STORAGE NAME: h3037.cjc
DATE: March 31, 1998

Florida House of Representatives

Daniel Webster, Speaker

March 8, 1998

SPECIAL MASTER'S FINAL REPORT

The Honorable Daniel Webster
Speaker, Florida House of Representatives
420 the Capitol
Tallahassee FL 32399-1300

Re: HB 3037 - Representative Cosgrove
SB 34 - Senator Casas
Relief of Bruce Wiggins as Personal Representative of the Estate of Helen Wiggins

THIS IS A VERDICT-BASED EXCESS JUDGMENT CLAIM FOR $1,522,665 IN FUNDS OF METROPOLITAN DADE COUNTY TO COMPENSATE THE ESTATE OF HELEN WIGGINS FOR HER DEATH AS RESULT OF THE NEGLIGENCE OF THE COUNTY.

FINDINGS OF FACT:

On the morning of March 2, 1993, a clear, dry day, Helen Wiggins was driving west on S.W. 232 Street in a four door Toyota Corona station wagon. She was alone at the time. S.W. 232 Street is a two-lane road in rural, western Dade County. At this intersection of S.W. 232 Street and S.W. 202 Avenue, there was a stop bar and stop sign facing traffic traveling west on S.W. 232 Street.

Charles Teggert was driving south on S.W. 202 Avenue in a Ford F-250 pick-up truck. There were no traffic control devices at the intersection of S.W. 232 Street and S.W. 202 Avenue facing traffic traveling south on the latter road. S.W. 202 Avenue is a two-lane road.

At the intersection, the front of Mr. Teggert's pick-up truck struck the middle of the passenger side of Mrs. Wiggins' vehicle when her vehicle was in the center of the southbound lane of S.W. 202 Avenue.

There is evidence in the record that at the time of the accident, there was a visual obstruction consisting of ragweed and Lantana bushes approximately 6 feet tall along the north side of S.W. 232 Street and the east side of S.W. 202 Avenue. The area of growth was fairly uniform in height and at least partially within the county right of way. The bushes and weeds were growing atop a mound of soil which was between one and two feet higher than the surrounding soil.

Mrs. Wiggins was severely injured. She was 35 years of age at the time of the accident. She was in a coma for more than 2 months. When she came out of the coma, she had severe brain damage; she was paralyzed on her right side, could not speak, and her nourishment was through a feeding tube.

Upon discharge from the hospital, Mrs. Wiggins lived at home with her husband, Bruce Wiggins, and their two children, a daughter, Alisha, who was 6 years old at the time of the accident, and a son, Jake, who was 3 years old. Mr. Wiggins took care of his wife. Mrs. Wiggins' condition never improved and she died on July 2, 1995.

LEGAL PROCEEDINGS:

Claimant sued Metropolitan Dade County and Joseph Borek, owner/operator of Borek Farms which included a 40-acre tract located at the northeast quadrant of the intersection of S.W. 232 Street and S.W. 202 Avenue. The lawsuit was resolved by a jury verdict. Borek Farms was no longer a part of the lawsuit when it went to the jury.

The jury found Helen Wiggins 30 percent at fault. They apportioned the remaining 70 percent of negligence: 50 percent to Dade County and 20 percent to the other driver, Charles Teggert. The jury award and final judgment reflect the following:

Damages	Jury Award	Final Judgment
Medical and Funeral Expenses	$1,112,720	$778,904.00 (30 percent reduction- comparative negligence of Helen Wiggins)
Past and Future Loss of Support and Services to:		
Bruce Wiggins	$202,234	$141,563.80 (30 percent reduction-comparative negligence of Helen Wiggins)
Alisha Wiggins	$154,410	$108,087.00 (30 percent reduction-comparative negligence of Helen Wiggins)
Jake Wiggins	$205,872	$144,110.40 (30 percent reduction-comparative negligence of Helen Wiggins)
Past and Future Loss of Companionship and Pain and Suffering by Bruce Wiggins	$100,000	$50,000 (50 percent reduction: 30 percent Helen Wiggins, 20 percent Charles Teggert
Past and Future Loss of Parental Companionship, Instruction, and Guidance, and Pain and Suffering to:		
Alisha Wiggins	$500,000	$250,000 (50 percent reduction: 30 percent Helen Wiggins, 20 percent Charles Teggert)
Jake Wiggins	$500,000	$250,000 (50 percent reduction: 30 percent Helen Wiggins, 20 percent Charles Teggert)
TOTAL	**$2,775,236.00**	**$1,722,665.20**

