

November 21, 1997

SPECIAL MASTER'S FINAL REPORT

<u>SPECIAL MASTER'S FINAL REPORT</u>	<u>DATE</u>	<u>COMM.</u>	<u>ACTION</u>
The Honorable Toni Jennings President, The Florida Senate Suite 409, The Capitol Tallahassee, Florida 32399-1100	12/02/97 02/02/98	CA WM	Fav/1 amendment Favorable

Re: SB 30 - Senator Forman
HB 2135 - Representative Saunders
Relief of Franklin David Messick

THIS IS AN EXCESS JUDGMENT CLAIM FOR \$101,639.55 AGAINST COLLIER COUNTY FOR NEGLIGENT ACTS CAUSING THE WRONGFUL DEATH OF ARTHUR DAVID MESSICK.

FINDINGS OF FACT:

This claim bill arose from an automobile accident wherein a truck plunged into a canal and two persons drowned. It occurred in Collier County, Florida, on or about October 6, 1990, in a remote area known as Southern Golden Gate Estates, approximately 12 miles outside the urban boundary established for Collier County.

The area is undeveloped and is laid out in a grid or block system of paved and unpaved roads, together with a canal system that was dug by GAC Development Corporation to drain the area and make it habitable. Some of the paved and unpaved roads end in canals. The area is owned and maintained by Collier County.

Specifically, the accident occurred at the southern end of Desoto Boulevard where it terminates at a canal bank gravel road and into a canal. Desoto Boulevard is a paved rural roadway approximately 16 feet in width and is surrounded on all sides by high vegetation which is mowed approximately twice a year, establishing a narrow shoulder on each side.

The area is very rural, principally uninhabited except for a very small number of hunting camps, and development is

discouraged by Collier County through its Comprehensive Plan and Land Development Regulations for Collier County.

It is mainly used for passive recreation, camping, fishing, and some sparse hunting. It is also commonly known as an area that is inhabited by individuals seeking to "party" mainly on weekends outside the area of active law enforcement activity. The area where the accident in question occurred was widely known to law enforcement as an area where individuals met for partying. In fact, it should be noted that a person died under the same circumstances in the same area of Desoto Boulevard approximately 1 year prior to the death of Arthur David Messick and there were two other deaths in the area of Desoto Boulevard following the death of Arthur David Messick. Two individuals died in a car collision at an uncontrolled intersection. These deaths occurred approximately 2 years following the death of Arthur David Messick.

Southern Golden Gate Estates is approximately 60 square miles and has approximately 300 miles of roadway. Although there is little traffic in the area, Collier County has taken steps to provide safe road conditions. There are only three access points into Southern Golden Gate Estates. At each of these access roads, there are signs alerting the public who might enter Southern Golden Gate Estates that there are "Uncontrolled Intersections," that "Roads End in Canals," and advisory speed markers setting a 25 MPH speed limit.

In addition, Collier County has put in "nine ball" reflector signs at the end of roads that terminate at canals. The reflector plates are rectangle orange signs with nine light sensitive reflectors placed on the plate which provide warnings to prudent drivers that the road terminates.

Photographs taken the morning after the accident indicate that no traffic signs were located at or near the end of Desoto Boulevard warning that the road ended in a canal. The county has experienced vandalism and theft of signs in the area.

Moreover, raised pavement markers (RPMs) mark the center and end of many of the rural roads. **Although RPMs currently mark Desoto Boulevard, photographs taken the**

morning after the accident indicate that no RPMs were present on the night of the accident.

On the day of the accident, Joe Randall Messick was driving a truck owned by his father, Franklin David Messick, and occupied by the two decedents, Arthur D. Messick and Trudy Christensen, and a fourth person. Earlier in the day they had attended the Chili Festival in Everglades City and headed to the remote area "to relax." There is evidence to support that the driver and passengers were familiar with the area. There is evidence to support that the occupants in the vehicle had been drinking alcohol prior to the accident, including the driver; however he was not charged with driving under the influence.

Based on the Investigation Report and expert testimony presented, the vehicle was traveling at a rate of speed between 50 and 60 mph on the desolate paved road. It was 8:00 p.m., October 6, 1990, and dark outside. The vehicle proceeded past the end of the road, traveled through 42 feet of grass, sand and foliage and into the canal. The truck submerged and rested on the driver's side. The driver, Joe Messick, and the fourth passenger, seated next to the passenger window, escaped. The two remaining passengers drowned.

At the time of the accident, the driver, Joe Randall Messick, did not have a valid drivers license as it had been revoked for 5 years on June 18, 1990, as a habitual traffic violator, pursuant to s. 322.251, F.S.

