



OFFICE OF THE PRESIDENT

October 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

11/05/97

CA

Favorable

02/02/98

WM

Favorable

Re: SB 56 - Senator Klein
HB 3079 - Representative Andrews
Relief of Julie McGinnes

THIS \$1,025,000 CLAIM TO BE PAID FROM LOCAL FUNDS, RESULTS FROM A PRE-TRIAL SETTLEMENT AGREEMENT BETWEEN PALM BEACH COUNTY AND A CLAIMANT WHO SUED AFTER A 1993 MOTOR VEHICLE COLLISION ON A COUNTY-MAINTAINED ROAD ON WHICH AN INTERSECTING DRIVER VIOLATED THE RIGHT-OF-WAY, IN LARGE PART BECAUSE OF LINE-OF-SIGHT OBSTRUCTIONS PLACED BY PALM BEACH COUNTY EMPLOYEES WHO LATER FAILED TO REMOVE OR REPOSITION THEM AFTER BEING PUT ON NOTICE OF THE EXISTING DANGEROUS CONDITION.

FINDINGS OF FACT:

At 4:10 p.m., on July 22, 1993, Julie Lynn McGinnes, an 18½-year-old student at Palm Beach Community College, was on her way from her parents' home to her nearby, part-time job. She was driving her mother's 1987 VW Cabriolet, northbound, within the posted speed limit, on Ponderosa Drive west of Boca Raton, in Palm Beach County.

At that moment, Debbie Contestable, the adverse driver, was driving a 1993 Mitsubishi, eastbound on perpendicularly intersecting Oriole Country Road. The intersection was controlled by a 4-way flashing signal showing red toward Contestable and yellow toward claimant. Neither driver's

speed was a factor in this collision. Neither alcohol nor illegal substances were involved. Claimant was wearing her seat belt.

Contestable made a full stop at the stop bar as required by the flashing red signal. She then pulled forward to enter and proceed straight through the intersection. Contestable did not see the McGinnes vehicle approaching from her right. Claimant had the right of way. In addition to Contestable's general carelessness and/or inattention, her failure to see claimant was attributable to a line-of-sight obstruction created by the county's traffic control cabinet and concrete utility pole; a Florida Power & Light (FP&L) switching cabinet located in the utility easement; and by a solid hedge planted and maintained by the local homeowners' association, all of which blocked the view to the right at the southwest corner, for motorists who were traveling eastbound on Oriole Country Road. Skid marks showed that McGinnes tried to avoid the impending collision, to no avail. The left front of her VW collided with the right front of Contestable's Mitsubishi. Both vehicles spun counterclockwise through the intersection.

This intersection is located within the Logger's Run neighborhood. The homeowners' association records are full of references over many years, to complaints made to Palm Beach County traffic personnel requesting improvements at this intersection. First it was for a 4-way stop sign. Then it was for a signal. Eventually the intersection was signalized but the complaints continued concerning the line-of-sight obstruction created by the cabinets and pole. A full 3 years before this collision, a Palm Beach County traffic technician responding to a call, surveyed the intersection, concluded that a more detailed line-of-sight visibility study was warranted, and submitted a written work order for one. The work order never made it to its intended supervisor, and the study was never performed. Over the next 3 years, the homeowners' association periodically requested that the county improve this situation. The county responded by altering the signal's timing patterns but the line-of-sight obstructions were not addressed. It is this failure, after being repeatedly put on notice, that formed the basis of the claimant's case against Palm Beach County.

INJURIES:

In the impact, claimant suffered a serious closed-head injury. She apparently hit her head against something in the vehicle; probably the left side of the roll bar assembly. Claimant was rendered unconscious at the scene. She was airlifted to Delray Community Medical Center where, because of swelling of her brain, she underwent emergency surgery to relieve the intracranial pressure. Claimant improved but remained in various stages of a coma for about 3 weeks. She was hospitalized for 3½ months.

THE LAW SUIT:

Claimant sued four defendants: the adverse driver [for not yielding the right of way against a blinking red signal]; FP&L [for placement of the utility cabinet that partially obstructed the adverse driver's view]; the homeowners' association [for adding a further obstruction in the form of a solid hedge around the FP&L box]; and, as a later-joined defendant, she added Palm Beach County [for failing, after repeated requests, to remove the signal cabinet and utility pole that also blocked the adverse driver's view].

