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
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January 15, 2002

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

Re: **SB 76 (2002)** – Senator Bill Posey
HB 563 – Representative Chris Smith
Relief of William and Anne Hennelly

SPECIAL MASTER'S FINAL REPORT

THIS IS AN EXCESS JUDGMENT CLAIM FOR $3,508,941 BASED ON A JURY VERDICT OF $4,884,342 AGAINST THE ST. LUCIE COUNTY SHERIFF'S OFFICE TO COMPENSATE MR. AND MRS. HENNELLY FOR INJURIES AND DAMAGES THEY SUSTAINED AS PASSENGERS IN AN INCIDENT IN WHICH THEIR VEHICLE WAS STRUCK BY ANOTHER VEHICLE BEING PURSUED BY A DEPUTY SHERIFF OF THE ST. LUCIE COUNTY SHERIFF'S OFFICE.

FINDINGS OF FACT:

On a late Saturday morning of February 17, 1996, William and Anne Hennelly (visiting from out-of-state) were passengers in a camper van owned and operated by long-time friends. The van was heading west on State Road A1A near the intersection with Old Dixie Highway in Ft. Pierce, St. Lucie County. At the same time, the St. Lucie County Sheriff's Office had established a stationary radar speed zone on Old Dixie Highway near Chamberlain Boulevard in Fort Pierce. Around 10:50 am, a vehicle driven by an 18-year old was clocked at 58 miles per hour in a 35 mile per hour zone. A high-speed (exceeding 80 mph) and close-distance chase ensued on Old Dixie Highway when the traffic offender illegally failed to stop completely for the

speed limit violation and attempted to elude law enforcement. Speeding at a high velocity with the deputy sheriff in pursuit, the traffic offender ultimately ran through a red light into the intersection of Old Dixie Highway and St. Road A1A. At a speed of 60 mph, the traffic offender's vehicle broadsided the van in which Mr. and Mrs. Hennelly were passengers. As a result of the collision both vehicles spun out of control and caught fire.

The collision killed one occupant (the driver's spouse) and seriously injured the driver and the Hennellys. The Hennellys sustained severe burns, prolonged comas and suffered numerous immediate, permanent, and severe injuries to the head, face, and body. The entire pursuit lasted approximately 48 seconds from the time of first communication with the dispatcher until the collision. The pursuit spanned 1.4 miles through a mixed residential and commercial area.

Mr. Hennelly was 69 years old at the time of the incident and father of two adult children. The record reflects that he was an active and very well-educated person (masters in art education) involved in everything from handling all the financial duties of the home to working on his boat to frequent solo-piloting a single-engine plane. As a result of receiving debilitating injuries in the accident, including a severe closed head injury, Mr. Hennelly can only perform very menial tasks and is heavily reliant upon his spouse for daily supervision of his living activities. Mr. Hennelly suffers severe permanent cognitive, behavioral and emotional impairment. Prognosis for improvement is not favorable and ultimately, if Mrs. Hennelly is no longer able to care for him, Mr. Hennelly will have to be placed in a long-term care facility.

Mrs. Hennelly was a 54-year old retired teacher at the time of the incident. She also suffered numerous injuries including traumatic brain injury producing a coma. She similarly experienced cognitive, emotional and behavioral deficits consistent with the brain damage. Unlike her spouse, Mrs. Hennelly underwent a significant amount of successful rehabilitation but continues to experience emotional deficits, including difficulty in coping with anxiety, depression and the taxing responsibility of caring for her spouse. The Hennellys' relationship resembles that of a

child to a parent rather than a man to a woman on an emotional, intellectual, and physical basis. The graphic details regarding the "undeniably horrific" injuries (as the parties admitted) need not be further laid out in this report. The overwhelming and unrebutted evidence in the record establish those damages resulting from this collision. Moreover, the St. Lucie County Sheriff Office did not and do not dispute or challenge the damages.

PROCEDURAL SUMMARY:

In April 1997, the Hennellys filed suit against a deputy sheriff of the St. Lucie County Sheriff's Office for the negligent causation of the vehicular collision between the fleeing traffic offender and the Hennellys' passenger van. In May 1998, the St. Lucie County Sheriff's Office in conjunction with the Florida Sheriffs' Self-Insurance Fund settled litigation filed on behalf of the driver of the vehicle in which an occupant (the driver's husband) had died for the amount of $225,000. Several unsuccessful settlement offers and demands were made, including a demand by the claimants for $2.5 million (inclusive of costs and attorneys' fees).

