

STORAGE NAME: h3083.cjc
DATE: March 31, 1998

**Florida House of Representatives
Committee on Civil Justice and Claims
Summary Claim Bill Report**

Bill #: HB 3083
Sponsor: Representative Eggleton
References: Civil Justice and Claims
Companion Bill(s): SB 64 by Senator Gutman

A. Basic Information

1. **Claimant:** Jose and Johammes Pena
2. **Respondent:** City of Hialeah
3. **Amount Requested:** \$1,1010,061.10
4. **Type of Claim:** Excess Judgment
5. **Respondent's Posture:** Contested
6. **Collateral Sources:** Cigna has paid \$424,214.68. Cigna claims a lien for that amount.
7. **Prior Legislative History:** None

B. Procedural Summary: A wrongful death action was filed and a one-week jury trial was held in October of 1994. The jury returned a verdict determining that the City of Hialeah was 75% at fault and that Carmen Pena was 25% at fault. A judgment was entered in the amount of \$1,301,061.10. The Third District Court of Appeal affirmed the jury's verdict on both liability and damages. The City of Hialeah has paid its \$200,000 statutory limit.

C. Facts of the Case: In 1998, Carmen Pena was driving her three children and her former husband, Jose Pena, on a Hialeah street when the right tires of her car went off the regular paved roadway. While moving back onto the roadway, the right rear tire was "blown out" by a jagged three-to-four-inch pavement drop-off causing the deflated tire to act as an anchor dragging the car to the right and forcing it to plunge into an adjacent canal. Jose Pena and 16-year-old Johammes Pena were able to escape the car to safety. Carmen, 12-year-old Richard, and six-year-old Catherine were eventually extracted from the vehicle by emergency personnel, but all three died at the hospital during the next ten weeks. The jury determined that the City of Hialeah, which owned and maintained the road, knew of the recurring road problems in this area, did not repair the road nor warn of the hazard.

SM: _____ **LRD:** _____ **Date: March 11, 1998** Richard
Hixson Richard Hixson