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

DATE	COMM	ACTION
12/1/01	SM	Favorable
	FT	

December 1, 2001

The Honorable John M. McKay
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 30 (2002)** – Senator Daryl Jones
HB 425 – Representative Manuel Prieguez
Relief of Hilda De Paz

SPECIAL MASTER'S FINAL REPORT

THIS IS A CLAIM BASED ON AN AGREED FINAL JUDGMENT AGAINST MIAMI-DADE COUNTY, IN THE AMOUNT OF $60,000 FOR DAMAGES INCURRED BY THE CLAIMANT AS A RESULT OF A COLLISION BETWEEN TWO METRO-DADE TRANSIT AGENCY BUSES.

CONCLUSIONS OF LAW: The facts and law as stated in the Special Master's Report for Senate Bill 68 (2001) dated February 20, 2001, attached, are hereby adopted and made a part of this Special Master's Report.

Since the issuance of the February 20, 2001 report, there have been no significant changes in the facts or law presented. Claimant and respondent were provided an opportunity to supplement the record. The claimant responded and the respondent has not.

RECOMMENDATIONS: The recommendations of the Special Master's Report issued February 20, 2001, attached, are hereby adopted and made a part of this report. Therefore, due to the foregoing reasons, I recommend that Senate Bill 30 be reported FAVORABLY.

Respectfully submitted,

Maria Matthews
Senate Special Master

cc: Senator Daryl L. Jones
Representative Manuel Prieguez
Faye Blanton, Secretary of the Senate
Stephanie Birtman, House Special Master

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February 20, 2001

SPECIAL MASTER'S FINAL REPORT	DATE	COMM	ACTION
President of the Senate	11/16/00	SM	Fav/1 amend.
Suite 409, The Capitol	02/20/01	CA	Fav/1 amend.
Tallahassee, Florida 32399-1100	04/03/01	FR	Favorable

Re: SB 68 – Senator Daryl L. Jones
Relief of Hilda DePaz

THIS IS A CLAIM BASED ON AN AGREED FINAL JUDGMENT AGAINST MIAMI-DADE COUNTY, IN THE AMOUNT OF $60,000, PLUS INTEREST FOR DAMAGES INCURRED BY THE CLAIMANT AS A RESULT OF A COLLISION BETWEEN TWO METRO-DADE TRANSIT AGENCY BUSES.

FINDINGS OF FACT:

The claimant bears the burden of proof based on a preponderance of the evidence. The Special Master considered documentation provided by the parties, held a final hearing and conducted a visit of the accident site. The claimant, Hilda DePaz (Ms. DePaz) is a non-English speaking Hispanic and a permanent legal resident, and testified through the assistance of an interpreter.

On the morning of May 23, 1995, 64-year-old Ms. DePaz was a passenger on a Metro-Dade Transit Authority (MDTA) bus when it collided into the rear end of another MDTA bus which had stopped for traffic. The incident occurred in the vicinity of 44th Street and Collins Avenue in Miami Beach. Ms. DePaz was taken by ambulance to the Miami Heart Institute where she remained as an inpatient for over a week. The record supports that Ms. DePaz suffered sprains in her cervical, dorsal and lumbar spine regions, contusions

in her left knee and shoulder, and a sternum fracture.

The evidence supports that the MDTA bus driver was initially aware of the MDTA bus ahead which had been running the same route along the beach but that he had come too pre-occupied with a passenger vehicle in another lane. Consequently, the MDTA bus driver was unable to brake sufficiently in advance to avoid a rear-end collision with the MDTA bus which had stopped directly ahead. Ms. DePaz testified that she thought the MDTA bus driver was speeding. The MDTA bus driver stated he was traveling 30-35 miles per hour in a 45 mile per hour speed zone but he also stated that the speedometer on the bus was not working. The front end of the bus sustained heavy damage including a complete shattering of the windshields, and crumpled doors. A number of passengers were injured including the other MDTA bus driver whose injuries resulted in worker's compensation benefits and a 2-year disability status.

A MDTA bus investigation report indicated that the bus driver (with whom Ms. DePaz was riding) had operated the bus carelessly and had failed to keep the bus under control such that the bus rear-ended the other bus. Additionally, the bus driver was cited but not found guilty for careless driving under §316.1925, F.S. (1995). The county did not provide any evidence that drugs or alcohol were involved which would have been cause for dismissal, demotion or suspension. No disciplinary action was taken by the agency against either bus driver although the bus driver causing the collision was required to take a refresher course.

