



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
2/1/17	SM	Favorable
	JU	
	ATD	
	AP	

February 1, 2017

The Honorable Joe Negrón
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 12** – Senator Frank Artiles
HB 6519 – Representative Bob Cortes
Relief of Amie Draiemann O'Brien

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$1,116,940 AGAINST THE DEPARTMENT OF TRANSPORTATION ARISING OUT OF A MOTOR VEHICLE CRASH IN JACKSONVILLE IN 2000 THAT KILLED CHRIS STEPHENSON.

CURRENT STATUS:

On December 11, 2006, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill, SB 34 (2007). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably with an amendment. That report is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, James Knudson. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if known at the hearing, might have

significantly altered the findings or recommendation in the previous report.

According to counsel for the claimant, no substantial changes have occurred since the hearing. Counsel for the claimant, in a letter dated December 13, 2016, detailed the current status of Amie Draiemann (Stephenson) O'Brien and the two surviving children, Hailey and Christian, II. They reside in Knoxville, Tennessee where Amie Draiemann O'Brien works as a teacher's assistant tutoring children with disabilities at the school her children attend. Amie is also attending Tusculum College to attain her bachelor's degree in Psychology. Hailey Stephenson, age 18, is a freshman at Tusculum College and has a part-time job at Dick's Sporting Goods. Christian Stephenson, age 16, is a high-school sophomore and plays high-school basketball. Counsel for the claimants' asserts that the family members continue to need therapy.

The prior claim bill, SB 34 (2007) had provided an appropriation from the General Revenue Fund to the Department of Transportation to Amie Draiemann Stephenson of \$1,092,040, plus taxable costs. On December 2, 2011, a subsequent Senate special master issued a Final Report that adopted the findings of the 2006 Final Report and recommended two amendments to a subsequent version of this claim bill, SB 62 (2012), which were not adopted because that bill was not heard in a Senate committee. These amendments, are incorporated into the claim bill filed for the 2017 Legislative Session.

The bill apportions damages between Mr. Stephenson's estate, his wife, and two children in the amounts awarded in the jury verdict. The jury verdict specifically apportioned damages of \$404,575.65 to Mr. Stephenson's estate (36.22 percent of the award), \$237,454.78 to Amie Draiemann O'Brien (21.26 percent), \$311,212.04 to Hailey Stephenson (27.86 percent), and \$163,697.53 to Christian Stephenson, II. (14.66 percent). The claim bill limits attorney fees, lobbying fees, costs, and other similar expenses to 25 percent of the award, which is \$279,253.00.

Based on the forgoing and the absence of new developments that might justify altering the prior special master's findings, I recommend SB 12 FAVORABLY.

SPECIAL MASTER'S FINAL REPORT – SB 12

February 1, 2017

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Respectfully submitted,

James Knudson
Senate Special Master

cc: Secretary of the Senate

Attachment



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/2/11	SM	Fav/1 amendment

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 70** – Senator Michael S. Bennett
Relief of Amie Draiemann Stephenson (O'Brien)

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$1,092,040 AGAINST THE DEPARTMENT OF TRANSPORTATION ARISING OUT OF A MOTOR VEHICLE CRASH IN JACKSONVILLE IN 2000 THAT KILLED CHRIS STEPHENSON.

FINDINGS OF FACT:

On August 12, 2000, 29-year-old Christian D. Stephenson was killed when he lost control of the gas tanker that he was driving and crashed on the Hart Bridge Expressway in Jacksonville. The truck exploded in the crash, and Mr. Stephenson burned to death in the fire.

The posted speed limit on the portion of the expressway where the crash occurred was 45 MPH. Mr. Stephenson was traveling in excess of the speed limit (perhaps as fast as 60 MPH) at the time of the crash, according to the eye witnesses and experts who testified at the trial.

The road was wet, and it was raining at the time of the crash. However, it was not raining as heavily at the time of the crash as it had been in the hour or so preceding the crash.

