



## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/1/03	SM	Unfavorable
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December 1, 2003

The Honorable James E. "Jim" King, Jr.  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **SB 30 (2004)** – Senator Larcenia J. Bullard  
Relief of Bruce Michael McQuillin and Michael McQuillin

### SPECIAL MASTER'S FINAL REPORT

THIS IS A VIGOROUSLY CONTESTED VERDICT-BASED EXCESS-JUDGMENT CLAIM FOR \$929,573.31 TO COMPENSATE BRUCE MICHAEL MCQUILLIN AND MICHAEL MCQUILLIN FOR THE DEATH OF DEBORAH ANN MCQUILLIN, RESULTING FROM AN AUTOMOBILE ACCIDENT ON A CITRUS COUNTY ROAD. THE COUNTY HAS PAID THE UNDERLYING \$200,000 SPECIFIED BY LAW.

#### FINDINGS OF FACT:

##### **Events Leading Up to the Accident**

On the evening of March 20, 1997, Deborah McQuillin drove her 1987 Mustang from her house to pick up her friend, Melissa Wood, and Ms. Wood's out-of-town guest, Kathleen Kowalski, for a "ladies' night out." Ms. McQuillin arrived at Ms. Wood's house with beer in her car. Upon entering the house, Ms. McQuillin started drinking one of her beers. At the house, the women planned their evening. First, they decided to visit Ms. Wood's mother to see her new house and then they would go to a bar for drinks.

Deborah McQuillin drove the three of them to Melissa Wood's mother's house. Ms. Wood brought an open wine cooler with her for the trip. While they were at Melissa

Wood's mother's house, Ms. Kowalski drank a beer from Ms. McQuillin's car.

After the women visited Melissa Wood's mother, Deborah McQuillin drove the three of them by several bars to see which bar had the most patrons. During the drive, Melissa Wood smoked a marijuana cigarette. Ms. Wood testified at trial that she shared the marijuana with her friends.

They decided to stop at Griff's Lounge because it had the fullest parking lot. Ms. McQuillin, Ms. Wood, and Ms. Kowalski all drank alcoholic beverages and became intoxicated. The women decided to leave the bar and go back to Ms. Wood's house sometime after midnight. As they headed to Melissa Wood's house, they drove down Eden Drive. Then, they sped down Moccasin Slough Road where the wreck occurred.

#### **Accident**

Somewhere along a straightaway on Moccasin Slough Road, the two right wheels on the vehicle went off of the right side of the roadway and onto the shoulder of the road. There was a drop-off at the edge of the roadway making the shoulder about 3 to 5 inches lower than the surface of the road. In an apparent attempt to return to the roadway, the driver of the vehicle steered to the left. The vehicle crossed to the left side of the road and collided with several trees. During the collision, Melissa Wood and Kathleen Kowalski were ejected from the vehicle. The vehicle eventually came to rest on its roof. Deborah McQuillin was found dead inside. None of the vehicle's occupants were wearing a seatbelt at the time of the accident.

#### **Road Conditions**

The posted speed limit on Eden Drive was 30 mph. Eden Drive first traverses a residential neighborhood with mailboxes lining the streets. After the residential neighborhood, Eden Drive becomes Moccasin Slough Road. Then the road becomes a canopy road in places with mature pine trees within two or three feet of the roadway on both sides. Afterwards, the road becomes winding with sharp blind curves, small hills, and a narrow bridge. Shortly after the narrow bridge, Moccasin Slough Road becomes straight for about 0.75 miles with no houses or mailboxes on either side of the road. The accident occurred on this straightaway.

After the straightaway, Moccasin Slough Road becomes a dirt and gravel road. To stay on a paved road after the straightaway, a driver has to make a sharp right turn onto Martinis Drive.

The straightaway on Moccasin Slough Road where the accident occurred was paved about a month earlier and was black in color. The surface of the pavement was 3 to 5 inches above the shoulder along the right side of the road. There were no lines painted on the road; however, the edges of the roadway were clearly visible at night with headlights because the black roadway contrasted with the shoulders comprised of crushed white limestone. There were no road signs, cones, or barricades that warned of a drop-off from the pavement to the shoulder.

### **Speed**

According to the trial testimony of expert witnesses, the vehicle was traveling between 67 and 106 mph at the time of the crash. The posted speed limit where the crash occurred was 30 mph.

