, conviction and incarceration, and

WHEREAS, the Legislature apologizes to William Dillon on behalf of the state, 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 $1,350,000 is appropriated from the General Revenue Fund to the Department of Financial Services under the conditions provided in this act.

Section 3. The Chief Financial Officer is directed to draw a warrant in the total sum specified in section 2 for the purposes provided in this act.

Section 4. The Department of Financial Services shall pay the funds appropriated under this act to an insurance company or other financial institution admitted and authorized to issue annuity contracts in this state and selected by William Dillon

to purchase an annuity. The Department of Financial Services shall execute all necessary agreements to implement this act.

Section 5. Tuition and fees for William Dillon shall be waived for up to a total of 120 hours of instruction at any career center established pursuant to s. 1001.44, Florida Statutes, community college established under part III of chapter 1004, Florida Statutes, or state university. For any educational benefit made, William Dillon must meet and maintain the regular admission requirements of, and be registered at, such career center, community college, or state university and make satisfactory academic progress as defined by the educational institution in which he is enrolled.

Section 6. The Chief Financial Officer shall purchase the annuity required by this act upon delivery by William Dillon to the Chief Financial Officer, the Department of Financial Services, the President of the Senate, and the Speaker of the House of Representatives of a release executed by William Dillon for himself and on behalf of his heirs, successors, and assigns, fully and forever releasing and discharging the State of Florida, and its agencies and subdivisions as defined by Section 768.28(2), Florida Statutes, from any and all present or future claims or declaratory relief that William Dillon or any of his heirs, successors, or assigns may have against the State of Florida and its agencies and subdivisions as defined herein, and arising out of the factual situation in connection with the arrest and conviction and incarceration for which compensation is awarded; and without limitation of the foregoing, the release shall specifically release and discharge the Sheriff of Brevard

County, Florida, in his official capacity, and any current or former Sheriffs, deputies, agents or employees of the Sheriff of Brevard County in their individual capacities, from all claims, causes of action, demands, rights, and claims for attorneys' fees or costs, of whatsoever kind or nature, whether in law or equity, including but not limited to any claims pursuant to 42 U.S.C. § 1983, which William Dillon had, has, or might hereinafter have or claim to have, whether known or not, against the Sheriff of Brevard County, Florida, and his assigns, successors in interest, predecessors in interest, heirs, employees, agents, servants, officers, directors, deputies, insurers, reinsurers and excess insurers, in their official and individual capacities, and that arise out of, are associated with, or are a cause of, the arrest and conviction and incarceration for which compensation is awarded, including any known or unknown loss, injury, or damage related to or caused by same and which may arise in the future. However, this act does not prohibit declaratory action to obtain judicial expungement of William Dillon's record as related to the arrest and conviction of First Degree Felony Murder within a judicial or executive branch agency as otherwise provided by law.

Section 7. The Legislature by this act does not waive any defense of sovereign immunity or increase the limits of liability on behalf of the state or any person or entity that is subject to s. 768.28, Florida Statutes, or any other law.

Section 8. This award is intended to provide the sole compensation for any and all present and future claims arising out of the factual situation in connection with William Dillon's

arrest, conviction and incarceration. There shall be no further award to include attorney's fees, lobbying fees, costs, or other similar expenses to William Dillon by the state or any agency, instrumentality, or any political subdivision thereof, or any other entity, including any county constitutional office, officer or employee, in state or federal court.

Section 9. If a future factual finding determines that William Dillon, by DNA evidence or otherwise, participated in any manner as related to the death or robbery of James Dvorak, the unused benefits to which he is entitled under this act are void.

Section 10. This act shall take effect upon becoming a law.

PCS for HB 293

STORAGE NAME: h0293.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 293; Relief of Matute, Torres, De Mayne, Torres, and Barahona/Palm Beach County Sheriff's Office
Sponsor: Representative Rooney, Jr.
Companion Bill: SB 52 by Senator Negron
Special Master: Tom Thomas

Basic Information:

Claimants:	Criss Matute, Christian Manuel Torres, Eddna Torres De Mayne, Lansky Torres, and Nasdry Yamileth Torres Barahona
Respondent:	Palm Beach County Sheriff's Office
Amount Requested:	$371,850.98
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The Palm Beach County Sheriff's Office admits responsibility for the accident and does not object to this claim bill.
Collateral Sources:	As part of its settlement, $75,000 was paid to the Claimants by Republic Services of Florida, owner of one of the vehicles, a Mack truck, involved in the accident.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	This is the first year this claim has been filed.

Procedural Summary: Mr. Matute's surviving child, Eddna Torres De Mayne, brought a wrongful-death action against the Palm Beach County Sheriff's Office seeking damages for her siblings, Criss Matute, Christian Manuel Torres, Lansky Torres, and Nasdry Yamileth Torres Barahona, and herself for their anguish and mental pain and suffering due to the tragic death of their father. On January 4, 2011, the Palm Beach County Sheriff's Office agreed to settle the claim in the amount of $500,000. In May 2011, the Palm Beach County Sheriff's Office tendered to Eddna Torres De Mayne, as personal representative of the Estate of Manuel A. Matute, a payment of $128,149.02 in

accordance with the statutory limits of liability set forth in s. 768.28, F.S.

Facts of Case: Manuel Antonio Matute, age 60, was killed on October 29, 2008, when he was hit head-on by a sheriff's office vehicle. The accident occurred at 5:58 a.m. The sheriff's vehicle was driven by a deputy employed by the Palm Beach County Sheriff's Office. The deputy fell asleep and lost control of his vehicle as he was travelling northbound on U.S. Highway 441 in West Palm Beach. The Sheriff's vehicle drifted to the right, hit the median, crossed the center island, and entered the southbound lane, finally impacting directly into the vehicle driven by Mr. Matute. As a result of the crash, two other southbound vehicles ran into the accident. Mr. Matute was declared dead at the scene of the accident.

Mr. Matute is survived by three sons and two daughters. Mr. Matute was not responsible in any way for causing the accident.

Recommendation: The bill should be amended to name the correct roadway where the accident occurred. The correct roadway is U.S. Highway 441, not Military Trail. I respectfully recommend House Bill 293 be reported **FAVORABLY,** as amended.

Tom Thomas, Special Master Date: February 15, 2012

cc: Representative Rooney, House Sponsor
Senator Negron, Senate Sponsor
Judge Jessica E. Varn, Senate Special Master

A bill to be entitled

An act for the relief of Criss Matute, Christian Manuel Torres, Eddna Torres De Mayne, Lansky Torres, and Nasdry Yamileth Torres Barahona by the Palm Beach County Sheriff's Office; providing for an appropriation to compensate them for injuries sustained as a result of the negligence of the Palm Beach County Sheriff's Office for the wrongful death of their father, Manuel Antonio Matute; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, Manuel Antonio Matute, age 60, was killed on October 29, 2008, when he was hit head-on by a sheriff's office vehicle whose driver, a Palm Beach County Deputy Sheriff, lost control of the vehicle on U.S. Highway 441 in West Palm Beach, Palm Beach County, and

WHEREAS, Manuel A. Matute's surviving child, Eddna Torres De Mayne, brought a wrongful-death action against the Palm Beach County Sheriff's Office seeking damages for her siblings, Criss Matute, Christian Manuel Torres, Lansky Torres, and Nasdry Yamileth Torres Barahona, and herself for their anguish and mental pain and suffering due to the tragic death of their father, and

WHEREAS, on January 4, 2011, the Palm Beach County Sheriff's Office agreed to settle the claim in the amount of $500,000, and

WHEREAS, in May 2011, the Palm Beach County Sheriff's

Office tendered to Eddna Torres De Mayne, as personal representative of the Estate of Manuel A. Matute, a payment of $128,149.02 in accordance with the statutory limits of liability set forth in s. 768.28, Florida Statutes, and

WHEREAS, Eddna Torres De Mayne, as personal representative of the Estate of Manuel A. Matute, seeks satisfaction of the balance of the settlement agreement which is $371,850.98, 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 Palm Beach County Sheriff's Office is authorized and directed to appropriate from funds of the county not otherwise appropriated and to draw a warrant in the sum of $371,850.98, payable to Eddna Torres De Mayne, as personal representative of the Estate of Manuel A. Matute, as compensation for injuries and damages sustained due to the wrongful death of Manuel Antonio Matute.

Section 3. The amount paid by the Palm Beach 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 present and future claims arising out of the factual situation described in this act which resulted in the death of Manuel Antonio Matute. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 15 percent of the

amount awarded under this act.

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

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

V

STORAGE NAME: h0445.CVJS
DATE: 2/15/2012

February 15, 2012

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 445 – Representative Grant
Relief/Eric Brody/Broward County Sheriff's Office

THIS IS A SETTLED EXCESS JUDGMENT CLAIM FOR $10,750,000, BASED ON A SETTLEMENT BY THE PARENTS AND GUARDIANSHIP OF ERIC BRODY FOR INJURIES HE SUFFERED DUE TO THE NEGLIGENCE OF AN EMPLOYEE OF THE BROWARD COUNTY SHERIFF'S OFFICE. 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 Broward County Sheriff's Office (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.

The parties recently settled this matter for $10,750,000.

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 s. 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.

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. As part of the settlement in this matter, the insurance company will pay the entire award.

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

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

services, will be borne by the client in addition to the 25% for attorney's fees. The agreed upon lobbying fees for 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 Senator 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.

House Bill 1151 by Representative Grant and Senate Bill 42 by Senator Benacquisto were filed during the 2011 Legislative Session. House Bill 1151 was passed by the Civil Justice Subcommittee and died on the House Calendar. Senate Bill 42 passed the Senate and died on the House Calendar.

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. However, since the parties have settled at the lower amount of $10,750,000, I find that amount reasonable as a settlement. Therefore, I recommend that this claim bill be reported FAVORABLY.

Respectfully submitted,

TOM THOMAS
Special Master, House of Representatives

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; providing a limitation on the payment of fees and costs related to the claim against the Broward County Sheriff's Office; providing legislative intent regarding lien interests held by the state; providing an effective date.

WHEREAS, on March 3, 1998, Eric Brody was driving home in his 1982 AMC Concord eastbound on Oakland Park Boulevard in Sunrise, Florida, and

WHEREAS, that same evening, Broward County Sheriff's Deputy Christopher Thieman was driving his Broward County Sheriff's Office cruiser on his way to work, and

WHEREAS, Deputy Thieman struck Eric Brody's car, leaving Eric profoundly injured, and

WHEREAS, the case was tried to a jury and the court rendered a final judgment of $30,879,670.30, and

WHEREAS, the parties have reached a settlement in the amount of $10,750,000, with other terms of value, and $200,000 has been paid pursuant to the limits of liability set forth in s. 768.28, Florida Statutes, 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 insurer of the Sheriff of Broward County has agreed to, and is authorized and directed to pay $10,750,000 on behalf of the Broward County Sheriff's Office to the Guardianship of Eric Brody to be placed in a special needs trust created for the exclusive use and benefit of Eric Brody as compensation by the Broward Sheriff's Office and its insurer, Fairmont Specialty Insurance Company, f/k/a Ranger Insurance Company, for injuries brought about by the facts set forth in the preamble of this act.

Section 3. This award is the sole compensation for all present and future claims, including all attorney fees, lobbying fees, and related costs, arising out of the factual situation described in this act which resulted in the injuries to Eric Brody, and hereby releases the Broward County Sheriff's Office and Fairmont Specialty Insurance Company, f/k/a Ranger Insurance Company, the Broward County Board of County Commissioners, Broward County, and Christopher Thieman from any further liability. The total amount of attorney fees, lobbying fees, and related costs may not exceed 15 percent of the first $1,000,000 awarded under this act, 10 percent of the second $1,000,000 awarded under this act, and 5 percent of the next $3,000,000 awarded under this act, for a total of $400,000.

Section 4. It is the intent of the Legislature that all lien interests relating to the claim of the Guardianship of Eric Brody and the treatment and care of Eric Brody, including Medicaid liens and any charging lien in excess of the sovereign

immunity cap, are hereby waived or extinguished.

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

STORAGE NAME: h0457.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 457; Relief/Denise Gordon Brown & David Brown/North Broward Hospital District
Sponsor: Representative Nehr
Companion Bill: SB 6 by Senator Negron
Special Master: Tom Thomas

Basic Information:

Claimants:	Denise Gordon Brown and David Brown, parents of Darian Brown
Respondent:	North Broward Hospital District
Amount Requested:	$2,000,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	North Broward Hospital District agrees that settlement in this matter is appropriate and has agreed to remain neutral and not take any action adverse to the pursuit of the claim bill.
Collateral Sources:	The Browns have received $10,550,000 from the District to date toward the settlement of this matter.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	In 2011, HB 855 by Representative Thurston, passed the Civil Justice Subcommittee, but died on the Calendar. SB 306 by Senator Rich passed the Rules Committee, but died on the Calendar.

Procedural Summary: The Browns filed a lawsuit against the Hospital District for negligence in the 17th Judicial Circuit Court, in and for Broward County. After trial, the jury returned a verdict in favor of the Browns, in the amount of $34,418,577. The jury's verdict was affirmed on appeal.

The District sued its insurers seeking a declaration of coverage for the damages awarded to the Browns. The coverage lawsuit led to a global settlement under which the District's insurers paid the

Browns $10.35 million, the district paid its sovereign immunity limit of $200,000, and the parties agreed that the plaintiffs could seek an additional $2 million through an uncontested claim bill. Under the settlement agreements, the plaintiffs' net recovery to date (after satisfying medical and legal expenses and attorneys' fees) is approximately $8.5 million. They have paid roughly $3.3 million to their attorneys.

Facts of Case: On January 10, 2000, Denise Gordon Brown, at 33 weeks gestation, was admitted as a high-risk obstetrical patient at Broward General Medical Center in Fort Lauderdale, Florida. Because the fetal heart rate of the baby she was carrying was elevated, her physician ordered continuous fetal monitoring. Mrs. Brown had delivered prematurely in the past.

On the evening of January 14, 2000, the fetal monitoring showed significant risk to the fetus. Denise Brown's obstetrician, Dr. Danoff, had given standing orders that the nurse on duty was to notify the obstetrician if the baby's heart rate ever exceeded 160 beats per minute.

On January 15, 2000, the monitoring indicated an accelerated heart rate (a condition known as tachycardia). The nursing staff did not notify the obstetrician of this development, despite the standing order to do so. Over the next few hours, the fetal monitoring strips showed increasingly worrisome signs, namely consistent fetal tachycardia and loss of fetal heart rate variability. Variability indicates fetal wellbeing.

