THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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SPECIAL MASTER'S FINAL REPORT	DATE	COMM	ACTION
President of the Senate Suite 409, The Capitol Tallahassee, Florida 32399-1100	11/16/00	SM CJ FR	Fav/1 amend.

Re: SB 66 – Senator Donald C. Sullivan
Relief of Alfred Brinkley Roberts

THIS IS A CLAIM FOR $1,014,188.04 BASED UPON A FINAL JUDGMENT ENTERED ON BEHALF OF THE CLAIMANT TO COMPENSATE HIM FOR INJURIES SUFFERED WHEN A CITY OF ST. PETERSBURG POLICE VEHICLE STRUCK HIM. THE PARTIES, HOWEVER, HAVE ENTERED INTO A POST-JUDGMENT SETTLEMENT THAT PROVIDES FOR A TOTAL OF $764,958.37 ON BEHALF OF THE CLAIMANT – WITH $655,346.97 BEING AUTHORIZED THROUGH A CLAIM BILL AND THE BALANCE HAVING ALREADY BEEN PAID BY THE CITY.

FINDINGS OF FACT: Findings of fact must be supported by a preponderance of evidence, although the Special Master is not bound by formal rules of evidence or civil procedure. The Special Master may collect, consider, and include in the record any reasonably believable information found to be relevant or persuasive.

Relating to Liability: *Accident Summary* – On a clear early afternoon in late August 1991, claimant Alfred Brinkley Roberts was walking across Ninth Street South in the City of St. Petersburg. Mr. Roberts was crossing from the east side of the street to the west side of the street near the intersection of Ninth Street South and 15th Avenue South. At the area where the claimant was crossing, Ninth Street South generally features two northbound lanes of traffic and two southbound lanes of traffic. At the intersection, there is also a left turn lane for southbound traffic desiring to access 15th Avenue. A portion of the roadway has double yellow

lines separating northbound and southbound traffic, and a portion of the roadway has a painted "island" in the center separating traffic lanes.

At approximately the same time, an on-duty St. Petersburg police officer had parked his police vehicle at a location approximately four blocks farther north on Ninth Street. In response to a dispatcher's announcement of a possible domestic disturbance, the police officer got back in the vehicle and began driving south on Ninth Street. The vehicle's lights and siren were not activated. In the vicinity of the intersection of Ninth Street and 15th Avenue, the police vehicle struck Mr. Roberts before the pedestrian reached the curb on the west side of the street, propelling him into the windshield and onto the hood of the vehicle. Mr. Roberts fell onto the street as the vehicle came to stop. Eyewitness and expert witness testimony, the traffic accident report, and a police internal affairs investigation support a finding that the police vehicle was speeding – likely at a rate of approximately 65 miles per hour in a 35 mile-per-hour zone – in the seconds immediately before the accident.

Many of the details related to this accident were subject to vigorous dispute between the parties, including whether the police vehicle was traveling in the left lane (which the parties and witnesses describe as the "inside lane") or in the curbside lane of southbound traffic at the point of impact; whether the claimant was crossing at a point north or south of the cross street; whether the claimant had almost successfully completed crossing all lanes or was stopped near the middle of the street at the point of impact; and whether there were other vehicles traveling directly in front of the police vehicle immediately before the accident.

The police officer reported that he was in the left lane (inside lane) of southbound traffic and that the claimant was stopped at a position within the left turn lane, which would be near the double yellow line dividing the southbound and northbound lanes of traffic. The officer said that he and the claimant made eye contact, that he blew his car horn, but that the claimant nonetheless stepped into the path of the vehicle just as the vehicle reached the area where the claimant was standing. In the same instant the officer slammed on the vehicle breaks.

The Special Master finds that the evidence from the official police investigation of the accident, from the claimant's accident-reconstruction expert, and from eyewitnesses, when taken together, is more persuasive. This evidence shows the following: that the police vehicle was traveling in the left lane of the southbound traffic behind two civilian vehicles; that the police vehicle moved into the curbside lane and around the two other vehicles as it approached the intersection; that the claimant had nearly completed his cross across all lanes of traffic; that, upon moving into the curbside lane and seeing the claimant, the police officer slammed on the breaks, causing the vehicle to skid for more than 100 feet; that the skidding vehicle was traveling at approximately 35 to 40 miles-per-hour when it struck the claimant in an unmarked parking lane within a few feet of the curb on the west side of the street; and that the vehicle left an additional trail of skid marks approximately 80 feet long after striking the claimant and before coming to a rest.

