



Civil Justice Subcommittee

**Tuesday, April 7, 2015
4:30 PM – 6:30 PM
Sumner Hall (404 HOB)**

MEETING PACKET

**Steve Crisafulli
Speaker**

**Kathleen Passidomo
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

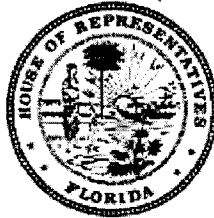
Civil Justice Subcommittee

Start Date and Time: Tuesday, April 07, 2015 04:30 pm
End Date and Time: Tuesday, April 07, 2015 06:30 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 3505 Relief/Estate of Lazaro Rodriguez/City of Hialeah by Steube
HB 3511 Relief/Carl Abbott/Palm Beach County School Board by Raburn
HB 3513 Relief/Estate of Victor Guerrero/Pasco County by Nuñez
HB 3519 Relief/Joseph Stewart & Audrey Stewart/City of Jacksonville by Jones, M.
HB 3521 Relief/Ronald Miller/City Of Hollywood by Jenne
HB 3523 Relief/Mark T. Sawicki & Sharon L. Sawicki/City of Tallahassee by Beshears
HB 3527 Relief/Asia Rollins/Public Health Trust of Miami-Dade County by Avila
HB 3531 Relief/Sharon Robinson/Central Florida Regional Transportation Authority by Fullwood
HB 3533 Relief/Estate of Manuel Antonio Matute/Palm Beach County Sheriff's Office by Santiago
HB 3543 Relief/Roy Wright & Ashley Wright/North Brevard County Hospital District by Avila
HB 3547 Relief/Javier Soria/Palm Beach County by Raulerson
HB 3549 Relief/Monica Cantillo Acosta & Luis Alberto Cantillo Acosta/Miami-Dade County by Santiago
HB 3555 Relief/Michael Rardin/North Broward Hospital District by Artiles
HB 3557 Relief/Maricelly Lopez/City of North Miami by Harrison

NOTICE FINALIZED on 04/03/2015 16:19 by Ingram.Michele



STORAGE NAME: h3505.CJS.DOCX
DATE: 4/3/2015

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 3505; Relief/Estate of Lazaro Rodriguez/City of Hialeah
Sponsor: Steube
Companion Bill: SB 44 by Grimsley
Special Master: Parker Aziz

Basic Information:

Claimants: Beatriz Luquez, individually and as personal representative of the Estate of Lazaro Rodriguez; Lazaro Rodriguez, Jr., and Katherine Rodriguez

Respondent: City of Hialeah

Amount Requested: \$485,000

Type of Claim: Local equitable claim; result of a settlement agreement

Respondent's Position: Hialeah City Council approved the settlement of a wrongful death claim on April 15, 2011. Hialeah's position is that the terms of the settlement are reasonable.

Collateral Sources: None.

Attorney's/Lobbying Fees: The bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.

Prior Legislative History: House Bill 3505 by Representative Steube and Senate Bill 60 by Senator Grimsley were filed during the 2014 Legislative Session. It was introduced but died in the Judiciary Committee in the Senate and the Civil Justice Subcommittee in the House.

Procedural Summary: Beatriz Luquez, the decedent's wife, as personal representative of the Estate of Lazaro Rodriguez initiated a wrongful death action in 2001. Claims were made for the benefit of three survivors: Beatriz Luquez, the decedent's wife; Lazaro Rodriguez, Jr., the decedent's son from a prior marriage; and Katherine Rodriguez, the decedent's daughter with Beatriz Luquez.

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The case was litigated for 10 years whereupon it was settled for the total amount of \$685,000, plus \$25,000 in costs.

The City of Hialeah ("City"), in accordance with statutory limits of liability in s. 768.28, F.S., at the time of the accident, paid \$200,000 to the claimants, plus an additional \$25,000 in costs. From those monies, attorney's recovered \$56,250 in attorney fees and \$11,250 in appellate attorney fees for Lauri Ross. Additionally, the attorneys recovered \$44,243.29 in unreimbursed costs and expenses.

After the deductions for attorneys' fees and costs, the claimants' net settlement was \$113,256.71. The net settlement was divided into equal shares between Beatriz Luquez, Lazaro Rodriguez, Jr., and Katherine Rodriguez. Each claimant received \$37,752.23.

Funds for the claims bill have been budgeted from the City's General Fund to be paid over five years.

Facts of Case: On the evening of July 30, 2000, Officer Jorge Rodriguez was attending a domestic violence call in Hialeah. Officer Leonor Duquela was back up for that same domestic violence call. Officer Duquela received a radio dispatch directing her to attend a domestic disturbance call as back up for another officer. Officer Rodriguez was not dispatched to the domestic disturbance call.

Officer Rodriguez elected to self-initiate a response to the domestic disturbance call with Officer Duquela. Rather than follow Officer Duquela, Officer Rodriguez continued north on Palm Avenue in Hialeah. Lazaro Rodriguez was driving westbound on 32nd Street, which intersects with Palm Avenue. Lazaro Rodriguez was proceeding forward with a green light at the intersection when Officer Rodriguez entered the intersection with a red light controlling his direction of travel. At approximately 10:15 PM at the intersection of Palm Avenue and 32nd Street, Lazaro Rodriguez's Ford Explorer and Officer Jorge Rodriguez's police car collided.

As a result of the impact with Officer Rodriguez's police vehicle, Lazaro Rodriguez's Ford Explorer hit a curb, tipped on its side, hit a concrete pole in the northwest corner of the intersection, continued to spin on its side, and impacted a third vehicle, a blue Toyota, where the vehicle came to rest. Lazaro Rodriguez was pronounced dead at the scene.

The City of Hialeah Police Department ("Department") conducted an internal investigation into the accident and found that Officer Rodriguez had violated Florida traffic statutes by unlawfully running the red light at the intersection. The Department found that Officer Rodriguez was operating his police vehicle in a careless manner and that the violations were the legal cause of the collision and death of Lazaro Rodriguez. The Department issued Officer Rodriguez a reprimand and two citations, for running a red light and careless driving.

Lazaro Rodriguez was born in Cuba and entered the United States illegally using a Spanish passport in the mid-1990s. He was in the process of claiming residency when the accident occurred.

Lazaro Rodriguez left behind his widow and business partner, Beatriz Luquez, and a daughter with Beatriz Luquez, Katherine Rodriguez, aged 3 at the time of the accident. He also left behind a son from a previous marriage, Lazaro Rodriguez, Jr., aged 8 at the time of the accident. Beatriz Luquez never remarried, and she and Katherine reside in the family home that Lazaro and Beatriz purchased together. Lazaro Rodriguez, Jr. resided in Spain with his mother at the time of the accident but now resides Florida.

In 2008, Claimants' counsel retained F.A. Raffa, Ph.D., to determine a present value assessment of

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the loss of dependent support and loss of household and childcare services occasioned by the death of Lazaro Rodriguez. Dr. Raffa calculated in 2008 that the total economic loss from the date of death to March 2009 ranged from \$897,932 to \$1,047,000. Given this estimation of loss and the pain the family has gone through, \$485,000 is an appropriate settlement.

Recommendation: I respectfully recommend that House Bill 3505 be reported **FAVORABLY** subject to changing Lazaro Rodriguez's age from 29 years old to 28 years old (line 13) and clarifying the apparent conflict about when payments are to be made (lines 61-62, 69, and 82-83).



Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Steube, House Sponsor
Senator Grimsley, Senate Sponsor
Scott Clodfelter, Senate Special Master

1 A bill to be entitled
 2 An act for the relief of the Estate of Lazaro
 3 Rodriguez and his legal survivors by the City of
 4 Hialeah; providing an appropriation to compensate the
 5 Estate and Lazaro Rodriguez's legal survivors for
 6 injuries sustained as a result of the negligence of
 7 the City of Hialeah; providing a limitation on the
 8 payment of fees and costs; providing that the
 9 appropriation settles all present and future claims
 10 related to the wrongful death of Lazaro Rodriguez;
 11 providing an effective date.

12
 13 WHEREAS, on July 30, 2000, at approximately 10:14 p.m., 29-
 14 year-old Lazaro Rodriguez was lawfully and properly operating
 15 his 1997 Ford Explorer in the westbound lanes of East 32nd
 16 Street in the City of Hialeah, and

17 WHEREAS, at the same time, Officer Jorge Rodriguez, a City
 18 of Hialeah road patrolman, was on duty and overheard a radio
 19 summons of another unit and, despite the fact that he was not
 20 dispatched to the call, decided to respond, and

21 WHEREAS, in responding to the call, Officer Rodriguez was
 22 traveling northbound on Palm Avenue in the City of Hialeah while
 23 Lazaro Rodriguez was traveling westbound on East 32nd Street,
 24 and

25 WHEREAS, Officer Rodriguez ran the red light at the
 26 intersection of Palm Avenue and East 32nd Street, crashing his

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27 | police cruiser into the driver side of the vehicle driven by
28 | Lazaro Rodriguez, and

29 | WHEREAS, the severe impact of the collision forced Lazaro
30 | Rodriguez's vehicle into a concrete utility pole at the
31 | northwest corner of the intersection and then into another
32 | vehicle, and

33 | WHEREAS, the force of the crash was so great that it caused
34 | massive and fatal blunt trauma injuries to Lazaro Rodriguez, and
35 | he was pronounced dead at the scene, and

36 | WHEREAS, at the conclusion of the traffic homicide
37 | investigation concerning the death of Lazaro Rodriguez, the City
38 | of Hialeah Police Department found that Officer Rodriguez had
39 | violated Florida traffic statutes by unlawfully running the red
40 | light at the intersection of Palm Avenue and East 32nd Street
41 | and operating his motor vehicle in a careless manner, and that
42 | these violations were the legal cause of the traffic collision
43 | and the death of Lazaro Rodriguez, and

44 | WHEREAS, Lazaro Rodriguez left a widow, Beatriz Luquez, and
45 | children, Lazaro, Jr., and Katherine, all of whom were dependent
46 | upon him financially and emotionally and loved him dearly, and

47 | WHEREAS, in 2001, Ms. Luquez, individually and as the
48 | personal representative of the Estate of Lazaro Rodriguez, filed
49 | a wrongful death lawsuit in the 11th Judicial Circuit Court in
50 | and for Miami-Dade County, styled *Beatriz Luquez, individually*
51 | *and as Personal Representative of the Estate of Lazaro Rodriguez*
52 | *v. City of Hialeah*, Case No. 01-3691 CA 08, and

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

hb3505-00

53 WHEREAS, the parties to the lawsuit entered into a formal
 54 settlement agreement following mediation and a unanimous vote by
 55 the Hialeah City Council, and

56 WHEREAS, the terms of the settlement agreement required the
 57 claimants to dismiss their case with prejudice and provide a
 58 full release of liability to the city and its employees, which
 59 the claimants have done, in exchange for payments by the City of
 60 Hialeah totaling \$685,000, plus \$25,000 for costs, to be paid
 61 over 5 years if the Legislature approves the unpaid amounts, and

62 WHEREAS, pursuant to the settlement agreement, the City of
 63 Hialeah has paid \$200,000 to the claimants, plus \$25,000 for
 64 costs, leaving an unpaid balance of \$485,000, and

65 WHEREAS, as part of the terms of the settlement agreement
 66 and general release, the City of Hialeah has agreed to support
 67 the passage of a claim bill and to pay the remaining balance of
 68 \$485,000 in installments, with the last payment to be made on
 69 July 1, 2016, NOW, THEREFORE,

70
 71 Be It Enacted by the Legislature of the State of Florida:

72
 73 Section 1. The facts stated in the preamble to this act
 74 are found and declared to be true.

75 Section 2. The City of Hialeah is authorized and directed
 76 to appropriate from funds of the city not otherwise appropriated
 77 and to draw warrants totaling the amount of \$485,000, payable to
 78 Beatriz Luquez, individually and as personal representative of

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79 the Estate of Lazaro Rodriguez, and to Lazaro Rodriguez, Jr.,
80 and Katherine Rodriguez, as compensation for injuries and
81 damages sustained by the claimants as a result of the death of
82 Lazaro Rodriguez. The amount of \$385,000 shall be paid on July
83 1, 2015, and \$100,000 shall be paid on July 1, 2016.

84 Section 3. The total amount paid for attorney fees,
85 lobbying fees, costs, and other similar expenses relating to
86 this claim may not exceed 25 percent of the total amount awarded
87 under this act.

88 Section 4. The amounts awarded pursuant to the waiver of
89 sovereign immunity under s. 768.28, Florida Statutes, and under
90 this act are intended to provide the sole compensation for all
91 present and future claims arising out of the factual situation
92 described in the preamble to this act which resulted in the
93 death of Lazaro Rodriguez.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Steube offered the following:

Amendment (with title amendment)

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

Remove line 13 and insert:

WHEREAS, on July 30, 2000, at approximately 10:14 p.m., 28-

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Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

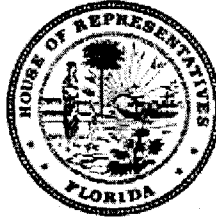
ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Steube offered the following:

Amendment (with title amendment)

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

7 Remove line 61 and insert:
8 if the Legislature approves the unpaid amounts, and



STORAGE NAME: h3511.CJS.DOCX
DATE: 4/3/2015

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 3511; Relief/Carl Abbott/Palm Beach County School Board
Sponsor: Raburn
Companion Bill: CS/SB 68 by Judiciary, Legg
Special Master: Parker Aziz

Basic Information:

Claimants: David Abbott, executor of estate of Carl Abbott

Respondent: Palm Beach County School Board

Amount Requested: \$1,900,000; to be made in payments of \$211,111.111 each fiscal year beginning in 2015 through 2022, inclusive, and \$211,111.12 in the 2023-2024 fiscal year.

However, if Carl Abbott dies before the last payment was made, David Abbott as son, guardian and survivor of Carl Abbott is guaranteed a minimum payment of \$633,333.33 in three annual payments.

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.

Notwithstanding the attorney's affidavit, the bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.

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.

House Bill 855 by Representative Workman and Senate Bill 54 by Senator Negron were filed during the 2012 Legislative Session. The House Bill passed its committees of reference (Civil Justice and Judiciary), passed the full House, passed the Senate as amended, and passed the House again, but died in Messages. The Senate Bill passed its only committee of reference (Rules), and was laid on the table in lieu of the House Bill.

House Bill 1167 by Representative Raburn and Senate Bill 22 by Senator Negron were filed during the 2013 Legislative Session. The House Bill passed its committees of reference (Select Committee on Claim Bills and Judiciary) but died on the House Calendar. The Senate Bill was never considered in its committees of reference.

House Bill 3529 by Representative Raburn and Senate Bill 56 by Senator Legg were filed during the 2014 Legislative Session. The House bill passed its committees of reference (Civil Justice and Judiciary), passed the full House but died in Messages. The Senate Bill was never considered in its committees of reference.

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.

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

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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.

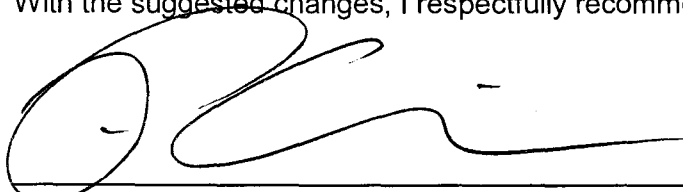
Mr. Abbott received cardiopulmonary resuscitation at the scene and was rushed to St. Mary's Medical Center, where he was placed on a ventilator. A cerebral shunt was placed to decrease intracranial pressure. After two months, Mr. Abbott was discharged with the following diagnoses: traumatic brain injury,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

In June of 2014, Mr. Abbott died. Prior to his passing, Mr. Abbott resided in a nursing home. As a result of the brain injury, he was unable to talk, walk, or take care of himself. He was alert but had significant cognitive impairments. Mr. Abbott had neurogenic bladder and bowels and hence was incontinent. He could not perform any activities of daily living and needed constant, total care.

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, were 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: The bill needs to be amended to reflect the death of Carl Abbott. The settlement agreement provides that any payment following Carl Abbott's death would be \$633,333.33 in annual installments over three years to David Abbott, who was Carl Abbott's son and legal guardian following the accident.

With the suggested changes, I respectfully recommend House Bill 3511 by reported **FAVORABLY**



Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Raburn, House Sponsor
Senator Legg, Senate Sponsor
Jason Hand, Senate Special Master

1 A bill to be entitled
 2 An act for the relief of Carl Abbott by the Palm Beach
 3 County School Board; providing for an appropriation to
 4 compensate Carl Abbott for injuries sustained as a
 5 result of the negligence of an employee of the Palm
 6 Beach County School District; providing a limitation
 7 on the payment of fees and costs; providing an
 8 effective date.

9
 10 WHEREAS, on June 30, 2008, 67-year-old Carl Abbott was
 11 struck by a school bus driven by an employee of the Palm Beach
 12 County School District while Mr. Abbott was crossing the street
 13 in a designated crosswalk at the intersection of South Anchorage
 14 Drive and U.S. 1 in Palm Beach County, and

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

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

23 WHEREAS, the Palm Beach County School Board unanimously
 24 passed a resolution in support of settling the lawsuit that was
 25 filed in this case, tendered payment of \$100,000 to Carl Abbott
 26 in accordance with the statutory limits of liability set forth

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27 in s. 768.28, Florida Statutes, and does not oppose the passage
 28 of this claim bill in favor of Carl Abbott in the amount of \$1.9
 29 million, as structured, NOW, THEREFORE,
 30

31 Be It Enacted by the Legislature of the State of Florida:
 32

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

35 Section 2. The Palm Beach County School Board is
 36 authorized and directed to appropriate from funds of the school
 37 board not otherwise appropriated and to draw warrants in the
 38 amount of \$211,111.11 each fiscal year beginning in 2015 through
 39 2022, inclusive, and \$211,111.12 in the 2023-2024 fiscal year
 40 for a total of \$1.9 million, payable to David Abbott, as
 41 guardian of Carl Abbott, as compensation for injuries and
 42 damages sustained as a result of the negligence of an employee
 43 of the Palm Beach County School District. The payments shall
 44 cease upon the death of Carl Abbott if he dies before the last
 45 payment is made. However, David Abbott, as guardian of Carl
 46 Abbott, shall be guaranteed a minimum payment amount of
 47 \$633,333.33 if Carl Abbott dies within 3 years after the
 48 effective date of this act. This amount represents three annual
 49 payments and shall be payable on the annual due dates.

50 Section 3. The amount paid by the Palm Beach County School
 51 Board pursuant to s. 768.28, Florida Statutes, and the amount
 52 awarded under this act are intended to provide the sole

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53 compensation for all present and future claims against the Palm
54 Beach County School District arising out of the factual
55 situation that resulted in the injuries to Carl Abbott as
56 described in the preamble to this act. The total amount paid for
57 attorney fees, lobbying fees, costs, and other similar expenses
58 relating to this claim may not exceed 25 percent of the total
59 amount awarded under this act.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Raburn offered the following:

Amendment (with title amendment)

5 Remove lines 43-49 and insert:
 6 of the Palm Beach County School District. The payments were
 7 scheduled to cease upon the death of Carl Abbott if he died
 8 before the last payment was made. However, David Abbott, as
 9 guardian of Carl Abbott, is guaranteed a total payment amount of
 10 \$633,333.33 since Carl Abbott died before or within 3 years
 11 after the effective date of this act. This amount represents
 12 three annual payments and shall be payable on the annual due
 13 dates.

