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DATE: March 13, 2001

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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 909 - Representative Ausley
Relief of Elizabeth Linton, as Personal Representative of the Estate of Harold
Armstrong, deceased.

**THIS IS A VIGOROUSLY CONTESTED EXCESS
JUDGMENT WRONGFUL DEATH CLAIM FOR
\$1,807,185 BASED ON A JURY VERDICT AGAINST
GULF COUNTY TO COMPENSATE THE EIGHT ADULT
CHILDREN OF HAROLD M. ARMSTRONG FOR PAIN
AND SUFFERING DAMAGES.**

FINDINGS OF FACT:

Background

Gulf County, Florida owns and operates a landfill (a dump). Ordinarily, county employees operate the landfill. There are three main duties to be performed by employees at the landfill. One is to weigh trucks in and out, charging the difference as a "tipping fee". Another is to push the garbage from where it is dumped to its correct placement, and to compress the garbage into the smallest possible pile. These two duties are traditional, the final duty is one that is only recent in nature. Environmental laws now require that garbage be sorted into different materials.¹

On July 3, 1994, Tropical Storm Alberto struck the Florida Panhandle. Gulf County was one of 78 counties in Florida, Georgia and Alabama that was declared a federal disaster area. Part of the federal disaster aid that was furnished to these counties was providing employees to assist in the cleanup. Some of those employees were paid out of federal funds pursuant to the Job Training and Partnership Act (JTPA).² Mr. Harold Armstrong was one of those employed.

¹ Typical piles are household garbage, construction debris, organic materials, tires, and metals.

² 29 USCA §§ 1501 to 1505. Repealed. Pub.L. 105-220, Title I, § 199(b)(2), Aug. 7, 1998, 112 Stat. 1059.

His duties were to assist in the sorting function at the Gulf County landfill.

There were a number of JTPA employees assigned to the Gulf County landfill. One was Tommy Skipper, who was named as supervisor. Supervision of the JTPA employees was fairly loose, and the split of duties between regular county employees of the landfill and the JTPA employees was informal at best. It is was not uncommon for county employees to ask JTPA employees to perform a task, nor for the JTPA supervisor to ask county employees to perform a task. Gulf County employees maintained ultimate control over the landfill, and ultimately all of the JTPA employees were under the control of Gulf County employees.³

All landfills utilize some form of machinery that pushes and compresses the refuse. A common machine utilized in this process is a track loader. A track loader has crawler tracks (like an army tank) rather than wheels, and a bucket or blade that pushes and rearranges the refuse. The machines are fairly heavy, and they use their weight to compress the refuse once it is pushed into place. Gulf County owns and uses a track loader.

The driver of the track loader would observe the sorting employees walk from behind a pile, and would assume that they all left together. Once he would see the employees walk away from a pile, he would push the pile into the pit and compress the pile.

The Accident

On the morning of the accident, Mr. Armstrong had been working on the organic material pile. He had been told by his supervisor to leave the organic material pile and to go assist with sorting at the metal pile.⁴ The track driver saw two employees walk from behind the pile, and (wrongfully) assumed that it was clear to push the pile. Mr. Armstrong's supervisor observed the track loader approaching the pile, but remembering that he had instructed Mr. Armstrong to go to the metal pile, he allowed the track loader to proceed with pushing the organic materials pile.

It was common practice of the employees to "plunder" in the garbage for useful or salvageable items.⁵ Mr. Armstrong had been seen "squatting" behind the organic pile shortly before it was pushed,⁶ or may have been "sitting" behind the pile.⁷ Mr.

³ There was testimony that direction to JTPA employees was supposed to go through the JTPA supervisor, but that seems to be simply a chain of command structure. Ultimately, the landfill belonged to the county, who was and is ultimately liable for its operation.

⁴ Testimony of Tommy Skipper before the Special Master; deposition of William Nunnery, page 7.

⁵ Deposition of Donna Mathis, page 34.

⁶ Deposition of William Nunnery, page 6; deposition of Donna Mathis, page 13.