At 11:00 p.m., the baby's heart rate started to slow periodically after uterine contractions. When this occurs, it is called a "late deceleration." Late decelerations are an ominous sign, especially in conjunction with tachycardia and loss of variability. The nursing staff, however, did not notify the obstetrician, or any other physician, that Mrs. Brown's baby might be in trouble.

The continued fetal tachycardia and loss of reactivity, necessitated immediate delivery. Ms. Brown's child, Darian Brown, was not delivered immediately and sustained a hypoxic brain injury as a result of the delay. Darian had been oxygen-deprived in his mother's womb for hours before his birth. As a result, he was born with numerous complications, including respiratory distress syndrome, cystic kidney disease, neonatal jaundice, neonatal hypoglycemia, and newborn intraventricular hemorrhage. He required aggressive resuscitation. Eventually, Mrs. Brown and Darian were discharged from the hospital. The Browns were not told, however, that Darian might have suffered a serious brain injury.

In October 2000, Mrs. Brown became concerned that her son was not meeting developmental milestones. Her inquiries to the pediatrician resulted in a computed tomography (CT) scan of Darian's brain being ordered. The CT scan showed that Darian's brain had been seriously and irreversibly damaged by partial prolonged hypoxia (oxygen deprivation) in the hours before his birth. The damage to Darian's brain has left him suffering from cerebral palsy, spastic quadriplegia, and developmental delay.

Darian is unable to talk but smiles at family members and communicates basic needs by gesturing. Darian has no bladder or bowel control, cannot feed himself, and is unable to perform any activities of daily living. He will be totally dependent on others for care and treatment for the rest of his life. The economic report prepared by Raffa Consulting Economists, Inc., concludes that the present value of Daran's future medical needs is between $11.5 and $13.6 million, and that his estimated lost earning capacity, reduced to present value, is approximately $0.68 million.

Recommendation: I respectfully recommend that House Bill 457 be reported **FAVORABLY**.

Tom Thomas, Special Master Date: February 15, 2012

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

A bill to be entitled

An act for the relief of Denise Gordon Brown and David Brown by the North Broward Hospital District; providing for an appropriation to compensate Denise Gordon Brown and David Brown, parents of Darian Brown, for injuries and damages sustained by Darian Brown as result of the negligence of Broward General Medical Center; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on January 10, 2000, Denise Gordon Brown was admitted as a high-risk obstetrical patient at Broward General Medical Center in Fort Lauderdale, Florida, and

WHEREAS, Denise Gordon Brown's physicians at Broward General Medical Center ordered continuous fetal monitoring, and

WHEREAS, on the evening of January 14, 2000, the fetal monitoring showed significant risk to the fetus, and

WHEREAS, on January 15, 2000, the monitoring indicated continued fetal tachycardia and loss of reactivity, necessitating immediate delivery, and

WHEREAS, Denise Gordon Brown's unborn child, Darian Brown, was not delivered immediately and sustained a hypoxic brain injury as a result of the delay, and

WHEREAS, Denise Gordon Brown and David Brown, the parents of Darian Brown, sought medical care and treatment that determined that Darian Brown's condition is permanent, has resulted in severe neurological damage, and requires a lifetime of round-the-clock care and treatment, and

WHEREAS, after a trial, a jury returned a verdict in favor of Denise Gordon Brown and David Brown, as parents and guardians of Darian Brown, in the amount of $35,236,000, for the cost of care for Darian Brown, resulting in a final judgment, less setoffs and costs, in the amount of $34,418,577, and

WHEREAS, the jury's verdict was affirmed on appeal, and

WHEREAS, pursuant to an agreement between the parties to the lawsuit, the judgment has been partially satisfied in the amount of $10,550,000, and

WHEREAS, pursuant to the agreement, the claim shall be considered fully satisfied by the stipulation that the North Broward Hospital District will seek its self-insured retention in the amount of $2 million as authorized by the Florida Legislature through a claim bill, 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 $2 million is appropriated out of funds not otherwise encumbered for payment by the North Broward Hospital District for the relief of Denise Gordon Brown and David Brown, as guardians of Darian Brown, for injuries and damages sustained by Darian Brown due to the negligence of Broward General Medical Center.

Section 3. A warrant shall be drawn in favor of Denise Gordon Brown and David Brown, as guardians of Darian Brown, in the amount of $2 million, to be placed in a special needs trust

created for the exclusive use and benefit of Darian Brown, a minor, to compensate Darian Brown for injuries and damages sustained.

Section 4. 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 injuries sustained by Darian Brown. The total amount of attorney fees, lobbying fees, and related costs may not exceed 15 percent of the first $1,000,000 awarded under this act and 10 percent of the second $1,000,000 awarded under this act, for a total of $250,000.

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

STORAGE NAME: h0579.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 579; Relief/Lopez, Guzman, Lopez, Jr., Lopez-Velasquez, and Guzman/Miami-Dade County
Sponsor: Representative Nuñez
Companion Bill: SB 16 by Senator Braynon
Special Master: Tom Thomas

Basic Information:

Claimants:	Ronnie Lopez and Robert Guzman, as co-personal representatives of the Estate of Ana Yency Velasquez, deceased, for the benefit of Ronnie Lopez, Jr., Ashley Lorena Lopez-Velasquez, and Steven Robert Guzman, minor children of Ana Yency Velasquez.
Respondent:	Miami-Dade County
Amount Requested:	$1,010,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	Miami-Dade County supports the passage of this claim bill.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	House Bill 1251 by Representative Pafford and Senate Bill 2222 by Senator Braynon were filed during the 2011 Legislative Session. Neither bill was ever heard in any committee

Procedural Summary: This case was successfully mediated prior to any litigation being filed. Mediation was held on November 17, 2010, whereupon the parties entered into a Mediation Settlement Agreement. The settlement called for the County to pay the Claimants $150,000 immediately and to support the passage of a claim bill for $1,010,000.

Facts of Case: On February 23, 2009, a Miami-Dade County police officer, when driving his marked police unit through an intersection, failed to obey a posted stop sign. The vehicle driven by the officer was reported to be in pursuit of a speeding vehicle but did not have his lights or siren engaged. Protocol for the Miami-Dade County Police Department requires that lights and sirens be engaged whenever any police vehicle is in pursuit of another vehicle. Section 316.271, F.S., requires that sirens be engaged whenever an authorized emergency vehicle is responding to an emergency or in immediate pursuit of an actual or suspected violator of the law.

The Miami-Dade County police cruiser crashed into the vehicle operated by Ana Yency Velasquez at the intersection of N.W. 112th St. and N.W. 12th Ave. The impact caused Ms. Velasquez's automobile to crash into the bedroom of a nearby residence. Ms. Velasquez was killed as a result of the accident. At the time of the accident, Ms. Velasquez was 23 years old and the mother of three minor children.

Ronnie Lopez, a co-personal representative of the Estate of Ana Yency Velasquez, is the father of Ronnie Lopez, Jr., age 5 and Ashley Lorena Lopez-Velasquez, age 4. Ana Yency Velasquez was the mother of Ronnie Lopez, Jr., and Ashley Lorena Lopez-Velasquez.

Robert Guzman, a co-personal representative of the Estate of Ana Yency Velasquez, is the father of Steven Robert Guzman, age 9. Ana Yency Velasquez, was the mother of Steven Robert Guzman.

Any funds awarded by the claim bill will go into a depository for equal distribution on behalf of the three children.

Recommendation: I respectfully recommend House Bill 579 be reported **FAVORABLY**.

Tom Thomas, Special Master Date: February 15, 2012

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

A bill to be entitled

An act for the relief of Ronnie Lopez and Robert Guzman, as co-personal representatives of the Estate of Ana-Yency Velasquez, deceased, and for Ronnie Lopez, Jr., Ashley Lorena Lopez-Velasquez, and Steven Robert Guzman, minor children of Ana-Yency Velasquez, by Miami-Dade County; providing for an appropriation to compensate the estate and the minor children for the death of Ana-Yency Velasquez as a result of the negligence of an employee of Miami-Dade County; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, Ronnie Lopez, co-personal representative of the Estate of Ana-Yency Velasquez, deceased, is the father of Ronnie Lopez, Jr., age 5, and Ashley Lorena Lopez-Velasquez, age 4, and Ana-Yency Velasquez, deceased, was the mother of Ronnie Lopez, Jr., and Ashley Lorena Lopez-Velasquez, and

WHEREAS, Robert Guzman, co-personal representative of the Estate of Ana-Yency Velasquez, deceased, is the father of minor child, Steven Robert Guzman, age 9, and Ana-Yency Velasquez, deceased, was the mother of Steven Robert Guzman, and

WHEREAS, on February 23, 2009, a Miami-Dade County Police Officer, when driving his marked police unit through an intersection, failed to obey a posted stop sign and also did not engage his lights or sirens, and

WHEREAS, protocol for the Miami-Dade County Police Department requires that lights and sirens be engaged whenever

any police vehicle is in pursuit of another vehicle, and

WHEREAS, s. 316.271, Florida Statutes, requires that sirens be engaged whenever an authorized emergency vehicle is responding to an emergency or in immediate pursuit of an actual or suspected violator of the law, and

WHEREAS, the vehicle driven by the Miami-Dade County police unit was in pursuit of a phantom speeding vehicle at the time of the collision, and

WHEREAS, the Miami-Dade County police cruiser crashed into and broadsided the vehicle operated by Ana-Yency Velasquez, then 23 years of age and the mother of three minor children, at the intersection of N.W. 112th St. and N.W. 12th Ave., and

WHEREAS, the Miami-Dade County police cruiser operated by the officer struck the vehicle driven by Ana-Yency Velasquez with such force that her automobile crashed into the bedroom of a nearby residence, throwing debris from the automobile onto the roof of the residence, and

WHEREAS, Ana-Yency Velasquez was killed as a result of the negligence of an employee of Miami-Dade County, Florida, and

WHEREAS, mediation of the claims of this matter was held on November 17, 2010, and

WHEREAS, at mediation, Miami-Dade County acknowledged that the damages far exceeded the statutory limit of $200,000 established under s. 768.28, Florida Statutes, and the representatives of Miami-Dade County agreed and entered into a Mediation Settlement Agreement, and

WHEREAS, Miami-Dade County has paid $150,000 to the co-personal representatives of the Estate of Ana-Yency Velasquez

under the statutory limits of liability set forth in s. 768.28, Florida Statutes, and

WHEREAS, Miami-Dade County has agreed in the Mediation Settlement Agreement to actively support the passage of a claim bill in the amount of $1,010,000, 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. Miami-Dade County is authorized and directed to appropriate from funds of the county not otherwise appropriated and to draw a warrant in the sum of $1,010,000, payable to Ronnie Lopez and Robert Guzman, as co-personal representatives of the Estate of Ana-Yency Velasquez, deceased, for the benefit of Ronnie Lopez, Jr., Ashley Lorena Lopez-Velasquez, and Steven Robert Guzman, minor children of Ana-Yency Velasquez, as compensation for the death of Ana-Yency Velasquez as a result of the negligence of an employee of Miami-Dade County.

Section 3. The amount paid by Miami-Dade County 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 the preamble to this act which resulted in the death of Ana-Yency Velasquez. The total amount paid for attorney's fees, lobbying fees, costs, and similar expenses relating to this claim may not exceed 15 percent of the first $1,000,000 awarded under this act and 10 percent of the

remainder awarded under this act, for a total of $151,000.

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

PCS for HB 697

STORAGE NAME: h0697.CVJS
DATE: 2/15/2012

February 15, 2012

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 697 – Representative McBurney
Relief/Don Brown/District School Board of Sumter County

THIS IS A CONTESTED CLAIM FOR $2,583,049.95 BASED ON A JURY VERDICT AGAINST THE DISTRICT SCHOOL BOARD OF SUMTER COUNTY, IN WHICH THE JURY DETERMINED THAT THE SCHOOL BOARD WAS 100 PERCENT RESPONSIBLE FOR INJURIES SUSTAINED BY DON BROWN DUE TO THE NEGLIGENT OPERATION OF A SCHOOL BUS BY ONE OF ITS EMPLOYEES.

FINDING OF FACT:

On October 18, 2004, at approximately 6:45 a.m., Donald Brown was driving his Harley-Davidson motorcycle heading to work at the Federal Bureau of Prisons in Coleman, Florida. Mr. Brown was driving eastbound on County Road 470 and was approaching the intersection with County Road 475 in Bushnell, Florida. Patsy C. Foxworth was operating a school bus, owned by the District School Board of Sumter County (School Board), heading north on County Road 475 in Bushnell, Florida. The school bus came to a stop at the meeting point of County Road 475 (its terminus) with County Road 470. After stopping at the stop sign, in an attempt to make a left turn and head west on County Road 470, Ms. Foxworth pulled in front of Mr. Brown causing a collision with his motorcycle.

Upon the impact with the bus, Mr. Brown sustained serious

injuries and his leg was severed below the knee. Mr. Brown was airlifted to Orlando Regional Medical Center where he was taken to surgery to complete a below-the-knee amputation of his right leg. Mr. Brown was hospitalized from October 18, 2004, to October 27, 2004, and underwent additional surgeries on October 25, 2004, and October 28, 2004, to care for the wound and to do skin grafts from his left thigh.

Mr. Brown was transferred to Shands Hospital in Gainesville, Florida, for rehabilitation from November 2, 2004, to November 12, 2004. As a result of the injuries, Mr. Brown required the use of a prosthetic leg, which resulted in ulcers requiring additional surgery on January 17, 2006.

Mr. Brown incurred medical expenses in the amount of $421,693.60 and medically retired from his federal employment at the Federal Bureau of Prisons where his salary was $42,000 a year. Prior to the accident, Mr. Brown lived a full life and was very active in recreational, social, and sporting activities.

Mr. Brown is receiving continuous medical care for his injuries, including two surgeries after the trial, the first surgery occurring on September 16 and 17, 2009, at Orlando Regional Medical Center due to a bone infection on his right leg, and the second surgery occurring on August 27, 2010, at the Jewish Hospital in Louisville, Kentucky, due to complications with his right leg resulting in an above-the-knee amputation.

The School Board argued that Mr. Brown was at fault for the accident – that he was tailgating the car in front of him and swerved around that car. However, the greater weight of the evidence supports the jury's finding that Ms. Foxworth was 100 percent at fault for the accident. Ms. Foxworth was cited for running the stop sign and pled guilty to the charge.

