

November 28, 1997

<u>SPECIAL MASTER'S FINAL REPORT</u>	<u>DATE</u>	<u>COMM</u>	<u>ACTION</u>
The Honorable Toni Jennings President, The Florida Senate Suite 409, The Capitol Tallahassee, Florida 32399-1100	01/06/98	CA WM	Favorable

Re: SB 70 - Senator Klein
HB 3081 - Representative Casey
Relief of Matthew White

THIS IS AN EXCESS JUDGMENT CLAIM FOR \$401,116.19 BASED UPON A JURY VERDICT AGAINST THE ALACHUA COUNTY SHERIFF'S DEPARTMENT TO COMPENSATE MATTHEW WHITE FOR PHYSICAL INJURIES AND ECONOMIC LOSS HE SUSTAINED WHEN HE WAS STRUCK BY A HORSE THAT WAS BEING CHASED BY A CITY OF WALDO POLICE OFFICER ACTING AT THE DIRECTION OF, AND ON BEHALF OF, THE ALACHUA COUNTY SHERIFF'S DEPARTMENT.

FINDINGS OF FACT:

Shortly after 10 p.m., following a severe thunderstorm, on November 4, 1988, Robert Jeffer's horse escaped from an enclosure where it was tethered and wandered the area near US Highway 301. At about 3:30 a.m. on November 5, 1998, a rookie police officer with the City of Waldo received a Citizens Band (CB) radio transmission that a horse was loose on US Highway 301, about 2 miles north of the City of Waldo. The Waldo police officer called the Alachua County Sheriff's Department dispatcher and relayed the information. Thereafter, he was sent by the Sheriff's Department's dispatcher out of the city limits of Waldo to the location of the horse to verify the report.

Upon arrival to the scene, the Waldo police officer observed a horse loose in the median of the divided highway, reported it to the Alachua County Sheriff's Department and was told by the Sheriff's dispatcher to handle the matter himself because there

was no Sheriff's deputy available to assist him. The officer thereupon attempted to catch the horse, both on foot and in his patrol car and attempted to drive the patrol car up next to the horse to secure it with the assistance of a civilian. When the police officer discovered that the blue lights and headlights on his car appeared to make the horse more nervous, he turned all of his lights off and attempted a "lights off sneak attack" on the horse.

At the same time, the Claimant, Matthew White, was traveling northbound on US Highway 301 on his motorcycle, and was unaware that the Waldo police officer was pursuing the horse. The police officer and the civilian chased the horse off the median out into Matthew White's line of traffic where the horse collided with his motorcycle, which was traveling 55 mph, the speed limit for that area.

Matthew White was thrown from his motorcycle, traveled approximately 95 feet through the air, and landed in the ditch alongside the road. He sustained severe damage to his leg including tears of all four of the main ligaments which hold the lower leg to the upper leg at the knee. He was treated at Shands Teaching Hospital where physicians surgically repaired the ligaments. He underwent a lengthy rehabilitation regime and had a subsequent procedure where the repaired knee had to be flexed under a general anesthetic because the joint became calcified and had very limited range of motion.

At the time of the accident Matthew White was a senior at the University of Florida. He had prepared for a commission in the Active Component of the United States Army, received an early commission at his graduation from Marion Military Academy in Georgia, and served as an Engineer 2nd Lieutenant in the Florida Army National Guard. As a result of his injuries, the Claimant argues that he was unable to continue to serve in the United States Army. Due to the delays in his graduation from college and in attending the Engineer Officers Basic Course, he missed both the educational and promotional "windows" that he had to make in order to continue his military career. In addition, the resulting limited range of motion of his leg put him within one degree of mandatory medical retirement.

On October 16, 1989, notice of Mr. White's claim was sent to the State of Florida and the Alachua County Sheriff's

Department. The Claimant filed suit on July 30, 1990, and the first trial began August 23, 1993. At the conclusion of the first trial, and before the jury rendered its verdict, the senior judge directed a verdict in favor of the defense on the basis that the actions of the police officer were protected by the doctrine of sovereign immunity. On appeal, the trial court's decision was reversed by the First District Court of Appeal in the case of Matthew White v. City of Waldo and Lu Hindery, as Sheriff of Alachua County, 659 So.2d 707 (1 DCA Fla. 1995). Petition for Review was denied by the Florida Supreme Court on January 18, 1996, City of Waldo v. Matthew White, 666 So.2d 901 (Fla. 1996).

On October 21, 1996, the second trial was held and a jury returned a verdict in the amount of \$489,942.65 in favor of the Claimant. The jury determined that the Sheriff's Department was 100 percent liable for the actions of the Waldo police officer because he was acting as their "agent." He was sent out of the city limits to secure the stray horse that was in fact the Sheriff's statutory duty to perform pursuant to §588.16, F.S. A judgment for the verdict, plus the costs, was entered on January 9, 1997. No appeal was taken. The Alachua County Sheriff's Department has liability insurance from which this claim bill would be paid.

CONCLUSIONS OF LAW:

After a jury trial, the Claimant was awarded \$489,942.65. Judgment was entered in the amount of \$501,116.19, inclusive of costs. The City of Waldo settled before trial for \$45,000. The Sheriff of Alachua County tendered payment in the amount of \$55,000, thereby meeting its maximum exposure pursuant to §768.28, F.S. The amount remaining above the statutory cap pursuant to the verdict is \$401,116.19. There are no appeals.

The jury concluded that the City of Waldo police officer acted as the "agent" of the Sheriff, and was solely and wholly responsible for injuries suffered by Matthew White.

Although the Sheriff argues that the horse owner was partially at fault for the injury to the claimant, the jury determined otherwise. Similarly, the determination that the City of Waldo's police officer was not only the agent of the Sheriff, but that the Sheriff was exclusively at fault for injuries caused by this officer's negligence, is not unreasonable.

The Sheriff argues that it is highly questionable whether liability was properly imposed on the Sheriff in any amount. The trial court originally agreed with the Sheriff that no duty was owed to the Claimant and granted a directed verdict for him. On appeal, however, the First District Court of Appeal reversed the entry of judgment for the Sheriff and concluded that "the jury should have been permitted to decide whether chasing the horse on to and along the highway created a danger that did not exist when the horse was grazing. In addition, turning all the lights out deprived motorists of any notice of the danger, or so the jury should have been permitted to find." White v. City of Waldo, 659 So.2d 707 (Fla. 1st DCA 1995). On retrial, the jury was allowed to do so, and returned a verdict in favor of Mr. White. The undersigned can find no compelling reason to deviate from that verdict.

By law, the Respondent is not required to satisfy the excess judgment claim unless and until a claim bill is passed by the Florida Legislature.

COLLATERAL SOURCES:

None.

ATTORNEYS FEES:

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

RECOMMENDATIONS:

Therefore, based upon the foregoing, the undersigned recommends that Senate Bill 70 be reported FAVORABLY.

Respectfully submitted,

William R. Pfeiffer
Senate Special Master

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