



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 The Capitol

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

DATE	COMM	ACTION
3/6/19	SM	Report Submitted
	JU	
	GO	
	RC	

March 6, 2019

The Honorable Bill Galvano
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 24** – Senator Simmons
HB 6513 – Representative Perez
Relief of the Estate of Eric S. Tenner

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$1.45 MILLION FROM MIAMI-DADE COUNTY. THIS AMOUNT IS THE REMAINING UNPAID BALANCE OF A SETTLEMENT FOR THE WRONGFUL DEATH OF ERIC S. TENNER, WHICH WAS PARTIALLY CAUSED BY THE NEGLIGENT OPERATION OF A COUNTY BUS.

UPDATE TO PRIOR REPORT: On November 3, 2017, Mr. Dan Looke, serving as Senate special master, held a de novo hearing on a previous version of this bill, SB 26 (2018). After the hearing, Mr. Looke issued a report containing findings of fact and conclusions of law and found the requested amount of \$1,450,000 was reasonable. That report is attached as an addendum to this report.

Since that time, the Senate President has reassigned the claim to the undersigned to review records and determine whether any changes have occurred since the hearing that, if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

According to information received, no such changes have occurred since the hearing.

RECOMMENDATIONS:

A correction to the spelling of Mr. Tenner's middle name is recommended. The bill currently reflects a spelling of "Scott" while submitted documents show the middle name spelled as "Scot." The recommended amendment is appended.

Respectfully submitted,

Christie M. Letarte
Senate Special Master

cc: Secretary of the Senate



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
515 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5198

DATE	COMM	ACTION
1/10/18	SM	Favorable
	JU	
	GO	
	RC	

January 10, 2018

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 26** – Senator Garcia
HB 6543 – Representative Perez
Relief of Eric Scott Tenner

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED EXCESS JUDGEMENT CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$1.45 MILLION AGAINST MIAMI-DADE COUNTY FOR THE WRONGFUL DEATH OF ERIC SCOTT TENNER, WHICH WAS PARTIALLY CAUSED BY THE NEGLIGENT OPERATION OF A COUNTY BUS.

FINDINGS OF FACT:

On the morning of October 8, 2014, Mr. Tenner, was riding his bicycle on the US 1 Busway just south of SW 124th Street in Miami-Dade County when he was struck from behind by a Miami-Dade County bus driven by Jose Sequeria. At the time, Mr. Tenner was wearing all recommended safety equipment including a helmet, a head lamp on the front of his bicycle, and a flashing strobe light on the rear of his bicycle. A witness riding the bus that struck Mr. Tenner, Christopher Hanna, saw Mr. Tenner riding on his bicycle with blinking lights when the bus approached him from behind. Mr. Hanna also felt the impact of the collision between the bus and Mr. Tenner.

After striking Mr. Tenner, Jose Sequeria did not stop to provide assistance, but continued driving his route.¹ Miguel

¹ Mr. Sequeria was later arrested for leaving the scene of an accident involving serious bodily injury, but the charges were dropped because the state could not prove that Mr. Sequeria was aware that he had hit Mr. Tenner.

Mora, driver of a bus immediately behind Mr. Sequeria's bus, pulled over to assist Mr. Tenner. Mr. Tenner was taken to Kendall Regional Hospital where he died of his injuries on October 11, 2014.

On July 16, 2015, Maria Tenner, Mr. Tenner's wife, brought suit against Miami-Dade County as the personal representative of Mr. Tenner's estate under the Florida Wrongful Death Act.² Miami-Dade County responded to the suit asserting the defenses of assumed risk and comparative negligence. The County's strongest argument at trial would likely have been that Mr. Tenner was riding his bicycle on a roadway that was designated specifically for transit and emergency vehicles.

The plaintiffs hired Raffa Consulting Economists to prepare a statement of loss of dependent support that could be expected from Mr. Tenner's death. The report determined that the total economic loss from Mr. Tenner's death would be approximately \$3.5 million. On June 14, 2017, the parties entered into mediation. It was successful and resulted in a settlement agreement signed on the same day. In the settlement the County agreed to pay a total of \$1.75 million to Mr. Tenner's estate to settle all claims arising from the matter.³ At the time of the settlement, the County paid \$300,000 to the plaintiffs and the County also agreed to support a claim bill for the remaining \$1.45 million.

