

October 29, 1997

<u>SPECIAL MASTER'S FINAL REPORT</u>	<u>DATE</u>	<u>COMM.</u>	<u>ACTION</u>
The Honorable Toni Jennings	11/05/97	CA	Favorable
President, The Florida Senate	01/05/98	WM	Favorable
Suite 409, The Capitol			
Tallahassee FL 32399-1100			

Re: SB 22 - Senator Campbell
HB 3025 - Representative Ritter
Relief of Triesa Wells

THIS IS A CLAIM FOR \$499,000.00 BASED UPON A SETTLEMENT AGREEMENT BETWEEN THE CLAIMANT AND THE CITY OF PEMBROKE PINES TO COMPENSATE THE CLAIMANT FOR INJURIES WHICH SHE SUFFERED WHEN HER VEHICLE WAS STRUCK BY A CITY OF PEMBROKE PINES POLICE VEHICLE.

FINDINGS OF FACT:

On December 10, 1993, around 9:00 p.m., Triesa Wells was operating her motor vehicle in a northbound direction on S.W. 114th Avenue. Her son and two of his friends were passengers in the vehicle. Mrs. Wells had a green light and began proceeding through the intersection when her vehicle was hit by a City of Pembroke Pines police vehicle traveling eastbound on Pines Boulevard.

It is uncontroverted that the City of Pembroke Pines police vehicle ran the red light at the intersection of Pines Boulevard at S.W. 114th Avenue. It also is uncontroverted that the police vehicle was exceeding the speed limit. The police officer apparently was assisting Metro-Dade and Miramar police in pursuit of a suspect traveling from Dade County. The accident occurred when the city's police officer swerved to avoid a crash with a third vehicle in the intersection traveling south on S.W. 114th Avenue.

Section 316.072(5), F.S. (1995) provides in pertinent part:

- (a) 1. The driver of an authorized emergency vehicle, when responding to an emergency call, when in the pursuit of an actual or suspected violator of the law, or when responding to a fire alarm,
...
may exercise the privileges set forth in this section, but subject to the conditions herein stated.

- (b) The driver of a vehicle specified in paragraph (a), except when otherwise directed by a police officer, may:
...
 - 2. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

 - 3. Exceed the maximum speed limits so long as the driver does not endanger life or property;

...

- (c) The foregoing provisions shall not relieve the driver of a vehicle specified in paragraph (a) from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his or her reckless disregard for the safety of others.

Section 316.126, F.S. (1995) provides in pertinent part:

- (1) Upon the immediate approach of an authorized emergency vehicle, while en route to meet an existing emergency, the driver of every other vehicle shall, when such emergency vehicle is giving audible signals by siren, exhaust whistle, or other adequate device, or visible signals by the use of displayed blue or red lights, yield the right-of-way to the emergency vehicle and shall immediately proceed to a position parallel to, and as close as reasonable to the closest edge of the curb of the roadway, clear of any intersection and shall stop and remain in position until the authorized emergency vehicle has passed, unless otherwise directed by any law enforcement officer.
...

- (3) Any authorized emergency vehicle, when en route to meet an existing emergency, shall warn all other vehicular traffic along the emergency route by an audible signal, siren, exhaust whistle, or other adequate device or by a visible signal by the use of displayed blue or red lights. While en route to such emergency, the emergency vehicle shall otherwise proceed in a manner consistent with the laws regulating vehicular traffic upon the highways of this state.
- (4) Nothing herein contained shall diminish or enlarge any rules of evidence or liability in any case involving the operation of an emergency vehicle.
- (5) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

It is unclear whether the police vehicle had its siren or warning lights in use at the time of the accident.

Triesa Wells was airlifted from the scene of the accident to the Trauma Unit at Memorial Hospital in Hollywood. The Glasgow Coma Scale indicated a value of 10 on Mrs. Wells' arrival at the hospital. During her hospitalization, she underwent major orthopedic surgery, developed a pulmonary emboli, went into respiratory arrest, and required the insertion of a vena cava filter. As a result of this accident, she sustained a comminuted left femur fracture, left sacral fracture, a fractured pelvis, and mild closed head injury, as well as other injuries to her body. She shattered nine or ten teeth, and had significant permanent scarring and disfigurement in both her buttocks and left leg.

Triesa Wells' medical bills in this case total in excess of \$180,000.00 in connection with the care and treatment she has received following the injuries resulting from the December 10, 1993 motor vehicle accident. Triesa Wells has not returned to work since this accident.

The City of Pembroke Pines has agreed to settle this claim for \$499,000.00.

RELATED PRIOR CLAIM BILL: In 1996 the Legislature enacted a claim bill to compensate one of the passengers in Mrs. Wells' vehicle. That bill became law. The \$200,000 statutory limit was paid in connection with the earlier claim.

CONCLUSIONS OF LAW: There is competent substantial evidence that a finding of liability on the part of the City of Pembroke Pines, through its employee, could be made.

COLLATERAL SOURCES: The claimant settled her case with the owner of the third vehicle for her bodily injury policy limits of \$10,000.00, less attorney's fees and costs, and also recovered \$20,000.00 from her own uninsured motorist carrier less attorney's fees and costs.

ATTORNEYS FEES: Limited to 25 percent of the total recovery in accordance with s. 768.28, F.S.

RECOMMENDATIONS: Accordingly, I recommend that SB 22 be reported FAVORABLY.

Respectfully submitted,

Glenn Lang
Senate Special Master

cc: Senator Campbell
Representative Ritter
Faye Blanton, Secretary of the Senate
Richard Hixson, House Special Master