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**DATE:** March 5, 2002

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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 369 - Representative Lee  
Relief of McCarty et al

FINDING OF FACT:

THE ACCIDENT: On Sunday afternoon, April 19, 1998, at approximately 12:30 p.m., a white GMC eight-passenger van owned by the Department of Children and Family Services (DCF) overturned multiple times on State Road 121 near Gainesville, Florida, resulting in three fatalities and six injuries. Rachuel Sercey, an employee of the DCF, was driving the van and Evertice Cole, another DCF employee, was a passenger. There were seven other women passengers in the van who were developmentally disabled adults residing at Tacachale,<sup>1</sup> a DCF facility. Of these women, Laura Bailey, Christina Decker, and Patricia Chapman died as a result of the accident and Pauline Hodge, Laura Harrison, Lori Center and Connie Hobson received injuries.

Subsequent to the crash, Rachuel Sercey's blood was drawn which revealed a blood alcohol level of .06 and she further tested positive for marijuana.<sup>2</sup> According to the investigative report by the Florida Highway Patrol (FHP), Ms. Sercey was arrested and charged with three counts of DUI manslaughter, two counts of causing severe bodily injury to another, one count of causing damage to property of another (state vehicle) and a non-moving infraction of not wearing a seatbelt. Evertice Cole was also charged with seven counts of criminal abuse or neglect of a disabled person and with not wearing a seatbelt,

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<sup>1</sup> Tacachale is a residential community for the mentally disabled that is owned and operated by the State of Florida, Department of Children and Family Services.

<sup>2</sup> According to the FHP report, Nurse Lorraine Otter (at Shands Hospital) stated that Ms. Sercey admitted to drinking alcohol beverages and smoking marijuana. Medical personnel at the scene of the van crash reported they could smell the odor of an alcoholic beverage on the breath of Ms. Sercey.

according to a report by staff with Tacachale.

CIRCUMSTANCES SURROUNDING THE ACCIDENT: On April 19, 1998, Tacachale employees, Rachuel Sercey and Evertice Cole left Tacachale at 8:57 a.m., in a GMC van with seven developmentally disabled residents for a picnic at Ginnie Springs. Sercey and Cole were to supervise the residents and drive them to the picnic. Prior to leaving the facility, Tacachale security personnel, Ron Powell and Teena Drumm, performed a security check on the van and its occupants. Even though the van was an eight-seat van, Powell and Drumm allowed the van to leave the premises carrying nine occupants. They also failed to check the seatbelts of from one to at least five of the van's occupants. Additionally, Powell and Drumm did not properly fill out the vehicle checklist on the van's trip ticket, which included inspection of the van's tires.<sup>3</sup> (The FHP accident investigation revealed that the van's right rear tire had been plugged<sup>4</sup> causing the tire to become under-inflated which resulted in it shredding just prior to the crash.<sup>5</sup>)

On the day of the picnic, Ms. Sercey, the van's driver, was scheduled to return to Tacachale with her passengers at 12:00 p.m. However, Ms. Sercey and Ms. Cole and the other crash victims never attended the picnic at Ginnie Springs. Instead, Ms. Sercey, upon leaving the facility, stopped at her residence to retrieve some items, and then drove to her cousin's house and consumed alcoholic beverages, leaving the disabled residents in the van. On the way back to Tacachale, Ms. Sercey was driving southbound on State Road 121 and passed James Sajczuk at approximately 60 to 65 miles per hour. As Ms. Sercey passed Mr. Sajczuk, he noticed that the van's right rear tire appeared to be flat. Mr. Sajczuk accelerated in an attempt to inform Ms. Sercey of the flat tire, but was unable to catch up with her because her speed then exceeded 70 miles per hour.

After traveling several miles, Ms. Sercey passed Sharon Gilbert. As Ms. Sercey completed passing Ms. Gilbert's vehicle, Ms. Gilbert noticed tire debris coming from the Sercey van which struck Ms. Gilbert's car. Shortly thereafter, Ms. Gilbert witnessed the van lose control, flip three to four times, with bodies and debris flying from the van as it turned over.

The FHP report reflected that the van had turned over three

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<sup>3</sup> None of the van's safety checklist items (which included tires) was checked as to being safe or functional. Further, two months before the van crash, Tacachale's staff conducted a survey of the facility's vehicle safety checklists which revealed that 96% of all vehicle checklists were left blank, contrary to Tacachale's policies and procedures.

<sup>4</sup> The plugging of the tire was contrary to the manufacture's (Michelin) recommendation.

<sup>5</sup> According to tire expert (Gary Stephens) who examined the van's right rear tire, the tire was under-inflated and should not have been plugged. Tacachale maintenance supervisor, Michael Janicki, was responsible for the care and maintenance of the GMC van, but denied any knowledge of plugging the right rear tire on the van.

and one-quarter revolutions for a distance of 106 feet, leaving semi-circular rim marks on each overturn and ejecting occupants. The report indicated Ms. Sercey drove at least two miles on the flat right rear tire before the tire started to come apart and left 373 feet of tire debris from the disintegrating tire. Ms. Sercey drove an additional 272 feet on the rim prior to overturning.

### CONCLUSION OF LAW:

For a governmental entity in Florida to be liable to a third party for the negligent acts of its employees under §768.28, F.S., the employee must be within the course and scope of employment and the action must not have been taken in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In determining when an employee is initially within the course and scope of employment for purposes of §768.28, F.S., the court in *Sussman v. Florida East Coast Properties, Inc.*<sup>6</sup> held:

- The conduct must be of the kind the employee is hired to perform;
- The conduct occurred substantially within the time and specific limits authorized or required by the work to be performed; and
- The conduct must be activated at least in part by a purpose to serve the master.