The experts differed in their calculations of the vehicle's speed because they differed over the amount of friction between the vehicle and the surfaces with which it came into contact. The experts also differed in their interpretation of the evidence at the scene, such as, whether the marks left by the car on the roadway were yaw marks or skid marks. Only one expert witness testified at the Special Master Hearing in this matter. As such, the evidence at the Special Master Hearing did not include many of the demonstrative aids and explanations that were available to the jury. In any event, even the lowest speed calculation shows that the vehicle was traveling more than twice the posted speed limit.

**Officer Leo Wells:** According to the trial testimony of the traffic homicide investigator, Officer Leo Wells, of the Florida Highway Patrol, the vehicle was traveling 106.45 mph at the time of the crash.

**Robert Drawdy:** Robert Drawdy was a former traffic homicide investigator for the Florida Highway Patrol hired by the McQuillin family to investigate the accident. He calculated the speed of the vehicle at the time of the accident to be 67, plus or minus 3, mph.

**Miles Moss:** Miles Moss was a transportation consulting engineer hired by the McQuillin family. He testified at trial that the vehicle was traveling between 69 and 74 mph at the time of the accident.

**Melissa Wood:** Melissa Wood testified at trial that upon reaching the straightaway on Moccasin Slough Road, Deborah McQuillin started accelerating. Melissa Wood testified that she saw the speedometer at 80 mph and climbing. Upon seeing the speed, she advised Deborah McQuillin to slow down. The next thing that Melissa Wood remembers is lying in the grass while tangled up in a barbed-wire fence and bleeding.

### **Alcohol**

All of the occupants of the vehicle were intoxicated beyond the legal limit to operate a motor vehicle at the time of the wreck. Under §316.193(1)(b), F.S. (1996 Supp.), a driver of a car is guilty of driving under the influence if he or she has a blood-alcohol level of 0.08 percent.

**Deborah McQuillin:** Deborah McQuillin had a 0.15 percent blood alcohol level at the time of the accident, according to the medical examiner who performed her autopsy. According to Trooper Wells' homicide investigation report:

Deborah McQuillin was in a stage of alcoholic influence characterized as euphoria. Further, she would have the general clinical sign/symptoms of mild euphoria, sociability, talkativeness, increased self confidence, and decreased inhibitions. She would also have diminution of attention, judgment and control.

**Melissa Wood:** Melissa Wood's medical records indicate that her blood was drawn for a chemical analysis at 2:35 a.m. on March 21. The analysis was performed about an hour after the crash was reported. The results of the analysis showed that Melissa Wood had a 0.134 percent blood alcohol level when the analysis was performed. Further, her urine drug screen tested positive for THC (the main intoxicant in marijuana) and opiates.

**Kathleen Kowalski:** Kathleen Kowalski's medical records indicate that her blood was drawn for a chemical analysis at

2:25 a.m. on March 21. This analysis was performed about an hour after the crash was reported. The results of the analysis showed that Kathleen Kowalski had a 0.237 percent blood alcohol level when the analysis was performed.

#### **Effect of Drop-Off**

Expert witnesses for the McQuillin family and expert witnesses for the county differed as to the role of the drop-off in the accident.

**James Coffron:** James Coffron was an expert hired by the McQuillin family at the trial. He testified that he visited the scene of the accident and testified that he saw a 3-to-5 inch 90 degree drop-off along the right edge of the road. According to Mr. Coffron, the drop-off constituted a dangerous condition. Mr. Coffron further testified that, when a car attempts to remount a roadway at high-speed where there is such a drop-off, the front wheels will bite into the road causing the vehicle to rotate and slide sideways to the opposite side of the roadway. Lastly, Mr. Coffron testified that there were no road signs, cones, or barricades providing warning of the drop-off.

**Miles Moss:** Miles Moss was also an expert witness hired by the McQuillin family. He testified during the trial that the driver of the vehicle attempted to remount the road by turning the wheels gradually, but the wheels would not grip the road. Eventually, the wheels were turned to such an angle that, when the front right tire did grip the road, the angle was so great that the car went out of control. According to Mr. Moss, the accident was a classic example of the interaction between tires and a drop-off causing an accident. Lastly, Mr. Moss testified that government safety standards require warning devices to mark drop-offs between 2 and 3 inches. Drop-offs greater than 3 inches require a barrier, he said.