Actions Against the Policy Officer – Following the August 31, 1991, accident, the St. Petersburg police department conducted an internal investigation, and a investigatory board concluded that the police officer violated a departmental policy which requires police vehicles to adhere to traffic laws while responding to non-emergency calls. The police dispatcher did not identify the call as a priority call, and the officer acknowledged in his testimony as part of the department's internal investigation that the call was not identified as a priority call. He testified that, although he thought it was important to get to the scene quickly, he did not perceive of the dispatcher's call as being a priority call. Specifically, the policy in force at that time stated, in part: "Under normal, non-emergency operating conditions, and while responding to routine calls for service, members operating police vehicles will strictly adhere to all traffic laws and drive defensively in a safe and courteous manner." The investigatory board imposed a 5-day suspension against the police officer.

Claimant's Conduct – The evidence in the Special Master's record demonstrates that Mr. Roberts was acutely intoxicated at the time of the accident. A blood draw taken at the accident scene revealed a blood-alcohol level of .28 and .279, which is more than two times above the statutory legal limit in force in 1991 for driving under the influence (.10 blood-alcohol level) under §316.193, F.S. (1991). The trial

court excluded the toxicologist's test, on the grounds that the blood draw taken at the accident scene violated Mr. Roberts' privacy rights under the Florida Constitution. Although evidence was admitted at trial of a blood serum draw taken at the hospital, the city notes that it was unable to have the jury instructed on the legal level of impairment.

Relating to Damages: Mr. Roberts suffered life-threatening neurological, orthopedic, and internal injuries as a result of this accident, including, but not limited to: a closed-head injury involving accumulations of blood (blood bruising) to the front and back regions of the brain and requiring insertion of a shunt to relieve pressure on the brain; multiple leg fractures, some requiring internal fixation; multiple pelvic fractures, including a fracture to the hip bone requiring internal fixation; ruptured bladder, requiring surgical repair; surgical removal of the gallbladder; nerve damage affecting the right leg; permanent paralysis, incontinence, and impotence; memory loss and slurred speech associated with moderate, permanent brain injury; chronic pain; and an inability to walk. The evidence in the record of the Special Master indicates that the claimant has experienced significant pain and suffering and a significant reduction in the quality of his life as a result of this accident. Unable to ambulate, Mr. Roberts is confined to a wheelchair and testified that he is limited in his social contact with others. He currently resides in a residential facility in which minimal assistance is provided in the form of weekly, basic household cleaning.

For his extensive injuries, Mr. Roberts received intensive hospital and rehabilitative care for about 18 months. (Mr. Roberts is a veteran and received part of his care at the James A. Haley Veterans Hospital in Tampa.) The claimant estimates that his outstanding medical bills and liens are at least $431,000, and that his future medical expenses may exceed $450,000. At the time of the accident, Mr. Roberts was 58 years of age and was employed as a laborer at an apartment complex, with annualized earnings in 1991 of $11,085. He has been unable to work since the accident, and will remain so. The claimant estimates lost past and future wages of $123,000.

PROCEDURAL HISTORY: Mr. Roberts filed a complaint against the City of St. Petersburg, alleging that the city was liable for the negligent operation of the police vehicle by a police officer acting

within the scope of his employment. The case was tried before a jury in August 1998. At the conclusion of the 5-day trial, the jury rendered a verdict in favor of the claimant, awarding total damages of $1,267,735.05. The jury found that the city was 80 percent responsible and that Mr. Roberts was 20 percent responsible for the damages. After a reduction was made for Mr. Roberts' share of responsibility, the trial court entered judgment in his favor for $1,014,188.

The city subsequently appealed to the Second District Court of Appeal, alleging, among other points, that the lower court erred in excluding certain evidence relating to alcohol in Mr. Roberts' system. The District Court of Appeal affirmed the lower court's decision without issuing a written opinion (*per curiam affirmed).* [*City of St. Petersburg v. Roberts*, 744 So.2d 996 (Fla. App. 2nd Dist. 1999).] The city paid $100,000 into the registry of the circuit court on behalf of the claimant, and the city also paid $9,611.40 for adjudicated costs.