A 10-day trial took place, beginning April 10, 2000. The St. Lucie County Sheriff's Office filed two motions for directed verdicts, one at the close of plaintiffs' case and one at the close of the defendants' case. The motions were denied. On April 24, 2000, the jury returned with a verdict of liability. The jury apportioned 50 percent negligence against the traffic offender, 50 percent against the deputy and 0 percent against the driver of the van in which the Hennellys were passengers. The jury awarded damages as follows:

	Anne Hennelly	William Hennelly
Past & Future Medical Expenses	$226,735	$1,946,805
Past & Future Loss of Services and Consortium	$871,523	$435,761
Past and Future Pain and Suffering	$531,995	$871,523
TOTAL DAMAGES ($4,884,342)	$1,630,253	$3,254,089

A motion to set aside the verdict or alternatively, to grant a new trial to the deputy was subsequently denied. An amended final judgment was entered on June 5, 2000 for $3,508,941, representing the apportioned percentage of

liability against the deputy of St. Lucie County Sheriff's Office. On June 19, 2000, the deputy appealed to the Fourth District Court of Appeal and the Hennellys cross-appealed on June 26, 2000. A legislative claim bill was filed in August 2000, but the claim was not yet ripe for legislative review due to the pending appeal.

On August 1, 2001, the appellate court issued an opinion upholding the final judgment based on the jury verdict against the deputy. *See* Knowles v. Hennelly, 793 So.2d 1063 (Fla. 4th DCA 2001). On September 26, 2001, the deputy's motion for certification of the issue as a question of great public importance was denied. The Hennellys recently filed a notice of withdrawal with prejudice for a claim for attorney fees in order to proceed with the legislative claim.

STANDARDS FOR FINDINGS OF FACT:

Findings of fact must be supported by a preponderance of the evidence, although the Senate's Special Master is not bound by the formal rules of evidence or procedure applicable in the judicial litigation of civil cases. The claimant has the burden of proof regarding each element of duty, breach, duty and proximate cause. The parties were given the opportunity to supplement the record for this claim. Specifically, the St. Lucie County Sheriff Office was asked and responded to questions and issues relating to available insurance coverage particularly under their existing Florida Sheriff's Self-Insurance Fund, as a potential source to pay the excess claim if recommended by the Legislature. It was represented that as of November 2001, only about $1,273,404.68 of $2.3 million in benefits remained potentially available to pay this claim and two other outstanding claims in St. Lucie County.

COLLATERAL SOURCES:

Although there are collateral sources of benefits, they are subject to rights of subrogation or reimbursement which when exercised require the Hennellys to pay back all or part of the medical bills paid on their behalf. There are no other sources of recovery for the claimants.

CONCLUSIONS OF LAW:

Claimant's Position

- The St. Lucie County Sheriff's Office is liable based on the same legal arguments made at the trial court

and appellate court that the deputy breached a duty of reasonable care when he pursued the traffic offender in a high-speed chase that was negligently conducted, exceeded proper and rational bounds in light of the foreseeable risk of injury, and caused the collision resulting in the injuries to the claimants.

- The jury awarded damages based on the competent substantial evidence and testimony and the final judgment was upheld on appeal.

Respondent's Position

The St. Lucie County Sheriff Office (and the Florida Sheriff's Self-Insurance Fund) did and do dispute and challenge vigorously the assignment of liability. The Respondent's primary position is based on the following arguments:

- The St. Lucie County Sheriff Office is not liable based on the same legal arguments made at the trial court and appellate court that the deputy did not operate his vehicle in a negligent manner or exceed proper and rational bounds but rather conducted the pursuit in accordance with the St. Lucie Sheriff's Office Motor Vehicle Pursuit policy and Florida law as authorized under §316.072, F.S.

- St. Lucie County Sheriff's Office should not be found liable for the excess claim on the pursuit for public policy reasons: impact on law enforcement discretionary enforcement decisions which may ultimately include banning such pursuits and impact on law enforcement's ability to secure insurance coverage such that general revenues may have to be tapped to pay these types of claims.