Mr. Stephenson was traveling in the left lane of the road, following closely behind a jeep driven by Jason Keiffer.

Unbeknown to Mr. Keiffer or Mr. Stephenson, there was a large pool of standing water in the left lane of the road. The water was estimated to be 300 feet long and 6 to 9 inches deep at its deepest point. The cause of the standing water was a clogged drainage basin in the median.

Mr. Keiffer hit the water and lost control of his jeep. Mr. Stephenson swerved to the right to miss Mr. Keiffer's jeep. That maneuver sent him in the direction of the safety zone in which three other vehicles were sitting. In order to miss those vehicles, Mr. Stephenson steered further to the right down an exit ramp where his truck hit a guardrail, flipped over, and burst into flames.

The three vehicles sitting in the safety zone were a City of Jacksonville police car, a car driven by Shana Williams, and a news van driven by Douglas Lockwood. Ms. Williams and Mr. Lockwood had each hit the water and lost control of their vehicles shortly before the crash involving Mr. Stephenson. The police car was driven by Lt. David Vanaman, who had just responded to the scene to assist Ms. Williams and Mr. Lockwood about the time that Mr. Stephenson lost control of his truck.

The Department of Transportation (DOT) is responsible for maintaining the drainage basins along the Hart Bridge Expressway. After the crash, DOT maintenance supervisor Alex Slaughter was called to the scene.

Mr. Slaughter called for the assistance of a vacuum truck to suck up the standing water and clean up the drainage basin. The vacuum truck was able to suck up all of the water on the road, but it was unable to unclog the drainage basin. As a result, it was necessary for Mr. Slaughter and three other DOT maintenance employees to climb down into the drainage basin and remove by hand the materials clogging the drain. The materials removed from the drainage basin included various items of trash and what was described at trial as a large rubber or plastic flap. It took the four DOT employees two hours to remove all of the materials in the drainage basin. Approximately one cubic yard of debris was removed.

No evidence was presented as to when DOT had last inspected and/or cleaned out the drainage basin. Mr. Slaughter testified that the materials removed from the

drainage basin had likely accumulated over 6 to 8 months. The plaintiffs' expert, Jerome Thomas, testified that the debris had likely been accumulating for several years. Mr. Thomas's estimate is more reasonable in light of the length of time that it took the DOT employees to unclog the drainage basin after the crash, the amount of debris removed, and the evidence of prior flooding at the site.

This was not the first time that the water had accumulated on the road in this location as a result of the clogged drainage basin. Several witnesses testified about seeing standing water at that location, and there had been several prior crashes, including one involving a City of Jacksonville fire truck, in which drivers lost control of their vehicles after hitting the water. However, there was no evidence that these accidents were reported to DOT, or that DOT had actual knowledge of the flooding caused by the clogged drain at this location.

Mr. Stephenson was survived by his wife, Amie, and two children, Hailey and Christian, II. Hailey (now 13) was 2 years old at the time of Mr. Stephenson's death. Christian, II (now 11), was born several months after Mr. Stephenson's death. Amie and Hailey both spent time in counseling after Mr. Stephenson's death. Christian is reportedly experiencing behavioral and emotional problems as a consequence of never having met his father.

Amie is a stay-at-home mom. She last worked outside the home in 1998, which was about the time that Hailey was born. Amie has moved on with her life. She married Kevin O'Brien, Mr. Stephenson's best friend, in October 2005. They have a daughter together.

Amie received approximately \$325,000 from various sources after Mr. Stephenson's death. That amount included \$104,581.34 in workers' compensation death benefits; a \$5,000 funeral benefit from Mr. Stephenson's insurer, State Farm; a \$100,000 uninsured motorist settlement from State Farm; a \$10,000 settlement of a suit against Mr. Keiffer; a \$10,000 settlement of a suit against the City of Jacksonville; \$22,000 in donations through a charity fund established by a local hospital where Mr. Stephenson's mother worked; and \$75,000 in life insurance. These funds are in addition to the \$175,100 paid by DOT in satisfaction of its legal liability for the

judgment in this case, as discussed below. Amie used the money from the charity fund to pay off the family's debts and purchase furniture for a new home. There is a statutory lien on the workers' compensation benefits, which will be paid from the proceeds of the claim bill.

