

November 19, 1997

SPECIAL MASTER'S FINAL REPORT

The Honorable Toni Jennings
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

DATE

COMM.

ACTION

12/02/97

CA

Favorable

02/02/98

WM

Fav/1 Amendment

Re: SB 26 - Senator Turner
HB 3031 - Representative Barreiro
Relief of Adela Azcuy

THIS IS A CLAIM BILL FOR \$232,519.51, PLUS ACCRUED INTEREST AS PRESCRIBED IN NUMEROUS FINAL JUDGMENTS. THE BILL REFLECTS A JURY VERDICT IN EXCESS OF THE \$100,000 SOVEREIGN IMMUNITY CAP PLUS AGREED FINAL JUDGMENTS AWARDING ATTORNEY'S FEES AND COURT COSTS.

FINDINGS OF FACT:

On January 22, 1993, Adela Azcuy was a 38-year-old female working for the United States Government as a Senior Special Agent with the United States Customs Service. She had obtained a Bachelor's degree in Criminal Justice and was trained at Glennville Georgia, Federal Law Enforcement Training Center. At the time of the accident she had been working with the United States Customs Service for approximately 10 years, engaging in the normal activities such as surveillance and tactical exercises. Prior to the date of the accident, Ms. Azcuy was in excellent physical condition without any limitations whatsoever. Prior to the accident, Ms. Azcuy worked out, was an active bike rider, and was otherwise in generally good health.

On January 22, 1993, Ms. Azcuy was working at Shed E at the Miami Port as a Customs Officer. This was her first day at that location. The office located at Shed E at the Miami Port was owned by Metropolitan Dade County. Several months prior to the accident, Metropolitan Dade County decided to convert Shed E from a warehouse to an office and

lease it to the United States Customs Service. As Shed E had previously been a warehouse, there was an approximate 1 degree slope in the floor which allowed for drainage if the warehouse needed to be hosed down. A determination was made that the slope in the floor would not be removed or corrected but simply that the office would be built on top of the existing slope.

Mr. Al Fraga was the project manager hired by Dade County to oversee the construction. He was aware of the slope in the floor in question and chose not to level the floor. He had concerns about the slope in the floor such as file drawers closing on their own. Mr. Fraga testified at trial that chairs were "more apt to roll" although he testified that he did not advise the occupants that chairs were more apt to roll. The Customs Service had actual knowledge of the slope and selected the furniture.

On the date of the accident in question, Ms. Azcuy stood up to hand a paper to Diana Beason, a United States Customs Service Analyst. Upon attempting to return to her chair, Ms. Azcuy's body slammed to the floor.

In 1994, Ms. Azcuy filed suit against Metropolitan Dade County for permanent injuries she sustained as a result of the fall. She alleged that the slope of the floor caused her chair to roll away after she stood and that she was not warned of the dangerous condition.

A jury trial commenced on April 23, 1995. Analyst Beason testified at trial that it was very common for chairs to roll and, in fact, Azcuy's chair would have rolled "to her rear." Other customs agents testified that chairs would roll on the sloped, linoleum-covered floor, including Customs Inspector Dana Martin, as well as Customs Inspector Barbara Evans.

There was no dispute amongst the parties that Adela Azcuy sustained a L5-S1 disc herniation as a result of the fall. In that regard, the county attorney admitted to the jury:

We don't dispute that she was injured and that she suffered a herniated disc. That is clear from the objective physical evidence in this case.

Trial transcript at pg. 324.

The claimant's treating orthopedic surgeon testified that Adela Azcuy sustained a disc herniation at L5-S1. It was the opinion of Dr. Lazzarin, Chief of Orthopedics at Doctor's Hospital, that Ms. Azcuy sustained a permanent injury to her back. Dr. Lazzarin testified further that he attempted conservative treatment on Ms. Azcuy. He further testified:

I feel she sustained what we call a right-sided herniated disc causing symptoms of lumbar radiiculopathy as a result of the fall in January, 1993.

Q: The symptoms and problems that she's having, are they likely to be permanent?

A: Yes.

Q: What limitations would you impose upon Ms. Azcuy as a result of the injury?

A: At this point, I would recommend that she avoid prolonged walking as it seems to have exacerbated it, any heaving lifting, any activity such as running, jumping, anything that would allow this axial loading. Avoid bending forward or sitting down for too long a period of time.