Litigation History: A lawsuit was brought against the School Board by Mr. Brown. After a jury trial, the jury found the School Board liable for Mr. Brown's injuries and awarded him damages in the amount of $2,941,383:

$421,963 for past medical bills;
$92,690 for past lost wages;
$972,730 for future medical bills;
$554,000 for future loss of earning capacity;
$630,000 for past pain and suffering; and
$270,000 for future pain and suffering.

A final judgment on March 2, 2009, reduced the final verdict to $2,651,375.83 (reductions were made for set-offs related to actual medical bills and disability payments), plus taxable costs in the amount of $31,674.12. The School Board appealed the judgment on March 30, 2009, which was affirmed by the Fifth District Court of Appeal on February 18, 2011. The School

Board has paid $100,000 in accordance with the statutory limits of liability in s. 768.28, Florida Statutes.

CONCLUSION OF LAW:

Like any motorist, Ms. Foxworth had a duty to operate her vehicle with consideration for the safety of other drivers.[1] By pulling in front of Mr. Brown, Ms. Foxworth breached her duty of care, which was a direct and proximate cause of Mr. Brown's injuries. The School Board, as Ms. Foxworth's employer, is liable for her negligent act.[2]

As discussed above, the jury determined that Ms. Foxworth, based upon the negligent operation of her vehicle, was 100 percent at fault in this accident. This conclusion is supported by the greater weight of the evidence and is affirmed by the undersigned.

The School Board argued that the damages awarded were too high. While, in hindsight, the jury's award may be questioned as being too high on lost future wages, it can also be said that the jury underestimated future medical expenses and pain and suffering. The jury did not foresee the additional surgeries Mr. Brown would undergo and the increased related suffering. It also appears the jury underestimated the amount of pain and suffering resulting from the loss of his leg – only awarding $270,000 for related pain and suffering going forward for a lifetime of the loss of his leg and the related pain and medical treatment resulting from that loss. The undersigned concludes that the damages awarded by the jury are appropriate and are affirmed.

The School Board argued that the injuries in this case do not rise to the level of passing a claim bill. It argued that while death, paralysis, or brain injury could justify a passage of a claim bill, that the injuries suffered by Mr. Brown, including the loss of his leg, do not rise to that level. I can find no support for this argument and find that his injuries are significant and consistent with those of prior claim bills passed by the Legislature.

Finally, the School Board argued that the underlying negligence in this matter does not rise to the level to support passage of a claim bill. It argued that the negligence in this case is only simple negligence and that something greater should be

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[1] *Pedigo v. Smith*, 395 So.2d 615, 616 (Fla. 5th DCA 1981).

[2] *Mercury Motors Express v. Smith*, 393 So.2d 545, 549 (Fla. 1981)(holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment); *see also Aurbach v. Gallina*, 753 So.2d 60, 62 (Fla. 2000)(holding that the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another"). Also, *see* s. 768.28(9)(a), F.S., which provides that "[t]he exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity... of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property."

required to justify the passage of a claim bill. I can find no support for this argument and find that the negligence in this matter is consistent with that of prior claim bills passed by the Legislature.

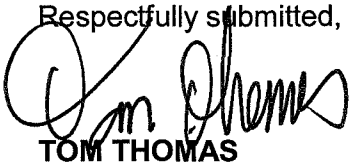
Prior Legislative History: This is the first year this claim has been filed.

Source of funds: The School Board has liability insurance with Preferred Governmental Insurance Trust that will pay the award under this claim should it be passed.

ATTORNEY'S/ LOBBYING FEES: The Claimant's 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 697 be reported FAVORABLY.

Respectfully submitted,



TOM THOMAS
Special Master

cc: Representative McBurney, House Sponsor
Senator Garcia, Senate Sponsor
Judge Jessica E. Varn, Senate Special Master

A bill to be entitled

An act for the relief of Donald Brown by the District School Board of Sumter County; providing for an appropriation to compensate Donald Brown for injuries sustained as a result of the negligence of an employee of the District School Board of Sumter County; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on October 18, 2004, at approximately 6:45 a.m., Donald Brown was driving his Harley-Davidson motorcycle eastbound on County Road 470 and was approaching the intersection with County Road 475 in Bushnell, Florida, and

WHEREAS, Patsy C. Foxworth was operating a school bus, owned by the District School Board of Sumter County, on County Road 475 in Bushnell, Florida, and

WHEREAS, Patsy C. Foxworth was operating and driving the motor vehicle with the permission and consent of its owner, the District School Board of Sumter County, and

WHEREAS, at that time and place, Patsy C. Foxworth negligently operated the Sumter County school bus by pulling in front of Donald Brown in an attempt to make a left turn, which caused a collision with his motorcycle, and

WHEREAS, the District School Board of Sumter County is vicariously liable for the negligence of Patsy C. Foxworth under the doctrine of respondeat superior, s. 768.28(9)(a), Florida Statutes, and

WHEREAS, upon the impact with the Sumter County school bus,

Donald Brown sustained a life-changing injury, and his right lower leg was amputated instantly below the knee as his leg and foot were pinned between the bumper of the bus and motorcycle, and

WHEREAS, Donald Brown seeks to recover damages for his bodily injury, including a permanent injury to the body as a whole, past and future pain and suffering of both a physical and mental nature, disability, physical impairment, disfigurement, mental anguish, inconvenience, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and loss of ability to lead and enjoy a normal life, and

WHEREAS, Donald Brown was airlifted to Orlando Regional Medical Center and was hospitalized from October 18, 2004, to October 27, 2004, where he was taken to surgery on October 18, 2004, to complete a below-the-knee amputation of his right leg, and

WHEREAS, Donald Brown underwent additional surgeries on October 25, 2004, and October 28, 2004, to care for the wound and to do skin grafts from his left thigh to cover an area of approximately 45 by 30 cm on his right leg, and

WHEREAS, Donald Brown was transferred to Shands Hospital in Gainesville, Florida, for rehabilitation from November 2, 2004, to November 12, 2004, and

WHEREAS, as a result of the injuries incurred on October 18, 2004, Donald Brown required the use of a prosthetic leg, which resulted in ulcers requiring additional surgery on January

17, 2006, and

WHEREAS, the effects of the injuries have been devastating, restricting Donald Brown's ability to work and enjoy life, and

WHEREAS, Donald Brown incurred medical expenses in the amount of $421,693.60 and was medically retired from his federal employment at the Federal Bureau of Prisons in Coleman, Florida, where he was earning $42,000 a year, and

WHEREAS, Donald Brown lived a full life before his accident on October 18, 2004, had a zest and vigor for life, and was very active in recreational, social, and sporting activities, and

WHEREAS, a lawsuit was brought against the District School Board of Sumter County by Donald Brown, and, after a lengthy jury trial, the jury found the school board liable for Donald Brown's injuries and awarded him damages in the amount of $2,941,240.60, and

WHEREAS, the Honorable Michelle T. Morley, Circuit Court Judge from the Fifth Judicial Circuit in Sumter County, entered a final judgment on March 2, 2009, reducing the final verdict to $2,651,375.83, plus taxable costs in the amount of $31,674.12 and interest to accrue on the amount of the judgment at a rate of 11 percent per annum from the date that the judgment was rendered until payment, and

WHEREAS, the District School Board of Sumter County filed a notice of appeal of the judgment on March 30, 2009, which was affirmed by the Fifth District Court of Appeal on February 18, 2011, and

WHEREAS, Donald Brown is receiving continuous medical care for his injuries, including two surgeries after the trial, the

first surgery occurring on September 16 and 17, 2009, at Orlando Regional Medical Center due to a bone infection on his right leg, and the second surgery occurring on August 27, 2010, at the Jewish Hospital in Louisville, Kentucky, due to complications with his right leg resulting in an above-the-knee amputation, and

WHEREAS, the District School Board of Sumter County has paid $100,000 pursuant to the statutory limits of liability set forth in s. 768.28, Florida Statutes, and

WHEREAS, the $2,551,375.83 remainder of the judgment is sought through the submission of a claim bill to the Legislature, 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 District School Board of Sumter County is authorized and directed to appropriate from funds of the school board not otherwise appropriated and to draw a warrant payable to Donald Brown, in the amount of $2,551,375.83, plus the taxable costs of $31,674.12, for a total of $2,583,049.95.

Section 3. The compensation awarded under this act is 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 injuries to Donald Brown. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 15

percent of the first $1,000,000 awarded under this act, 10 percent of the second $1,000,000 awarded under this act, and 5 percent of the remainder awarded under this act, for a total of $279,152.

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

PCS for HB 855

STORAGE NAME: h0855.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 855; Relief/Carl Abbott/Palm Beach County School Board
Sponsor: Representative Workman
Companion Bill: SB 54 by Senator Negron
Special Master: Tom Thomas

Basic Information:

Claimants:	David Abbott, guardian of Carl Abbott
Respondent:	Palm Beach County School Board
Amount Requested:	$1,900,000; to be made in payments of $211,111.11 each fiscal year beginning in 2012 through 2019, inclusive, and $211,111.12 in the 2020 fiscal year.
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The Palm Beach County School Board does not oppose the enactment of this claim bill.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	House Bill 1487 by Representative Workman and Senate Bill 70 by Senator Negron were filed during the 2011 Legislative Session. The House Bill passed its only committee of reference (Civil Justice), passed the full House, but died in Messages. The Senate Bill passed its only committee of reference (Rules) but died on the Calendar.

Procedural Summary: David Abbott, the son and guardian of Carl Abbott, brought suit in 2008 claiming negligence against the School Board of Palm Beach County. The action was filed in the 15th Judicial Circuit Court, in and for Palm Beach County, Florida.

Prior to trial, the parties came to an agreement through mediation to settle the case for $2 million,

$100,000 of which the School Board has already paid. Pursuant to the settlement agreement, the $1.9 million balance will be paid in eight yearly installments of $211,111.11, plus a ninth and final annual payment of $211,111.12. These yearly payments will commence on the effective date of the claim bill, and continue for nine years, or until Mr. Abbott's death, whichever first occurs. The School Board has agreed, however, to make at least three years' worth of payments, guaranteeing a minimum payout of $633.333.33. Out of the $100,000 settlement proceeds he has already received, Mr. Abbott paid $25,000 in attorney's fees and, after paying some expenses, netted $51,905.65. This amount was paid to Mr. Abbott's guardian, David Abbott.

Facts of Case: On June 30, 2008, at about 2:00 p.m., Carl Abbott, then 68 years old, started to walk across U.S. Highway 1 at the intersection with South Anchorage Drive in North Palm Beach, Florida. Mr. Abbott was heading west from the northeast quadrant of the intersection, toward the intersection's northwest quadrant. To get to the other side of U. S. Highway 1, which runs north and south, Mr. Abbott needed to cross the highway's three northbound lanes, a median, the southbound left turn lane, and the three southbound travel lanes. Mr. Abbott remained within the marked pedestrian crosswalk.

At the time Mr. Abbott began to cross U.S. Highway 1, a school bus was idling in the eastbound left-turn lane on South Anchorage Drive, waiting for the green light. The bus driver, Generia Bedford, intended to turn left and proceed north on U.S. Highway 1. When the light changed, Ms. Bedford drove the bus eastward through the intersection and turned left, as planned, heading northward. She did not see Mr. Abbott, who was in the center northbound lane of U.S. Highway 1, until it was too late. The school bus struck Mr. Abbott and knocked him to the ground. He sustained a serious, traumatic brain injury in the accident.

Mr. Abbott received cardiopulmonary resuscitation (CPR) at the scene and was rushed to St. Mary's Medical Center, where he was placed on a ventilator. A cerebral shunt was placed to decrease intracranial pressure. After two months, Mr. Abbott was discharged with the following diagnoses: traumatic brain injury, pulmonary contusions, intracranial hemorrhage, subdural hematoma, and paralysis.

Mr. Abbott presently resides in a nursing home. As a result of the brain injury, he is unable to talk, walk, or take care of himself. He is alert but has significant cognitive impairments. Mr. Abbott has neurogenic bladder and bowels and hence is incontinent. He cannot perform any activities of daily living and needs constant, total care. His condition is not expected to improve.

Based on the Life Care Plan prepared by Stuart B. Krost, M.D., Mr. Abbott's future medical needs, assuming a life expectancy of 78 years, are projected to cost about $4 million, before a reduction to present value. The school Board is self-insured and will pay the balance of the agreed sum out of its General Fund, which was the source of revenue used to satisfy the initial commitment of $100,000.

Recommendation: I respectfully recommend House Bill 855 be reported **FAVORABLY.**

Tom Thomas, Special Master Date: February 15, 2012

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

A bill to be entitled

An act for the relief of Carl Abbott by the Palm Beach County School Board; providing for an appropriation to compensate Carl Abbott for injuries sustained as a result of the negligence of the Palm Beach County School District; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on June 30, 2008, 67-year-old Carl Abbott was struck by a school bus driven by an employee of the Palm Beach County School District while Mr. Abbott was crossing the street in a designated crosswalk at the intersection of South Anchorage Drive and U.S. 1 in Palm Beach County, and

WHEREAS, as a result of the accident, Carl Abbott suffered a closed-head injury, traumatic brain injury, subdural hematoma, and subarachnoid hemorrhage, and

WHEREAS, as a result of his injuries, Carl Abbott must now reside in a nursing home, suffers from loss of cognitive function, right-sided paralysis, immobility, urinary incontinence, bowel incontinence, delirium, and an inability to speak, and must obtain nutrition through a feeding tube, and

WHEREAS, the Palm Beach County School Board unanimously passed a resolution in support of settling the lawsuit that was filed in this case, tendered payment of $100,000 to Carl Abbott, in accordance with the statutory limits of liability set forth in s. 768.28, Florida Statutes, and does not oppose the passage of this claim bill in favor of Carl Abbott in the amount of $1,900,000, as structured, 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 Palm Beach County School Board is authorized and directed to appropriate from funds of the school board not otherwise appropriated and to draw warrants in the amount of $211,111.11 each fiscal year beginning in 2012 through 2019, inclusive, and $211,111.12 in the 2020 fiscal year for a total of $1,900,000, payable to David Abbott, guardian of Carl Abbott, as compensation for injuries and damages sustained as a result of the negligence of an employee of the Palm Beach County School District. The payments shall cease upon the death of Carl Abbott if he dies prior to the last payment being made. However, David Abbott, as guardian of Carl Abbott, shall be guaranteed a minimum payment amount of $633,333.33 if Carl Abbott dies within 3 years after the effective date of this act. The amount represents three annual payments and shall be payable on the annual due dates.