In addition to the lump sum payments referenced above, Amie received Social Security survivor benefits of approximately \$700 per month until the time that she married Mr. O'Brien. Hailey and Chris, II, continue to receive survivor benefits. It was reported at the Special Master hearing that each child receives benefits of \$917 per month, and that the benefits will continue until the children turn 18.

Amie testified at the Special Master hearing that any money she receives from the claim bill will ultimately pass to her children, and not Mr. O'Brien. She confirmed that intent in writing after the hearing. Additionally, Mr. O'Brien submitted a written statement waiving his right to any of the money received by Amie from the claim bill.

DOT reported that it has sufficient funds available in its "unappropriated trust fund balances" to pay the claim, and those funds were suggested by DOT as the appropriate source for payment of this claim if the bill is approved over its objection. Payment of the claim from those funds will not adversely impact DOT's operations or any particular work program.

LEGAL PROCEEDINGS:

In 2001, Amie, as personal representative of Mr. Stephenson's estate, filed suit against DOT, the City of Jacksonville, Multimedia Holdings Corporation (Mr. Lockwood's employer), Ms. Williams, and Mr. Keiffer, in circuit court in Jacksonville. A two-week jury trial was held in March 2005.

Prior to trial, the court entered summary judgment in favor of Multimedia and Ms. Williams. Those rulings were affirmed on appeal, and judgments were subsequently entered in favor of Ms. Williams (\$21,599 in attorney's fees and \$1,887.07 in costs) and Multimedia (\$5,148 in attorney's fees). Those judgments remain unsatisfied and are against Mr. Stephenson's estate, which has not yet been closed. It is

expected that the judgments will be paid out of the proceeds from the claim bill that are paid to the estate.

Summary judgment was also entered in favor of Mr. Keiffer prior to the trial. The claimants' appeal of that ruling was dismissed after Mr. Keiffer agreed to pay \$10,000 to settle the suit against him. A \$10,000 pre-trial settlement was also reached with the City of Jacksonville.

As a result of the pre-trial rulings and settlements, the case proceeded to trial with DOT as the only defendant. The jury found DOT negligent and apportioned 36 percent of the negligence for Mr. Stephenson's death to DOT. The jury apportioned the remaining 64 percent of the negligence to Mr. Stephenson. The jury awarded a total of \$3,589,000, broken down as follows:

Damages to Mr. Stephenson's estate	\$1,300,000
Damages to Amie	\$763,000
Damages to Hailey	\$1,000,000
Damages to Chris, II	\$526,000

After the award was reduced to reflect Mr. Stephenson's comparative fault, a final judgment was entered against DOT for \$1,292,040.

The final judgment reserved jurisdiction to award costs against DOT. A cost judgment was never entered because the parties agreed that the amount of trial-related costs was roughly equivalent to the amount that would be offset against the judgment for the collateral sources received by Amie after Mr. Stephenson's death.

DOT did not appeal the final judgment. Amie appealed the final judgment, but the appeal was voluntarily dismissed because according to the claimants' attorney, Amie would not have been able emotionally to go through another trial in the event that the judgment was reversed on appeal.

DOT paid \$175,100 to the claimants in satisfaction of its legal liability under the judgment. The remainder of the \$200,000 available under the sovereign immunity cap was paid to the company that owned the truck Mr. Stephenson was driving which was destroyed in the crash. The "outstanding balance" of the judgment against DOT is \$1,117,940.

The claimants only received approximately \$26,000 of the \$175,100 paid by DOT, with approximately \$8,500 going to Amie, approximately \$11,300 going to Hailey, and approximately \$5,900 going to Christian, II. None of the initial payment went to Mr. Stephenson's estate. The remainder of the initial payment went to attorney's fees, costs, and the repayment of a loan taken out by the claimants.

