



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location

402 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

| DATE | COMM | ACTION |
|----------|------|-----------|
| 12/04/09 | SM | Favorable |
| | | |
| | | |
| | | |

December 4, 2009

The Honorable Jeff Atwater
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 60 (2010)** – Senator Ronda Storms
Relief of Pierreisna Archille

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM FOR \$1.3 MILLION BASED ON A MEDIATED SETTLEMENT BETWEEN THE COURT-APPOINTED GUARDIAN OF PIERREISNA ARCHILLE, WHO IS MENTALLY DISABLED, AND THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES (DCF) FOR DAMAGES SUFFERED BY PIERREISNA WHEN, AT THE AGE OF 17, SHE WAS SEXUALLY ABUSED AND BECAME PREGNANT WHILE IN A FOSTER HOME LICENSED BY DCF.

FINDINGS OF FACT:

Pierreisna Archille, now 28 years old, is a moderately retarded woman with the cognitive ability of a five or six-year-old child. In 1993, Pierreisna and her five brothers and sisters were placed in foster care by DCF due to evidence of neglect by their single mother. Pierreisna and two of her sisters, Darlene and Muriel, were placed in the same foster home.

In 1997, the three sisters were moved to the foster home of Benny and Josephine Velazquez. Mr. Velazquez was 62 years old at the time. Mr. and Mrs. Velazquez had a daughter named S.A., a former foster child whom they had adopted. S.A. was a toddler. Darlene and Muriel saw Mr.

Velazquez molesting S.A and told a friend's mother. The matter was reported to DCF. When Darlene, who was 13 years old, was interviewed regarding the reported abuse of S.A., she reported that Mr. Velazquez had also been groping her and had offered to pay her for sex. A physical examination was conducted of S.A. and no physical evidence of sexual abuse was found. DCF closed the case, determining that Darlene's and Muriel's allegations were not credible. However, DCF removed Darlene and Muriel from the Velazquez home shortly thereafter, leaving their mentally disabled sister, Pierreisna, behind. During 1998, when Pierreisna was 17, Mr. Velazquez repeatedly sexually molested and raped her. Pierreisna complained to Mrs. Velazquez about the abuse, but Mrs. Velazquez refused to believe it.

During all of her years in foster care, Pierreisna's DCF foster care counselor was Yves Benoit. Although foster care counselors are required to make periodic records of their observations of foster care children, DCF could not produce any of Mr. Benoit's records pertaining to Pierreisna's foster care in 1998.

In June 1999, Mrs. Velazquez died. Pierreisna was then removed from the Velazquez home, but it was discovered that she was pregnant. Pierreisna said Mr. Velazquez was the father. He denied the accusation, but DNA testing confirmed that he was the father. His daughter, S.A., was then examined and was determined to have been sexually abused as well. Mr. Velazquez was arrested, convicted of sexual battery on Pierreisna and lewd and lascivious assault on S.A., and sent to prison.

Pierreisna gave birth to a daughter, Takeisha, in January 2000. Takeisha is now nine years old. Through the remarkable efforts of Pierreisna's sister, Darlene, Pierreisna and Takeisha ultimately came to live with Darlene. Darlene also obtained legal custody of Takeisha. In addition to her developmental disabilities, Pierreisna has diabetes.

A life care plan was developed to identify the counseling and assistance that Pierreisna needs for herself and to be a parent to Takeisha. The present value of the plan's services is over \$4 million. A Special Needs Trust has been prepared for Pierreisna.

At the claim bill hearing held in December 2007, Secretary Robert Butterworth made an appearance and testified in support of the claim bill. Secretary Sheldon submitted a letter to the President Atwater in April 2009 to again express his support for Pierreisna's claim bill.

LITIGATION HISTORY:

Claimant sued DCF in the circuit court for Collier County in 2002. The case was successfully mediated and the parties entered into a settlement agreement in June 2007, which called for payment of the sovereign immunity limit of \$100,000 to the court-appointed guardian of Pierreisna and for DCF to support a claim bill for an additional \$1.2 million.

CLAIMANTS' POSITION:

DCF is liable for the negligence of its employees in failing to adequately supervise the foster parents and for failing to respond appropriately to evidence of sexual abuse.

DCF'S POSITION:

DCF admits that its employee failed to properly investigate reports of sexual abuse and that the failure resulted in Claimant's further sexual abuse and pregnancy.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether DCF is liable in negligence for the injuries suffered by Pierreisna Archille and, if so, whether the amount of the claim is reasonable.

DCF has a duty to supervise foster parents and to investigate reports or other evidence of sexual abuse of a foster child. If evidence of sexual abuse exists, DCF has a duty to remove the foster child from the abusive environment. These duties were breached by DCF.

No reasonable explanation was given for why the testimony of Darlene and Muriel taken in 1997 was not believed. There was also no reasonable explanation for the apparent lapse of any meaningful monitoring and supervision of Pierreisna following the 1997 investigation. DCF left Mr. Velazquez in custody of the children that were least capable of resisting or reporting sexual abuse, but did not periodically interview them or make any other attempt to assure that the children were not being abused as had been earlier reported. These breaches of duty were the proximate cause of further sexual abuse of Pierreisna and of her pregnancy.

The amount of the claim is fair and reasonable.

ATTORNEY'S FEES AND
LOBBYIST'S FEES:

Claimant's attorney agrees to limit his fees to 25 percent of any amount awarded by the Legislature as required by s. 768.28(8), F.S. No fee was taken from the \$100,000 that was already paid. They also agree to pay the lobbyist's fee out of the attorney's fees. They acknowledged their awareness of the provision of the bill that also requires costs to be included in the 25 percent figure. The latest report of costs was \$47,978.

LEGISLATIVE HISTORY:

This first claim bill for Pierreisna was filed in the 2008 Legislative Session and a new claim bill has been filed in each session thereafter.

OTHER ISSUES:

DCF reports that it has sufficient unobligated funds in its Federal Grants trust fund account which the Legislature could appropriate for the payment of this claim if the bill passes.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 60 (2010) be reported FAVORABLY.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Ronda Storms
R. Philip Twogood, Secretary of the Senate
Counsel of Record