**Officer Leo Wells:** Officer Wells testified that the drop-off on the edge of the roadway would have created no impediment to returning to the roadway even at 106 mph. He measured the drop-off where the vehicle returned to the road to be 3 inches. He testified that the driver of the vehicle attempted to redirect the vehicle more than 15 degrees and went into an uncontrollable slide.

**James Parrish:** James Parrish was a vehicular accident reconstructionist hired by Citrus County to testify about the effect of the drop-off. He testified that the roadway was reasonably safe in the condition that it existed at the time of the crash for speeds of 45 mph or less. He testified that the sides of the tires that went onto the shoulder of the road did not rub along the drop-off causing the car to jerk across the road. The tires, he said, just came up over the edge of the roadway.

He testified that standards requiring shoulders to be even with a roadway are for completed roads. It is impossible to build a road without creating a drop-off temporarily, he said. He also testified that drop-offs do not become unsafe until they are greater than 5 inches. Nevertheless, Mr. Parrish believed that it would have been a good idea to have a sign warning of the existence of the drop-off.

#### **Identity of the Driver**

During the trial, the McQuillin family disputed Officer Wells' finding that Deborah McQuillin was the driver of the vehicle at the time of the crash. Members of the McQuillin family testified that Deborah McQuillin was always a safe driver who did not enjoy driving fast. They also testified that Deborah McQuillin never drove a car while intoxicated. The McQuillin family believes that Melissa Wood was the driver of the vehicle at the time of the wreck and that she should be criminally prosecuted for her conduct.

The jury on its verdict form did not expressly state its determination of the identity of the driver. The jury, however, expressly determined that Deborah McQuillin was negligent and that she was 80 percent at fault for the crash and that Citrus County was negligent and was 20 percent at fault for the crash. The percentage of fault for the accident attributed to Melissa Wood was zero. Thus, the jury must have believed that Ms. McQuillin was the driver.

The Special Master did not see the live testimony of all of the expert witnesses that testified during the trial as they explained the seating arrangement of the occupants of the vehicle, the forces at work during the collision, and their demonstrative aids. As such, the Special Master is not in a position to contradict the jury's determination that Ms. McQuillin was the driver of the vehicle. Regardless of

who was driving, both potential drivers, Deborah McQuillin and Melissa Wood, were intoxicated well beyond the legal limit to operate a vehicle at the time of the crash. As such, it is clear that whoever was driving Ms. McQuillin's car should not have been driving that night.

The testimony of the witnesses who testified to the identity of driver is summarized below.

**Melissa Wood:** Melissa Wood testified at trial that at the time of the crash, she was in the front passenger seat, Deborah McQuillin was the driver, and Kathleen Kowalski was seated in the rear passenger-side seat.

**Kathleen Kowalski:** Kathleen Kowalski testified at trial that at the time of the crash, she was in the rear passenger-side seat, Deborah McQuillin was the driver, and Melissa Wood was sitting in the front passenger seat.

**Officer Leo Wells:** Officer Wells testified at trial that when he arrived at the scene of the accident Deborah McQuillin's legs were under the steering wheel and she was in the driver's seat with half her body over the seat into the rear portion of the vehicle.

**Shelly Armstrong:** Shelly Armstrong was an EMT who helped remove Deborah McQuillin's body from the car. She testified at trial that Deborah McQuillin was lying in the back of the car on the floor wedged between the seat and the console area.

**Robert Drawdy:** Robert Drawdy was an expert witness hired by the McQuillin family. He testified that he believed that Melissa Wood was the driver of the car at the time of the accident. He based his opinion on his belief that the roof of the car was crushed when the car collided with the first tree. Because the roof was crushed, the driver would have been unable to move to the rear of the vehicle. The vehicle's rear passenger would have been trapped in the rear of the vehicle when the roof crushed. He also believed that the forces at work in the accident would have ejected the two front seat passengers through the passenger side window. Because Melissa Wood and Kathleen Kowalski were ejected, they must have been seated in the front, he opined.

**Miles Moss:** Mr. Moss was another expert hired by the McQuillin family. He testified at trial that it was his opinion that Melissa Wood was the driver of the vehicle at the time of the accident and that Kathleen Kowalski was the front passenger and that Deborah McQuillin was seated in the rear. His testimony as to the seating arrangement of the occupants of the vehicle was similar to Robert Drawdy's.

