



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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November 24, 1998

<u>SPECIAL MASTER'S FINAL REPORT</u>	<u>DATE</u>	<u>COMM</u>	<u>ACTION</u>
The Honorable Toni Jennings President, The Florida Senate Suite 409, The Capitol Tallahassee, Florida 32399-1100	11/25/98	SM RC FR	Favorable

Re: SB 32 - Senator William "Doc" Myers
Relief of Eubanks & Black

THIS IS A SETTLED CLAIM FOR \$350,000 BASED ON A JURY VERDICT AND EXCESS FINAL JUDGMENT AGAINST PALM BEACH COUNTY TO COMPENSATE MEMBERS OF THE EUBANKS & BLACK FAMILIES FOR DAMAGES SUSTAINED AS A RESULT OF THE COUNTY'S NEGLIGENCE IN FAILING TO PROPERLY MAINTAIN A ROAD. THIS BILL AUTHORIZES THE COUNTY TO PAY THE CLAIM FROM ITS OWN REVENUES.

FINDINGS OF FACT:

The facts of this claim are heart wrenching: On March 19, 1992, Jennifer Black struggled in vain to save her two infant sons and her mother from drowning in a car which plunged into a drainage canal.

The road and intersection. This single-car accident occurred at about 10:30 p.m., in Palm Beach County off Airport Road. Although it was not raining at that time, it had rained earlier and the roadway was wet and dark.

Airport Road is a rural, 55 mile-per-hour, two-lane highway. Airport Road ends by making a 90 degree right turn into Sam Senter Road. At this intersection, a concrete bridge and dirt road lie straight ahead of Airport Road. The bridge goes over an 80-foot-wide drainage canal. The canal lies parallel to Sam Senter Road and is bounded by a

guardrail. There is no lighting at the Airport -- Sam Senter Road intersection.

About 420 feet from the intersection's 90 degree right turn, there was one 15-mile-an-hour right turn sign. At the intersection just above the guardrail there was a right turn arrow sign. However, this sign was positioned to the right of the Airport Road, and thus not in a driver's direct line of sight.

The accident. Jennifer Black's mother, Carolyn Eubanks, was driving her car east on Airport Road. Mrs. Black was seated in the passenger seat. Her two infant sons, Todd Allen Black, (20 months old), and William Anthony Black, (5 months old), were in the back seat.

Mrs. Eubanks was not familiar with Airport Road. As she drove on Airport Road that night, she did not see the 15-mile-an-hour right turn sign. The concrete bridge and dirt road, just ahead of Airport Road's turn, created an optical illusion that the road continued on. Having missed the sign, Mrs. Eubanks did not see the pavement turning until it was too late. She could not negotiate the turn at the car's speed and went through the guardrail and into the canal.

The car flipped over and began to sink upside down. The car sunk very rapidly. Mrs. Black was able to release her seat belt and managed to escape through the right front window. Before escaping, she tried unsuccessfully to remove her children from the back seat. She swam up to the surface for air and then attempted again to save her children and her mother. Eventually, Mrs. Black went out to the road where she found help. It was too late. Carolyn Eubanks and Todd and William Black drowned.

The Florida Highway Patrol officer's investigative report concluded that "the traffic control was inadequate at the intersection." In addition the officer found that the guardrail was damaged from prior accidents, and if it had been in the correct position, the car "may not have entered the canal."

Prior accidents at same intersection. Just two weeks before the Eubanks accident, there were two separate accidents at the Airport -- Sam Senter Road intersection.

The accidents were substantially similar to the Eubanks accident: both drivers failed to notice the 15-mile-an-hour right turn sign and continued straight ahead. However, in these other accidents the guardrail was able to prevent the cars from going into the canal.

County plans to reconstruct road. In 1988, Palm Beach County contracted with Kimley-Horn and Associates, an engineering firm, to design a reconstruction of Airport Road from Sam Senter Road to a point 3 miles west of Sam Senter Road. Early on, Kimley-Horn "expressed some concerns about the existing operation of the intersection of Airport Road and Sam Senter Road." In a series of memorandums, the county acknowledged the "substandard" and "hazardous" conditions of the intersection.

Kimley-Horn, proposed a 4-way stop operation for this intersection. Kimley-Horn proposed erecting "35-mile-per-hour," "reduced speed ahead," and "stop ahead" signs leading to the intersection. In addition, Kimley-Horn proposed installing "rumble strips," (devices placed on the roadway to alert drivers of an impending danger). The county accepted this proposal. The county rebuilt Airport Road and reopened it in October 1991. However, the road did not have the rumble strips, speed reduction signs, nor the 4-way stop. The record does not establish why the county failed to implement these proposed changes.

