

STORAGE NAME: h1499.cla

DATE: January 14, 2000

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SPECIAL MASTER'S FINAL REPORT

The Honorable John Thrasher
Speaker, The Florida House of Representatives
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: HB 1499 - Relief of Frank J. Ruck, Jr., and Marlene G. Ruck (SB 12)

THIS IS A CLAIM FOR \$800,000, PAYABLE FROM LOCAL FUNDS, BASED UPON A \$1 MILLION SETTLEMENT BETWEEN THE CLAIMANTS AND MIAMI-DADE COUNTY, UNDER WHICH THE COUNTY AGREED TO PAY THE STATUTORY LIMIT OF \$200,000 AND SUPPORT A CLAIM BILL FOR THE BALANCE, IN ORDER TO COMPENSATE THE CLAIMANTS FOR DAMAGES RESULTING FROM THE DEATH OF THEIR ADULT SON, WHO WAS STRUCK BY A COUNTY-OPERATED BUS WHILE RIDING A BICYCLE.

FINDINGS OF FACT:

Findings of fact must be supported by a preponderance of evidence, although the Special Master is not bound by formal rules of evidence or civil procedure. The Special Master may collect, consider, and include in the record any reasonably believable information found to be relevant or persuasive.

Relating to Liability

Accident Summary -- On June 16, 1996, Christopher F. Ruck, 33, and a second man were riding bicycles northbound on Collins Avenue (State Road A1A) in Miami Beach. It was approximately 10:15 a.m.; the weather was clear; and traffic was light. At the area in which the men were bicycling, Collins Avenue is a one-way street with three through lanes of northbound traffic. The bicyclists were in the far right lane, riding close to the curb. At roughly the intersection of Collins Avenue and 29th

Street, a Miami-Dade County bus, apparently in the course of attempting to pass the bicyclists on the left, crowded the bicyclists against the curb and struck the bicycle driven by Christopher Ruck, causing a collision of the two bicycles and causing both men to be thrown to the ground. Christopher Ruck landed toward the street and under the path of the bus, while the second bicyclist landed toward the sidewalk. As the bus continued its course, without slowing, the right rear tire of the vehicle ran over Christopher Ruck's head, resulting in massive trauma. Christopher Ruck was wearing a helmet at the time of impact. Christopher Ruck died almost immediately. The second bicyclist, who also was wearing a helmet, was not seriously injured in the fall.

The bicyclists had caught sight of the bus after they entered Collins Avenue at approximately 15th Street, several blocks before the accident location. The bicyclist accompanying Christopher Ruck testified that on probably two occasions in the minutes before the accident the bicyclists passed the bus on the left as it stopped to pick up or release passengers, suggesting that the bus driver was, or should have been, aware of the bicyclists' presence on the roadway. The bus driver's statement accompanying an incident report indicates that, at a minimum, she was aware of the bicyclists as the bus approached 29th Street. She stated that she moved toward the center lane to clear the bicyclists. One witness, who was standing on the sidewalk near the location of the accident, stated that the bus moved into the bicyclists' path as the vehicle approached the intersection. Witnesses stated that there was no traffic in the center and left through lanes impeding the ability of the driver to change lanes in order to proceed around the bicyclists.

There is conflicting evidence in the record regarding the speed at which the bus was traveling. The posted speed limit was 35 miles per hour. One witness estimated that the bus may have been traveling as fast as 60 miles per hour, although another witness and the police report estimated the speed of the bus to be 35 and 30 miles per hour, respectively. The bus driver stopped the vehicle at 30th Street, as one of the witnesses chased the bus on

foot and upon hearing from one of the passengers that a collision had occurred. The evidence suggests that the bus driver was not independently aware of the accident until she looked in the bus mirror and saw the bicycles on the ground.

Actions Against the Bus Driver -- The bus driver ultimately was charged with and convicted of careless driving under §316.1925(1), F.S. (1995). The driver was also dismissed by the county following the accident. In a disciplinary action report, the bus driver's supervisor found that the accident was preventable and a direct result of the bus driver's negligence in the performance of her duties. According to that report, the accident involving Christopher Ruck was the bus driver's eleventh vehicular accident during her 3½-year employment as a bus driver with the county transit authority. The bus driver's record on file with the Florida Department of Highway Safety and Motor Vehicles contains multiple traffic incidents, investigations, or infractions over several years.

Bicyclists' Conduct -- The Florida traffic crash report specifies that there was no improper driving or actions on the part of the two bicyclists, and the evidence in the Special Master's record supports this finding. Both bicyclists were wearing helmets and other biking attire. In addition, the bicyclists were riding as close as practicable to the curb or edge of the roadway, as required by statute. See §316.2065(5), F.S. (1995). There is conflicting evidence in the record on whether the bicyclists were riding side by side or single file at the time of the accident. The second bicyclist testified that he was riding about one foot behind Christopher Ruck's bicycle and that his momentum propelled him into Christopher Ruck after the bus hit Christopher's bicycle. Based upon the credible testimony of the second bicyclist, the Special Master finds that the bicyclists were riding in single file. Regardless, the bicyclists were in compliance with §316.2065(6), F.S. (1995), under which bicyclists may ride two abreast unless doing so would impede traffic. There is no evidence in the record to suggest that the bicyclists were, under the existing conditions, impeding traffic.

