Committee on Claims

Wednesday

February 8, 2006

10:45 A.M.

28 House Office Building

Allan G. Bense
Speaker

John Quinones
Chair

Agenda

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Claims Committee

Start Date and Time:	Wednesday, February 08, 2006 10:45 am
End Date and Time:	Wednesday, February 08, 2006 11:45 am
Location:	28 HOB
Duration:	1.00 hrs

Consideration of the following bill(s):

HB 383 Relief of Claude Tunc, Martine Tunc, and Sandrine Tunc by the City of Miami Beach by Barreiro
HB 215 Relief of Minouche Noel, and Jean and Flora Noel by Smith
HB 315 Relief of Jennifer Graham by the Palm Beach County Sheriff's Office by Bucher
HB 107 Relief of Sheryl D. Allen and George F. Allen by the City of Tallahassee by Pickens

NOTICE FINALIZED on 01/27/2006 15:55 by WATSON.LOIS

1 A bill to be entitled
2 An act for the relief of Claude Tunc, Martine Tunc, and
3 Sandrine Tunc by the City of Miami Beach; providing for
4 the relief of Claude Tunc and Martine Tunc, individually
5 and as personal representatives of the estate of Stephanie
6 Tunc, deceased, and Sandrine Tunc, sister of Stephanie
7 Tunc, deceased, for the death of Stephanie Tunc and
8 injuries and damages sustained by Sandrine Tunc due to the
9 negligence of the City of Miami Beach; providing for an
10 appropriation; providing for attorney's fees and costs;
11 providing an effective date.
12
13 WHEREAS, on February 22, 2003, 27-year-old Sandrine Tunc
14 and her 26-year-old sister, Stephanie Tunc, were sunbathing on
15 the soft sand of Miami Beach on a sunny afternoon, and
16 WHEREAS, Officer George Varon, a police officer employed by
17 the City of Miami Beach Police Department, while in the course
18 and scope of his duties as a City of Miami Beach police officer,
19 drove a Miami Beach police vehicle on the soft sand of Miami
20 Beach and negligently drove through an area of sunbathers near a
21 lifeguard station, and in fact did drive over Stephanie Tunc and
22 Sandrine Tunc with his police vehicle, proximately causing the
23 death of Stephanie Tunc and serious permanent injuries to
24 Sandrine Tunc, and
25 WHEREAS, Stephanie Tunc was crushed to death by the vehicle
26 and died shortly after the incident, and Sandrine Tunc survived
27 the accident and was transferred to the Ryder Trauma Center at
28 the Jackson Memorial Hospital, and

29 WHEREAS, the parents of Stephanie Tunc, Claude Tunc and
30 Martine Tunc, seek to recover damages for their mental pain and
31 suffering, as well as future loss of support of services based
32 on the death of their daughter, and
33 WHEREAS, Sandrine Tunc seeks damages for past pain and
34 suffering, disability, impairment, disfigurement, mental
35 anguish, inconvenience, and lost capacity to enjoy life; future
36 pain and suffering, disability, impairment, disfigurement,
37 mental anguish, inconvenience, and lost capacity to enjoy life;
38 loss of future earning capacity; and future medical and
39 psychiatric care and rehabilitation, and
40 WHEREAS, Sandrine Tunc was hospitalized from February 22,
41 2003, through February 28, 2003, at the Jackson Memorial
42 Hospital for a lacerated liver, fractured ribs, punctured lung,
43 contusions, and hematomas, and
44 WHEREAS, also as a result of the injuries incurred on
45 February 22, 2003, Sandrine Tunc has disfiguring scars as well
46 as a permanent hardened cyst-like hematoma in her lower left
47 groin area, and
48 WHEREAS, Sandrine Tunc incurred medical expenses of
49 $37,624.20 for her treatment at the Jackson Memorial Hospital
50 Ryder Trauma Center, and the decedent, Stephanie Tunc, incurred
51 medical expenses of $45,030.24 at the Jackson Memorial Hospital
52 Ryder Trauma Center, and
53 WHEREAS, Sandrine Tunc is receiving continuous medical and
54 psychiatric care due to the above injuries as well as the
55 emotional trauma of watching her sister being crushed to death
56 by the police vehicle while they were lying side-by-side on the

57 beach, and
58 WHEREAS, as a result of a suit filed following the
59 incident, the City Commission of the City of Miami Beach
60 voluntarily agreed to a settlement of this cause in the amount
61 of $1,500,000, of which $200,000 will be paid by the City of
62 Miami Beach, and
63 WHEREAS, the remaining $1,300,000 is to be paid subject to
64 the passage of a claim bill introduced in the Legislature, and
65 WHEREAS, the City of Miami Beach has agreed to support this
66 claim bill, NOW, THEREFORE,
67
68 Be It Enacted by the Legislature of the State of Florida:
69
70 Section 1. The facts stated in the preamble to this act
71 are found and declared to be true.
72 Section 2. The City of Miami Beach is authorized and
73 directed to appropriate from funds not otherwise appropriated
74 and to draw a warrant payable to Claude Tunc and Martine Tunc,
75 individually and as personal representatives of the estate of
76 Stephanie Tunc, deceased, and Sandrine Tunc, sister of Stephanie
77 Tunc, deceased, for the total amount of $1,300,000, which amount
78 is inclusive of costs and attorney's fees as limited by s.
79 768.28(8), Florida Statutes, as compensation for injuries and
80 damages sustained due to the negligence of the City of Miami
81 Beach.
82 Section 3. This act shall take effect upon becoming a law.

STORAGE NAME: h0383.CLAM
DATE: January 4, 2006

Florida House of Representatives
Committee on Claims
Summary Claim Bill Report

Bill #: **HB 383**
Sponsor: **Rep. Barreiro**
Companion Bill: **SB 36 by Sen. Margolis**
Special Master: **Stephanie Birtman**

Basic Information:

Claimants: Claude and Martine Tunc, individually and as personal representatives of Stephanie Tunc, deceased; and Sandrine Tunc, sister of Stephanie Tunc.

Respondent: City of Miami Beach

Amount Requested: $1,300,000

Type of Claim: Equitable. Result of a settlement agreement.

Respondent's Position: Agrees not to oppose and to fully cooperate with claim bill process. The City is holding the full amount in the City's Risk Management Fund.

Collateral Sources: Sandrine has received 49,500 pounds (approximately $92,000 US dollars as of the date of the initial report) as beneficiary of Stephanie's life insurance policy and has submitted her medical expenses to her travel insurance company (Tower, Gate, Chase, Parkinson Ltd.). Martine and Claude have received 10,000 pounds (approximately $18,968 in US dollars) as the beneficiaries of Stephanie's death indemnity through her employer, The Royal Mail, and have submitted her medical expenses to her travel insurance (Voyagers Assistance).

Attorney's Fees: The claimants' attorney has submitted an affidavit affirming that his fees are limited to 25% of any settlement as required by law. Lobbying fees are 3%, and are included within the 25% attorney's fees

limitation. There are no outstanding costs.

Prior Legislative History: HB 1493 (2004) was filed by Rep. Barreiro. The bill died in the Subcommittee on Claims as there was no timely filed Senate companion bill pursuant to Senate Rule 4.81.

HB 731 (2005) was again filed by Rep. Barreiro. The bill died on the Second Reading Calendar of the House of Representatives. SB 34 (2005) by Sen. Margolis was never considered by the Senate.

