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DATE: March 4, 2004

SPECIAL MASTER'S FINAL REPORT

The Honorable Johnnie Byrd
Speaker, The Florida House of Representatives
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: HB 349 by Representative Barreiro
Relief of Alana Kelly and Richard Taylor

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$101,833 AGAINST THE HILLSBOROUGH COUNTY SCHOOL BOARD FOR THE WRONGFUL DEATH OF RICHARD TAYLOR WHO WAS KILLED WHEN HIS MOTORCYCLE COLLIDED WITH A SCHOOL BUS OWNED BY THE SCHOOL BOARD. THE JURY FOUND THE SCHOOL BOARD 75 PERCENT NEGLIGENT RESULTING IN A FINAL JUDGMENT TO THE CLAIMANT'S PARENTS FOR \$301,833 OF WHICH THE SCHOOL BOARD HAS PAID \$200,000. THE CLAIM BILL DIRECTS THE SCHOOL BOARD TO PAY THE \$101,833 BALANCE OF THE JUDGMENT, OF WHICH \$51,833 WOULD BE PAYABLE TO THE CLAIMANT'S FATHER, RICHARD F TAYLOR, SR., AND \$50,000 WOULD BE PAYABLE TO THE CLAIMANT'S MOTHER, ALANA KELLY.

FINDING OF FACT:

Summary and Background:

On April 24, 1998, twenty-one year old Richard F. Taylor, Jr. was killed when his motorcycle collided with a school bus owned and operated by the Hillsborough County School Board.

The decedent's parents, Richard F. Taylor, Sr. and Alana Kelly, brought a wrongful death action. The jury found the school board 75% negligent for the accident and entered a verdict for \$402,444 (\$2,444 in funeral expenses, \$100,000 in past pain and suffering for each parent, and \$100,000 in future pain and suffering for each parent), resulting in a final judgment for \$301,833. The school board has paid \$200,000 in partial satisfaction of the judgment, which is the limit of liability under the sovereign immunity statute, § 768.28, Fla. Stat., for all claims arising out of the same incident. The unpaid balance of the judgment is \$101,833.

Related to Liability:

Mr. Taylor was riding his motorcycle southbound on U.S. 301 in Hillsborough County. A school bus driven by Victoria Loetscher pulled out from a stop sign and attempted to cross the highway directly in the path of the motorcycle. The motorcycle had the right of way. Mr. Taylor attempted to stop the motorcycle, evidenced by skid marks and scrape marks beginning about 57 feet from the side of the bus. Mr. Taylor braked, skidded, and then laid his motorcycle down and it crashed into the side of the bus. He died of blunt trauma to the head and was pronounced dead on the scene. There was no evidence of alcohol or drugs.

The bus driver never saw the motorcycle prior to impact, though she claimed to look to the left before proceeding and thought that it was clear. She had no explanation as to why she did not see the motorcycle.

The accident occurred shortly after daybreak, at about 6:45 a.m., when the bus was transporting children to school and Mr. Taylor was going to work. The weather was clear. The bus had exited Interstate 4 at the 301 exit, in an area south of Tampa that experiences heavy traffic. The exit leads to a double stop sign, one on each side of the road. The bus driver stopped at the stop sign, intending to cross over the southbound lane of 301 and turn left (north) on 301. The intersection was under construction, with orange barrels with flasher lights on each side of the road where the bus was stopped and a 3-foot high concrete barrier running along the side of the U.S. 301, but the bus driver's vision was not impeded by any objects. As she proceeded through the intersection, the bus driver saw a "blur" on the left and slammed on her brakes, but it was too late. The motorcycle hit the bus as it was straddled across the middle of the southbound lane.

The speed of Richard Taylor's motorcycle is a matter of dispute. The speed limit on U.S. 301 was 45 miles per hour. A witness, Noel Gonzalez, was parked in his truck in a construction lane alongside U.S. 301, facing south, the same direction the motorcycle was heading. Mr. Gonzalez testified in deposition that he was about 150 feet from the accident, but it was determined that he was actually about 400 to 450 feet from the accident site. He testified in deposition that he believed the motorcycle was going from 80 to 100 mph. Previously, he told the investigating officer that he estimated the speed at 65 to 75 mph. His trial testimony was that the speed was somewhere in between these two estimates, but he was not sure. He did not remember whether the motorcycle's lights were on or off. He believed that the bus began to pull into the intersection at the time that the motorcycle was passing him. He saw the motorcycle skid, then get turned down, and then collide with the bus as it crossed the highway.

