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DATE: 3/25/2009

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 67; Relief of Madonna & Reyna Castillo v. City of Hialeah

Sponsor: Representative Planas

Companion Bill: SB 56 by Senator Rich

Special Master: Tom Thomas

Basic Information:

Claimants: Madonna Castillo

Respondent: City of Hialeah

Amount Requested: \$500,000

Type of Claim: Local equitable claim; result of a settlement agreement.

Respondent's Position: Agreed not to oppose and to fully cooperate with the claim bill process. However, the City now claims, given financial difficulties, that they cannot afford to pay the claim at this time.

Collateral Sources: Pursuant to injuries sustained as a result of a July 3, 1998 swimming pool incident, the health insurer of the minor's mother tendered payment of \$30,311.20 for medical care.

Attorney's/Lobbying Fees: The claimants' attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.

Prior Legislative History: This is the first year that this claim bill has been brought before the Legislature.

Procedural Summary: On September 28, 2000, Reyna Castillo, as legal guardian of Madonna Castillo, a minor, sued the City of Hialeah in the Circuit Court in and for Dade County, alleging negligence. At the conclusion of the trial, the jury awarded the Plaintiff \$5,856,480.60, \$4,737,180.60 of which was apportioned to the City, for negligence. Of this amount, \$200,000 has already been paid to claimants pursuant to the statutory cap on liability imposed by section 768.28, Florida Statutes. Of this \$200,000, the claimant received, after paying attorney's fees and costs, and outstanding medical bills, \$122,407.25.

Facts of Case: On July 3, 1998, Claimant Madonna Castillo, who was 12 years old at the time, was swimming at Milander Pool located in the City of Hialeah, Florida. She was situated in the shallow end of the pool with a group of children of approximately the same age as her. While there, her sister warned her of a swimmer of approximately 17 to 19 years of age who was swimming right

behind. Upon this warning, Ms. Castillo turned around and was struck in the right eye by this swimmer.

Upon being struck in the eye, her sister removed her from the pool and brought her to the Head Lifeguard's office, where Fire Rescue was called. She was bleeding from her eye, and was taken to the Hospital by Fire Rescue. Ultimately, she was rendered completely blind in the right eye, as a result of the high speed impact. This impact caused a vitreous hemorrhage that resulted in neurovascular glaucoma. Ms. Castillo underwent multiple aggressive procedures in an effort to relieve her eye pressure, but those were unsuccessful due to the nature of the injury.

In terms of future treatment and care, testimony indicates that Ms. Castillo will require a complete surgical removal of her eye and multiple prosthetic devices over the course of her lifetime. There's also some concern of a potential sympathetic problem developing in her left, undamaged eye.

The City was deemed negligent because of a lack of safety protocol and procedures and a lack of appropriate supervision by the lifeguards on duty. According to testimony, the swimmer who injured Ms. Castillo had been previously warned to stop various banned activities, including horseplay. This horseplay should have, according to the Chief Lifeguard, put the lifeguards on notice to continue to watch that swimmer while he was in the pool.

The parties agreed to settle for \$700,000, after the jury verdict had been awarded, in exchange for the City dropping their appeal. The settlement agreement included a clause that the City agreed to support a claims bill in the amount of \$500,000. The City has now taken the position that it cannot afford to pay the claim at this time, given their current economic situation. The City's treasurer confirmed that following the settlement agreement in 2004, the City did not reserve any funds to pay Ms. Castillo in the event a claim bill were enacted. No persuasive explanation for this was given. In sum, while the City's ability to pay (or lack thereof) is a legitimate factor for the Legislature to consider in deciding whether to enact this bill, it is fundamentally a political or policy consideration, not a legal one. From a legal standpoint, the City's financial condition diminishes neither the strength of Ms. Castillo's claim nor the City's culpability in connection with her injury.

Tom Thomas, Special Master

Date: March 25, 2009

cc: Representative Planas, House Sponsor
Senator Rich, Senate Sponsor
Judge John G. Van Laningham, Senate Special Master
Counsel of Record