14
 15
 16 -----
 17 **T I T L E A M E N D M E N T**



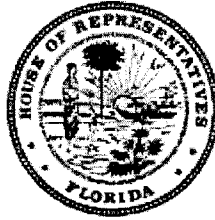
Amendment No. 1

18 Remove lines 18-29 and insert:

19 WHEREAS, as a result of his injuries, Carl Abbott had to
20 reside in a nursing home, suffered from loss of cognitive
21 function, right-sided paralysis, immobility, urinary
22 incontinence, bowel incontinence, delirium, and an inability to
23 speak, and had to obtain nutrition through a feeding tube, and

24 WHEREAS, the Palm Beach County School Board unanimously
25 passed a resolution in support of settling the lawsuit that was
26 filed in this case, tendered payment of \$100,000 to Carl Abbott
27 in accordance with the statutory limits of liability set forth
28 in s. 768.28, Florida Statutes, and does not oppose the passage
29 of this claim bill in favor of Carl Abbott in the amount of \$1.9
30 million, as structured, and

31 WHEREAS, Carl Abbott passed away in June 2014, NOW,
32 THEREFORE,



STORAGE NAME: h3513.CJS.DOCX
DATE: 4/3/2015

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 3513; Relief/Estate of Victor Guerrero/Pasco County
Sponsor: Nuñez
Companion Bill: CS/SB 36 by Judiciary, Diaz de la Portilla
Special Master: Parker Aziz

Basic Information:

Claimants: Estate of Victor Guerrero, which includes Lara Guerrero, Kevin Guerrero, Michael Guerrero, and David Guerrero.

Respondent: Pasco County

Amount Requested: \$1,500,000.00, which will be apportioned as follows:

- \$90,000 to the Estate of Victor Guerrero
- \$405,000 to Lara Guerrero
- \$345,000 to Kevin Guerrero
- \$330,000 to Michael Guerrero
- \$333,000 to David Guerrero

Type of Claim: Local equitable claim; Result of a settlement agreement.

Respondent's Position: Pasco County will not oppose, obstruct or delay the passage of the claims bill or direct its representatives, agents or lobbyist to oppose, obstruct or delay the passage of said claims bill in the amount of \$1,500,000.00.

Collateral Sources: None reported.

Attorney's/Lobbying Fees: The terms of the bill limit the total award of attorney fees, lobbying fees, costs and other similar expenses relating to this claim to no more than 25 percent of the total amount awarded under the bill.

Prior Legislative History: This is the first time House Bill 3513 by Representative Nuñez and Senate Bill 36 by Senator Diaz de la Portilla has been introduced to the Legislature.

Procedural Summary: On December 10, 2008, Lara Guerrero, as the Personal Representative of the Estate of Victor M. Guerrero, filed a Complaint in the 6th Judicial Circuit Court, in and for Pasco

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County, Florida, with respect to the accident that took place on May 1, 2008, between Daniel Whipple, a Pasco County employee, and her late husband, Victor M. Guerrero, that resulted in Mr. Guerrero's death. During the litigation, Pasco County strongly contested liability and requested a mistrial twice during the trial based on the fact that witnesses were overly emotional and crying on the stand.

The matter was tried during the week of February 6, 2012, through February 10, 2012, before the Honorable W. Lowell Bray, Jr. During the trial, Lara Guerrero, Michael, David and Kevin Guerrero, Victor Guerrero's sons, and, despite Pasco County's objections, Lara Guerrero's father and three children testified, in addition to several experts proffered by each side.¹

On February 10, 2012, the jury returned a verdict assessing Daniel Whipple, the Pasco County employee 90% at fault for the accident that resulted in the death of Victor Guerrero and finding Victor Guerrero 10% at fault for his death for failing to wear a helmet while riding his motorcycle. The jury awarded the stipulated amount of \$1,095,127.30 to the Estate as damages, \$1,500,000 in damages to Lara Guerrero and \$1,750,000 each to Victor Guerrero's three sons from a prior marriage. After accounting for Mr. Guerrero's contributory negligence as determined by the jury, the total amount of the award was reduced by 10% and totaled \$7,060,614.57.

Pasco County filed a Motion for New Trial on February 20, 2012, stating that the jury verdict was the result of improper rulings on evidence, improper arguments of Plaintiff's counsel, and was the result of passion, sympathy, and emotion, as opposed to the evidence presented.² The Petitioners opposed the motion for a new trial stating that none of the reasons put forth by Pasco County were sufficient to warrant a new trial. Additionally, the Petitioners filed a Renewed Motion for Directed Verdict and/or for Judgment Notwithstanding the Verdict requesting that the jury finding that Victor Guerrero was contributorily negligent for failing to wear a helmet be put aside.

On April 11, 2012, Judge Bray denied Pasco County's motion for new trial/remittitur and the Petitioners' motion for directed verdict/judgment notwithstanding the verdict. Judge Bray did grant the Petitioners' Motion for Entry of Final Judgment against Pasco County but denied it without prejudice as to Star Insurance Company.³ Additionally, in July of 2013, Judge Bray awarded the Estate \$45,148.95 in costs plus interest, to be paid by Pasco County.

On May 10, 2012, Pasco County filed a Notice of Appeal in the Second District Court of Appeal. In their initial brief, the County addressed whether the trial court abused its discretion in denying Pasco County's motion for new trial or remittitur of the jury's award for pain and suffering damages to the decedent's sons. Part of this assessment included the fact that the award given to the sons by the jury was substantially more than what was asked for at trial; the Petitioners' counsel asked for \$500,000 for each son for loss of companionship, pain and suffering following their father's death, but the jury awarded \$1,750,000 for each son. Pasco County submitted that the verdict in

¹Kevin Guerrero did not come in person to the trial so the transcript of his deposition was read aloud. Michael and David Guerrero were present and testified in person at trial. Lara Guerrero's children and father were not allowed to testify as the effect Victor Guerrero's death had on them personally but only could testify as to what they observed about Lara's behavior following Victor Guerrero's death.

² Pasco County submitted that the trial court erred in the following ways: allowing testimony from the Pasco County Risk Manager and Driver Safety Review Board Chairwoman Jane Calano and the redacted memorandum of the Board finding Daniel Whipple at fault for the accident; excluding testimony that Lara Guerrero entered into a romantic relationship with police officer Robert Tungate shortly after Victor Guerrero's death; denying Pasco County's request that highly emotional witnesses and spectators leave the courtroom; allowing Lara Guerrero's children to testify; and allowing Plaintiff's counsel to commit two "Golden Rule" violations in closing argument.

³ Star Insurance Company, Pasco County's insurer, posits that because the sovereign immunity statute prohibits the County from paying over \$200,000, Star cannot be obligated to pay sums in excess of the county's self-insured retention amount of \$1,000,000.

favor of the Guerrero sons was the product of improper influence of emotion, sympathy, and passion at the trial level and that the amount of damages proved and injury suffered by the sons was not sufficient to support the verdict.

The Second District Court of Appeals filed their opinion on October 2, 2013, affirming, per curiam, the jury verdict.

Pasco County has previously paid the applicable aggregate sovereign immunity limit amount of \$200,000 for this incident. Of the \$200,000, \$186,766.38 was paid to the Claimant following the entry of final judgment, and \$13,223.62 was paid to the Claimant's auto carrier to satisfy its subrogated property damage claim. Of the \$186,766.38, \$7,937.99 went to Lara Guerrero; \$6,761.99 went to Kevin Guerrero, Victor's youngest son who was a minor at the time of his father's death; \$6,467.99 each went to Michael and David Guerrero, Victor Guerrero's oldest and middle sons who were not minors at the time of their father's death; and \$1,764.00 went to Victor's estate. The remaining \$157,366.42 was used to pay attorney's fees and cost; \$5,000 of which was held in trust to cover future costs and probate fees.

On March 6, 2015, Pasco County and the Guerrero family reached a settlement for the amount of \$1,500,000 in addition to the amount previously paid. The settlement apportions the amount as follows: \$90,000.00 to the estate of Victor Guerrero, \$405,000.00 to Lara Guerrero, \$345,000 to Kevin Guerrero, \$330,000.00 to Michael Guerrero, and \$330,000.00 to David Guerrero.

Facts of Case: On May 1, 2008, Victor Guerrero, a 48 year old, off-duty Tampa police officer, was traveling southbound on U.S. Highway 41 on his motorcycle. Highway 41 is a north-south thoroughfare in Pasco County and is a two lane undivided highway with a 55 mph speed limit in the area where Mr. Guerrero was driving. At the time of the accident there were female prisoners working on either side of the road as well as another company doing work on the road; as a result, there were signs on the road at this time warning drivers that inmates were working and construction was occurring. At the same time, Daniel Whipple, a Pasco County employee, was driving a Pasco County truck northbound on Highway 41 on his way to inspect a subdivision off of that road. As Mr. Guerrero approached Mr. Whipple, Mr. Whipple made a left hand turn into the southbound lane.

As Mr. Whipple turned, the Pasco County truck he was driving and Mr. Guerrero's motorcycle collided in the southbound lane. Mr. Guerrero's motorcycle struck the side of the Pasco County pickup truck, and Mr. Guerrero was ejected from the motorcycle. Mr. Guerrero was not wearing a helmet at the time of the accident and died as a result of a brainstem laceration which occurred as a result of the incident.⁴ According to the medical examiner that performed Mr. Guerrero's autopsy, Mr. Guerrero also suffered from a fracture to his sternum, some rib injuries, and some lung injuries; none of which were immediately fatal. Emergency personnel responded to the scene of the accident, and Mr. Guerrero was airlifted to St. Joseph's Hospital in Tampa where he was subsequently pronounced dead by Doctors Barry and Lyon.

Mr. Guerrero is survived by his wife of two years, Lara Guerrero. He had lived with Lara and her three children since 2000. Mr. Guerrero is also survived by three sons from a prior marriage, Michael, David, and Kevin, aged 21, 19, and 15 at the time of their father's death, respectively. At the time of Mr. Guerrero's death, his sons lived in South Carolina with their mother and had lived there for less than one year. Mr. Guerrero had seen his sons three times after their move—once Mr.

⁴ Pursuant to § 316.211(3)(b), F.S., a person over 21 years of age may operate or ride upon a motorcycle without wearing protective headgear securely fastened upon his or her head if such person is covered by an insurance policy providing for at least \$10,000 in medical benefits for injuries incurred as a result of a crash while operating or riding on a motorcycle. Victor Guerrero was over the age of 21 and had at least \$10,000 in medical benefits for injuries incurred as a result of a crash and was therefore compliant with the statute.

Guerrero traveled to South Carolina and twice his sons returned to Florida. Prior to moving to South Carolina in 2007, Mr. Guerrero's sons and their mother resided in the Tampa area.

Following the accident, Pasco County's Driver Safety Review Board conducted an internal investigation relating to the accident, and found that Daniel Whipple was negligent in causing the accident citing mistakes due to carelessness. The Board recommended that Daniel Whipple's driving privileges as extended to County vehicles and equipment be suspended.⁵ Additionally, the Florida Highway Patrol conducted a Traffic Homicide Investigation following the accident. In his report, Corporal R.J. Kraus, who conducted the investigation, concluded that the crash was due to Daniel Whipple's error and that Daniel Whipple violated Florida Statute § 316.22 which in part states: "The driver of a vehicle intending to turn left within an intersection or into an alley, private road, or driveway shall yield right-of-way to any vehicle approaching from the opposite direction, or vehicles lawfully passing on the left of the turning vehicle, which is within the intersection or so close thereto as to constitute an immediate hazard."

Following the trial, Michael and Kevin Guerrero have remained in South Carolina with their mother. Michael is currently employed at an auto body shop and Kevin graduated from Northeastern Technical College in May of 2013 after obtaining an Associate in Arts Degree. Kevin currently works at the Food Lion. David was honorably discharged from the United States Marine Corps in January 2013, and is currently in the Reserves. David currently resides in Florida and will begin the Hillsborough Community College Law Enforcement Academy in January 2015. Lara Guerrero moved out of the Tampa area after the home she, Victor, and her three children lived in was foreclosed following Victor's death. She currently resides in Fleming Island, Florida with her boyfriend, daughter, and boyfriend's son. Lara Guerrero has been employed sporadically since Victor Guerrero's death but is not currently employed. Prior to Victor's death, Lara Guerrero was employed by the Home Depot for over fifteen years.

Both the Petitioner and Respondent obtained valuations from economists to determine the present value of the total economic loss incurred as a result of Victor Guerrero's death. The Petitioner retained Dr. F.A. Raffa who concluded that as of June 6, 2011, the present value of the total economic loss to the Guerrero family due to Victor Guerrero's death was \$1,094,258. The Respondents retained Dr. Stephen E. Durham who initially stated that as of June 2011, the present value of the total economic loss due to Victor Guerrero's death was \$741,649; however, Dr. Durham did further calculations taking into account information about Victor Guerrero's benefits as a Tampa police officer that he had not in his first valuation and determined that the present value of the total economic loss was \$1,084,315 as of May 11, 2011. The parties then stipulated to an economic loss to the Estate of \$1,095,127.30.

Pasco County was insured by a Public Entity Excess Liability Policy issued by Star Insurance Company which has liability limits of \$1,000,000 for each covered accident or occurrence. The Policy is subject to a self-retention limit of \$1,000,000 which is eroded by certain costs and expenses incurred by the County in the defense or payment of a covered claim. Approximately \$690,000 remains of Pasco County's self-insured retention limit which must be exhausted before Star Insurance Company's duty to indemnify the County is triggered. The self-insured retention would be paid from the County's general fund.

⁵ The jury was informed of the Board's finding but not that Daniel Whipple's driving privileges were suspended. Pasco County objected to that information being made available to the jury arguing that it was privileged and too prejudicial. However, that argument was not preserved for appeal, and the information in memorandum is not a basis for my findings.

SPECIAL MASTER'S SUMMARY REPORT--

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Recommendation: The bill needs to be amended to reflect the settlement agreement and the appropriate apportionment. I respectfully recommend that House Bill 3513 be reported **FAVORABLY**.



Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Nuñez, House Sponsor
Senator Diaz de la Portilla, Senate Sponsor
Michael Billmeier, Senate Special Master

27 | claimed that he never saw Officer Guerrero, made the turn, and
 28 | WHEREAS, Officer Guerrero had no time to brake or swerve
 29 | and struck the side of Mr. Whipple's truck and was ejected from
 30 | the motorcycle, and

31 | WHEREAS, Officer Guerrero was airlifted to St. Joseph's
 32 | Hospital in Tampa, where he was pronounced dead, and

33 | WHEREAS, the Pasco County Driver Safety Review Board
 34 | investigated the accident and determined that Mr. Whipple was at
 35 | fault, citing carelessness, and

36 | WHEREAS, after the accident, Officer Guerrero's widow, Lara
 37 | Guerrero, was unable to return to her job at Home Depot due to
 38 | severe emotional distress, and was prescribed anti-depressant
 39 | medication to assist her in dealing with her loss, and

40 | WHEREAS, Officer Guerrero left behind three sons, Michael,
 41 | David, and Kevin, who were 21, 19, and 15, respectively, at the
 42 | time of the accident, and

43 | WHEREAS, Lara Guerrero, as personal representative of the
 44 | Estate of Victor Guerrero, filed a law suit against Pasco County
 45 | in the Circuit Court of the Sixth Judicial Circuit in Pasco
 46 | County, and

47 | WHEREAS, on February 10, 2012, the jury in the case
 48 | returned a verdict for \$7,845,127.30 in favor of the Estate of
 49 | Victor Guerrero, which was reduced 10 percent for comparative
 50 | negligence for Officer Guerrero's failure to wear a helmet,
 51 | leaving a total verdict of \$7,060,614.57, plus interest at the
 52 | statutory rate of 4.75 percent per annum, and

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2015

53 WHEREAS, the amount awarded by the jury includes economic
 54 damages of \$1,095,127.30, which were stipulated to by the
 55 parties and include damages for future loss of income and
 56 funeral expenses, damages representing loss of support for Lara
 57 Guerrero, and damages representing loss of support for Kevin
 58 Guerrero, and

59 WHEREAS, the amount awarded by the jury also includes \$1.5
 60 million for Lara Guerrero for loss of her husband's
 61 companionship and protection and for her pain and suffering, and
 62 \$1.75 million for each of Officer Guerrero's sons for loss of
 63 parental companionship, instruction, and guidance and for their
 64 pain and suffering, and

65 WHEREAS, Pasco County has paid \$186,776.38 of the final
 66 judgment and there is a balance owed of \$6,873,838.19, NOW,
 67 THEREFORE,

68
 69 Be It Enacted by the Legislature of the State of Florida:

70
 71 Section 1. The facts stated in the preamble to this act
 72 are found and declared to be true.

73 Section 2. Pasco County is authorized and directed to
 74 appropriate from funds of the county not otherwise appropriated
 75 and to draw a warrant in the sum of \$6,873,838.19 plus interest
 76 at the statutory rate of 4.75 percent per annum owed from the
 77 date of the final judgment payable to Lara Guerrero, as personal
 78 representative of the Estate of Victor Guerrero, as compensation

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79 for injuries and damages sustained as the result of the death of
80 Victor Guerrero.

81 Section 3. The amount paid previously by Pasco County and
82 the amount awarded under this act are intended to provide the
83 sole compensation for all present and future claims arising out
84 of the factual situation described in the preamble to this act
85 which resulted in the death of Victor Guerrero. The total amount
86 paid for attorney fees, lobbying fees, costs, and other similar
87 expenses relating to this claim may not exceed 25 percent of the
88 amount awarded under this act.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Nuñez offered the following:

Amendment (with title amendment)

Remove lines 75-80 and insert:

3
 4
 5
 6 and to draw a warrant payable to Lara Guerrero, as personal
 7 representative of the Estate of Victor Guerrero in the amount of
 8 \$1,500,000, which shall be apportioned as follows: to the Estate
 9 of Victor Guerrero in the amount of \$90,000, to Lara Guerrero in
 10 the amount of \$405,000, to Kevin Guerrero in the amount of
 11 \$345,000, to Michael Guerrero in the amount of \$330,000, and to
 12 David Guerrero in the amount of \$330,000, as compensation for
 13 injuries and damages sustained as a result of the death of
 14 Victor Guerrero.



Amendment No. 1

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

Remove lines 2-67 and insert:

An act for the relief of the Estate of Victor Guerrero by Pasco County; providing for an appropriation to compensate the Guerrero family for Officer Guerrero's death, which was the result of negligence by an employee of Pasco County; providing that the appropriation settles all present and future claims relating to the death of Officer Guerrero; providing a limitation on fees and costs; providing an effective date.