The claimants' attorney reports that there are approximately \$320,000 of billed and unbilled costs and expenses which remain outstanding. Some of those expenses relate to post-trial matters, but the bulk of the expenses relate to the investigation and trial of the case.

CLAIMANT'S ARGUEMENTS:

DOT was negligent by failing to keep the drainage basin free of debris, which caused water to overflow onto the road creating an unsafe condition that led to Mr. Stephenson's death.

DOT had at least constructive notice of the dangerous condition created by the clogged drainage basin as a result of prior crashes at the location caused by standing water.

The jury verdict against DOT should be given full effect.

RESPONDENT'S ARGUMENTS:

DOT did not have actual notice of the clogged drainage basin or the resulting dangerous roadway condition.

The clogged drain was not caused by months or years of accumulated debris, but rather by the large rubber or plastic flap that somehow got into the drainage basin.

The primary cause of the crash that killed Mr. Stephenson was his own negligence, namely his excessive speed for the wet road conditions that existed at the time of the crash.

CONCLUSIONS OF LAW:

DOT had a duty to maintain the drainage basin so that it did not become clogged and create an unsafe roadway condition. Although DOT argued that its decisions as to where drainage basins are located and how and when they are inspected are planning level decisions entitled to sovereign immunity, it conceded that its duty to properly maintain a particular drainage basin is an operational level decision for which

sovereign immunity has been partially waived by section 768.28, Florida Statutes.

DOT breached its duty, as evidenced by the fact that there was no evidence when the drainage basin was last cleaned out, and the fact that it took four DOT employees a total of two hours to remove the cubic yard of debris that had accumulated in the drainage basin. DOT's argument that the drainage basin became clogged because of a "freak event" (i.e., the rubber or plastic flap) was not persuasive in light of the amount of debris removed from the drainage basin after the crash and the evidence of prior crashes caused by standing water in the same location.

DOT's negligence was a proximate cause of Mr. Stephenson's death because but for the standing water in the roadway caused by the clogged drainage basin, Mr. Keiffer would not have lost control of his jeep causing Mr. Stephenson to take the evasive action that ultimately led to his death.

Mr. Stephenson's own negligence also contributed to his death because he was speeding at the time of his crash despite the wet road conditions, and he may have also been following Mr. Keiffer's jeep too closely. Accordingly, the jury's apportionment of fault between DOT and Mr. Stephenson is reasonable and appropriate.

The damages awarded by the jury are reasonable as well. Dr. Patricia Pacey, the expert who testified at trial for the claimants, calculated the economic damages of Mr. Stephenson's death to be approximately \$1.8 million. DOT's expert came to a similar amount. The jury awarded \$1.3 million to Mr. Stephenson's estate for economic damages. The remaining \$2.2 million of the verdict were non-economic damages apportioned amongst Amie, Hailey, and Christian, II.

The trial court did not enter a cost judgment against DOT, and it did not adjust the jury verdict to take into account collateral sources of recovery by Mr. Stephenson's family.

The evidence presented at the Special Master hearing establishes that, consistent with the agreement of the parties at the trial level, the costs incurred by the claimants are

roughly equivalent to, and off-set, the collateral-source payments received by the claimants.

LEGISLATIVE HISTORY:

This is the sixth year that this claim has been presented to the Legislature. The bills filed in 2007 (SB 34), 2008 (SB 62), 2009 (SB 22), 2010 (SB 32), and 2011 (SB 30) were not referred to committee.

ATTORNEYS FEES:

The bill states that "attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act." (Emphasis supplied). This limitation is within the authority and discretion of the Legislature. See *Gamble v. Wells*, 450 So. 2d 850 (Fla. 1984); *Noel v. Schlesinger*, 984 So. 2d 1265 (Fla. 4th DCA 2008).

The claimants' attorney provided an affidavit stating that in accordance with s. 768.28(8), F.S., attorney's fees related to this claim will be capped at 25 percent of the amount awarded in the bill. The lobbyist's fee is 6 percent of amount awarded in the bill, and according to lobbyist's affidavit, the lobbyist's fee is "included within the 25 percent attorney fee cap."

