THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/18/07	SM	Unfavorable

December 18, 2007

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 50 (2008)** – Senator Carey Baker
HB 765 (2008) – Representative Jack Seiler
Relief of Lisa Freeman-Salazar and Andy Salazar

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR $342,208 BASED ON A SETTLEMENT AGREEMENT BETWEEN CLAIMANTS LISA FREEMAN-SALAZAR AND HER HUSBAND, ANDY SALAZAR, AND THE CITY OF LAKE WORTH TO COMPENSATE CLAIMANTS FOR THE DEATH OF THEIR DAUGHTER IN A MOTOR VEHICLE CRASH CAUSED WHEN THE CITY FAILED TO EXPEDITIOUSLY REPLACE A STOLEN STOP SIGN.

FINDINGS OF FACT:

On October 26, 2004, Claimant Lisa Freeman-Salazar was driving home with her 2-year-old son and her 5-year-old daughter, Alexandria, whom Ms. Freeman-Salazar had just picked up from South Grade Elementary School in Lake Worth. They were in the family's minivan. Ms. Freeman-Salazar and Alexandria were in the front seats, but neither one was using a seatbelt. The baby boy was in a car seat that was belted to a rear seat.

Ms. Freeman-Salazar was taking an unfamiliar route home because road construction had closed a portion of her usual route. At the intersection of 7th Avenue South with South H

Street, the configuration of hedges and other objects on adjacent properties made it difficult for drivers on 7th Avenue South to see traffic on South H Street. There was supposed to be a stop sign at this intersection for vehicles traveling on 7th Avenue South, but the stop sign had been removed by one or more vandals. There were no stop signs for drivers on South H Street and they had the right of way.

The exact time that the stop sign was removed is unknown, but on the morning of October 25, 2004, there was a crash in the same intersection caused by the absence of the stop sign. The Lake Worth Police called the City's Public Works Department at 9:12 a.m. on October 25, 2004, to report that the stop sign was missing and had resulted in a crash. A temporary City employee took the message, but failed to get the information to the proper people. More than 32 hours later the Public Works Department had still not replaced the missing stop sign.

Because there was no stop sign, Ms. Freeman-Salazar entered the intersection without first stopping and collided with a vehicle driving north on South H Street. The crash caused minor injuries to Ms. Freeman-Salazar's arms, caused no injury to the baby in the car seat, but caused fatal injuries to Alexandria. There was a mother and her three children in the other vehicle that was involved in the crash. None of them suffered a serious injury.

The Lake Worth Police Department's crash investigation found that the driver side and passenger side air bags in Ms. Freeman-Salazar's minivan both deployed. The passenger air bag was removed from the vehicle and examined at the Police Department. The investigative report concludes that the air bag had been restricted in its deployment and that the restriction was likely caused by Alexandria being thrown toward, or on top of, the dash when the brakes were applied. The report also states that the air bag caught Alexandria underneath her chin, causing the hyper-extension of her neck and "transection of the brainstem" that killed her. The report suggests that Alexandria would not have received fatal injuries if she had been wearing her seat belt.

Claimants' attorneys submitted a report from a consulting engineer. After reviewing the police crash investigation and

medical examiner's report, the engineer opined that Alexandria would likely have sustained the same fatal injuries even if she had been using her seat belt. He did not think the minivan had braked hard enough to make the seat belt lock, so Alexandria would still have been thrown forward into the deploying air bag.

The evidence presented by Claimants on this point is not sufficient to persuade me that Alexandria would have been killed in the crash even if she had been wearing the seat belt. A 1996 report of the National Highway Traffic Safety Administration (NHTSA), which compiled statistics on injuries to children caused by air bags in vehicle crashes from 1993 to 1996, found that all but one of the 20 "critical-to-fatal" injuries to children (19 were fatal) not involving infants in rear-facing car seats occurred to children who were not wearing a seat belt. In other words, only one child who was wearing a seat belt suffered critical-to-fatal injuries from an air bag. Although it is possible that Alexandria would have been killed even with her seat belt fastened, on this record I believe it is more likely that Ms. Freeman-Salazar's failure to make Alexandria use her seat belt was the effective cause of this tragedy.