An accident reconstruction expert hired by the claimants testified at trial and at the special masters' hearing that the intersection was dangerous and that Kimley-Horn's proposal would have prevented these deaths, if implemented. In addition, this expert testified that the 15-mile-an-hour right turn sign was placed too close to the intersection, was too low and angled improperly.

County actions after accident. On April 13, 1992, just 25 days after the Eubanks accident, the county acted to improve the intersection. The county placed rumble strips on the roadway. Instead of a stop sign, the county put up a right turn sign with a blinking flashing light that continually warns traffic of the curve.

Jury trial, verdict and settlement. The claimants went to trial against Palm Beach County in July 1996. The claimants alleged the county's negligence on various theories of failing to properly warn motorists and adequately maintain the roadway. The jury returned a verdict awarding the claimants \$8.1 million in damages. However, the jury assessed 10 percent fault to Palm Beach County and 90 percent fault to the claimants' decedent, Carolyn Eubanks. This comparative negligence verdict reduced the total judgment to \$810,000. The parties did not appeal the verdict.

The county paid \$200,000, the full amount allowed under the sovereign immunity waiver statute. The parties entered into a settlement of \$350,000 to satisfy the excess judgment amount.

Comparative negligence evidence. The jury found Carolyn Eubanks 90 percent at fault for the accident. The following evidence supports this finding:

- Carolyn Eubanks was driving down an unfamiliar wet road that she acknowledged to her daughter that it was quite dark.
- Despite the darkness, and Mrs. Eubanks's unfamiliarity with the road, she did not have the car's high beam lights on and was not paying careful attention.
- Mrs. Eubanks failed to see the 15-mile-an-hour right turn sign and continued at a high rate of speed.
- Skid-mark evidence suggested that the car was traveling 50 miles per hour upon impact and possibly a higher speed when it was on the road.
- The FHP investigative report found Mrs. Eubanks's speed a contributory factor, and stated that she misjudged the curve, "panicked" and applied the brakes. This locked the wheels and caused the vehicle to skid out of control and into the canal.
- The county's roadway design expert testified that the roadway was safe, met the nationally recognized

standards, and that the Kimley-Horn design "did not guarantee increased safety."

Evidence of claimant's damages. There are 4 claimants: Jennifer Prairie (formerly Jennifer Black); David Black, the father of the decedent children; John Eubanks, the widower of Carolyn Eubanks, and Ivy Dawn Eubanks, Mrs. Eubanks's youngest daughter.

Mrs. Prairie was involved in this tragic accident and witnessed the drowning of her two infant sons and her mother. She is forever affected. She often thinks of her deceased children and mother. Mrs. Prairie received counseling from a psychiatrist and her church but she testified that it has not helped much in alleviating her pain and suffering. A psychiatrist testified that Mrs. Prairie suffers from a depressive disorder caused by her grieving.

The decedent children's father, David Black, testified that he thinks about his children everyday and night. He has not been able to work as a carpenter, his previous occupation. He too has been treated for depression by a psychiatrist. He attends weekly meetings of a group of parents who have lost children.

After his wife's death, John Eubanks lost his job as a result of chronic absenteeism. He was not able to sleep at night and found it difficult to work. A psychiatrist testified that Mr. Eubanks suffers from a depressive disorder and anxiety.

Mrs. Eubanks' daughter, Ivey Dawn Eubanks has had a difficult time with the tragedy. Mrs. Prairie testified that her youngest sister simply "can't handle it." At the mention of the topic, she "gets very upset and does not want to talk about it."

CONCLUSIONS OF LAW:

Each claim bill must be based on facts sufficient to establish liability and damages by a preponderance of the evidence. This is true even for a claim bill in which the parties have entered a settlement agreement, as the parties have here.

Liability. The county "had the same duty as a private person to properly maintain and operate" the roadway. *Brady v. State Paving Corp.*, 693 So. 2d 612, 614 (Fla. 4th DCA 1997); *Department of Transportation v. Neilson*, 419 So. 2d 1071, 1078 (Fla.1982). Further, governmental entities are required to act in a reasonably prudent manner and to warn or protect the public against known dangers or hazards. *City of St. Petersburg v. Collom*, 419 So. 2d 1082 (Fla.1982). I find that the claimants have provided sufficient proof that the county breached its duty to properly and adequately maintain the roadway and warn the public of a danger they acknowledged.

