

STORAGE NAME: pcb07.cla
DATE: January 13, 2000

**Florida House of Representatives
Committee on Claims
Summary Claim Bill Report**

Bill #: PCB CL 00-07
Sponsor: Claims Committee
Companion Bill: SB 38 by Senator Burt
Special Master: Nathan L. Bond

A. Basic Information:

1. Claimant:

Fred Fedorka

2. Respondent:

Volusia County

3. Amount Requested:

\$800,000.00

4. Type of Claim:

Settlement

5. Respondent's Position:

Agreed to settlement

6. Collateral Sources:

The claimant Fred Fedorka had health insurance through the Teamsters Welfare Fund. The Fund asserts a subrogation claim that the claimant's attorney will satisfy from the monies awarded by this bill.

7. Prior Legislative History:

None.

B. Procedural Summary: Fred Fedorka filed a claim against Volusia County for personal injury to himself, and for the wrongful death of his wife, resulting from a traffic accident on March 5, 1997, in which Mr. and Mrs. Fedorka were involved. Suit was filed. Prior to trial, the parties submitted the matter to mediation and entered into a settlement agreement for a total of \$1,000,000. The county has already paid the first \$200,000 of the settlement. The remaining payment on the settlement will be by lump sum upon becoming a law. The parties have agreed to an effective date of the bill of December 1, 2000.

C. Facts of Case: Mr. and Mrs. Fedorka were traveling northbound on State Road A1A in Volusia County on motorcycles. They were slowing down in preparation to stop in the lane of traffic to wait for an automobile ahead to make a left turn. A Volusia County public works truck, driven by an employee of Volusia County in furtherance of his duties as an employee of the County, was also traveling northbound, but did not slow down. The truck struck the two motorcycles, throwing Mr. and Mrs. Fedorka off of their motorcycles and onto the pavement. The truck then ran over and dragged the Fedorkas. Mrs. Fedorka sustained 41 separately described injuries. After five emergency

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PAGE 2

surgeries and 13 days hospitalization, Mrs. Fedorka (40 y.o.a.) died. Mr. Fedorka (48 y.o.a.) suffered C4 and C5 vertebra fractures (a broken neck) that were nearly fatal. He also sustained fractures of the pelvis, nasal bone, clavicle, and a rib. In addition, he sustained a lung contusion, tears in the bladder and urethra, and open wounds to the face and ear. He underwent surgery to fuse the vertebra from C4 through C6. He still suffers from numbness in the hands, restriction of motion in his left shoulder, loss of coordination and balance, loss of senses and motor skills in his lower extremities, scars, a noticeable dent in the right side of his head, loss of part of his right ear, significant neck and back pain, and constant pain and burning during urination. Drug and alcohol testing of both victims were negative, and they were wearing helmets in conformance with law. Combined medical bills and funeral expenses to date for both were nearly a half of a million dollars. Mr. Fedorka was retired at the time, but had five rental properties that he has since been unable to manage and has sold as a result thereof.

Under the common law, in rear-end collision cases, a rebuttable presumption of negligence arises and attaches to the driver of the rear vehicle. See, Waters v. Williams, 696 So.2d 386 (Fla. 1st DCA 1997), and cases cited therein. Unless rebutted, the presumption entitles the driver of the lead vehicle (the claimant here) to a directed verdict on the issue of liability. There is no apparent legal cause or reason to deviate from the presumption in this case. The Florida Highway Patrol investigation placed 100% of the fault on the driver of the public works truck.

SM: _____
Nathan L. Bond

SD: _____
Stephanie Olin Birtman

Date: _____