WHEREAS, on May 1, 2008, Victor Guerrero, a veteran of the United States Marine Corps and a decorated, 20-year veteran of the City of Tampa Police Department, was riding his motorcycle to visit his mother on his day off from work, and

WHEREAS, Officer Guerrero was traveling southbound on U.S. 41, about 1 mile north of S.R. 52, which is a straightaway with no obstructions, and

WHEREAS, at the same time, Pasco County employee Daniel Whipple was driving a Pasco County vehicle northbound on U.S. 41, and

WHEREAS, as Officer Guerrero approached Mr. Whipple, Mr. Whipple made a left hand turn directly into the path of Officer Guerrero, and



Amendment No. 1

43 WHEREAS, an accident reconstruction expert estimated that
44 Officer Guerrero was about 100 feet away when Mr. Whipple, who
45 claimed that he never saw Officer Guerrero, made the turn, and

46 WHEREAS, Officer Guerrero had no time to brake or swerve
47 and struck the side of Mr. Whipple's truck and was ejected from
48 the motorcycle, and

49 WHEREAS, Officer Guerrero was airlifted to St. Joseph's
50 Hospital in Tampa, where he was pronounced dead, and

51 WHEREAS, the Pasco County Driver Safety Review Board
52 investigated the accident and determined that Mr. Whipple was at
53 fault, citing carelessness, and

54 WHEREAS, after the accident, Officer Guerrero's widow, Lara
55 Guerrero, was unable to return to her job at Home Depot due to
56 severe emotional distress, and was prescribed anti-depressant
57 medication to assist her in dealing with her loss, and

58 WHEREAS, Officer Guerrero left behind three sons, Michael,
59 David, and Kevin, who were 21, 19, and 15, respectively, at the
60 time of the accident, and

61 WHEREAS, Lara Guerrero, as personal representative of the
62 Estate of Victor Guerrero, filed a law suit against Pasco County
63 in the Circuit Court of the Sixth Judicial Circuit in Pasco
64 County, and

65 WHEREAS, on February 10, 2012, the jury in the case
66 returned a verdict for \$7,845,127.30 in favor of the Estate of
67 Victor Guerrero, which was reduced 10 percent for comparative
68 negligence for Officer Guerrero's failure to wear a helmet,



Amendment No. 1

69 leaving a total verdict of \$7,060,614.57, plus interest at the
70 statutory rate of 4.75 percent per annum, and

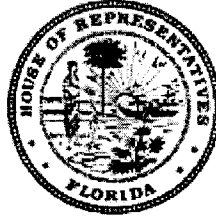
71 WHEREAS, the amount awarded by the jury includes economic
72 damages of \$1,095,127.30, which were stipulated to by the
73 parties and include damages for future loss of income and
74 funeral expenses, damages representing loss of support for Lara
75 Guerrero, and damages representing loss of support for Kevin
76 Guerrero, and

77 WHEREAS, the amount awarded by the jury also includes \$1.5
78 million for Lara Guerrero for loss of her husband's
79 companionship and protection and for her pain and suffering, and
80 \$1.75 million for each of Officer Guerrero's sons for loss of
81 parental companionship, instruction, and guidance and for their
82 pain and suffering, and

83 WHEREAS, Pasco County has paid \$186,776.38 of the final
84 judgment, and

85 WHEREAS, on March 6, 2015, Pasco County and the Guerrero
86 family reached a settlement in this matter for the payment of
87 1.5 million in addition to the amount previously paid, NOW,
88 THEREFORE,

89



STORAGE NAME: h3519.CJS.DOCX
DATE: 4/3/2015

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 3519; Relief/Joseph Stewart & Audrey Stewart/City of Jacksonville
Sponsor: Jones, M.
Companion Bill: CS/SB 22 by Judiciary, Bradley
Special Master: Ryan Cox

Basic Information:

Claimants: Joseph Stewart and Audrey Stewart on behalf of their son, Aubrey Stewart

Respondent: City of Jacksonville

Amount Requested: \$3,300,000.00

Type of Claim: Local equitable claim; result of a settlement agreement

Respondent's Position: City of Jacksonville

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 fees, if any, will be included in the 25% fee cap.

Notwithstanding the attorney's affidavit, the bill specifically provides the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.

Prior Legislative History: House Bill 3513 by Representative McBurney and Senate Bill 30 by Senator Bradley were filed during the 2014 Legislative Session. Neither bill was ever heard in any committee.

Procedural Summary: A civil suit was filed in the Fourth Judicial Circuit in and for Duval County. The City of Jacksonville filed standard denials and affirmative defenses, but subsequently entered into a settlement agreement with the Claimants. The settlement agreement calls for \$200,000 to be paid immediately in accordance with the statutory limits of liability in s. 768.28, F.S., and support for a claim bill in the amount of \$3,300,000. The Court authorized the settlement agreement and

SPECIAL MASTER'S SUMMARY REPORT--

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entered its Stipulated Final Judgment on July 29, 2013, for \$3,500,000. The Jacksonville City Council passed the settlement agreement unanimously as enacted ordinance 2013-515 and subsequently passed Resolution 2014-231-A, urging the Legislature and the Governor to approve the claim bill.

Facts of Case: On June 27, 2011, Aubrey Stewart, age 15, was seriously injured when he stepped out of his home and was crushed by a large tree limb that fell from a tree. The tree in question was on the right-of-way on Dyal Street, which is owned by the City of Jacksonville (City). The City's records establish that the City was on notice regarding the dangerous condition of the trees lining the right-of-way on Dyal Street.

Residents on four separate occasions had contacted the City regarding multiple trees in poor condition and causing a hazardous condition. On September 7, 2010, Ms. Jacqueline Hagan, a neighbor, reported to the City that "several trees along (Dyal) street need to be trimmed due to falling limbs." On September 10, 2011, Mr. Joseph Stewart, the Claimant, reported to the City that a dead tree in the right-of-way needed to be checked for removal because it was dropping large limbs. Mr. Stewart also notified the City that a second tree may need to be checked out. The City responded to this call on September 27, 2010, but only removed a limb from the right-of-way. On January 6, 2011, Mr. Joseph Stewart made another report that the tree in front of his house was showing actual cracks in the trunk where it appears it is about to fall. Mr. Stewart informed the City that he would place a pink ribbon around the tree to identify it. He also informed the City that the tree was still dropping limbs, one which dented his vehicle. The C.A.R.E. report indicates that Mr. Stewart was "very concerned that the tree would fall any day now." In response to this report, the City conducted an investigation and the Risk Management Department paid \$856.21 to Mr. Stewart for the damage to his vehicle. On May 13, 2011, Ms. Joil Williams, another neighbor, reported that one of the previously reported trees had fallen in the middle of the road and was blocking traffic. The City sent a crew to the area to remove the downed tree, but failed to do anything about the other previously reported tree that was still in poor condition. Aubrey Stewart was injured by the remaining tree on June 27, 2011.

Aubrey Stewart was taken to Shands Jacksonville, where he spent five months in the pediatric intensive care unit. He was then released and spent a month at Brooks Rehabilitation Center. From June 27, 2011 through September 13, 2011, Aubrey went through approximately 12 surgeries, including, but not limited to, repair of anal laceration and rectum; insertion of chest tubes, inferior vena cava, and inferior vena cavogram; surgeries to repair spinal fractures; and debridement and irrigation of several septic abscess cavities. Aubrey was paralyzed as a result of the injuries sustained from the falling tree limb and is bound to a wheelchair for the remainder of his life. Additionally, Aubrey must wear diapers, use a catheter and a colostomy bag, and has permanent hardware in his body. Aubrey resides at home with his parents and is completely dependent on them and a part-time nurse for his daily living, including going to the restroom, eating, and getting around.

The known medical bills at the time of the settlement agreement amounted to \$1,647,937.57. Outstanding charges include: Jacksonville Fire and Rescue - \$685.00; Shands Jacksonville - \$1,419,119.24; University of Florida Jacksonville Physicians - \$153,494.45; Brooks Rehabilitation (Inpatient) - \$62,561.88; and Brooks Rehabilitation (Outpatient) - \$12,077.00. In addition, the future medical bills for Aubrey Stewart are sizeable. Mr. Lawrence Forman, with Comprehensive Rehabilitation Consultants, Inc., provided an extensive listing of the continuum of care that is required for the remainder of Aubrey Stewart's natural life based on the documented injuries. Two continuum of care plans were detailed in this report, one that included the use of a Baclofen Pump and the second which assumed Aubrey Stewart remains on Oral Baclofen for the remainder of his life. Economist Frederick A. Raffa, Ph.D., then used this continuum of care to calculate the future life care needs for Aubrey Stewart. The future care costs for the each plan were calculated at

SPECIAL MASTER'S SUMMARY REPORT--

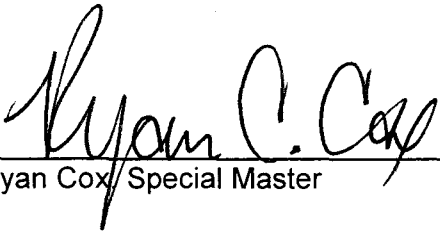
Page 3

\$10,793,383.00 and \$9,052,435, respectively. These costs are separate from medical bills already incurred as a result of the injury.

The figures presented do not account for any loss of earning capacity or non-economic damages, which would likely have been substantial if this case had preceded to trial.

The bill directs the City of Jacksonville to pay: \$1.2 million the first November 1 after the claims bill becomes law; \$1 million one year later; \$600,000 a year later; and \$500,000 a year later. The monies to pay the settlement will come from the City's Risk Management Fund and was crafted in a manner to minimize any potential financial impact of the City of Jacksonville.

Recommendation: I recommend that House Bill 3519 be amended to direct payment of the funds, after deduction of costs and liens, to the special needs trust established for Aubrey Stewart. I respectfully recommend that House Bill 3519 be reported **FAVORABLY**.



Ryan Cox / Special Master

Date: April 3, 2015

cc: Representative Jones, M., House Sponsor
Senator Bradley, Senate Sponsor
Dan Looke, Senate Special Master

26 Street which needed to be trimmed due to falling tree limbs, and

27 WHEREAS, the City of Jacksonville's records confirm that a
 28 few days later, Joseph Stewart also filed a complaint with the
 29 city about two trees in dangerous condition on Dyal Street, and

30 WHEREAS, the City of Jacksonville's records confirm that
 31 the city received an additional complaint on January 6, 2011,
 32 about a falling tree limb that struck a car, and the city's Risk
 33 Management Division investigated the claim and subsequently paid
 34 for the damage to the car, but failed to address the dangerous
 35 trees, and

36 WHEREAS, the City of Jacksonville's records confirm that on
 37 May 13, 2011, a neighbor called the city and reported that one
 38 of the trees that was the subject of previous complaints had
 39 fallen in the road and was blocking traffic, and the city
 40 responded by removing only the fallen debris, failing to remedy
 41 the continued and known dangerous condition, and

42 WHEREAS, despite these four complaints, the City of
 43 Jacksonville took no action to address the dangerous tree on
 44 Dyal Street until almost a month after a limb from that tree
 45 crushed and critically injured Aubrey Stewart, and

46 WHEREAS, as a result of the foregoing incident, Aubrey
 47 Stewart sustained multiple injuries, including, but not limited
 48 to, multiple spinal fractures with a complete spinal cord
 49 injury, an open pelvic fracture wound, a complex anal
 50 laceration, a left lateral buttocks wound, a large perineal

51 | wound, and multiple abscesses, and

52 | WHEREAS, Aubrey Stewart spent 5 months in the Shands'
 53 | Pediatric Intensive Care Unit, where he underwent approximately
 54 | a dozen surgeries to stabilize his condition, and spent an
 55 | additional month at Brooks Rehabilitation, and

56 | WHEREAS, Aubrey Stewart is now paralyzed and confined to a
 57 | wheelchair, depends on others for many daily life activities,
 58 | and must wear diapers and use a catheter and colostomy bag, and

59 | WHEREAS, the City of Jacksonville recognizes the potential
 60 | for a sizeable jury verdict in favor of Aubrey Stewart, given
 61 | the liability and damages stemming from the city's negligence,
 62 | and

63 | WHEREAS, during court-ordered mediation on May 8, 2013, the
 64 | City of Jacksonville agreed to pay \$200,000 under the statutory
 65 | limits of liability set forth in s. 768.28, Florida Statutes,
 66 | within 60 days and then \$3.3 million, to be paid in installments
 67 | in order to minimize any potential financial impact on the city,
 68 | and

69 | WHEREAS, the negotiated settlement agreement was designed
 70 | with the claim bill process specifically in mind, is in the best
 71 | interest of all parties involved, and was passed unanimously by
 72 | the Jacksonville City Council on July 23, 2013, and

73 | WHEREAS, the City of Jacksonville fully supports the
 74 | passage of this claim bill, NOW, THEREFORE,

75 |

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

77

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

80 Section 2. The City of Jacksonville is authorized and
 81 directed to appropriate from funds of the city not otherwise
 82 appropriated and to draw a warrant in the sum of \$1.2 million
 83 payable to Joseph and Audrey Stewart, as parents and guardians
 84 of Aubrey Stewart, by the first November 1 after the passage of
 85 this act as compensation for injuries and damages sustained as a
 86 result of the negligence of the City of Jacksonville. In
 87 addition, the City of Jacksonville is further authorized and
 88 directed to appropriate from funds of the city not otherwise
 89 appropriated and to draw a warrant in the sum of \$1 million
 90 payable to Joseph and Audrey Stewart, as parents and guardians
 91 of Aubrey Stewart, 1 year from the first payment; the sum of
 92 \$600,000, 1 year from the second payment; and the sum of
 93 \$500,000, 1 year from the third payment, for a total of \$3.3
 94 million as compensation for injuries and damages sustained as a
 95 result of the negligence of the City of Jacksonville.

96 Section 3. The amount paid by the City of Jacksonville
 97 pursuant to s. 768.28, Florida Statutes, and the amount awarded
 98 under this act are intended to provide the sole compensation for
 99 all present and future claims arising out of the factual
 100 situation described in the preamble to this act which resulted

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2015

101 in the injuries and damages to Aubrey Stewart, and to release
102 the city from any further liability. The total amount paid for
103 attorney fees, lobbying fees, costs, and other similar expenses
104 relating to this claim may not exceed 25 percent of the amount
105 awarded under this act.

106 Section 4. The City of Jacksonville shall pay to the
107 Agency for Health Care Administration the amount due under s.
108 409.910, Florida Statutes, before disbursing any funds to the
109 claimant. The amount due to the agency shall be equal to all
110 unreimbursed medical payments paid by Medicaid up to the date
111 that this bill becomes a law.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

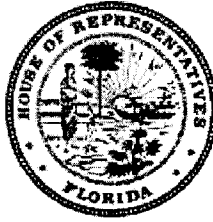
ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Jones, M. offered the following:

Amendment

5 Remove lines 82-91 and insert:

6 appropriated and to draw a warrant in the sum of \$1.2 million,
 7 less the amount paid for repayment of Medicaid liens, payable to
 8 the Aubrey Javaris Stewart Special Needs Trust, by the first
 9 November 1 after the passage of this act as compensation for
 10 injuries and damages sustained as a result of the negligence of
 11 the City of Jacksonville. In addition, the City of Jacksonville
 12 is further authorized and directed to appropriate from funds of
 13 the city not otherwise appropriated and to draw a warrant in the
 14 sum of \$1 million payable to the Aubrey Javaris Stewart Special
 15 Needs Trust, 1 year from the first payment; the sum of



STORAGE NAME: h3521.CJS.DOCX
DATE: 4/3/2015

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 3521; Relief/Ronald Miller/City Of Hollywood
Sponsor: Jenne
Companion Bill: CS/SB 66 by Judiciary, Legg
Special Master: Parker Aziz

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.

Notwithstanding the attorney's affidavit, the bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.

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.

House Bill 43 by Representative Jenne and Senate Bill 8 by Senator Sobel were filed during the 2012 Legislative Session. The House Bill passed its committees of reference (Civil Justice and Judiciary), passed the full House, but died in the Senate. The Senate Bill was never heard in any Committee.

House Bill 1415 by Representative Gibbons and Senate Bill 44 by Senator Sobel were filed during the 2013 Legislative Session. The House Bill passed its committees of reference (Select Committee on Claim Bills and Judiciary) but died on the House Calendar. The Senate Bill was never considered in its committees of reference.

House Bill 3531 by Representative Gibbons and Senate Bill 54 by Senator Legg were filed during the 2014 Legislative Session. The House Bill passed its committees of reference (Civil Justice and Judiciary), passed the full House, but died in the Senate. The Senate Bill was never considered in its committees of reference.

Procedural Summary: In January 2005, Mr. Miller filed suit in the Circuit Court of the 17th Judicial Circuit in and for Broward County. After a 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.

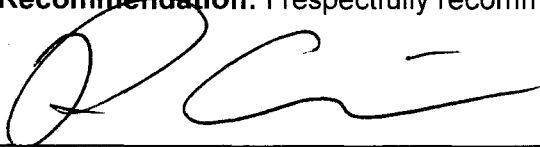
Facts of Case: This case arises out of a motor vehicle accident that occurred on July 30, 2002. Mr. Miller was traveling northbound in his pickup truck on North Federal Highway, just south of Sheridan Street in the City of Hollywood, Florida. At approximately 5:30 p.m., Mr. Miller entered the center 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 meniscectomy 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.

Because settlement agreements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense, stipulations or settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature or its committees, or on the Special Master. However, all such agreements must be evaluated. If found to be reasonable and based on equity, then they can be given effect, at least at the Special Master's level of consideration. I find that the settlement agreement in this case is reasonable and equitable in light of the negligence surrounding Mr. Miller's accident and his resulting injury and recommend that the settlement be given effect by the Legislature

Recommendation: I respectfully recommend that House Bill 3521 be reported **FAVORABLY**.



Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Jenne, House Sponsor
Senator Legg, Senate Sponsor
Diana Caldwell, Senate Special Master

HB 3521

2015

27 payment by the City of Hollywood of an additional \$100,000 to
 28 Ronald Miller, NOW, THEREFORE,

29
 30 Be It Enacted by the Legislature of the State of Florida:

31
 32 Section 1. The facts stated in the preamble to this act
 33 are found and declared to be true.

34 Section 2. The City of Hollywood is authorized and
 35 directed to appropriate from funds of the city not otherwise
 36 appropriated and to draw a warrant, payable to Ronald Miller,
 37 for the total amount of \$100,000 as compensation for injuries
 38 and damages sustained as a result of the negligence of an
 39 employee of the City of Hollywood.

40 Section 3. The amount paid by the City of Hollywood
 41 pursuant to s. 768.28, Florida Statutes, and the amount awarded
 42 under this act are intended to provide the sole compensation for
 43 all present and future claims arising out of the factual
 44 situation described in this act which resulted in injuries to
 45 Ronald Miller. All expenses that constitute a part of Ronald
 46 Miller's judgments described in this claim shall be paid from
 47 the amount awarded under this act on a pro rata basis. The total
 48 amount paid for attorney fees, lobbying fees, costs, and other
 49 similar expenses relating to this claim may not exceed 25
 50 percent of the amount awarded under this act.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

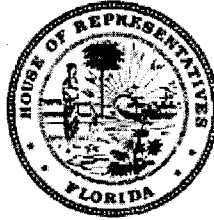
1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Jenne offered the following:

Amendment (with title amendment)

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

Remove line 12 and insert:

WHEREAS, at that time Robert Mettler, a City of Hollywood



STORAGE NAME: h3523.CJS.DOCX
DATE: 4/3/2015

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 3523; Relief/Mark T. Sawicki & Sharon L. Sawicki/City of Tallahassee
Sponsor: Beshears
Companion Bill: SB 54 by Montford
Special Master: Parker Aziz

Basic Information:

Claimants: Mark T. Sawicki and Sharon L. Sawicki

Respondent: City of Tallahassee

Amount Requested: \$700,000.00

Type of Claim: Local equitable claim; Result of a Settlement Agreement

Respondent's Position: City of Tallahassee will not oppose, obstruct or delay the passage of the claim bill or direct its representatives, agents or lobbyists to oppose, obstruct or delay the passage of said claim bill in the amount of \$700,000.00.