After SB 66 was filed and prior to the Special Master's hearing on this bill, the parties entered into a settlement agreement. The agreement provides for the city to pay the claimant a total of $764,958.37, minus the $109,611.40 previously paid (as described above), for a net amount of $655,346.97. As part of the agreement, the city pledged to support, and not lobby against, passage of a claim bill for this net amount.

[As filed, the claim bill currently seeks the full amount of the trial court judgment entered for the claimant. As mentioned above, on August 23, 2000, after SB 66 was pre-filed, the City of St. Petersburg paid the sum of $100,000 into the registry of the court. Consequently, if the Legislature elects to effectuate the trial court judgment in this matter, the amount requested in the claim bill should be reduced by $100,000, since this amount has already been paid by the city.]

CONCLUSIONS OF LAW: Each claim bill must be based on facts sufficient to establish liability and damages by a preponderance of the evidence. This is true even for cases in which the parties have entered into a settlement agreement, as the parties have here.

Relating to Liability and Damages:

Negligence of the Police Officer – Chapter 316 of the Florida Statutes is the "Florida Uniform Traffic Control Law" and establishes duties for pedestrians, bicyclists, and operators of motor vehicles. For example, under §316.130(15), F.S. (1991), a driver of a vehicle has a duty to exercise due care to avoid colliding with a pedestrian or a person propelling a human-powered vehicle. In addition, §316.1925(1), F.S. (1991), provides:

> Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person.

For the driver of an authorized emergency vehicle, in particular, the statutes prescribe specific conditions under which certain driving privileges may be exercised, such as exceeding the maximum speed limit. For such privileges to apply, the driver of an authorized emergency vehicle must be responding to an emergency call, pursuing an actual or suspected violator of the law, or responding to a fire alarm. Under these conditions, a driver may, among other privileges, "[e]xceed the maximum speed limits *so long as he does not endanger life or property.*" [§316.072(5), F.S. (1991), emphasis added.] In addition, the statute cautions that, in spite of meeting the specified conditions, the driver of an emergency vehicle shall not be relieved from "the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others." [§316.072(5)(c), F.S. (1991).] In other words, although §316.072(5), F.S., allows the driver of an authorized emergency vehicle to disregard certain traffic control provisions when responding to an emergency call, the statute specifies that the driver is not relieved of his or her duty to drive with due regard for the safety of others.

Florida common law also imposes a duty of care on public officials and employees, such as police officers, in the operation of motor vehicles during the course of employment. [*See, e.g., Trianon Park Condominium v. City of Hialeah*, 468 So.2d 912, 920 (Fla. 1985).]

The evidence in the record of the Special Master supports a conclusion that the police officer in this case was not responding to an emergency situation, and therefore breached a duty of care to the claimant by operating the police vehicle at a speed well in excess of the posted speed limit. Even if the officer were responding to an emergency call, the evidence indicates that the police officer was negligent because he failed to sound the vehicle's siren, whistle, or bell to warn Mr. Roberts of his approach. (The officer did testify that he blew the car horn.) When responding to an emergency call or pursuing an actual or suspected violator of the law, the driver of an authorized emergency vehicle is required by law to sound the siren, whistle, or bell when reasonably necessary to warn pedestrians and other drivers of the vehicle's approach. [§316.271(6), F.S., (1991).]

Although the credibility of some witnesses to this accident may be questioned because of evidence suggesting that they were under the influence of alcohol at the time of the accident, the evidence before the Special Master, when viewed in total, supports a conclusion that the police officer was speeding in a non-emergency situation in violation of state law and police department policy and that, had he not been speeding, he likely would have been able to avoid striking the pedestrian by stopping in time or steering around the pedestrian. Even if the police officer were justified in speeding, he was negligent in failing to adequately warn the pedestrian of his approach. The record of the Special Master also supports a conclusion that the negligence of the driver was a proximate cause of Mr. Roberts' injuries, and that the city, through the negligence of its employee, shares in the liability for the damages suffered by the claimant.

