

November 28, 1997

SPECIAL MASTER'S FINAL REPORT

DATE

COMM.

ACTION

The Honorable Toni Jennings
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

TR
WM

Re: SB 46 - Senator Holzendorf
HB 2129 - Representative Dennis
Relief of Frances W. McGrady

THIS IS AN EXCESS JUDGMENT CLAIM BASED ON A DUVAL COUNTY CIRCUIT COURT JURY VERDICT FOR \$365,000 AGAINST THE JACKSONVILLE TRANSPORTATION AUTHORITY. THE CLAIMANT DIED AFTER JUDGMENT WAS ENTERED AND HER ESTATE IS SEEKING THE \$265,000 BALANCE OF THE EXCESS JUDGMENT.

FINDINGS OF FACT:

On August 7, 1993, Frances W. McGrady was injured after she fell while departing from a Jacksonville Transportation Authority (JTA) bus at a bus stop in Duval County Florida. The JTA is a state agency which operates the bus system in Jacksonville. On the day of the incident, Ms. McGrady was 78 years old, retired, had a prosthetic eye, walked with a cane, and had been a frequent passenger on JTA buses.

The Claimant contends the bus stopped at a driveway "cut" which inclined back toward the bus. As Ms. McGrady stepped off the bus, she fell back against the bus fracturing her pubic ramus and injuring her hips. The record reflects that Ms. McGrady suffered from numerous health problems prior to the incident, including degenerative joint disease, congestive heart failure, diabetes, atrial flutter, hypoglycemia, cardiac arrhythmias, chest pain, muscle weakness, and headaches. Her health and mental condition declined after her fall. She was eventually relegated to a wheel chair and ultimately bed ridden. Her preexisting problems were

exacerbated by the fall during the bus incident on August 7, 1993. Due to Ms. McGrady's condition, her daughter, Louise Ramsey, provided intensive care for her mother.

In 1995, Ms. McGrady filed suit against the JTA alleging negligence. After extensive pretrial discovery, the case went to a jury trial on February 5, 1996. At trial, Ms. McGrady did not make a claim for her medical expenses and no evidence was introduced regarding her medical costs. Instead, Ms. McGrady's counsel asked the jury to award Ms. McGrady \$50 a day as pain and suffering for the remaining 10 years of her life expectancy.

At trial, Ms. McGrady testified that she frequently exited the bus at the bus stop in question. On each of those occasions the driver always let her off on the sidewalk. However, according to Ms. McGrady, on the day of the incident, she exited the bus in front of a slanting driveway. After she stepped from the bus, she fell backwards upon the slanted driveway and fractured her pelvic bone.

Ms. McGrady's treating physician, Dr. Ira Harmon, testified that he first saw her in January 1986. Ms. McGrady was on medication for degenerative joint disease before Dr. Harmon became her physician and he continued to treat Ms. McGrady for this condition. In addition, during the period of January 1986 to August 1993, Dr. Harmon also treated her for congestive heart failure, diabetes, chest pain, atrial flutter, hypoglycemia, cardiac arrhythmias, muscle weakness, and headaches. In January 1991, she was diagnosed with severe coronary artery disease and she underwent bypass surgery in February 1991.

Dr. Harmon testified that he saw Ms. McGrady on August 8, 1993, at Methodist Hospital in Jacksonville, one day after the incident. Dr. Harmon immediately consulted Dr. Jerome Jones, an orthopedic surgeon, to manage the fracture of Ms. McGrady's left pelvic bone. Ms. McGrady was discharged from the hospital after one week.

Dr. Harmon provided follow-up care after she left the hospital. According to his records, Ms. McGrady was next in the hospital on May 2, 1994, and complained of generalized weakness, shortness of breath, and abdominal and chest pain. She was hospitalized for one day. The record indicates that this problem occurred after Ms. McGrady walked from her home to a bus stop approximately 9 months after the bus incident.