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.

Notwithstanding the attorney's affidavit, the bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.

Prior Legislative History: House Bill 3501 by Representative Beshears and Senate Bill 14 by Senator Montford were filed during the 2014 Legislative Session. Neither bill was ever heard in any committee.

House Bill 243 by Representative Beshears and Senate Bill 12 by Senator Montford were filed during the 2013 Legislative Session. Neither bill was ever heard in any committee.

Procedural Summary: On June 7, 2010, Mark and Sharon Sawicki filed suit against the City of Tallahassee, [Case No. 2010-CA-1984], in the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida. Prior to trial, the case was settled in mediation in the amount of \$900,000.00. Pursuant to the settlement, the City paid the sovereign immunity limit of \$200,000.00 and the parties agreed that the plaintiff could seek an additional \$700,000.00 through an uncontested claim bill.

Facts of Case: On October 2, 2009, Mark Sawicki, 51 years old, was riding his bicycle on his way to work at Florida State University. Mr. Sawicki stopped at a red-light at the intersection of Call Street and North Monroe Street. A solid waste collection truck, owned by the City and operated by Paul Hudson, a City employee, made a right hand turn. During the process of the turn, the truck ran over Mr. Sawicki. The tire of the truck crossed over Mr. Sawicki's midsection causing significant injuries. After feeling his truck run over Mr. Sawicki, Mr. Hudson immediately stopped his truck. Hudson called 911 and Mr. Sawicki's wife Sharon. Mr. Sawicki was transferred via ambulance to Tallahassee Memorial Hospital ("TMH"). Mr. Sawicki was hospitalized for 32 days following the accident, followed by six weeks in a wheelchair, followed by four months on a walker, followed by four months walking with a cane. Sawicki sustained multiple fractures, including fractures to his right and left pelvic region, right femur, right acetabulum pubic ramus, and sacrum. Sawicki also sustained a torn urethra, multiple abrasions and lacerations to his right thigh and upper and lower extremities, and neurological damage to his right lower extremities resulting in a "dropped foot".

On October 12, 2009, an open reduction internal fixation was performed on Sawicki's pelvic and hip region, which required the placement of metal plates and screws to secure the structure of the bones. At this time the doctors at TMH attempted to repair the damage to his urethra, but were unsuccessful, requiring them to leave in Foley and super pubic catheters. Mr. Sawicki had six MRSA infections during the nine months of catheterization. On October 16, 2009, Sawicki was transferred to the TMH rehabilitation center for two and half weeks of inpatient physical therapy. Sawicki continued with outpatient physical therapy for several more months. He progressed from walking with a walker, to a cane, and eventually being able to walk without assistance. In May, 2010, Mr. Sawicki received surgery by Dr. Ordorica in Tampa who repaired the damage to his urethra.

Mr. Sawicki's medical expenses total \$251,315.29. Mr. Sawicki's claim also includes damages for lost wages, loss of consortium with his wife and family, and pain and suffering damages. Mr. Sawicki has received \$122,880.99 of the \$200,000.00 paid by the City, with payments to his attorneys' of \$57,500.00 and \$6,733.34 to Capitol Health Plan ("CHP"). CHP had a medical lien of \$101,018.06 which has been reduced to \$30,300.00. CHP is still owed \$23,566.66 and will be paid upon approval of this claims bill.

Mr. Sawicki's preliminary life care plan indicates that he has recovered well from his injuries. Mr. Sawicki will likely continue to have limited follow-up physician care, including an annual appointment with his urologist, David Burday, M.D. and an annual visit with an orthopedist. Mr. Sawicki will likely require continual physical therapy. His life care plan estimates 16 visits a year. Dr. Hutchinson indicates that it is probable that Mr. Sawicki will require a total hip replacement between two and twenty years. This procedure is estimated to cost roughly \$62,000.00. Mr. Sawicki has returned to his job as an engineer at Florida State University. During his recovery Mr. Sawicki used up his 710 hours of sick and leave time. His life care plan indicates that his work life may be shortened by his injuries from retiring at 66 to 63.

The City of Tallahassee supports this claim bill in the amount of \$700,000.00. The City is self-insured and there are no applicable insurance policies. The funds to pay this claim bill will be from the City's self-insurance fund. The claim amount is fully funded and reserved.

SPECIAL MASTER'S SUMMARY REPORT--

Page 3

Recommendation: I respectfully recommend that House Bill 3523 be reported **FAVORABLY**.



Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Beshears, House Sponsor
Senator Montford, Senate Sponsor
Cindy Brown, Senate Special Master

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2015

27 and lower extremities; and neurological damage to his right
 28 lower extremities, resulting in a dropped foot, and

29 WHEREAS, on June 7, 2010, a complaint was filed on behalf
 30 of Mark T. Sawicki and his wife, Sharon L. Sawicki, against the
 31 City of Tallahassee in the Circuit Court for Leon County, Case
 32 No. 2010-CA-1984, to recover damages for the injuries sustained
 33 by Mark T. Sawicki as a result of the negligence of the City of
 34 Tallahassee employee, and

35 WHEREAS, the City of Tallahassee, Mark T. Sawicki, and his
 36 wife, Sharon L. Sawicki, reached a settlement of the case that
 37 includes a lump-sum payment in the amount of \$900,000, and

38 WHEREAS, the City of Tallahassee paid \$200,000 of the
 39 settlement pursuant to the statutory limits of liability set
 40 forth in s. 768.28, Florida Statutes, and

41 WHEREAS, the City of Tallahassee fully supports the passage
 42 of this claim bill, NOW, THEREFORE,

43

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

45

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

48 Section 2. The City of Tallahassee is authorized and
 49 directed to appropriate from funds of the city not otherwise
 50 appropriated and to draw a warrant, payable to Mark T. Sawicki
 51 and his wife, Sharon L. Sawicki, for the total amount of
 52 \$700,000 as compensation for injuries and damages sustained as a

HB 3523

2015

53 result of the negligence of an employee of the City of
54 Tallahassee.

55 Section 3. The total amount paid for attorney fees,
56 lobbying fees, costs, and other similar expenses relating to
57 this claim may not exceed 25 percent of the amount awarded under
58 this act.

59 Section 4. The amount paid by the City of Tallahassee
60 pursuant to s. 768.28, Florida Statutes, and the amount awarded
61 under this act is intended to provide the sole compensation for
62 all present and future claims arising out of the factual
63 situation described in this act which resulted in the injuries
64 to Mark T. Sawicki.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Beshears offered the following:

Amendment (with title amendment)

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

Remove line 16 and insert:

8 WHEREAS, Mark T. Sawicki was stopped at a red light at the
 9 intersection of



STORAGE NAME: h3527.CJS.DOCX
DATE: 4/3/2015

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 3527; Relief/Asia Rollins/Public Health Trust of Miami-Dade County
Sponsor: Avila
Companion Bill: CS/SB 34 by Judiciary, Diaz de la Portilla
Special Master: Parker Aziz

Basic Information:

Claimants: Indya Leshea Marc, individually and as parent and legal guardian of Asia Rose Rollins

Respondent: Public Health Trust d/b/a Jackson Memorial Hospital

Amount Requested: \$699,999

Type of Claim: Local equitable claim; result of a settlement agreement.

Respondent's Position: Public Health Trust agrees to support the enactment of a claim bill authorizing the additional payment of \$699,999 and affirmatively agrees not to interfere with passage of said bill.

Collateral Sources: None.

Attorney's/Lobbying Fees: Petitioner's counsel submitted an affidavit stating that his fee would not exceed 25% of the total amount awarded. Additionally, pursuant to a written agreement, the lobbyist fees related to this bill will be limited to 5% of the total amount awarded. However, the bill states that the total amount of attorney fees, lobbying fees, and related costs may not exceed 15% of the total award, absent a waiver from the Petitioner that would increase the total to 25%.

Prior Legislative History: This is the first time House Bill 3527 by Representative Avila and Senate Bill 34 by Senator Diaz de la Portilla has been introduced to the Legislature.

Procedural Summary: On October 16, 2013, Indya Leshea Marc, as the proposed guardian of the property of Asia Rose Rollins, filed a Petition to Approve Settlement in the 11th Judicial Circuit Court, in and for Miami-Dade County, Florida. The Public Trust d/b/a Jackson Memorial Hospital agreed to settle the claim without the filing of a lawsuit for \$999,999.

SPECIAL MASTER'S SUMMARY REPORT--

Page 2

Pursuant to the settlement, the Trust paid its sovereign immunity limit of \$300,000, and the parties agreed that the plaintiffs could seek an additional \$699,999 through a supported claim bill. Under the settlement agreement, the plaintiffs' net recovery to date (after satisfying a Medicaid lien and legal expenses and attorneys' fees) is approximately \$105,064.39. The plaintiffs have paid approximately \$75,000 to their attorneys; \$56,250.00 of which was paid to the Ratzan Law Group and \$18,750.00 of which was paid to Fann & Petruccelli, P.A.

The Public Health Trust d/b/a Jackson Health System provides employees professional liability insurance through its Self-Insured Trust which has no policy number or expiration date. All monies paid in the past and future to Asia Rollins comes from this trust.

The Honorable Judge Bernard S. Shapiro ordered that the net settlement proceeds be deposited into a special needs trust account for the benefit of the minor, Asia Rollins, in order to preserve her Medicaid benefits. The funds held in the trust account of Ratzan Law Group for Asia are deemed unavailable to Asia and the guardian of the property, Indya Leshea Marc, until the special needs trust is established by the 11th Judicial Circuit Court, in and for Miami-Dade County, Florida.

Facts of Case: Around 11:50 A.M. on October 26, 2011, Asia Rollins, a three year old girl diagnosed with Dravet Syndrome who had a history of epileptic seizures, suffered a mild seizure at daycare. The daycare nurse administered two doses of seizure medication to Asia, but the doses were not effective. The daycare providers called EMS who reported that Asia had been seizing for approximately fifteen minutes upon their arrival. EMS administered two additional doses of valium and oxygen via nonrebreather mask. EMS noted that Asia was making gurgling sounds and had poor respiratory effort so she was given oxygen through bag mask ventilation during transport.

After arriving at the hospital, it was noted that Asia still had poor respiratory effort and diffuse rhonchi, meaning she was making a coarse rattling respiratory sound. She was given an albuterol nebulizer but showed minimum improvement. According to Asia's discharge summary, it was at this point, because her respiratory efforts were poor and breaths were shallow, that it was decided to electively intubate her.

A pediatric resident attempted to intubate Asia but failed and bag mask ventilation was started before the second attempt. The second attempt was successful according to Asia's discharge summary; however, the tube was dislodged as it was being taped. The third attempt at intubation was successful; however, discharge notes indicate that vomit was emitted from the endotracheal tube. After the third attempt Asia's oxygen levels and heart rate decreased such that she required CPR.

A fourth attempt at intubation, by Dr. Quiero, was successful but Asia had gone into asystole; her heart rate had flat lined and she had no pulses without CPR. Asia was given four doses of epinephrine with ongoing CPR, two doses of calcium chloride, two doses of sodium bicarbonate, and one dose of calcium gluconate. Following the fourth intubation, CPR, and medication, Asia's heart rate returned to the 160s, and she was transferred to the Pediatric Intensive Care Unit for continued treatment.

On October 31, 2011, an MRI of Asia's brain showed findings consistent with severe hypoxic ischemic injury, distortion of the brain stem due to herniation on both sides, and herniation of bilateral tonsils. Asia was diagnosed with hypoxic ischemic encephalopathy and cortical blindness. On March 14, 2013, Dr. Craig J. Spurdle, M.D., noted that Asia has globally involved spastic quadriplegia and according to Asia's neurologist, Dr. Ian Miller, M.D., as a result of the hypoxic ischemic injury Asia sustained in October of 2011, she requires 24-hour, 7-days a week monitoring at a medical level her family is unable to provide.

According to Dr. Miller, Asia will not be able to lead an independent life. Asia is currently 6 years old

SPECIAL MASTER'S SUMMARY REPORT--

Page 3

and is wheelchair bound. Asia cannot walk or talk and is blind; however, a neurology note from Dr. Sayed Naqvi, M.D., dated June 11, 2014, states that Asia will turn her head when someone calls her name, that she smiles and laughs, and that she likes to pat the dog her mother bought for her. Despite these noted improvements, Asia needs a professional attendant and LPN level care 24 hours a day, 7 days a week for the rest of her life. Asia cannot feed herself and has a gastrostomy tube. Asia needs constant attention to her airway and suction when necessary to prevent mucous accumulation in her lungs and airway. Asia cannot dress herself or get around her home without assistance and will need assistive devices in order to get around her home in the future.

In the Guardian Ad Litem report submitted, Stephen F. Cain, Esq., posits that "[a] reasonable estimate of the full damages in this case would likely exceed \$35,000,000." He rests his estimation on similar cases he has handled in the past where the life care plan was estimated at \$23,000,000 to \$26,000,000 and non-economic damages of the child and parents ranged from \$15,000,000 to \$20,000,000.

According to the Settlement and Release Agreement submitted by both parties, the Public Health Trust agreed to support the enactment of a claim bill authorizing the additional payment of \$699,999 from its Self-Insured Trust and affirmatively agreed to not interfere with, lobby against, or attempt to influence anyone against the passage of said claim bill but made no admission of liability.

Recommendation: I respectfully recommend that House Bill 3527 be reported **FAVORABLY**.



Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Avila, House Sponsor
Senator Diaz de la Portilla, Senate Sponsor
Tom Cibula, Senate Special Master

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2015

27 WHEREAS, Asia Rollins, now 6 years old, is unable to walk
 28 or talk and will never be able to live an independent life, and

29 WHEREAS, Asia Rollins's neurologist recommends that she
 30 receive 24-hour care for the rest of her life, and

31 WHEREAS, Asia Rollins needs assistive devices for
 32 ambulation and is unable to dress or feed herself or get around
 33 her home, which requires modification to accommodate the
 34 required assistive and therapy devices, and

35 WHEREAS, the Public Health Trust of Miami-Dade County
 36 agreed to settle Asia Rollins's claim for \$999,999, and

37 WHEREAS, \$300,000 has been paid pursuant to the statutory
 38 limits of liability in s. 768.28, Florida Statutes, and \$699,999
 39 remains to be paid, NOW, THEREFORE,

40

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

42

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

45 Section 2. The Public Health Trust of Miami-Dade County,
 46 d/b/a Jackson Memorial Hospital, is authorized and directed to
 47 appropriate from funds not otherwise encumbered and to draw a
 48 warrant in the sum of \$699,999 payable to the Supplemental Care
 49 Trust for the Benefit of Asia Rose Rollins or other special
 50 needs trust for the exclusive use and benefit of Asia Rollins.

51 Section 3. The amount paid by the Public Health Trust of
 52 Miami-Dade County pursuant to s. 768.28, Florida Statutes, and

HB 3527

2015

53 | the amount awarded under this act are intended to provide the
54 | sole compensation for all present and future claims arising out
55 | of the factual situation described in this act which resulted in
56 | the injuries and damages to Asia Rollins.

57 | Section 4. The total amount paid for attorney fees,
58 | lobbying fees, and related costs may not exceed 25 percent of
59 | the amount awarded under this act.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED (Y/N)

ADOPTED AS AMENDED (Y/N)

ADOPTED W/O OBJECTION (Y/N)

FAILED TO ADOPT (Y/N)

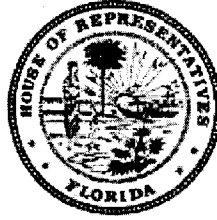
WITHDRAWN (Y/N)

OTHER

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Avila offered the following:

3
4 **Amendment**

5 Remove line 58 and insert:
6 lobbying fees, costs, and other similar expenses relating to
7 this claim may not exceed 25 percent of



STORAGE NAME: h3531.CJS.DOCX

DATE: 4/3/2015

April 3, 2015

SPECIAL MASTER'S FINAL REPORT

The Honorable Steve Crisafulli
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 3531 - Representative Fullwood
Relief/Sharon Robinson/Central Florida Regional Transportation Authority

THIS IS AN EQUITABLE CLAIM BASED ON A SETTLEMENT AGREEMENT, WHEREIN THE CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY D/B/A LYNX HAS AGREED TO PAY \$3,200,000 TO SHARON ROBINSON, INDIVIDUALLY, AS GUARDIAN OF MARK ROBINSON AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MATTHEW ROBISON FOR DAMAGES THEY RECEIVED AS A RESULT OF AN ACCIDENT WITH A BUS DRIVEN BY AN EMPLOYEE OF THE AUTHORITY AS THEY CROSSED THE STREET. THE AUTHORITY HAS PAID \$200,000 PURSUANT TO THE STATUTORY CAP LEAVING, \$3,000,000 TO BE PAID PURSUANT TO THIS CLAIM BILL.

FINDING OF FACT:

On November 4, 2010, Mark and Matthew Robinson, aged 12 and 10 years respectively, were walking home from a trip to the gas station.

The boys waited until they were given the signal to walk across the street and began to cross at the intersection of Columbia Avenue and Dyer Street.

At the same time a LYNX public transportation bus was northbound on Dyer Street and making a left turn to travel west

on Columbia Avenue. The bus operator failed to yield to the pedestrians in the crosswalk and struck both of the brothers.

Mark took hold of the bike rack on the front of the bus to prevent himself from being pulled under the bus. Matthew was pulled under the bus, and the waist band of his jeans was caught on the end of a bolt that fasten a large air dam to the undercarriage.

Matthew was pronounced dead at the scene. Mark was transported to the Arnold Palmer Hospital Emergency Room and subsequently diagnosed with an L5-S1 spondylolisthesis which is the forward displacement of vertebrae due to a stress fracture of the vertebrae. Mark was treated nonoperatively with a thoracolumbar spinal orthosis brace and released on November 6, 2010.

In its investigation LYNX found that the accident was preventable, terminated the bus driver's employment on December 14, 2010, and admitted liability in the case on December 17, 2010. The settlement agreement was approved by the Honorable John E. Jordan on July 16, 2014. The funds to pay for the total amount of the settlement, including the claim bill amount, will be drawn from LYNX's risk reserve account which has adequate funds to pay the total amount of the claim bill.

In 2013, claimants' counsel retained Jerry Adatos, M.S., CVE, CRC, CCM to determine an earning capacity assessment of Matthew Robinson. Mr. Adatos estimated that Matthew Robinson would have earned \$54,187.87 annually which equates to \$2,167,514.80 in lifetime earnings.

LITIGATION HISTORY:

Sharon Robinson, individually, as Guardian of Mark Robinson and as Personal Representative of the Estate of Matthew Robinson filed a lawsuit against Central Florida Regional Transportation Authority d/b/a LYNX in the Ninth Judicial Circuit in and for Osceola County.

