



**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

November 24, 1998

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

Re: SB 30 - Senator Walter "Skip" Campbell  
Relief of R.B. Gay Construction Co., Inc.

THIS IS AN EQUITABLE CLAIM AGAINST THE FLORIDA BOARD OF REGENTS FOR \$577,411.77 TO ENFORCE A CIRCUIT COURT JUDGMENT AWARDING CONTRACT DAMAGES TO R.B. GAY CONSTRUCTION, INC.

FINDINGS OF FACT:

In May 1992, the Florida Board of Regents (the board) contracted with R.B. Gay Construction Inc. (R.B. Gay) for the renovation of Leigh Hall on the University of Florida campus. The base compensation due R.B. Gay under the contract was \$7.57 million, subject to additions and deductions effected through modification. Owner-Contractor Agreement for Construction of State Project No. BR-124, Article 5 (May 20, 1992).

There were extensive modifications and additional work required to complete the project, which, by claimant's tally, increased the total cost of the project to \$8.97 million. Also, the project was delayed several months beyond the mutually agreed upon completion date. A dispute ensued, and R.B. Gay sued the board.

After a contentious 2-week bench trial, the circuit court judge awarded R.B. Gay \$577,411.77 in damages, with post-judgment interest accruing from February 21, 1998, at the statutory rate (currently, 10 percent annually). Final Judgment, R.B. Gay Construction Co., Inc. v. Florida Board of Regents, Case No. 95-507-CA (2nd Circuit Court, July 20, 1998); §55.03, F.S. (1997). Neither R.B. Gay nor the board appealed the Final Judgment. However, there was

an initial hesitancy or perceived inability on the part of the board to pay the judgment.

SB 30, which seeks \$577,411.77 in state funds "to satisfy the judgment of the Leon County Circuit Court," was subsequently filed on behalf of R.B. Gay.

On October 28, 1998, R.B. Gay and the board filed a Joint Notice of Resolution informing the Special Masters that an agreement in principle had been reached settling the payment dispute. Shortly thereafter, R.B. Gay executed a Satisfaction of Judgment, and both parties executed mutual Releases of Liability in settlement of all issues arising from the underlying case and the claim bill. On November 3, 1998, the board forwarded a check to R.B. Gay in the amount of \$616,747.85 in full satisfaction of this matter, which included post-judgment interest of \$39,336.08.

The bill sponsor has filed a letter with the Senate Secretary evidencing his intent to withdraw the bill from further consideration on the first day of session.

CONCLUSIONS OF LAW:

The Florida Supreme Court has judicially waived sovereign immunity in contract. See Pan-Am Tobacco Corp. v. Dep't of Corrections, 471 So.2d 4 (Fla. 1984), and progeny. There is no need for legislative action to implement the settlement between the parties, as would be required in the case of an excess tort judgment.

ATTORNEYS FEES:

The 25 percent cap on attorneys fees in §768.28, F.S., does not apply because this claim is grounded in contract, not tort.

RECOMMENDATIONS:

In view of the foregoing, I recommend that the only Senate action necessary on SB 30 is the withdrawal of the bill from further consideration upon the formal request of the sponsor.

Respectfully submitted,

Jonathan Fox  
Senate Special Master

cc: Senator Walter "Skip" Campbell  
Faye Blanton, Secretary of the Senate

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Lynn Cobb, House Special Master