Procedural Summary: On September 18, 2003, Claude and Martine Tunc, and Sandrine Tunc filed a negligence lawsuit against the City of Miami Beach in the circuit court of the 11th Judicial Circuit in and for Dade County. Prior to trial, the parties entered into a settlement agreement whereby the City agreed to pay a total of $1.5 million, $200,000 of which has already been paid pursuant to the statutory cap on liability, and agreed to the entry of a final judgment for same.

Facts of Case: Stephanie (then aged 28) and her sister Sandrine Tunc (then aged 27) were French citizens visiting Miami Beach on the tail end of their trip to South America for a vacation. Neither sister was married or had children. The two were sunbathing on February 22, 2003 on Miami Beach near the 13th Street lifeguard stand in an authorized area of the beach with other sunbathers nearby. A Miami Beach police officer driving a marked city SUV in the course and scope of his employment, was looking for an alleged robbery suspect without using a siren or flashing lights. The officer drove over both girls, crushing Stephanie and pinning her under the SUV when he first stopped. As a result, Stephanie died; Sandrine suffered a lacerated liver, contusion of her lung, a fractured sacrum, lacerated spleen, contusion of her abdominal wall, numerous burns, and a fractured rib. Her medical bills totaled $37,624. Stephanie's medical bills totaled $45,030. Sandrine has suffered a permanent injury and serious psychological ramifications, including anorexia. Her parents, Claude and Martine Tunc flew to Miami from Forges Les Eaux, France, to bring Stephanie's body back for a funeral; they then returned to Miami to assist Sandrine in her recovery until she was well enough to return to her home in England.

An investigation by the State Attorney's Office for the 11th Circuit concluded that the driver was negligent in failing to observe the sunbathers on the beach. No criminal charges were filed against the driver. Miami Beach Police Department Standard Operating Procedure #14 states that police officers will drive in a defensive manner; the officer was found to have breached this policy. As a result of this accident, the City of Miami Beach changed their beach vehicle policy, prohibiting vehicles from patrolling the beach unless dispatched to respond to a call for service; and requiring vehicles that must drive on the beach to use their flashers.

SM: _____ SD: _____ Date: 1/30/06

Stephanie O. Birtman Stephanie O. Birtman

HB 215

1 A bill to be entitled
2 An act for the relief of Minouche Noel, a minor, and Jean
3 and Flora Noel, parents and natural guardians of Minouche
4 Noel; providing an appropriation to compensate Minouche
5 Noel, a minor, and Jean and Flora Noel, parents and
6 natural guardians of Minouche Noel, individually, for
7 injuries and damages sustained due to the negligence of
8 Children's Medical Services of the former Department of
9 Health and Rehabilitative Services; providing for the use
10 of funds; providing for reversion of funds to the state;
11 providing an effective date.
12
13 WHEREAS, Minouche Noel was born on February 15, 1988, and
14 soon after was diagnosed as having "a possible meningocele,
15 questionable other lesion, with spina bifida," and
16 WHEREAS, on July 15, 1988, Minouche Noel underwent surgery
17 and, following the surgery and throughout her hospital stay,
18 seemed able to move her legs, and
19 WHEREAS, from January 1989 until May 1989, Minouche Noel's
20 parents repeatedly sought help from the doctors and staff at the
21 Children's Medical Services clinic because of her increasing
22 difficulty in walking, and
23 WHEREAS, on May 16, 1989, the same doctor who originally
24 operated on Minouche Noel's spine operated again, and, after
25 that operation, Minouche Noel never walked again, and
26 WHEREAS, at trial, it was found that the first operation on
27 Minouche Noel's spine had not been necessary and that the
28 surgeon had performed the surgery below the minimum acceptable

29 standard of care and had caused Minouche Noel to lose all
30 function in her legs and bladder, and
31 WHEREAS, the jury found that Children's Medical Services
32 had been negligent and that the negligence constituted 100
33 percent of the legal cause of injury or damage to Minouche Noel,
34 and
35 WHEREAS, on March 25, 1999, the jury awarded damages in the
36 amount of $6,500,000 to Minouche Noel, a minor, and damages in
37 the amount of $2,000,000 to Jean and Flora Noel, parents and
38 natural guardians of Minouche Noel, and
39 WHEREAS, $200,000 has been paid in accordance with the
40 provisions of s. 768.28, Florida Statutes, NOW, THEREFORE,
41
42 Be It Enacted by the Legislature of the State of Florida:
43
44 Section 1. The facts stated in the preamble to this act
45 are found and declared to be true.
46 Section 2. There is appropriated from the General Revenue
47 Fund to the Department of Health, as successor to the Department
48 of Health and Rehabilitative Services, the sum of $6,500,000 to
49 be paid to Jean and Flora Noel, as parents and legal guardians
50 of Minouche Noel, a minor, for the benefit of Minouche Noel, as
51 relief for injuries and damages sustained. After payment of
52 statutory fees, costs, outstanding medical liens, and other
53 immediate needs, the remaining funds shall be placed into a
54 special needs trust created for the use and benefit of Minouche
55 Noel. Any funds remaining in the special needs trust upon the
56 death of Minouche Noel, after the payment of any outstanding

57 Medicaid liens, shall revert to the General Revenue Fund of the
58 State of Florida.
59 Section 3. There is appropriated from the General Revenue
60 Fund to the Department of Health, as successor to the Department
61 of Health and Rehabilitative Services, the sum of $2,000,000 for
62 the relief of Jean and Flora Noel, individually, as relief for
63 injuries and damages sustained.
64 Section 4. The Chief Financial Officer is directed to draw
65 a warrant in favor of Jean and Flora Noel, as parents and legal
66 guardians of Minouche Noel, a minor, in the sum of $6,500,000
67 for the benefit of Minouche Noel, minor child of Jean and Flora
68 Noel, upon funds in the State Treasury to the credit of the
69 Department of Health, and the Chief Financial Officer is
70 directed to pay the same out of such funds in the State Treasury
71 not otherwise appropriated.
72 Section 5. The Chief Financial Officer is directed to draw
73 a warrant in favor of Jean and Flora Noel, individually, in the
74 sum of $2,000,000 upon funds in the State Treasury to the credit
75 of the Department of Health, and the Chief Financial Officer is
76 directed to pay the same out of such funds in the State Treasury
77 not otherwise appropriated.
78 Section 6. This act shall take effect upon becoming a law.

STORAGE NAME: h0215.CLAM
DATE: January 9, 2006

SPECIAL MASTER'S FINAL REPORT

The Honorable Allan Bense
Speaker, The Florida House of Representatives
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: HB 215
Relief of Minouche Noel, a minor, and her parents Jean and Flora Noel

THIS IS AN $8.5 MILLION EXCESS JUDGMENT CLAIM FOR AN INCIDENT OF MEDICAL MALPRACTICE BY THE FLORIDA DEPARTMENT OF HEALTH AS THE SUCCESSOR TO THE FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES D/B/A CHILDREN'S MEDICAL SERVICES, FOR SEVERE AND PERMANENT INJURIES SUSTAINED BY THE CLAIMANT AND HER FAMILY.

