

STORAGE NAME: h0039.cla  
DATE: October 31, 2001

Florida House of Representatives  
Committee on Claims  
Summary Claim Bill Report

Bill #: HB 39  
Sponsor: Representative Bucher  
Companion Bill: SB 38 by Senator Rossin  
Special Master: David M. Greenbaum for David R. Wescott

A. Basic Information:

1. **Claimants:** Rosemary Falkinburg
2. **Respondent:** City of West Palm Beach
3. **Amount Requested:** \$500,000.00
4. **Type of Claim:** Excess verdict/settlement agreement.
5. **Respondent's Position:** Claimant and Respondent have entered into a settlement agreement where the Respondent has agreed to neither support nor oppose this claim bill.
6. **Collateral Sources:** PIP benefits and health insurance coverage.
7. **Prior Legislative History:** This bill was filed in the 2001 session as HB 889. It was referred to and died in the Committee on Claims. The Senate Special Master filed a favorable report in the companion measure, SB 26 (2001), which passed the full Senate and died in messages.

**Procedural Summary:** In December 1997, Ms. Falkinburg filed suit against the City of West Palm Beach, alleging negligence by one of its police officers and seeking damages for pain and suffering, lost wages, and future earnings. No claim for punitive damages was sought.

In January 1999, one month prior to Ms. Falkinburg's surgery, the City of West Palm Beach offered to settle for \$14,500, which was not accepted by Ms. Falkinburg. In January 2000, the plaintiff made a demand for judgment for \$65,000, which was not accepted by the City of West Palm Beach.

On February 14, 2000, the jury rendered a verdict for \$1,601,600 against the City of West Palm Beach for Ms. Falkinburg's medical expenses, pain and suffering, lost wages and loss of future earnings, awarding over \$1,390,000 for past and future pain and suffering, disfigurement, and loss of enjoyment of life. The jury apportioned 98 percent fault to the law enforcement officer and 2 percent fault to Ms. Falkinburg. A final judgment was entered on February 17, 2000, for \$1,559,568, plus interest. On February 20, 2000, the City of West Palm Beach filed a Motion for New Trial and a Remittitur (i.e., a reduction in the amount of the final judgment). Those motions were subsequently withdrawn based on a settlement agreement entered into by the parties on August 11, 2000, for \$600,000. Under the terms of the agreement, the City of West Palm Beach agreed not to oppose the claims bill process. The City

of West Palm Beach Commission approved the settlement. Ms. Falkinburg received \$100,000, the first installment of the settlement agreement. On August 15, 2000, the Court entered an Amended Final Judgment reflective of the stipulated settlement agreement.

**Facts of Case:** On August 11, 1994, around 7:45 a.m., the claimant, Rosemary Falkinburg (Ms. Falkinburg), a then 34-year-old petite woman, sustained injuries in a vehicular crash in West Palm Beach. Ms. Falkinburg was en route to work at Belvedere Animal Hospital and driving eastbound in a 1979 Chevrolet Camaro on Belvedere Road and about to turn into the hospital driveway from a center turn lane. In the interim, a City of West Palm Beach Police Officer, Fred Naranjo (Officer Naranjo), who was on road patrol, was pulling out of a Sun Bank parking lot to cross two lanes of stopped traffic to travel westbound on Belvedere Road. With limited visibility, Officer Naranjo pulled his 1991 Ford car out into the center turn lane and his vehicle struck Ms. Falkinburg's vehicle on the right passenger side somewhere between the center turn lane and a westbound lane on Belvedere Road.

Ms. Falkinburg experienced neck, back and buttock pain within days of the incident. The pain persisted and became severe enough to require major back surgery. In February 1999, a laminectomy and a bilateral fusion were performed.

Ms. Falkinburg's injuries are permanent and continuing. She is still under medical care and medication. Although the initial surgery appeared to be a success, the bone fusion did not ultimately hold. Ms. Falkinburg will now be incurring additional medical costs arising from the second surgery, physical therapy, rehabilitation and follow-up care. Her permanent disability is set at 13 percent but may go higher after the surgery.

After the first surgery, the incident eventually cost Ms. Falkinburg a higher paying position as a veterinary technician where she had worked for many years. Although currently working at another veterinary hospital, she is earning less and has difficulty performing the tasks required. There is a strong probability that she will not be able to continue her job after the second surgery.

In an update filed with the Senate and House Special Masters on October 19, 2001, as of April 2001, it was reported that Ms. Falkinburg no longer works in the veterinarian's office but is working part-time cleaning houses. The materials submitted indicate that she has not had any additional surgery nor any additional physical therapy. The doctor's report dated July 5, 2001, (attached to that update) reports no change in Ms. Falkinburg's symptoms and recommends that the patient be totally temporarily disabled.

SM: \_\_\_\_\_ SD: \_\_\_\_\_ Date: \_\_\_\_\_  
David Greenbaum for Stephanie O. Birtman  
David Westcott