Section 3. The amount paid by the Palm Beach County School Board pursuant to s. 768.28, Florida Statutes, and this award are intended to provide the sole compensation for all present and future claims against the Palm Beach County School District arising out of the factual situation that resulted in the injuries to Carl Abbott as described in this act. The total amount paid for attorney's fees, lobbying fees, costs, and similar expenses relating to this claim may not exceed 15

percent of the first $1,000,000 awarded under this act and 10 percent of the remainder awarded under this act, for a total of $240,000.

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

STORAGE NAME: h0877.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 877; Relief/Odette Acanda and Alexis Rodriquez/Public Health Trust of Miami-Dade County
Sponsor: Representative Trujillo
Companion Bill: SB 48 by Senator Montford
Special Master: Tom Thomas

Basic Information:

Claimants:	Odette Acanda and Alexis Rodriquez
Respondent:	Public Health Trust of Miami-Dade County
Amount Requested:	$799,999
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The Trust does not admit liability, but does support the claim bill in the amount of $799,000.
Collateral Sources:	$462,500 was paid to the Claimants from the University of Miami.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	This is the first year this claim has been filed.

Procedural Summary: A civil suit was filed in 2006 in the Eleventh Judicial Circuit in and for Miami-Dade County. After trial, the jury returned a verdict in favor of the plaintiffs, finding that the hospital was 100 percent responsible for the death of Ryan Rodriguez, and awarded damages in the amount of $2 million. The defendant appealed the jury verdict, and the verdict was upheld by the Third District Court of Appeal. The parties entered into a settlement agreement wherein they agreed to settle the case for $999,000, of which $200,000 has been paid in accordance with the statutory limits of liability in s. 768.28, Florida Statutes.

Facts of Case: Ryan Rodriguez, the son of Odette Acanda and Alexis Rodriguez, was born prematurely on February 5, 2005, to Odette Acanda at Jackson Memorial Hospital After delivery,

Ryan was provided with oxygen through respiratory equipment that was later discovered to have been contaminated with Pseudomonas bacteria, due to improper infection control measures by employees of the hospital. On February 8, 2005, a positive nasopharyngeal culture revealed that Ryan suffered from a Pseudomonas infection. However, physicians and other hospital employees failed to review the lab report, failed to recognize the signs and symptoms of the infection, and failed to follow physician orders.

An order for antibiotics was not written until February 10, 2005, and antibiotics were not provided until after Ryan went into distress. As a result of the failure to timely identify and treat the infection, Ryan died on February 10, 2005. An autopsy report indicated that Ryan died as a result of the bacterial infection he acquired at the hospital.

Recommendation: The claim bill should be amended to reflect the agreed upon amount of $799,000. I respectfully recommend House Bill 877 be reported **FAVORABLY**, as amended.

Tom Thomas, Special Master Date: February 15, 2012

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

A bill to be entitled

An act for the relief of Odette Acanda and Alexis Rodriguez by the Public Health Trust of Miami-Dade County, d/b/a Jackson Memorial Hospital; providing for an appropriation to compensate Odette Acanda and Alexis Rodriguez for the death of their son, Ryan Rodriguez, as a result of the negligence of employees of the Public Health Trust of Miami-Dade County; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, Ryan Rodriguez, the son of Odette Acanda and Alexis Rodriguez, was born prematurely on February 5, 2005, to Odette Acanda at Jackson Memorial Hospital, and

WHEREAS, after delivery, Ryan Rodriguez was provided with oxygen through respiratory equipment that was contaminated with Pseudomonas bacteria, due to improper infection control measures by employees of the hospital, and

WHEREAS, on February 8, 2005, a positive nasopharyngeal culture revealed that Ryan Rodriguez suffered from a Pseudomonas infection, and

WHEREAS, physicians and other hospital employees failed to review the lab report, failed to recognize the signs and symptoms of the infection, and failed to follow physician orders, and

WHEREAS, an order for antibiotics was not written until February 10, 2005, and antibiotics were not provided until after Ryan Rodriguez went into distress, and

WHEREAS, as a result of the failure of employees to timely identify and treat the infection, Ryan Rodriguez died on February 10, 2005, and

WHEREAS, an autopsy report indicated that Ryan Rodriguez died as a result of the bacterial infection he acquired at the hospital, and

WHEREAS, suit was filed in the Eleventh Judicial Circuit in and for Miami-Dade County and a jury returned a verdict in favor of the plaintiffs, finding that the hospital was 100 percent responsible for the death of Ryan Rodriguez, and awarded damages in the amount of $2 million, and

WHEREAS, the defendant appealed the jury verdict, and the final judgment entered in the plaintiff's favor was upheld by the Third District Court of Appeal, and

WHEREAS, the defendant appealed the ruling of the Third District Court of Appeal, and the Supreme Court of Florida affirmed the ruling, and

WHEREAS, the parties entered into a settlement agreement wherein they agreed to settle the case for $999,999, of which $200,000 has been paid in accordance with the statutory limits of liability in s. 768.28, Florida Statutes, and $799,999 remains to be paid, 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>

Section 2. <u>The Public Health Trust of Miami-Dade County,</u>

d/b/a Jackson Memorial Hospital, is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $799,999, payable to Odette Acanda and Alexis Rodriguez, parents of decedent Ryan Rodriguez, as compensation for the death of Ryan Rodriguez as a result of the negligence of employees of the Public Health Trust of Miami-Dade County.

Section 3. The amount paid by the Public Health Trust of Miami-Dade County, d/b/a Jackson Memorial Hospital, 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 the preamble to this act which resulted in the death of Ryan Rodriguez. The total amount paid for attorney's fees, lobbying fees, costs, and similar expenses relating to this claim may not exceed 15 percent of the total amount awarded under section 2 of this act.

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

STORAGE NAME: h0909.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 909; Relief/Anais Cruz Peinado and Juan Carlos Rivera/School Board of Miami-Dade County
Sponsor: Representative Gonzalez
Companion Bill: SB 1076 by Senator Gibson
Special Master: Tom Thomas

Basic Information:

Claimants:	Anais Cruz Peinado and Juan Carlos Rivera
Respondent:	School Board of Miami-Dade County
Amount Requested:	$1,175,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The School Board of Miami-Dade County does not object to the passage of this claim bill.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	This is the first year this claim has been filed.

Procedural Summary: The Estate of Juan Carlos Rivera has alleged, through a lawsuit filed April 28, 2010, in Miami-Dade County, that the negligence of the School Board of Miami-Dade County was the proximate cause of the death of Juan Carlos Rivera. The Estate of Juan Carlos Rivera and the School Board of Miami-Dade County, Florida reached a compromise settlement in the amount of $1,875,000, which was approved by the school board on October 17, 2011. Pursuant to the agreement between the parties, the settlement has been partially satisfied in the amount of $700,000, $200,000 in accordance with the statutory limits of liability set forth in s. 768.28, F.S., and $500,000 from insurance.

Facts of Case: Juan Carlos Rivera was attacked, stabbed, and murdered on the grounds of Coral Gables Senior High School by another student. On the date of his death, September 15, 2009,

Juan Carlos Rivera was 17 years old and a student at Coral Gables Senior High School in the care and custody of the School Board of Miami-Dade County, Florida. It is the Claimant's position that this incident was foreseeable based on the inadequacy of the school's security plan and the history of crime at the school and throughout the School District.

The school had hired nine monitors (in-house security personnel) for the purpose of security who were stationed throughout the school. However, a monitor was not assigned to the corridor where the attack occurred – a location that was well know to school officials as an area for fights between students.

Recommendation: I respectfully recommend House Bill 909 be reported **FAVORABLY**.

Tom Thomas, Special Master Date: February 9, 2012

cc: Representative Gonzalez, House Sponsor
Senator Gibson, Senate Sponsor
Judge Jessica E. Varn, Senate Special Master

A bill to be entitled

An act for the relief of Anais Cruz Peinado by the School Board of Miami-Dade County; providing for an appropriation to compensate Anais Cruz Peinado, mother of Juan Carlos Rivera, deceased, for the death of Juan Carlos Rivera as a result of the negligence of the School Board of Miami-Dade County; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on September 15, 2009, Juan Carlos Rivera was a student at Coral Gables Senior High School in the care and custody of the School Board of Miami-Dade County, Florida, and

WHEREAS, on September 15, 2009, Juan Carlos Rivera was attacked, stabbed, and murdered on the grounds of Coral Gables Senior High School by another student, and

WHEREAS, the Estate of Juan Carlos Rivera has alleged, through a lawsuit filed April 28, 2010, in Miami-Dade County, that the negligence of the School Board of Miami-Dade County was the proximate cause of the death of Juan Carlos Rivera, and

WHEREAS, Anais Cruz Peinado has suffered extreme mental anguish and undergone great suffering as a result of the loss of her son, and

WHEREAS, the Estate of Juan Carlos Rivera and the School Board of Miami-Dade County, Florida have reached a compromise settlement in the amount of $1,875,000, which was approved by the school board on October 17, 2011, and

WHEREAS, pursuant to the agreement between the parties, the settlement has been partially satisfied in the amount of $700,000, and

WHEREAS, the claim shall be considered fully satisfied upon payment of an additional $1,175,000 by the School Board of Miami-Dade County to Anais Cruz Peinado, as beneficiary of the Estate of Juan Carlos Rivera, pursuant to a claim bill authorized by the Florida Legislature, 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 School Board of Miami-Dade County is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $1,175,000, payable to Anais Cruz Peinado, mother of Juan Carlos Rivera, as compensation for the death of Juan Carlos Rivera due to the negligence of the School Board of Miami-Dade County.

Section 3. The amount paid by the School Board of Miami-Dade County 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 Juan Carlos Rivera. The total amount paid for attorney's fees, lobbying fees, costs, and similar expenses relating to this claim may not exceed 15 percent of the first

$1,000,000 awarded under this act and 10 percent of the remainder awarded under this act, for a total of $167,500.

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

STORAGE NAME: h0965.CVJS
DATE: 2/15/2012

February 15, 2012

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 965 – Representative Diaz and others
Relief/Aaron Edwards, Mitzi Roden, and Mark Edwards/Lee Memorial Health System/Lee County

THIS IS AN EXCESS JUDGMENT CLAIM FOR $30,793,027.13 BASED ON A JURY VERDICT FOR CLAIMANTS AND AGAINST LEE MEMORIAL HEALTH SYSTEM TO COMPENSATE CLAIMANTS FOR AARON EDWARD'S CEREBRAL PALSY, WHICH WAS CAUSED AT BIRTH BY THE NEGLIGENT ADMINISTRATION OF PITOCIN TO HIS MOTHER TO INDUCE LABOR.

FINDING OF FACT:

On the morning of September 5, 1997, Mitzi Roden was scheduled to deliver her first child at HealthPark Medical Center, a hospital owned and operated by Lee Memorial Health System ("Lee Memorial"). Mitzi was accompanied by her husband, Mark Edwards. Mitzi had enjoyed a healthy pregnancy, free of complications.

Mitzi's labor and delivery were to be managed by her nurse-midwife, Patricia Hunsucker (an employee of Lee Memorial Health System), who would be assisted by the obstetric nurses whose work shifts covered the time that Mitzi was at the hospital. From 9:00 a.m. until 12:30 p.m., Mitzi made little progress in her labor. At 12:30 p.m., Ms. Hunsucker ordered

that Pitocin be given to Mitzi, by IV drip, to stimulate Mitzi's labor.

The use of Pitocin to assist labor is a very common practice, but its effect on the mother and child must be closely monitored. In a normal childbirth, the mother's contractions cause some stress to the baby because the contractions compress the placenta, reducing blood flow to the baby. Because blood flow is the baby's source of oxygen, contractions require the baby to, in effect, hold his or her breath until the contraction stops. The contractions in a normal labor do not reduce oxygen to the baby to such a degree that the baby's life is endangered. However, the overuse of Pitocin can cause contractions that come too fast, too strong, and last too long, which can cause the baby to become severely stressed and even asphyxiated.

The initial amount of Pitocin given to Mitzi was 3 milliunits and was to be increased periodically until Mitzi's labor had progressed to the point that she was having good contractions every 2 or 3 minutes. Although Mitzi's contractions soon reached the point of being 2 or 3 minutes apart, the nurses evidently believed that her contractions were not strong enough.

For the next several hours, the dosage of Pitocin was increased by the obstetric nurses. At 6:00 p.m., Mitzi's contractions were closer than two minutes, but the Pitocin was increased again at 6:20 p.m. The dosage was up to 13 milliunits. Mitzi's obstetrician, who was never present during these events, testified later that the Pitocin should not have been further increased. Nevertheless, a new obstetric nurse, Elizabeth Kelly-Jencks, started her shift at 7:00 p.m. and increased the Pitocin to 14 milliunits at 7:15 p.m.

The more persuasive evidence shows that Ms. Hunsucker and Ms. Kelly-Jencks, both employees of Lee Memorial Health System, were not giving appropriate attention to the fetal monitoring machine and the frequency and duration of the contractions. The monitors indicated that Mitzi's contractions were becoming too frequent, too intense, and were lasting too long, and that they were causing the baby's heart rate to decelerate after the contractions. In the vast majority of cases when Pitocin is used, babies are delivered after less than 8 milliunits of Pitocin. Claimants' expert medical witnesses testified persuasively that there were multiple indications that increasing the Pitocin to 14 milliunits was neither sensible nor safe. Mitzi's uterus was being over-stimulated.

At 8:30 p.m., Mitzi experienced a contraction lasting longer than 90 seconds, showing clearly that the Pitocin level was too high. Even though reasonable obstetric practice and the standing policy of the hospital regarding the use of Pitocin required that

the Pitocin drip be reduced or stopped at that point, the Pitocin dosage was increased again, to 15 milliunits. At 9:00 p.m., Ms. Hunsucker looked in on Mitzi, but was unaware of the Pitocin dosage she was receiving and failed to recognize that Mitzi was having excessive contractions. Certainly, by this point, it should have been recognized that Mitzi's labor was not going well. There had been almost no progress toward a safe vaginal delivery. Ms. Hunsucker should have contacted Dr. Devall to consult about the situation, but she did not.

At 9:30 p.m., the Pitocin was increased to 16 milliunits. Ten minutes later, alone in the room, Mitzi and Mark noticed that the fetal heart monitor showed their baby's heart rate had dropped to 40 beats per minutes. The normal fetal heart rate is 120 to 160 beats per minute. A low fetal heart rate for over ten minutes is referred to as "bradycardia." When no one responded to the emergency call button, Mark ran out of the room to get help. The obstetric staff realized the gravity of the situation, but incredibly, the Pitocin drip was not turned off while the nurses spent about 10 minutes trying to resuscitate the baby by turning Mitzi in the bed and by other means. Finally the Pitocin was turned off and an immediate cesarean section was ordered.