Following the death of Arthur David Messick, his estate brought a civil action against Collier County in September 1993, for failing to properly warn of a known hazardous condition, or failing to repair or replace existing warning signs and speed limit signs. The decedent's estate and potential beneficiaries are comprised of his mother and father, Lorene and David Messick. He had no children nor spouse. The decedent lived with his father and contributed to the monthly expenses.

A jury trial commenced in September, 1993. During the trial and at the Special Master's Hearing, Collier County's expert witness, George Archibald, P.E., testified to a number of

different speeds and stopping distances and opined that a knowledgeable and prudent driver would have had no difficulty in stopping a vehicle prior to it going into the canal.

Expert witness George Archibald, P.E., also testified that the county surveyed its traffic signals and signage in Southern Golden Gate Estates on a semi-annual basis. He stated that the signage for Southern Golden Gate Estates was consistent with the Manual of Uniform Minimum Standards that serve as a guide and protocol for local governments in the State of Florida concerning transportation systems, its design, maintenance, and survey. Mr. Archibald indicated that Collier County met the Florida Department of Transportation's rules and regulations for signage in a rural area such as Southern Golden Gate Estates. It was his opinion that the signage was appropriate and was sufficient to alert a knowledgeable and prudent driver that the driver was entering a rural area with uncontrolled intersections and roads that end in canals. He further testified that the 25 mph advisory speed limit was consistent with the rural area, its transportation network, and provided a safe speed for any traversing Southern Golden Gate Estates.

Mr. Archibald further opined that if Joe Randall Messick had been operating his vehicle prudently, carefully, and consistent with the signage, raised pavement marking, and the rural area in which he was operating his vehicle, he would have stopped prior to entering the canal.

Notwithstanding, the expert testimony, the jury returned a verdict in favor of the decedent's estate in the amount of \$237,223.

The jury, however, found Joe Randall Messick to be 15 percent negligent and Collier County to be 85 percent negligent. Collier County has paid the estate \$100,000 of the \$201,639.55 final judgment.

CONCLUSIONS OF LAW:

A trial was held on the merits of this matter, and a jury returned a verdict on September 28, 1993, finding Collier County 85 percent negligent and Joe Randall Messick 15 percent negligent in the wrongful death of Arthur David Messick.

Joe Randall Messick was driving his father's motor vehicle and had no valid drivers license as the State of Florida, Division of Motor Vehicles and Highway Safety, had revoked his drivers license for being an habitual traffic violator.

Collier County paid the capitated statutory maximum amount of \$100,000, consistent with s. 768.28, F.S., to Franklin David Messick.

Collier County is protected by sovereign immunity, pursuant to s. 768.28, F.S., and is subject to the limited waiver of sovereign immunity enacted by the Legislature of the State of Florida.

There is outstanding the amount of \$101,639.55 which has not been paid by Collier County and remains unpaid after the jury verdict rendered on September 28, 1993. Unless a claim bill is passed by the Florida Legislature, Collier County is not required to pay the balance of the jury verdict.

Collier County has paid out a total of \$200,000 to all claimants from the accident which occurred on October 6, 1990, consistent with the statutory limit within s. 768.28, F.S.

COLLATERAL SOURCES:

The Estate of Arthur David Messick received \$10,000 in bodily injury motorist benefits from the automobile insurance company insuring the vehicle in which Arthur David Messick died. No money has been collected from Joe Randall Messick. The personal representative of the Estate of Arthur David Messick has not sought, and refuses to seek, payment for Joe Randall Messick for the wrongful death of Arthur David Messick.

ATTORNEYS FEES:

They are consistent with s. 768.28, F.S., which limits attorney's fees to 25 percent of any award, settlement, or judgment.

RECOMMENDATIONS:

Although Collier County has paid the maximum amount it is statutorily obligated to pay pursuant to s. 768.28, F.S., to all claimants for all claims that arose out of the accident, the undersigned contends that Collier County should be directed to satisfy the excess judgment claim for the following reasons:

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- 1) A jury returned a verdict in favor of the decedent's estate finding the county 85 percent responsible for the death of Arthur David Messick.
- 2) The amount of the award was not unreasonable.
- 3) Given the totality of the circumstances, public policy is best served by passage of the claim bill.

NOTE: The claim bill should be amended to reflect the correct amount of excess claim to be paid (i.e., \$101,639.55).

For the foregoing reasons, the undersigned recommends that SB 30, if amended, be reported FAVORABLY.

Respectfully submitted,

William R. Pfeiffer
Senate Special Master

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