Subsequent to two rounds of mediation and between 60 to 70 depositions, the claimant settled with all four defendants. She accepted the \$100,000 policy limits covering the adverse driver's vehicle; \$500,000 from FP&L; \$600,000 from the carrier for the homeowners' association; and the initial \$100,000 from Palm Beach County with a balance of \$1,025,000, conditioned on the passage of this claim bill into law.

INSURANCE SITUATION:

The total cost of claimant's medical/hospital/rehabilitation care to date is about \$275,000, the bulk of which was paid by Massachusetts Mutual and Blue Cross Blue Shield of Rhode Island. Also included in that total is about \$42,000 that the Florida Department of Labor and Employment Security has expended for her vocational rehabilitation. Finally, the claimant's parents have paid about \$25,000 in miscellaneous, uncovered medical expenses, deductibles, etc. Claimant's attorney expects that he will be able to substantially compromise the roughly \$250,000 in existing subrogation liens for as little as 5 to 15 percent.

RESPONDENT'S POSITION:

Palm Beach County agents have essentially acknowledged that after the fault of the adverse driver, the county bore the next most active negligence that resulted in this collision. The

Board of County Commissioners of Palm Beach County, at its May 20, 1997, public meeting held pursuant to notice, and on its staff's advice that the settlement amount was less than they could reasonably expect to get hit with in a jury verdict, voted, on a consent item, to settle their liability in this case for \$1,125,000; voted to transfer that amount from its \$5.75 million general fund contingency reserve account to its casualty self-insurance fund; and voted to expend it to satisfy this claim bill, if enacted by the Legislature. The official position of Palm Beach County in this matter, after having paid the initial \$100,000, is that it "will not oppose" passage of a claim bill for \$1,025,000 in claimant's favor.

TRUST:

In June 1997, claimant established an "irrevocable trust" (at least it is irrevocable from her point of view although it can be terminated by others on or after claimant's 40th birthday, and on a substantial change in family circumstances, or upon claimant's demonstrated capacity to manage her own funds, etc.) into which her net proceeds will be placed. Family members serve as trustees. In my view, this trust provides a reasonable degree of protection for the proceeds, yet retains some flexibility in the event change is warranted.

CLAIMANT'S
FUTURE NEEDS:

Claimant's closed brain injury is described as permanent and catastrophic, and in one sense it is. Although she has now completed her first year of community college and is physically able to and does drive herself around on local errands such as going to a nearby gym to work out, or to a food store where she can pay by writing her own checks, she is unlikely to improve sufficiently to be able to enter the competitive, professional job market. She is likely to have problems living independently, and will require a sheltered environment for the foreseeable future. Claimant suffered significant neurologic damage that resulted in partial paralysis of her left side. Some residual is likely to remain no matter how much therapy, vocational rehabilitation, and counseling she undergoes. Her loss of potential lifetime earnings is likely to be over a million dollars, and the present value of future care and living costs is likely to be in excess of \$2.5 million. The full settlement proceeds from all four defendants will total about \$2.33 million. This should net claimant's trust approximately \$1.25 million to \$1.6 million, depending on the resolution of the subrogation claims. If invested prudently,

this trust can provide a more than sufficient stream of income to take care of claimant's monetary needs for her lifetime.

STANDARD OF PROOF:

Whether or not there is a stipulation or settlement, as there is here, every claim bill must be based on facts supported by a preponderance of evidence. A Senate Special Master may collect, consider, and include in the record, any matter of reasonable believability or authenticity that the Master finds to be relevant in the matter under inquiry. In my view, the claimant has shown by a preponderance of evidence, that employees of the Board of County Commissioners of Palm Beach County breached their duty to her, that the breach was a proximate cause of the collision, that her damages were substantial and permanent, and that this is a case of operational, not planning-level negligence. The settlement in this case is warranted and supported by the evidence produced.

ATTORNEYS FEES:

Claimant's attorney has certified, pursuant to s. 768.28(8), F.S., that neither he nor his firm will receive in excess of 25 percent of the \$1,125,000 which is the amount of the settlement entered into with Palm Beach County.

RECOMMENDATIONS:

Accordingly, I recommend SB 56 (1998), FAVORABLY.

Respectfully submitted,

D. Stephen Kahn
Senate Special Master

cc: Senator Ron Klein
Representative Bill Andrews
Faye Blanton, Secretary of the Senate
Richard Hixson, House Special Master