FINDING OF FACT:

On February 15, 1988, Minouche Noel was born with a small paraspinal lump (a sinus of connective and fatty tissue) at the tenth thoracic vertebra, on her back. Her physician obtained a neurological consultation from Dr. Richard McKenzie. Based on his review of x-rays of Minouche's spine and a physical examination, Dr. McKenzie diagnosed Minouche with spina bifida, a possible meningocele, and a questionable other lesion. Dr. McKenzie recommended a full evaluation, including a magnetic resonance imaging (MRI) scan, and a possible excision to be performed through the Children's Medical Services (CMS) neurosurgery clinic in one month. Jean and Flora Noel, Minouche's parents, followed Dr. McKenzie's orders and took Minouche to the CMS neurosurgery clinic for evaluation and follow-up.

In March 1988, Minouche was seen in the pediatric clinic at

CMS. Dr. Sonia Hodges, a pediatrician, examined Minouche and found that she was very active, had regular motion in her extremities, no paralysis, and that she had a small raised round lesion on her back, soft and completely covered with skin. Dr. Hodge arranged for Minouche to be seen in the neurology clinic for evaluation of the lesion. No neurological abnormalities were noted in Minouche's medical records for the treatment she received from birth until May 1988. On May 26, 1988, an MRI of the dorsal spine was performed on Minouche and revealed what appeared to be a myelomeningocele (hernial protrusion of the spinal cord and its membranes through a defect in the vertebral canal) and possible syrinx (an abnormal cavity in the spinal cord in which cavitation may slowly occur), tumor, cyst, or other abnormality." Dr. McKenzie examined Minouche in the CMS clinic following the MRI scan and planned to operate on Minouche: (1) to remove the sinus to prevent infection within the spinal cord; (2) to untether the spinal cord so that it could migrate in its usual developmental pattern; and (3) to explore the spinal cord to determine if what was seen was, in fact, a cystic tumor or other abnormality.

On July 14, 1988, Minouche was admitted to Broward General Medical Center for surgery. On admission to the hospital, Minouche was functioning well neurologically and had normal strength in all extremities. The following day, Dr. McKenzie performed a laminectomy from the ninth, tenth, and eleventh thoracic vertebrae, released a tethered spinal cord and removed a sinus tract. Immediately following the surgery, Minouche had no neurological deficits. Subsequent to the surgery, and during her hospital admission, Minouche was able to move her legs. Between October and December 1988, Minouche eventually walked. By mid-December, however, Minouche had stopped walking and had no bowel movements for a period of about 2 days.

On January 2, 1989, Jean Noel took Minouche to the Broward General Medical Center emergency room and Minouche was admitted to the hospital. A pediatrician examined Minouche and discovered weakness in the child's lower extremities. Minouche was unable to walk. She exhibited fine scratches across her abdomen which was slightly distended; had trouble moving her bowels; and had weakness in her lower extremities. Dr. McKenzie ordered an orthopedic consultation and physical therapy consultation to evaluate the weakness in Minouche's extremities. Minouche was examined by Dr. Leroy Smith, an orthopedic physician, who diagnosed her condition as a mild right hip subluxation (partial dislocation of a joint) and motor weakness of undetermined etiology. At trial, Dr. Smith testified

that he told Dr. McKenzie that the mild condition of her hips could not account for the problems that Minouche was experiencing and that he believed that it was neurological rather than an orthopedic problem. Minouche was discharged on January 9, 1989 without a diagnosis that explained the cause of the weakness in her lower extremities.

From January 2, 1989 until May 16, 1989, Minouche gradually lost function in her lower extremities and her physicians failed to definitively diagnose the cause for her condition.

Following the January hospital admission, Dr. McKenzie, a neurosurgeon; Dr. Sonia Hodge, a pediatrician; Dr. Alan Watson, an orthopedist; and Dr. Ronald Sirois, an urologist, saw Minouche in the multidisciplinary myelodysplasia clinic at CMS on March 16, 1989 for follow-up. Although Minouche regained some capacity to walk again, she had a wobbly, unsteady gait as noted by Dr. Hodge. Although Dr. Watson concluded that Minouche did not need anything from an orthopedic perspective, he and the other physicians providing care to Minouche failed to adequately communicate with each other and to investigate the underlying cause of the child's symptoms in her lower extremities.

The Noels persistently sought treatment for their daughter's condition from doctors and staff at the CMS clinic but at this point were desperate and began to seek care in the emergency room of local hospitals. On April 11, 1989, Mr. and Mrs. Noel took Minouche to Broward General Medical Center emergency room because Minouche was unable to stand on her right leg and would not walk. The Noels were referred back to the CMS clinic for evaluation. Two days later, Mrs. Noel called CMS stating that Minouche had been taken to the emergency room of the hospital and complained that Minouche was unable to walk and appeared to be in pain. Despite the urgency of the call, Mrs. Noel was referred back to the CMS clinic for appointment for Minouche's annual pediatric evaluation on May 9, 1989. Minouche's parents took her to Humana Bennett Hospital emergency room on April 19, 1989, and the emergency room physician determined that Minouche was not bearing weight on either leg but could still move her legs. At this point, Minouche had not used her legs for 3 weeks.

Through the CMS clinic, Minouche was eventually seen on April 24, 1989, by Dr. Lucy Cohen, a pediatric physiatrist, who determined that there was no orthopedic problem and arranged for Minouche to meet Dr. McKenzie at the Broward General Medical Center emergency room as soon as possible that day.

On April 26, 1989, Minouche returned to the CMS clinic and was seen by Dr. Melvin Grossman, a neurologist. Dr. Grossman diagnosed Minouche with evidence of thoracic myopathy and ordered a stat MRI of the thoracic spine that was scheduled the next day. The April 27, 1989 MRI showed a cystic area which had been progressively widening the cord, which most likely represented a residual syrinx or post-operative arachnoid cyst secondary to adhesions.

Minouche at this point was crippled by the introduction of an infection into her spine by the initial surgery, which went undiagnosed. On May 6, 1989, Mr. and Mrs. Noel took her to Jackson Memorial Hospital emergency room, noting that she was unable to walk. A physical examination of Minouche showed that she had no movement of the lower extremities, decreased tone, and was unable to sit up.

On May 16, 1989, Drs. McKenzie and Stoll re-operated on Minouche's spine, performing a laminectomy from the seventh through the eighth thoracic vertebrae. The surgeons found a spinal cord abscess with purulent appearing fluid. Dr. McKenzie noted that the cyst was infected and had enlarged, and had to be completely removed from her spinal cord. Although Dr. McKenzie advised Mr. and Mrs. Noel that Minouche would eventually walk again, she never did.

Minouche is a paraplegic and no longer has use of her lower extremities. Minouche, now age 18, will require day-to-day attendant care and medical care, has no control of her bladder or bowel movement and other handicapping conditions secondary to the paraplegia, and is confined to a wheelchair. Minouche is susceptible to skin breakdowns, bladder infections, bowel obstructions and infections, scoliosis, muscle and tendon contractures and other related problems. Minouche will need multiple therapies during her lifetime. Mr. and Mrs. Noel currently rent a home that has not been modified for wheelchair accessibility. Her parents can no longer carry her around the house.

The claimants presented two scenarios showing the total economic loss of Minouche in a life care plan structured by an economist retained by the claimants. The first model provides for a live-in attendant and the second model provides for institutional care if Minouche's condition deteriorates. The present value of caring for Minouche is approximately $6.373 million under the first model and approximately $9.146 million under the second model. Minouche has a life expectancy of about 70 years.