There are approximately \$320,000 of outstanding costs and expenses. Those costs will not come out of the claimants' portion of the bill as a result of the bill language quoted above.

SPECIAL ISSUES:

This Final Report was written by Special Master T. Kent Wetherell, II, who conducted the claim bill hearing on this matter in December 2006. Having reviewed the case, the undersigned has elected to adopt Special Master Wetherell's report and recommendations, with minor editorial changes to the text.

One amendment to the bill is needed. The fourth whereas clause erroneously states that the jeep was traveling towards Mr. Stephenson's tanker truck. This clause should be amended to conform to the undisputed evidence that Mr. Stephenson's tanker truck was following the jeep.

Other amendments might be desirable. First, the last "whereas" clause in the bill states that the amount subject to being awarded pursuant to this act is \$1,092,040, which will be the unpaid balance of the final judgment after DOT has paid the claimants \$200,000 under the sovereign immunity

cap. To date, DOT has not paid the claimants the full \$200,000. Instead, DOT paid \$25,000 to the company that owned the truck which was destroyed in the fire and \$175,000 to the claimants. Given that the bill seeks payment of \$1,092,040, which is the amount of the judgment less \$200,000, it appears that the claimants anticipate DOT will pay them the \$25,000 balance due under the cap without the compulsion of this legislation—or that they have abandoned the pursuit of this sum. If these assumptions are incorrect, the claimants should seek to amend the bill, to reflect that the "outstanding balance" against DOT is \$1,117,940, and to correct the "whereas" clause accordingly.

Second, the bill contemplates a single lump sum payment to Amie, as personal representative of Mr. Stephenson's estate, even though the jury verdict specifically apportioned damages between Mr. Stephenson's estate (36.22 percent of the award), Amie (21.26 percent), Hailey (27.86 percent), and Christian, II. (14.66 percent). Amie testified at the Special Master hearing (and the claimants' attorney confirmed in a written submittal this year) that she has no objection to the children's shares of the claim bill being specifically earmarked for them. It was suggested, however, that the children's shares of the claim bill should be paid into a trust since they are minors. The claimants should consider seeking an amendment to the bill that would provide for the allocation of the proceeds as follows: \$404,575.65 to Mr. Stephenson's estate; \$237,454.78 to Amie; \$311,212.04 in trust for Hailey; and \$163,697.53 in trust for Christian, II.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 62 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Michael S. Bennett
Debbie Brown, Interim Secretary of the Senate
Counsel of Record



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SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/2/11	SM	Fav/1 amendment

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
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Re: **SB 70** – Senator Michael S. Bennett
Relief of Amie Draiemann Stephenson (O'Brien)

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FINDINGS OF FACT:

On August 12, 2000, 29-year-old Christian D. Stephenson was killed when he lost control of the gas tanker that he was driving and crashed on the Hart Bridge Expressway in Jacksonville. The truck exploded in the crash, and Mr. Stephenson burned to death in the fire.

The posted speed limit on the portion of the expressway where the crash occurred was 45 MPH. Mr. Stephenson was traveling in excess of the speed limit (perhaps as fast as 60 MPH) at the time of the crash, according to the eye witnesses and experts who testified at the trial.

The road was wet, and it was raining at the time of the crash. However, it was not raining as heavily at the time of the crash as it had been in the hour or so preceding the crash.

Mr. Stephenson was traveling in the left lane of the road, following closely behind a jeep driven by Jason Keiffer. Unbeknown to Mr. Keiffer or Mr. Stephenson, there was a large pool of standing water in the left lane of the road. The water was estimated to be 300 feet long and 6 to 9 inches deep at its deepest point. The cause of the standing water was a clogged drainage basin in the median.

