



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/1/01	SM	Favorable
	CA	
	FT	

December 1, 2001

The Honorable John M. McKay
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 52 (2002)** – Senator Alex Villalobos
HB 85 – Representative Annie Betancourt
Relief of Jessica Ann Calderon,
Sean Ryan Calderon, and Lily Ann Calderon

SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLED EQUITABLE CLAIM FOR \$2.1 MILLION AGAINST MIAMI-DADE COUNTY TO COMPENSATE JESSICA ANN CALDERON, SEAN RYAN CALDERON, AND LILY ANN CALDERON FOR THE DEATH OF ROBERTO LUIS CALDERON, CAUSED BY THE NEGLIGENCE OF A MIAMI-DADE COUNTY BUS DRIVER WHO RAN A RED LIGHT AND STRUCK ROBERTO CALDERON'S POLICE VEHICLE.

FINDINGS OF FACT:

On the evening of December 7, 1999, Miami-Dade Police Officer Roberto Luis Calderon was driving a marked police vehicle southbound on a Busway that is adjacent to and parallel to southbound U.S. 1. The Busway is a north/south, undivided, two-lane roadway. The Busway is a limited access roadway where buses and emergency vehicles are permitted access. Miami-Dade police officers are responsible for patrolling the Busway. The Busway has a posted speed limit of 45 mph. At approximately 11:23 p.m., on December 7, 1999, Miami-Dade Transit Bus #9925 driven by Gerry Goodine was traveling westbound on Hibiscus Street. The posted speed limit for Hibiscus Street is 30 mph.

The two vehicles entered the intersection of Hibiscus Street and the Busway at the same time and the front of the bus struck the left front side of the police vehicle.

Two police officers were riding in the patrol car that the bus hit, Officer Calderon and Officer Edgar Perez. Officer Calderon was airlifted to Jackson Memorial Hospital where he died on December 10, 1999, as the result of the injuries he sustained in the accident.

Accident investigations were conducted by the Miami-Dade Police Department and the Miami-Dade Transit Department, both agencies of Miami-Dade County. An independent investigation of the accident by an entity outside of Miami-Dade County was not conducted. A major focus of the accident investigation was the question of whether Officer Calderon or the bus driver had the green light at the intersection of the Busway and Hibiscus Street.

The approach of the Busway to the intersection is equipped with a sensor, referred to as the up-stream loop that triggers the light to cycle from red to green. A traffic engineer reviewed the printout for the traffic signal and gave a statement that the light for the Busway would have begun its cycle immediately upon the police vehicle driving over the up-stream loop. The police vehicle would have received a green traffic signal 5 seconds after the cycle began, the cycle having been initiated when the police vehicle drove over the up-stream loop. The police vehicle, accordingly, would have had a green light for between 2 and 3 seconds prior to impact.

Based on an examination of a computer printout of the operation of the light at the intersection of the Busway and Hibiscus Street and speed calculations for the police vehicle and the bus, the accident investigator, Miami-Dade Police Detective Buchanan drew the following conclusions regarding the cause of the accident:

- Officer Calderon was driving southbound on the Busway proceeding with a green traffic signal.
- The bus was traveling westbound on Hibiscus Street proceeding against a red traffic signal.

- As the bus turned right on Hibiscus Street from South Dixie Highway, the bus driver's traffic signal cycled from green to yellow. The bus driver accelerated in an attempt to beat the red light.
- The police vehicle was traveling at 49 mph and took no evasive action prior to the impact with the bus.
- The bus was traveling at 30 mph and the bus driver applied the brakes at the moment of impact with the police vehicle.
- The bus driver ran the red light and caused the accident.

An accident reconstruction expert, Dr. Neil Freeman, reviewed the speed level assumptions made by Detective Buchanan in his analysis of the accident. Dr. Freeman prepared a written report where he estimates that the police vehicle was traveling at 32-44 mph and the bus at 28-31 mph at the time of impact.

Gerry Goodine, the driver of the bus claims he had the green light when he proceeded through the intersection. At the time of the accident, the bus driven by Mr. Goodine was the only bus in the area and the bus was running about 10 minutes behind its intended schedule. The bus involved in the accident is equipped with a global positioning system that verifies the location of the bus at any given time.

After the accident, the passengers riding on the bus were interviewed and asked whether they saw the color of the light at the time the bus proceeded through the intersection. Two of these passengers, Mr. Harris and Mr. Johnson reported that the bus driver had a green light. The Miami-Dade Police Department investigators discount this testimony for two reasons. First, these witnesses were given a second interview under conditions where the police investigators applied a "voice stress analysis" to their taped interviews. The police investigators concluded that the voice stress analysis indicated deception at points where the bus driver and Mr. Harris and Mr. Johnson were questioned about the color of the traffic light.

