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DATE: January 28, 2002

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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 469 - Representative Bense
Relief of Verela/Iglesias/Avendano

THIS IS AN UNCONTESTED TOTAL CLAIM FOR \$800,000, BASED ON A SETTLEMENT AGREEMENT BETWEEN THE DEPARTMENT OF TRANSPORTATION AND MARIA VERELA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF VERONICA BARCOS, DECEASED, AND ON BEHALF OF JANESEA BARCOS AND NATALEE BARCOS, MINOR CHILDREN OF VERONICA BARCOS AND BETWEEN LIGIA IGLESIAS AND ALBA LUZ AVENDANO, AS CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF ZULEIMA TORRES, DECEASED, AND ON BEHALF OF FASHLEY BARCOS AND GIANNI BARCOS, MINOR CHILDREN OF ZULEIMA TORRES, FOR INJURIES AND DAMAGES SUSTAINED BY THE CLAIMANTS AS A RESULT OF THE DEATHS OF VERONICA BARCOS AND ZULEIMA TORRES.

FINDING OF FACT:

On September 1, 1997, at approximately 12:00 a.m. Zuleima Torres was driving a Toyota SR5 4Runner vehicle across the 17th Street Causeway Bridge in Ft. Lauderdale, in a Westbound direction when she lost control of the vehicle. The vehicle then crossed the oncoming lanes of traffic and vaulted the retaining wall and railing of the bridge and fell into the Intercoastal Waterway. As a result, Ms. Torres and Veronica Barcos, who was a passenger in the right front seat, died. Autopsy reports list the cause of death as drowning, with multiple blunt force trauma as a contributory cause. The posted speed limit is 35 miles per hour for the bridge. It had been raining intermittently for several hours prior to the accident and the roadway and steel grating of the bridge was slick. According to witnesses, the vehicle began to fishtail, either just

before or as it passed over the metal bridge grating. The vehicle then rotated and traveled across the Eastbound lanes in a West-Southwestwardly direction, finally completing a rotation of 180 degrees, until the right side tires struck the sidewalk curb on the South side of the bridge, and the vehicle catapulted over the retaining wall and sidewalk railing, breaking the railing and falling into the water below.

A few minutes before the accident, a BMW vehicle driven by Wosenyeleh Wolde was crossing the bridge in the same direction as the decedent's Toyota. The BMW also spun out of control as it crossed the metal grating; coming to rest facing in an Easterly direction, thereby facing approaching traffic with headlights on. As soon as the Wolde vehicle crashed, Lorain Jackson, the bridge tender at the 17th Street Causeway Bridge, left her station and went to the Wolde vehicle. The bridge tender was a state employee acting within the scope of her employment at the time of the accident.

The bridge tender had several available options upon seeing the Wolde accident. She clearly knew how slippery the bridge was when wet. She could have put out orange safety cones that are stored in the bridge tender shack for that purpose. She could have, wearing her orange safety vest, stood in the traffic lane and waved off traffic. She could have lowered the gates, thereby completely stopping traffic until the situation could be secured. She did not take any of these actions. The most logical action for her to have taken was to lower the gates; but, strangely enough, DOT policy prohibited her from taking this simple safety step.

Had the bridge tender lowered the traffic gates on the bridge, she would have prevented the Torres vehicle from entering upon the bridge and into what appeared to have been an "emergency" situation with the Wolde vehicle facing Ms. Torres as she crested the bridge. The bridge tender, a state employee, was plainly aware of the dangerous situation, and she plainly failed to take any reasonable step to mitigate the dangerous situation.

The metal grating of the bridge was slick, due to rain. Traffic Homicide Investigator Shawn M. Perez, in the Traffic Crash Report stated that, "The roadway was damp and the metal (steel) grating portion of the bridge span opening was extremely slick." In her conclusion she states, "While I was taking measurements, as I walked across the metal grating in tennis shoes, I slipped several times due to the slickness of the grate. There was little to no traction due to the wet weather and the worn metal grate."

The claimants presented extensive evidence regarding maintenance problems with the subject bridge. The vast majority of this evidence is irrelevant to this claim, and was not considered by this special master. There was evidence that the DOT was aware that a number of metal grate bridges

seemed to have a disproportionate number of wet weather accidents occurring on or near the steel grating. There was a prior similar accident on September 12, 1979, involving a Lincoln Continental that slid and went through the concrete railing. The problem appears to have been ignored by the DOT.

It is always appropriate in any automobile accident, especially a one car accident like this one, to examine whether the concept of contributory negligence should reduce or negate the damages claim of the driver of the automobile. In this case, it does not appear that any amount of contributory negligence should be attributed to either of the decedents.

The claimants did not provide the special master with a copy of the autopsy for the driver or passenger. The special master thus undertook to obtain this important document. The Ft. Lauderdale Police Department diligently and promptly provided a complete copy of the accident report together with the autopsy reports. The toxicology reports of both decedents showed that neither was under the influence of alcohol or illegal drugs.