The bus driver, who had been driving for MDTA for less than 10 months, reported that the bus' front wheels had shimmied during braking affecting his ability to brake properly. However, the bus' maintenance and repair records before the accident indicate that monthly maintenance checks were conducted including a brake inspection conducted less than one week before the incident.

PROCEDURAL HISTORY: On the day following the collision, Ms. DePaz gave notice of a claim against the county for alleged injuries sustained during the bus collision. Seventeen passengers, including Ms. DePaz, gave notice of claims against the county for

injuries sustained during the bus on bus collision. The Miami-Dade County Risk Management Department asserts that the county had no insurance. As of this date, the department exhausted the county's general funds for this incident up to the $200,000 statutory cap on liability per incident. Within a year of the bus collision, the county paid 10 of the 17 claimants, ranging from $10,000 to 50,000. The county subsequently paid two more claims, one for $4,500 and $5,500. Only two lawsuits were filed. The person who ultimately settled for $4,500 filed one, and Ms. DePaz filed the other. In July 1996, prior to Ms. DePaz' lawsuit, the county made an initial offer to settle Ms. DePaz' claim for $10,000, which amount would not have covered the initial inpatient hospital stay expenditures alone (excluding consultation and specialists fees) totaling $15,070.37. Ms. DePaz had no medical insurance, could not secure approval for Personal Injury Protection coverage under her daughter's auto insurance plan because the incident involved a mass transit vehicle, and did not apply for Medicaid benefits in time to secure coverage for the medical and hospital treatment costs arising from the incident.

In October 1996, Ms. DePaz sued Miami-Dade County alleging liability and damages. Subsequent settlement negotiations were unsuccessful until May 25, 2000, when the Miami-Dade County entered into a settlement agreement and stipulation for entry of an agreed final judgment for $60,000 plus interest. However, the county asserts that the agreed final judgment was never intended to waive the county's right to contest liability or damages through the legislative claim bill process and was merely for the purpose of moving the claim from the judicial arena to the legislative arena.

CONCLUSIONS OF LAW:

Duty: The Metro-Dade Transit Agency operates the public bus transport system for the Miami-Dade County. The county had a duty to ensure that the bus drivers in the bus transport system exercised care and provided safety to its passengers. The agency's bus operating training manual emphasizes this carrier's duty.

Breach: The evidence in the record supports that Metro-Dade County is vicariously liable for the bus driver's negligent operation of the bus. The county did not have any

specific policies governing background checks on their bus drivers. The bus driver's record with the Florida Department of Highway Safety and Motor Vehicles shows several driving infractions over several years including speeding both within and outside his employment with the Agency. Given the morning hour traffic and the existence of stoplights at every block of this stretch of road, it was foreseeable that a sudden stop might become necessary. The bus driver, however, did not exercise proper caution in monitoring the traffic flow, especially what lay ahead, to assure the safety of the passengers. Ms. DePaz had a right to rely on the bus driver's duty to provide safe transportation.

Causation: The county admitted that Ms. DePaz was a passenger on the bus. The collision between the two buses was the direct and proximate cause of Ms. DePaz' injuries and subsequent other damages.

The county has contested liability from the onset of this legislative claim process but had to be prodded to provide documentation to address, at a minimum, its alleged defenses against liability. The record is insufficient to overcome a finding of liability.

Damages: The Miami-Dade County entered into an settlement agreement and stipulation for entry of an agreed final judgment for a total of $60,000 plus interest. The damages were apportioned within the claim bill as follows:

Past medical expenses	$30,000
Past lost wages	$20,000
Future Medical Expenses	$ 5,000
Impairment of earning ability	$ 5,000
TOTAL	$60,000

Ms. DePaz made no claim for noneconomic damages such as pain or suffering. Medical records and expenses were provided including expert medical testimony regarding Ms. DePaz' present medical and physical condition. Ms. DePaz has reached maximum medical improvement and permanent partial disability lies at a minimum at 12 percent, as a result of the injuries sustained on May 25, 1995. Ms. DePaz testified to continuing episodic pain, limited range of motion, aggravation of disc degeneration, and inability to resume the

tasks she once performed with ease, including lifting and bending. Two updated chiropractic evaluations were performed on Ms. DePaz, one in anticipation of trial and the other in anticipation of the final claim bill hearing. The initial evaluation recommended weekly therapy treatment for 6 weeks and the final evaluation recommended as on-needed basis to address the continuing complaints.