Negligence of the Claimant – The jury concluded that this was a case of shared responsibility. Mr. Roberts was acutely intoxicated at the time of this accident. An accident-reconstruction expert for the claimant opined that the claimant could not have avoided being struck by the speeding police vehicle because there was insufficient time to react. Nonetheless, it is reasonable for the trier of fact to conclude that alcohol may have played a role in the accident.

The Florida Statutes impose duties of care upon pedestrians as well as the operators of motor vehicles. Specifically,

§316.130(8), F.S. (1991), provides that "[n]o pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield." Further, subsection (10) of this section specifies that a "pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway." In addition, §316.126(2), F.S. (1991), provides that a pedestrian using the road right-of-way "shall yield the right-of-way until the authorized emergency vehicle has passed, unless otherwise directed by any police officer."

Mr. Roberts testified that he has no recollection of the accident, including his actions moments before being struck by the police vehicle. There was not a marked cross walk at the point of Ninth Street South where the claimant was crossing. It cannot be determined whether the claimant saw the police vehicle, although there is evidence in the record supporting a conclusion that the police vehicle pulled out from behind two civilian vehicles that were traveling in the same direction as the police vehicle, in which case the claimant may have reasonably thought he could cross safely in front of the two civilian vehicles but did not see the approaching police vehicle behind them. Nonetheless, the jury could have concluded that Mr. Roberts was partly negligent in that a reasonable person might have recognized the speed of the police vehicle and yielded to it or that a reasonable person would have yielded to the other approaching vehicles. There is competent and substantial evidence in the record of the Special Master to support a jury's finding that Mr. Roberts was 20 percent responsible for the damages resulting from this accident.

Finally, there is competent and substantial evidence in the record of the Special Master to conclude that Mr. Roberts suffered tremendous economic and non-economic damages as a result of this accident and that the negligence of the police officer was a legal cause of such damages.

Relating to the Claim Overall: The Special Master reviewed the evidence in this case with recognition of the parties' settlement agreement. Settlements may be entered into for reasons unrelated to the actual merits of a claim or the validity of a defense. Consequently, settlement agreements between the parties to a claim bill are not

necessarily binding on the Legislature or its committees, or on the Special Master. All such agreements, however, must be evaluated and can be given effect, at least at the Special Master's level, if they are found to be reasonable and based on equity. Such is the case with respect to this claim bill. The Special Master finds that the settlement agreement is reasonable, is not inequitable to either side, was negotiated in good faith by the attorneys representing the parties, and should be given effect.

The claimant has incurred tremendous economic and non-economic damages as a result of this accident. The settlement agreement does represent a reduction in the award made by the jury. However, in light of the facts and contested issues in this case and in light of the claimant's shared responsibility, the Special Master finds that the settlement agreement is not unreasonable. The attorney for the claimant stated during the course of the Special Master's hearing that he planned to pursue, to the extent feasible, efforts to secure reductions in the liens currently outstanding against any recovery by the claimant, in an effort to maximize the net recovery for the claimant. The attorney for the claimant also stated during the Special Master's hearing that he would discuss with his client the appointment of a guardian ad litem and the use of a private firm specializing in managing funds for individuals who are disabled and have long-term care needs.

ATTORNEY'S FEES: Section 768.28(8), F.S., limits attorney fees to 25 percent of a claimant's total recovery by way of any judgment or settlement obtained pursuant to §768.28, F.S. The attorney for the claimant has submitted a statement attesting to compliance with this limitation.

COLLATERAL SOURCES & LIENS: The claimant has estimated the following outstanding liens, based upon services provided or moneys paid on his behalf:

Bayfront Medical Center	$183,683
Department of Veterans Affairs	$153,621
Agency for Health Care Administration	$ 88,037
Hobby, Smith, & Nantais, M.D., P.A.	$ 6,235

The claimant also anticipates an additional lien to Humana Gold Plus, although an estimate for this lien was not available as of October 2000.

RECOMMENDATION: Based upon the foregoing, I recommend that the amount provided in this bill be amended to $655,346.97 in order to reflect the terms of the settlement agreement, and that Senate Bill 66 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Eric W. Maclure
Senate Special Master

cc: Senator Donald C. Sullivan
Faye Blanton, Secretary of the Senate
House Claims Committee