Aaron was delivered by cesarean 25 minutes later, but oxygen starvation to his brain left him with permanent damage to the parts of the brain that control muscle movement. The result is that Aaron has cerebral palsy. Aaron exhibits primarily dystonia, a lack of control of the direction and force of muscle movement, and some spasticity, which is involuntary contractions of the muscles.

A major issue at trial was whether Mitzi objected to receiving Pitocin, but her wishes were ignored. The evidence on this point was ambiguous. Mitzi says that she told Ms. Hunsucker that she did not want Pitocin, but did not mention it to the other obstetric nurses who were periodically increasing the dosage. Mitizi says that Ms. Hunsucker called Dr. DeVall and then told Mitzi that Dr. DeVall approved the use of Pitocin. Ms. Hunsucker testified at trial that she did not remember Mitzi objecting to the Pitocin and that she does not think she would have administered the Pitocin if Mitzi had objected to it. I am not persuaded that Mitzi clearly communicated a strong objection about the Pitocin. That claim cannot be reconciled with the evidence that the Pitocin drip was started and was then administered for hours, but Mitzi made no mention of her objection to the obstetric nurses, and her husband apparently took no steps on her behalf to have the Pitocin stopped.

Aaron's brain damage did not affect his higher cognitive functioning. He is now an extremely bright and creative 13-year old. Unfortunately, he is trapped inside a body that he can barely control. He cannot feed, bathe, or dress himself. He

cannot walk and uses a wheelchair. He cannot speak so as to be understood by anyone other than his mother. He uses a computer touch screen device to communicate. Still, it takes him a long time to compose simple sentences.

Aaron's limbs, especially his legs, are becoming rigid. He said at the claim bill hearing that he felt like Pinochio, a wooden boy who wants to be a real boy. His mother uses various physical therapies and Aaron also takes medication to reduce the contraction of the muscles. The principal needs that Aaron currently has are regular speech and physical therapies and a better wheelchair. The wheelchair he has now is uncomfortable and difficult to operate. There are also more advanced communication devices becoming available that could help Aaron to communicate more quickly.

Mitzi Roden and Mark Edwards are now divorced. Aaron lives with his mother in Canyon City, Colorado. Aaron is home-schooled by his mother and, because she cannot afford to hire someone to care for him during the day, she brings him to the dog grooming shop where she works. Mitzi earns $14,000 annually as a dog groomer. She receives monthly Social Security disability payments of $674.

Lee Memorial is a special district that operates four acute care hospitals, a rehabilitation hospital, and some other health care facilities in Lee County. It does not have taxing authority. It is a not-for-profit entity. Lee Memorial is a "Safety Net Provider," meaning that it is a member of a group of hospital operators in Florida that provide access to medical services by Medicaid-eligible, Medicare-eligible, and uninsured patients far beyond the average for other hospitals in Florida. In 2010, Lee Memorial had about $170 million of losses attributable to these patients. However, with income from commercially-insured patients and from its investments, Lee Memorial had about $65 million in overall net income.

PROCEDURAL HISTORY: In 1999, a negligence lawsuit was filed in the circuit court for Lee County by Mitzi Roden and Mark Edwards, on behalf of themselves and as the guardians of Aaron Edwards, against Lee Memorial. Following a six-week trial in 2007, the jury found that Lee Memorial was negligent and that its negligence was the sole cause of Aaron's injuries. The jury awarded damages of $28,477,966.48 to the guardianship of Aaron. They also awarded $1.34 million to Mitzi Roden and $1 million to Mark Edwards, for their damages as parents. The court entered a cost judgment of $174,969.65. The sum of these figures is $30,992,936.13.

Lee Memorial paid the $200,000 sovereign immunity limit. All of this payment was applied to legal fees. Aaron and his parents received nothing.

CONCLUSION 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 Lee Memorial is liable in negligence for the injuries suffered by Aaron Edwards and his parents, and, if so, whether the amount of the claim is reasonable.

Ms. Hunsucker and Ms. Kelly-Jencks failed to recognize and respond appropriately to the risks to the baby that were indicated by the monitoring devices. Their actions failed to meet the standard of care applicable to the administration of Pitocin and the management of Mitzi's labor. Their negligence was the proximate cause of the injuries suffered by Aaron, and the related damages suffered by his parents. Because these individuals were acting within the course and scope of their employment when their negligent acts occurred, Lee Memorial is liable for their negligence.

I agree with Lee Memorial that the manner in which the "lack of consent" issue was raised for the first time at trial was wrong and the trial judge would have been justified in not allowing the issue to be presented to the jury. Nevertheless, I do not believe that the jury's verdict of liability was based solely on lack of consent. The preponderance of the evidence presented at trial and at the claim bill hearing establishes that Ms. Hunsucker and Ms. Kelly-Jencks were negligent in their management of the Pitocin and their care for Mitzi during her labor.

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 by the jury 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 Aaron Edwards and his parents 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

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

find any legal reason based on the record to depart from the jury's award.

Lee Memorial testified that it does not carry insurance, that it has never paid a claim bill, and that it has not set aside any funds for the payment of this claim.

ATTORNEY'S/ LOBBYING FEES: Claimants' attorneys have agreed to limit attorney's fees and lobbyist's fees to 25 percent of the claim paid. However, they request that the fee for the attorneys who handled the appeal of the trial court judgment (5 percent of the claim bill award) not be included in the 25 percent. In other words, they request that 30 percent of the claim bill award go to attorneys fees and costs. I believe paying a separate and additional fee in this manner would create a precedent for many similar requests. Therefore, I recommend that all attorneys fees be limited to 25 percent of the award.

LEGISLATIVE HISTORY: House Bill 1073 by Representative Nunez and Senate Bill 322 by Senator Flores were filed during the 2011 Legislative Session. House Bill 1073 was never heard by the Civil Justice Subcommittee. Senate Bill 322 passed the Senate Rules Committee but died on the Senate Calendar.

SPECIAL ISSUES: The trial court ordered that the damage award and cost judgment would accrue interest at the rate of 11 percent per year. I do not believe that interest on an excess judgment can be required because the only amount owed and due is the sovereign immunity limit. Any amount paid by the Legislature on claim bills is a matter of legislative grace. It is not "owed" to the claimants.

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 Aaron Edwards, and the related damages suffered by his parents, were caused by the negligent act of Lee Memorial, through its employees, Ms. Hunsucker and Ms. Kelly-Jencks. 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
Special Master

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

A bill to be entitled

An act for the relief of Aaron Edwards, a minor, and his parents, Mitzi Roden and Mark Edwards, by Lee Memorial Health System of Lee County; providing for an appropriation to compensate Aaron Edwards and his parents for damages sustained as a result of medical negligence by employees of Lee Memorial Health System of Lee County; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, Mitzi Roden and Mark Edwards' only child, Aaron Edwards, was born on September 5, 2007, at Lee Memorial Hospital, and

WHEREAS, during Mitzi Roden's pregnancy, Mitzi Roden and Mark Edwards attended childbirth classes through Lee Memorial Health System and learned of the potentially devastating effect that the administration of Pitocin to augment labor may have on a mother and her unborn child when not carefully and competently monitored, and

WHEREAS, Mitzi Roden and Mark Edwards communicated directly to Nurse Midwife Patricia Hunsucker of Lee Memorial Health System of their desire to have a natural childbirth, and

WHEREAS, Mitzi Roden enjoyed an uneventful full-term pregnancy with Aaron Edwards, free from any complications, and

WHEREAS, on September 5, 2007, at 5:29 a.m., Mitzi Roden, at 41 and 5/7 weeks' gestation awoke to find that her membranes had ruptured, and

WHEREAS, when Mitzi Roden presented to the hospital on the

morning of September 5, she was placed on a fetal monitoring machine that confirmed that Aaron Edwards was doing well and in very good condition, and

WHEREAS, Mitzi Roden tolerated well a period of labor from 9 a.m. until 12:30 p.m., but failed to progress in her labor to the point of being in active labor. At that time, Nurse Midwife Patricia Hunsucker informed Mitzi Roden and Mark Edwards that she would administer Pitocin to Mitzi in an attempt to speed up the labor, but both Mitzi Roden and Mark Edwards strenuously objected to the administration of Pitocin because of their knowledge about the potentially devastating effects it can have on a mother and child, including fetal distress and even death. Mitzi Roden and Mark Edwards informed Nurse Midwife Patricia Hunsucker that they would rather undergo a cesarean section than be administered Pitocin, but in spite of their objections, Nurse Midwife Patricia Hunsucker ordered that a Pitocin drip be administered to Mitzi Roden at an initial dose of 3 milliunits, to be increased by 3 milliunits every 30 minutes, and

WHEREAS, there was universal agreement by the experts called to testify at the trial in this matter that the administration of Pitocin over the express objections of Mitzi Roden and Mark Edwards was a violation of the standard of care, and

WHEREAS, for several hours during the afternoon of September 5, 2007, the dosage of Pitocin was consistently increased and Mitzi Roden began to experience contractions closer than every 2 minutes at 4:50 p.m., and began to experience excessive uterine contractility shortly before 6

p.m., which should have been recognized by any reasonably competent obstetric care provider, and

WHEREAS, in spite of Mitzi Roden's excessive uterine contractility, the administration of Pitocin was inappropriately increased to 13 milliunits at 6:20 p.m. by Labor and Delivery Nurse Beth Jencks, which was a deviation from the acceptable standard of care for obstetric health care providers because, in fact, it should have been discontinued, and

WHEREAS, reasonable obstetric care required that Dr. Duvall, the obstetrician who was ultimately responsible for Mitzi Roden's labor and delivery, be notified of Mitzi Roden's excessive uterine contractility and that she was not adequately progressing in her labor, but the health care providers overseeing Mitzi Roden's labor unreasonably failed to do so, and

WHEREAS, in spite of Mitzi Roden's excessive uterine contractility, the administration of Pitocin was increased to 14 milliunits at 7:15 p.m., when reasonable obstetric practices required that it be discontinued, and a knowledgeable obstetric care provider should have known that the continued use of Pitocin in the face of excessive uterine contractility posed an unreasonable risk to both Mitzi Roden and Aaron Edwards, and

WHEREAS, Lee Memorial's own obstetrical expert, Jeffrey Phelan, M.D., testified that Mitzi Roden experienced a tetanic contraction lasting longer than 90 seconds at 8:30 p.m., and Lee Memorial's own nurse midwife expert, Lynne Dollar, testified that she herself would have discontinued Pitocin at 8:30 p.m., and

WHEREAS, at 8:30 p.m., the administration of Pitocin was

unreasonably and inappropriately increased to 15 milliunits when reasonable obstetric practices required that it be discontinued, and

WHEREAS, at 9 p.m., Nurse Midwife Hunsucker visited Mitzi Roden at bedside, but mistakenly believed that the level of Pitocin remained at 9 milliunits, when, in fact, it had been increased to 15 milliunits, and further, she failed to appreciate and correct Mitzi Roden's excessive uterine contractility, and

WHEREAS, Lynne Dollar acknowledged that it is below the standard of care for Nurse Midwife Patricia Hunsucker to not know the correct level of Pitocin being administered to her patient, Mitzi Roden, and

WHEREAS, at 9:30 p.m., the administration of Pitocin was again unreasonably and inappropriately increased to 16 milliunits, when reasonable obstetric practice required that it be discontinued in light of Mitzi Roden's excessive uterine contractility and intrauterine pressure, and

WHEREAS, at 9:40 p.m., Aaron Edwards could no longer compensate for the increasingly intense periods of hypercontractility and excessive intrauterine pressure brought on by the overuse and poor management of Pitocin administration, and suffered a reasonably foreseeable and predictable severe episode of bradycardia, where his heart rate plummeted to life-endangering levels, which necessitated an emergency cesarean section. Not until Aaron Edwards' heart rate crashed at 9:40 p.m. did Nurse Midwife Patricia Hunsucker consult with her supervising obstetrician, Diana Duvall, M.D., having not

discussed with Dr. Duvall her care and treatment of Mitzi Roden's labor since 12:30 p.m. Because Dr. Duvall had not been kept informed about the status of Mitzi Roden's labor, she was not on the hospital grounds at the time Aaron Edwards' heart rate crashed, and another obstetrician who was unfamiliar with Mitzi Roden's labor performed the emergency cesarean section to save Aaron Edwards' life, and

WHEREAS, there existed at the time of Mitzi Roden's labor and delivery a compensation system whereby a nurse midwife such as Patricia Hunsucker had a financial disincentive to consult with her supervising obstetrician during the period of labor, and

WHEREAS, Lee Memorial Health System had in place at the time of Mitzi Roden's labor and delivery rules regulating the use of Pitocin for the augmentation of labor which required that Pitocin be discontinued immediately upon the occurrence of tetanic contractions, nonreassuring fetal heart-rate patterns, or contractions closer than every 2 minutes, and

WHEREAS, in violation of rules regulating the use of Pitocin for the augmentation of labor, Labor and Delivery Nurse Beth Jencks and Nurse Midwife Patricia Hunsucker failed to immediately discontinue the administration of Pitocin in the face of hyperstimulated uterine contractions and excessive intrauterine pressure and increased the amount of Pitocin being administered to Mitzi Roden or remained completely unaware that the levels of Pitocin were being repeatedly increased, and

WHEREAS, Aaron Edwards suffered permanent and catastrophic injuries to his brain as a consequence of the acute hypoxic

ischemic episode at birth, and

WHEREAS, Aaron Edwards currently and for the remainder of his life will suffer from spastic and dystonic cerebral palsy and quadriparesis, rendering him totally and permanently disabled, and

WHEREAS, Aaron Edwards currently and for the remainder of his life will not be able to orally communicate other than to his closest caregivers, and is entirely dependent on a computer tablet communication board for speech, and

WHEREAS, Aaron Edwards suffers from profound physical limitations affecting all four of his limbs such that he requires supervision 24 hours a day and cannot feed, bathe, dress, or protect himself, and

WHEREAS, Aaron Edwards will never be able to enter the competitive job market and will require a lifetime of medical, therapeutic, rehabilitation, and nursing care, and

WHEREAS, after a 6-week trial, a jury in Lee County returned a verdict in favor of Aaron Edwards, Mitzi Roden, and Mark Edwards, finding Lee Memorial Health System 100 percent responsible for Aaron Edwards' catastrophic and entirely preventable injuries and awarded a total of $28,477,966.48 to the Guardianship of Aaron Edwards, $1,340,000 to Mitzi Roden, and $1 million to Mark Edwards, and

WHEREAS, the court also awarded Aaron Edwards, Mitzi Roden, and Mark Edwards $174,969.65 in taxable costs, and

WHEREAS, Lee Memorial Health System tendered $200,000 toward payment of this claim, in accordance with the statutory

limits of liability set forth in s. 768.28, Florida Statutes, 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. Lee Memorial Health System, formerly known as the Hospital Board of Directors of Lee County, is authorized and directed to appropriate from funds of the county not otherwise appropriated and to draw the following warrants as compensation for the medical malpractice committed against Aaron Edwards and Mitzi Roden:

(1) The sum of $28,454,838.43, payable to the Guardianship of Aaron Edwards to be placed in a special needs trust created for the exclusive use and benefit of Aaron Edwards, a minor;

(2) The sum of $1,338,989.67, payable to Mitzi Roden; and

(3) The sum of $999,199.03, payable to Mark Edwards.

