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DATE: 3/23/2010

March 18, 2010

SPECIAL MASTER'S FINAL REPORT

The Honorable Larry Cretul
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 9 - Representative Bernard and others
Relief of Stephen Hall/DOT

THIS IS AN EQUITABLE CLAIM BASED ON A SETTLEMENT AGREEMENT, WHEREIN THE DEPARTMENT OF TRANSPORTATION HAS AGREED TO PAY \$500,000 TO STEPHEN HALL FOR DAMAGES HE RECEIVED AS A RESULT OF A MOTOR VEHICLE ACCIDENT WITH A VEHICLE DRIVEN BY AN EMPLOYEE OF THE DEPARTMENT. THE DEPARTMENT HAS PAID \$112,000 PURSUANT TO THE STATUTORY CAP, LEAVING \$388,000 TO BE PAID PURSUANT TO THIS CLAIM BILL.

FINDING OF FACT:

On June 30, 1997, Stephen Hall, a belted 12 year-old passenger in his father's 1954 Chevy pick-up truck, was traveling westbound on S.R. 500 in Brevard County. A Department of Transportation (DOT) vehicle being driven by David Eacker in the course and scope of his employment, was stopped on the north shoulder of S.R. 500. Just as the Hall vehicle was approaching, the DOT vehicle (a Suburban) attempted a U-turn, pulling in front of and violating Mr. Hall's right-of-way and causing the collision. The Florida Highway Patrol cited Eacker for failure to yield, a violation of s. 316.085(2), F.S.

Upon impact, Stephen's face hit the dashboard. He was subsequently transported via ambulance to Holmes Regional Medical Center Emergency Room and was diagnosed with two general areas of injury: his jaws and his knees. Both his right and left jaw were fractured, including a fracture at the point where the two sides of the jaw meet in the middle. Additionally, he suffered lacerations on his face and inside his mouth. He

lost two teeth in the accident, and had one removed as part of the surgery to repair his jaws. Several teeth have since died. He has lost all feeling in his lower left lip. Surgery was required to repair his jaws, and he had hardware surgically implanted on both the right and left jaws. He was hospitalized for a week.

Two months after the initial surgery, the arch bars in his jaws were surgically removed. It was further discovered that Stephen's jaw moved 5-6 mm leftward from the midline. Stephen's jaw has continued to shift to the left, causing pain and facial asymmetry and restricted jaw movements. Currently Stephen finds it difficult to chew. In an effort to improve the alignment of his jaws, Stephen was placed in full braces. Several experts agreed that further surgery was needed to align Stephen's jaws, but that such surgery should not take place until after he stops growing, and another year of orthodontics.

Stephen also experienced occasional buckling of the knees, and was diagnosed with anterior cruciate ligament tears. Again, the medical experts agreed that surgery to correct the tears should not be conducted until he stops growing. Stephen was additionally diagnosed with orthopedic injuries to his right arm, elbow, shoulder, neck, and back. Stephen was prescribed both non-drug and drug treatment for post traumatic cervical, thoracic, and lumbar sprains. Stephen testified that while he experiences significant pain, he prefers not to take the medication due to the negative side effects.

Past medical expenses totaled \$51,965.81. Future medical treatment for his jaw includes a full course of orthodontics, extraction of 9 teeth; removal of the bone plate; corrective jaw surgery which will require hospitalization; bone grafts, 7 implants; and crowns for the implants. It was estimated by Dr. Hardemann, DDS, MD, that future medical treatment to repair his jaw will cost \$51,950. Future medical treatment for his headaches, neck pain, and back pain include a neuropsychological consultation and MRI's of his brain and cervical spine, as well as physical therapy and medicines. It was estimated by Dr. Sharfman at the Headache and Neurological Treatment Institute that future medical treatment for his neck and back pain will range between \$29,160 and \$64,800. Future medical treatment to repair the cruciate ligament injury in his left knee will require surgery, and was estimated by Dr. Madison at the Madison-Mackey-Rogers-Murrah Orthopedic Association, to cost \$30,000 to repair. Thus, total medical expenses are expected to cost between \$111,110 - \$257,860.

At the time of the accident, Stephen had just completed the 6th grade. As a result of the injuries suffered in this accident, including his mouth being wired shut, he was unable to attend school and missed his entire 7th grade year. Stephen attempted to return to school with his class for 8th grade, but was unable to complete a full school day due to fatigue and

numerous medical appointments. For the 9th grade, Stephen was placed in a partial homebound program where he attended school for half a day and then had a homebound teacher come to his home to complete the other half of his schoolwork. Stephen completed credits through the equivalent of the 11th grade. He is now working and was enrolled in community college.

Stephen is now 25 years-old and sensitive about his physical appearance, specifically the asymmetry of his jaw. He has completed his growth process and is now at the point where he is physically ready to undergo the recommended surgical procedures. He continues to suffer pain and depression, and is very fearful about the future surgeries required. Stephen has no health or dental insurance.

