



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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December 8, 1999

<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	11/19/99 02/09/00	SM TR FR	Fav/2 amend Fav/CS Fav/1 amend

Re: SB 10 - Senator William G. "Doc" Myers
HB 185 - Representative Charles W. Sembler
Relief of Elizabeth and Frederick Schnell

THIS IS A \$17,011,558 EXCESS JUDGMENT CLAIM BASED ON A JURY VERDICT AND SUPPORTED BY A SETTLEMENT AGREEMENT IN WHICH THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES AGREED TO COMPENSATE THE CLAIMANTS IN THE AMOUNT OF \$9,750,000 FOR PERMANENT AND CATASTROPHIC INJURIES SUSTAINED BY THE CLAIMANTS AS A RESULT OF A HEAD-ON COLLISION BETWEEN THE CLAIMANT'S VEHICLE AND A VEHICLE DRIVEN BY A STATE TROOPER. THE DEPARTMENT HAS ALREADY PAID \$190,691 PURSUANT TO THE STATUTORY CAP.

FINDINGS OF FACT:

- I. The Accident: On January 25, 1997, then 41-year-old Mrs. Schnell and her husband were traveling west bound on SR 60, headed for Disney World. Mr. Schnell was driving their 1985 Corvette at the posted speed limit of 55 mph, and both he and Mrs. Schnell were wearing seatbelts, when at approximately 7:30 a.m., Trooper Wayne Titus, who was traveling east bound on SR 60, abruptly crossed over the center line, and hit the Schnell's vehicle head-on.

State Trooper Titus is employed by the Florida Highway Patrol, a division of the Department of

Highway Safety and Motor Vehicles. The night prior to the accident, Trooper Titus was working an all night off-duty security detail at the Ft. Drum Service Plaza. After clearing the off-duty detail, Trooper Titus was en route to his daily work zone in Indian River County, traveling in his assigned patrol vehicle. The investigative report filed by the department indicated that on the morning of January 25, 1997, the weather was clear and dry, and sunrise was at 7:12 a.m. The Sheriff's Accident Investigation reported that Trooper Titus was traveling at 71 mph upon impact.

II. Liability: At his deposition, Trooper Titus accepted total and complete responsibility for causing the accident and offered no mitigating circumstances for crossing the centerline. The court granted the plaintiffs' Motion for Summary Judgment on the issue of liability as a matter of law.

III. Damages:

a. Mr. Schnell: As a result of the collision, Mr. Schnell was hospitalized overnight for the following injuries:

- Fractured collar bone.
- Contused sternum and ribs.
- Sprained wrist and ankle.
- Lacerated lip.
- Teeth pushed in.
- Swollen eye.

Mr. Schnell has fully recovered from these physical injuries. However, Mr. Schnell continues to receive psychiatric treatment and counseling on a bi-weekly basis as a result of the injuries to Mrs. Schnell. During the trial, evidence was presented that Mr. Schnell sustained a permanent psychiatric injury as a result of the accident. There was no evidence presented to the Special Master in this case to contradict this evidence.

Mr. Schnell has worked at New Piper Aircraft for 20 years as an aircraft painter. Evidence was presented at trial showing Mr. Schnell suffered lost earnings between 1997 and 1999 of \$30,156.37 and past medical expenses of \$41,159. Of these past medical expenses, \$6,881.43 are subject to a reimbursement lien.

- b. Mrs. Schnell: Mrs. Schnell was life-flighted from the scene of the accident to Holmes Regional Medical Center in Melbourne, where she underwent emergency life-saving surgery required by a catastrophic brain injury sustained in the accident. Mrs. Schnell was in a coma for approximately 2 months, has had 7 surgeries, and has been transferred to 4 different medical centers. She has not been home since the collision. Mrs. Schnell is currently being treated at the Florida Institute for Neurologic Rehabilitation in Wauchula, Florida. Mrs. Schnell's injuries include the following:

- Permanent brain injury.
- Broken jaw.
- Right-sided paralysis.
- Moderate short-term memory loss.
- Significant long-term memory loss.

Mrs. Schnell currently requires 24-hour-a-day care, and evidence was presented that she will continue to require 24-hour-a-day care for the remainder of her life. She has been found totally incapacitated, and as such, Mr. Schnell has been appointed the guardian of both her person and property. The nature and scope of Mrs. Schnell's incapacity was determined to be severe dementia due to severe concussive closed head injury with right temporal contusion. Mrs. Schnell has also been found disabled and she now receives \$708 monthly in social security disability benefits. Mrs. Schnell's medical expenses total approximately \$805,221.52, to date. Of these medical expenses, \$477,513 are subject to a reimbursement lien.

Prior to the collision, Mrs. Schnell was working on a Master's Degree in International Affairs at Florida State University, and was employed part-time as an attorney by Bob Routa, Esq. She had already attained her Juris Doctorate, a Master's Degree in Education, and a Bachelor's Degree in Music. Dr. Frederick Raffa, a consulting economist, testified at trial that Mrs. Schnell's pre-accident lifetime earning capacity, adjusted to present value, is \$945,511, and calculated a loss of past earnings at \$70,446, for a total of \$1,015,957. There was nothing in the record to contradict this finding.