BATTLE OF THE EXPERTS:

The claimants presented deposition testimony as to whether the respondents fell below the standard of care by taking Minouche for surgery when she did not show any neurological deficits that would justify the initial surgery. A pediatric neurologist, and two neurosurgeons testified that Drs. McKenzie and Stoll should not have performed the initial laminectomy on Minouche because she did not show any symptoms, such as a loss in neurological function, to justify the potential risk of surgery which included the risk of infection. According to the experts, Minouche's MRI taken on May 26, 1988 showed that she had a neural tube defect, a benign condition in the absence of any neurological deficits.

The experts noted that the MRI showed that Minouche did not have a meningocele (membranes that cover the spinal cord and protrude out through a defect), or a meningomyelocele (a hernial protrusion of the spinal cord and its membranes through a defect in the vertebral canal). The experts noted that a meningomyelocele invariably has severe neurological consequences.

The experts noted that the MRI showed that Minouche had three congenital spinal anomalies: (1) a dermal sinus tract of connective tissue and fat; (2) cavitation in the spinal cord; and (3) the cord is widened out by some fluid within its substances at a higher level in her spinal column. At the other end of the dermal sinus tract there was an epidermoid cyst that was within Minouche's spinal cord. At the initial surgery, Minouche did not have any neurological problems and claimant's experts testified that the lesion on Minouche's spine should have been left alone and monitored for any changes.

In the experts' opinion, the physicians deviated and departed from an acceptable standard of care in their care and treatment of Minouche and but for that deviation from the standard of care, within reasonable medical probability, Minouche would not be paralyzed, she would be ambulatory. In their opinion, the surgery allowed an 'indolent staph germ' to go down into the cyst in Minouche's spine which was subsequently discovered in May 1989. In the experts' opinion, Dr. McKenzie negligently performed the surgery by failing to remove the epidermoid cyst which later became infected. The experts testified that the infection introduced by the initial surgery caused progressive pressure to increase on Minouche's spinal cord which ultimately caused her to lose all function in her legs, bladder and bowel. The claimant's experts noted that treatment or surgery of the

infected epidermoid cyst would have in reasonable medical probability prevented Minouche's paralysis.

The experts retained by claimants and respondents both testified that the physicians who treated Minouche in the CMS multidisciplinary clinic deviated from the appropriate standard of care by negligently failing to communicate their findings with each other to provide a diagnosis, including a comprehensive neurological evaluation, that would explain Minouche's loss of function in her lower extremities.

The respondents presented deposition testimony by a neurologist that the causation of Minouche's paralysis stemmed from a congenital malformation of the spinal cord. Respondent's expert opined that Minouche's paralysis was the natural progression of a pre-existing spinal cord deformity. Respondents' expert opined that the existence and subsequent growth of the epidermoid cyst in Minouche's spine was wholly unrelated to the initial surgery performed by Drs. McKenzie and Stoll.

PROCEDURAL HISTORY:

The *Noel* case, *Stoll v. Noe*l, 694 So.2d 701 (Fla. 1997) has a lengthy and well-known procedural history, and the Florida Supreme Court opinion is often cited regarding the status of sovereign immunity as it pertains to physician consultants.

In October of 1990, a complaint was filed against North Broward Hospital District, the Department of Health and Rehabilitative Services d/b/a Children's Medical Services (and now operating as the Department of Health); and six physicians, both independently and with their professional associations (PA's). The trial court granted summary judgment in favor of the physicians and PA's, which decision was appealed all the way to the Florida Supreme Court. In *Noe*l, 694 So.2d 701 (Fla. 1997), the Florida Supreme Court held that the physicians were agents of the state and thus were entitled to sovereign immunity, and remanded the case for further proceedings consistent with the ruling.

As a result of being dismissed from the suit, the physicians were awarded final cost judgments, which order was also appealed. In *Noel v. Broward General Medical Cente*r, 725 So.2d 438 (Fla. 4th DCA 1999), the Fourth District Court of Appeal affirmed the cost judgments in favor of the physician defendants.

The underlying case, upon remand, was heard in the Circuit

Court in Broward County in March of 1999. The jury found no negligence on the part of the North Broward Hospital District, instead finding the Department of Health and Rehabilitative Services, d/b/a Children's Medical Services (now operating as the Department of Health) 100 percent liable, and awarding total damages to Minouche Noel and her parents of $8,500,000. Nearly one year later, in April of 2000, the court granted the claimant's motion for enforcement of that portion of the final judgment not exceeding the $200,000 statutory cap. The respondent department filed a Motion for Judgment notwithstanding the Verdict; Motion for New Trial on Liability and Damages; Motion for New Trial on Damages only; or in the alternative, Motion for Remittitur and Set Off. All motions were denied. The department chose not to appeal because the department determined that an appeal might not have been successful; further, the time for appeal has expired. Currently, there is no litigation pending on this matter.

CLAIMANT'S ARGUMENTS:

There is a well-supported jury verdict that was not appealed. The jury was given the opportunity to apportion liability to the North Broward Hospital District for the negligence of physicians employed by the District, but the jury found 100 percent liability on the part of the department.

In this case, the Florida Supreme Court opined that the department was responsible for the negligence of the physicians that contracted with CMS.

Motions for remittitur and new trial were denied.

Claimant's expert, Dr. Sussman, testified that the first surgery was negligently performed, and that but for this deviation from the standard of care, Minouche Noel would not be paralyzed. Dr. Sussman further testified that lack of communication amongst other treating physicians, as well as multiple failures to perform a neurological examination allowed the infection in her spine to ultimately paralyze her.

Claimant's rehabilitation expert, Lawrence Forman, testified that Minouche's future needs include: physical and occupational therapies; wheelchair modifications to the family home or a new home; a van; and extensive medical care. Dr. Bernard Pettingill, the claimant's expert economist, submitted a 1998 report stating that the present value of Minouche Noel's lifetime loss, using a model that keeps Minouche in home care, is $8,228,238. Dr. Pettingill's analysis was based on the following assumptions:

- o Minouche's life expectancy of 70.1 years;
- o Minouche's work life expectancy of 65 years;
- o Capacity to earn $630.75/week, with no benefits;
- o Reduction in lifetime earned income of 25 percent,

based on the assumption that she will not be able to work to age 65.

RESPONDENT'S ARGUMENTS:

The doctrine of sovereign immunity should protect the Department of Health from paying anything more than the $200,000 statutory cap already paid.

Minouche Noel suffered from a pre-existing spina bifida, and was pre-disposed to paralysis due to no fault of the physicians as agents of the department.

There were numerous other physicians that treated Minouche Noel who were not under the control or supervision of CMS. The jury should have apportioned some liability to the North Broward Hospital District.

The Department of Health and CMS does not have the financial resources to pay a claim in excess of $200,000, and such payment would put at risk the CMS program and services provided by it.

However, in the alternative, if the Legislature does consider a claim bill in this matter, Minouche Noel should receive no more than necessary to privately fund and sustain a healthy environment, secure the appropriate medical care, and provide for her limited vocational shortcomings. The department's General Counsel testified at the Special Master hearing that $1.7 million would be sufficient to cover Minouche's needs. On questioning, counsel clarified that the $1.7 million amount contemplates economic needs only, and does not compensate Minouche or her parents for any pain and suffering.

The respondent's rehabilitation/economist experts, Dr. Shanasarian and Dr. Clarkson, provided a 1998 report that valued Minouche Noel's net present value of lost earning capacity and future support at $1,787,900. This analysis was based on the following assumptions:

- Claimant's pre-existing spina bifida would significantly reduce the types of jobs that Minouche could realistically perform.
- Lawrence Forman, the rehabilitation expert hired by the claimant is unqualified to prepare a life care plan and has inflated the value of items in the claimant's life care plan.
- The claimant doesn't need a new home, but merely modifications to the existing family home.

