

November 28, 1997

SPECIAL MASTER'S FINAL REPORT

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

DATE

COMM.

ACTION

02/03/98

CA

Fav/1 amendment

04/15/98

WM

Favorable/CS

Re: SB 58 - Senator Meadows
HB 3085 - Representative Healey
Relief of Kimberly L. Gonzalez

THIS IS A CLAIM FOR \$95,406.65 AGAINST THE PALM BEACH COUNTY SHERIFF'S OFFICE TO COMPENSATE CLAIMANT FOR INJURIES SUSTAINED WHEN A PALM BEACH COUNTY DEPUTY SHERIFF REAR-ENDED CLAIMANT.

FINDINGS OF FACT:

On **June 1, 1992**, while traveling north on Military Trail, Kimberly Gonzalez was rear-ended by an automobile being operated by Palm Beach County Deputy Sheriff Crerand.

As a result of this low-speed collision, the vehicle being operated by Deputy Sheriff Crerand suffered minimal bumper damage. The 1979 Chrysler Cordoba automobile being operated by Ms. Gonzalez sustained essentially no damage.

Shortly after the accident, Ms. Gonzalez began treatment with Dr. Rupolo, a chiropractor, whom she saw for approximately 61 visits.

Fourteen months later, in August 1993, Ms. Gonzalez saw an orthopedist, Dr. Fernyhough, who eventually performed a two-level fusion at the C4-5, C5-6 level of the Claimant's neck in April 1994.

It should be noted that there were several incidents that predated Ms. Gonzalez's automobile accident that the Respondent contends could have caused her neck injury.

First, Ms. Gonzalez had filed a restraining order for domestic violence against her husband, indicating that since 1986 she had been physically abused where her husband would choke her, pull her hair, and hit her with his fists. Ms. Gonzalez recounted one incident in 1991 where her husband abused her by striking her with his fist in her head and stomach and pushing her around.

In addition, Ms. Gonzalez was involved in several accidents, both before and after the incident that was the subject matter of this lawsuit. These prior accidents include a February 27, 1993 collision wherein Ms. Gonzalez backed up and struck a vehicle behind her in a parking lot, and was cited for unsafe backing, driving under a suspended license, and no proof of insurance.

She was also involved in an accident in December 1992, wherein she was a passenger in a vehicle that was broad-sided by a vehicle traveling at approximately 30 mph, in which Ms. Gonzalez complained of neck and back pain to the Palm Beach County Deputy Sheriff.

Ms. Gonzalez was also involved in an accident in January 1992, wherein she was a passenger in a vehicle that backed into a stop sign.

In January 1991, the Claimant was involved in another collision as a driver, where she was rear-ended by a vehicle in an accident similar to the one in the instant lawsuit. Ms. Gonzalez was taking a left hand turn and was struck in the left rear quarter of her vehicle by the driver behind her

In October 1994, Ms. Gonzalez filed suit against the county alleging negligence. At trial in October 1996, the county admitted to liability for the accident but refuted the amount of damages allegedly suffered by Ms. Gonzalez as a result of the minor collision.

Dr. Richard Harding, a biomechanics expert retained by the Palm Beach County Sheriff's Office, rendered his opinion that

there was no more than a 5 mph change in velocity in this collision and that such a minor impact and minor change of velocity could not have caused the claimant's disk herniations. Dr. Harding opined that the most the claimant would have sustained would have been an acute cervical muscle strain, and that the change of velocity of the impact of the two vehicles would need to exceed 15 mph, more than three times the change of velocity experienced in this accident, in order to have disk herniations in the cervical region of Ms. Gonzalez.

Conversely, the Claimant's expert, Dr. Marius Ziejewski, was of the opinion that because of the position of the Claimant's head facing to the right, that a change of 5 mph was sufficient enough to cause the disk herniations.

The Palm Beach County Sheriff's Department had Ms. Gonzalez examined by Dr. Craig Lichtblau, a Board Certified Physiatrist, who rendered the opinion that the Claimant could work 8 hours per day in a light duty job. Sharon Griffin, a rehabilitation expert hired by the Palm Beach County Sheriff's Office, rendered the opinion that based upon Ms. Gonzalez's physical restrictions, Ms. Gonzalez was primarily an unskilled worker pre-injury, with a sporadic work history, earning minimum wage. Ms. Gonzalez was training to become a phlebotomist, at which she would earn \$8 per hour and as such, Ms. Griffin rendered an opinion that Ms. Gonzalez did not suffer any loss of earning capacity in the future.

Ms. Gonzalez sought approximately \$230,000 in future wage loss and \$55,000 in future medical expenses as a result of this accident. She also sought approximately \$241,000 in household services lost as a result of the accident, and \$45,000 in past wage loss.

On October 11, 1996, after 4 hours of deliberation, the jury returned a verdict in favor of Ms. Gonzalez in the total amount of **\$180,710.99**. The jury awarded Ms. Gonzalez \$30,000 for past pain and suffering and \$82,000 for future pain and suffering damages.

The jury awarded her \$53,710.99 in past medicals, \$5,000 in lost earnings, \$10,000 in future medicals, and zero for lost earning ability to be sustained in future years.

The taxation of costs was awarded on November 15, 1996, for \$14,695.66 thereby establishing the total judgment for **\$195,406.65**. The Palm Beach County Sheriff's Department declined to appeal.

Pursuant to §768.28, F.S., the Respondent paid the Claimant \$100,000, leaving \$95,406.65 as excess judgment.

CONCLUSIONS OF LAW:

1. On November 15, 1996, a judgment in the amount of \$195,406.65 was entered against the Respondent as a result of the jury verdict and related costs.
2. Pursuant to §768.28, F.S., the Respondent has paid the Claimant \$100,000, thereby leaving \$95,406.65 as excess judgment.
3. The Respondent is not obligated to satisfy the excess judgment unless and until the Florida Legislature passes this claim bill.

MEDICAL BILLS AND
COLLATERAL SOURCES:

The total medical bills were \$53,710.99. There was no PIP or other collateral source of payment to reduce bills absent a right of reimbursement. The jury verdict and claim bill does not provide for a double recovery on bills to the claimant due to a collateral source payment of any bill. The jury verdict and claim bill reflects the actual medical cost obligations to the Claimant from bills and/or liens.

ATTORNEYS FEES:

The Claimant's attorney's fees are limited to 25 percent of recovery under the provisions of §768.28, F.S.

The total attorney's fees incurred up to and including the Special Master Hearing for the representation of the Palm Beach County Sheriff's Office is approximately \$42,000.

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RECOMMENDATIONS:

Based upon the foregoing evidence offered at trial and the Special Master's hearing, including Ms. Gonzalez's collateral incidents, the undersigned finds no compelling reason to deviate from the jury verdict. Accordingly, the undersigned recommends that Senate Bill 58 be reported FAVORABLY.

Respectfully submitted,

William R. Pfeiffer
Senate Special Master

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