CONCLUSIONS OF LAW:

Miami-Dade County owned and operated the bus that struck Mr. Tenner and the driver of the bus, Mr. Sequeria, was an employee of the county. Section 768.28, F.S., allows injured parties to sue the state or local governments for damages caused by the negligence of their employees. When demonstrating negligence, the elements that must be found are duty, breach, causation, and damages.⁴ Additionally, s. 768.81, F.S., allows damages in a negligence case to be apportioned among all responsible parties who contributed to an accident.

In general, the driver of a motor vehicle has a duty to use reasonable care, in light of the circumstances, to prevent

² Section 768.16, F.S.

³ In testimony during the Special Master hearing, the attorney for the plaintiffs, Christopher Marlowe, testified that the plaintiffs agreed to Mr. Tenner's 50 percent comparative negligence when settling the case.

⁴ *Charron v. Birge*, 37 So.3d 292, 296 (Fla. 5th DCA 2010).

injuring persons within the vehicle's path.⁵ In this case, several witnesses riding Mr. Sequeria's bus, as well as the bus immediately behind Mr. Sequeria's, testified that they were able to see Mr. Tenner riding his bicycle as the bus approached him from the rear. Mr. Hanna, a witness riding Mr. Sequeria's bus, testified that he, at first, believed that Mr. Sequeria was attempting to turn to avoid the collision; but in the end did not turn and consequently struck and killed Mr. Tenner. Mr. Hanna's testimony shows that Mr. Sequeria was negligent in not using reasonable care and not taking appropriate action to avoid a collision with Mr. Tenner.

Mr. Tenner was also comparatively negligent for riding his bicycle on a roadway specifically designated for transit and emergency vehicles only. Although designated specifically for such traffic, the roadway where Mr. Tenner was riding his bicycle was often used by cyclists. Mr. Mora, the driver of a second bus, testified that bicyclists and pedestrians are constantly present and "there's a lot of accidents on the Busway." At trial, the portion of negligence would have been determined by the jury. However, during the special master hearing Christopher Marlowe, the attorney for the plaintiffs, testified that the plaintiffs agreed to accept 50 percent comparative negligence upon settlement of the case. This apportionment of fault is reasonable in light of the evidence.

According to the economic analysis done by the Raffa Consulting Economists, Mr. Tenner's estate suffered damages of approximately \$3.5 million due to his premature death. This figure is reasonable based on the evidence. Due to Mr. Tenner's comparative negligence, stipulated at 50 percent, the damages that a court could assess to Mr. Sequeria's negligence are \$1.75 million. Of these damages, \$300,000 have been paid leaving \$1.45 million outstanding.

ATTORNEYS FEES:

Senate Bill 26 limits the total amount paid for attorney fees to 25 percent of the amount awarded. As such, the amount of attorney fees will be limited to \$362,500 of the \$1.45 million awarded under the bill.

RECOMMENDATIONS:

The undersigned recommends that Senate Bill 26 be reported FAVORABLY.

⁵ *Gowdy v. Bell*, 993 So.2d 585, 586 (Fla. 1st DCA 2008).

SPECIAL MASTER'S FINAL REPORT – SB 26

January 10, 2018

Page 4

Respectfully submitted,

Daniel Looke
Senate Special Master

cc: Secretary of the Senate

Attachment



764368

LEGISLATIVE ACTION

Senate

House

.
. .
. .
. .
. .
. .

The Special Master on Claim Bills recommended the following:

1 **Senate Amendment (with title amendment)**

2

3 Delete everything after the enacting clause

4 and insert:

5 Section 1. The facts stated in the preamble to this act are
6 found and declared to be true.

7 Section 2. The Miami-Dade County Board of County
8 Commissioners is authorized and directed to appropriate from
9 funds of the county not otherwise encumbered and to draw a
10 warrant in the sum of \$1.45 million, payable to Maria Tenner as
11 personal representative of the Estate of Eric Scot Tenner, as
12 compensation for injuries and damages sustained.