- Claimant only needs a personal care attendant for 2-4 hours per day until she is 50, 4-6 hours per day from ages 51 to 60, and 6-8 hours per day from age 61 to death.
- Any money paid to the claimant should go into a Special Needs Trust to ensure proper expenditure, preserve Medicaid eligibility, and ensure reimbursement to the state upon the claimant's death.

CONCLUSION OF LAW:

In 1988, the respondent, State of Florida, Department of Health and Rehabilitative Services operated Children's Medical Services, which is liable for the negligent acts of its employees and agents. I find that the claimant has established, to my satisfaction and by a preponderance of the evidence that the physicians and employees of CMS owed a duty of care to Minouche Noel, that the duty was breached, and that the injuries suffered were a proximate and foreseeable result of that breach.

As in many cases of this nature, the various named defendants shared the responsibility for the result, and although reasonable people may disagree with the allocation of the responsibility among the defendants, I find that the sum to be paid by the Department of Health, the successor to the Department of Health and Rehabilitative Services, is supported by the evidence against it, in light of all the circumstances.

DAMAGES:

Damages as found by the jury and in the Final Judgment were as follows:

Damages	**Jury Award**
Minouche Noel's future medical expenses and lost earning capacity	$3.5 million
Minouche's past pain and suffering	$1 million
Minouche's future pain and suffering	$2 million
Total for Minouche Noel	**$6.5 million**
Jean and Flora Noel's past medical expenses	$200,000
Jean and Flora Noel's future medical expenses, until the age of Noel's majority	$1.3 million
Jean and Flora Noel's past pain and suffering	$300,000
Jean and Flora Noel's future pain and suffering	$200,000
Total for Jean and Flora Noel	**$2 million**
TOTAL OF ALL DAMAGES	**$ 8.5 million**

The jury verdict is under attack by the respondent, Department of Health. How should the Legislature measure it? Rather than the subjective, time-worn "shock the conscience" standard used by the courts, for purposes of the claim bill process, a respondent who assails a jury verdict as being excessive should have the burden of showing the Legislature that the verdict was unsupported by any credible evidence; or that it was influenced by corruption, passion, prejudice, or other improper motives; or that it has no reasonable relation to the damages shown; or that it imposes a hardship on the defendant out of proportion to the injuries suffered; or that it obviously and grossly exceeds the maximum limit of a reasonable range within which a jury may properly operate; or that there are post-judgment considerations that were not known at the time of the jury verdict. Both the respondent, Department of Health and the law firm retained by the department failed to produce any credible evidence that would support a recommendation for an amount lower than the jury verdict.

There are no collateral sources of payment. The claimant is still eligible for and receiving Medicaid services. The Agency for Health Care Administration reports that Medicaid has paid a total of $149,843.51 to date for Minouche Noel's medical care as a result of the accident. The bill requires any outstanding Medicaid lien to be paid prior to the placement of funds into Minouche's special needs trust.

PROTECTION OF MINOR'S FUNDS:

The appointed Guardian ad Litem in this case has reported that the funds would be best protected in a guardianship account with Jean and Flora Noel as appointed guardians of the guardianship account with Sun Trust Bank for the benefit of Minouche Noel. The Circuit Court in Broward County has retained jurisdiction over the expenditures from the account, and has entered an order that no withdrawals may be made without a court order.

Because the Legislature generally favors structured payments, guaranteed-term annuities, or special needs trusts in large claims and in claims on behalf of those who have suffered serious or permanent injuries that are likely to require substantial or long-term medical care, I recommend that after the payment of attorney's fees and costs, medical bills and other immediate needs, that the remaining proceeds be required, by law, to be placed in a special needs trust created exclusively for the benefit of the claimant. To do so, would preserve Medicaid eligibility for the claimant.

Claimants argue that a special needs trust would force Minouche to accept medical care from the physicians that caused her injury. However, at the hearing the claimants indicated that Minouche is treated by and will continue to be treated by Dr. Lucy Cohen, who accepts Medicaid and has been paid by Medicaid for treating Minouche up to this point.

INTEREST:

The final judgment provides for interest on the award, which the claimant has represented has accrued interest at the rate of 12 percent per annum. However, since the award could not be paid without further act of the Legislature, as required by s. 768.28, F.S., the respondent should not have to pay interest on a judgment that they could not satisfy but for the passage of a claim bill.

ATTORNEYS FEES:

Section 768.28(8), F.S., limits claimant's attorneys' fees to 25 percent of claimant's total recovery by way of any judgment or settlement obtained pursuant to §768.28, F.S. Claimants' attorneys have acknowledged this limitation and verified in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorneys' fees.

The dismissed defendants have a cost judgment against the claimant for $39,718.09. There is a Medicaid lien outstanding in the amount of $148,550.92. The claimant's attorney has a cost judgment of $84,000. Again, as the respondent is prohibited by law from paying the portion of the judgment exceeding the statutory cap of $200,000 absent passage of a claim bill, respondent should not have to pay interest on the cost judgment.

LEGISLATIVE HISTORY:

HB 241 (2001) was filed by Rep. Cantens. The undersigned Special Master recommended that the bill be amended to delete reference to any payment of interest and to specify that after payment of statutory fees, court-ordered costs, and outstanding medical bills and liens, the balance of the $6.5 million awarded to Minouche Noel be paid into a Special Needs Trust Fund. Any funds remaining in the Special Needs Trust at Minouche Noel's death after payment of any outstanding Medicaid liens were to revert to the General Revenue Fund of the State of Florida. HB 241 (2001) died in the Committee on Claims. SB 6 (2001) was amended to reflect the Special Master's recommendations and passed all committees of reference. SB 6 died on the Senate calendar.

HB 529 (2002) died in the Committee on Claims. CS/SB 4 (2002) passed all committees of reference in the Senate, passed

the full Senate, and died in House messages. No further Special Masters' hearings have been held.

In 2003, HB 183 was introduced by Representative Murman. The claim passed favorably through both the Committee on Claims and the Judiciary Committee but died in Health Appropriations.

The Senate companion, SB 22, was introduced by Senator Campbell. The claim was referred to and died in the Committee on Rules and Calendar.

In 2004, HB 265 was introduced by Representative Murman. The claim passed favorably through both the Sub-Committee on Claims and the Judiciary Committee but died in Health Appropriations.

The Senate companion, SB 4, was introduced by Senator Campbell. The claim was referred to the Rules and Calendar Committee and died in that committee.

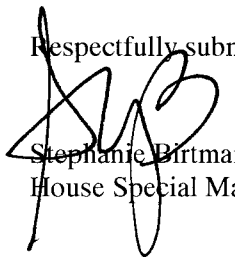
HB 399 (2005) was filed by Rep. Barreiro, considered favorably by the Claims Committee, and died in Health Care Appropriations. SB 8 (2005) was filed by Sen. Campbell; the Senate bill was referred to and died in the Senate Committee on Rules and Calendar.

In preparation for the 2006 session, both parties have been given the opportunity to supplement the record for this claim; the claimant responded that she is in the 12th grade at Dillard High School in Ft. Lauderdale. She lives in the same house without wheelchair ramps and continues to crawl on the floor in her home. She continues to catheterize herself daily and has uncontrolled spasms in her legs for which she receives Myobloc injections in all of her lower extremities muscles.

