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DATE: January 24, 2002

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SPECIAL MASTER'S FINAL REPORT

The Honorable Tom Feeney
Speaker, The Florida House of Representatives
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: HB 419 - Representative Brown
Relief of Billie Jo McIntire

THIS IS AN EQUITABLE CLAIM FOR \$1,000,000 BASED UPON A SETTLEMENT AGREEMENT BETWEEN THE CLAIMANTS AND THE FLORIDA DEPARTMENT OF TRANSPORTATION TO COMPENSATE THE CLAIMANTS FOR THE WRONGFUL DEATH OF JEFFREY SCOTT MCINTIRE WHO DIED IN A MOTOR VEHICLE ACCIDENT INVOLVING HIS VEHICLE AND A FLORIDA DEPARTMENT OF TRANSPORTATION VEHICLE DRIVEN BY CHARLES J. WASHINGTON.

FINDING OF FACT:

The Accident: On July 17, 1997, 24-year-old Jeffrey Scott McIntire was traveling eastward on SR 10 (US Highway 90). Mr. McIntire was traveling toward his home in the Defuniak Springs area from the Crestview Police Department, where Mr. McIntire was employed. Mr. McIntire was wearing his seatbelt while driving his 1987 Ford F-150 pick-up truck slightly below the posted speed limit of 55 miles per hour. Charles J. Washington, an employee of the department of Transportation, was traveling westward from the department's offices in Defuniak Springs, Florida, where he had gone to pick up paychecks for his co-workers, to the department's offices in Crestview, Florida. Mr. Washington was driving a 1995 Ford F-150 pick-up truck, owned by the Florida Department of Transportation. Mr. Washington lost control of his vehicle, it abruptly crossed over the centerline and collided with Mr. McIntire's vehicle. Jeffrey Scott McIntire was fatally injured in this collision. The cause of death was due to cranial cerebral injuries from blunt force head trauma.

State Road 10 is an east-west roadway that has one lane in

each direction. The roadway is 23 feet in width and has wide grassy shoulders on both the north and south sides. Each lane is 11 feet 6 inches wide. A broken yellow line divides the lanes, and a solid white line marks the outer edges. The posted speed limit is 55 miles per hour. There were no other traffic control devices, or visual obstructions in the area of the collision. The collision occurred during daylight hours, and during a period of heavy rain. The roadway was extremely traffic worn and cracked which caused puddles of water to stand on the roadway during the rainfall. The standing water on the roadway caused Mr. Washington to lose control of his vehicle and caused his vehicle to rotate into the opposite lane. In addition to the standing water on the roadway, Mr. Williams was traveling at approximately 60-65 miles per hour at the time of the collision. There was no evidence of intoxicants on the part of either Mr. Washington or Mr. McIntire.

A post crash examination of both of the vehicles involved in the collision showed no evidence of any type of mechanical failure. Both vehicles were in good repair. The vehicle driven by Mr. Washington had tires with minimal tread depths.

Mr. Washington was charged with violating section 316.185, Florida Statutes, which states the following: "Special hazards. -The fact that the speed of a vehicle is lower than the prescribed limits shall not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazards exist or may exist with respect to pedestrians or other traffic or by reason of weather or other roadway conditions, and speed shall be decreased as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the street in compliance with legal requirements and the duty of all persons to use due care." A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

Liability: From the evidence submitted, it appears that the decedent Jeffrey Scott McIntire is completely without fault in the accident; and that Mr. Washington is appropriately charged with 100% of the liability in the accident.

Damages: Mr. McIntire was married to Billie Jo McIntire. He had a daughter Sarah Ellen Megan McIntire who was born on January 16, 1996. Mrs. McIntire was pregnant at the time of the collision, and gave birth to Christian Jeffery Taylor McIntire on January 26, 1998.

Mr. McIntire graduated from Crestview High School in 1991. He went to Okaloosa Walton Community College and obtained an Associate of Science Degree in Criminology. He also received a certification as a law enforcement officer. At the time of the collision, he was employed as a police officer with the City of

Crestview Police Department.

