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**DATE:** 3/5/2008

March 5, 2008

**SPECIAL MASTER'S FINAL REPORT**

The Honorable Marco Rubio  
Speaker, The Florida House of Representatives  
Suite 420, The Capitol  
Tallahassee, Florida 32399-1300

Re: HB 255 - Representative Scionti  
Relief of Relief/Dennis & Diana Gay/DOT

**THIS IS AN EQUITABLE CLAIM PURSUED PURSUANT TO A SETTLEMENT AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION SEEKING \$700,000 TO COMPENSATE DENNIS AND DIANA GAY FOR DAMAGES SUSTAINED IN A PEDESTRIAN/VEHICLE ACCIDENT IN WHICH DENNIS GAY WAS STRUCK BY A VEHICLE DRIVEN BY AN EMPLOYEE OF THE DEPARTMENT.**

**THE DEPARTMENT HAS PAID \$200,000 PURSUANT TO THE SOVEREIGN IMMUNITY CAP SPECIFIED BY LAW.**

**FINDING OF FACT:**

At approximately 7 a.m., on February 2, 2005, Dennis Gay, age 56, attempted to cross Brorein Street in downtown Tampa. Mr. Gay was crossing in a crosswalk, with a green light, in compliance with the laws of Florida. While crossing the street, Mr. Gay was struck by a Florida Department of Transportation vehicle driven by Jorge Alberto Tejada. Mr. Gay was thrown approximately 27 feet on impact and sustained severe injuries; his immediate diagnosis was (i) skull fracture; (ii) subarachnoid hemorrhage; (iii) subdural hematoma; (iv) intracerebral hemorrhage; and (v) left hemiparesis. Mr. Gay's doctors have expressed surprise at his ability to survive the injuries he sustained.

Mr. Tejada's driving record shows two speeding tickets, in 1991 (65 in a 55 MPH zone) and 1995 (82 in a 65 MPH zone), along with a "Failure to Obey a Traffic Device" charge resulting from this incident.

The Department accepts liability for Mr. Gay's injuries and has indicated that Mr. Tejada is no longer employed by the agency.

In order to treat Mr. Gay's injuries, doctors at Tampa General Hospital placed Mr. Gay in a medically-induced coma that lasted at least one week. After additional treatment, therapy, and monitoring, he was discharged from the hospital in April 2005. Mr. Gay exhibits permanent physical and mental injuries as a result of the trauma to his brain. Of particular note, Mr. Gay has suffered significant cognitive impairment, physical impairments on his left side, and a shift in personality that his neurosurgeon attributes to permanent damage to those areas of his brain responsible for awareness and social behavior.

Mr. Gay's employer made attempts to re-employ him, but the extent of his mental injuries makes returning to his former employment impossible. Suffering from a condition referred to as "diminished insight," Mr. Gay is unable to recognize his own cognitive shortcomings; that is, he is often unable to understand his own lessened mental state. In live testimony before the House and Senate special masters, he continued to express his desire to get back to his work in the telecom industry. However, testimony has also been received that Mr. Gay can no longer operate computers and other electrical equipment at work, at church, or at home. A significant part of Mr. Gay's trauma-induced injury is that he believes that he *can* continue these projects, even while he repeatedly fails to use the devices correctly.

Mr. Gay remains hindered by an inability to control the left side of his body as a result of the accident. While he is able to walk, he does so with significant trouble. His home has been somewhat modified to address this concern. A volunteer group has assisted with some minor modifications to his home, including "grab bars" in the bathrooms and a modified ramp structure to the entrance.

Testimony was also received regarding Mr. Gay's social behavior. He was described in the past as being a "gentle giant," a deacon in the church, and a person fastidious in dress and behavior. After suffering major head trauma, Mr. Gay no longer focuses on issues of personal hygiene or "social graces." Mr. Gay frequently fails to bathe or otherwise maintain

good hygiene. In addition, he is prone to inappropriate outbursts regarding others, notwithstanding the social setting (e.g. loud and inappropriate comments about another person's appearance, in the middle of church services).

