

November 21, 1997

<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	12/03/97	ED WM	Favorable

Re: SB 32 - Representative Ron Silver
HB 3027 - Representative Barry Silver
Relief of Kathryn Malloy f/k/a Kathryn Sperdute

THIS IS A CLAIM FOR \$86,050 FOR INJURIES SUSTAINED IN A MOTOR VEHICLE ACCIDENT WITH A TRUCK OWNED BY THE PALM BEACH COUNTY SCHOOL BOARD AND DRIVEN BY A SCHOOL BOARD EMPLOYEE.

FINDINGS OF FACT:

On June 10, 1992, Kathryn Malloy was involved in a motor vehicle accident with a truck owned by the Palm Beach County School Board (School Board) and driven by a School Board employee in which the truck rear-ended Ms. Malloy's motor vehicle.

During litigation between Ms. Malloy and the School Board it was admitted that the accident was entirely the fault of the School Board's employee. This accident was the result of simple negligence.

Prior to the accident, Ms. Malloy had a history of spinal problems and resulting spinal surgeries.

In approximately 1967, Ms. Malloy underwent a lumbar discectomy at the L4-L5 level that, for a period of time, created significant pain relief. Ultimately, however, she began to require physical therapy and traction. Then, in approximately 1980, she required a second lumbar laminectomy.

The second surgery was again successful and she received significant relief for approximately 4 years. She then began having severe right-sided sciatica. Ultimately, Ms. Malloy came to require a third lumbar surgery in approximately 1986.

At all times following each of the three surgeries, Ms. Malloy performed her duties as a registered nurse.

Approximately 4 years after this third lumbar surgery, Ms. Malloy was troubled by problems. In 1990, approximately 4 years after the third lumbar surgery, Ms. Malloy came under the care of Dr. Frank DeLucia, an orthopedic surgeon. His records from 1990 document that many efforts were being undertaken to help alleviate Ms. Malloy's pain, including the sporadic use of prescription medication, traction, physical therapy and a lumbar corset. She did, however, continue to maintain her work schedule as a home health care nurse.

Dr. DeLucia achieved limited success in his efforts to assist Ms. Malloy and ultimately recommended that she attend a pain clinic at the Miami Back Institute.

Ms. Malloy was able to continue her activities of daily living at that time, as well as working. Dr. DeLucia's records make clear, however, that she was able to do this because of the multiple modalities of treatment he was attempting.

The seriousness of Ms. Malloy's condition in 1990, led Dr. DeLucia to refer Ms. Malloy to a neurologist, Dr. Carl Sadowsky. Dr. Sadowsky noted that Ms. Malloy had a history of right sciatica dating back several years. She also had an absent right ankle jerk and a diminished right knee jerk, along with some sensory loss. Electrical studies performed by Dr. Sadowsky showed evidence of an L5 and S1 abnormality.

Ms. Malloy was unable to continue with this expensive treatment in 1990 because she was paying for it out of her own pocket.

On June 10, 1992, a large School Board maintenance truck collided into the back of Ms. Malloy's late model Trans Am automobile, causing damage.

Following the accident, Ms. Malloy again went under the care of orthopedic and neurological specialists. Her main complaints following the collision were low back pain, sciatica, and a pronounced "hunched back" position. The records from Dr. DeLucia and Dr. Sadowsky document that Ms. Malloy had low back pain and sciatica before the motor vehicle accident occurred. Records from Dr. Donald Lambe, an orthopedic surgeon, document that the "hunched back" position was also developing before the accident.

After the motor vehicle accident, Ms. Malloy ultimately came under the care of a pain clinic and was given a morphine pump. It is important to note that referral to a pain clinic had occurred prior to the accident but never occurred because of financial considerations.

The medical evidence indicates that Ms. Malloy suffers from "failed back syndrome." If not the cause, it is reasonable to conclude that the motor vehicle accident aggravated this condition. Ms. Malloy has been rendered disabled.

In June 1994, the case went to trial on the issue of damages and the jury rendered a verdict in favor of Ms. Malloy in the amount of \$176,269. A judgment was later entered for that amount plus costs in the amount of \$9,781, for a total award of \$186,050. No appeal was taken. Pursuant to s. 768.28, F.S., the School Board has paid \$100,000 to Ms. Malloy.

CONCLUSIONS OF LAW:

1. A trial was held in June 1994, on the issue of damages. A jury rendered a verdict in favor of Ms. Malloy in the amount of \$176,269.
2. A final judgment was rendered for \$186,050.
3. The School Board paid the capitated statutory maximum amount of \$100,000, consistent with s. 768.28, F.S., to Ms. Malloy.
4. The School Board 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.

5. There is an outstanding amount which has not been paid by the School Board and remains unpaid after the jury verdict rendered in June 1994. Unless a claim bill is passed by the Florida Legislature, the School Board is not required to pay the balance of the jury verdict.

COLLATERAL SOURCES:

At the time of the accident, Ms. Malloy was in the course and scope of her employment. Accordingly, she was eligible to receive workers' compensation benefits.

Ms. Malloy has, in fact, received workers' compensation benefits and will continue to receive them in the future. Ms. Malloy also receives social security disability payments, having been declared totally disabled by Social Security.

Both social security benefits and workers' compensation benefits are available to Ms. Malloy to assist her with economic losses in the future.

ATTORNEYS FEES:

Limited to 25 percent of the recovery, as provided in s. 768.28, F.S.

RECOMMENDATIONS:

Based upon the foregoing, it is recommended that SB 32 be reported FAVORABLY.

Respectfully submitted,

William R. Pfeiffer
Senate Special Master

cc: Representative Ron Silver
Representative Barry Silver
Faye Blanton, Secretary of the Senate
Richard Hixson, House Special Master