Relating to Damages

Parents' Mental Pain and Suffering -- The recovery being pursued under this claim bill is to compensate for the mental pain and suffering of Christopher Ruck's parents. The claimants, who are residents of Pennsylvania, learned of their son's death upon returning to their house from a family gathering in New Jersey. It was Father's Day. Both parents testified as to the mental pain and suffering they have experienced in the wake of the death of their middle child.

From her statements, it is apparent that, to this day, it continues to distress Marlene Ruck that her son was dead for several hours before she learned of that fact. She reported that she continues to experience bouts of weeping on a daily or near-daily basis. In the time following her son's death, she utilized antianxiety medication on an as-required basis. Mrs. Ruck, 68, testified that she stopped working as a trusts and estates paralegal because of difficulty concentrating in the months following her son's death. Frank Ruck, 70, who is employed as a closing officer, also testified to his difficulty in concentrating because images of the accident come to mind. According to information in the record, friends of Mr. Ruck's report that his personality has become more subdued since his son's death.

Marlene Ruck testified that their son's death, while in some respects strengthening the couple's relationship, has also strained their marriage, as they adjust to different manners of expressing their grief, with hers being more outward and his being more internalized. In the aftermath of Christopher's death, the couple lost interest in participating in social activities.

Relationship with Son -- The Rucks testified that they spoke with their son via telephone on a weekly basis. In addition, they visited him in South Florida, and he returned to the family home for holidays and other significant family gatherings. The Rucks spoke of their pride at their son's numerous accomplishments in high

school, college, and in his profession as a design architect with a firm in South Florida. Their testimony demonstrates specific knowledge of their son's professional accomplishments, including buildings he helped design, as well as familiarity with his hobbies and other activities. The parents also testified as to the close relationship among Christopher Ruck and his two brothers, citing as an example the brothers' participation in 300-mile charity bike ride in Christopher's honor the year following his death.

Expert's Analysis -- A university professor of psychology who was retained by the claimants and who interviewed the claimants reported that both Marlene and Frank Ruck have demonstrated some symptoms of post traumatic stress syndrome. According to the professor's report, dated July 1998, the Rucks have demonstrated, among other conditions, obsessive-compulsive behaviors, manifested in repeatedly experiencing unpleasant thoughts.

PROCEDURAL HISTORY:

As personal representatives of their son's estate, Frank Ruck and Marlene Ruck in 1997 brought a civil action under the Florida Wrongful Death Act, §§768.16-768.27, F.S. (1995), alleging negligence of the bus driver and vicarious liability of the county for the bus driver's conduct. (In addition, the complaint alleged negligence of the county in hiring and retaining the driver.) Miami-Dade County admitted liability, upon opining that the bus driver was at fault and was the sole cause of Christopher Ruck's death. The parties agreed that the primary damages to be pursued by the parents were for their mental pain and suffering. (Damages were also sought for medical or funeral expenses allowable under the Wrongful Death Act.) Prior to trial, the parties agreed to settle the claim for a total of \$1 million, with \$200,000 payable under §768.28, F.S., and \$800,000 to be pursued through a claim bill. (A release and settlement agreement was signed in October 1998, and the civil court issued an order of dismissal in November 1998.) Consistent with the settlement, the county has paid the claimants \$200,000. The attorney for the claimants reports that all estate obligations have been satisfied,

and that Marlene and Frank Ruck will split any net proceeds from this claim bill equally.

CONCLUSIONS OF LAW:

Each claim bill must be based on facts sufficient to establish liability and damages by a preponderance of the evidence. This is true even for a claim bill in which the parties have entered a settlement agreement, as the parties have here.

Relating to Liability

Under §316.130(15), F.S. (1995), a driver of a vehicle has a duty to exercise due care to avoid colliding with a pedestrian or a person propelling a human-powered vehicle. Section 316.083(1), F.S. (1995) specifies that “[t]he driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.” (For purposes of this statute, the term “vehicle” would include a bicycle. See §316.003(2) and (75), F.S. (1995).)

In addition, §316.1925(1), F.S. (1995) provides:

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. Failure to drive in such manner shall constitute careless driving and a violation of this section.

The evidence in the record of the Special Master supports the admission of vicarious liability by Miami-Dade County for the driver's negligent operation of the bus. The bus driver was aware of the bicyclists' presence in the roadway and, without traffic in the other lanes, was unimpeded in her ability to move into the center lane to avoid the riders. By needlessly crowding the bicyclists against the curb, the driver breached a duty of care to overtake them in a safe manner. At the

intersection at which the accident occurred, the roadway curves to the right and then back to the left. The record suggests that the bus driver, unobstructed in her view, acted without regard for this potentially dangerous condition in the roadway by maneuvering the jog in the road too quickly and too close to the curb. She was negligent in failing to move fully into the adjoining left lane of traffic to avoid the bicyclists and failing to remain there until safely clear of the bicyclists. The driver's negligence was the cause of Christopher Ruck's death.