Mr. Keiffer hit the water and lost control of his jeep. Mr. Stephenson swerved to the right to miss Mr. Keiffer's jeep. That maneuver sent him in the direction of the safety zone in which three other vehicles were sitting. In order to miss those vehicles, Mr. Stephenson steered further to the right down an exit ramp where his truck hit a guardrail, flipped over, and burst into flames.

The three vehicles sitting in the safety zone were a City of Jacksonville police car, a car driven by Shana Williams, and a news van driven by Douglas Lockwood. Ms. Williams and Mr. Lockwood had each hit the water and lost control of their vehicles shortly before the crash involving Mr. Stephenson. The police car was driven by Lt. David Vanaman, who had just responded to the scene to assist Ms. Williams and Mr. Lockwood about the time that Mr. Stephenson lost control of his truck.

The Department of Transportation (DOT) is responsible for maintaining the drainage basins along the Hart Bridge Expressway. After the crash, DOT maintenance supervisor Alex Slaughter was called to the scene.

Mr. Slaughter called for the assistance of a vacuum truck to suck up the standing water and clean up the drainage basin. The vacuum truck was able to suck up all of the water on the road, but it was unable to unclog the drainage basin. As a result, it was necessary for Mr. Slaughter and three other DOT maintenance employees to climb down into the drainage basin and remove by hand the materials clogging the drain. The materials removed from the drainage basin included various items of trash and what was described at trial as a large rubber or plastic flap. It took the four DOT employees

two hours to remove all of the materials in the drainage basin. Approximately one cubic yard of debris was removed.

No evidence was presented as to when DOT had last inspected and/or cleaned out the drainage basin. Mr. Slaughter testified that the materials removed from the drainage basin had likely accumulated over 6 to 8 months. The plaintiffs' expert, Jerome Thomas, testified that the debris had likely been accumulating for several years. Mr. Thomas's estimate is more reasonable in light of the length of time that it took the DOT employees to unclog the drainage basin after the crash, the amount of debris removed, and the evidence of prior flooding at the site.

This was not the first time that the water had accumulated on the road in this location as a result of the clogged drainage basin. Several witnesses testified about seeing standing water at that location, and there had been several prior crashes, including one involving a City of Jacksonville fire truck, in which drivers lost control of their vehicles after hitting the water. However, there was no evidence that these accidents were reported to DOT, or that DOT had actual knowledge of the flooding caused by the clogged drain at this location.

Mr. Stephenson was survived by his wife, Amie, and two children, Hailey and Christian, II. Hailey (now 13) was 2 years old at the time of Mr. Stephenson's death. Christian, II (now 11), was born several months after Mr. Stephenson's death. Amie and Hailey both spent time in counseling after Mr. Stephenson's death. Christian is reportedly experiencing behavioral and emotional problems as a consequence of never having met his father.

Amie is a stay-at-home mom. She last worked outside the home in 1998, which was about the time that Hailey was born. Amie has moved on with her life. She married Kevin O'Brien, Mr. Stephenson's best friend, in October 2005. They have a daughter together.

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Farm; a \$10,000 settlement of a suit against Mr. Keiffer; a \$10,000 settlement of a suit against the City of Jacksonville; \$22,000 in donations through a charity fund established by a local hospital where Mr. Stephenson's mother worked; and \$75,000 in life insurance. These funds are in addition to the \$175,100 paid by DOT in satisfaction of its legal liability for the judgment in this case, as discussed below. Amie used the money from the charity fund to pay off the family's debts and purchase furniture for a new home. There is a statutory lien on the workers' compensation benefits, which will be paid from the proceeds of the claim bill.

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DOT reported that it has sufficient funds available in its "unappropriated trust fund balances" to pay the claim, and those funds were suggested by DOT as the appropriate source for payment of this claim if the bill is approved over its objection. Payment of the claim from those funds will not adversely impact DOT's operations or any particular work program.

LEGAL PROCEEDINGS:

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Ms. Williams (\$21,599 in attorney's fees and \$1,887.07 in costs) and Multimedia (\$5,148 in attorney's fees). Those judgments remain unsatisfied and are against Mr. Stephenson's estate, which has not yet been closed. It is expected that the judgments will be paid out of the proceeds from the claim bill that are paid to the estate.

