

October 17, 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	11/05/97	CA	Favorable
President, The Florida Senate	01/05/98	WM	Favorable
Suite 409, The Capitol			
Tallahassee, Florida 32399-1100			

Re: SB 44 - Senator Turner
HB 1713 - Representative Sembler
Relief of Frank H. Holliday

THIS IS A CLAIM FOR \$235,000 BASED ON AN AGREED SETTLEMENT BETWEEN MANATEE COUNTY AND FRANK H. HOLLIDAY FOR INJURIES AND DAMAGES CAUSED BY THE MANATEE COUNTY SHERIFF'S DEPARTMENT IN A TRAFFIC ACCIDENT ON JUNE 28, 1996.

FINDINGS OF FACT:

On June 28, 1996 at approximately 8:10 a.m., Mr. Holliday was driving his motorcycle southbound on 15th Street East in Manatee County on his way to work. A Ford Thunderbird automobile in the northbound lane was stopped waiting to make a left turn on 74th Avenue Drive East. The roadway in this location consists of one lane for southbound traffic and one lane for northbound traffic. As Mr. Holliday's motorcycle approached 74th Avenue Drive East, the vehicle stopped in the northbound lane waiting to turn, was struck from behind by a Manatee County Sheriff's patrol car. The impact of this rear-end collision propelled the vehicle which was stopped across the center line directly into the path of Mr. Holliday's motorcycle which was traveling southbound.

There was no time for Mr. Holliday to take any type of evasive action to avoid the collision. His left leg was crushed between the front bumper of the Ford Thunderbird and his motorcycle and Mr. Holliday was ejected onto the roadway.

Frank Holliday was rushed to Doctor's Hospital in Sarasota, Florida but immediately thereafter transported by helicopter

to Bayfront Medical Center in St. Petersburg, Florida due to the extreme injuries he suffered and the need for immediate surgeries.

LIABILITY AND
CONCLUSIONS OF LAW:

The Sheriff's Deputy, William Kelley, was charged with careless driving for the rear-end collision, and the accident report indicates "no improper driving action" by Mr. Holliday. There has been no indication that the Ford Thunderbird made any type of sudden stop and the width of the roadway in the northbound lane provided the deputy plenty of room to drive around the stopped Ford Thunderbird had Deputy Kelley been paying attention. It is well established under Florida law that there is a presumption of liability on the driver of a vehicle which rear-ends another vehicle. The damage sustained by the Ford Thunderbird suggests a high speed rear impact. The accident report indicates there were no skid marks found at the scene which suggests that Deputy Kelley never touched his brakes before impact. In this case Deputy Kelley, of the Manatee County Sheriff's Department, caused the collision which propelled the Ford Thunderbird across the center line directly into the path of Mr. Holliday's motorcycle.

MEDICAL INJURIES:

Injuries sustained by Frank Holliday in the crash were extremely serious, including compound fractures of the left tibia and fibula, fracture of the left hip, dislocation of the left hip, fracture of the nose, facial lacerations, and multiple abrasions. He was forced to undergo multiple surgeries at Bayfront Medical Center including open reduction and internal fixation of the fractures of his left leg. These procedures involved installation of surgical hardware inside the leg and outside of the leg.

The left leg fractures were non-union fractures and he also required hip surgery during his initial hospitalization. He underwent follow-up surgery at Bayfront Medical Center on November 11, 1996, wherein the surgeons grafted bone into the left leg fractures in an effort to promote union of the bones. This hospital stay at Bayfront was for 5 days between November 11, 1996, and November 15, 1996.

He underwent another surgery in April of 1997 where the surgeons attempted to arthroscopically repair left knee damage which was making it impossible for Mr. Holliday to bear weight on the left leg or bend the left knee. Unfortunately, this surgery was not successful and Mr. Holliday was forced to undergo open

left knee surgery on June 16, 1997. Despite these efforts, his surgeons at All Florida Orthopaedic Associates were not successful in resolving the left knee injuries which make it impossible for Mr. Holliday to bend his left leg. Consequently, the latest recommendation is for surgery to perform a full left knee replacement.

Since the day of the accident, more than one year ago, Mr. Holliday has not been able to walk without crutches, has not been able to place weight on the left leg and has not been able to bend the left knee. This is despite lengthy and painful efforts at rehabilitation and physical therapy. Mr. Holliday is permanently scarred on his left leg, left hip and other areas as a result of his injuries and numerous surgeries.

Medical bills to date have exceeded \$130,000 and Mr. Holliday has not yet been able to return to any type of work due to his injuries and ongoing medical treatment.

AGREED SETTLEMENT:

Mr. Holliday retained legal counsel and brought a claim against Manatee County for the injuries and damages caused him by the negligence of Deputy Sheriff William Kelley. A settlement was negotiated between the parties wherein Manatee County agreed to pay Mr. Holliday the amount of \$335,000. The amount of \$100,000 was paid by Manatee County shortly after settlement.

The Settlement and Release Agreement clearly sets forth the agreement of the county that a claim bill for an additional amount of \$235,000 is being presented. The county and Frank Holliday agreed that settlement is in the best interests of both parties. The county indicated in the settlement agreement that the claim bill would not be contested or objected to and that the county agrees to assist in passage of said bill. The county stipulated at the Special Master Hearing on August 14, 1997 that it supports passage of the bill.

The county has agreed it would be responsible for payment of the additional \$235,000 upon passage of the bill.

Resolution 97-29 enacted by Manatee County on February 18, 1997, also clearly states that Manatee County would not oppose the claim bill.

COLLATERAL SOURCES:

Unfortunately, Mr. Holliday was not covered by any health insurance policy at the time of June 28, 1996, accident. The health insurance coverage provided by his employer would have become effective on July 1, 1996.

The driver of the Ford Thunderbird which was involved in the accident did carry bodily injury coverage with State Farm Insurance but recovery against that policy is predicated upon being able to prove negligence on behalf of that vehicle's driver. To date, no claim has been made against that driver and State Farm Insurance Company has taken the position that Deputy Sheriff William Kelley is solely responsible for this accident and their insured, Barbara Lucas, is not negligent.

Accordingly, without health insurance coverage and with liability attributable to the Sheriff's Department, Mr. Holliday cannot depend upon collateral sources. Further, since he was operating a motorcycle at the time of the accident, there was no available PIP insurance coverage for payment of any of his medical bills or lost wages. Mr. Holliday was not entitled to any sick pay benefits from his employer and therefore has lost all wages since the date of the injures.

ATTORNEYS FEES:

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

RECOMMENDATIONS:

Based on the foregoing, the undersigned recommends that SB 44, which authorizes and directs Manatee County to pay \$235,000 to Mr. Holliday in full satisfaction of the settlement agreement, be reported FAVORABLY.

Respectfully submitted,

William R. Pfeiffer
Senate Special Master

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