Jeff Coughlin, who was traveling north on U.S. 301,

remembered passing the motorcycle heading the opposite direction. This driver testified that Mr. Taylor was wearing his helmet. He did not notice anything unusual about the operation of the motorcycle.

Corporal L. R. Myers of the Florida Highway Patrol was the investigating officer of the accident and is an accident reconstructionist. He was unable to estimate the speed of the motorcycle because, in his opinion, there was not enough physical evidence to do so. But, Corporal Myers was of the opinion that Richard Taylor could have avoided the accident if he had been driving at the 45 mph speed limit. However, it was also Corporal Myers' opinion that the bus driver violated Mr. Taylor's right-of-way. Corporal Myers also testified that the tire treads on the motorcycle had sufficient depth. A motorcycle helmet was found at the scene and Corporal Myers determined that Mr. Taylor was wearing the helmet at the time of the collision. Corporal Myers also stated that motorcycle headlights are made to automatically turn on when the engine is operating.

The School Board retained the services of David Wiggins, an accident reconstructionist. Mr. Wiggins estimated that the motorcycle was traveling at a speed between 57 and 75 miles per hour. This opinion was based, in part, on the witness testimony that the bus began to pull out just as the motorcycle was passing the witness, 450 feet from the accident site.

Richard Taylor had a valid driver's license but did not have a motorcycle endorsement that is required to operate a motorcycle, which includes a driving test and written test. He obtained the motorcycle two days prior to the accident, after giving a down payment for its purchase to Christopher Specht (a "friend of a friend"), who still held title to the vehicle, a 1991 600 cc. Suzuki Katana. Mr. Specht testified that Mr. Taylor had some experience riding motorcycles. He also stated that whenever the bike was turned on, the headlights and running lights automatically came on. He stated that the bike had brand-new brakes and new tires and was properly maintained.

The jury determined that the school bus driver was 75% negligent and that Richard Taylor was 25% negligent in causing the accident.

Claimant's Argument: The failure of the school bus driver to yield the right-of-way to Richard Taylor is undisputed and was the major contributing cause to the accident. Evidence of Richard Taylor's speeding is very subjective. The witness was not able to accurately estimate the speed and gave conflicting estimates. The investigating officer who was trained in traffic reconstruction could not reach a conclusion as to the speed due to the lack of physical evidence. The expert hired by the defense based his opinion on a witness's perception that the bus pulled out just at the moment that the motorcycle passed him, which may not be accurate. If the bus actually pulled out

after the motorcycle was past the witness, the estimate for the speed would have been lower. If Richard Taylor was speeding, the jury's assignment of 25% negligence to him is reasonable. The evidence supports that the motorcycle lights were on, that Richard Taylor was wearing a helmet, and that the tires and breaks of the motorcycle were in good condition.

Respondent's Argument: The speed of the motorcycle was the major contributing cause of the accident and the jury's determination that the bus driver was 75% negligent is too high. A traffic reconstruction expert determined that the speed of the motorcycle was as high as 75 miles per hour, which is consistent with an eyewitness who said that the speed might have been greater. The investigating officer concluded that Richard Taylor could have avoided the accident had he been traveling at the lawful 45 mph speed limit. Richard Taylor was a very inexperienced rider and did not have the required motorcycle endorsement on his license. No eyewitness testified that the motorcycle's lights were on. It is not clear that the helmet found at the scene of the accident was being worn.

Related to Damages:

Richard Taylor, Jr., was 21-years old at his death and the only child of Richard Taylor, Sr. and Alana Kelly, who are divorced.

Richard Taylor, Sr. and Alana Kelly were divorced in 1987 when their son, Richard, was eleven-years old. Mr. Taylor obtained custody of his son and they lived together for five years, the last three years in the Florida Keys. While living in the Keys, Richard would fly to visit his mother about once a month, at his parents' expense. When Richard was fifteen, it was agreed that he would move to his mother's home in Zephyrhills, Florida, where she lived with her second husband and had a hay business. Richard worked at the hay business and dropped out of high school in the eleventh grade. He visited his father three or four times by driving down to his home in the Keys.