The Claimants received $10,000 from the insurance policy of the other vehicle's driver. They also received $10,000 under the PIP coverage of their own auto insurance. They received $185,000 in settlement of a claim against the manufacturer of the minivan because it did not have an air bag warning.

LITIGATION HISTORY:

Ms. Freeman-Salazar filed a lawsuit against the City of Lake Worth for wrongful death in September 2004, in the circuit court for Palm Beach County. The case was settled in mediation with the City agreeing to pay Ms. Freeman-Salazar, as representative of the estate of Alexandria, $500,000. Because there was another claimant who received $42,208 from the City, the City paid $157,792 to Ms. Freeman-Salazar, exhausting the $200,000 sovereign immunity cap. The balance of $342,208 was to be requested through a claim bill.

CLAIMANTS' POSITION:

- The City was negligent in failing to replace the stop sign within a reasonable amount of time and its negligence

resulted in the crash that caused Alexandria's death.

- Section 316.613(3), F.S., prohibits the consideration of whether a child was using a seat belt for purposes of comparative negligence.
- Alexandria would likely have been killed by the air bag even if she had been wearing a seat belt.
- The settlement amount is fair and reasonable.

CITY'S POSITION: The City admitted liability and agreed to support the claim bill.

CONCLUSIONS OF LAW: The City had a duty to replace the stop sign as soon as practicable to prevent foreseeable injuries to motorists. It breached that duty when it failed to replace the stop sign within 32 hours after receiving a report of another crash at the intersection. The breach of this duty was the proximate cause of the crash in which Alexandria was killed.

There are many reasons for entering into a settlement agreement other than the perceived merits of the claim and, therefore, I am not precluded from reviewing the terms of the parties' settlement agreement in this matter and determining whether they are reasonable under the totality of the circumstances. The payment of a claim bill is a matter of legislative grace. It is in derogation of the principle behind the sovereign immunity doctrine that claims against public agencies must be limited so that the agencies can continue to operate and provide important public services.

Although the City breached its duty to replace the stop sign within a reasonable amount of time after it learned that the sign was missing, it was not proven by a preponderance of the evidence that the breach of duty was the proximate cause of Alexandria's injuries. The more persuasive evidence suggests that Alexandria would not have been critically injured or killed if Ms. Freeman-Salazar had provided for Alexandria's safety as a passenger by making her use the seat belt. Therefore, in consideration of the nearly $363,000 Ms. Freeman-Salazar has already received, I believe the claim should not be paid.

Pursuant to s. 316.614(4)(a), F.S., it is unlawful to operate a motor vehicle with a 5-year-old passenger unless the child is restrained by a safety belt or by a child restraint device. Claimants point to s. 316.613(3), F.S., which provides:

> The failure to provide and use a child passenger restraint shall not be considered comparative negligence, nor shall such failure be admissible in the trial of any civil action with regard to negligence

They argue that this statute should bar any consideration by the Senate of the seat belt issue in determining whether their claim bill should be paid. I disagree. I believe the statute was intended to control judicial proceedings and not the legislative claim bill process. This process is not for the purpose of establishing comparative negligence in a legal sense, but for the purpose of establishing whether Claimants' request for legislative grace is deserving. Rules regarding the admissibility of evidence at trial are not controlling. Paying a claim in circumstances where an unbelted child survived a crash with injuries that require costly future care might be reasonable. In this case, however, there are no such future financial needs.

ATTORNEY'S AND LOBBYIST'S FEES: Claimants' attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. However, they have not acknowledged their awareness of the provision of the bill that limits attorney's fees, lobbyist's fees, and costs to 25 percent of the award. They report costs of $9,115. The proposed lobbyist's fee is 6 percent of any award.

LEGISLATIVE HISTORY: This is the second claim bill filed in this matter.

OTHER ISSUES: The City has an insurance policy that will pay all but $25,000 of this claim bill. The City's operations would not be adversely affected if the claim bill is passed.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 50 be reported UNFAVORABLY.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Carey Baker
Representative Jack Seiler
Faye Blanton, Secretary of the Senate
Tom Thomas, House Special Master
House Committee on Constitution and Civil Law
Counsel of record