Prior to trial LYNX admitted liability and the parties settled for \$3,200,000.

LYNX, in accordance with statutory limits of liability in s. 768.28, Florida Statutes, paid \$200,000 to the claimants. From those monies, attorney's recovered \$50,000.00 in attorney fees and \$29,512.66 in costs and expenses. The attorney's fees were divided between King & Markman, P.A. and Kelvin Soto, Esq. which received \$37,500 and \$12,500, respectively.

After the deductions for attorneys' fees and costs, the claimants' net settlement was \$91,568.34. The net settlement was divided as follows: \$2,747.05 to Sharon Robinson as personal representative; \$22,205.32 to Sharon Robinson as mother and survivor; \$22,205.32 to Warren L Robinson, Jr. as

father and survivor, (of this \$12,179.45 was garnered to satisfy past due child support payments); and \$44,410.65 to Mark Robinson with half paid to the Guardian and half to be invested in the PA529 Guaranteed Savings Plan (a Pennsylvania education fund).

CONCLUSION OF LAW:

I concur with the Authority's finding that their employee was in the course and scope of his employment and had a duty to yield the right of way to the pedestrians in the crosswalk. This duty was breached and was the proximate cause of both the injuries suffered by Mark Robinson and the death of Matthew Robinson. I find the damages to be appropriate and based on competent substantial evidence. Because settlement agreements are sometimes entered into for reasons that may have very little to do with the merits of claim or the validity of a defense, stipulations or settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature or its committees, or on the Special Master. However, all such agreements must be evaluated. If found to be reasonable and based on equity, then they can be given effect, at least at the Special Master's level of consideration. I find that the settlement agreement in this case is reasonable and equitable and recommend it be given effect by the Legislature.

RESPONDENT'S ABILITY TO PAY:

The funds to pay for the total amount of the settlement, including the claim bill amount, will be drawn from the Authority's reserve account which are adequate funds to pay the total amount of the claim bill.

ATTORNEY'S/LOBBYING FEES:

The attorney in this case submitted an affidavit that the Petitioner retained his firm based on a fee of 25% of the total recovery from the claim bill, contingent on upon the bill becoming law and payment received. Closing Statement A was submitted showing costs of \$29,512.66. However, the terms of the bill limit the total award of attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim to no more than 25 percent of the total amount awarded by the bill.

LEGISLATIVE HISTORY:

This is the first time House Bill 3531 by Representative Fullwood Senate Bill 84 by Senator Soto has been introduced to the Legislature.

RECOMMENDED AMENDMENTS:

On lines 67-68 the bill appropriates funds from the General Revenue Fund. This should be amended to appropriate the award from the Authority's general revenue fund.

In addition, the bill allocates the entire amount of the award to Sharon Robinson, individually and as Personal Representative

SPECIAL MASTER'S FINAL REPORT--

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of the estate. The bill should be amended to award the funds as provided in the settlement agreement, pursuant to the terms of Closing Statement B: Sharon Robinson, as Personal Representative, is to receive \$58,429.34; Sharon Robinson, as mother and survivor, is to receive \$821,838.99; Warren Robinson, as father and survivor, is to receive \$61,250.00; and Mark Robinson, individually, is to receive \$1,308,481.67.

RECOMMENDATIONS:

I respectfully recommend that the bill be reported **FAVORABLY**.

Respectfully submitted,



PARKER AZIZ

House Special Master

cc: Representative Fullwood, House Sponsor
Senator Soto, Senate Sponsor
James Knudson, Senate Special Master

1 A bill to be entitled
 2 An act for the relief of Sharon Robinson,
 3 individually, as guardian of Mark Robinson, and as
 4 personal representative of the Estate of Matthew
 5 Robinson; providing an appropriation to compensate her
 6 and her son for the death of Matthew Robinson and for
 7 injuries and damages they sustained as a result of the
 8 negligence of the Central Florida Regional
 9 Transportation Authority as operator of Lynx buses;
 10 providing that the amount already paid by the
 11 authority and the appropriation satisfy all present
 12 and future claims related to the negligent act;
 13 providing a limitation on the payment of fees and
 14 costs; providing an effective date.

15
 16 WHEREAS, on November 4, 2010, Matthew Robinson, 10, and
 17 Mark Robinson, 12, both children of Sharon Robinson, were
 18 crossing the street at the intersection of Columbia Avenue and
 19 Dyer Street in Kissimmee, and

20 WHEREAS, Matthew Robinson and Mark Robinson were struck by
 21 the front bike rack of a Lynx bus while in the crosswalk and
 22 dragged underneath the bus when the driver of the bus failed to
 23 yield to pedestrians in the crosswalk, and

24 WHEREAS, while the bus was still moving, Mark Robinson was
 25 able to crawl out to safety, but Matthew Robinson's belt loop
 26 was caught in the undercarriage of the bus, and

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27 WHEREAS, Matthew Robinson was dragged underneath the bus
 28 until the rear tire crushed his head, and

29 WHEREAS, Matthew Robinson was pronounced dead at the scene,
 30 and

31 WHEREAS, Mark Robinson was transported to the hospital via
 32 ambulance and diagnosed with a stress fracture of the vertebrae
 33 with spondylolisthesis, and

34 WHEREAS, Mark Robinson wore a brace until he recovered from
 35 his physical injuries, but has permanent injury due to the
 36 spondylolisthesis, and

37 WHEREAS, Mark Robinson's medical bills total \$27,137.90,
 38 and

39 WHEREAS, Sharon Robinson and Mark Robinson both suffer from
 40 posttraumatic stress disorder, and Ms. Robinson suffers from
 41 symptoms placing her in the range of severe depression, and

42 WHEREAS, the driver of the bus that struck Matthew Robinson
 43 and Mark Robinson had been previously involved in six
 44 preventable accidents, and

45 WHEREAS, the driver was found guilty of violating s.
 46 316.075, Florida Statutes, and was terminated by Lynx for
 47 violation of safety policies and procedures after a finding that
 48 the accident was preventable, and

49 WHEREAS, Sharon Robinson, individually, as guardian of Mark
 50 Robinson, and as personal representative of the Estate of
 51 Matthew Robinson, filed a lawsuit against Central Florida
 52 Regional Transportation Authority, which operates Lynx, in the

53 Ninth Judicial Circuit in Osceola County, and

54 WHEREAS, before trial, the respondent admitted liability,
 55 and the parties reached a settlement agreement totaling \$3.2
 56 million, of which the Central Florida Regional Transportation
 57 Authority has paid \$200,000 under the statutory limits of
 58 liability set forth in s. 768.28, Florida Statutes, and

59 WHEREAS, the Central Florida Regional Transportation
 60 Authority fully supports the passage of this claim bill for the
 61 unpaid portion of the settlement amount, NOW, THEREFORE,

62
 63 Be It Enacted by the Legislature of the State of Florida:

64
 65 Section 1. The facts stated in the preamble to this act
 66 are found and declared to be true.

67 Section 2. There is appropriated from the General Revenue
 68 Fund to the Central Florida Regional Transportation Authority
 69 the sum of \$3 million for the relief of Sharon Robinson,
 70 individually, as guardian of Mark Robinson, and as personal
 71 representative of the Estate of Matthew Robinson for injuries
 72 and damages sustained by Mark Robinson and Sharon Robinson and
 73 the death of Matthew Robinson.

74 Section 3. The Chief Financial Officer is directed to draw
 75 a warrant in favor of Sharon Robinson, individually, as guardian
 76 of Mark Robinson, and as personal representative of the Estate
 77 of Matthew Robinson in the sum of \$3 million upon funds of the
 78 Central Florida Regional Transportation Authority in the State

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79 Treasury, and the Chief Financial Officer is directed to pay the
 80 same out of such funds in the State Treasury.

81 Section 4. The amount paid by the Central Florida Regional
 82 Transportation Authority pursuant to s. 768.28, Florida
 83 Statutes, and the amount awarded under this act are intended to
 84 provide the sole compensation for all present and future claims
 85 arising out of the factual situation described in the preamble
 86 to this act which resulted in the death of Matthew Robinson and
 87 the injuries and damages sustained by Mark and Sharon Robinson.
 88 The total amount paid for attorney fees, lobbying fees, costs,
 89 and other similar expenses relating to this claim may not exceed
 90 25 percent of the amount awarded under this act.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Fullwood offered the following:

Amendment (with title amendment)

Remove lines 67-80 and insert:

3
 4
 5
 6 Section 2. The Central Florida Regional Transportation
 7 Authority is authorized and directed to appropriate from funds
 8 of the authority not otherwise appropriated and to draw a
 9 warrant, payable to Sharon Robinson, individually, as guardian
 10 of Mark Robinson and as personal representative for the Estate
 11 of Matthew Robinson, for the total amount of \$3 million as
 12 compensation for injuries and damages sustained as a result of
 13 the negligence of an employee of the Central Florida Regional
 14 Transportation Authority.

15 Section 3. The warrant shall be drawn to Sharon and Mark
 16 Robinson's attorneys to be placed in the Florida Bar Interest on
 17 Trust Accounts (IOTA) program for the benefit of Sharon



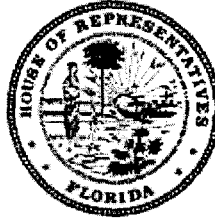
Amendment No. 1

18 Robinson, as the personal representative of the Estate of
19 Matthew Robinson, for a reduced statutory fee after attorney
20 fees and costs pursuant to s. 733.617(2), Florida Statutes, in
21 the amount of 3 percent of the first \$1 million and 2.5 percent
22 of the remainder, reducing the fee to \$58,529.34. The payment to
23 Sharon Robinson, as mother individually, will be 37.5 percent of
24 the remainder or \$821,838.99; to Warren Robinson, as father
25 individually, 2.8 percent of the remainder or \$61,250.00; and
26 for Mark Robinson in the amount of 59.7 percent of the remainder
27 or \$1,308,481.67, to be placed in a trust account, guardianship,
28 or structure to provide income, protect from wasteful
29 dissipation, and provide protection of the assets for the
30 benefit of Mark Robinson; for a total in the sum of \$3 million.
31 The Central Florida Regional Transportation Authority is
32 directed to pay the same out of funds not otherwise
33 appropriated. The remainder of the total shall be paid to
34 reimburse for taxable costs and fees. Lobbying and attorney fees
35 shall be prorated and may not exceed 25 percent.

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

Remove line 5 and insert:

Robinson; authorizing the Central Florida Regional
Transportation Authority to make an appropriation from funds of
the authority not otherwise appropriated to compensate her



STORAGE NAME: h3533.CJS.DOCX
DATE: 4/3/2015

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 3533; Relief/Estate of Manuel Antonio Matute/Palm Beach County Sheriff's Office
Sponsor: Santiago
Companion Bill: SB 52 by Negron
Special Master: Parker Aziz

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: House Bill 293 by Representative Rooney and Senate Bill 52 by Senator Negron were filed during the 2012 Legislative Session. The House Bill passed its committees of reference (Civil Justice and Judiciary), passed the full House, passed the Senate as amended, and passed the House again, but died in Messages. The Senate Bill passed its committee of reference (Rules), and was laid on the table in lieu of the House Bill.

Procedural Summary: Mr. Matute's surviving child, Eddna Torres De Mayne, brought a wrongful-

SPECIAL MASTER'S SUMMARY REPORT--

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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 left, 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: I respectfully recommend House Bill 3533 be reported **FAVORABLY**



Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Santiago, House Sponsor
Senator Negron, Senate Sponsor
Tracy Sumner, Senate Special Master

27 and her sibilings, Criss Matute, Christian Manuel Torres, Lansky
 28 Torres, and Nasdry Yamileth Torres Barahona, for their anguish
 29 and mental pain and suffering due to the tragic death of their
 30 father, and

31 WHEREAS, on January 4, 2011, the Palm Beach County
 32 Sheriff's Office offered to settle the claim for the amount of
 33 \$500,000 and Ms. Torres De Mayne, as personal representative of
 34 the Estate of Manuel Antonio Matute, accepted the Sheriff's
 35 offer on or about January 9, 2011, and

36 WHEREAS, in May 2011, the Palm Beach County Sheriff's
 37 Office tendered to Ms. Torres De Mayne, as personal
 38 representative of the Estate of Manuel Antonio Matute, a payment
 39 of \$128,149.02 in accordance with the remaining statutory limits
 40 of liability set forth in s. 768.28, Florida Statutes, and

41 WHEREAS, Ms. Torres De Mayne, as personal representative of
 42 the Estate of Manuel Antonio Matute, seeks satisfaction of the
 43 balance of the settlement agreement, which is \$371,850.98, NOW,
 44 THEREFORE,

45
 46 Be It Enacted by the Legislature of the State of Florida:

47
 48 Section 1. The facts stated in the preamble to this act
 49 are found and declared to be true.

50 Section 2. The Palm Beach County Sheriff's Office is
 51 authorized and directed to appropriate from funds of the county
 52 not otherwise appropriated and to draw a warrant in the sum of

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53 \$371,850.98 to Eddna Torres De Mayne, as personal representative
54 of the Estate of Manuel Antonio Matute, as compensation for the
55 wrongful death of Mr. Matute as a result of the negligence of an
56 employee of the sheriff's office.

57 Section 3. The amount paid by the Palm Beach County
58 Sheriff's Office pursuant to s. 768.28, Florida Statutes, and
59 the amount awarded under this act are intended to provide the
60 sole compensation for all present and future claims arising out
61 of the factual situation described in this act which resulted in
62 the death of Mr. Matute. The total amount paid for attorney
63 fees, lobbying fees, costs, and other similar expenses relating
64 to this claim may not exceed 25 percent of the amount awarded
65 under this act.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Santiago offered the following:

Amendment (with title amendment)

Remove line 53 and insert:

\$371,850.98 to Eddna Torres de Mayne, as personal representative

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

Remove line 3 and insert:

Manuel Torres, Eddna Torres de Mayne, Lansky Torres,

Remove line 25 and insert:

Torres de Mayne, brought a wrongful-death action against the

Remove line 33 and insert:

\$500,000 and Ms. Torres de Mayne, as personal representative of

Remove line 37 and insert:

Office tendered to Ms. Torres de Mayne, as personal



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 3533 (2015)

Amendment No. 1

18 Remove line 41 and insert:

19 WHEREAS, Ms. Torres de Mayne, as personal representative of



STORAGE NAME: h3543.CJS.DOCX
DATE: 4/3/2015

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 3543; Relief/Roy Wright & Ashley Wright/North Brevard County Hospital District
Sponsor: Avila
Companion Bill: CS/SB 60 by Judiciary, Simpson
Special Master: Parker Aziz

Basic Information:

Claimants: Roy Wright and Ashley Wright, individually and as parents and natural guardians of Tucker Wright

Respondent: North Brevard County Hospital District d/b/a Parrish Medical Center

Amount Requested: \$395,000

Type of Claim: Local equitable claim; result of a settlement agreement.

Respondent's Position: North Brevard County Hospital District will not oppose, obstruct or delay the passage of the claims bill or direct its representatives, agents or lobbyist to oppose, obstruct delay the passage of said claims bill but do not admit liability.

Collateral Sources: None reported.

Attorney's/Lobbying Fees: The bill limits the total award of attorney's fees, lobbying fees, costs, and other similar expenses to no more than 25% of the total amount awarded by the bill.

Prior Legislative History: This is the first time House Bill 3543 by Representative Avila and Senate Bill 60 by Senator Simpson have been introduced to the Legislature.

Procedural Summary: On June 12, 2012, Roy and Ashley Wright filed a medical malpractice suit against North Brevard County Hospital District d/b/a Parrish Medical Center in the 18th Judicial Circuit Court, in and for Brevard County, Florida. Prior to trial, the case was settled in mediation on October 18, 2013.

Pursuant to the settlement, the District paid its sovereign immunity limit of \$200,000, and the parties agreed that the plaintiffs could seek an additional \$395,000 through an uncontested claim bill. Under the settlement agreement, the plaintiffs' net recovery to date (after satisfying medical liens

SPECIAL MASTER'S SUMMARY REPORT--

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and legal expenses and attorneys' fees) is approximately \$106,086.65. They have paid approximately \$65,790.15 to their attorneys in fees and costs.

As ordered by the Honorable Judge George W. Maxwell, III, the net settlement proceeds have been divided 25% to Roy and Ashley Wright as the parents of Tucker Wright for the expenses incurred in caring for Tucker Wright in his disability and 75% to the Tucker Wright Trust to which Roy and Ashley Wright are co-trustees and will manage the funds until Tucker Wright reaches the age of majority.

Facts of Case: On June 24, 2009, Ashley Wright was seen by Dr. Vidya Haté at Parrish Medical Center for obstetrical care related to her pregnancy. Again on July 8, 2009, Mrs. Wright was seen by Dr. Vidya Haté for obstetrical care related to her pregnancy. Mrs. Wright had a history of gestational diabetes that was being controlled through diet and exercise because she had adverse reactions after self-administering prescribed insulin.

As of June 24, 2009, Mrs. Wright measured five foot and three inches tall and weighed 230 pounds. Mrs. Wright's body mass index (BMI) at the time of her initial consultation with Dr. Haté was 40, which is considered a high body mass index. A patient, like Mrs. Wright, with a history of gestational diabetes and a high BMI would typically be classified as a patient with a high risk pregnancy.

On July 15, 2009, around 10:30 P.M., approximately a month before her due date, Mrs. Wright presented to Parrish Medical Center following a spontaneous rupture of her membranes. She was admitted by Dr. Perez who subsequently gave her a sonogram to determine the size of her unborn fetus. Dr. Perez determined that the estimated weight of her unborn fetus was 7 pounds and 14 ounces, plus or minus three pounds.

Dr. Vidya Haté visited Mrs. Wright the next day at 12:30 P.M. while Mrs. Wright was in the labor and delivery suite. Dr. Haté conducted a vaginal examination and ordered Midwife Cara Starkey, R.N., to advise her as soon as Mrs. Wright was either dilated or started to push. Dr. Haté then returned to her office in another building that was located approximately three minutes away, by car, to see other patients.

At 3:20 P.M., notes indicate that Mrs. Wright began pushing, but there is no note of a call being made to Dr. Haté. At 3:45 P.M., notes indicate that Mrs. Wright's cervix was fully dilated, but there is no note of a call being made to Dr. Haté. At 4:00 P.M., the end of Midwife Starkey's scheduled shift, Dr. Haté called Midwife Starkey asking her to stay past her shift since Mrs. Wright was close to delivery, and Dr. Haté had more patients to see at her office. Dr. Haté told Midwife Starkey that she would be there at 4:30 P.M. However, Dr. Haté did not arrive at 4:30 P.M.