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As a result of the pre-trial rulings and settlements, the case proceeded to trial with DOT as the only defendant. The jury found DOT negligent and apportioned 36 percent of the negligence for Mr. Stephenson's death to DOT. The jury apportioned the remaining 64 percent of the negligence to Mr. Stephenson. The jury awarded a total of \$3,589,000, broken down as follows:

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After the award was reduced to reflect Mr. Stephenson's comparative fault, a final judgment was entered against DOT for \$1,292,040.

The final judgment reserved jurisdiction to award costs against DOT. A cost judgment was never entered because the parties agreed that the amount of trial-related costs was roughly equivalent to the amount that would be offset against the judgment for the collateral sources received by Amie after Mr. Stephenson's death.

DOT did not appeal the final judgment. Amie appealed the final judgment, but the appeal was voluntarily dismissed because according to the claimants' attorney, Amie would not have been able emotionally to go through another trial in the event that the judgment was reversed on appeal.

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available under the sovereign immunity cap was paid to the company that owned the truck Mr. Stephenson was driving which was destroyed in the crash. The "outstanding balance" of the judgment against DOT is \$1,117,940.

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The claimants' attorney reports that there are approximately \$320,000 of billed and unbilled costs and expenses which remain outstanding. Some of those expenses relate to post-trial matters, but the bulk of the expenses relate to the investigation and trial of the case.

CLAIMANT'S ARGUEMENTS:

DOT was negligent by failing to keep the drainage basin free of debris, which caused water to overflow onto the road creating an unsafe condition that led to Mr. Stephenson's death.

DOT had at least constructive notice of the dangerous condition created by the clogged drainage basin as a result of prior crashes at the location caused by standing water.

The jury verdict against DOT should be given full effect.

RESPONDENT'S ARGUMENTS: DOT did not have actual notice of the clogged drainage basin or the resulting dangerous roadway condition.

The clogged drain was not caused by months or years of accumulated debris, but rather by the large rubber or plastic flap that somehow got into the drainage basin.

The primary cause of the crash that killed Mr. Stephenson was his own negligence, namely his excessive speed for the wet road conditions that existed at the time of the crash.

CONCLUSIONS OF LAW:

DOT had a duty to maintain the drainage basin so that it did not become clogged and create an unsafe roadway condition. Although DOT argued that its decisions as to where drainage basins are located and how and when they are inspected are

planning level decisions entitled to sovereign immunity, it conceded that its duty to properly maintain a particular drainage basin is an operational level decision for which sovereign immunity has been partially waived by section 768.28, Florida Statutes.

DOT breached its duty, as evidenced by the fact that there was no evidence when the drainage basin was last cleaned out, and the fact that it took four DOT employees a total of two hours to remove the cubic yard of debris that had accumulated in the drainage basin. DOT's argument that the drainage basin became clogged because of a "freak event" (i.e., the rubber or plastic flap) was not persuasive in light of the amount of debris removed from the drainage basin after the crash and the evidence of prior crashes caused by standing water in the same location.

DOT's negligence was a proximate cause of Mr. Stephenson's death because but for the standing water in the roadway caused by the clogged drainage basin, Mr. Keiffer would not have lost control of his jeep causing Mr. Stephenson to take the evasive action that ultimately led to his death.

Mr. Stephenson's own negligence also contributed to his death because he was speeding at the time of his crash despite the wet road conditions, and he may have also been following Mr. Keiffer's jeep too closely. Accordingly, the jury's apportionment of fault between DOT and Mr. Stephenson is reasonable and appropriate.

The damages awarded by the jury are reasonable as well. Dr. Patricia Pacey, the expert who testified at trial for the claimants, calculated the economic damages of Mr. Stephenson's death to be approximately \$1.8 million. DOT's expert came to a similar amount. The jury awarded \$1.3 million to Mr. Stephenson's estate for economic damages. The remaining \$2.2 million of the verdict were non-economic damages apportioned amongst Amie, Hailey, and Christian, II.