RECOMMENDATIONS:

As filed, HB 215 (2006) incorporates the Special Master's recommendations from 2001, 2002, 2003, 2004, and 2005. Thus, I again recommend that House Bill 215 be reported FAVORABLY.

Respectfully submitted,



Stephanie Birtman
House Special Master

cc: Rep. Smith, House Sponsor
Sen. Campbell, Senate Sponsor
Barry Munroe, Senate special master

HB 315

1 A bill to be entitled
2 An act for the relief of Jennifer Graham by the Palm Beach
3 County Sheriff's Office; providing for an appropriation to
4 compensate Jennifer Graham for injuries sustained as a
5 result of the negligence of the sheriff's office;
6 providing an effective date.
7
8 WHEREAS, on June 15, 2003, 29-year-old Jennifer Graham was
9 seated on a park bench on the southwest corner of Park Avenue
10 located in Palm Beach County, Florida, and
11 WHEREAS, a deputy sheriff of the Palm Beach County
12 Sheriff's Office was traveling westbound on Park Avenue at
13 approximately 60 to 70 miles per hour according to an
14 eyewitness, and
15 WHEREAS, when the deputy sheriff attempted to make a left
16 turn at this high rate of speed, he lost control of his vehicle
17 and collided with the park bench and Jennifer Graham, and
18 WHEREAS, Ms. Graham was thrown approximately 30 feet due to
19 the collision and landed on a concrete sidewalk, and
20 WHEREAS, the Palm Beach County Sheriff's Office
21 investigated the accident and determined that the deputy sheriff
22 was the sole contributing cause of the accident by exceeding a
23 safe speed and losing control of the vehicle while attempting to
24 make a left turn, and
25 WHEREAS, Ms. Graham suffered multiple pelvic fractures and
26 a bladder rupture, for which she had immediate surgery; a left
27 acetabulum fracture; a right sacroiliac joint fracture; a pelvic
28 hematoma; and an open laceration from her stomach to her pubic

29 bone, and
30 WHEREAS, as a result of her injuries, Ms. Graham later
31 underwent multiple surgeries to repair a hernia, a left shoulder
32 joint, and the pelvic and iliosacral fractures, the latter
33 requiring hardware and screw fixation, and
34 WHEREAS, Ms. Graham was admitted to two rehabilitation
35 facilities for a total of approximately 5 months where she was
36 diagnosed with chronic pain, gait dysfunction, and depression,
37 and
38 WHEREAS, as a result of the accident, Ms. Graham sustained
39 a 40-percent permanent functional impairment and permanent gait
40 dysfunction, and
41 WHEREAS, due to the severity of her injuries, Ms. Graham
42 cannot maintain employment and will require future medical care
43 over her lifetime and an additional surgery to remove the
44 hardware that was placed in her pelvis and iliosacral joint, and
45 WHEREAS, Ms. Graham's medical expenses resulting from this
46 accident were $266,462.44 and the Palm Beach County Health Care
47 District has paid a portion of the outstanding medical expenses,
48 but has imposed a lien in the amount of $87,937.31, and
49 WHEREAS, the present value of Ms. Graham's total economic
50 damages over her lifetime was calculated to be $1,018,988.40;
51 however, the expert economist hired by the Palm Beach County
52 Sheriff's Office calculated the value to be $771,670, and
53 WHEREAS, Ms. Graham is also entitled to collect damages for
54 her past and future pain and suffering, mental anguish,
55 disability, and loss of enjoyment of life resulting from the
56 devastating injuries and severe impairment she incurred as a

57 result of the accident, and
58 WHEREAS, Ms. Graham filed a lawsuit against the Palm Beach
59 County Sheriff's Office, and a trial was set to begin on July
60 18, 2005, and
61 WHEREAS, on July 13, 2005, Ms. Graham and the Palm Beach
62 County Sheriff's Office entered into an agreement to settle the
63 lawsuit in the amount of $950,000, of which the sheriff's office
64 paid $100,000 at the time the settlement agreement was signed by
65 all parties, NOW, THEREFORE,
66
67 Be It Enacted by the Legislature of the State of Florida:
68
69 Section 1. The facts stated in the preamble to this act
70 are found and declared to be true.
71 Section 2. The Palm Beach County Sheriff's Office is
72 authorized and directed to pay to Jennifer Graham, out of
73 insurance proceeds or out of moneys appropriated by the
74 sheriff's office from funds of the sheriff's office not
75 otherwise encumbered, the sum of $850,000 for injuries and
76 damages sustained due to the negligence of the Palm Beach County
77 Sheriff's Office in the following manner, as agreed by the
78 parties in their settlement agreement:
79 (1) Three hundred fifty thousand dollars, paid within 20
80 days after notice to the Palm Beach County Sheriff's Office upon
81 the effective date of this act;
82 (2) Two hundred fifty thousand dollars, paid 1 year
83 following the date of the payment of the first payment of
84 $350,000; and

85 (3) Two hundred fifty thousand dollars, paid 2 years
86 following the date of the first payment of $350,000.
87 Section 3. This act shall take effect upon becoming a law.

Amendment No. (for drafter's use only)

Bill No. **315**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

---

1 Council/Committee hearing bill: Committee on Claims
2 Representative(s) Bucher offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line(s) 87 and insert:
6 Section 3. (1) Within 20 days of the effective date of this
7 act, Jennifer Graham shall purchase a structured settlement
8 annuity at a cost of no less than $75,000, for the exclusive use
9 and benefit of her minor children, Ashley Graham, Tyler Graham,
10 and Hunter Graham. Pursuant to the terms of the annuity, each
11 child shall be guaranteed monthly payments beginning on the
12 effective date of this act and ending on each child's 18th
13 birthday. Such funds are to follow the children regardless of
14 who their legal custodians are, where the children are living,
15 or Jennifer Graham's legal status as a parent, and shall be in
16 addition to any child support payments that may be owed or owing
17 by Jennifer Graham.
18 (2) Within 13 months of the effective date of this act,
19 Jennifer Graham shall purchase a structured educational fund at
20 a cost to Jennifer Graham of no less than $45,000. Such fund
21 shall provide a semi-annual benefit to each of three minor

22 children, Ashley Graham, Tyler Graham, and Hunter Graham, for
23 four years each, beginning on each child's 18th birthday. Such
24 funds are to follow the children regardless of who their legal
25 custodians are, where the children are living, or Jennifer
26 Graham's legal status as a parent, and shall be in addition to
27 any child support payments that may be owed or owing by Jennifer
28 Graham.
29 Section 4. This act shall take effect upon becoming a law.
30
31
32 ========== T I T L E A M E N D M E N T ==========
33 Remove line(s) 6 and insert:
34 requiring the purchase of a specified structured annuity and
35 educational fund; providing an effective date.

STORAGE NAME: h0315.CLAM.doc
DATE: December 9, 2005

SPECIAL MASTER'S FINAL REPORT

The Honorable Allan Bense
Speaker, The Florida House of Representatives
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: HB 315 - Representative Bucher
Relief of Jennifer Graham

THIS IS AN EQUITABLE CLAIM FOR $950,000 BASED UPON A SETTLEMENT AGREEMENT REACHED BY THE CLAIMANT AND THE PALM BEACH COUNTY SHERIFF'S OFFICE WHEREIN THE PALM BEACH COUNTY SHERIFF'S OFFICE ADMITTED LIABILITY AND AGREED TO PAY JENNIFER GRAHAM A TOTAL OF $950,000 TO COMPENSATE HER FOR DAMAGES SHE RECEIVED AS A RESULT OF BEING HIT BY A PATROL CAR. THE SHERIFF'S OFFICE HAS ALREADY PAID $100,000 PURSUANT TO THE STATUTORY CAP ON GOVERNMENT LIABILITY, LEAVING $850,000 TO BE PAID VIA THIS CLAIM BILL.