During the trial, the jury was presented with two options for the lifetime medical care of Mrs. Schnell:

- Option 1 involved attendant care in the Schnell's home for the remainder of Mrs. Schnell's life. Present value adjusted to the life-expectancy figure = \$6,973,132.
- Option 2 involved Mrs. Schnell remaining at a facility for the remainder of her life. Present value = \$5,387,076.

The court found Mrs. Schnell's life expectancy, based on revised figures presented by Dr. Raffa is 75.29 years; Mrs. Schnell is presently 43 years old.

At trial, evidence was presented by six of Mrs. Schnell's treating physicians and three of her case managers that Option 1, the home environment, was the best placement for Mrs. Schnell. The jury agreed. There was no evidence presented to the Special Master to contradict this finding.

CONCLUSIONS OF LAW:

I. Competent and Substantial Evidence:

There is competent and substantial evidence to support a finding of liability on the part of the department and to support the damages of Mr. and

Mrs. Schnell in the amount of \$9,750,000. I find Trooper Titus was acting within the scope of his employment for the department. I further find Trooper Titus exceeded the posted speed limit in violation of sections 316.187 and 316.1925, F. S., and crossed the centerline in violation of sections 316.081 and 316.089, F. S., causing the collision which resulted in the injuries to Mr. and Mrs. Schnell.

II. Jury Verdict and Remittitur: The Indian River County jury found:

	Jury Award	Final Judgment
Mr. Schnell:		
• Past medical expenses and past lost earnings	\$41,159	\$41,159
• Future medical expenses and lost earning ability	\$4,171	\$4,171
• Past pain and suffering	\$500,000	\$200,000
• Future pain and suffering	\$1,000,000	\$500,000
• Past loss of consortium	\$500,000	\$500,000
• Future loss of consortium	\$1,000,000	\$1,000,000
Sub-Total	\$3,045,330	\$2,245,330
{less PIP and disability set off}	\$-17,861	\$-17,861
Total award to Mr. Schnell	\$3,027,469	\$2,227,469
Mrs. Schnell:		
• Past medical and past loss of earnings	\$875,446	\$875,446
• Future medical and lost earning ability	\$9,331,774	\$7,918,643
• Past pain and suffering	\$1,000,000	\$1,000,000
• Future pain and suffering	\$5,000,000	\$5,000,000
Sub-Total	\$16,207,220	\$14,794,089
{less PIP set off}	\$-10,000	\$-10,000
Total award to Mrs. Schnell	\$16,197,220	\$14,784,089
GRAND TOTAL	\$19,224,689	\$17,011,557

The court also entered a separate order entitling the claimants to recover \$40,647.45 in taxable costs.

- III. Settlement: After the final judgment was entered, but prior to the Special Master hearing, the parties entered into a settlement agreement. Pursuant to this agreement, the department agreed to pay the statutory obligation of \$190,691 and an additional \$9,750,000 by way of claim bill which the department agreed not to oppose.

ATTORNEYS FEES:

Limited to 25% of recovery pursuant to the provisions of section 768.28, F.S. Attorney's fees and costs are included in the settlement amount.

RECOMMENDATIONS:

While it is not uncommon in claim bills of this amount to see structured settlements over a period of years, the parties to this particular claim did not include structured terms as a part of the settlement agreement.

Based on the foregoing, I recommend that SB 10 be amended to conform it to the terms of the settlement agreement and then be reported FAVORABLY, AS AMENDED.

Subsequent to the issuance of the Special Master's Final Report, SB 10 came before the Senate Transportation Committee. The Committee approved the recommended amendments and voted to make a Committee Substitute. The Committee Substitute for SB 10 allows for the payment of \$8,473,349.07 to Elizabeth Schnell and for the payment of \$1,276,650.93 to Frederick Schnell in conformance with the terms of the settlement agreement.

The Fiscal Resource Committee adopted the following amendment to Committee Substitute for SB 10:

Provided that after the payment of fees and costs, medical bills and other immediate needs, the remaining proceeds from Mrs. Schnell's payment of \$8,473,349.07 shall be used to purchase an appropriate structured financial plan to ensure the continued medical care of Mrs. Schnell. In the event Mrs. Schnell death occurs within twenty years of the date of the enactment of this

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bill, the residual monies, less two additional years of payment, shall revert back to the General Revenue Fund. If Mrs. Schnell's death occurs after twenty years of the date of enactment of this bill, then the residual monies shall inure to the benefit to Mrs. Schnell's estate.

Respectfully submitted,

Reynold Meyer
Senate Special Master

cc: Senator William G. "Doc" Myers
Representative Charles W. Sembler
Faye Blanton, Secretary of the Senate
Stephanie Birtman, House Special Master