

STORAGE NAME: h0611.SSC

DATE: Feb 9, 2007

February 9, 2007

SPECIAL MASTER'S FINAL REPORT

The Honorable Marco Rubio
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 611 – Representative Bucher
Relief of Jennifer Graham v. Palm Beach County Sheriff's Office

THIS IS AN EQUITABLE CLAIM FOR \$950,000 BASED UPON A SETTLEMENT AGREEMENT REACHED BY THE CLAIMANT AND THE PALM BEACH COUNTY SHERIFF'S OFFICE WHEREIN THE PALM BEACH COUNTY SHERIFF'S OFFICE ADMITTED LIABILITY AND AGREED TO PAY JENNIFER GRAHAM A TOTAL OF \$950,000 TO COMPENSATE HER FOR DAMAGES SHE RECEIVED AS A RESULT OF BEING HIT BY A PATROL CAR. THE SHERIFF'S OFFICE HAS ALREADY PAID \$100,000 PURSUANT TO THE STATUTORY CAP ON GOVERNMENT LIABILITY, LEAVING \$850,000 TO BE PAID VIA THIS CLAIM BILL.

FINDING OF FACT:

On June 15, 2003, Jennifer Graham, then a 29 year old woman, was sitting on a bench located on the corner of Park Avenue and a driveway access to a shopping plaza located in Palm Beach County Florida. A Palm Beach County Sheriff's deputy traveling over the stated speed limit of 25 mph, missed the turn and collided with the bench upon which Jennifer Graham was seated. The deputy did not have his lights and sirens activated as he was not responding to an emergency situation. The officer received a suspension without pay and loss of his vehicle for 90 days.

The Palm Beach County Sheriff's Office admitted liability for the accident and causation for Jennifer Graham's injuries. The Sheriff's Office also admits that claimant was in no way responsible or comparatively negligent in causing the accident in question.

As a result of the accident, Jennifer Graham was thrown

approximately 10-30 feet and landed on a concrete sidewalk. She was rushed to the emergency room of St. Mary's Medical Center, where she underwent a series of surgical procedures to repair her ruptured bladder and stabilize her pelvic fracture, sustained multiple public bone fractures, shattered her left hip, and sustained a right sacroiliac dislocation (described as her right leg being removed from her spine). She was also treated for an open laceration from her stomach to her pubic bone.

To date, Jennifer Graham has undergone five surgeries and has spent 3 months as an in-patient in rehabilitation facilities. The claimant continues to experience significant chronic pain in her right hip and leg, her back, her neck, is incontinent, has gait dysfunction, and is depressed. The claimant's physician determined that Jennifer Graham has sustained a 40% permanent functional impairment due to the multiple injuries sustained in the accident.

Jennifer Graham's past medical expenses total \$266,462.44. The Health Care District of Palm Beach County has a lien for medical services provided of \$97,382.29. Jennifer also has \$20,000 in outstanding medical costs incurred. The claimant's experts opined that future medical expenses over Jennifer's lifetime total \$298,205 in present value dollars.

The injuries sustained in the accident have rendered Jennifer Graham unable to work as determined by her treating physicians and experts hired by both the claimant and the Palm Beach county Sheriff's Office. From 1998 to the date of the accident in 2003, Ms. Graham held ten different jobs with annual earnings of \$11,212. Ms. Graham completed her education through the 10th grade at Coastal Senior High School in Lake Park. Claimant's experts calculated that her lifetime wage loss is \$454,321. The present value of the total economic damages as a result of this accident equates to \$1,018,988.

CONCLUSION OF LAW:

The duty to drive carefully has been established by statute and case law. Section 316.1925(1), F.S., which prohibits careless driving, states:

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.

According to case law, motor vehicle drivers have a duty to attempt to avoid pedestrians on and off roadways. See, e.g., City of Tallahassee v. Kaufman, 87 Fla. 119 (1924) (imposing

liability on the City of Tallahassee for damages caused by a trailer pulled behind a fire truck that swept across a street corner and injured a pedestrian); Craig v. School Board of Broward County, 679 So. 2d 1219, 1222 (Fla. 4th DCA 1996) (finding the existence of a duty of a high degree of care is owed by a driver of a motor vehicle to children when children are present and a reasonably prudent driver would see them).

The Palm Beach County Sheriff's deputy breached his duty to Jennifer Graham and she was injured as a result of the deputy's failure to use due care in the operation of his patrol car, specifically in the attempted execution of a turn into a parking lot at an excessive speed for the conditions.

Because the sheriff's deputy was an employee of the Palm Beach County Sheriff's Office, acting within the scope of his employment, the Palm Beach County Sheriff is liable for the damages caused by its employee. See, e.g., Stinson v. Prevatt, 84 Fla. 416 (1922).

The evidence in this case was reviewed with recognition of the parties' settlement agreement. Settlements may be entered into for reasons unrelated to the actual merits of a claim or the validity of a defense. Consequently, settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature, its committees, or the Special Master. All such agreements, however, must be evaluated and can be given effect, at least at the Special Master's level, if they are found to be reasonable. As such, the Special Master finds that this settlement agreement is reasonable and was negotiated in good faith by the attorneys representing the parties, and should be given effect. Further, the settlement amount is within the ranges approved by the Legislature in claim bills for similar injuries.