As to Ms. DePaz' past earnings, lost wages and loss of future earning capacity, the record consisted of discovery pleading responses, and the sworn testimony of Ms. DePaz' and her daughter. No economist or vocational rehabilitation reports are available since the matter settled before expert testimony was secured or before trial. Ms. DePaz has had a sporadic employment history until the last 5 years in which she provided a range of housekeeping, home care aide, and child-caring services to various households. She resided (and continues to reside) with her daughter and provided support by doing chores and childcare services to support the household headed by her daughter. Ms. DePaz transacted her self-employment services in cash and apparently never made enough to trigger the income tax reporting requirements in recent years. Therefore, no income tax records or W-2 forms were available.

Based on the record, it appears that for the 5-year period preceding the incident, Ms. DePaz earned an estimated $5,500 per year which equates to $3.52 per hour based on a 30-hour work week). [Note: The federal minimum wage was set at $4.25 in 1991, $4.75 in 1996 and $5.15 in 1997]. However, in the half year preceding the accident, Ms. DePaz testified that she was earning as much as $250 per week providing home care, and cleaning and housekeeping services. Based on an average 30-hour work week, this would equate to $8.30 per hour. Ms. DePaz wanted and intended to continue to offer her services and expressed an interest in expanding and formalizing her services to a number of households. Since the accident, her work habits have been substantially limited and she has not been able to resume her self-employment and even assist her daughter in household chores.

Lost earning capacity is intended to compensate not only the loss of wages that was being earned at the time of the injury,

but also, for lost wages that the injured party was capable of earning. Prior to the collision, Ms. DePaz was in relatively good health and appeared to be quite mobile despite her age. She was enjoying the substantial increase in income she was receiving, and expressed no desire to retire but rather to take on more clients. There is a reasonable degree of certainty that Ms. DePaz work life expectancy would have continued for at least 5 more years. Ms. DePaz could potentially have earned a median hourly rate of $7.69 as a personal home care aide or earned a median hourly rate of $6.85 as a housekeeper/cleaner (both rates of which are set forth in Bureau of Labor and Statistics 1998 Florida Occupational and Wage Estimates) or earned a federal minimum hourly wage rate of $5.15 per hour. These rates are all less than the rate she was earning just prior to the accident. Therefore, it is reasonable to calculate that Ms. DePaz' loss, based on a 30-hour work week over 5 years, ranges from $60,000 to $40,000, without regard to factors such as inflation, pay raises, increase in work hours and other economic factors. The Special Master would have preferred more tangible evidence as to this aspect of Ms. DePaz' damages. However, Ms. DePaz' testimony was very credible and the county did present evidence sufficient to overcome a find of damages.

The damages alleged have been evaluated also within the context of the settlement amount underlying the agreed final judgment. Sometimes parties may enter into stipulations and settlements for reasons other than the merits of a claim or the validity of a defense to a claim. Therefore, the Legislature is not necessarily bound by them. However, in this case, I believe that the parties, each represented by counsel, intended to act in good faith and that each party carefully assessed the merits of and any valid defenses to this case before reaching the settlement agreement. Therefore, although Ms. DePaz did not meet the burden of proving her damages exactly as originally apportioned in the claim bill, I find that the total settlement amount underlying the agreed final judgment represents a reasonable and equitable compromise to compensate Ms. DePaz for her non-economic and economic damages and to limit the county's further exposure to litigation and liability expenditure on this claim.

The agreed final judgment should be given effect as requested in the claim bill. However, the settlement agreement contemplated accrual of interest. Since governmental agencies cannot pay any judgment in excess of the statutory cap until passage of a claim bill, it has been the legislative policy, although not statutorily prohibited, to exclude recovery for interest on any money approved that exceeds the statutory cap. Ms. DePaz did claim that the county protracted settlement of this claim. Although the county, despite receiving a number of extensions throughout the claims process, did not provide documentation as to the county's process and standard for claims payout and resolution of incidents involving multi-claimants in this particular incident prior to the claim bill, I am without sufficient evidence to determine whether the county acted in bad faith in settling this claim. Therefore, although the parties, especially Ms. DePaz, may not have realized this legislative policy in reaching this settlement agreement, I recommend the payment of the $60,0000, without the accrued interest, to be paid no later than 30 days after the effective date of this act

ATTORNEYS FEES: Section 768.28(8), F.S., provides that no attorney may charge or receive legal fees in excess of 25 percent of any judgment or settlement. Claimant's counsel has filed a fee affidavit in accordance with this section.

RECOMMENDATIONS: For the foregoing reasons, I recommend that Senate Bill 68 be amended to exclude recovery for accrued interest and be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Maria I. Matthews
Senate Special Master

cc: Senator Daryl L. Jones
Faye Blanton, Secretary of the Senate
House Claims Committee