Section 3. The amount paid by Lee Memorial Health System 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 injuries suffered by Aaron Edwards. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed $100,000.

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

PCS for HB 967

STORAGE NAME: h0967.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 967; Relief/Kristi Mellen/North Broward Hospital District
Sponsor: Representative Diaz
Companion Bill: SB 70 by Senator Storms
Special Master: Tom Thomas

Basic Information:

Claimants:	Kristi Mellen, as personal representative of the Estate of Michael Munson
Respondent:	North Broward Hospital District
Amount Requested:	$2,800,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The North Broward Hospital District has agreed to support this claim bill.
Collateral Sources:	$10,000 was paid by a doctor for his release from the civil suit.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	This is the first year this claim has been filed.

Procedural Summary: A tort claim was filed on behalf of Kristi Mellen, as personal representative of the Estate of Michael Munson, Case No. 09-036106 (02) in the Circuit Court of the Seventeenth Judicial Circuit of Florida. Prior to trial, the parties agreed to settle this matter. The settlement is in the amount of $3 million. The North Broward Hospital District has paid the statutory limit of $200,000 to the Claimant pursuant to s. 768.28, F.S.

Facts of Case: On September 21, 2008, Michael Munson, a 49-year-old accountant and attorney, began to experience signs and symptoms of a heart attack including burning in his chest, indigestion, and radiating pain into his arms, along with severe shortness of breath. His wife, Kristi Mellen, drove her husband immediately to Coral Springs Medical Center, which is a hospital owned

and operated by the North Broward Hospital District, and dropped him off at the entrance to the emergency center. Mr. Munson was evaluated by Lynn Parpard, the triage nurse, who was informed of the burning in his chest, indigestion, and radiating pain into his arms, along with severe shortness of breath. Ms. Parpard took an initial set of vital signs and misdiagnosed Mr. Munson as suffering from an anxiety attack and sent him into the waiting room.

An administrative assistant who, upon hearing his symptoms, asked Ms. Parpard to address the patient's complaints, given the Chest Pain Protocol that existed. Ms. Parpard once again did not recognize Mr. Munson's complaints as a heart attack and asked him to return to the waiting room for a second time. Shortly thereafter, Mr. Munson suffered a massive heart attack in the waiting room and was taken back into the treatment area. All of these facts and circumstances were recorded by one of the hospital's security cameras.

Medical personnel were unable to resuscitate Mr. Munson, and he died on September 21, 2008, at 12:10 p.m., leaving behind Kristi, his wife of 20 years, and their two minor children, who, at the time, were ages 14 and 17. The hospital's investigation into this matter determined that Ms. Parpard's triage of the patient was inadequate and inappropriate, and, as a result, Ms. Parpard was terminated from her employment with Coral Springs Medical Center.

Recommendation: I respectfully recommend House Bill 967 be reported **FAVORABLY**.

Tom Thomas, Special Master Date: February 15, 2012

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 Kristi Mellen as personal representative of the Estate of Michael Munson, deceased, by the North Broward Hospital District; providing for an appropriation to compensate the estate and the statutory survivors, Kristi Mellen, surviving spouse, and Michael Conner Munson and Corinne Keller Munson, surviving minor son and surviving minor daughter, for the wrongful death of Michael Munson as a result of the negligence of the North Broward Hospital District; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on September 21, 2008, while spending the morning with his family, Michael Munson, a 49-year-old accountant and attorney, began to experience signs and symptoms of a heart attack including burning in his chest, indigestion, and radiating pain into his arms, along with severe shortness of breath, and

WHEREAS, Kristi Mellen, his wife, drove her husband immediately to Coral Springs Medical Center, which is a hospital owned and operated by the North Broward Hospital District, and dropped him off at the entrance to the emergency center, and

WHEREAS, Mr. Munson was evaluated by Lynn Parpard, the triage nurse, who was informed of the burning in his chest, indigestion, and radiating pain into his arms, along with severe shortness of breath, and

WHEREAS, Ms. Parpard took an initial set of vital signs and misdiagnosed Mr. Munson as suffering from an anxiety attack and sent him into the waiting room, and

WHEREAS, Ms. Parpard violated the appropriate standards of care and breached the hospital's policies and procedures including its Chest Pain Protocol, and

WHEREAS, Mr. Munson was then processed by an administrative assistant who, upon hearing his symptoms, asked Ms. Parpard to address the patient's complaints, given the Chest Pain Protocol that existed, and

WHEREAS, Ms. Parpard once again dismissed Mr. Munson's complaints and asked him to return to the waiting room for a second time, and

WHEREAS, shortly thereafter, Mr. Munson suffered a massive heart attack as he collapsed in the waiting room and was taken back into the treatment area, and

WHEREAS, all of the facts and circumstances described in this preamble were recorded by one of the hospital's security cameras, and

WHEREAS, medical personnel were unable to resuscitate Mr. Munson, and he died on September 21, 2008, at 12:10 p.m., leaving behind Kristi, his wife of 20 years, and their two minor children, who, at the time, were ages 14 and 17, and

WHEREAS, the hospital's investigation into this circumstance determined that Ms. Parpard's triage of the patient was inadequate and inappropriate, and, as a result, Ms. Parpard was terminated from her employment with Coral Springs Medical Center, and

WHEREAS, a tort claim was filed on behalf of Kristi Mellen, as personal representative of the Estate of Michael Munson, Case No. 09-036106 (02) in the Circuit Court of the Seventeenth Judicial Circuit of Florida, and

WHEREAS, Kristi Mellen, as personal representative of the Estate of Michael Munson, and the North Broward Hospital District did agree to amicably settle this matter, and

WHEREAS, a specific condition of the settlement was that the North Broward Hospital District would permit the entry of a consent judgment in the amount of $3 million, and

WHEREAS, the North Broward Hospital District has paid the statutory limit of $200,000 to the Estate of Michael Munson, pursuant to s. 768.28, Florida Statutes, and

WHEREAS, the North Broward Hospital District has agreed to fully cooperate and promote the passage of this claim bill in the amount of $2.8 million, 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>

Section 2. <u>The North Broward Hospital District is authorized and directed to appropriate from funds of the district not otherwise appropriated, including insurance, and to draw a warrant payable to Kristi Mellen, as personal representative of the Estate of Michael Munson, in the sum of $2.8 million as compensation for the death of Michael Munson.</u>

Section 3. <u>The amount paid by the North Broward Hospital</u>

District 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 Michael Munson. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 15 percent of the first $1,000,000 awarded under this act, 10 percent of the second $1,000,000 awarded under this act, and 5 percent of the remainder awarded under this act, for a total of $290,000.

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

PCS for HB 969

STORAGE NAME: h0969.CVJS
DATE: 2/15/2012

February 15, 2012

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 969 - Representative Grant
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 officers, 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 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, as did the arbitrator, 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.

Prior Legislative History: HB 1315 by Representative Diaz and SB 54 by Senator Storms were filed during the 2011 Legislative Session. HB 1315 was passed by the Civil Justice Subcommittee and died on the House Calendar. SB 54 passed the Senate Rules Committee, passed the full Senate, but died on the House Calendar.

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 969 be reported FAVORABLY.

Respectfully submitted,

TOM THOMAS
Special Master

cc: Representative Grant, 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 non-threatening manner and the situation remained stable, and

WHEREAS, the backup police officers violated their training

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>

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 15 percent of the first $1,000,000 awarded under this act, 10 percent of the second $1,000,000 awarded under this act, and 5 percent of the remainder awarded under this act, for a total of $277,500.

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

STORAGE NAME: h0985.CVJS
DATE: 2/15/2012

February 15, 2012

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 985 - Representative Pilon
Relief/Maricelly Lopez/City of North Miami

THIS IS A CONTESTED CLAIM FOR $1,611,237.33 BASED ON A JURY VERDICT AGAINST THE CITY OF NORTH MIAMI, IN WHICH THE JURY DETERMINED THAT THE CITY OF NORTH MIAMI WAS 50 PERCENT RESPONSIBLE FOR THE DEATH OF OMAR MIELES DUE TO THE NEGLIGENT OPERATION OF A PATROL VEHICLE BY ONE OF ITS OFFICERS.

FINDING OF FACT:

On November 11, 2007, a traffic accident occurred in Miami at the intersection of Northwest 7th Avenue and Northwest 46th Street. Northwest 46th Street runs from east to west, and intersects Northwest 7th Avenue (which runs from north to south) at a right angle. At the time of the accident, the intersection was controlled by four traffic signals: two blinking red lights that directed vehicles traveling east and west on Northwest 46th Street to stop, and two blinking yellow lights for vehicles proceeding north and south on Northwest 7th Avenue.

At approximately 4:10 a.m., Madelayne Ibarra was driving her 2005 Ford Focus east on Northwest 46th Street in a 2005 Ford Focus, which was being driven by. The vehicle was owned by Ms. Ibarra's mother, who was not present. 19-year-old Omar Mieles was in the back seat and his girlfriend, Raiza Areas, was in the front passenger seat. Although Ms. Ibarra and Ms. Areas

were both wearing seatbelts, Mr. Mieles was lying down unrestrained on the back seat, with his head behind the front passenger's seat. Mr. Mieles, Ms. Areas, and Ms. Ibarra had spent the evening eating dinner in Coconut Grove and socializing with friends in South Beach.

Although Ms. Ibarra was not under the influence of alcohol or controlled substances, she was unfamiliar with the area and fatigued due to the late hour. As a consequence, Ms. Ibarra failed to come to a complete stop at the red traffic signal prior to entering the Northwest 7th Avenue intersection. At the same time, a City of North Miami police cruiser traveling north on Northwest 7th Avenue entered the intersection through the yellow caution light. The police vehicle, which was on routine patrol and not operating in emergency mode (i.e., the siren and emergency lights were not activated), was substantially exceeding the 30 MPH limit.

Tragically, the police cruiser, which was being operated by Officer James Thompson, struck the right rear passenger door of Ms. Ibarra's Ford Focus. Mr. Mieles, who was ejected through a rear window due to the force and location of the impact, landed approximately 35 feet from the final resting position of Ms. Ibarra's vehicle. Although Mr. Mieles sustained catastrophic head injuries as a result of the accident, neither Ms. Ibarra nor Ms. Areas was seriously injured.

Officer Thompson, who likewise was not significantly injured in the collision, immediately radioed for emergency assistance. Paramedics responded to the scene minutes later and transported Mr. Mieles to Jackson Memorial Hospital. Soon after his arrival at the hospital, Mr. Mieles was pronounced brain dead. On November 14, 2007, with the consent of Maricelly Lopez (Mr. Miles' mother and the Claimant in this proceeding), hospital staff harvested Mr. Mieles' heart, liver, and kidneys for donation, at which point he expired.

Approximately 90 minutes after the collision, K. Andrews, a detective employed with the City of Miami Police Department, arrived at the scene of the crash and initiated an accident investigation. During the investigation, Officer Thompson advised Detective Andrews that Ms. Ibarra had failed to stop at the red light and that he was unable to avoid the accident. However, Officer Thompson failed to mention that he was needlessly exceeding the speed limit at the time of the crash. Based upon the incomplete information in her possession, Detective Andrews concluded that Ms. Ibarra was solely at fault in the accident and issued her a citation for running a red light.

During the ensuing litigation between Mr. Mieles' estate and the City of North Miami, it was determined (based upon data from the patrol vehicle's "black box") that one second prior to the crash, Officer Thompson was traveling 61 MPH. As noted

above, the speed limit on Northwest 7th Street at the accident location was 30 MPH.

At the time of his death, Mr. Mieles had recently graduated from high school and was working two jobs. In addition, he had been accepted to Valencia Community College and was scheduled to begin classes in January 2008. Mr. Mieles, who is survived by his mother, stepfather, and two siblings, was by all accounts a hard-working and well-liked young man.

Litigation History: On June 23, 2008, Maricelly Lopez, in her individual capacity and as the personal representative of the estate of Omar Mieles, filed a complaint for damages in Miami-Dade County circuit court against the City of North Miami. The complaint alleged that Officer Thompson's operation of his police vehicle on November 11, 2007, was negligent, and that such negligence was the direct and proximate cause of Mr. Mieles' death. In addition, the complaint alleged that Mr. Mieles' estate sustained various damages, which included medical and funeral expenses, as well as lost earnings. The complaint further asserted that Ms. Lopez sustained damages in her individual capacity, such as the loss of past and future support and services, past and future mental pain and suffering, and loss of companionship.

The matter subsequently proceeded to a jury trial, during which the parties presented conflicting theories regarding the cause of the accident. Specifically, the plaintiff contended that Ms. Ibarra had properly stopped at the intersection and that Officer Thompson was solely responsible for the collision, while the City of North Miami argued that Ms. Ibarra had run the red light and was entirely at fault. In addition, both sides presented conflicting expert testimony regarding whether Mr. Mieles would have sustained fatal injuries had he been wearing a seatbelt. In particular, the plaintiff's expert opined that due to the location of the collision (the right rear passenger's door of the Ford Focus) and its force, Mr. Mieles would have been killed even if he had been properly restrained. In contrast, the City of Miami presented expert testimony indicating that the use of a seatbelt would have saved Mr. Mieles' life.

On March 19, 2010, the jury returned a verdict, in which it determined that the City of North Miami and Ms. Ibarra were negligent, and that each was 50 percent responsible for Mr. Mieles' death. The jury apportioned no fault to Mr. Mieles. The jury further concluded that Mr. Mieles' estate and Ms. Lopez sustained the following damages:

<u>Damages to the Estate</u>

- $163,950.15 for medical expenses.
- $1,630 for funeral expenses.

