



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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November 9, 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	SM TR FR	Unfavorable

Re: SB 30 - Senator Ron Klein
HB 343 - Representative John C. Rayson
Relief of Russell Allen

THIS IS AN EXCESS JUDGMENT CLAIM FOR \$4,590,000, BASED ON A JURY VERDICT AGAINST THE FLORIDA DEPARTMENT OF TRANSPORTATION TO COMPENSATE RUSSELL ALLEN FOR INJURIES AND DAMAGES HE SUSTAINED IN AN ACCIDENT RESULTING FROM THE NEGLIGENCE OF THE DEPARTMENT. THIS BILL DIRECTS THE COMPTROLLER TO PAY THE CLAIM BY DRAWING A WARRANT UPON FUNDS IN THE STATE TREASURY TO THE CREDIT OF THE DEPARTMENT.

FINDINGS OF FACT:

For the reasons discussed below, no Special Master hearing was conducted on this claim. Consequently, the following facts are taken from the Senate bill and are provided solely as background information.

On March 27, 1997, 37-year-old Russell Allen was operating a motor scooter in West Palm Beach, turning south onto U.S. Highway 1. U.S. Highway 1 was marked as a one-way street going south. While making his turn, another vehicle, which was traveling in the wrong direction on the one-way street, struck Russell Allen's motor scooter. Russell Allen suffered extensive injuries including a closed head injury, a ruptured spleen, and a severe spinal fracture. As a result, Russell Allen is

permanently paralyzed from the mid-chest down, has measurable cognitive deficits, suffers from debilitating pain, and will require several future operations and attendant care for the rest of his life. Additionally, Russell Allen is now unemployable.

The department was responsible for the signage on U.S. Highway 1 at or near the location of the accident. In 1989, the department changed a 1.2 mile strip of U.S. Highway 1 from a two-lane road going north and south to a one-way road heading south only. When the change was made, no barriers or other devices were erected to prohibit motorists previously traveling north from entering the southbound lane. Also, no signs, rumble strips, or other warnings were in place to alert motorists heading north on U.S. Highway 1 that the two-way road on which they were driving was about to become a one-way road heading south. Additionally, although a "do not enter" sign was erected at the intersection by the department, the department's own design specifications for the placement of the sign were not followed, which resulted in confusion so that drivers traveled the wrong way.

On July 21, 1999, a jury returned a verdict in favor of Russell Allen in the amount of \$7,000,000. The jury determined the department was 67% at fault for the accident and that the motorist who was going the wrong way was 33% at fault. On July 21, 1999, an amended final judgment was entered in favor of Russell Allen and against the department in the amount of \$4,690,000.

After the department has paid Russell Allen \$100,000, the maximum allowable under §768.28, Florida Statutes, this claim bill will be for the remaining excess judgment of \$4,590,000.

CONCLUSIONS OF LAW:

Senate Rule 4.81(f), states:

The hearing and consideration of a claim, any element of which is pending in litigation, shall be held in abeyance until all judicial activity thereon, ***including any appellate proceedings,*** shall have come to rest. (Emphasis supplied.)

The defendant, Florida Department of Transportation, has filed a Notice of Appeal. Pursuant to Rule 4.81(f), this claim is held in abeyance while the appeal is pending.

The parties were notified that the appeal would have to be disposed of before a Special Master's hearing could be held. As of this date, the appeal remains pending in the Fourth District Court of Appeal. Consequently, the Special Master is not able to hold a timely hearing on this claim.

ATTORNEYS FEES:

Not applicable.

RECOMMENDATIONS:

Because each claimant carries the burden of proof and the burden of going forward at a Special Master's hearing with a preponderance of evidence to support his or her claim, and because Russell Allen, pursuant to Senate Rule 4.81(f), has been unable to do so in light of the department's pending judicial appeal of the amended final judgment that underlies this claim, and without expressing any opinion or conclusions on the merits of Russell Allen's claim as the merits may be made to appear at a Special Master's hearing, I recommend that SB 36 (2000) be reported UNFAVORABLY.

Respectfully submitted,

John Forgas
Senate Special Master

cc: Senator Ron Klein
Representative John C. Rayson
Faye Blanton, Secretary of the Senate
Mike Carlson, House Special Master