ATTORNEYS FEES:

Section 768.28, F.S., limits attorneys' 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 claimant has submitted documentation attesting to compliance with this limitation. Outstanding costs total \$1,488.57. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of the award in lobbying fees; such payment is in addition to the 25% statutory limitation on attorney's fees.

EQUITABLE ISSUES:

In 2001, two years prior to this accident, Jennifer Graham became addicted to cocaine and lost the custody of her three children (now aged 9, 11, and 14) as a result. She sought treatment and appears to have successfully beaten the addiction. The children lived with their father until recently, as his parental rights are in the process of being terminated in dependency court. The three children currently live with another sister of Jennifer Graham's under long term relative placement supervision from the Department of Children and Family Services. Jennifer Graham's

stated goal is to be reunited with her children.

Jennifer Graham has paid a child support arrearage of \$12,246.65 out of the proceeds of the first \$100,000 received by her. To date, Jennifer Graham believes that she is still under a legal obligation to pay a monthly child support payment of \$384 and is attempting to have that order modified. The current custodians are receiving aide from the state's Relative Caregiver Program. It is anticipated that Jennifer Graham and/or the children's father will be required to reimburse the state for the children's care.

This Special Master asked the parties to submit a plan to ensure that the children's financial wellbeing is provided for from any monies distributed as the result of this claim bill. The claimant's attorney proposed that \$75,000 of the first payment from the Palm Beach County Sheriff's Office be used to fund an annuity that will guarantee monthly payments to each child until that child's 18th birthday as follows: Ashley Graham - \$485.98 per month; Tyler Graham - \$323.95 per month; Hunter Graham - \$256.65 per month. Such annuity would guarantee a total payment of \$87,425.03 combined to the three minor children.

Additionally, from the funds paid to Jennifer Graham in the second year of the settlement, she proposes to purchase an structured education fund for each of the three children which would provide semi-annual payments to each of the children beginning on each child's 18th birthday and continuing for four years thereafter. The payments would be purchased at the cost of \$15,000 per child, and make semi-annual payments as follows: Ashley Graham - \$20,155.84; Tyler Graham - \$2,931.05; Hunter Graham - \$3,373. Such educational annuity would guarantee a total payment of \$70,588.24 combined, to be used for the children's educational expenses.

PROCEDURAL HISTORY:

A lawsuit was filed by Jennifer Graham against the Palm Beach County Sheriff's Office in 2004. A week prior to trial, the parties entered into a settlement agreement whereby the Sheriff's Office admitted liability and agreed to pay Jennifer Graham a total of \$950,000. Pursuant to the agreement \$100,000 has already been paid. The remaining \$850,000 is to be paid as follows:

- \$350,000 to be paid within 20 days of notice to the Sheriff that the bill has become law;
- \$250,000 to be paid one year from the first payment; and
- \$250,000 to be paid two years from the date of the first payment.

FISCAL IMPACT:

The Chief Financial Officer for the Palm Beach County Sheriff's Office submitted an affidavit stating that the payment of this claim will be paid from the operating budget of the Palm Beach County Sheriff's Office. The affidavit further stated that the payment of this claim over three years should not have a adverse operational impact on the Palm Beach County Sheriff's Office unless a catastrophic event or change in law substantially increases anticipated costs over the three year time span.

COLLATERAL SOURCES:

Jennifer Graham's sister, with whom she was living at the time of the accident, was covered by State Farm Insurance, who paid \$10,000 in PIP coverage, \$10,000 in uninsured motorist coverage, and \$5000 in medical benefits. Further, several physicians treated Jennifer Graham under letters of protection. \$20,095 in obligations owed to these physicians is being held in trust from the initial \$100,000 paid, pending a reduction request.

PRIOR LEGISLATIVE HISTORY:

HB 315 (2006) was filed by Rep. Bucher, and considered by the Claims Committee which reported the bill favorably with a committee substitute that incorporated this Special Master's recommendation. The bill died in the Justice Council. SB 64 (2006) by Senator Aronberg was not considered in any Senate committee.

In anticipation of the 2007 legislation both parties were given the opportunity to update the record.

The claimant provided medical reports suggesting that she still suffers from chronic pain and memory loss. She still does not drive.

RECOMMENDATIONS:

HB 611 as filed for 2007 incorporates the amendments passed to HB 315 (2006). It appears that as currently drafted the bill requires guaranteed monthly annuity payments before the annuity is purchased. This can be remedied by an amendment at line 94 that removes the word "on" and inserts the phrase "the month following".

Based upon the foregoing, I recommend that House Bill 611 be reported FAVORABLY, WITH ONE AMENDMENT.

Respectfully submitted,

Stephanie Birtman
House Special Master

cc: Rep. Bucher, House Sponsor
Sen. Aronberg, Senate Sponsor
Judge Bram Canter, Senate Special Master
D. Stephen Kahn, Senate General Counsel