The trial court did not enter a cost judgment against DOT, and it did not adjust the jury verdict to take into account collateral sources of recovery by Mr. Stephenson's family.

The evidence presented at the Special Master hearing establishes that, consistent with the agreement of the parties at the trial level, the costs incurred by the claimants are roughly equivalent to, and off-set, the collateral-source payments received by the claimants.

LEGISLATIVE HISTORY:

This is the sixth year that this claim has been presented to the Legislature. The bills filed in 2007 (SB 34), 2008 (SB 62), 2009 (SB 22), 2010 (SB 32), and 2011 (SB 30) were not referred to committee.

ATTORNEYS FEES:

The bill states that "attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act." (Emphasis supplied). This limitation is within the authority and discretion of the Legislature. See *Gamble v. Wells*, 450 So. 2d 850 (Fla. 1984); *Noel v. Schlesinger*, 984 So. 2d 1265 (Fla. 4th DCA 2008).

The claimants' attorney provided an affidavit stating that in accordance with s. 768.28(8), F.S., attorney's fees related to this claim will be capped at 25 percent of the amount awarded in the bill. The lobbyist's fee is 6 percent of amount awarded in the bill, and according to lobbyist's affidavit, the lobbyist's fee is "included within the 25 percent attorney fee cap."

There are approximately \$320,000 of outstanding costs and expenses. Those costs will not come out of the claimants' portion of the bill as a result of the bill language quoted above.

SPECIAL ISSUES:

This Final Report was written by Special Master T. Kent Wetherell, II, who conducted the claim bill hearing on this matter in December 2006. Having reviewed the case, the undersigned has elected to adopt Special Master Wetherell's report and recommendations, with minor editorial changes to the text.

One amendment to the bill is needed. The fourth whereas clause erroneously states that the jeep was traveling towards Mr. Stephenson's tanker truck. This clause should be amended to conform to the undisputed evidence that Mr. Stephenson's tanker truck was following the jeep.

Other amendments might be desirable. First, the last "whereas" clause in the bill states that the amount subject to being awarded pursuant to this act is \$1,092,040, which will be the unpaid balance of the final judgment after DOT has paid the claimants \$200,000 under the sovereign immunity cap. To date, DOT has not paid the claimants the full \$200,000. Instead, DOT paid \$25,000 to the company that owned the truck which was destroyed in the fire and \$175,000 to the claimants. Given that the bill seeks payment of \$1,092,040, which is the amount of the judgment less \$200,000, it appears that the claimants anticipate DOT will pay them the \$25,000 balance due under the cap without the compulsion of this legislation—or that they have abandoned the pursuit of this sum. If these assumptions are incorrect, the claimants should seek to amend the bill, to reflect that the "outstanding balance" against DOT is \$1,117,940, and to correct the "whereas" clause accordingly.

Second, the bill contemplates a single lump sum payment to Amie, as personal representative of Mr. Stephenson's estate, even though the jury verdict specifically apportioned damages between Mr. Stephenson's estate (36.22 percent of the award), Amie (21.26 percent), Hailey (27.86 percent), and Christian, II. (14.66 percent). Amie testified at the Special Master hearing (and the claimants' attorney confirmed in a written submittal this year) that she has no objection to the children's shares of the claim bill being specifically earmarked for them. It was suggested, however, that the children's shares of the claim bill should be paid into a trust since they are minors. The claimants should consider seeking an amendment to the bill that would provide for the allocation of the proceeds as follows: \$404,575.65 to Mr. Stephenson's estate; \$237,454.78 to Amie; \$311,212.04 in trust for Hailey; and \$163,697.53 in trust for Christian, II.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 62 (2012) be reported FAVORABLY, as amended.

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December 2, 2011

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Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Michael S. Bennett
Debbie Brown, Interim Secretary of the Senate
Counsel of Record