



STORAGE NAME: h6535.CJC h6535.CJC

DATE: 1/26/2018

January 26, 2018

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6535 - Representative Newton
Relief/Estate of Dr. Sherrill Lynn Aversa/Department of Transportation

THIS IS AN UNCONTESTED CLAIM FOR \$650,000 AGAINST THE DEPARTMENT OF TRANSPORTATION BASED ON A STIPULATED SETTLEMENT AGREEMENT IN WHICH THE DEPARTMENT AGREED TO COMPENSATE THE ESTATE OF DR. SHERRILL AVERSA IN THE TOTAL AMOUNT OF \$800,000 FOR HER WRONGFUL DEATH. THE DEPARTMENT HAS PAID \$150,000.

FINDINGS OF FACT:

On June 21, 1999, around 5:45 p.m., Dr. Sherrill Lynn Aversa was traveling southbound on I-75 in Tampa. Meanwhile, a Department of Transportation (DOT) truck driven by a DOT employee, Domingo Alvarado, Jr., was traveling northbound on I-75. Mr. Alvarado was the DOT electrician on call that evening.

The DOT truck had a 12-foot extension ladder along with cones on the top of the truck. Shortly before Mr. Alvarado reached the I-4 overpass, during rush hour, the ladder fell off his truck. Immediately behind Mr. Alvarado's DOT truck was a Ford Explorer SUV driven by Roxann Hodge. Mrs. Hodge was driving about the speed limit, 70 miles per hour, wearing her seatbelt. To avoid a collision with the ladder, Mrs. Hodge

swerved sharply left,¹ lost control of her vehicle, and crossed the interstate median.² Mrs. Hodge's vehicle then exited the median into southbound traffic and struck Dr. Aversa's vehicle head on.³ The force of the impact caused both cars to rotate, causing a subsequent impact between Hodge's vehicle and a vehicle driven by Christopher Chappell. After rotating around completely, Dr. Aversa's vehicle was hit again by another vehicle. Six vehicles were ultimately involved in the collision, resulting in Dr. Aversa's death and four other injuries.

After realizing the ladder had fallen off his vehicle, Mr. Alvarado pulled off the roadway into the emergency lane on the right side, put on his caution lights, and ran to the ladder. He ultimately retrieved the ladder and cones, which had come to a rest in the center northbound lane, and re-secured the ladder. A witness who stopped to assist Mr. Alvarado pointed out the accident on the other side of the divided highway. Mr. Alvarado was not aware that his ladder had anything to do with the accident and noted that a sheriff was already at the scene. Later that evening, Mr. Alvarado saw news coverage of the accident and called Highway Patrol. DOT ultimately issued Mr. Alvarado a disciplinary letter.

The other drivers in the accident suffered various injuries and settled with DOT for a combined total of \$50,000, leaving \$150,000 available for payment to Dr. Lee Crandall, as husband and personal representative of the estate of Dr. Sherrill Aversa ("Estate").⁴

Dr. Aversa was a 32-year-old epidemiologist and published researcher in the field of HIV/AIDS at the University of Miami Medical School. Expert testimony was presented that the present value of economic damages alone totaled \$2,646,244.

LITIGATION HISTORY:

On May 15, 2000, Dr. Aversa's husband and her estate's personal representative, Dr. Lee Crandall, filed a wrongful death action against DOT. Prior to trial, the parties entered into a stipulated settlement agreement in which Respondent agreed to pay a total of \$800,000. The agreement acknowledged Respondent had already paid \$50,000 to other parties injured in the accident and that only \$150,000 remained under the sovereign immunity cap. Respondent therefore agreed to pay Claimant \$150,000 and support a claim bill for \$650,000 for up to ten legislative sessions. The court approved the agreement and entered a consent final judgment on June 11, 2003. Respondent has paid Claimant \$150,000.

¹ Mrs. Hodge stated in her deposition that she could not veer right because of another vehicle on the road.

² At the point in question, I-75 has three northbound lanes and three southbound lanes.

³ The Investigative Report by Florida Highway Patrol found that Dr. Aversa was wearing her seatbelt.

⁴ Under s. 768.28(5), F.S. (1999), any liability of a governmental entity exceeding \$200,000 per occurrence can be paid only as directed by the Legislature through a claim bill.

CLAIMANT'S POSITION:

Claimant argues it is entitled to the remaining amount of \$650,000 under the stipulated settlement agreement.

RESPONDENT'S POSITION:

Respondent entered into a settlement agreement with Claimant in 2003, agreeing to support a claim bill "for up to ten legislative sessions." Because more than ten legislative sessions have passed, Respondent states that it now "takes no position" on this claim bill. Respondent states that the bill erroneously indicates that Respondent has admitted liability for the accident and requests that this statement be removed from the bill.

CONCLUSIONS OF LAW:

Regardless of whether there is a jury verdict or settlement, every claim bill must be reviewed *de novo* in light of the elements of negligence.

Duty & Breach

Section 316.520, F.S. (1999), provides that "[a] vehicle may not be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, shifting, leaking, blowing, or otherwise escaping therefrom" Under this statute, Mr. Alvarado had a duty to secure the ladder to the DOT truck before operating the truck on the roadway. His failure to do so was a breach of that duty. As an employee of DOT in the course and scope of his employment, his negligence is attributable to DOT under the doctrine of respondeat superior.

Causation

Mr. Alvarado's failure to properly secure the ladder to the DOT truck he was driving was the proximate cause of Dr. Aversa's untimely death. When the ladder fell off the truck into Mrs. Hodge's path, she swerved to avoid the ladder, lost control of her vehicle, careened into the median, and crashed into Dr. Aversa's vehicle head on.

Damages

Dr. Aversa was an intelligent woman with a promising career ahead of her. An expert found that economic damages alone totaled \$2,646,244. The amount of damages sought in this claim bill—\$650,000—is wholly reasonable considering the outcome of the accident.

ATTORNEY'S/
LOBBYING FEES:

Claimant's attorneys will limit their fees to 25 percent of any legislative award. Out of these fees, a lobbyist fee for 6% of the total award will be paid. There are no outstanding costs.

COLLATERAL SOURCES:

In addition to the \$150,000 paid by DOT, Dr. Aversa's estate has received the following amounts: \$153,000 in life and accidental death insurance proceeds; \$66,666 in underinsured motorist coverage; and \$6,666 in settlement proceeds from

Mrs. Hodge, the driver of the Ford Explorer.⁵

RESPONDENT'S ABILITY
TO PAY:

Respondent states that if the claim bill passes, funds will be paid out of the State Transportation Trust Fund. Respondent states that it "will make adjustments as necessary to avoid any impact on the Department's Work Program."

SUGGESTED AMENDMENTS:

The statement that Respondent admitted liability for the accident should be removed from the bill. Also, the section addressing the limitation on attorney's fees should be amended to provide for specific fee amounts.

LEGISLATIVE HISTORY:

This is the twelfth session this claim has been presented to the Legislature over a fifteen-session period. It was initially filed in the 2004 session as HB 245 by Representative Prieguez and SB 10 by Senator Margolis. In 2016, CS/SB 14 was not heard in Senate Appropriations and was never filed in the House.

RECOMMENDATION:

I recommend that HB 6535 be reported **FAVORABLY**.

Respectfully submitted,

JORDAN JONES

House Special Master

cc: Representative Newton, House Sponsor
Senator Thurston, Senate Sponsor
Thomas Cibula, Senate Special Master

⁵ Dr. Crandall created a Foundation in his late wife's name with the purpose of awarding scholarships to help doctoral students complete their degrees. The Foundation has awarded multiple scholarships over the years.