

October 17, 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

CA
WM

Re: SB 6 - Senator Meadows
HB 1711 - Representative Rojas
Relief of Michelle Ponce

THIS IS A CLAIM FOR \$410,000 AS PART OF A SETTLEMENT AND CONSENT JUDGMENT WITH METROPOLITAN DADE COUNTY, BASED ON INJURIES RECEIVED BY MICHELLE PONCE, A MINOR, AS A RESULT OF BEING STRUCK BY A METROPOLITAN DADE COUNTY BUS.

FINDINGS OF FACT:

On Saturday, December 26, 1992, at approximately 2:30 p.m., Michelle Ponce, who was 9 years old at the time, was standing on the south side sidewalk of NW 7th Street near its intersection with NW 37th Avenue, in Miami, Florida. At that time and place, a Metropolitan Dade County bus, operated by Mr. Ismael A. Rodriguez, a Metro-Dade County employee, was traveling eastbound on NW 7th Street. Due to driver error, the bus driver lost control of his bus, jumped the curb, struck two other pedestrians, and, thereafter, struck the minor, Michelle Ponce. After striking Michelle, the bus continued, striking two vehicles. Michelle Ponce ended up underneath the bus when the bus finally came to rest.

As a result of the incident, Michelle sustained serious injuries and was transported to Jackson Memorial Hospital where she was admitted with a diagnosis of an oblique fracture of the mid-femoral diaphysis, with a full shaft lateral displacement, and a disfiguring open wound of the right lower extremity. At the time of her admission to the hospital, Michelle underwent surgery to attach a femoral external fixator, and an

aggressive debridement of the wound. She remained hospitalized until January 14, 1993.

Michelle was readmitted on February 21, 1993, to undergo a second surgical procedure to remove the right femoral external fixator, and to undergo a split/thickness skin graft from the left thigh to the right lower extremity. She remained hospitalized until March 2, 1993.

Michelle's doctors have indicated that Michelle, upon maturity, will need to undergo two additional surgical procedures to attempt to ameliorate the permanent and disfiguring scar with which she has been left. On Friday, August 15, 1997, Michelle saw a plastic surgeon who was of the opinion that if Michelle has reached maturity (in the sense that she will not grow anymore) then she will be ready to have the surgical procedure done, in the immediate future, to attempt to alleviate the disfiguring appearance of the scar.

The amount of the future medical bills for the surgical procedures is undetermined at this time as the doctors have not given an indication as to the cost of these procedures.

The medical bills incurred by Michelle in the past have amounted to:

Jackson Memorial Hospital	\$83,825.36
Dr. Salvador Ramirez	\$790.00

A portion of Jackson Memorial Hospital's bill has been paid by Medicaid, which has a lien, pursuant to their correspondence of August 14, 1996, of \$27,399.29. There is also a balance owed to Jackson Memorial Hospital, pursuant to their letter of March 27, 1997, of \$63,351.52. The hospital also recorded a lien in the public records of Dade County, Florida, in January of 1993, reflecting the lien at that time to be \$67,254.79. All of the past and any future medical bills would be satisfied in full out of the settlement funds.

As a result of the injuries, at the suggestion of the Risk Management Department of Metropolitan Dade County, a lawsuit was filed against Dade County. The lawsuit was answered by Dade County and, immediately thereafter, a mediation was scheduled. The case was tentatively settled at

mediation for the total amount of \$469,362.64. The settlement was subject to county and court approval. The county agreed in the settlement to consent to a judgment for \$469,362.64 and not oppose a claim bill in the amount of \$410,000. As part of the settlement, after it was approved by the appropriate county officials, the county partially satisfied the consent judgment by issuing a check to Michelle Ponce's guardian for \$59,362.64, which represented the amount remaining available under the \$200,000 statutory cap, pursuant to s. 768.28, F.S. These funds have been deposited, under court supervision, in a restricted guardianship account with United National Bank in Dade County Florida.

CONCLUSIONS OF LAW:

Dade County never contested liability. The county assumed the responsibility for the carelessness of its bus driver. There is sufficient evidence in the record to support the damages arrived at in the settlement agreement and ratified by the court.

ATTORNEYS FEES:

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

RECOMMENDATIONS:

Based upon the foregoing, the undersigned recommends that SB 6, which authorizes and directs Metropolitan Dade County to pay \$410,000 in full satisfaction of the settlement agreement, be reported FAVORABLY.

Respectfully submitted,

William R. Pfeiffer
Senate Special Master

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