The claimants suggested at the hearing damages as follows: (a) Loss of net accumulations to the estate of Jeffrey Scott McIntire of \$123,000 based upon retained earnings for investment of \$3000 per year for 41 years; (b) Loss of Services and Support to Billie Jo McIntire of \$561,600 based upon \$10 per hour for 20 hours per week for 52 weeks a year for 54 years (life expectancy of Jeffrey Scott McIntire); (c) Loss of services and support to Sarah McIntire of \$78,000 based upon \$10 per hour for 10 hours per week for 52 weeks a year for 15 years (when Sarah would reach age of majority); (d) Loss of services and support to Christian McIntire of \$93,600 based upon \$10 per hour for 10 hours a week for 52 weeks a year for 18 years (when Christian would reach age of majority); (e) Loss of companionship, protection, and for mental pain and suffering of Billie Jo McIntire of \$1.56 million; (f) Loss of parental companionship, instruction, guidance, and for mental pain and suffering of Sarah McIntire of \$1 million; (g) Loss of companionship, instruction, guidance, and for mental pain and suffering of Christian McIntire or \$1 million; and (h) Funeral expenses in the amount of \$7,146.

Subsequent to the hearing, the claimants presented a report prepared by Whit L. Brown, Jr., of Brown, Thornton, Pacenta & Company, P.A. The report is a comprehensive examination of the economic loss sustained by the claimants as a direct result of the accident, examining wage loss, together with loss of retirement and other benefits, and reducing the result to present value. That report provides competent, substantive evidence that the claimants sustained an economic loss alone of between \$1.1 and \$1.2 million. No analysis was made in the report as to non-economic damages.

Billie Jo McIntire has subsequently remarried.

Legal Proceedings: A probate action was filed regarding the estate of Jeffrey Scott McIntire in Walton County, Florida. Billie Jo McIntire was appointed personal representative of the estate. Guardians Ad Litem were appointed for Sarah Ellen Megan McIntire and Christian Jeffery Taylor McIntire.

Billie Jo McIntire filed suit as surviving spouse and as personal representative of the estate of Jeffrey Scott McIntire against the department. A General Release and a Settlement Contract were signed on December 8, 1999, requiring the department to pay the sum of \$200,000, and requiring the department to support a claim bill in the amount of \$1,000,000. No annuities or other financial products were to be purchased by the department. The department has paid the sum of \$200,000. An Order of Dismissal With Prejudice was entered on December 30, 1999.

Additional Sources of Recovery related to the Claim: In addition to the \$200,000 mentioned above, the Claimants have received

the following amounts resulting from the death of Mr. McIntire: (a) \$100,613.70 death benefit from New York Life Insurance Company; (b) \$10,000 personal injury protection coverage from Florida Farm Bureau Insurance Companies; and (c) \$25,000 death benefit from AFLAC.

Claims History: This claim was previously filed in the 2001 legislative session. On May 4, 2001, HB 739 died in the Procedural & Redistricting Council; SB 8 died on the Senate calendar. A formal claims hearing was conducted before the 2001 session. No formal hearing was conducted for this session; but the parties were offered a chance to supplement the record. Neither party offered any supplemental evidence.

CONCLUSIONS OF LAW:

Competent and Substantial Evidence: There is competent and substantial evidence to support a finding of causation and liability on the part of the department and to support the damages of the claimants in the amount of \$1,200,000.

I conclude Mr. Washington: did not exercise due care, in violation of s. 316.185, F.S.; exceeded the posted speed limit, in violation of ss. 316.187 and 316.1925, F.S.; and crossed the centerline, in violation of ss. 316.081 and 316.089, F.S. I further conclude the actions of Charles J. Washington, an employee of the department who was acting within the scope of his employment, resulted in the death of Jeffrey Scott McIntire and thereby resulted in damages to the Claimants. As there was no contributory negligence on the part of the deceased, no reduction for contributory negligence is appropriate.

ATTORNEYS FEES:

Attorney's fees are limited to 25% of recovery pursuant to the provisions of section 768.28, F.S. Attorney's fees and costs are included in the settlement amount.

RECOMMENDATIONS:

The bill provides for payment from the General Revenue Fund. It appears that the "State Transportation (Primary) Trust Fund" would be a more appropriate funding source. Accordingly, it is recommended that the bill be amended to require payment from that trust fund.

Based upon the foregoing, I recommend HB 419 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Nathan L. Bond
House Special Master

Stephanie Birtman
Staff Director, Committee on Claims

cc: Representative Brown, House Sponsor
Senator Clary, Senate Sponsor
Reynold Meyer, Senate special master
House Claims Committee