764368

13 Section 3. The amount paid by the Miami-Dade County Board
14 of County Commissioners pursuant to s. 768.28, Florida Statutes,
15 and the amount awarded under this act are intended to provide
16 the sole compensation for all present and future claims arising
17 out of the factual situation described in this act which
18 resulted in the death of Eric Scot Tenner, including injuries
19 and damages to the Estate of Eric Scot Tenner and his survivors.
20 The total amount paid for attorney fees relating to this claim
21 may not exceed 25 percent of the total amount awarded under this
22 act.

23 Section 4. This act shall take effect upon becoming a law.

24
25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 Delete everything before the enacting clause
28 and insert:

29 A bill to be entitled
30 An act for the relief of the Estate of Eric Scot
31 Tenner by the Miami-Dade County Board of County
32 Commissioners; providing for an appropriation to
33 compensate his estate for injuries and damages
34 sustained by Eric Scot Tenner and his survivors as a
35 result of the negligence of an employee of the Miami-
36 Dade County Board of County Commissioners; providing a
37 limitation on the payment of attorney fees; providing
38 an effective date.

39
40 WHEREAS, on October 8, 2014, 45-year-old Eric Scot Tenner
41 was riding his bicycle along the U.S. 1 Busway in Miami-Dade



764368

42 County, wearing appropriate clothing and safety equipment for
43 cycling, and

44 WHEREAS, Mr. Tenner was struck by a bus owned and operated
45 by the Miami-Dade County Board of County Commissioners at
46 approximately 7 a.m. near the intersection of the U.S. 1 Busway
47 and SW 124th Street, and

48 WHEREAS, the driver of a vehicle has a duty to use
49 reasonable care to prevent injuring persons in the vehicle's
50 path, and

51 WHEREAS, the bus driver should have seen Mr. Tenner's
52 bicycle, but the driver breached his duty to use reasonable care
53 when his bus struck Mr. Tenner from behind, and

54 WHEREAS, the bus driver was acting within his scope of
55 employment with the Miami-Dade County Board of County
56 Commissioners at the time of the accident and the board is
57 liable under the doctrine of respondeat superior, and

58 WHEREAS, Mr. Tenner was transported to Kendall Regional
59 Medical Center, where he succumbed to his injuries and died on
60 October 11, 2014, and

61 WHEREAS, Mr. Tenner, through his wife, donated all viable
62 tissues and organs so that others may live, and

63 WHEREAS, Mr. Tenner is survived by his wife and two minor
64 sons, all of whom are being treated by therapists and health
65 professionals to cope with the loss of their husband and father,
66 who provided for and had a demonstrably close relationship with
67 his family, and

68 WHEREAS, Mr. Tenner's family is suffering significant
69 financial hardship due to the loss of Mr. Tenner's net
70 accumulations in the past and the future, and extreme mental



764368

71 anguish and suffering resulting from the loss of their husband
72 and father, and

73 WHEREAS, the Estate of Eric Scot Tenner has alleged,
74 through a lawsuit filed May 22, 2015, in Miami-Dade County, that
75 the negligence of the Miami-Dade County Board of County
76 Commissioners, through its bus driver, was the proximate cause
77 of Mr. Tenner's death, and

78 WHEREAS, the total present value of Mr. Tenner's economic
79 damages from this incident is calculated to be \$3,563,249.93,
80 which consists of his future and past lost earning capacity of
81 \$3,531,212 and past medical expenses of \$32,037.93, and

82 WHEREAS, the Miami-Dade County Board of County
83 Commissioners and the Estate of Eric Scot Tenner reached a
84 settlement agreement by mediation in the amount of \$1.75
85 million, of which \$300,000 will be paid to the Estate of Eric
86 Scot Tenner pursuant to the limits of liability set forth in s.
87 768.28, Florida Statutes, and the remainder is conditioned upon
88 the passage of a claim bill, which is agreed to by the Miami-
89 Dade County Board of County Commissioners, in the amount of
90 \$1.45 million, NOW, THEREFORE,

91