In addition, subsequent investigation of the bus driver revealed that Mr. Goodine is a convicted felon, and that he had a stolen firearm in his possession, stowed on the bus with other personal belongings, at the time of the accident.

More compelling to the Special Master, however, are the results of a reenactment of the accident where individuals seated where the witnesses claimed to be seated at the time of the accident, testified that they could not see the traffic light from the vantage point of their seat.

At the time of the accident, Officer Calderon was not wearing a seatbelt. Miami-Dade Police Department policy requires an officer to wear a seatbelt. The airbag in the police cruiser was deployed by the impact of the accident. Officer Calderon died as the result of blunt trauma injuries caused by the bus hitting the left passenger side of the police cruiser.

Testimony was provided at the claim bill hearing that the wearing of a seatbelt would not have lessened Officer Calderon's injuries. The impact of the crash crushed the door pillar of the police vehicle allowing the front end of the bus to penetrate the driver's compartment of the police vehicle. The autopsy report for Officer Calderon states that he suffered a lacerated thoracic aorta, a lacerated spleen and associated hemorrhage, and brain hemorrhages.

DAMAGES:

At the time of his death, Officer Calderon was 27 years old. He is survived by a wife, Jessica Ann Calderon, currently 30 years old, and two children, Sean Ryan (6 years old) and Lily Ann (4 years old). Officer Calderon was employed by the Miami-Dade County Police Department where his salary for 1999 was approximately \$59,000.

Two different economic analyses were prepared estimating the economic damages from the death of Officer Calderon. The first, prepared by Dr. Bernard Pettingill, Jr., estimates the present value of economic damages as \$1,312,271.00, broken down as follows:

Loss of Support to Survivors	\$ 712,812
Lost Benefits (Health Insurance)	\$ 70,380
Lost Services	\$ 278,843
Incidental Expenses (Daycare)	\$ 12,028
Lost Net Accumulations to Estate	\$ 238,208
TOTAL ECONOMIC DAMAGES	\$1,312,271

The second analysis, prepared by Dr. David Williams, estimates total economic damages for lost net accumulations, lost support and lost services as \$2,277,586 (expressed in present value dollars).

Lost Support	\$1,479,783
Lost Services	\$ 354,907
Lost Net Accumulations	\$ 442,896
TOTAL ECONOMIC DAMAGES	\$2,277,586

According to the testimony of Dr. Williams, his calculation is more accurate because Dr. Pettingill failed to use the correct gross pay figure (he forgot to factor in the last two paychecks Officer Calderon would have received prior to the end of 1999) and used pension growth rates that are too low.

PROCEDURAL HISTORY:

On March 2, 2000, claimant, Jessica Ann Calderon, sent Miami- Dade County a statutory notice of claim pursuant to s. 768.28(6), Florida Statutes (F.S.) Prior to the expiration of the statutory notice period, and before a lawsuit was filed, the claimant and Miami-Dade County conducted a mediation conference at which time a settlement was reached in the amount of \$2,300,000. The Settlement Agreement, entered on August 11, 2000, provides that Miami-Dade County pay Jessica Calderon, as the personal representative of the Estate of Roberto Calderon, \$200,000 within a reasonable time and seek authority, through a claim bill, to pay Jessica Calderon an additional \$2,100,000. In addition, Miami-Dade agreed to waive any claims to subrogation. A letter dated August 18, 2000, informed Mrs. Calderon that Miami-Dade County had ratified the settlement.

Mrs. Calderon has been appointed the personal representative of the Estate of Roberto Calderon. She has petitioned the probate court to appoint a guardian ad litem for the children and to allocate the settlement proceeds.

Tomas F. Gamba was appointed guardian ad litem by the probate court. In his report issued on December 6, 2000, Mr. Gamba recommended that the net settlement proceeds of \$136, 539.61 be distributed as follows: \$54,615.85 to Jessica Calderon; \$40,961.88 to Sean Ryan Calderon; and \$40,961.89 to Lily Ann Calderon. In addition, Mr. Gamba recommended that the initial distribution to the minor children be deposited in a restricted guardianship account under the supervision of the court, with the mother as guardian, or alternatively, that the funds be used to purchase a structured settlement annuities for both minors. Mrs. Calderon testified at the claim bill hearing that she intends to seek court approval to purchase each child an annuity with the proceeds of the allocation of the settlement by the probate court.