Months later, she returned to Dr. Harmon's office and complained of pain in her left hip area. It was her first visit to Dr. Harmon's office in over a year since the bus fall incident. Dr. Harmon conducted a physical examination which showed some tenderness in her hip. Dr. Harmon concluded that the tenderness was attributable to age related degenerative changes to the hip and spine.

In February 1995, October 1995, and November 1995, Ms. McGrady returned to Dr. Harmon's office for treatment on a number of different ailments including pain in her hip, which Dr. Harmon continued to link to degenerative joint disease. On each of these occasions, Ms. McGrady used a cane to ambulate as she did prior to the incident.

Dr. William Pujadas, the Claimant's medical expert at trial, evaluated Ms. McGrady on September 7, 1995. This was the only time Dr. Pujadas evaluated Ms. McGrady and the evaluation was conducted 25 months after the date of the incident.

The X-rays reviewed by Dr. Pujadas indicated that Ms. McGrady's fracture had healed. The X-rays also showed degenerative changes in the lower spine and sacroiliac joint. Dr. Pujadas opined that, in addition to the fracture to the pelvic bone, Ms. McGrady suffered an injury to the ligaments in the posterior sacroiliac joint. He deemed this injury significant in that these ligaments provided support to her pelvic ring. Although Dr. Pujadas admitted that he had only seen Ms. McGrady once and that he did not have all of the hospital records relating to the fall or her previous medical

history, he gave Ms. McGrady a 5 percent impairment rating. Dr. Pujadas' rating was based on the healed fracture and the injury to the ligaments in the posterior sacroiliac joint.

Several individuals testified concerning Ms. McGrady's lifestyle before the bus injuries and there after. The witnesses stated that Ms. McGrady, prior to her injuries, led an active and independent lifestyle. They testified that after her injuries she became dependent and inactive. Ms. McGrady was in considerable pain. Her physical and her mental condition declined after her fall. Ms. McGrady's daughter, Louise Ramsey, testified how those injuries resulted in her becoming bed ridden. Mrs. Ramsey testified as to the time, expense, and resources that she committed to Ms. McGrady during her period of debilitation.

On February 8, 1996, the jury returned a verdict in favor of Ms. McGrady. It found the JTA 100 percent negligent and assessed damages in the amount of \$365,000. The trial judge entered judgment and JTA filed a "Motion for New Trial" asking the trial court for relief on twelve separate points. The trial court denied Defendant's Motion for New Trial on March 20, 1996, and entered costs for \$2,278.09.

The JTA appealed to the First District Court of Appeal on April 12, 1996. After briefing the issues and hearing oral argument, the appellate court affirmed the jury verdict and found the award not excessive.

On November 21, 1996, the JTA paid Ms. McGrady \$100,000 pursuant to §768.28, F.S. Ms. McGrady died 2 months later, on January 30, 1997. The Certificate of Death showed that the causes of death were numerous. Specifically, there were 19 causes of death listed in the hospital records. Among them were respiratory failure, bacteremia in the bloodstream, pneumonia, coronary artery disease, hypokalemia, anemia, cerebrovascular disease, and dehydration.

Although there were 19 causes of death listed in the hospital records, nothing indicated that Ms. McGrady's degenerative joint condition contributed to her death. Moreover, in his deposition prior to the Special Masters' hearing, Dr. Harmon agreed that Ms. McGrady's injury would have played a very minor role, if any, in her death.

CONCLUSIONS OF LAW:

- 1) On February 8, 1996, a judgment in the amount of \$365,000 was entered against the JTA as a result of the jury verdict.
- 2) Pursuant to §768.28, F.S., the JTA paid the Claimant \$100,000 on November 21, 1996, thereby leaving a balance of \$265,000 as excess judgment.
- 3) The JTA is not obligated to satisfy the excess judgment unless and until the Florida Legislature passes a claim bill.

ATTORNEYS FEES:

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

RECOMMENDATIONS:

Claim bills are to be decided on a case-by-case basis and are awarded based on individual circumstances. In the instant claim, Louise Ramsey, as Ms. McGrady's daughter and Personal Representative of the Estate, and her sister Sally Green, are the parties seeking claim bill relief. It should be noted that Louise Ramsey and Sally Green are both middle aged adults and neither were parties to the underlying lawsuit.

