

STORAGE NAME: h0335.cla.doc

DATE: February 26, 2001

February 26, 2001

SPECIAL MASTER'S FINAL REPORT

The Honorable Tom Feeney
Speaker, The Florida House of Representatives
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: HB 335 - Representative Stansel
Relief of Patsy Bauccho

THIS IS AN EQUITABLE CLAIM FOR \$550,000 BASED UPON A SETTLEMENT AGREEMENT BETWEEN THE CLAIMANT AND THE DEPARTMENT OF TRANSPORTATION TO COMPENSATE THE CLAIMANT FOR THE INJURIES SHE SUFFERED IN A MOTOR VEHICLE ACCIDENT INVOLVING HER VEHICLE AND A FLORIDA DEPARTMENT OF TRANSPORTATION VEHICLE DRIVEN BY THOMAS PORTER.

FINDINGS OF FACT:

The Accident: On April 27, 1998, sixty-eight year old Patsy Bauccho and her husband were traveling south in the left lane on SR 93 (I-75) near Ocala, Florida. Mr. Bauccho was driving and Mrs. Bauccho was seated in the front passenger's seat. Mr. and Mrs. Bauccho were wearing seatbelts and were traveling at the posted speed limit of 70 miles per hour. Thomas Porter, an employee of the Department of Transportation, was in his vehicle, which was located on the right shoulder of southbound SR 93. While attempting to access the emergency turnover in the median by crossing the three southbound lanes of SR 93 from the far right shoulder, Mr. Porter's vehicle collided with the Bauccho's vehicle. Patsy Bauccho suffered permanent injuries as a result of this collision.

Liability: Mr. Porter was charged and pled guilty to violating section 316.085 (2), F.S., which states the following: "No vehicle shall be driven from a direct course in any lane on any highway until the driver has determined that the vehicle is not being approached or passed by any other vehicle in

the lane or on the side to which the driver desires to move and that the move can be completely made with safety and without interfering with the safe operation of any vehicle approaching from the same direction." A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318, F.S. On June 4, 1998, Thomas Porter was adjudicated guilty and paid a civil penalty of \$500 plus \$18 in court costs.

At his deposition, Mr. Porter accepted total and complete responsibility for causing the accident and offered no mitigating circumstances. Upon stipulation by the Plaintiffs and the department, the court granted the plaintiffs' Motion for Summary Judgment on the issue of liability as a matter of law.

The department suspended Mr. Porter for two workweeks without pay.

Damages: Mrs. Bauccho was life-flighted from the scene of the accident to Ocala's Monroe Regional Medical Center where her injuries were stabilized after losing four-fifths of her blood. The next day Mrs. Bauccho was transferred to Orlando Regional Health Care where she received treatment for the following injuries:

- Four fractures of her pelvis
- Several breaks in her right wrist
- Comminuted fracture of her right tibia
- Comminuted fracture of her right fibula
- Comminuted fracture of her right femur
- Comminuted fracture of her left tibia
- Comminuted fracture of her left fibula
- Fracture of her big toe
- Fracture of her left ring finger

During her 18-day hospital stay in Orlando, Mrs. Bauccho received five surgical procedures. Mrs. Bauccho was transferred to the Cleveland Clinic in Ohio where she spent the next two weeks being evaluated. Thereafter, she spent three months in a custodial care facility waiting for her injuries to heal. Mrs. Bauccho subsequently received two additional surgical procedures relating to her injuries and underwent rehabilitation therapy twice a week for a year. Today, Mrs. Bauccho is able to walk short distances with the assistance of a cane and longer distances with the assistance of either a walker or wheel chair.

Mrs. Bauccho's medical expenses total approximately \$145,429, to date. Of these medical expenses, \$42,423.46

is subject to a reimbursement lien.

Evidence was presented that Mrs. Bauccho's life expectancy is 85.5 years. The projected lifetime medical care ranges from \$270,986 to \$485,197, including a probability she will need two additional surgical procedures in the future to replace her left knee and right hip.

Legal Proceedings: Mr. and Mrs. Bauccho filed suit against the department. After Summary Judgment against the department on the issue of liability, Mr. and Mrs. Bauccho and the parties signed a Stipulated Settlement Agreement dated January 25, 2001, requiring the department to pay the sum of \$200,000, and requiring the department to support a claim bill solely on behalf of Patsy Bauccho in the amount of \$550,000. No annuities or other financial products were required to be purchased by the department. The department has subsequently paid the \$200,000 and the suit against the department has been dismissed.

Additional Sources of Income: In addition to the \$200,000 mentioned above, Mr. and Mrs. Bauccho received \$10,000 from their insurance company for personal injury protection coverage and \$10,000 in property damage coverage.

CONCLUSIONS OF LAW: Competent and Substantial Evidence: There is competent and substantial evidence to support a finding of causation and liability on the part of the department and to support the damages of the claimant in the amount of \$550,000.

I conclude Mr. Porter did not exercise due care in violation of section 316.085(2), F.S. I further conclude the actions of Thomas Porter, an employee of the department who was acting within the scope of his employment, resulted in the permanent injuries and damages to Patsy Bauccho.

I further conclude the parties' settlement agreement adequately compensates Mrs. Bauccho for her injuries. The bill should be amended to reflect the terms of the settlement agreement.

ATTORNEYS FEES: Attorney's fees are limited to 25 percent of recovery pursuant to the provisions of section 768.28, F.S. Attorney's fees and costs are included in the settlement amount.

RECOMMENDATIONS: Based upon the foregoing, I recommend House Bill 335 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Stephanie Birtman
House Special Master

cc: Rep. Stansel, House Sponsor
Sen. Lawson, Senate Sponsor
Reynold Meyer, Senate Special Master
House Claims Committee