LITIGATION HISTORY:

A complaint was filed by Stephen's parents in the Eighteenth Judicial Circuit in Brevard County, alleging negligence on the part of DOT's employee in causing the accident. Upon Stephen reaching the age of majority, he was substituted as the plaintiff. The DOT admitted liability. The parties agreed to a settlement as a result of mediation. The settlement agreement, which was affirmed by a Consent Final Judgment, calls for a total settlement amount of \$500,000. A total of \$88,000 was initially paid by the DOT to settle the individual claims of Stephen's parents and for property damage to their automobile, leaving \$112,000 to be paid from the \$200,000 statutory cap. The \$112,000 has been paid to Stephen, in return for which he signed a release, leaving \$388,000 to be paid by way of this claim bill. The DOT has agreed to support the claim bill and affirmatively state that the claim bill is a fair settlement for the State of Florida, an appropriate resolution of the action, and in the state's best interest.

COLLATERAL SOURCES:

Stephen's family was covered by health insurance under United Healthcare, which has failed to respond to the Hall's request to determine how much United Healthcare paid in benefits and whether they are claiming a lien. However, pursuant to s. 768.76(7), F.S., failure of a provider of collateral sources to provide a statement asserting its payment of benefits and right of subrogation or reimbursement within 30 days of receipt of the claimant's notification, shall result in waiver of any claim to subrogation. Over three years has elapsed since the claimant notified United Healthcare.

Stephen has also received \$100,000 from State Farm for uninsured motorist coverage, \$10,000 in PIP benefits, and \$5,000 in Med Pay benefits.

CONCLUSION OF LAW:

I find that the DOT employee was in the course and scope of his employment, and had a duty to yield the right of way to the Hall vehicle. This duty was breached, and was the proximate cause of the injuries suffered by Stephen Hall. I find the damages to be appropriate, and based on competent substantial evidence. Because settlement agreements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense, stipulations or settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature or its committees, or on the Special Master. However, all such agreements must be evaluated. If found to be reasonable and based on equity, then they can be given effect, at least at the Special Master's level of consideration. I find that the settlement agreement in this case is reasonable and equitable, and recommend that it be given effect by the Legislature.

RESPONDENT'S ABILITY TO PAY:

It is the intent of the DOT to pay the amount provided for in the settlement agreement from unappropriated trust fund balances in the Department. To this extent, the DOT reports that they do not anticipate this claim bill affecting any existing or planned construction projects.

ATTORNEY'S/
LOBBYING FEES:

The attorney in this case testified that his fee would not exceed 25% of the award as provided in s. 768.28, F.S. An affidavit of costs was submitted showing costs to be \$2,497.98. The claimant has hired a lobbyist and agreed to pay lobbying fees of 6% of the claim bill, to be paid in addition to the attorney's fees. However, the terms of the bill limit the total award of costs, attorney's fees, and lobbying fees to no more than 25 percent of the total amount awarded by the bill.

LEGISLATIVE HISTORY:

This claim was filed by Representative Johnson as HB 793 (2004). The bill passed with an approved amendment by the Judiciary Committee, as recommended by the Claims Sub-Committee. The amendment reflected the respondent's intention to pay from an unappropriated trust fund balance. The bill died in the Committee on Transportation & Economic Developments Appropriations.

The Senate companion bill, SB 34, was introduced by Senator Campbell. The bill was referred to the Rules & Calendar Committee and died in that committee.

HB 1405 (2005) was filed by Rep. Poppell, and died in the Claims Committee. SB 10 (2005) by Sen. Campbell died in the Senate Committee on Rules and Calendar.

HB 677 (2006) was filed by Rep. Machek and died in the Claims Committee. SB 40 (2006) was filed by Sen. Campbell and died in the Rules and Calendar committee.

HB 181 (2007) by Rep. Machek died in the Committee on Infrastructure. SB 22 (2007) by Sen. Hill was never heard in any Senate Committee.

HB 469 (2008) by Rep. Machek died in the Committee on Infrastructure. SB 20 (2008) by Sen. Hill was never heard in any Senate Committee.

HB 667 (2009) by Rep. Workman died in Civil Justice & Courts Policy Committee. SB 36 (2009) by Sen. Haridopolos was postponed and withdrawn.

In preparation for the 2010 session, both parties have been given the opportunity to supplement the record for this claim. The attorney for the claimant stated that Stephen's health has not changed and that he is still in need of surgery. The attorney for the respondent stated that the Department's position remains the same.

RECOMMENDATIONS:

I recommend that HB 9 be reported FAVORABLY.

Respectfully submitted,

TOM THOMAS
House Special Master
Florida House of Representatives

cc: Representative Bernard, House Sponsor
Senator Haridopolos, Senate Sponsor
Judge Bram D. E. Canter, Senate Special Master