In addition, although the issues of liability were not subjected to extensive discovery or otherwise fully litigated by the parties once the county admitted liability for the driver's negligence early in the case, there is some evidence in the Special Master's record supporting an argument that the county breached its duty to Christopher Ruck by retaining an employee who had numerous vehicular accidents during her employment as a bus driver -- prior to the fatal accident involving Christopher Ruck.

The record also supports the conclusion that the bicyclists were without fault and could not have avoided the collision. The bus pinched the bicyclists into the curb rapidly and to the point that there was no place they could maneuver to avoid the accident.

Relating to Damages

Under the Florida Wrongful Death Act, the surviving parents of an adult child may recover for mental pain and suffering from the date of injury if there are no other survivors (§768.21(4), F.S.). Although Christopher Ruck was survived by two brothers, those brothers do not meet the statutory definition of "survivors" because they were not partly or wholly dependent upon him for support or services. (See §768.18(1), F.S.)

The Florida Supreme Court has recognized the difficulty of establishing tangible criteria or standards for measuring pain and suffering and has stated that the trier of fact must use his or her enlightened conscience based on the evidence in the case. *Braddock v. Seaboard Air*

Line R. Co., 80 So. 2d 662, 667-68 (Fla. 1955); *Steele v. Miami Transit Co.*, 34 So. 2d 530, 531 (Fla. 1948); *Florida Dairies Co. v. Rogers*, 161 So. 85, 87 (Fla. 1935). Evidence regarding the domestic relationship between a decedent and his or her survivor is relevant in assessing the mental pain and suffering of those survivors. *Adkins v. Seaboard Coast Line R. Co.*, 351 So. 2d 1088, 1092 (Fla. App. 2nd 1977).

There is competent and substantial evidence in the Special Master's record to conclude that Marlene and Frank Ruck have suffered tremendous mental pain and suffering associated with their son's death and that, as Marlene Ruck described, his death has left "an enormous hole" in what the evidence demonstrates is a close-knit family. The record demonstrates that the Rucks had a loving and close relationship with their child. The record also supports the conclusion that the negligence of the county's employee through this accident is the cause of the Rucks' mental pain and suffering. Noting the difficulty in quantifying such suffering, the Special Master concludes that the requested damage amount bears a reasonable relationship to the facts in this case.

RELATED ISSUES:

In 1989, Christopher Ruck tested HIV-positive. At two points in time during his treatment between 1989 and 1996, his CD4-cell (or "T-cell") count was found to have dropped below 200, which is one of the government's indicators for making an AIDS diagnosis. In both instances, subsequent tests found his T-cell counts to have risen above 200. According to deposition testimony from his physician, Christopher Ruck had not developed any AIDS-related opportunistic infections. The record contains evidence that Christopher Ruck was leading an active life without outward signs of significant illness, including participating in a 300-mile charity bicycle ride shortly before his death.

The parties in this case litigated issues related to Christopher Ruck's life expectancy. An expert for the respondent estimated Christopher Ruck's probable life expectancy to be between five and eight years, while an expert for the claimants estimated his probable life expectancy to be between five and 10 years, with a

possibility for additional years based upon expected advances in AIDS-related treatments.

The claimants are not seeking damages for lost support or services or for lost net accumulation to the estate of Christopher Ruck. Evidence relating to his HIV/AIDS status and life expectancy was considered by the Special Master only as it might bear on the familial relationship and on the mental pain and suffering of the claimants, which is the focus of the damages being addressed by the claim bill. Marlene and Frank Ruck were not aware of their son's HIV/AIDS status until after his death. Marlene Ruck stated her belief, based upon conversations with Christopher Ruck's friends, that he did not tell his parents about his condition because he did not want to worry them. She said this action was illustrative of her son's concern for others. The psychology professor who interviewed the claimants reported that the mental anguish associated with the sudden and traumatic death of a child is likely to be more pronounced and prolonged than the anguish resulting from a child's death from an extended illness such as AIDS, in part because, in the case of such illness, the parents have more time to come to terms with the death of the child. The Special Master concludes that the claimants suffered substantial pain and suffering as a result of their son's death in this accident, independent of any consideration of Christopher's HIV/AIDS status.

ATTORNEY'S FEES:

Section 768.28(8), F.S., limits attorney's 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 claimants has submitted an affidavit attesting to compliance with this limitation.

COLLATERAL SOURCES:

According to information provided by the attorney for the claimants, the claimants have received the following insurance benefits stemming from their son's death, from sources independent of the respondent county.

PIP Death Benefits	\$ 5,000.00
Uninsured Motorist	\$ 50,000.00
<u>Various Life Insurance</u>	<u>\$390,000.00</u>
Total	\$445,000.00

RECOMMENDATIONS:

Based upon the foregoing, I recommend that PCB CL 00-02 be reported FAVORABLY.

Respectfully submitted,

Maggie Moody
House Special Master

cc: House Committee on Claims
Senator Ron Silver
Eric W. Maclure, Senate Special Master
John Phelps, Clerk of House