This claim is similar to the claim in Senate Bill 483 (1986) regarding the Claim of Minnis. In that claim, the Estate of Learlean Minnis sought claim bill relief on an excess judgment. Similar to the instant claim, Mrs. Minnis died after the judgment was entered and the claim was brought by her survivors. Because Mrs. Minnis died after the judgment was entered, the Special Master questioned whether the Senate should consider the claim. See Page 8 of the Special Master's Final Report on Senate Bill 483 (1986) (Report). The Special Master correctly explained that it has been the custom in the legislative forum that personal injury claims abate when the

claimant dies. See Report at page 8. Accordingly, the 1986 Florida Senate declined passage of the claim bill.

Although this is not dispositive of the issue, it provides some historical perspective.

The reasoning set forth in the Special Master's opinion regarding the Claim of Minnis is applicable to the instant claim. The jury verdict in the instant case was based on future pain and suffering only and the amount of the verdict was arrived at by calculating a pain and suffering figure over an anticipated 10-year life expectancy. Ms. McGrady was 78 years old at the time of the incident and retired. No evidence was introduced that Ms. McGrady supported anyone other than herself. Because her survivors, Louise Ramsey and Sally Green are both middle-aged adults, there is no compelling reason to allocate public funds to them for support purposes.

Instead, awarding Ms. McGrady's survivors claim bill relief would allow them to collect tax payer dollars for her pain and suffering. Florida's public funds should not be applied to allow a decedent's survivors to recover in this type of case.

At the Special Master's hearing, the Claimants argued that Ms. McGrady never benefited from the funds because she died several months after the judgment was entered. After subtracting the attorney's fee and \$35,000 in medical liens, there was no money remaining for Ms. McGrady.

If Ms. McGrady was alive today, this argument would be compelling. The jury's purpose of providing compensation to Ms. McGrady for the pain she was expected to experience in the future would merit the Legislature's consideration and attention. However, this claim is personal to Ms. McGrady. The jury did not award these damages to her survivors. Because Ms. McGrady is no longer living, the argument that there is no money remaining does not carry weight. Public funds should not be administered to allow Ms. McGrady's survivors to benefit from her jury verdict. This would, in essence, undermine the purpose behind the verdict.

Moreover, the argument regarding medical liens is also without merit. At trial, Ms. McGrady did not seek reimbursement for her medical costs and no evidence was presented to the jury in this regard. Under these circumstances, Ms. McGrady's survivors cannot now make a claim for medical costs.

In addition, no evidence was presented at the Special Master's hearing showing that the outstanding medical costs arose directly or indirectly from treatment related to the incident in question. It is undisputed that Ms. McGrady had multiple health problems throughout the last 10 years of her life. In addition, sufficient funds remain from the \$100,000 paid by the JTA to satisfy all outstanding medical bills. For this reason and the reasons discussed above, it would be inequitable to apportion public funds for unpaid medical expenses.

Furthermore, the Claimants' argument is rejected for the following reasons. First, because no cause of action exists in favor of Ms. McGrady's survivors, pursuant to Florida's Wrongful Death Act, (a judgment for personal injuries rendered in favor of an injured party while the injured party was living bars a subsequent wrongful death action brought by the injured party's survivors based on the same tortious conduct), Ms. McGrady's survivors should not be compensated through claim bill relief. And, in view of Ms. McGrady's age and general declining medical condition prior to and after the incident, it is unlikely that her injury contributed to her death. Instead, as reflected on the death certificate, it appears that her death was caused by numerous natural causes.

While Ms. McGrady's hip injury was extremely unfortunate, equitable public policy does not translate into claim bill relief for her survivors. There is no compelling reason to apply public funds to compensate Ms. McGrady's survivors for injuries and damages that were personal to Ms. McGrady.

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Therefore, due to the foregoing reasons, I recommend that
Senate Bill 46 be reported UNFAVORABLY.

Respectfully submitted,

William R. Pfeiffer
Senate Special Master

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