Although neither was wearing a seat belt, it does not appear that this contributed to their death. It appears that, with or without a seat belt, they would have perished in this accident.

There was some evidence that the loss of control of the vehicle was due in part to panic on the driver's part. In some accidents it is appropriate to assign fault for unreasonable panic, however special master does not apportion fault to the driver in this case. Common sense dictates that the driver drove in a manner consistent with what a reasonable normal person would under the circumstances. A typical driver is not, and should not, be expected to pull out of a slide on an excessively slick surface with the expertise of a NASCAR veteran. To some extent, it appears that Toyota recognized the difficulty of driving this automobile in wet conditions in its settlement.

In general, contributory negligence would only be found in a passenger on the issue of seat belt. As stated above, it does not appear that seat belt usage would have affected a different outcome in this case.

Zuleima Torres was 27 years old and divorced from Ricardo Barcos at the time of her death. Two daughters, Ashley and Gianni, who were 8 and 3 years old, respectively at the time of her death, survive her. The passenger in the vehicle, Veronica Barcos, was 29 years old and divorced from Carlos Barcos, the brother of Ms. Torres' ex-husband, at the time of her death. Two daughters, Janessa and Natalee Barcos, who were ages 11 and 3, respectively, at the time of her death, survive her. Ms. Barcos was employed by American Airlines as a passenger service representative and worked approximately 35 hours per week in the baggage department. She was also

attending classes and clinical studies in physical therapy, intending to become a physical therapist.

Claimants in the Barcos case have recovered the following amounts from collateral sources. Uninsured motorist coverage from State Farm, \$100,000. Settlement with Toyota, \$750,000. Pending settlement with third party liability coverage of Zuleima Torres, \$10,000. Social Security payments presently being paid to Janessa and Natalee Barcos, \$992 per month.

Plaintiffs in the Torres case have recovered the following amounts from collateral sources: Settlement with Toyota, \$450,000. Settlement with David Volkart & Associates, (DOT engineering subcontractor), \$45,000. Social Security benefits presently being paid to Ashley and Gianni Barcos, \$610 per month.

Representatives of both parties commenced litigation against the Department of Transportation and others in separate actions. The action filed on behalf of the Estate of Zuleima Torres and others, hereinafter referred to as the Torres suit, was case number 98-007776-04 in the Circuit Court for the 17th Judicial Circuit in and for Broward County, Florida, asserting that DOT was negligent and responsible for the death of Ms. Torres. The action filed on behalf of the Estate of Veronica Barcos and others, hereinafter referred the Barcos suit, was case number 97-020391-03 in the Circuit Court for the 17th Judicial Circuit in and for Broward County, Florida, asserting that DOT was negligent and responsible for the death of Ms. Barcos. Stipulated settlement agreements were entered into between the Department of Transportation the plaintiffs in both actions. The Torres settlement provided for the entry of a consent final judgment in the amount of \$416,666.67. The Barcos settlement provided for the entry of a consent final judgment in the amount of \$583,333.33. In view of the sovereign immunity limits, the department agreed to pay \$100,000 to the Barcos claimants and \$100,000 to the Torres claimants and to support the passage of a claims bill in the Torres suit in the amount of \$316,666.67 and in the Barcos suit in the amount of \$483.333.33. A Final Consent Judgment was entered in the Torres suit in the amount of \$416,666.67 and in the Barcos suit in the amount of \$583,333.33 on July 31,2001.

Because settlements are sometimes entered into for reasons that may have little to do with the merits of a claim or the validity of a defense, stipulations or settlement agreements between parties to a claim bill are not binding on the Legislature or the Special Master. However, all such agreements must be evaluated. If found to be reasonable and based on equity, they can be given effect by the Special Master. Based on the evidence, I find the damages agreed to in the consent judgment to be reasonable.

CONCLUSION OF LAW:

There is competent evidence to support a finding of causation and liability on the part of the department and to support the damages of the claimants in the amount of \$316,666.67 for the Torres claimants and in the amount of \$483,333.33 for the Barcos claimants. The Department of Transportation had a duty to maintain the 17th Street Causeway Bridge in a manner to ensure that the bridge would be safe for vehicular traffic in wet weather. The bridge tender had a duty to stop traffic upon seeing a dangerous situation. I conclude that the department breached those duties, and that such breaches were directly and proximately responsible for the crash that resulted in the deaths of Veronica Barcos and Zuleima Torres.

ATTORNEYS FEES:

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

RECOMMENDATIONS:

The bill provides for payment from the "funds of the Department of Transportation in the State Treasury." It appears that the "State Transportation (Primary) Trust Fund" would be a more appropriate designation of the funding source. Accordingly, it is recommended that the bill be amended to require payment from that trust fund.

Based on the foregoing, I recommend that House Bill 469 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Nathan L. Bond
House Special Master

Stephanie Birtman
Staff Director, Committee on Claims

cc: House Sponsor
Senate Sponsor
Senate special master
House Claims Committee