Metropolitan Dade County appealed to the Third District Court of Appeal. Per curiam, i.e., without written opinion, the appellate court affirmed the trial court's denial of Dade County's motion for summary judgment and motions for directed verdict.

REVIEW OF EVIDENCE:

CLAIMANT. Claimant presented the following evidence:

1. Obstruction. There was evidence in the record consisting of excerpts of testimony of witnesses at trial that a growth of bushes and weeds in the county right of way obstructed Mrs. Wiggins' line of sight on the day of the accident so that she could not see the approaching vehicle at an appropriate time.

2. County Had Knowledge of Obstruction. There was evidence in the record that about 7 months before the accident, a Dade County Public Works Traffic Engineer inspected the intersection

in question pursuant to a citizen request for a four-way stop sign at the intersection. The employee noted a visual obstruction of grass and overgrowth on the northeast corner of the intersection and a row of trees and overgrowth on the northwest corner and requested another county entity to mow the visual obstructions flat. The employee checked the box for "emergency" as opposed to the one for "routine."

3. Similar Accident. The record contains the testimony of a woman who had an accident at the intersection in question approximately three years before the subject accident. She was driving west on S.W. 232 Street, stopped at the stop bar, looked right, left, and right again, did not see any vehicle approaching in the southbound lane of S.W. 202 Avenue, entered the intersection, and was struck by a van traveling south on S.W. 202 Avenue. After being shown a photo of the weeds after the Wiggins accident, she testified that the weeds in the photo were in a similar condition on the day of her accident, and that if they had been completely cleared, then maybe she would have seen the van.

4. Actions of Property Owner in Vicinity. There was evidence in the record that the owner of a nursery in the immediate vicinity of the intersection sometimes mowed along the east side of S.W. 202 Avenue, because he could not see when he stopped at the stop bar on S.W. 232 Street. He apparently did not or was not able to mow the growth of bushes and weeds that were in issue in this case.

5. Claimant's Accident Reconstruction Expert. The expert performed a conservation of momentum analysis. This analysis presumes there was no steering input, and if there was no such input, Mrs. Wiggins' vehicle was traveling at 34 m.p.h. That speed would be inconsistent with her having stopped at the stop bar. However, the expert's testimony was that the conservation of momentum analysis did not fit the physical evidence in this case. The expert testified that Mrs. Wiggins' vehicle could not have been going 34, 27, 23, or 21.5 m.p.h., all of which speeds would indicate she did not stop at the stop bar, because without starting up from a stop, there is not enough time for Mr. Teggert to do his reaction and braking.

RESPONDENT. Respondent presented the following evidence:

1. No Material Line of Sight Obstruction.

   At trial, respondent elicited testimony from a land surveyor regarding the area of growth at issue. According to him, the area of growth at its southern most end was 30 feet from S.W. 232 Street, the street on which Mrs. Wiggins was driving, and 14 feet from S.W. 202 Avenue, the street on which Mr. Teggert was driving.

At trial, respondent also elicited testimony that mowing was done along S.W. 202 Avenue by Dade County employees from S.W. 232 Street to S.W. 300th Street in December 1992. This was about 4 months after Hurricane Andrew and a little more than 2 months before the accident. Testimony also was elicited that county mowing crews generally cut across intersection corners to improve visibility.

There was testimony in the record from two Metro Dade law enforcement officers who investigated the accident. One officer completed an accident report; the other completed a traffic homicide investigation. Each officer concluded there was no obstruction to their view or to Mrs. Wiggins' view on the northeast corner of the intersection at issue. One of the officers testified the speed limit on S.W. 202 Avenue at the intersection was 45 m.p.h.