Armstrong may have been looking through it to retrieve some Christmas ornaments that were in the pile,⁸ and he had just found a watchcase that he was going to give as a gift to someone else.⁹

The organic material pile that was pushed was approximately 8 feet high.¹⁰ Although the operator of the track loader is high above the ground, the operator cannot see a person standing behind an 8 foot tall pile of debris; and thus would have no way of discovering someone who, like Mr. Armstrong, was sitting or lying behind the pile.

The track loader is a large, heavy, loud piece of equipment.¹¹ The ground vibrates as it approaches.¹² A person working at the dump should know or learn, by sound and ground vibration, that the track loader is approaching. The track loader has a number of "blind spots". It is common sense to get out of the way of a large and dangerous piece of equipment operated by someone with limited visibility.

Gulf County had provided no appreciable safety training or safety instruction to employees of the county operating the machinery, nor to JTPA employees that were assisting the county.¹³ There were no safety procedures in place at the time of the accident. No employee had the duty to watch the track loader from the ground, or to view the blind side of debris pile before the track loader was allowed to push it.¹⁴

Damages

At the time of his death, Mr. Linton was 72 years old. He was unmarried and had no legal dependents. His children were assisting him with his mortgage and utility payments, and he was earning \$6.00 an hour working for the JTPA. It is apparent that Mr. Armstrong, had he died of natural causes, would not have had any estate to leave to his heirs. The petitioner conceded this fact at the hearing.

The jury awarded damages in the amount of \$250,000 to each of the eight children of Mr. Linton, totaling \$2 million. The county disagrees with this award. At trial, the plaintiffs argued that \$4 million was appropriate (plus the medical and funeral expenses); the county did not argue about damages. Before the special master, the petitioner argued that the \$2 million

⁷ Deposition of William H. Lolly, page 9.

⁸ Testimony of Tommy Skipper, before Special Master.

⁹ Deposition of William H. Lolly, page 11.

¹⁰ Testimony of Flip Gentry before Special Master, deposition of William Nunnery, page 10.

¹¹ Deposition of William Nunnery, page 11.

¹² Testimony of Tommy Skipper, before Special Master.

¹³ Deposition of William Nunnery, page 21; deposition of Donna Mathis, page 36; deposition of William H. Lolly, page 32.

¹⁴ Testimony of Flip Gentry, deposition of Donna Mathis, page 33.

jury award was correct and sufficient, plus the medical and funeral expenses.

The jury further awarded damages in the amount of \$7,184.92 for medical and funeral expenses relating to the accident. These expenses are not disputed by the respondent county, and appear reasonable. The workmen's compensation carrier holds a lien against the estate for repayment of this sum.

The petitioner has asked that post-judgment interest be awarded. An award of interest is rarely granted in claims bills, and accordingly the special master has not calculated any amount for interest.

Claimants

Elizabeth Linton is a daughter of Harold Armstrong, the deceased. Mr. Armstrong was unmarried at the time of his death, and left 8 adult children who ranged in age from 37 to 51 years of age at the time of his death.

Hardship

The respondent county asserts that this claim bill would cause an undue hardship on the county. The special master finds that the county has a general liability insurance policy in the amount of \$1,000,000. Additionally, Gulf County's audited Combined Balance Sheet as of September 30, 1999, as filed with the Auditor General and as confirmed by its independent auditor, shows that the County had \$5,490,848 of undesignated, unreserved, general funds on hand. The special master finds that an award against respondent Gulf County will not cause an undue hardship on the county.

CONCLUSIONS OF LAW:

Section 440.11(1), F.S., a part of the Workers' Compensation law, provides that workers' compensation benefits are the sole and exclusive remedy for an employee injured in a work-related accident. Should there be a finding that Mr. Armstrong was an employee of Gulf County, workers' comp law would require a finding by the Special Master that there is no legal cause for relief. The first issue to be addressed is thus whether Mr. Armstrong was an employee of Gulf County.

Gulf County raised this issue as an affirmative defense in its answer to the complaint. The county then filed a motion for summary judgment, seeking dismissal of the complaint on workers' comp immunity. The trial court granted that motion, but that decision was overturned on appeal. The appellate court did not rule on the merits, they simply decided that the county had not met the standard for summary judgment. It is unclear why the issue was not raised before the jury.