Trial transcript at pgs. 109-110.

This undisputed medical opinion was that Ms. Azcuy would require surgical intervention in the future at a cost of approximately \$20-25,000. Trial transcript at pg. 118.

The claimant contended throughout the trial that Dade County had failed to warn her of the danger of chairs rolling as a result of the slope in the floor. It was undisputed that no such warning was ever given to Azcuy. Although the county argued that Customs' Supervisors were aware of the slope in the floor, the trial court rejected this argument and submitted the case to the jury. The jury deliberated for 2 hours and 4 minutes. It returned a verdict in favor of Ms. Azcuy and found that the county was negligent in failing to warn Ms.

Azcuy of the dangerous condition and awarded her damages in the amount of \$320,519.51.

In September 1995, Metropolitan Dade County appealed the judgment to the Third District Court of Appeal. The appellate court affirmed the lower court per curiam.

It should be noted that, on February 2, 1997, Ms. Azcuy settled a Title VII, Civil Rights claim with her employer, the Department of Treasury. In that claim, Ms. Azcuy alleged that she received discriminatory treatment from her employers on the basis of her sex and national origin (Cuban American). She asserted that her pain and suffering and lost future earnings result from job discrimination. She received \$140,000 from the federal government in settlement of her federal claim.

Although Ms. Azcuy's attorney argued at the trial against Dade County in April 1995, that her chair injury in January 1993, may cause her to be demoted or relegated to a desk job, the evidence is clear that Ms. Azcuy was promoted in May 1993, approximately 5 months after the accident.

Notwithstanding, the jury awarded Ms. Azcuy \$320,519.51 for the injury she sustained as a result of the fall. It does not appear that the settlement of the federal claim was related to the claim against Dade County.

Based upon the aforementioned, the following facts are clear:

1. Metropolitan Dade County was negligent in failing to warn Adela Azcuy of the dangerous condition that existed at Shed E.
2. As a result of the negligence of Metropolitan Dade County, the claimant fell to the floor causing an axial load to be placed on her spine.
3. As a result of the fall, Adela Azcuy sustained a herniated disc at L5-S1 which will result in permanent pain, weakness, and certain limitations. As a result of said injury, Ms. Azcuy may require surgical intervention in her back.

4. The jury award of \$320,519.51 was not unreasonable in light of the injury sustained by Adela Azcuy.

CONCLUSIONS OF LAW:

Based upon the record, the following Conclusions of Law are made:

1. A jury has determined that Metropolitan Dade County was negligent.
2. As a result of the negligence of Metropolitan Dade County, Adela Azcuy sustained serious and permanent injuries.
3. Metropolitan Dade County's contention that it fulfilled its duty to warn of the dangerous condition was rejected by the trial court, jury, and the appellate court and for all purposes here is also rejected.

COLLATERAL SOURCES:

At the time of the accident, Adela Azcuy received workers' compensation benefits. The workers' compensation claim was satisfied after \$5,092.14 was paid back to the government to secure a release of its lien on the third party action.

ATTORNEYS FEES:

Metropolitan Dade County paid the claimant \$100,000 following the mandate from the Third District Court of Appeal. Out of said \$100,000, \$25,000 was paid to the attorneys. Because Metropolitan Dade County had failed to accept the Plaintiff's Demand for Judgment, attorney's fees were additionally assessed against Metropolitan Dade County. By agreement, Metropolitan Dade County allowed the claimant and her attorneys to obtain Agreed Final Judgments awarding attorney's fees in the amount of \$64,103.92 plus interest at the rate of 8 percent per annum. (Said Judgment being dated July 6, 1995.) Additionally, an Agreed Final Judgment was entered taxing appellate attorney's fees in the amount of \$8,000 plus interest at the rate of 10 percent per annum on January 22, 1996. Those attorney's fees have not been paid by Metropolitan Dade County notwithstanding the entry of the Agreed Final Judgments.

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RECOMMENDATIONS:

Based on the foregoing, the undersigned recommends that SB 26, in the amount of \$232,519.51, be reported FAVORABLY.

Respectfully submitted,

William R. Pfeiffer
Senate Special Master

cc: Senator Turner
Representative Barreiro
Faye Blanton, Secretary of the Senate
Richard Hixson, House Special Master