Between 4:30 P.M. and 4:54 P.M., Midwife Starkey realized that the infant, Tucker Wright, had encountered shoulder dystocia. "[S]houlder dystocia occurs when the fetal anterior shoulder impacts against the maternal symphysis following delivery of the vertex" or "from impaction of the posterior shoulder on the sacral promontory." In layman's terms, after the infant's head has been delivered, the infant's shoulder lodges against the mother's pubic bone and requires medical assistance in order to dislodge the shoulder to facilitate birth. Before Dr. Haté arrived, but after 4:30 P.M., Midwife Starkey attempted to perform the McRoberts Maneuver to dislodge Tucker's shoulder. The only medical professionals present at the time were Midwife Starkey and nurse Donna Hayashi. Midwife Starkey attempted to rotate the infant's shoulders away from the pelvis while nurse Hayashi applied supra-pubic pressure. Mrs. Wright's sister and husband were asked to rotate her legs. It was later documented in the nurse's notes that during the delivery Midwife Starkey relieved the shoulder dystocia using the McRoberts Maneuver, applying supra-pubic pressure, and rotating the head on the perineum. In her deposition, Midwife Starkey stated that nurse Donna Hayashi wrote the nurse's notes that indicated Midwife Starkey rotated Tucker's head. However, Midwife Starkey's signature appears at the bottom of the nurse's notes. Rotating the head

SPECIAL MASTER'S SUMMARY REPORT--

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on the perineum is not a method of relieving should dystocia or part of the McRoberts Maneuver because the rotation could damage the brachial plexus nerves that control the use of the baby's arm, a condition known as Erb's Palsy.

Tucker Wright was delivered at 4:54 P.M. weighing 8 pounds and 12 ounces. Dr. Haté arrived at 5:15 P.M. after Tucker had been delivered.

As a result of Midwife Starkey's negligence (improperly performing the McRoberts Maneuver and rotating Tucker's head during delivery), Tucker suffered damaged and ruptured brachial plexus nerves and was diagnosed with Erb's Palsy after his birth. Tucker was subsequently seen by Dr. John Grossman, M.D., who opined that Tucker sustained an Erb's Palsy injury during the birthing process. Dr. Grossman further opined that the damaged the nerves in Tucker's brachial plexus caused him to have limited use of his right arm. In Tucker's initial examination, Dr. Grossman found that most of Tucker's impairments were to his shoulder and elbow. However, Tucker's bicep muscle was totally paralyzed, and he was unable to supinate his arm, holding it constantly in pronation. Dr. Grossman diagnosed the injury as severe.

Tucker has undergone two surgical procedures to release the nerves in his brachial plexus in order to restore some of the lost use in his right arm. Dr. Grossman performed one of the surgeries during which time determined that two of Tucker's nerves were completely ruptured and three were stretched and injured. During the course of that surgery, Dr. Grossman removed the ruptured and damaged nerves and replaced them with nerves from Tucker's leg. Tucker has also received botulinum toxin shots in his shoulder in order to facilitate the effectiveness of the surgeries. The procedures have met some success, but according to Dr. Grossman, Tucker will never have full use of his right arm. Additionally, Dr. Grossman opines that Tucker's right hand will permanently lack fine motor skills and that due to the impairment of his upper extremity his right arm will be shorter and smaller. Tucker Wright is unable to rotate or otherwise use his right arm as other people do and is not likely to ever rotate or use his right arm as other people do.

Tucker Wright's medical expenses as of October 16, 2014, are \$320,016.91.

Parrish Medical Center does not admit to liability despite the settlement of this matter. Additionally, Parrish Medical Center does not maintain professional liability coverage for the monies being claimed in the claim bill. However, Parrish Medical Center does have a dedicated trust fund for the payment of expenses associated with professional liability claims, including indemnity payments to plaintiffs in medical malpractice litigation. Parrish Medical Center has already set aside funds to satisfy the full amount of the bill should it be passed by the Florida Legislature. As such, the passage of the bill by the Legislature will have no impact on the operations of North Brevard County Hospital District d/b/a Parrish Medical Center.

I find that Midwife Cara Starkey as the attending midwife during Mrs. Wright's labor and Tucker Wright's delivery owed a duty to Mrs. Wright and Tucker commensurate to that required by her status as midwife. I find that the Petitioners' met their burden by showing that Midwife Starkey's actions during the course of Tucker's delivery were sufficient to prove by a preponderance of the evidence that she breached her duty of care and that breach was the proximate cause of the injuries sustained by Tucker Wright.

I find the damages to be appropriate and based on competent and substantial evidence. Because settlement agreements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense, stipulations or settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature or its committees, or on the Special Master. However, all such agreements must be evaluated. If found to be reasonable and based on equity, then the agreements can be given effect, at least at the Special Master's level of consideration. I find that the settlement agreement in this case is reasonable and equitable in light

SPECIAL MASTER'S SUMMARY REPORT--

Page 4

of the negligence surrounding Tucker Wright's birth and his resulting permanent injury and recommend that the settlement be given effect by the Legislature.

Recommendation: The bill should be amended to correctly spell Nurse Starkey's name. I respectfully recommend that House Bill 3543 be reported **FAVORABLY**.

A handwritten signature in black ink, appearing to read 'Parker Aziz', written over a horizontal line.

Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Avila, House Sponsor
Senator Simpson, Senate Sponsor
Eva Davis, Senate Special Master

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1 A bill to be entitled

2 An act for the relief of Roy Wright and Ashley Wright
3 by the North Brevard County Hospital District;
4 providing for an appropriation to compensate Roy
5 Wright and Ashley Wright, individually and as
6 guardians of Tucker Wright, for injuries and damages
7 sustained by Tucker Wright as a result of the
8 negligence of an employee of Parrish Medical Center;
9 providing a limitation on the payment of fees and
10 costs; providing that certain payments and the
11 appropriation satisfy all present and future claims
12 related to the negligent act; providing an effective
13 date.

14
15 WHEREAS, on July 15, 2009, Ashley Wright, suffering from
16 gestational diabetes, was admitted as a high-risk obstetrical
17 patient at Parrish Medical Center, operated by the North Brevard
18 County Hospital District, in Titusville, Florida, and

19 WHEREAS, mothers with gestational diabetes are classified
20 as high-risk obstetrical patients because their fetuses tend to
21 be larger than normal and large fetuses are at risk for
22 complications during the birth process, and

23 WHEREAS, Ashley Wright's care at Parrish Medical Center was
24 provided by Vidya Hate, M.D., an obstetrician, and Cara Starky,
25 R.N., a midwife, both employees of Parrish Medical Center, and

26 WHEREAS, on July 16, 2009, Ashley Wright was in labor with

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

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27 her unborn child, Tucker Wright, and Nurse Starky failed to
28 notify Dr. Hate of the impending delivery as previously
29 instructed and delivered Tucker Wright herself without the
30 presence, supervision, or assistance of Dr. Hate, and

31 WHEREAS, complications arose during the delivery, and
32 Tucker Wright developed shoulder dystocia, a condition in which
33 the shoulder of a fetus becomes wedged on the mother's pelvic
34 bone as the fetus transits the birth canal, which condition is a
35 known and recognized risk for mothers with gestational diabetes,
36 and

37 WHEREAS, Nurse Starky attempted to resolve the shoulder
38 dystocia by performing McRoberts maneuver, a procedure in which
39 the shoulders of a fetus are gently rotated by hand underneath
40 the shoulders, allowing the shoulders to pass the pelvic bone
41 and out through the birth canal, and

42 WHEREAS, Nurse Starky negligently performed McRoberts
43 maneuver by also rotating the head of the fetus on the perineum,
44 causing a brachial plexus injury to Tucker Wright which left his
45 right arm paralyzed, and

46 WHEREAS, all parties to this claim agree that rotation of
47 the head of a fetus on the perineum is an improper method of
48 performing McRoberts maneuver because rotation of the head with
49 pressure can stretch and damage the nerves in a fetus's neck
50 which control the use of muscles in the arm, and

51 WHEREAS, Tucker Wright has undergone two surgeries on his
52 right shoulder and regained some use of his right arm but

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

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53 continues to be challenged with functional deficits that may be
 54 permanent, and

55 WHEREAS, Roy Wright and Ashley Wright have incurred medical
 56 expenses on behalf of Tucker Wright in the amount of \$320,016.91
 57 due to the injury caused by the negligence of an employee of
 58 Parrish Medical Center, and may incur additional expenses for
 59 surgeries needed as Tucker Wright grows older, and

60 WHEREAS, on January 11, 2012, Roy Wright and Ashley Wright,
 61 individually and as guardians of Tucker Wright, filed suit
 62 against the North Brevard County Hospital District in the
 63 Circuit Court for Brevard County, Case No. 05-2012-CA-024060, to
 64 recover damages for the injuries sustained by Tucker Wright as a
 65 result of the negligence of an employee of Parrish Medical
 66 Center, and

67 WHEREAS, the North Brevard County Hospital District, Roy
 68 Wright, and Ashley Wright agreed to settle the lawsuit for
 69 \$595,000, and

70 WHEREAS, the North Brevard County Hospital District paid
 71 \$200,000 of the settlement pursuant to the statutory limits of
 72 liability set forth in s. 768.28, Florida Statutes, and there
 73 remains \$395,000 of the settlement unsatisfied, and

74 WHEREAS, the North Brevard County Hospital District does
 75 not oppose passage of this claim bill, NOW, THEREFORE,

76

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

78

HB 3543

2015

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

81 Section 2. The North Brevard County Hospital District is
82 authorized and directed to appropriate from funds of the
83 district not otherwise appropriated and to draw a warrant,
84 payable to Roy Wright and Ashley Wright, individually and as
85 guardians for Tucker Wright, for the total amount of \$395,000 as
86 compensation for injuries and damages sustained by Tucker Wright
87 as a result of the negligence of an employee of Parrish Medical
88 Center.

89 Section 3. The total amount paid for attorney fees,
90 lobbying fees, costs, and other similar expenses relating to
91 this claim may not exceed 25 percent of the amount awarded under
92 this act.

93 Section 4. The amount paid by the North Brevard County
94 Hospital District pursuant to s. 768.28, Florida Statutes, and
95 the amount awarded under this act are intended to provide the
96 sole compensation for all present and future claims arising out
97 of the factual situation described in this act which resulted in
98 the injuries to Tucker Wright.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Avila offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

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

8 Section 2. The North Brevard County Hospital District is
9 authorized and directed to appropriate from funds of the
10 district not otherwise appropriated and to draw a warrant,
11 payable to Roy Wright and Ashley Wright, individually and as
12 guardians for Tucker Wright, for the total amount of \$395,000 as
13 compensation for injuries and damages sustained by Tucker Wright
14 as a result of the negligence of Parrish Medical Center.

15 Section 3. The total amount paid for attorney fees,
16 lobbying fees, costs, and other similar expenses relating to



Amendment No. 1

17 this claim may not exceed 25 percent of the amount awarded under
18 this act.

19 Section 4. The amount paid by the North Brevard County
20 Hospital District pursuant to s. 768.28, Florida Statutes, and
21 the amount awarded under this act are intended to provide the
22 sole compensation for all present and future claims arising out
23 of the factual situation described in this act which resulted in
24 the injuries to Tucker Wright.

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

26 -----
27

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

29 Remove everything before the enacting clause and insert:
30 An act for the relief of Roy Wright and Ashley Wright by the
31 North Brevard County Hospital District; providing for an
32 appropriation to compensate Roy Wright and Ashley Wright,
33 individually and as guardians of Tucker Wright, for injuries and
34 damages sustained by Tucker Wright as a result of the negligence
35 of Parrish Medical Center; providing a limitation on the payment
36 of fees and costs; providing that certain payments and the
37 appropriation satisfy all present and future claims related to
38 the negligent act; providing an effective date.

39
40 WHEREAS, on July 15, 2009, Ashley Wright, suffering from
41 gestational diabetes, was admitted as a high-risk obstetrical



Amendment No. 1

42 patient at Parrish Medical Center, operated by the North Brevard
43 County Hospital District, in Titusville, Florida, and

44 WHEREAS, mothers with gestational diabetes are classified
45 as high-risk obstetrical patients because their fetuses tend to
46 be larger than normal and large fetuses are at risk for
47 complications during the birth process, and

48 WHEREAS, Ashley Wright's care at Parrish Medical Center was
49 provided by Vidya Hate, M.D., an obstetrician, and Cara Starkey,
50 R.N., a midwife, both employees of Parrish Medical Center, and

51 WHEREAS, on July 16, 2009, Ashley Wright was in labor with
52 her unborn child, Tucker Wright, and Nurse Starkey failed to
53 notify Dr. Hate of the impending delivery as previously
54 instructed and delivered Tucker Wright herself without the
55 presence, supervision, or assistance of Dr. Hate, and

56 WHEREAS, complications arose during the delivery, and
57 Tucker Wright developed shoulder dystocia, a condition in which
58 the shoulder of a fetus becomes wedged on the mother's pelvic
59 bone as the fetus transits the birth canal, which condition is a
60 known and recognized risk for mothers with gestational diabetes,
61 and

62 WHEREAS, Nurse Starkey attempted to resolve the shoulder
63 dystocia by performing a McRoberts maneuver and a procedure in
64 which the shoulders of a fetus are gently rotated by hand
65 underneath the shoulders, allowing the shoulders to pass
66 underneath the pelvic bone and out through the birth canal, and



Amendment No. 1

67 WHEREAS, Nurse Starkey negligently rotated the head of the
68 fetus on the perineum, causing a brachial plexus injury to
69 Tucker Wright which injured his right arm and will limit his
70 activities and future career options, and

71 WHEREAS, all parties to this claim agree that rotation of
72 the head of a fetus on the perineum is an improper maneuver
73 because rotation of the head with pressure can stretch and
74 damage the nerves in a fetus's neck which control the use of
75 muscles in the arm, and

76 WHEREAS, Tucker Wright has undergone two surgeries on his
77 right shoulder and regained some use of his right arm but
78 continues to be challenged with functional deficits that may be
79 permanent, and

80 WHEREAS, Roy Wright and Ashley Wright have incurred medical
81 expenses on behalf of Tucker Wright in the amount of \$320,016.91
82 due to the injury caused by the negligence of Parrish Medical
83 Center, and may incur additional expenses for surgeries needed
84 as Tucker Wright grows older, and

85 WHEREAS, on January 11, 2012, Roy Wright and Ashley Wright,
86 individually and as guardians of Tucker Wright, filed suit
87 against the North Brevard County Hospital District in the
88 Circuit Court for Brevard County, Case No. 05-2012-CA-024060, to
89 recover damages for the injuries sustained by Tucker Wright as a
90 result of the negligence of Parrish Medical Center, and

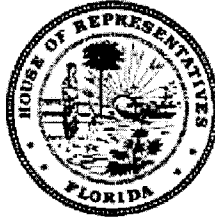


Amendment No. 1

91 WHEREAS, the North Brevard County Hospital District, Roy
92 Wright, and Ashley Wright agreed to settle the lawsuit for
93 \$595,000, and

94 WHEREAS, the North Brevard County Hospital District paid
95 \$200,000 of the settlement pursuant to the statutory limits of
96 liability set forth in s. 768.28, Florida Statutes, and there
97 remains \$395,000 of the settlement unsatisfied, and

98 WHEREAS, the North Brevard County Hospital District does
99 not oppose passage of this claim bill, NOW, THEREFORE,



STORAGE NAME: h3547.CJS.DOCX
DATE: 4/3/2015

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 3547; Relief/Javier Soria/Palm Beach County
Sponsor: Raulerson
Companion Bill: CS/SB 42 by Judiciary, Braynon
Special Master: Parker Aziz

Basic Information:

Claimants: Javier Soria

Respondent: Palm Beach County

Amount Requested: \$100,000.00

Type of Claim: Local equitable claim; Result of a settlement agreement.

Respondent's Position: Palm Beach County will not oppose, obstruct or delay the passage of the claims bill or direct its representatives, agents or lobbyist to oppose, obstruct or delay the passage of said claims bill in the amount of \$100,000.00.

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.

Notwithstanding the attorney's affidavit, the bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.

Prior Legislative History: House Bill 3515 by Representative Raulerson and Senate Bill 50 by Senator Braynon were filed during the 2014 Legislative Session. Neither bill was ever heard in any committee.

House Bill 1363 by Representative Raulerson and Senate Bill 40 by Senator Braynon were filed during the 2013

Legislative Session. Neither bill was ever heard in any committee.

Procedural Summary: On March 23, 2009, Javier Soria filed a medical malpractice suit against Palm Beach County, Case No. 502008 CA 015296 MC AO, in the 15th Judicial Circuit, in and for Palm Beach County, Florida. This claim included a loss of consortium claim filed on behalf of Mr. Soria's children. Prior to trial, the case was settled in mediation in the amount of \$300,000.00. Pursuant to the settlement, the County paid the sovereign immunity limit of \$200,000.00, and the parties agreed that the plaintiff could seek an additional \$100,000.00 through an uncontested claim bill. Mr. Soria's children's claim for loss of consortium has been paid and satisfied with funds from the initial payment of \$200,000.00. The County has a self-insured retention of \$500,000.00 for this claim. As such, the \$100,000.00 requested would be paid with County funds.

Facts of Case: On April 17, 2007, 36 year old Javier Soria was travelling on his motorcycle in the center lane on SR 807 in Delray Beach. At the same time, Juan Sepeda Casas was driving a Palm Beach County dump truck. While exiting the Palm Beach County maintenance complex, Mr. Casas failed to stop at a stop sign, pulling out into the path of Mr. Soria causing a collision between the two vehicles. The dump truck continued forward dragging Mr. Soria for approximately twelve feet. The Delray Beach Police Department charged Mr. Casas in the accident.

Mr. Casas was employed by Palm Beach County and was driving a County truck at the time of the accident. Mr. Casas was clearly within the scope of his employment at the time of the accident. Under the doctrine of respondeat superior, the County is vicariously liable for Mr. Casas' negligence in failing to stop at the stop sign and pulling into the path of Mr. Soria.

As a result of the collision, Mr. Soria sustained severe head trauma, including a subarachnoid hemorrhage, a right-elbow fracture, deep lacerations requiring wound debridement, multiple abrasions to his face, hands, legs, arms, upper-back pain, low-back disc herniation, left-hip pain, right-wrist pain, right-shoulder pain, and a right-knee linear tear that required bracing, physical therapy, and surgery.

Mr. Soria has undergone numerous surgical procedures, including irrigation debridement with placement of a temporary external fixator across the elbow joint, subsequent removal of the external fixator, and open reduction internal fixation on the ulnar fractures. Mr. Soria will likely require additional surgery to his right elbow, including elbow fusion or total elbow replacement, surgeries to his right wrist and shoulder, arthroscopic surgery to his right knee, and is a candidate for total knee replacement in the future. Mr. Soria suffers from multiple neurological injuries that cause chronic headaches, low-back pain, vision problems, sleep disturbance, depression, memory loss, anxiety, dizziness, tiredness, buzzing in the ears, numbness, tingling, and knee pain, all of which limit his daily activities.

According to American Medical Association guidelines, Mr. Soria's treating neurologist, Dr. Waden Emery, has assigned him a 34 percent impairment rating with 5 percent for headaches, 14 percent for lumbar radiculopathy, 5 percent for insomnia, and 10 percent for anxiety. Mr. Soria's treating orthopedist, Dr. Fernando Moya, has assigned him a 53 percent orthopedic disability impairment rating, which includes 36 percent for injuries to the right elbow, 6 percent for injuries to the right knee, 6 percent for injuries to the lumbar spine, and 5 percent for injuries to the right wrist. The neuropsychological assessment of Dr. Robert Brick concluded that Mr. Soria suffers from post-traumatic stress disorder, memory loss, poor management and organization skills, mood swings, daily headaches, constant ringing in his ears, insomnia, panic attacks, and amnesia that require cognitive therapy. Mr. Soria continues to suffer from pain and instability in his head, neck, back, body, and limbs and, in addition, continues to suffer from severe depression brought about by his pain, suffering, disability, and limitations. Mr. Soria's injuries have resulted in permanent cognitive

SPECIAL MASTER'S SUMMARY REPORT--

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impairment.