FINDING OF FACT:

On June 15, 2003, Jennifer Graham, then a 29 year old woman, was sitting on a bench located on the corner of Park Avenue and a driveway access to a shopping plaza located in Palm Beach County Florida. A Palm Beach County Sheriff's deputy traveling over the stated speed limit of 25 mph, missed the turn and collided with the bench upon which Jennifer Graham was seated. The deputy did not have his lights and sirens activated as he was not responding to an emergency situation. The officer received a suspension without pay and loss of his vehicle for 90 days.

The Palm Beach County Sheriff's Office admitted liability for the accident and causation for Jennifer Graham's injuries. The

Sheriff's Office also admits that claimant was in no way responsible or comparatively negligent in causing the accident in question.

As a result of the accident, Jennifer Graham was thrown approximately 10-30 feet and landed on a concrete sidewalk. She was rushed to the emergency room of St. Mary's Medical Center, where she underwent a series of surgical procedures to repair her ruptured bladder and stabilize her pelvic fracture, sustained multiple public bone fractures, shattered her left hip, and sustained a right sacroiliac dislocation (described as her right leg being removed from her spine). She was also treated for an open laceration from her stomach to her pubic bone.

To date, Jennifer Graham has undergone five surgeries and has spent 3 months as an in-patient in rehabilitation facilities. The claimant continues to experience significant chronic pain in her right hip and leg, her back, her neck, is incontinent, has gait dysfunction, and is depressed. The claimant's physician determined that Jennifer Graham has sustained a 40% permanent functional impairment due to the multiple injuries sustained in the accident.

Jennifer Graham's past medical expenses total $266,462.44. The Health Care District of Palm Beach County has a lien for medical services provided of $87,937.31. Jennifer also has $44,724.46 in outstanding medical costs incurred. The claimant's experts opined that future medical expenses over Jennifer's lifetime total $298,205 in present value dollars.

The injuries sustained in the accident have rendered Jennifer Graham unable to work as determined by her treating physicians and experts hired by both the claimant and the Palm Beach county Sheriff's Office. From 1998 to the date of the accident in 2003, Ms. Graham held ten different jobs with an annual earnings of $11,212. Ms. Graham completed her education through the 10th grade at Coastal Senior High School in Lake Park. Claimant's experts calculated that her lifetime wage loss is $454,321. The present value of the total economic damages as a result of this accident equates to $1,018,988.

CONCLUSION OF LAW:

Under House Rule 5.6, HB 315 was assigned by the Speaker to this Special Master to conduct a hearing to determine whether the elements of negligence are satisfied: duty, breach, proximate cause, and damages.

The duty to drive carefully has been established by statute and

case law. Section 316.1925(1), F.S., which prohibits careless driving, states:

> 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.

According to case law, motor vehicle drivers have a duty to attempt to avoid pedestrians on and off roadways. See, e.g., City of Tallahassee v. Kaufman, 87 Fla. 119 (1924) (imposing liability on the City of Tallahassee for damages caused by a trailer pulled behind a fire truck that swept across a street corner and injured a pedestrian); Craig v. School Board of Broward County, 679 So. 2d 1219, 1222 (Fla. 4th DCA 1996) (finding the existence of a duty of a high degree of care is owed by a driver of a motor vehicle to children when children are present and a reasonably prudent driver would see them).

The Palm Beach County Sheriff's deputy breached his duty to Jennifer Graham and she was injured as a result of the deputy's failure to use due care in the operation of his patrol car, specifically in the attempted execution of a turn into a parking lot at an excessive speed for the conditions.

Because the sheriff's deputy was an employee of the Palm Beach County Sheriff's Office, acting within the scope of his employment, the Palm Beach County Sheriff is liable for the damages caused by its employee. See, e.g., Stinson v. Prevatt, 84 Fla. 416 (1922).

The evidence in this case was reviewed 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, its committees, or 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. As such, the Special Master finds that this settlement agreement is reasonable and was negotiated in good faith by the attorneys representing the parties, and should be given effect. Further, the settlement amount is within the ranges approved by the Legislature in claim bills for similar injuries.

ATTORNEYS FEES: Section 768.28, F.S., limits attorneys' 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 documentation attesting to compliance with this limitation. Costs total $15,870.01. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of the award in lobbying fees; such payment is in addition to the 25% statutory limitation on attorney's fees.

EQUITABLE ISSUES: In 2001, two years prior to this accident, Jennifer Graham became addicted to cocaine and lost the custody of her three children (now aged 7,9, and 12) as a result. She sought treatment and appears to have successfully beaten the addiction. The children lived with their father until recently, as his parental rights are in the process of being terminated in dependency court. The three children currently live with another sister of Jennifer Graham's under long term relative placement supervision from the Department of Children and Family Services. Jennifer Graham's stated goal is to be reunited with her children.

Jennifer Graham had been ordered to pay child support, which was not paid. Her arrearage of $12,246.65 is apparently being held by the court until a determination is made as to who is entitled to the funds (the children's father or their current custodians.) To date, Jennifer Graham believes that she is still under a legal obligation to pay a monthly child support payment of $384 and is attempting to have that order modified. The current custodians are receiving aide from the state's Relative Caregiver Program. It is anticipated that Jennifer Graham and/or the children's father will be required to reimburse the state for the children's care.

This Special Master asked the parties to submit a plan to ensure that the children's financial wellbeing is provided for from any monies distributed as the result of this claim bill. The claimant's attorney proposed that $75,000 of the first payment from the Palm Beach County Sheriff's Office be used to fund an annuity that will guarantee monthly payments to each child until that child's 18th birthday as follows: Ashley Graham - $485.98 per month; Tyler Graham - $323.95 per month; Hunter Graham - $256.65 per month. Such annuity would guarantee a total payment of $87,425.03 combined to the three minor children.

Additionally, from the funds paid to Jennifer Graham in the second year of the settlement, she proposes to purchase an structured education fund for each of the three children which

would provide semi-annual payments to each of the children beginning on each child's 18th birthday and continuing for four years thereafter. The payments would be purchased at the cost of $15,000 per child, and make semi-annual payments as follows: Ashley Graham - $20,155.84; Tyler Graham - $2,931.05; Hunter Graham - $3,373. Such educational annuity would guarantee a total payment of $70,588.24 combined, to be used for the children's educational expenses.

PROCEDURAL HISTORY:

A lawsuit was filed by Jennifer Graham against the Palm Beach County Sheriff's Office in 2004. A week prior to trial, the parties entered into a settlement agreement whereby the Sheriff's Office admitted liability and agreed to pay Jennifer Graham a total of $950,000. Pursuant to the agreement $100,000 has already been paid. The remaining $850,000 is to be paid as follows:

- $350,000 to be paid within 20 days of notice to the Sheriff that the bill has become law;
- $250,000 to be paid one year from the first payment; and
- $250,000 to be paid two years from the date of the first payment.

