



**THE FLORIDA SENATE**  
**SPECIAL MASTER ON CLAIM BILLS**

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November 24, 1998

<u>SPECIAL MASTER'S FINAL REPORT</u>	<u>DATE</u>	<u>COMM</u>	<u>ACTION</u>
The Honorable Toni Jennings President, The Florida Senate Suite 409, The Capitol Tallahassee, Florida 32399-1100	11/25/98	SM NR FR	Unfavorable

Re: SB 18 - Senator John Grant  
Relief of Appellees in 5th District Court of Appeal  
Case No. 97-767

THIS IS AN EQUITABLE CLAIM FOR \$200,000 TO BE PAID TO THE APPELLEES IN FIFTH DISTRICT COURT OF APPEAL CASE NUMBER 97-767 TO COMPENSATE THEM FOR ATTORNEYS' FEES AND COSTS INCURRED IN DEFENDING, AT THE TRIAL AND APPELLATE LEVELS, AN ALLEGED "SLAPP" SUIT BROUGHT AGAINST THEM BY PINELLAS COUNTY.

FINDINGS OF FACT:

On January 16, 1996, Pinellas County brought an alleged "SLAPP" suit seeking declaratory relief against the Southwest Florida Water Management District, Coalition of Lake Associations, Incorporated, Richard E. Martin, Eileen C. Hart, Gaye Townsend, J. Meredith Wester, Judith A. Williams, William J. Alexander, Gilliam M. Clarke, and Peter M. Gottschalk. In this action, Pinellas County sought a declaratory judgment prohibiting the named respondents from petitioning for redress for Pinellas County's lowering of water levels by withdrawing water from wellfields.

Respondents moved to dismiss the suit on the grounds that the petition failed to state a cause of action and that Pinellas County was not entitled to the relief sought. After several hearings on the motion, the Hernando County Circuit Court dismissed the petition with prejudice

for failing to state a cause of action and for being premature, overbroad, and speculative in nature.

Pinellas County appealed the dismissal, arguing that it should have been allowed to amend its complaint. On September 4, 1998, the Fifth District Court of Appeal reversed and remanded the action, holding that Pinellas County should have been given leave to amend its complaint. In the remand order, the Court stated:

Appellant has assured this court that it can plead sufficiently to allow the court to grant the declaratory relief, so it should be allowed to do so. Attorneys' fees have been denied to this point; however, if appellant fails to establish a proper cause of action upon amending the pleadings, then the court may well entertain that question again.

On September 8, 1998, the district court entered an order denying three motions for attorneys' fees which the Appellees had filed on July 28, 1997, August 13, 1997, and September 18, 1997. As this order expressly applies to motions filed prior to the remand order, it has no effect on any motions for fees which may be filed later should Pinellas County fail to establish a proper cause of action upon amending the pleadings.

CONCLUSIONS OF LAW:

Senate Rule 4.81 f. requires that the Senate reserve action on this claim until all judicial proceedings are completed. Senate Rule 4.81 f. provides:

4.81—Claim bills  
f. The hearing and consideration of a claim, any element of which is pending in litigation, shall be held in abeyance until all judicial activity thereon, including any appellate proceedings, shall have come to rest.

The issue of whether Pinellas County has a cause of action is still pending in the judicial system. As a practical matter, a decision on this issue is necessary before either the Judiciary or the Legislature can determine whether an award of attorneys' fees is

appropriate. As to application of Senate Rule 4.81 f., as there are judicial proceedings which have not been disposed of and as there is a remaining potential judicial remedy which has not been exhausted, the Rule requires that this claim be held in abeyance until all the court proceedings are completed and all judicial remedies are exhausted. As such, no Special Master's hearing was held on this claim and the Senate should take no action on the claim until these proceedings are completed. This is not meant to express any opinion on the merits of either the underlying action or this claim.

RECOMMENDATIONS:

Accordingly, due to the above reasons, this bill is not yet ripe for legislative consideration and I recommend that until such remedies are exhausted, that the bill be reported UNFAVORABLY.

Respectfully submitted,

Kevin Wiehle  
Senate Special Master

cc: Senator John Grant  
Faye Blanton, Secretary of the Senate  
Sheri Holtz, House Special Master