Mr. Soria's medical expenses total approximately \$200,254.00. Experts in life care planning and economics have determined that his future medical expenses are approximately \$640,000.00, and past and future lost earnings total approximately \$478,000.00. Mr. Soria's total economic damages exceed \$1,300,000.00. This figure does not include damages for pain and suffering. Mr. Soria's damages clearly exceed the settlement amount.

It should be noted that at the time of the accident Mr. Soria was in the country illegally on an expired work visa. Mr. Soria has subsequently moved back to Argentina, where he presently resides.

Recommendation: The bill needs to be amended to increase the amount to \$101,800 to reflect the full amount of the settlement agreement. I respectfully recommend that House Bill 3547 be reported **FAVORABLY**



Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Raulerson, House Sponsor
Senator Braynon, Senate Sponsor
Sandra Stovall, Senate Special Master

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27 severe head trauma, including a subarachnoid hemorrhage, a
 28 right-elbow fracture, deep lacerations requiring wound
 29 debridement, multiple abrasions to his face, hands, legs, and
 30 arms, upper-back pain, low-back disc herniation, left-hip pain,
 31 right-wrist pain, right-shoulder pain, and a right-knee linear
 32 tear that required bracing, physical therapy, and surgery, and

33 WHEREAS, Mr. Soria has undergone numerous surgical
 34 procedures, including irrigation debridement with placement of a
 35 temporary external fixator across the elbow joint, subsequent
 36 removal of the external fixator, and open reduction internal
 37 fixation on ulnar fractures, and

38 WHEREAS, Mr. Soria needs additional surgery to his right
 39 elbow, including elbow fusion or total elbow replacement;
 40 surgeries to his right wrist and shoulder; and arthroscopic
 41 surgery to his right knee; and is a candidate for total knee
 42 replacement in the future, and

43 WHEREAS, Mr. Soria suffers from multiple neurological
 44 injuries that cause chronic headaches, low-back pain, vision
 45 problems, sleep disturbance, depression, memory loss, anxiety,
 46 dizziness, tiredness, buzzing in the ears, numbness, tingling,
 47 and knee pain, which limit his routine daily activities, and

48 WHEREAS, according to American Medical Association
 49 guidelines, Mr. Soria's treating neurologist, Dr. Waden Emery,
 50 has assigned him a 34 percent impairment rating with 5 percent
 51 for headaches, 14 percent for lumbar radiculopathy, 5 percent
 52 for insomnia, and 10 percent for anxiety, and

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53 WHEREAS, Mr. Soria's treating orthopedist, Dr. Fernando
54 Moya, has assigned him a 53 percent orthopedic disability
55 impairment rating, which includes 36 percent for injuries to the
56 right elbow, 6 percent for injuries to the right knee, 6 percent
57 for injuries to the lumbar spine, and 5 percent for injuries to
58 the right wrist, and

59 WHEREAS, Mr. Soria's medical expenses have totaled
60 approximately \$200,254, and experts in life care planning and
61 economics have determined that his future medical expenses are
62 approximately \$640,000, and past and future lost earnings total
63 approximately \$478,000, with total economic damages exceeding
64 \$1.3 million, and

65 WHEREAS, Mr. Soria's injuries resulted in permanent
66 cognitive impairment, with the neuropsychological assessment of
67 Dr. Robert Brick concluding that Mr. Soria suffers from post-
68 traumatic stress disorder, memory loss, poor management and
69 organizational skills, mood swings, daily headaches, constant
70 ringing in his ears, insomnia, panic attacks, and amnesia that
71 require cognitive therapy, and

72 WHEREAS, Mr. Soria continues to suffer from pain and
73 instability in his head, neck, back, body, and limbs and, in
74 addition, continues to suffer from severe depression brought
75 about by his pain, suffering, disability, and limitations, all
76 of which are a direct result of the accident, and

77 WHEREAS, before the accident, Mr. Soria was in excellent
78 physical condition and had dreams of one day opening his own

HB 3547

2015

79 martial arts studio and becoming a certified martial arts
 80 instructor, and

81 WHEREAS, Mr. Soria's three children have a corresponding
 82 right of action and claim given that Mr. Soria is now
 83 permanently disabled with physical limitations and injuries and
 84 cognitive restrictions and depression that limit his ability to
 85 provide the companionship and support that he was once capable
 86 of providing his family, and

87 WHEREAS, a settlement was reached between Mr. Soria and
 88 Palm Beach County in the amount of \$300,000, and

89 WHEREAS, Palm Beach County has agreed to and pledged its
 90 support for a claim bill in the amount of \$100,000, NOW,
 91 THEREFORE,

92
 93 Be It Enacted by the Legislature of the State of Florida:

94
 95 Section 1. The facts stated in the preamble to this act
 96 are found and declared to be true.

97 Section 2. Palm Beach County is authorized and directed to
 98 appropriate from funds of the county not otherwise appropriated
 99 and to draw a warrant in the sum of \$100,000, payable to Javier
 100 Soria as compensation for injuries and damages sustained.

101 Section 3. The amount paid by Palm Beach County pursuant
 102 to s. 768.28, Florida Statutes, and the amount awarded under
 103 this act are intended to provide the sole compensation for all
 104 present and future claims against Palm Beach County arising out

HB 3547

2015

105 | of the factual situation described in this act which resulted in
106 | the injuries to Javier Soria. The total amount paid for attorney
107 | fees, lobbying fees, costs, and other similar expenses relating
108 | to this claim may not exceed 25 percent of the total amount
109 | awarded under this act.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Raulerson offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

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

8 Section 2. Palm Beach County is authorized and directed to
9 appropriate from funds of the county not otherwise appropriated
10 and to draw a warrant in the sum of \$101,800, payable to Javier
11 Soria as compensation for injuries and damages sustained.

12 Section 3. The amount paid by Palm Beach County pursuant
13 to s. 768.28, Florida Statutes, and the amount awarded under
14 this act are intended to provide the sole compensation for all
15 present and future claims against Palm Beach County arising out
16 of the factual situation described in this act which resulted in
17 the injuries to Javier Soria. The total amount paid for attorney



Amendment No. 1

18 fees, lobbying fees, costs, and other similar expenses relating
19 to this claim may not exceed 25 percent of the total amount
20 awarded under this act.

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

22
23 -----

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

25 Remove everything before the enacting clause and insert:
26 An act for the relief of Javier Soria by Palm Beach County;
27 providing for an appropriation to compensate him for injuries
28 sustained as a result of negligence by an employee of Palm Beach
29 County; providing a limitation on the payment of fees and costs;
30 providing an effective date.

31
32 WHEREAS, on April 17, 2007, 36-year-old Javier Soria was
33 lawfully traveling on his motorcycle northbound in the center
34 lane on SR 807 in Delray Beach in the 200 block of South
35 Congress Avenue, and

36 WHEREAS, at the same time, an employee of Palm Beach
37 County, Juan Sepeda Casas, was driving a Palm Beach County dump
38 truck with a utility trailer in tow, and

39 WHEREAS, as Mr. Casas exited the Palm Beach County
40 maintenance complex, he failed to stop at a stop sign, pulling
41 out into the path of Mr. Soria and causing a violent collision
42 between the two vehicles, and



Amendment No. 1

43 WHEREAS, the Palm Beach County truck continued forward,
44 dragging Mr. Soria and the motorcycle under the dump truck for
45 approximately 12 feet, and

46 WHEREAS, Mr. Casas was charged in the accident by the
47 investigating law enforcement agency, the Delray Beach Police
48 Department, and

49 WHEREAS, as a result of the collision, Mr. Soria sustained
50 severe head trauma, including a subarachnoid hemorrhage, a
51 right-elbow fracture, deep lacerations requiring wound
52 debridement, multiple abrasions to his face, hands, legs, and
53 arms, upper-back pain, low-back disc herniation, left-hip pain,
54 right-wrist pain, right-shoulder pain, and a right-knee linear
55 tear that required bracing, physical therapy, and surgery, and

56 WHEREAS, Mr. Soria has undergone numerous surgical
57 procedures, including irrigation debridement with placement of a
58 temporary external fixator across the elbow joint, subsequent
59 removal of the external fixator, and open reduction internal
60 fixation on ulnar fractures, and

61 WHEREAS, Mr. Soria needs additional surgery to his right
62 elbow, including elbow fusion or total elbow replacement;
63 surgeries to his right wrist and shoulder; and arthroscopic
64 surgery to his right knee; and is a candidate for total knee
65 replacement in the future, and

66 WHEREAS, Mr. Soria suffers from multiple neurological
67 injuries that cause chronic headaches, low-back pain, vision
68 problems, sleep disturbance, depression, memory loss, anxiety,



Amendment No. 1

69 dizziness, tiredness, buzzing in the ears, numbness, tingling,
70 and knee pain, which limit his routine daily activities, and

71 WHEREAS, according to American Medical Association
72 guidelines, Mr. Soria's treating neurologist, Dr. Waden Emery,
73 has assigned him a 31 percent impairment rating with 5 percent
74 for headaches, 14 percent for lumbar radiculopathy, 5 percent
75 for insomnia, and 10 percent for anxiety, and

76 WHEREAS, Mr. Soria's treating orthopedist, Dr. Fernando
77 Moya, has assigned him a 39 percent whole person orthopedic
78 disability impairment rating, which includes 36 percent for
79 injuries to the right elbow, 6 percent for injuries to the right
80 knee, 6 percent for injuries to the lumbar spine, and 5 percent
81 for injuries to the right wrist, and

82 WHEREAS, Mr. Soria's medical expenses have totaled
83 approximately \$200,254, and experts in life care planning and
84 economics have determined that his future medical expenses are
85 approximately \$640,000, and past and future lost earnings total
86 approximately \$478,000, with total economic damages exceeding
87 \$1.3 million, and

88 WHEREAS, Mr. Soria's injuries resulted in permanent
89 cognitive impairment, with the neuropsychological assessment of
90 Dr. Robert Brick concluding that Mr. Soria suffers from post-
91 traumatic stress disorder, memory loss, poor management and
92 organizational skills, mood swings, daily headaches, constant
93 ringing in his ears, insomnia, panic attacks, and amnesia that
94 require cognitive therapy, and

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Published On: 4/6/2015 7:03:35 PM



Amendment No. 1

95 WHEREAS, Mr. Soria continues to suffer from pain and
96 instability in his head, neck, back, body, and limbs and, in
97 addition, continues to suffer from severe depression brought
98 about by his pain, suffering, disability, and limitations, all
99 of which are a direct result of the accident, and

100 WHEREAS, before the accident, Mr. Soria was in excellent
101 physical condition and had dreams of one day opening his own
102 martial arts studio and becoming a certified martial arts
103 instructor, and

104 WHEREAS, Mr. Soria's three children have a corresponding
105 right of action and claim given that Mr. Soria is now
106 permanently disabled with physical limitations and injuries and
107 cognitive restrictions and depression that limit his ability to
108 provide the companionship and support that he was once capable
109 of providing his family, and

110 WHEREAS, a settlement was reached between Mr. Soria, his
111 three children, and Palm Beach County in the amount of \$300,000,
112 which is in addition to an \$1,800 property damage claim
113 previously paid by Palm Beach County related to the accident,
114 and

115 WHEREAS, Palm Beach County paid the claimants a total of
116 \$200,000 under the statutory limits of liability per occurrence
117 set forth in s. 768.28, Florida Statutes, which fully satisfied
118 the loss of consortium claims of each of the three children, and

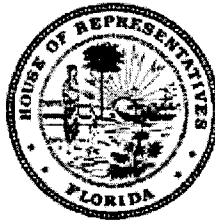


COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 3547 (2015)

Amendment No. 1

119 WHEREAS, Palm Beach County has agreed to and pledged its
120 support for a claim bill in the amount of \$101,800, NOW,
121 THEREFORE,
122



STORAGE NAME: h3549.CJS.DOCX

DATE: 4/3/2015

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 3549; Relief/Monica Cantillo Acosta & Luis Alberto Cantillo Acosta/Miami-Dade County
Sponsor: Santiago
Companion Bill: SB 64 by Legg
Special Master: Parker Aziz

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.

Notwithstanding the attorney's affidavit, the bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.

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.

House Bill 1485 by Representative Steube and Senate Bill 50 by Bogdanoff were filed during the 2012 Legislative Session. The House Bill passed its committees of reference (Civil Justice and Judiciary), passed the full House, passed the Senate as amended, and passed the House again, but died in Messages. The Senate Bill passed its only committee of reference (Rules), and was laid on the table in lieu of the House Bill.

SPECIAL MASTER'S SUMMARY REPORT--

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House Bill 1413 by Representative Santiago and Senate Bill 188 by Senator Legg were filed during the 2013 Legislative Session. The House Bill passed its committees of reference (Select Committee on Claim Bills and Judiciary) but died on the House Calendar. The Senate Bill was never considered in its committees of reference.

House Bill 3519 by Representative Santiago and Senate Bill 52 by Senator Legg were filed during the 2014 Legislative Session. The House Bill passed its committees of reference (Civil Justice and Judiciary) and passed the full House but died in Senate Judiciary. The Senate Bill was never considered in its committees of reference.

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 2:28 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 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: I respectfully recommend House Bill 3549 be reported **FAVORABLY**.



Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Santiago, House Sponsor
Senator Legg, Senate Sponsor
Sandra Stovall, Senate Special Master

HB 3549

2015

27 cerebral edema, and basilar herniations, and

28 WHEREAS, Ms. Acosta was rushed to the trauma resuscitation
 29 bay at Jackson Memorial Hospital in a comatose state, was placed
 30 on a ventilator, underwent various procedures to no avail, and
 31 was pronounced dead at 2:05 p.m. the next day, and

32 WHEREAS, Ms. Acosta was a 54-year-old single mother of two
 33 children, Monica and Luis, who had been raised exclusively by
 34 their mother, and because of her death, her children were left
 35 orphaned, and

36 WHEREAS, Monica and Luis loved their mother, their only
 37 parent, dearly and have lost her support, love, and guidance and
 38 have suffered intense mental pain due to her untimely death, as
 39 a result of the negligence of the Miami-Dade bus driver, and

40 WHEREAS, on November 5, 2007, a Miami-Dade County jury
 41 rendered a verdict and found the Miami-Dade County bus driver
 42 100 percent negligent and responsible for the wrongful death of
 43 Ms. Acosta, and determined the damages of Monica and Luis to be
 44 \$3 million each, and

45 WHEREAS, the parties have subsequently settled this matter
 46 for \$1.14 million, and Miami-Dade County has paid the claimants
 47 \$200,000 under the statutory limits of liability set forth in s.
 48 768.28, Florida Statutes, NOW, THEREFORE,

49
 50 Be It Enacted by the Legislature of the State of Florida:

51
 52 Section 1. The facts stated in the preamble to this act

53 are found and declared to be true.

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

60 Section 3. The amount paid by Miami-Dade County pursuant
 61 to s. 768.28, Florida Statutes, and the amounts awarded under
 62 this act are intended to provide the sole compensation for all
 63 present and future claims arising out of the factual situation
 64 described in this act which resulted in the death of Ms. Acosta.
 65 The total amount paid for attorney fees, lobbying fees, costs,
 66 and other similar expenses relating to this claim may not exceed
 67 25 percent of the total amount awarded under this act.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

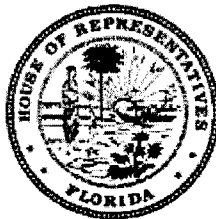
1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Santiago offered the following:

Amendment (with title amendment)

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

Remove line 12 and insert:

WHEREAS, on November 12, 2004, at approximately 2:28 p.m.,



STORAGE NAME: h3555.CJS.DOCX

DATE: 4/3/2015

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 3555; Relief/Michael Rardin/North Broward Hospital District

Sponsor: Artiles

Companion Bill: CS/SB 80 by Judiciary, Flores

Special Master: Parker Aziz

Basic Information:

Claimants: Michael Rardin

Respondent: North Broward Hospital District

Amount Requested: \$2,000,000.00

Type of Claim: Local equitable claim; Result of a settlement agreement

Respondent's Position: North Broward County Hospital District will not oppose, obstruct or delay the passage of the claims bill or direct its representatives, agents or lobbyist to oppose, obstruct or delay the passage of said claims bill for \$2,000,000.00.

Collateral Sources: Unknown settlement amount between Michael Rardin and Dr. Susan Nesselroth. Claimant also received \$200,000 from North Broward County Hospital District.

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.

Notwithstanding the attorney's affidavit, the bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.

Prior Legislative History: This is the first time House Bill 3555 by Representative Artiles and Senate Bill 80 by Senator Flores have been introduced to the Legislature.

Procedural Summary: On December 7, 2012, Michael Rardin ("Claimant") filed a medical

SPECIAL MASTER'S SUMMARY REPORT--

Page 2

malpractice suit against Susan Nesselroth M.D., Phoenix Emergency Medicine of Broward, LLC., and North Broward County Hospital District ("District"), in the 17th Judicial Circuit, in and for Broward County, Florida. Prior to trial, the case was settled between Claimant and the District in mediation in the amount of \$2,200,000. Pursuant to the settlement, the District paid the sovereign immunity limit of \$200,000, and the parties agreed that Claimant could seek an additional \$2,000,000 through an uncontested claim bill. Additionally, Claimant has reached a confidential settlement agreement and release with Dr. Nesselroth and Phoenix Emergency Medicine of Broward, LLC.

Facts of Case: On July 14, 2011, Michael Rardin, a 42 year old contractor, arrived at the emergency room at the North Broward Medical Center, complaining of chest pain, shortness of breath and the need to sleep during the day. Claimant's vital signs at the time of arrival were alarming with a heart rate at 106, blood pressure 108 over 93 and an oxygen saturation of 53 percent on room air. Based upon these concerning vital signs, Claimant was triaged as a priority one, critical patient.

Claimant was evaluated by Dr. Susan Nesselroth, who noted that his chief complaint was persistent shortness of breath with an associated cough. Dr. Nesselroth ordered an oxygen saturation monitor, which reported a critical oxygen saturation level of 53 percent, and a nonrebreather mask with supplemental oxygen. Claimant was to be monitored in the emergency department. A blood gas test was performed which indicated acidosis and a high level of carbon dioxide in his blood. Claimant was not placed on a centrally monitored respiratory or cardiac monitor. A chest x-ray was performed which indicated a left lower lobe infiltrate, and Dr. Nesselroth's diagnostic impression was left lower lobe pneumonia and hypoxia.