- This claim bill is not ripe for legislative review on several grounds including that the claim bill process was not conducted in accordance with Senate Rules and that the claimants have not exhausted their legal remedies including recovery of attorney's fees.

Conclusion

I find this claim raises significant policy considerations regarding tort liability and sovereign immunity in the area of pursuit by law enforcement and the appropriate balance to

strike between law enforcement and public safety of innocent bystanders. To date, there are no statewide uniform standards, guidelines, or policies for the initiation, continuation, and termination of the pursuit policy as applied to traffic offenders and criminal offenders in vehicles fleeing or eluding, or attempting thereto, law enforcement. The Florida Sheriff's Self-Insurance Fund did not have readily available historical data regarding the number of pursuits conducted, the underlying facts governing the pursuits and the number of claims arising annually from the tragic perils to innocent third parties with some of these pursuits.

In light of recent court case rulings and these types of claim bills, it is for the Legislature to decide whether the time is ripe to review the existing policies, practices and law governing pursuit and to clarify or provide statutory guidance and policies to law enforcement on pursuit. Early court cases implicitly recognized a fundamental social cost-benefit analysis regarding immunity from liability for a law enforcement officer's decision to pursue despite the inherent risk of harm to innocent persons. *See* City of Miami v. Horne, 198 So.2d 10 (1967). However, over the years the actions of law enforcement taken under these county-by-county pursuit policies, including what functions are discretionary or operational and whether the social benefits outweigh the inherent risks, have come under increased judicial and public scrutiny. Partly in response, various law enforcement offices have adopted pursuit policy manuals.

In City of Pinellas Park v. Brown, 604 So.2d 1222 (Fla. 1992), the Florida Supreme Court placed a duty of care on the police in a comparable high-speed pursuit scenario even though the accident did not directly involve a police vehicle. The Court reasoned that a substantial portion of the risk of injury to a foreseeable victim was being created by the police themselves. The court held that the duty would have existed regardless of whether a specific policy governing such pursuits was in place. Further, the Court, in finding that the issue of the city's liability was a jury question, concluded that police officers engaging in hot pursuit is an operational function that is not immune from liability or subject to sovereign immunity if accomplished in a manner contrary to public reason and public safety. In the Hennelly case, the sheriff's deputies had acquired the traffic offender's vehicle tag number and a sufficient description of the offender and

the car at the outset of the ensuing chase such that the offender could have been tracked down at a later date. Even after the initial collision, the deputy in question pursued the traffic offender on foot in lieu of immediately rendering aid to the victims in the burning vehicle.

The exact facts and circumstances preceding the collision in this claim bill were often the subject of differing opinions and testimony in the record and at the claim bill hearing, particularly as pertained to the speeds and distances between the vehicles, the moment the deputy's vehicle lights and sirens were activated, and the manner in which the pursuit was conducted. I find, however, there was enough evidence to present factual questions to the jury. *See* Creamer v. Sampson, 700 So.2d 711 (Fla. 2nd DCA 1997). Furthermore, based on competent substantial evidence, I find a jury could reasonably conclude that the deputy conducted the hot pursuit of a misdemeanor traffic offender in a negligent manner that had the reasonable and foreseeable risk of causing serious bodily injury to the Hennellys. The damages to the Hennellys under this claim have been reviewed and evaluated.

Based on the review of the record, the claim bill hearing, and the supplemental documentation, I find there is liability and damages. Moreover, the Legislature has also historically given significant deference to jury verdicts and judgments and the full judicial trial and appellate process in reviewing and recommending action on claims bill.

It should be noted that the claim bill must be amended to reflect that excess payment is sought on behalf of both Anne and William Hennelly (in lieu of solely Anne Hennelly) based on the presentation of the claim (see SB 34) last year and as understood by the parties.

ATTORNEY'S FEES:

The claimants' attorney has submitted an affidavit that the attorney fees will be, and have been, limited to the statutorily prescribed amount of 25 percent in accordance with §768.28, F.S.

RECOMMENDATION: Based on the foregoing, I recommend that SB 76 (2002) be amended to provide for the collective payment of $3,508,941, as set forth in the bill, to both Anne and William Hennelly, and that the bill be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Maria I. Matthews
Senate Special Master

cc: Senator Bill Posey
Representative Chris Smith
Faye Blanton, Secretary of the Senate
Eric Haug, House Special Master