Further, once an employee deviates from the scope of his employment, he or she may return to his or her employment by doing something that meaningfully benefits his employer's interests.<sup>7</sup>

The determination of whether an employee is within the course and scope of employment is a question for the jury. In making that determination the jury must not only consider the facts of the case but must also consider the inferences that can be made from those facts to determine whether the employee was acting within the course and scope of employment.<sup>8</sup>

There is competent and substantial evidence that Tacachale and its employees were responsible for providing a safe, caring, and habitable environment for its developmentally disabled residents. The facility had a duty to protect and care for its residents and monitor the treatment of such residents. Tacachale was responsible for properly maintaining vehicles used to transport residents and for the proper hiring, training

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<sup>6</sup> 557 So.2d 74 (Fla.3d DCA 1990).

<sup>7</sup> *Burroughs Corp. v. American Druggists' Insurance Co.*, 450 So.2d 540 (Fla. 2d DCA 1984); *Thurston v. Morrison*, 141 So.2d 291 (Fla. 2d DCA 1962).

<sup>8</sup> *Gardner v. Holifield*, 639 So.2d 652 (Fla. 1st DCA 1994).

and retention of staff to provide for the needs of its residents. Also, Tacachale was responsible for establishing and adhering to a series of policies and procedures to ensure that its employees met the various needs of its residents.

The evidence clearly establishes that Tacachale breached its duty of care and responsibility to residents Laura Bailey, Christina Decker, Patricia Chapman and Pauline Hodge and failed in its duty to prevent the van crash of April 19, 1998. The evidence establishes that Rachuel Sercey and Evertice Cole were employees of Tacachale and were acting within the course and scope of their employment when the accident happened. Further, the evidence shows that driver Sercey operated the van in a negligent, reckless and dangerous manner by driving at excessive speeds and ignoring an under-inflated right rear tire. Evertice Cole had a duty to intervene on behalf of the occupants of the Tacachale' owned van, but did not do anything to prevent Rachuel Sercey from causing the accident.

Respondent argues that Sercey and Cole acted outside the scope of their employment and exhibited bad faith and a wanton and willful disregard because they consumed alcohol and possibly marijuana prior to the accident. However, allowing that Sercey and Cole may have deviated from their scope of employment for that period prior to the accident, they clearly returned to their employer's business after such deviation and before the act at issue, e.g., the accident, occurred.<sup>9</sup>

The actions of Tacachale's security employees Powell and Drumm were clearly negligent. They failed to inspect the van's tires, to ensure that the occupants of the van were properly seat belted and to ensure the van was not overloaded when it left the premises on the day in question.

Tacachale employees were responsible for the care and maintenance of the GMC van involved in the accident. Although the employee responsible for maintaining the van (Michael Janicki) denied any knowledge of plugging the right rear tire on the vehicle, no other employee would have undertaken this task. Also, there are no records of the van being sent to an outside contractor for such repair. Mr. Janicki knew of the dangers of plugged tires and could or should have been able to see the plug in the van's tire. Thus, he failed to observe the plug and replace the tire before putting the van back in service prior to April 19, 1998.

The evidence clearly supports the fact that Tacachale breached its own policies and procedures to ensure the safety of its residents. Tacachale Superintendent Murphy acknowledged that "...our policies and procedures in place at

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<sup>9</sup> *Burroughs Corp. v. American Druggists' Insurance Co.*, 450 So.2d 540 (Fla. 2d DCA 1984); *Thurston v. Morrison*, 141 So.2d 291 (Fla. 2d DCA 1962).

the time (of the accident) did not indicate enough safety checks and balances.”

The evidence supports the conclusion that the negligence of Tacachale and its employees was the legal (proximate) cause of the vehicular accident. Specifically, I find that as a direct and proximate result of the aforesaid negligence of Tacachale and its employees, Laura Bailey, Christina Decker and Patricia Chapman died from injuries received in the accident and Pauline Hodge was injured.

#### SETTLEMENT

On October 2, 2001, the parties entered into a Settlement Agreement as follows:

- DCF agrees to pay the statutory maximum amount of \$200,000 and will *not* oppose a claim bill for \$400,000. The claim bill will provide for \$246,000 for Dr. McCarty and \$70,000 for the Deckers.
- A letter of regret by DCF will be sent to Dr. McCarty and Dr. McCarty will be able to meet with a representative of the DCF.

The four parties (McCarty, Deckers, Chapmans, and Williams (Hodge)) will be distributed various amounts of the \$200,000 payment.

#### ATTORNEYS FEES:

The Settlement Agreement provides that the claimant's attorney fees are limited to 20 percent of the award.

#### RECOMMENDATIONS:

HB 369 reflects the facts and law as stated in this report. The bill provides for an appropriation from the General Revenue Fund to the Department of Children and Family Services and directs the department to make payments to McCarty (\$246,000) and the Deckers (\$70,000) as provided in the settlement.

The bill reflects the terms of the settlement and has the support of the department. Accordingly, I recommend that the bill be reported FAVORABLY.

Respectfully submitted,

Leonard Schulte  
House Special Master

Stephanie Birtman  
Staff Director

cc: Rep. Lee, House Sponsor  
Sen. Holzendorf, Senate Sponsor  
Kathie Emrich, Senate special master  
House Claims Committee