Certainly, Mr. Armstrong did not have a typical employer-

employee relationship. His paychecks were not drawn on the county account. Florida workers' comp law does provide, however, that a "special employer" relationship may exist. The elements of a special employer relationship are:

- (1) a contract for hire, express or implied, between the employee and special employer;
- (2) the work being done at the time of the injury was essentially that of the special employer and
- (3) the power to control details of work in the special employer.¹⁵

Elements (2) and (3) are easily met. As to element (2), Mr. Armstrong was sorting garbage, a task that is required of every landfill operator. As to element (3), there was testimony that employees went back and forth between the county supervisors and the JTPA supervisors, and that the JTPA supervisors were in turn supervised by the county employees responsible for the landfill.

Element (1) requires that there be a contract for hire, whether express or implied, between the employee and the special employer. In this case, there was an express contract that contained a recital which specifically stated that Mr. Armstrong was not considered an employee of the county. The recital also provided that Mr. Armstrong was not an employee of the federal government, the source of his payroll funds. The question then was: who was the real employer? The petitioner would argue that the real employer was the regional council of the JTPA, but that entity is a part of the federal government that the recital specifically stated was not the employer. The only conclusion to be drawn is that the recital was a sham, and without legal effect.

Section 101(a) of Public Law 102-367 provided that: "In recognition of the training needs of low-income adults and youth, the Congress declares it to be the policy of the United States to -- (1) provide financial assistance to States and local service delivery areas to meet the training needs of such low-income adults and youth, and to assist such individuals in obtaining unsubsidized employment".¹⁶

The United States, through the Job Training Partnership Act, indirectly provided to Gulf County a means to hire employees to provide disaster assistance under the guise of a training program. The employees working under the guise of the JTPA for Gulf County received no job training and no real federal assistance. Gulf County entered into a partnership whereby it received the benefit of free employees to help with disaster

¹⁵ *Rainbow Poultry Company V. Ritter Rental System, Inc.*, 140 So.2d 101, 103 (Fla. 1962).

¹⁶ 29 USCA § 1501, §§ 1501 to 1505. Repealed. Pub.L. 105-220, Title I, § 199(b)(2), Aug. 7, 1998, 112 Stat. 1059.

cleanup. The Special Master finds that, under these facts and circumstances, an implied contract of employment existed between Gulf County, Florida, and Harold Armstrong.

Accordingly, finding that the elements of a special employment relationship exist, it is the opinion of the Special Master that, as a matter of law, this claim is barred except for payments due and payable under the applicable workers' compensation laws (which payment has already been made).

Whether or not this claims bill passes, Gulf County remains liable for the statutory maximum of \$200,000, which is due and payable as a result of the jury verdict.

ATTORNEYS FEES:

The claimant's attorney has certified that his attorney's fees do not exceed the statutory cap.

RECOMMENDATIONS:

No person is entitled as a matter of right to payment through a claims bill. The grant of a claims bill is a matter of legislative grace, payable only when the Legislature, subject to the Governor's veto power, decrees that equity demands it.

A hearing before a Special Master is *de novo*, and while prior court rulings are persuasive, neither the Special Master nor the Legislature is not bound to follow those rulings. Indeed, a Special Master is required to make independent findings of fact and conclusions of law in arriving at a recommendation that a claims bill be reported favorably or unfavorably; even in the face of a less than optimal presentation of the case by the parties.

The Special Master recommends a finding that a special employment relationship existed between Harold Linton and the Respondent Gulf County on the date of his death; that accordingly the provisions of the workers' compensation laws apply, including the tort immunity of the employer.

The Special Master thus recommends that this bill be reported UNFAVORABLY.

Respectfully submitted,

Nathan L. Bond,
House Special Master

Stephanie Birtman
Staff Director, Committee on Claims

cc: Rep. Ausley, House Sponsor
Sen. Holzendorf, Senate Sponsor
Steve Kahn, Senate Special Master
House Claims Committee