2. Mrs. Wiggins Ran the Stop Sign. Respondent offered the testimony of the other driver, Mr. Teggert, that Mrs. Wiggins never stopped before entering the intersection.

   Respondent also offered the testimony of the three accident reconstruction experts retained, respectively, by Dade County, Borek Farms, and claimant. Each performed a conservation of momentum analysis. Each calculated a speed that Mrs. Wiggins was driving that was inconsistent with her having stopped at the stop sign.

   Only claimant's expert dismissed the conservation of momentum method for determining Mrs. Wiggins' speed at impact. He found the physical evidence compelled the conclusion that Mrs. Wiggins did not run the stop sign.

CONCLUSIONS OF LAW:

LIABILITY Whether or not there is a jury verdict, as there is here, every claim bill must be based upon facts sufficient to meet the preponderance of the evidence standard. From my review of the evidence, I find the county had a duty to make the intersection safe for Mrs. Wiggins. The county breached that duty and that breach was the proximate cause of the collision which resulted in the damages to the claimant.

I find the jury's allocation of negligence of 30 percent to Mrs. Wiggins was a fair allocation of her fault.

Section 316.123(2)(a), F.S., provides that:

> every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at a clearly marked stop line, but if none, . . . at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, the driver shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway

> as to constitute an immediate hazard during the time when the driver is moving across or within the intersection.

From all of the evidence, it can never be determined with certainty whether Mrs. Wiggins did or did not stop at the stop line on S.W. 232 Street. However, I find no basis for altering the jury's view that she did.

Under the statute, Mrs. Wiggins had a duty to yield the right of way to a vehicle which has entered the intersection or which is approaching so closely as to constitute an immediate hazard when the driver is moving across or within the intersection. Respondent contends Mrs. Wiggins was negligent in fulfilling this duty and that this negligence was a superceding, intervening cause of the accident, thereby relieving the county of liability. Neither the jury nor the Third District Court of Appeal was persuaded by this argument nor am I.

There is evidence in the record that the speed limit on S.W. 202 Avenue was 45 m.p.h. There also is evidence in the record that Mr. Teggert was exceeding the speed limit and traveling at approximately 60 m.p.h. Thus, the jury's allocation of 20 percent of the negligence to him is fair.

Finally, there is evidence in the record that there was a line of sight visual obstruction to Mrs. Wiggins' view at the intersection. Further, there is evidence in the record that the county knew of this obstruction but did not remove it. Thus, the jury's allocation of 50 percent of the negligence to the county is fair.

DAMAGES In summary, the jury award and the final judgment, which took into account Mrs. Wiggins' and Mr. Teggert's comparative negligence, were as follows:

Damages	Jury Award	Final Judgment
Medical and Funeral Expenses	$1,112,720	$778,904
Loss of Support and Services to Bruce Wiggins and the children	$562,516	$393,761.20
Loss of Companionship and Pain and Suffering to Bruce Wiggins	$100,000	$50,000
Loss of Companionship, Instruction, and Guidance, and pain and Suffering to the children	$1,000,000	$500,000
TOTAL	**$2,775,236**	**$1,722,665.20**

There is competent and substantial evidence in the record to support the jury award and final judgment, and I find no basis for altering it.

There are $667,532.00 in outstanding medical and funeral expenses and liens for Medicaid and the Department of Labor and Employment, Division of Vocational Rehabilitation.

ATTORNEYS FEES: Limited to 25 percent of recovery under the provisions of s. 768.28, F.S.

RECOMMENDATIONS: When large sums are involved, the Legislature generally has favored structured payments to a claimant. Given the amount involved here and the young ages of the children, structured payments are appropriate in this case and should be required. With this condition, I recommend that HB 3037 be reported FAVORABLY.

Respectfully submitted,

Richard Hixson
Special Master

cc: Representative Cosgrove
Senator Casas
Senate Special Master