Richard liked mechanics and worked for Lykes Brothers Trucking in the maintenance department. He then worked for Patmar Supply, operating a glue machine used in making paper cartons. He later worked at a refrigeration plant, then returned to Patmar where he was working at the time of his death, making about \$11 an hour. Richard's mother and her husband moved to Canada in 1996 when Richard was 19, but maintained her property in Zephyrhills and rented her former residence to Richard. Alana Kelly and her husband raised horses in Canada. Richard would occasionally obtain horses for them, which were shipped to Canada. Richard spoke to his mother on the telephone about every other day. She flew him up to Canada for Christmas in 1996. Mr. Taylor moved from the Keys to Crystal River, Florida. He had Sunday dinner with his son twice a month, talked to him on the phone weekly, and often fished together. Mr. Taylor had been to Richard's home

helping with remodeling work four weekends in a row, soon before the accident happened. Mr. Taylor bought his son a pick-up truck about six months prior to his death. Mr. Taylor was greatly grieved by the death of his only son. In his words, "Everything I've planned for the future is gone now. I have no relatives. He was my sole relative, and it's kind of left a real empty spot in my life."

Richard's mother, Alana Kelly, was hysterical upon learning of the death of her only son. Mr. Taylor said that "Richard was the world to his mother". She is still unable to talk about her son without crying.

Richard Taylor, Jr. had minimal assets at the time of his death, other than his truck.

The funeral expenses were \$2,444, paid by Richard Taylor, Sr.

LEGISLATIVE HISTORY:

HB 191 (2001) died in the Committee on Claims. SB 62 (2001) passed all committees of reference in the Senate and died on the Senate calendar.

HB 521 (2002) died in the Committee on Claims. CS/SB 40 (2002) passed all committees of reference in the Senate and died on the Senate calendar.

HB 1693 (2003) died in the Committee on Claims May 2, 2003. CS/SB 32 (2003) passed all committees of reference in the Senate and died on the Senate calendar on May 2, 2003.

The parties were given the opportunity to update the record in anticipation of consideration by the 2004 Legislature. The claimant has not responded. The respondent's has no change in circumstances, but restated their objection to the claim bill establishing that they have already tendered their \$200,000 sovereign immunity limit and that any funding in addition would impair the ability of the School Board to fund other programs now in peril.

CONCLUSION OF LAW:

Related to Liability:

It is undisputed that the bus driver failed to yield the right of way to Richard Taylor, which was a proximate cause of his death. The preponderance of the evidence is that Richard Taylor was speeding above the 45 mph speed limit, which also was a proximate cause of his death. His speed may have been between 60 and 75 miles per hour, but there is not strong evidence to allow for an accurate estimate of his speed. The determination of the jury that the school board (bus driver) was 75% at fault and that Richard Taylor, Jr. was 25% at fault is reasonable and adopted as a conclusion of law.

Related to Damages:

Section 768.21, Florida Statutes, allows for each parent of a deceased minor child to recover for mental pain and suffering. "Minor children" is defined in section 768.18(2), Florida Statutes, to mean children less than 25 years of age. Each parent of an adult child may also recover for mental pain and suffering if there are no other survivors. In this case, Richard Taylor, Sr. and Alana Kelly are entitled to recover damages for mental pain and suffering since their son was less than 25 years of age. They are also entitled to seek these damages regardless of their son's age, because there were no other survivors.

Even though Richard Taylor, Sr. and Alana Kelly were divorced when their son was eleven-years old, they each maintained a close relationship with their son. They each suffered mental pain and suffering as a result of his wrongful death.

The jury verdict awarding \$100,000 for past pain and suffering and \$100,000 for future pain and suffering to each parent (\$400,000 total) is reasonable and adopted as the Special Master's conclusion.

The jury verdict awarding \$2,444 for the funeral costs expended by Richard Taylor, Sr., is reasonable and adopted as the Special Master's conclusion.

This total jury verdict of \$402,444 was appropriately reduced to \$301,833 due to the jury's finding that the school board was 75% at fault. The School Board has satisfied \$200,000 of the judgment, leaving an unpaid balance of \$101,833.

ATTORNEYS FEES:

The attorney fees in this case are limited to 25 percent of the recovery pursuant to section 768.28, Florida Statutes.

RECOMMENDATIONS:

I recommend that this bill be reported **FAVORABLY**.

Respectfully submitted,

Stephanie Birtman, Esq.
House Special Master

cc: Representative Barreiro, House Sponsor
Senator Hill, Senate Sponsor
Brian Deffenbaugh, Senate Special Master