Damages to Maricelly Lopez

- $2,000 for loss of past support.
- $40,000 for loss of future support.
- $1,750,000 for past pain and suffering.
- $1,750,000 for future pain and suffering.

Based on the jury's finding that the City of North Miami was 50 percent responsible, final judgment was entered against it in the amount of $1,719,808.63 (this figure is comprised of $1,688,195.10, which represents fifty percent of the total damages outlined above, minus various setoffs, plus costs of $31,613.53).

No appeal of the final judgment was taken to the Third District Court of Appeal.

The City of North Miami has tendered $108,571.30 against the final judgment, leaving $1,611,237.33 unpaid.

CONCLUSION OF LAW:

Like any motorist, Officer Thompson had a duty to operate his patrol vehicle with consideration for the safety of other drivers.[1] Specifically, Officer Thompson owed a duty to observe the 30 MPH posted speed limit and to use caution (as directed by the yellow flashing light) as he entered the intersection.[2] By entering the intersection at 61 MPH, Officer Thompson breached his duty of care, which was a direct and proximate cause of Mr. Mieles' death. The City of North Miami, as Officer Thompson's employer, is liable for his negligent act.[3]

As discussed above, the jury determined that Officer Thompson and Ms. Ibarra, based upon the negligent operation of their respective vehicles, were equally at fault in this tragic event. Further, in apportioning no fault to Mr. Mieles, the jury presumably found that Mr. Mieles would have been killed in the collision even if he had been properly restrained. These conclusions are reasonable and will not be disturbed by the undersigned. The undersigned also concludes that the damages awarded by the jury were appropriate.

Collateral Sources: Prior to the litigation against the City of North Miami, the Claimant recovered the bodily injury limits from Ms. Ibarra's GEICO policy in the amount of $10,000, as well as $10,000 from the Claimant's underinsured motorist coverage.

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[1] *Pedigo v. Smith*, 395 So.2d 615, 616 (Fla. 5th DCA 1981).

[2] *See* § 316.076(1)(b), F.S. (2007)("When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution."); § 316.183(2), F.S. (2007)("On all streets or highways, the maximum speed limits for all vehicles must be 30 miles per hour in business . . . districts").

[3] *Mercury Motors Express v. Smith*, 393 So.2d 545, 549 (Fla. 1981)(holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment); *see also Aurbach v. Gallina*, 753 So.2d 60, 62 (Fla. 2000)(holding that the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another").

Prior Legislative History: HB 1443 by Representative Patronis and SB 342 by Senator Evers were filed during the 2011 Legislative Session. HB 1443 was never considered in the House and died in the Civil Justice Subcommittee. SB 342 was reported favorably by the Senate Special Master but was never considered in the Senate and died in the Senate Rules Committee.

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 985 be reported FAVORABLY.

Respectfully submitted,

TOM THOMAS
Special Master

cc: Representative Pilon, House Sponsor
Senator Flores, Senate Sponsor
Judge Edward T. Bauer, Senate Special Master

A bill to be entitled

An act for the relief of Maricelly Lopez by the City of North Miami; providing for an appropriation to compensate Maricelly Lopez, individually and as personal representative of the Estate of Omar Mieles, for the wrongful death of her son, Omar Mieles, which was due to the negligence of a police officer of the City of North Miami; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on November 11, 2007, 18-year-old Omar Mieles was a passenger in the backseat of a vehicle traveling eastbound on NW 46th Street in North Miami, and

WHEREAS, Officer James Ray Thompson, a police officer employed by the City of North Miami Police Department, while in the course and scope of his duties as a police officer, negligently drove a North Miami police vehicle at a high rate of speed and collided with the vehicle in which Omar Mieles was a passenger at the intersection of NW 46th Street and 7th Avenue, and

WHEREAS, Omar Mieles was thrown from the rear window of the vehicle in which he was traveling, landed 35 feet from the vehicle, and died shortly thereafter from the injuries sustained as a direct result of the incident and Officer Thompson's negligence, and

WHEREAS, the mother of Omar Mieles, Maricelly Lopez, seeks to recover damages, individually, for the loss of support,

services, and companionship due to the death of her son, and

WHEREAS, Maricelly Lopez has endured mental pain and suffering since the date of her son's death and will continue to suffer such losses in the future, and

WHEREAS, the Estate of Omar Mieles seeks to recover damages for medical expenses, funeral expenses, loss of earnings, and net accumulation of earnings, and

WHEREAS, on March 19, 2010, this case was tried before a jury that returned a verdict for damages against the City of North Miami and in favor of Maricelly Lopez, as personal representative of the Estate of Omar Mieles and in her individual capacity as mother of Omar Mieles, in the amount of $3,542,000, and

WHEREAS, the jury apportioned 50 percent of the responsibility for the death of Omar Mieles to the City of North Miami, and the remaining 50 percent to the driver of the vehicle in which Omar Mieles was traveling as a passenger, and

WHEREAS, a final judgment was entered against the City of North Miami for $1,719,808.63, against which the city has paid $108,571.30, leaving a balance of $1,611,237.33 for which Maricelly Lopez seeks satisfaction, 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>

Section 2. <u>The City of North Miami is authorized and directed to appropriate from funds of the city not otherwise</u>

appropriated and to draw a warrant in the amount of $1,611,237.33, payable to Maricelly Lopez, individually and as personal representative of the Estate of Omar Mieles, as compensation for the death of her son due to the negligence of a police officer of the City of North Miami.

Section 3. The amount paid by the City of North Miami pursuant to s. 768.28, Florida Statutes, and this award 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 Omar Mieles. The total amount paid for attorney's fees, lobbying fees, costs, and similar expenses relating to this claim may not exceed 15 percent of the first $1,000,000 awarded under this act and 10 percent of the remainder awarded under this act, for a total of $211,124.

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

STORAGE NAME: h1029.CVJS
DATE: 2/15/2012

February 15, 2012

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 1029 - Representative Rouson
Relief/Thomas and Karen Brandi/City of Haines City

THIS IS A CONTESTED CLAIM FOR $825,094 BASED ON A JURY VERDICT AGAINST THE CITY OF HAINES CITY, IN WHICH THE JURY DETERMINED THAT THE CITY OF HAINES CITY WAS 60 PERCENT RESPONSIBLE FOR THE INJURIES TO THOMAS AND KAREN BRANDI DUE TO THE NEGLIGENT OPERATION OF A PATROL VEHICLE BY ONE OF ITS OFFICERS.

FINDING OF FACT:

Thomas Brandi was involved in a two-vehicle accident that occurred on March 26, 2005, on U.S. Highway 27 in Haines City, Florida. Mr. Brandi was traveling alone westbound on Southern Dunes Boulevard. After stopping for his red light, his light turned green, and he proceeded into the intersection. Upon entering the intersection, his vehicle was hit broadside on the driver's side by a Haines City police car operated by Officer Pamela Graham, an employee of the city of Haines City (the City). Officer Graham was travelling north on U.S. Highway 27 when she entered the intersection through a red light, in emergency mode with lights and siren on, and struck the driver's side door of Mr. Brandi's vehicle at a speed between 30 - 40 miles per hour. Mr. Brandi was going between 15 – 30 miles per hour.

Mr. Brandi was taken by helicopter to Lakeland Regional Hospital. As a result of the crash, Mr. Brandi sustained life-threatening injuries, including an aortic arch tear with contained hematoma and suggestion of active bleeding, a fractured rib, a right fibula fracture, a fractured sternum, a left acetabulum fracture, multiple right inferior pubic ramus fractures, and brain injury. Surgery was performed to repair the aortic tear. Mr. Brandi was at Lakeland Regional Hospital for ten days. He was then transferred to Florida Hospital in Orlando for rehabilitation, which included cognitive therapy. Mr. Brandi remained at Florida Hospital for ten days before being discharged for outpatient treatment.

Mr. Brandi's medical expenses as of August 1, 2011, are $167,330, and as a result of those expenses, Aetna Health, Inc., has a lien on any recovery in from this claim bill in the amount of $78,109. While his orthopedic injuries have substantially healed and do not present any significant difficulty to Mr. Brandi, he faces a lifetime of difficulties resulting from his brain injuries.

Officer Graham testified at trial that while she was at the station booking someone, she received an officer in distress call and rushed to her vehicle to respond, and entered the intersection in emergency mode while responding to that call. However, a review of the recordings of the radio calls at that time by the Police Department could not substantiate that any such call was made or that Officer Graham had authorization to respond to any call.

The Haines City Police Department concluded in its own investigation that the claim of Officer Graham could not be substantiated. The internal investigation found Officer Graham to have violated s. 316.072(5)(b), F.S., regarding standard operating procedures for the operation of emergency vehicles, by not operating her vehicle with due regard for the safety of all persons using the roadway. Officer Graham appealed the findings of the Crash Review Board to the Police Chief, but the Chief concurred with the Review Board and Officer Graham was suspended for three days without pay and was ordered to take an advanced driving course in emergency operations. Officer Graham appealed that decision unsuccessfully, as well.

The Haines City Police Department Vehicle Policy provides that:

> an "agency vehicle engaged in emergency operations may... Proceed past a red or stop signal, but only after slowing or stopping as may be necessary for safe operation. Agency vehicles will not enter controlled intersections against the directional flow of traffic at a speed greater than 15 MPH and will be sure that cross-

traffic flow has yielded in each lane before attempting to cross that lane."

Section 316.126, F.S., requires the driver of every vehicle to yield the right-of-way to an emergency vehicle while en route to an existing emergency when such emergency vehicle is giving audible signals by siren or visible signals by the use of displayed lights. However, the statute specifically states that its provisions do not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

Litigation History: The Claimants filed a complaint for damages in Polk County circuit court against the City. The complaint alleged that Officer Graham's operation of her police vehicle on March 26, 2005, was negligent, and that such negligence was the direct and proximate cause of injuries sustained by Mr. Brandi and consortium damages to Ms. Brandi.

The matter proceeded to a jury trial. On November 17, 2009, the jury entered a verdict assessing the City 60 percent liability for the injuries sustained by Mr. Brandi in the accident, and assessing Mr. Brandi 40 percent liability for the accident. Future medical expenses and lost earning ability in the future totaled $903,000, and the verdict included an award for past medical expenses and lost wages in the amount of $279,330. Mr. Brandi was awarded $450,000 in damages for past and future pain and suffering and Karen Brandi, his wife, was awarded $175,000 in damages for past and future loss of consortium. After reduction for comparative negligence, the net award to Thomas and Karen Brandi was $1,084,396. In addition, a stipulated cost judgment in the amount of $94,049 was entered by the trial court against the City.

The City did not make a motion for new trial or for remittitur, and no appeal was taken. The City paid $200,000 to Thomas and Karen Brandi in satisfaction of sovereign immunity limits pursuant to s. 768.28, F.S.

CONCLUSION OF LAW:

Standing: The City made arguments in this matter that the Claimant's have not exhausted their judicial remedies and do not have an excess judgment from the trial court. The City cites House Rule 5.6(c) requiring the exhaustion of judicial remedies and s. 768.28(5), F.S., which provides that the "portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature."

The City's argument is based on a hyper-technical-reading of the final judgment entered by the trial judge. While the final judgment is for only $200,000, that is the limit allowed to be paid by the City due to the immunity provisions of s. 768.28,

F.S. The judgment goes on to say that the "judgment is entered without prejudice to the Plaintiff's right to pursue payment of the full verdict through passage of a claims bill." It is my opinion that the Claimants clearly have an excess judgment for which they may pursue a claim bill before the Legislature.

On the Merits: The greater weight of the evidence indicates that Mr. Brandi had the right-of-way and Officer Graham ran through a red light in emergency mode. This is my finding and is implied as the finding of the jury since Mr. Brandi was attributed less fault for the accident than that of Officer Graham. Had Officer Graham had a yellow light, the jury would not have attributed any fault to her. It was also part of the Florida Highway Patrol report that reads: "[w]itnesess stated that the police vehicle proceeded through the intersection on a red light with blue lights and siren." While finding that Mr. Brandi failed to yield to an emergency vehicle, the report also found that Officer Graham did not operate her emergency vehicle with due regard for the safety of all persons using the highway (meaning she did not have the right-of-way).

Ms. Graham clearly violated the Police Department's own policy on entering intersections in emergency mode, which prohibits entering the intersection "against the directional flow of traffic at a speed greater than 15 MPH and [ensuring] that cross-traffic flow has yielded in each lane before attempting to cross that lane." She also violated the provisions of s. 316.072(5)(b), F.S., regarding standard operating procedures for the operation of emergency vehicles, by not operating her vehicle with due regard for the safety of all persons using the roadway.

Officer Graham failed to operate her vehicle in a reasonably safe manner and conducted herself in direct violation of procedures of the Haines City Police Department. Although she claimed that she was responding to a distress call, there is no evidence to support this statement and the internal investigation conducted by the Haines City Police Department concluded that she was neither called nor dispatched to the location where she was headed.

While contested by the City, the greater weight of the evidence supports a finding that Mr. Brandi was wearing his seatbelt at the time of the accident and that he was not under the influence of drugs or alcohol at the time of the crash.

The jury found Mr. Brandi 40% at fault. This appears to be more liability than is justified by the facts, but I will defer to the jury's judgment on this issue. Since Officer Graham was not even on an authorized emergency call, this accident never should have occurred. As to damages, I find that the jury's award is reasonable and will not be disturbed.

Collateral Sources: Mr. Brandi received a payment of $100,000 from his uninsured motorist insurance coverage.

Source of Funds: The City has an automobile insurance policy that will pay up to $2,000,000 of a covered claim bill, such as this claim. This policy is with the Preferred Governmental Insurance Trust.

Prior Legislative History: HB 1339 by Representative Rouson and SB 280 by Senator Norman were filed during the 2011 Legislative Session. HB 1339 was never considered in the House and died in the Civil Justice Subcommittee. SB 280 was never considered in the Senate.

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 1029 be reported FAVORABLY.