Claimant's condition progressively deteriorated for the next two hours. Dr. Nesselroth was called to Claimant's bedside and a nurse noted increased respiratory distress and difficulty arousing Claimant. Dr. Nesselroth evaluated Claimant as unresponsive, diaphoretic, and as having agonal respirations. The first of two intubation attempts resulted in an esophageal intubation, where oxygen is delivered to the stomach rather than the lungs. Claimant remained intubated incorrectly for nearly five minutes. Claimant became asystolic and a code was called, which led to the administration of cardiopulmonary resuscitation and advance life support efforts. Claimant was left in a condition of no heart rate, no blood pressure and minimal oxygen being delivered to his brain.

By the time hospital personnel were able to successfully intubate Claimant, he had suffered a serious and permanent hypoxic brain injury due to the length of time, roughly ten minutes, during which his brain did not receive sufficient oxygen.

Claimant's alarming vital signs should have elicited a higher level of vigilance by the hospital staff. Claimant was not closely monitored, improperly placed on a rebreather mask rather than intubated initially, and intubated incorrectly. Numerous members of the hospital staff, all of which were employees of the District acting within the scope of their employment, breached the standard of care owed to Claimant. As a result of Dr. Nesselroth and the Hospital's staff's breach of their duty of care, Claimant sustained significant and permanent injury.

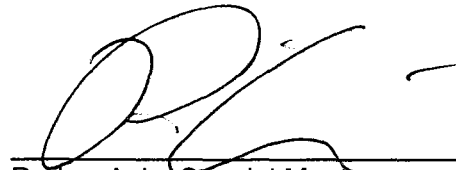
Claimant now suffers from a permanent brain injury and symptoms such as visual disturbances, short-term memory loss, difficulty performing everyday tasks, and severe depression. These conditions prevent Claimant from being able to return to work. Mr. Rardin is unable to support his family or provide the company and affection that he otherwise would have provided to his wife, Patricia Rardin, and their two minor children, Emily and Kayla Rardin. Claimant has been declared disabled by the Social Security Administration and is currently receiving disability benefits. Claimant's life care plan indicates past and future life care costs of \$2,036,613 and past and future lost earnings of \$2,448,642. Mr. Rardin will require care and assistance for the remainder of his life.

SPECIAL MASTER'S SUMMARY REPORT--

Page 3

Given these estimates, the \$2 million awarded through the claim bill appears to be an appropriate settlement.

Recommendation: The bill should be amended to correctly reflect that Patricia Rardin, Michael's wife, is also a claimant. I respectfully recommend that House Bill 3555 be reported **FAVORABLY**.



Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Artiles, House Sponsor
Senator Flores, Senate Sponsor
Michael Billmeier, Senate Special Master

1 A bill to be entitled
 2 An act for the relief of Michael Rardin by the North
 3 Broward Hospital District; providing for an
 4 appropriation to compensate Michael Rardin, Patricia
 5 Rardin, his wife, and Emily and Kayla Rardin, their
 6 two minor children, for injuries sustained as a result
 7 of the negligence of the North Broward Hospital
 8 District; providing a limitation on the payment of
 9 fees and costs; providing an effective date.

10
 11 WHEREAS, on July 14, 2011, Michael Rardin, a 42-year-old
 12 construction company employee earning a six-figure salary,
 13 visited the emergency room at the North Broward Medical Center,
 14 which is owned and operated by the North Broward Hospital
 15 District, complaining of chest pain, shortness of breath for the
 16 prior two weeks, and the need to sleep during the day, and

17 WHEREAS, based on Mr. Rardin's alarming vital signs, he was
 18 triaged as a priority 1/critical patient, and

19 WHEREAS, Mr. Rardin was evaluated by Susan Nesselroth,
 20 M.D., at 2:04 p.m., who noted that his chief complaint was
 21 persistent shortness of breath with an associated cough, and

22 WHEREAS, Dr. Nesselroth ordered an oxygen saturation
 23 monitor, which reported a critical oxygen saturation level of 53
 24 percent, and a nonrebreather mask with supplemental oxygen, and

25 WHEREAS, Mr. Rardin was to be monitored in the emergency
 26 department, and

27 WHEREAS, in violation of the standard of care, Mr. Rardin,
 28 a priority 1/critical patient, was not placed on a centrally
 29 monitored respiratory or cardiac monitor, and

30 WHEREAS, a chest x-ray was performed which indicated a left
 31 lower lobe infiltrate, and Dr. Nesselroth's diagnostic
 32 impression was left lower lobe pneumonia and hypoxia, and

33 WHEREAS, Mr. Rardin proceeded to progressively deteriorate
 34 for about the following 2 hours, and

35 WHEREAS, at 3:57 p.m., Dr. Nesselroth was called to Mr.
 36 Rardin's bedside and a nurse noted increased respiratory
 37 distress and difficulty arousing Mr. Rardin, and

38 WHEREAS, at Mr. Rardin's bedside, Dr. Nesselroth evaluated
 39 him as unresponsive, diaphoretic, and as having agonal
 40 respirations, and

41 WHEREAS, in violation of the standard of care, Mr. Rardin
 42 was not intubated until about 2 hours after Dr. Nesselroth's
 43 initial evaluation that indicated critical oxygen values, and

44 WHEREAS, at 4:05 p.m., the first of two intubation attempts
 45 resulted in an esophageal intubation, where oxygen was being
 46 delivered to Mr. Rardin's stomach rather than his lungs, and

47 WHEREAS, as a result of the faulty intubation, Mr. Rardin
 48 became asystolic and a code was called, which led to the
 49 administration of cardiopulmonary resuscitation (CPR) and
 50 Advance Life Support (ALS) efforts, and

51 WHEREAS, by the time hospital personnel were able to
 52 successfully intubate Mr. Rardin he had suffered a serious and

HB 3555

2015

53 permanent hypoxic brain injury due to the length of time,
54 approximately 10 minutes, during which his brain did not receive
55 sufficient oxygen, and

56 WHEREAS, as a result of the hospital personnel's negligent
57 failure to monitor and timely intubate Mr. Rardin, he now
58 suffers from a permanent brain injury and symptoms such as
59 visual disturbances, short-term memory loss, and severe
60 depression, and

61 WHEREAS, as a result of the hospital personnel's negligent
62 failure to monitor and timely intubate Mr. Rardin, he can no
63 longer support his family or provide the company and affection
64 that he otherwise would have provided to his wife, Patricia
65 Rardin, and their two minor children, Emily and Kayla Rardin,
66 and

67 WHEREAS, a tort claim was filed on behalf of Mr. Rardin,
68 Case No. 12-034723(13), in the 17th Judicial Circuit, and

69 WHEREAS, the North Broward Hospital District and Mr. Rardin
70 have agreed to settle the claim for \$2.2 million, and

71 WHEREAS, \$200,000 has been paid pursuant to the statutory
72 limits of liability imposed under s. 768.28, Florida Statutes,
73 and

74 WHEREAS, the North Broward Hospital District has agreed to
75 fully cooperate and promote the passage of this claim bill in
76 the amount of \$2 million, the remainder of the settlement
77 amount, NOW, THEREFORE,

78

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

80

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

83 Section 2. The North Broward Hospital District is
 84 authorized and directed to appropriate from funds of the
 85 district not otherwise appropriated, including insurance, and to
 86 draw a warrant in the sum of \$2 million payable to Michael
 87 Rardin, as compensation for the catastrophic injuries and
 88 damages he sustained.

89 Section 3. The amount paid by the North Broward Hospital
 90 District pursuant to s. 768.28, Florida Statutes, and the amount
 91 awarded under this act are intended to provide the sole
 92 compensation for all present and future claims arising out of
 93 the factual situation described in this act which resulted in
 94 the catastrophic injuries to Mr. Rardin. The total amount paid
 95 for attorney fees, lobbying fees, costs, and other similar
 96 expenses relating to this claim may not exceed 25 percent of the
 97 amount awarded under this act.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Artiles offered the following:

Amendment (with title amendment)

5 Remove lines 87-88 and insert:

6 Rardin and Patricia Rardin, as compensation for the catastrophic
 7 injuries and damages they sustained.

10 -----
 11 **T I T L E A M E N D M E N T**

12 Remove lines 2-69 and insert:

13 An act for the relief of Michael and Patricia Rardin by the
 14 North Broward Hospital District; providing for an appropriation
 15 to compensate Michael and Patricia Rardin for injuries sustained
 16 as a result of the negligence of the North Broward Hospital



Amendment No. 1

17 District; providing a limitation on the payment of fees and
18 costs; providing an effective date.

19
20 WHEREAS, on July 14, 2011, Michael Rardin, a 42-year-old
21 construction company employee earning a six-figure salary,
22 visited the emergency room at the North Broward Medical Center,
23 which is owned and operated by the North Broward Hospital
24 District, complaining of chest pain, shortness of breath for the
25 prior 2 weeks, and the need to sleep during the day, and

26 WHEREAS, based on Mr. Rardin's alarming vital signs, he was
27 triaged as a priority 1/critical patient, and

28 WHEREAS, Mr. Rardin was evaluated by Susan Nesselroth,
29 M.D., at 2:04 p.m., who noted that his chief complaint was
30 persistent shortness of breath with an associated cough, and

31 WHEREAS, Dr. Nesselroth ordered an oxygen saturation
32 monitor, which reported a critical oxygen saturation level of 53
33 percent, and a nonrebreather mask with supplemental oxygen, and

34 WHEREAS, Mr. Rardin was to be monitored in the emergency
35 department, and

36 WHEREAS, in violation of the standard of care, Mr. Rardin,
37 a priority 1/critical patient, was not placed on a centrally
38 monitored respiratory or cardiac monitor, and

39 WHEREAS, a chest x-ray was performed, which indicated a
40 left lower lobe infiltrate, and Dr. Nesselroth's diagnostic
41 impression was left lower lobe pneumonia and hypoxia, and



Amendment No. 1

42 WHEREAS, Mr. Rardin proceeded to progressively deteriorate
43 for about the following 2 hours, and

44 WHEREAS, at 3:57 p.m., Dr. Nesselroth was called to Mr.
45 Rardin's bedside and a nurse noted increased respiratory
46 distress and difficulty arousing Mr. Rardin, and

47 WHEREAS, at Mr. Rardin's bedside, Dr. Nesselroth evaluated
48 him as unresponsive, diaphoretic, and as having agonal
49 respirations, and

50 WHEREAS, in violation of the standard of care, Mr. Rardin
51 was not intubated until about 2 hours after Dr. Nesselroth's
52 initial evaluation that indicated critical oxygen values, and

53 WHEREAS, at 4:05 p.m., the first of two intubation attempts
54 resulted in an esophageal intubation, where oxygen was being
55 delivered to Mr. Rardin's stomach rather than his lungs, and

56 WHEREAS, as a result of the faulty intubation, Mr. Rardin
57 became asystolic and a code was called, which led to the
58 administration of cardiopulmonary resuscitation (CPR) and
59 Advance Life Support (ALS) efforts, and

60 WHEREAS, by the time hospital personnel were able to
61 successfully intubate Mr. Rardin he had suffered a serious and
62 permanent hypoxic brain injury due to the length of time,
63 approximately 10 minutes, during which his brain did not receive
64 sufficient oxygen, and

65 WHEREAS, as a result of the hospital personnel's negligent
66 failure to monitor and timely intubate Mr. Rardin, he now
67 suffers from a permanent brain injury and symptoms such as



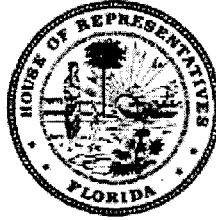
Amendment No. 1

68 visual disturbances, short-term memory loss, and severe
69 depression, and

70 WHEREAS, as a result of the hospital personnel's negligent
71 failure to monitor and timely intubate Mr. Rardin, he can no
72 longer support his family or provide the company and affection
73 that he otherwise would have provided to his wife, Patricia
74 Rardin, and their two minor children, Emily and Kayla Rardin,
75 and

76 WHEREAS, a tort claim was filed on behalf of Michael and
77 Patricia Rardin, Case No. 12-034723(13), in the 17th Judicial
78 Circuit, and

79 WHEREAS, the North Broward Hospital District and Mr. and
80 Mrs. Rardin



STORAGE NAME: h3557.CJS.DOCX
DATE: 4/3/2015

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 3557; Relief/Maricelly Lopez/City of North Miami
Sponsor: Harrison
Companion Bill: CS/SB 78 by Judiciary, Flores
Special Master: Parker Aziz

Basic Information:

Claimants: Maricelly Lopez, individually and as personal representative of the Estate of Omar Mieles.

Respondent: City of North Miami

Amount Requested: \$200,000.00

Type of Claim: Local equitable claim; result of a settlement agreement.

Respondent's Position: The City of North Miami does not oppose the enactment of this claim bill.

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

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.

Prior Legislative History: Senate Bill 40 by Senator Flores was filed during the 2014 Legislative Session. It was withdrawn prior to introduction. A House bill was never filed.

House Bill 1417 by Representative Manny Diaz and Senate Bill 35 by Senator Flores were filed during the 2013 Legislative Session. The House bill was never considered in the House and died in the Select Committee on Claim Bills. The Senate bill was never heard and died in Judiciary.

House Bill 985 by Representative Pilon and Senate Bill 58 by Senator Flores were filed during the 2012 Legislative Session. As a proposed committee substitute, the House bill was heard and voted down in Civil Justice Subcommittee. The Senate Bill was reported favorably by the Senate Special Master but was never considered in the Senate and died in the Senate Rules Committee.

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

Procedural Summary: On June 23, 2008, Maricelly Lopez, in her individual capacity and as the personal representative of the estate of Omar Mieleles, 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. Mieleles' death. In addition, the complaint alleged that Mr. Mieleles' 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. Mieleles 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. Mieleles 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. Mieleles' 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. Mieleles' death. The jury apportioned no fault to Mr. Mieleles. The jury further concluded that Mr. Mieleles' estate and Ms. Lopez sustained the following damages:

Damages to the Estate

- \$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.

SPECIAL MASTER'S SUMMARY REPORT--

Page 3

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.

On March 19, 2015, the City of North Miami and claimant agreed to settle the existing claim bill in the amount of \$200,000.00

Facts of Case: 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 Mieleles 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. Mieleles was lying down unrestrained on the back seat, with his head behind the front passenger's seat. Mr. Mieleles, 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. Mieleles, 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. Mieleles 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. Mieleles to Jackson Memorial Hospital. Soon after his arrival at the hospital, Mr. Mieleles was pronounced brain dead. On November 14, 2007, with the consent of Maricelly Lopez (Mr. Mieleles' mother and the Claimant in this proceeding), hospital staff harvested Mr. Mieleles' 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

SPECIAL MASTER'S SUMMARY REPORT--

Page 4

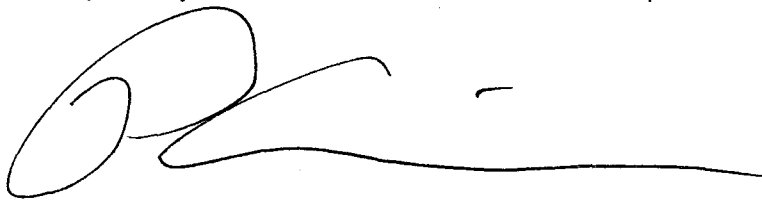
failed to mention that he was needlessly exceeding the speed limit at the time of the crash. Based upon the incomplete information in her possession, Detective Andrews concluded that Ms. Ibarra was solely at fault in the accident and issued her a citation for running a red light.

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.

Recommendation: Because settlement agreements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense, stipulations or settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature or its committees, or on the Special Master. However, all such agreements must be evaluated. If found to be reasonable and based on equity, then they can be given effect, at least at the Special Master's level of consideration. I find that the settlement agreement in this case is reasonable and equitable in light of the negligence surrounding Mr. Mieles' accident and his tragic death and recommend that the settlement be given effect by the Legislature.

I respectfully recommend House Bill 3557 be reported **FAVORABLY**.



Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Harrison, House Sponsor
Senator Flores, Senate Sponsor
George Levesque, Senate Special Master

27 | injuries he sustained, and

28 | WHEREAS, the mother of Omar Mieles, Maricelly Lopez, has
 29 | endured continuous mental pain and suffering since the date of
 30 | her son's death and seeks to recover damages, individually, for
 31 | loss of support, services, and companionship due to the death of
 32 | her son, and

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

36 | WHEREAS, on June 23, 2008, Maricelly Lopez, as personal
 37 | representative of the Estate of Omar Mieles and in her
 38 | individual capacity as mother of Omar Mieles, filed an action
 39 | against the City of North Miami in the Miami-Dade County Circuit
 40 | Court, styled *Maricelly Lopez, Plaintiff, v. City of North*
 41 | *Miami, Defendants*, Case No. 13-2008-CA-035955-0000-01, to
 42 | recover damages for the wrongful death of Omar Mieles as a
 43 | result of the negligence of a police officer of the City of
 44 | North Miami, and

45 | WHEREAS, on March 19, 2010, the case was tried before a
 46 | jury that returned a verdict for damages against the City of
 47 | North Miami and in favor of Maricelly Lopez, as personal
 48 | representative of the Estate of Omar Mieles and in her
 49 | individual capacity as mother of Omar Mieles, in the amount of
 50 | \$3,542,000, and

51 | WHEREAS, the jury apportioned 50 percent of the
 52 | responsibility for the death of Omar Mieles to the City of North

53 Miami, and 50 percent to the driver of the vehicle in which Omar
 54 Mieleles was traveling as a passenger, and

55 WHEREAS, on April 21, 2010, a final judgment was entered
 56 against the City of North Miami for \$1,719,808.63, of which the
 57 city has paid \$108,571.30 pursuant to the statutory limits of
 58 liability set forth in s. 768.28, Florida Statutes, and

59 WHEREAS, the remainder of the judgment is sought through
 60 the submission of a claim bill to the Legislature, NOW,
 61 THEREFORE,

62
 63 Be It Enacted by the Legislature of the State of Florida:

64
 65 Section 1. The facts stated in the preamble to this act
 66 are found and declared to be true.

67 Section 2. The City of North Miami is authorized and
 68 directed to appropriate from funds of the city not otherwise
 69 appropriated and to draw a warrant in the amount of
 70 \$1,611,237.33, payable to Maricelly Lopez, individually and as
 71 personal representative of the Estate of Omar Mieleles, as
 72 compensation for the death of her son due to the negligence of a
 73 police officer of the City of North Miami.

74 Section 3. The total amount paid for attorney fees,
 75 lobbying fees, costs, and other similar expenses relating to
 76 this claim may not exceed 25 percent of the amount awarded under
 77 this act.

78 Section 4. The amount paid by the City of North Miami

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79 pursuant to s. 768.28, Florida Statutes, and the amount awarded
80 under this act are intended to provide the sole compensation for
81 all present and future claims arising out of the factual
82 situation described in this act which resulted in the death of
83 Omar Mieles.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Harrison offered the following:

Amendment (with title amendment)

Remove line 70 and insert:

\$200,000.00 payable to Maricelly Lopez, individually and as

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

Remove lines 59-61 and insert:

WHEREAS, on March 24, 2015, the City of North Miami passed
 a resolution unanimously authorizing the settlement of the claim
 for \$200,000, and supporting the passage of a claim bill in that
 amount for Maricelly Lopez, individually and as personal
 representative of Omar Mieles, and

WHEREAS, the City of North Miami and Maricelly Lopez have
 agreed to settle the claim for \$200,000, NOW, THEREFORE,