**Procedural History**

On March 23, 1999, a complaint was filed against Citrus County, Pave-Rite, Inc., Melissa Jane Wood, and Kathleen Lynn Kowalski. Pave-Rite, Inc., was granted summary judgment on March 3, 2000, as Citrus County had accepted the paving done by Pave-Rite prior to the date of the accident. Kathleen Lynn Kowalski, one of the passengers in the car, was voluntarily dismissed from the action as it was clear that she was not the driver of the car. Melissa Wood, who the claimants alleged was the driver of the car, settled for \$10,000, and was dismissed from the case on August 16, 2001.

The claim against Citrus County proceeded to trial based on the allegation that the county was negligent for allowing a drop-off between the paved surface and the shoulder of the road, and failure to warn of the alleged drop-off. The claimants further alleged that Deborah McQuillin was not driving the vehicle, but was the back seat passenger. After a 3-day trial, the jury found that Citrus County was negligent and the legal cause of Ms. McQuillin's damages, but found that Ms. McQuillin was 80 percent liable for her own damages, that Ms. Wood was not liable at all, and that Citrus County was liable for 20 percent of the damages.



The jury determined the damages as follows:

Net accumulations to the estate		\$ 50,400
Medical/funeral expenses		\$ 8,000
Present value of lost support and services to Bruce McQuillin, husband		\$655,060
Pain and suffering of Bruce Michael McQuillin, husband	Past	\$121,000
	Future	\$395,000
Pain and suffering of Michael McQuillin, minor son	Past	\$1,400,000
	Future	\$3,000,000
TOTAL		\$5,629,460

The trial court reduced the total damages determined by the jury by 80 percent because the jury determined that Ms. McQuillin was 80 percent at fault for the damages. Thus, the total damages awarded by the trial court were \$1,125,892. The court also awarded costs in the amount of \$13,761.

Citrus County filed motions for a new trial and to set aside the verdict. Both were denied. Citrus County then appealed on the grounds that the lower court erred in admitting an allegedly gruesome and inflammatory photograph of Deborah McQuillin, that the jury’s verdict was contrary to the weight of the evidence, and was clearly excessive. The appellate court concluded that the admission of the photograph was within the trial court’s discretion, eliminated the award for net accumulations as there was no competent substantial evidence to support such an award, and held that there was no abuse of discretion by the trial judge in denying the county’s motions for a new trial and/or to set aside the verdict. The county then filed a Notice to Invoke the Discretionary Jurisdiction of the Supreme Court of Florida, but dismissed such notice on April 28, 2003.

**Collateral Sources**

The claimants have received \$10,000 from a settlement with Melissa Wood in the underlying litigation. Though not statutorily considered collateral sources, the claimants have also received the following: \$48,036.60 in life insurance proceeds (there is a question whether Bruce McQuillin or Deborah McQuillin’s mother was the beneficiary); and \$7,000 for funeral expenses paid by Allstate Life Insurance.

Additionally, both Bruce and Michael McQuillin receive \$463 per month in Social Security payments. Bruce McQuillin will receive this amount until 2010 when his son reaches majority; Michael McQuillin will receive this amount until he reaches 24 years of age in 2013.

**Claimant's Arguments:**

- There is a valid jury verdict attributing 20 percent of the liability to Citrus County. The jury has already attributed 80 percent of the fault for the crash to Deborah McQuillin because she was exceeding the speed limit and she had a 0.15 percent blood alcohol level. The final judgment reduced the jury verdict to reflect the comparative negligence, was affirmed by the Fifth District Court of Appeal, and should not be further reduced.
- In the alternative, the county should pay the balance of its insurance coverage in the amount of \$800,000.
- There was competent, substantial evidence of the drop-off.

**Respondent's Arguments:**

- The road was reasonably safe at a speed of 45 mph (15 mph over the posted speed limit) or less at the time of the incident. Ms. McQuillin's vehicle was going between 67 and 106 mph at the time of the crash.
- There was no evidence presented that an intoxicated driver, having ignored the posted speed limit, would have heeded any other warning on the road. This accident would not have happened if the driver of the vehicle was sober and obeying the speed limit.
- The county should not be legally responsible for the unforeseeable act of an intoxicated driver who exceeds the speed limit.
- The jury in this case was motivated by sympathy for Ms. McQuillin, due to the admission of the gruesome photograph, which was not relevant to any issue or element required to be proven, but the admission of which was affirmed by the appeals court.