Mrs. Diana Gay suffers from her own ailments, including diabetes and heart ailments. Prior to the accident, Mr. Gay was her primary caregiver, escorting her to frequent hospital visits and other medical trips. He was also primarily responsible for maintaining the household in good condition, as well as maintaining the Gay's yard and the yard of his elderly mother who lives on property adjacent to the Gays'. Since the accident, neither spouse has been fully capable of caring for the other's healthcare needs. Volunteers from the Gays' church make attempts to assist the family; however it is unclear to what extent the Gays will be able to manage their own health issues in the long-term.

Medical Costs: Mr. Gay amassed approximately \$250,000 in medical bills in the 8 weeks following the accident. Of this amount, approximately \$70,000 remains unpaid after insurance reimbursements.

Settlement Agreement: At a salary of \$59,000, Mr Gay's future wage loss is estimated at approximately \$530,000. After engaging in a full discovery process including more than a dozen depositions, the Department agreed to settle with Dennis Gay for his injuries and Diana Gay for loss of consortium. The total stipulated amount was \$900,000, representing \$600,000 for Mr. Gay and \$300,000 for Mrs. Gay. The Gays received \$200,000 pursuant to s. 768.28, F.S.

Of the remaining \$700,000, HB 255 calls for \$500,000 to be deposited in a Special Needs trust for the benefit of Dennis Gay, with the remaining \$200,000 paid to Diana Gay. The funds in the Special Needs trust shall revert to the General Revenue Fund of the State of Florida upon the death of Dennis Gay.

Collateral Sources: Mr. Gay received \$25,000 in benefits from his automobile insurer State Farm, under his underinsured motorist policy. Friends of Mr. Gay organized a raffle which generated \$1,700.

CONCLUSION OF LAW:

Section 316.075(1)(a)1., F.S. states that "vehicular traffic... shall yield the right-of-way to other vehicles and to pedestrians lawfully within... an adjacent crosswalk...."

More generally, the duty to drive carefully has been established

by statute and case law. Section 316.1925(1), F.S., which prohibits careless driving, states:

Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person.

According to case law, motor vehicle drivers have a duty to attempt to avoid pedestrians on and off roadways. See, e.g., *City of Tallahassee v. Kaufman*, 87 Fla. 119 (1924) (imposing liability on the City of Tallahassee for damages caused by a trailer pulled behind a fire truck that swept across a street corner and injured a pedestrian); *Craig v. School Board of Broward County*, 679 So. 2d 1219, 1222 (Fla. 4th DCA 1996) (finding the existence of a duty of a high degree of care is owed by a driver of a motor vehicle to children when children are present and a reasonably prudent driver would see them).

Mr. Tejada breached his duty to Dennis Gay and Mr. Gay was injured as a result of Mr. Tejada's failure to use due care in the operation of the Department's vehicle, specifically by failing to yield to a pedestrian lawfully using a crosswalk. Because Mr. Tejada was an employee of the Florida Department of Transportation, acting within the scope of his employment, the Department is liable for the damages caused by its employee. See, e.g., *Stinson v. Prevatt*, 84 Fla. 416 (1922).

The evidence in this case was reviewed with recognition of the parties' settlement agreement. Settlements may be entered into for reasons unrelated to the actual merits of a claim or the validity of a defense. Consequently, settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature, its committees, or the Special Master. All such agreements, however, must be evaluated and can be given effect, at least at the Special Master's level, if they are found to be reasonable. As such, the Special Master finds that this settlement agreement is reasonable and was negotiated in good faith by the attorneys representing the parties, and should be given effect. Further, the settlement amount is within the ranges approved by the Legislature in claim bills for similar injuries.

ATTORNEY'S/  
LOBBYING FEES:

Claimant's attorney has acknowledged and verified in writing that any recovery of fees will be limited to 25% of any award received by the claimant in this matter. Under the bill's current form, this amounts to \$175,000.

The attorney has received 25 percent of a \$25,000 settlement (\$6,250) with State Farm, the Gays' underinsured motorist carrier, as well as 25 percent of the \$200,000 payment (\$50,000) from the Florida Department of Transportation under s. 768.28, F.S.

RECOMMENDATIONS:

I respectfully recommend the passage of HB 255 in its present form.

Respectfully submitted,

**RICHARD L. BROWN, ESQ.**

House Special Master

cc: Rep. Scionti, House Sponsor  
Sen. Joyner Senate Sponsor  
The Hon. Bram D. E. Cantor, Senate Special Master