Respectfully submitted,

TOM THOMAS
Special Master

cc: Representative Rouson, House Sponsor
Senator Norman, Senate Sponsor
Judge Claude B. Arrington, Senate Special Master

A bill to be entitled

An act for the relief of Thomas and Karen Brandi by the city of Haines City; providing for an appropriation to compensate them for injuries sustained as a result of the negligence of the city of Haines City; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, Thomas Brandi was involved in a two-vehicle accident that occurred on March 26, 2005, on U.S. Highway 27 in Haines City, Florida, and

WHEREAS, Thomas Brandi was traveling alone on a green arrow when his vehicle was broadsided on the driver's side by a Haines City police car operated by Officer Pamela Graham, and

WHEREAS, Officer Graham entered the intersection despite a red light and struck the driver's side door of Mr. Brandi's vehicle at a speed in excess of 30 miles per hour, and

WHEREAS, Officer Graham failed to operate her vehicle in a reasonably safe manner and conducted herself in direct violation of procedures of the Haines City Police Department, and

WHEREAS, although she claimed that she was responding to a distress call, there was no evidence to support this statement and the internal investigation conducted by the Haines City Police Department concluded that she was neither called nor dispatched to the location where she was headed, and

WHEREAS, the internal investigation conducted by the Haines City Police Department found her to be at fault in the accident, and

WHEREAS, as a result of the crash, Thomas Brandi sustained life-threatening injuries, including an aortic arch tear with contained hematoma and suggestion of active bleeding, a fractured rib, a right fibula fracture, a fractured sternum, a left acetabulum fracture, multiple right inferior pubic ramus fractures, and severe traumatic brain injury resulting in cognitive disorder, complex personality change, depressive disorder, pain disorder, post-traumatic stress disorder, and panic disorder, and

WHEREAS, Thomas Brandi's medical expenses at the time of trial exceeded $156,000, and

WHEREAS, after a trial, a jury entered a verdict assessing the city of Haines City 60 percent liability for the injuries sustained by Mr. Brandi in the accident, and assessing Thomas Brandi 40 percent liability for the accident, and

WHEREAS, future medical expenses and lost earning ability in the future totaled $903,000, and the verdict included an award for past medical expenses and lost wages in the amount of $279,330, and

WHEREAS, Thomas Brandi was awarded $450,000 in damages for past and future pain and suffering and Karen Brandi was awarded $175,000 in damages for past and future loss of consortium, and

WHEREAS, after reduction for comparative negligence, the net award to Thomas and Karen Brandi was $1,084,396, and

WHEREAS, a stipulated cost judgment in the amount of $94,049 was entered by the trial court against the city of Haines City, and

WHEREAS, Thomas Brandi's medical expenses as of August 1,

2011, are $167,330, and as a result of those expenses Aetna Health, Inc., has a lien on any recovery in this matter in the amount of $78,109, and

WHEREAS, the city of Haines City paid $200,000 to Thomas and Karen Brandi in satisfaction of sovereign immunity limits, and

WHEREAS, Thomas Brandi received a payment of $100,000 from his uninsured motorist insurance coverage, 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 city of Haines City is authorized and directed to appropriate from funds of the city not otherwise appropriated and to draw a warrant in the amount of $825,094, payable to Thomas and Karen Brandi, as compensation for injuries and damages sustained.

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 injuries to Thomas and Karen Brandi. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 15 percent of the total amount awarded under this act.

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

PCS for HB 1039

STORAGE NAME: h1039.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 1039; Relief/James Feurtado/Miami-Dade County
Sponsor: Representative Steube
Companion Bill: SB 42 by Senator Flores
Special Master: Tom Thomas

Basic Information:

Claimants:	James D. Feurtado, III
Respondent:	Miami-Dade County
Amount Requested:	$1,150,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	Miami-Dade County agrees that settlement in this matter is appropriate and has agreed to remain neutral and not take any action adverse to the pursuit of a claim bill by Mr. Feurtado.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	House Bill 1013 by Representative Ingram and Senate Bill 324 by Senator Flores were filed during the 2011 Legislative Session. The House Bill passed its only committee of reference (Civil Justice), passed the full House, but died in Messages. The Senate Bill passed its only committee of reference (Rules) but died on the Calendar.

Procedural Summary: Mr. Feurtado filed a lawsuit against Miami-Dade County for negligence in the 11th Judicial Circuit Court, in and for Miami-Dade County. Prior to trial, the parties reached a settlement agreement by mediation for $1,250,000, of which $100,000 has been paid by the County pursuant to the statutory cap on liability imposed by s. 768.28, F.S., and the remainder is conditioned upon the passage of a claim bill.

Facts of Case: On February 12, 2009, James D. Feurtado, III, while jogging, was hit by a bus owned by Miami-Dade County at approximately 7:00 p.m. at the intersection of Pisano Avenue and University Drive in Coral Gables. The operator of the bus failed to stop at the stop sign before making a right-hand turn and collided into Mr. Feurtado, age 37 at the time. The bus operator was found guilty of violating s. 316.123(2)(a), F.S., for failing to obey the stop sign and was disciplined by Miami-Dade County for violations of safety policies and procedures. Mr. Feurtado, a pharmaceutical sales representative, was in excellent health at the time of the accident.

Mr. Feurtado was transported to the Jackson Memorial Hospital Ryder Trauma Center, where he was found to have sustained serious injuries to the skull and brain and a right maxillary sinus fracture. He underwent a craniotomy and placement of a drain. He later required further surgery to insert a shunt in order to reduce the brain swelling to a point where a cranioplasty was performed. Although the Claimant's physicians were able to replace a portion of the Claimant's skull approximately eight months after the accident (the skull was kept frozen), a visible defect is still present. Mr. Feurtado has permanent brain damage, unilateral deafness, vertigo, headaches, psychiatric sequelae, a shunt, scarring, and skull defect, and has sustained serious and permanent neurologic and orthopedic injuries.

While Mr. Feurtado has been able to return to work, he has great difficulty performing his duties and cannot do so as efficiently as he did prior to his brain injury. His ability to remember pertinent information has been impaired, and he often loses his train of thought when speaking with customers. His deafness in one ear makes it nearly impossible for him to successfully interact in social situations with physicians and other customers, which is an essential component of pharmaceutical sales.

The present value of Mr. Feurtado's economic damages from this incident is calculated to be $1,823,468, which consists of his future and past lost earning capacity of $508,083, anticipated future medical expenses of $1,176,840, and past medical expenses of $138,545. If the bill is passed, Miami-Dade Transit operating funds will be used to satisfy the claim.

Recommendation: I respectfully recommend that House Bill 1039 be reported **FAVORABLY**.

Tom Thomas, Special Master Date: February 15, 2012

cc: Representative Steube, House Sponsor
Senator Flores, Senate Sponsor
Judge Edward T. Bauer, Senate Special Master

A bill to be entitled

An act for the relief of James D. Feurtado, III, by Miami-Dade County; providing for an appropriation to compensate him for injuries he sustained as a result of the negligence of an employee of Miami-Dade County; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on February 12, 2009, James D. Feurtado, III, age 37 at the time of the accident, sustained serious and permanent neurologic and orthopedic injuries in a bus accident at approximately 7 p.m. at the intersection of Pisano Avenue and University Drive in Coral Gables, and

WHEREAS, the Miami-Dade County bus operator failed to stop at the stop sign at this intersection before making a right-hand turn and collided into James D. Feurtado, III, a pedestrian, thereby causing him severe orthopedic and neurological injuries, and

WHEREAS, the bus operator was found guilty of violating s. 316.123(2)(a), Florida Statutes, for failing to obey the stop sign and was disciplined by Miami-Dade County for various violations of safety policies and procedures, and

WHEREAS, Mr. Feurtado was transported to the Ryder Trauma Center, where he was found to have sustained a large extra-axial hematoma in the left hemisphere of the brain with mass effect and mid-line shift, a large left hemispheric subarachnoid hemorrhage, as well as left temporal, parietal, and bi-frontal hemorrhagic contusions. He also sustained a right maxillary

sinus fracture involving the anterior and lateral wall extending into the floor and lateral wall of the orbit, and fracture to the right zygomatic arch and temporal bone, and

WHEREAS, Mr. Feurtado underwent a left frontoparietal craniotomy with evacuation of the subdural hematoma and placement of a drain. He developed post-traumatic communicating hydrocephalus, ultimately requiring further surgery to place a ventriculoperitoneal shunt in order to reduce the brain swelling to a point where a cranioplasty was performed, and

WHEREAS, Mr. Feurtado has profound sensorineural hearing loss to the right and has been evaluated for a BAHA implant procedure in the future, and

WHEREAS, Mr. Feurtado underwent extensive neuropsychological and psychological evaluation, and

WHEREAS, Mr. Feurtado has permanent brain damage, unilateral deafness, vertigo, headaches, psychiatric sequelae, a shunt, scarring, and skull defect, and

WHEREAS, Mr. Feurtado underwent assessment by a vocational rehabilitation and life-care planner, and

WHEREAS, the total present value of Mr. Feurtado's economic damages from this incident is calculated to be $1,823,468, which consists of his future and past lost earning capacity of $508,083, anticipated future medical expenses of $1,176,840, and past medical expenses of $138,545, and

WHEREAS, Miami-Dade County and Mr. Feurtado reached a settlement agreement by mediation in the amount of $1.25 million, of which $100,000 has been paid to Mr. Feurtado pursuant to the limits of liability set forth in s. 768.28,

Florida Statutes, and the remainder is conditioned upon the passage of a claim bill, which is unopposed, in the amount of $1.15 million, 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. Miami-Dade County is authorized and directed to appropriate from funds of the county not otherwise appropriated and to draw a warrant in the sum of $1.15 million, payable to James D. Feurtado, III, as compensation for injuries and damages sustained.

Section 3. The amount paid by Miami-Dade County 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 injuries to James D. Feurtado, III. The total amount paid for attorney's fees, lobbying fees, costs, and similar expenses relating to this claim may not exceed 15 percent of the first $1,000,000 awarded under this act and 10 percent of the remainder awarded under this act, for a total of $165,000.

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

PCS for HB 1485

STORAGE NAME: h1485.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 1485; Relief/Monica Cantillo Acosta and Luis Alberto Cantillo Acosta/Miami-Dade County
Sponsor: Representative Steube
Companion Bill: SB 50 by Senator Bogdanoff
Special Master: Tom Thomas

Basic Information:

Claimants:	Monica Cantillo Acosta and Luis Alberto Cantillo Acosta
Respondent:	Miami-Dade County
Amount Requested:	$940,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	Miami-Dade County supports the claim bill in the amount of $940,000.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	House Bill 1075 by Representative Steube and Senate Bill 60 by Senator Bogdanoff were filed during the 2011 Legislative Session. Neither bill was ever heard in any committee.

Procedural Summary: A civil suit was filed in the Eleventh Judicial Circuit in and for Miami-Dade County. After trial, the jury returned a verdict in favor of the plaintiffs on November 5, 2007, finding Miami-Dade County bus driver 100 percent negligent and responsible for the wrongful death of Nhora Acosta, and determined the damages of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta to be $3 million each. The defendant appealed the jury verdict, however, the parties entered into a settlement agreement while the appeal was pending. The settlement calls for $200,000 to be paid immediately in accordance with the statutory limits of liability in s. 768.28, Florida Statutes, and support for a claim bill in the amount of $940,000.

Facts of Case: On November 12, 2004, at approximately 4:16 p.m. in Miami-Dade County, Nhora Acosta entered Miami-Dade County bus #04142 at a stop on S.W. 8th Street in Miami, Florida, paid the driver, and was trying to find a seat on the crowded bus. While Ms. Acosta walked toward the rear of the bus in search of a seat, the bus driver accelerated in order to avoid a collision with another vehicle. The driver then then hit the brakes, causing Ms. Acosta to fall and strike her head on an interior portion of the bus. Because of the force upon which Ms. Acosta struck her head within the bus interior, she suffered a severe closed head injury and massive brain damage, including a right subdural hemorrhage, a left dural hemorrhage, diffused cerebral edema, and basilar herniations. Ms. Acosta was rushed to the trauma resuscitation bay at Jackson Memorial Hospital in a comatose state, was placed on a ventilator, underwent various procedures to no avail, and was pronounced dead at 2:05 p.m. the next day.

Ms. Acosta was a 54-year-old single mother of two children, Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, who were raised exclusively by their mother. At the time of the accident, Monica was 21 years old and Luis was 16 years old.

Recommendation: The bill should be amended to reflect the settlement amount of $940,000. I respectfully recommend House Bill 1485 be reported **FAVORABLY**, as amended.

Tom Thomas, Special Master Date: February 9, 1012

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

A bill to be entitled

An act for the relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, surviving children of Nhora Acosta, by Miami-Dade County; providing for an appropriation to compensate them for the wrongful death of their mother, Nhora Acosta, due to injuries sustained as a result of the negligence of a Miami-Dade County bus driver; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on November 12, 2004, at approximately 4:16 p.m. in Miami-Dade County, Nhora Acosta entered Miami-Dade County bus #04142 at a stop on S.W. 8th Street in Miami, Florida, paid the driver, and was trying to find a seat on the crowded bus, and

WHEREAS, while Nhora Acosta walked toward the rear of the bus in search of a seat, the bus driver accelerated in order to avoid a collision with another vehicle then braked suddenly, which caused Nhora Acosta to fall and strike her head on an interior portion of the bus, and

WHEREAS, because of the force upon which Nhora Acosta struck her head within the bus interior, she suffered a severe closed head injury and massive brain damage, including a right subdural hemorrhage, a left dural hemorrhage, diffused cerebral edema, and basilar herniations, and

WHEREAS, Nhora Acosta was rushed to the trauma resuscitation bay at Jackson Memorial Hospital in a comatose state, was placed on a ventilator, underwent various procedures

to no avail, and was pronounced dead at 2:05 p.m. the next day, and

WHEREAS, Nhora Acosta was a 54-year-old single mother of two children, Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, who were raised exclusively by their mother, and because of her death, her children were left orphaned, and

WHEREAS, Monica Cantillo Acosta and Luis Alberto Cantillo Acosta loved their mother and only parent dearly, and they have suffered enormous, intense mental pain and suffering due to their mother's untimely death, and have further lost the support, love, guidance, and consortium of their only parent, Nhora Acosta, as a result of the negligence of the Miami-Dade bus driver, and

WHEREAS, on November 5, 2007, a Miami-Dade County jury rendered a verdict and found the Miami-Dade County bus driver 100 percent negligent and responsible for the wrongful death of Nhora Acosta, and determined the damages of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta to be $3 million each, and

WHEREAS, the parties have subsequently settled this matter for $1,140,000 and Miami-Dade County has paid the Claimants $200,000 under the statutory limits of liability set forth in s. 768.28, Florida Statutes, 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>

Section 2. Miami-Dade County is authorized and directed to appropriate from funds of the county not otherwise appropriated and to draw a warrant in the sum of $470,000, payable to Monica Cantillo Acosta, and a warrant in the sum of $470,000, payable to Luis Alberto Cantillo Acosta, as compensation for the wrongful death of their mother, Nhora Acosta.

Section 3. The amounts 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 Nhora Acosta. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 15 percent of the total amount awarded under this act.

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