On the other hand, Mrs. Eubanks was also at fault for failing to exercise reasonable care in driving at an excessive speed in an unfamiliar and seemingly dangerous roadway. The jury found that Mrs. Eubanks was 90 percent at fault. I find sufficient evidence to support the jury's verdict on this point.

Damages. I also find there was sufficient evidence to support the jury's finding that the county's negligence caused significant injury. Specifically, the jury made the following findings for each claimant:

- JOHN EUBANKS (loss of his wife Carolyn, companionship and protection, mental pain and suffering):

Past Loses:	\$750,000
Future Loses:	\$250,000
TOTAL:	\$1,000,000

- JENNIFER BLACK (parental companionship and mental pain and suffering for the death of her mother):

Past Loses:	\$1,000,000
Future Loses:	\$1,000,000
TOTAL:	\$2,000,000

- IVEY DAWN EUBANKS (parental companionship and mental pain and suffering for the death of her mother):

Past Loses:	\$500,000
Future Loses:	\$500,000
TOTAL:	\$1,000,000

- JENNIFER BLACK (pain and suffering as a result of the death of her children):
 - Past Loses: \$2,000,000
 - Future Loses: \$2,000,000
 - TOTAL: \$4,000,000

- DAVID BLACK (pain and suffering as a result of the death of her children):
 - Past Loses: \$50,000
 - Future Loses: \$50,000
 - TOTAL: \$100,000

The total damages for all claimants is \$8,100,000.

ATTORNEYS FEES:

Section 768.28(8), F.S., limits claimants' attorney fees to 25 percent of judgment or settlement obtained pursuant to the statute. Claimants' attorney submitted an affidavit stating that he has not obtained a fee in excess of this limitation.

COLLATERAL SOURCES:

The claimants sued a number of third parties alleging their negligence in the accident. Each of the third parties settled prior to trial. The following table identifies the third parties, the alleged negligence and the settled amount. The claimants settled with these defendants for a total of \$1,261,500.

SETTLING DEFENDANT	ALLEGED NEGLIGENCE	AMOUNT
W. Jackson and Sons Construction Company	Reconstructed roadway in 1991; failure to place proper warning signs.	\$50,000
Highland Glades Water Control District	Owned and maintained bridge and canal; failure to warn of hazard.	\$10,000
Florida Sugar Growers Cooperative of Florida	Employees operated equipment near intersection; damaged traffic devices.	\$8,000
Florida Sugar Corporation	Same as above.	\$3,500
Kimley-Horn & Associates	Designed bridge to create illusion it continues on; failing to design warnings.	\$150,000
Murphy Construction Co.	Constructed bridge which created illusion.	\$20,000

SETTLING DEFENDANT	ALLEGED NEGLIGENCE	AMOUNT
Ridgill and Son, Inc.	Improperly constructed the canal excavation and improvement project.	\$20,000
Palm Beach GuardRail Inc., and Erosion Control, Inc.	Failure to properly reconstruct guardrail; guardrail damaged from prior accidents not repaired.	\$1,000,000
TOTAL		\$1,261,500

In addition, Ivy Dawn Eubanks was the sole beneficiary of Carolyn Eubanks's life insurance policy. That policy provided for a \$100,000 death benefit. Finally, under a Personal Injury Protection (PIP) policy in place on the vehicle, the underwriter paid death benefits for each decedent for a total of \$15,000.

GENERAL CONCLUSIONS:

I find that the claimants have proven that the county's negligence caused damages totaling \$8,100,000. However, I also find sufficient evidence to support the jury's finding that Mrs. Eubanks was 90 percent at fault. This jury verdict reduced the claimants' final judgment to \$810,000. The county paid \$200,000, the full amount allowed under the sovereign immunity waiver statute. The parties have entered into a settlement of \$350,000 to satisfy the excess judgment amount.

The claimants settled with various third parties for a total of \$1.2 million. The \$1.2 million more than compensates claimants for the total amount of the final judgment. However, I believe these collateral source payments should not be used to offset this claim because to do so would be to factor the comparative negligence of the claimants' own family member against claimants. An offset would be unduly harsh since the claimants were not at fault for the accident. Further, the additional payment authorized by this claim bill will not unjustly enrich claimants since they suffered \$8,100,000 damages, an amount larger than the collateral source payments and the amount of this claim bill. For these reasons and in light of the county's agreement to settle this claim, an offset is not appropriate.

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RECOMMENDATIONS:

Therefore, I recommend that Senate Bill 32, in the amount of \$350,000, be reported FAVORABLY.

Respectfully submitted,

Abel Gomez
Senate Special Master

cc: Senator William "Doc" Myers
Faye Blanton, Secretary of the Senate
Phillip Miller, House Special Master