FISCAL IMPACT:

The Chief Financial Officer for the Palm Beach County Sheriff's Office submitted an affidavit stating that the payment of this claim will be paid from the operating budget of the Palm Beach County Sheriff's Office. The affidavit further stated that the payment of this claim over three years should not have a adverse operational impact on the Palm Beach County Sheriff's Office unless a catastrophic event or change in law substantially increases anticipated costs over the three year time span.

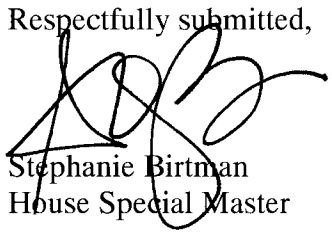
COLLATERAL SOURCES:

Jennifer Graham's sister, with whom she was living at the time of the accident, was covered by State Farm Insurance, who paid $10,000 in PIP coverage, $10,000 in uninsured motorist coverage, and $5000 in medical benefits. Further, several physicians treated Jennifer Graham under letters of protection. $20,095 in obligations owed to these physicians is being held in trust from the initial $100,000 paid, pending a reduction request.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that House Bill 315 be reported FAVORABLY AS AMENDED, to reflect the claimant's proposal to provide financial protection for her three minor children.

Respectfully submitted,



Stephanie Birtman
House Special Master

cc: Rep. Bucher, House Sponsor
Sen. Aronberg, Senate Sponsor
Connie Cellon, Senate special master

1 A bill to be entitled
2 An act for the relief of Sheryl D. Allen and George F.
3 Allen by the City of Tallahassee; providing for an
4 appropriation to compensate Sheryl D. Allen and George F.
5 Allen for injuries sustained as a result of an accident
6 involving Sheryl D. Allen and an employee of the City of
7 Tallahassee; providing an effective date.
8
9 WHEREAS, on December 8, 2001, Sheryl D. Allen was in
10 Tallahassee chaperoning her daughter's Keystone Heights High
11 School Band as they participated in the city's 2001 Winter
12 Festival parade, and
13 WHEREAS, Sheryl D. Allen was hit by a large trailer/float
14 owned by the City of Tallahassee and driven by a City of
15 Tallahassee employee when the trailer swung wide, leaving the
16 parade disembarkment area, and
17 WHEREAS, the contact with the trailer knocked Sheryl D.
18 Allen to the ground, resulting in a skull fracture and
19 significant closed-head injury, and
20 WHEREAS, the accident of December 8, 2001, formed the basis
21 of a negligence action filed against the City of Tallahassee in
22 2002, and
23 WHEREAS, the city, after extensive discovery during the
24 litigation, admitted liability, and
25 WHEREAS, on April 7, 2004, the City of Tallahassee and
26 Sheryl D. Allen and George F. Allen, husband of Sheryl D. Allen,
27 mediated the case prior to trial and reached an agreement
28 whereby the city agreed to pay Sheryl D. Allen and George F.

29 Allen $200,000, pursuant to the limits of liability set forth in
30 s. 768.28, Florida Statutes, and to support the passage of a
31 claims bill in the Legislature for an additional payment of
32 $775,000, and
33 WHEREAS, the Tallahassee City Commission and the Circuit
34 Court in and for the Second Judicial Circuit approved the
35 settlement agreement reached at mediation, and the city has paid
36 $200,000 to Sheryl D. Allen, George F. Allen, and their
37 attorneys, and
38 WHEREAS, the City of Tallahassee has agreed to support the
39 filing and passage of this bill and has agreed that, if this act
40 becomes law, the City of Tallahassee, within 30 days after the
41 effective date of this act, will pay an additional $775,000 to
42 Sheryl D. Allen and George F. Allen, NOW, THEREFORE,
43
44 Be It Enacted by the Legislature of the State of Florida:
45
46 Section 1. The facts stated in the preamble to this act
47 are found and declared to be true.
48 Section 2. The City of Tallahassee is authorized and
49 directed to appropriate from funds of the city not otherwise
50 appropriated and to draw a warrant in the sum of $775,000
51 payable to Sheryl D. Allen and George F. Allen as compensation
52 for injuries and damages sustained due to the negligence of an
53 employee of the city.
54 Section 3. This act shall take effect upon becoming a law.

STORAGE NAME: h0107.CLAM
DATE: December 9, 2005

Florida House of Representatives
Committee on Claims
Summary Claim Bill Report

Bill #:	**HB 107**
Sponsor:	**Rep. Pickens**
Companion Bill:	**SB 48, by Senator Lynn**
Special Master:	**Stephanie Birtman, Esq.**

Basic Information:

Claimants:	Sheryl and George Allen
Respondent:	City of Tallahassee
Amount Requested:	$775,000
Type of Claim:	Equitable claim based on a consent agreement whereby the City agreed to pay $775,000 in addition to the $200,000 limit already paid.
Respondent's Position:	Supports the claim.
Collateral Sources:	While not legally considered collateral sources, Mrs. Allen's motor vehicle insurance has paid $11,000 in PIP and Med Pay benefits; her health insurance has paid $7,897.01 (which subrogation claim was settled for $4,661.24); and she has received $1300 in supplemental hospital benefits. Mrs. Allen currently receives $780 per month in Social Security Disability payments.
Attorney's Fees:	The claimant's attorney has submitted an affidavit certifying that attorney's fees are limited to 25% of the award in accordance with s. 768.28(5), F.S., and that lobbying fees of $20,000 will be included within the 25% cap on attorney's fees. There are outstanding costs of $1,574.49.

Prior Legislative History: Bill History – 2005 Session: The claim was introduced by Senator Lynn as SB 26 (2005). The bill died in the Committee on Health Care. HB 7 (2005) by Representative Pickens passed favorably out of the Claims Committee and Justice Council, but died on the Calendar.

Supplemental Information: Both parties have been given the opportunity to provide further supplemental information and argument supporting or opposing the 2006 version of this claim. The claimant's attorney has provided a current status report indicating continuing adjustment of medications and resulting side effects, as well as the inability to afford attendant services. The claimant indicates that her daughter's college funds have been used for Ms. Allen's rehabilitation. The claimant's attorney also indicates that it has been necessary for part of the family businesses to be sold and that Mr. Allen, the primary care giver, has suffered health problems attributed to stress.

Procedural Summary: The claimants filed a negligence suit against the City of Tallahassee in the Second Judicial Circuit in and for Leon County. Prior to trial the parties entered into a settlement agreement whereby the City agreed to pay Sheryl and George Allen a total of $975,000, of which $200,000 has already been paid pursuant to s. 768.28(5), F.S. The settlement includes costs and attorney's fees. The City Commission unanimously approved the settlement on April 28, 2004.

Facts of Case: On December 8, 2001, Sheryl Allen who was then 51 years old, was chaperoning her daughter's high school band and assisting band members to board their bus back to Keystone Heights after participation in Tallahassee's Winter Festival of Lights parade. As she was waiting in a downtown parking lot, a flatbed trailer owned and operated by the City and used in the parade to carry a float struck her, causing her to hit her head on the cement curb. As a result of the accident, Mrs. Allen suffered a traumatic brain injury which has left her permanently disabled. She is unable to drive, has memory deficiencies that prevent her from reading or remembering. She suffers from debilitating headaches, seizures, and has lost most of her sense of smell. Her medical bills totaled $47,016.89, and experts estimate that the amount for her future medical and rehabilitative needs, as well as her estimated loss of future earnings is estimated to be $816,076.

SM: Stephanie O. Birtman SD: Stephanie O. Birtman Date: 1/30/06