



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
408 The Capitol
Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

November 1, 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 CA FR	Unfavorable

Re: SB 34 - Senator W.D. Childers
Relief of Elizabeth Linton

THIS IS AN EXCESS JUDGMENT CLAIM FOR \$1,807,184.92, BASED ON A JURY VERDICT AGAINST GULF COUNTY TO COMPENSATE ELIZABETH LINTON , AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HER FATHER, HAROLD ARMSTRONG, FOR DAMAGES MR. ARMSTRONG SUSTAINED AS A RESULT OF A COUNTY EMPLOYEE'S NEGLIGENCE AT A COUNTY LANDFILL. THIS BILL DIRECTS THE COUNTY TO PAY THE CLAIM FROM ITS OWN FUNDS.

FINDINGS OF FACT:

For the reasons discussed below, no Special Master hearing was conducted on this claim. The following facts were derived from the Senate bill and other public documents. They are provided solely as background information.

On November 11, 1994, Harold Armstrong, a 72-year-old contract laborer, working at the Five Points Landfill in Gulf County, was standing on one side of a mound of debris that was 6-8 feet high and 10-12 feet wide. A Gulf County employee, operating a bulldozer on the other side of the mound, assumed no one was on the other side of the debris and plowed it down, causing the debris to fall on Harold Armstrong, dragging him some distance, and burying him alive. Mr. Armstrong died after being taken to a hospital.

On April 28, 1999, a jury returned a verdict against Gulf County in the amount of \$2,007,184.92, allocated as follows: \$7,184.92 for past medical and funeral expenses and \$250,000 (\$125,000 in the past and \$125,000 in the future) for the loss of parental companionship, instruction, and guidance, and for his/her mental pain and suffering as a result of Harold Armstrong's death for each of Harold Armstrong's eight children (Jessie Armstrong, Donna Nunery, Lenora Pitts, Hazel Nunery, Dorothy Alderman, Elizabeth Linton, Kenny Armstrong and Betty Hughes). The Jury did not find any comparative negligence on the part of Harold Armstrong. A final judgment for \$2,007,184.92 was entered on September 21, 1999, by Judge Glenn Hess of the Fourteenth Judicial Circuit.

The defendant, Gulf County, has paid the estate \$200,000, the maximum allowable under section 768.28, Florida Statutes. This claim bill is for the excess judgment of \$1,807,184.92.

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 added).

The defendant, Gulf County, filed a Notice of Appeal on October 14, 1999. 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 resolved before a Special Master's hearing could be held. As of this date, the appeal remains pending in the First 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 Elizabeth Linton has been unable to do so in light of Gulf County's pending judicial appeal of the Final Judgment that underlies this claim, associated with the tolling requirement of Senate Rule 4.81; and without expressing any opinion or conclusions on the merits of Ms. Linton's claim as the merits may be made to appear at a Special Master's hearing, I recommend that SB 34 (2000) be reported UNFAVORABLY.

Respectfully submitted,

Mark Casteel
Senate Special Master

cc: Senator W.D. Childers
Faye Blanton, Secretary of the Senate
Robert Wolfe, House Special Master