On December 8, 2000, the probate court approved distribution of the initial \$200,000 as follows: \$68,269.81 to Jessica Ann Calderon; \$34,134.90 to Sean Ryan Calderon and \$34,134.90 to Lily Ann Calderon; \$50,000 for initial attorneys' fees and \$13,460.39 in costs. In addition, the order requires the minors' settlement to be placed in an interest bearing trust account, "pending resolution of the Claim Bill, at which time the court [is] to determine whether to direct the settlements to guardianships or the purchase of structured settlement annuities." The court also retains jurisdiction over the settlement proceeds to "determine the appropriate allocation of the balance of settlement funds upon passage of the claim bill in an amount up to \$2,100,000."

Mrs. Calderon has also received a total of \$430,000 in death benefits and workers' compensation benefits to which she is entitled as the result of Officer Calderon's death. These benefits are not considered collateral sources for the purposes of §768.28, F.S.

CLAIMANT'S BACKGROUND:

Jessica Ann Calderon is 30 years old and has two children, Sean Ryan, 6 years old, and Lily Ann, 4 years old. Prior to her husband's death, she was employed as a radio dispatcher for Miami-Dade County. She and her husband arranged their shifts so that one of them could care for their two children while the other was at work. Since her husband's death, Mrs. Calderon quit her job so that she can take care of her children on a fulltime basis. At the claim bill

hearing, Mrs. Calderon testified that she plans to return to work at some point in the future.

CONCLUSIONS OF LAW:

Claimant argues that Gerald Goodine's negligent operation of the Miami-Dade Transit Authority Bus was the proximate cause of Officer Calderon's death. Miami-Dade County does not dispute this argument and the results of accident investigations by the Miami-Dade Police Department and Miami-Dade Transit Department agree that the negligent failure of Gerald Goodine to stop at the red light at the intersection of the Busway and Hibiscus Street was the proximate cause of Officer Calderon's death.

For a governmental entity in Florida to be liable to a third party for the negligent acts of its employees under s. 768.28, F.S., the employee must be within the course and scope of his 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 and property. The bus driver, Gerald Goodine, was clearly acting within the scope of his employment when he committed the negligent act of running a red light, thereby causing Officer Calderon's death. The Special Master finds that negligence in this case has been established by the preponderance of the evidence and that the negligence of Mr. Goodine was the proximate cause of Officer Calderon's death.

CONCLUSION ON DAMAGES:

Because settlements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense, stipulations or settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature or its committees, or on the Special Master assigned to the case by the Senate President. However, all such agreements must be evaluated. If found to be reasonable and based on equity, then they can be given effect, at least at the Special Master's level of consideration.

Based on my review of the economist's reports documenting the damages attributed to Officer Calderon's death, I find that the amount of damages sought by the claimant is justified and should be confirmed by the Legislature. In this case, I believe it is appropriate to leave the distribution of the damages between Mrs. Calderon and her children up to the

probate court. As a guardian ad litem has been appointed to represent the interests of the children, I believe a process is already in place to ensure the interests of the children will be protected. The terms of the claim bill require that the \$2,100,000 be distributed between Mrs. Calderon, Sean Ryan Calderon and Lily Ann Calderon pursuant to an order of the Probate Division for the 11th Judicial Circuit for Miami-Dade County in the case 00-1510 CP (02).

ATTORNEYS' FEES:

Section 768.28(8), F.S., limits claimant's attorneys' fees to 25 percent of claimant's total recovery by way of any judgment or settlement obtained pursuant to §768.28, F.S. Claimant's attorney has acknowledged this limitation and verified in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid to him or his firm or to any other lawyer as attorneys' fees.

LEGISLATIVE HISTORY:

SB 20 (2001) received a favorable report by the undersigned Special Master, was passed out of the Senate Comprehensive Planning, Local Government and Military Affairs, and Senate Finance & Taxation Committees and was passed by the Senate on May 4, 2001. The bill died in messages. The companion bill, HB 925, was reported favorably by the House Claims Committee and died in the House Procedural & Redistricting Council.

RECOMMENDATIONS:

Accordingly, I recommend that Senate Bill 52 be reported FAVORABLY.

Respectfully submitted,

Janet Bowman
Senate Special Master

cc: Senator Alex Villalobos
Representative Annie Betancourt
Faye Blanton, Secretary of the Senate
Stephanie Birtman, House Special Master