The role of the Legislature is not to rubber stamp jury verdicts, but to authorize the payment of judgments wherein the government has a moral obligation to the claimants. No such moral obligation exists in this case.

CONCLUSIONS OF LAW:

Some see the Legislature's role in claim bills against government agencies as approving and "passing through" for payment those jury verdicts that have been reduced to judgment and survived appeal, as this one has. Others see the Legislature's role as a de novo responsibility to review, evaluate, and weigh the total circumstances and the type of the public entity's liability, and to consider those factors that might not have been perceived by or introduced to the jury or court.

Whichever of these two views each lawmaker holds, at the Special Master's level every claim bill, whether based on a jury verdict or not, must be measured anew against the four standard elements of negligence: Duty, breach of duty, proximate cause, and damages. If, and only if, all four elements are satisfied, can liability be found.

**Duty:** Under Florida case law, Citrus County is legally responsible for injuries proximately resulting from dangerous drop-offs at the shoulders of its roads. *Manning v. State Department of Transportation*, 288 So.2d 289 (Fla. 2nd DCA 1974), cert. denied, 295 So.2d 307 (Fla. 1974). The Florida Supreme Court has also held that when a governmental entity creates a known dangerous condition, which is not readily apparent to persons who would be injured by the condition, a duty at the operational-level arises to warn the public of, or protect the public from, the known danger. *City of St. Petersburg v. Collom*, 419 So.2d 1082, 1083 (Fla. 1982).

This claim presents the question whether the drop-off on Moccasin Slough Road was a known dangerous condition which was not readily apparent. Competent, substantial evidence was presented that both of the two possible drivers were familiar with Moccasin Slough Road. The testimony in the record established that the potential drivers were familiar with the road and that drop-off was readily apparent to them. It is not known whether drivers on the road would have understood the drop-off to be a dangerous condition. Thus, Citrus County should have had some kind of warning device alerting drivers that the drop-off was potentially dangerous.

However, the potential danger from the drop-off increased with the speed of the vehicle on the roadway. The 30 mph

speed limit and state law prohibiting driving under the influence was a warning which was not heeded by the driver in this case. The dangers of leaving a roadway at high speed are readily apparent to the general public. See *Department of Transportation v. Caffiero*, 522 So.2d 57, 59 (Fla. 1988) (holding that the dangers of leaving a straight six-lane road at a high rate of speed are readily apparent to the general public).

**Breach:** By failing to warn drivers that the drop-off was dangerous, the county breached its duty to warn drivers of the dangerous condition.

**Causation:** The proximate causation element of negligence is whether an to what extent the defendant's conduct foreseeably and substantially caused the specific injury that actually occurred. See *McCain v. Florida Power Corp.*, 593 So.2d 500, 502 (Fla. 1992). The issue of proximate cause is generally a question of fact. *Id.* at 504. "To constitute proximate cause there must be such a natural, direct, and continuous sequence between the negligent act and the injury that but for the act the injury would not have occurred." *Pope v. Pinkerton-Hays Lumber Co.*, 120 So.2d 227, 230 (1st DCA 1960).

The Special Master finds that there was competent, substantial evidence to show that the drop-off, though dangerous and though it could have contributed to other accidents, did not contribute to the crash of Deborah McQuillin's vehicle. In this case, the evidence showed that the speeding intoxicated driver of the vehicle over-corrected to return to the road.

**Damages:** Because the drop-off did not contribute to the accident, Citrus County is not responsible for any damages suffered by the claimants. Even if the drop-off did contribute to the accident, Citrus County's negligence is miniscule in relation to the negligence of the driver of the vehicle. As such, the \$200,000 paid to the claimants by the county is adequate compensation for the county's comparative negligence.

ATTORNEYS FEES:

Section 768.28(8), F.S., limits the claimants' attorneys' fees to 25 percent of the claimants' total recovery by way of any judgment or settlement obtained pursuant to §768.28, F.S.

The claimants' attorney has acknowledged this limitation and verified in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorneys' fees.

RECOMMENDATIONS:

Based on the foregoing, I recommend that Senate Bill 30 (2004) be reported UNFAVORABLY.

Respectfully submitted,

Thomas Cibula  
Senate Special Master

cc: Senator Larcenia J. Bullard  
Faye Blanton, Secretary of the Senate  
House Subcommittee on Claims