

**STORAGE NAME:** h0245.ju

**DATE:** March 4, 2004

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SPECIAL MASTER'S FINAL REPORT

The Honorable Johnnie Byrd  
Speaker, The Florida House of Representatives  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: HB 245 by Representative Prieguez  
Relief of the Estate of Dr. Sherrill Aversa v. Department of Transportation

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

FINDING OF FACT:

On June 21, 1999, Dr. Sherrill Lynn Aversa was traveling southbound on I-75 in Tampa at approximately 5:45 p.m. Traveling northbound on I-75 was a Department of Transportation (DOT) truck being driven by a DOT employee, Domingo Alvarado, who was driving the DOT truck home, and who was the electrician on-call that evening for DOT.

The DOT truck had a 12-foot extension ladder that was not secured to the top of the truck. Right before the 1-4 overpass, the unsecured ladder flew off the truck in rush hour traffic. Immediately behind the DOT truck was an SUV driven by Mrs. Hodge. Mrs. Hodge was driving the speed limit (70 m.p.h.), was wearing her seatbelt, and later tested negative for any alcohol or drugs. In an attempt to avoid being hit by the ladder, Mrs. Hodge veered sharply left, crossed two adjacent lanes, and entered the median. When the Hodge vehicle entered the median, she lost control of her vehicle, which exited the median into southbound traffic and struck the vehicle being driven by Dr. Aversa, killing Dr. Aversa instantly. The force of the impact caused both cars to rotate causing a subsequent impact

between the Hodge vehicle and a vehicle driven by Christopher Chappell. The Aversa vehicle rotated in a southwesterly direction, and was subsequently impacted by a vehicle driven by Dawn Clark. In an effort to avoid the wreckage, a vehicle driven by Brian Spence struck a retaining wall, and then impacted the Hodge vehicle.

After he realized that the ladder had fallen off his vehicle, Domingo Alvarado, the DOT employee, pulled off the roadway, put on his caution lights, and resecured the ladder, which had come to a rest in the center northbound lane. 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. He waited to make sure that no northbound travelers stopped to say that his ladder hit their vehicle (no one did) and proceeded on his way. Later that evening, Mr. Alvarado saw news coverage of the accident, and decided to call the Highway Patrol. After investigation, Mr. Alvarado was charged with a violation of s. 316.520, F.S., failure to secure a load.

The other drivers in the accident suffered various injuries and settled with the DOT for a combined total of \$50,000, leaving \$150,000 available for payment for Dr. Lee Crandall, as husband and personal representative of the estate of Dr. Sherrill Aversa.<sup>1</sup>

Dr. Aversa was an epidemiologist at the Medical School at the University of Miami, and a leading researcher in the field of HIV/AIDS research. Dr. Aversa was 33 years old at the time of her death. Expert testimony was presented reflecting that economic damages alone totaled \$2,646,244 in present value dollars.

Dr. Aversa's husband, and the personal representative of her estate, Dr. Lee Crandall, filed an action for negligence against the Department of Transportation in the circuit court for Hillsborough County in 2000. On the eve of trial the parties entered into a stipulated settlement agreement wherein the Department of Transportation agreed to pay Dr. Crandall a total of \$800,000. The DOT has paid \$150,000, leaving \$650,000 to be paid by way of this claim bill. As a part of the settlement agreement, the DOT agreed to an entry of a consent final judgment, and to cooperate and support the passage of a claim bill in the amount of \$650,000.

While not considered collateral sources, Dr. Crandall also 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 driver Hodge.

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<sup>1</sup> Section 768.28(5), F.S., provides that any liability of a governmental entity that exceeds \$100,000 per person or \$200,000 per occurrence may only be paid by as directed by the Legislature through a claim bill.

Dr. Crandall has created a Foundation in his late wife's name, with the purpose of awarding scholarships to assist doctoral students in epidemiology to complete their doctoral degrees. Dr. Crandall testified that it is his intent to deposit funds awarded from this claim bill into the Foundation. Two scholarships have already been awarded.

CONCLUSION OF LAW:

Domingo Alvarado had a duty to secure the load to his truck pursuant to s. 316.520, F.S. 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 the DOT. I find that the DOT negligence was the cause of Dr. Aversa's death.

Further, I find that the amount of damages is based on competent, substantial evidence.

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 the Special Master. 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. I find that the settlement in this case is reasonable and equitable, and recommend it be given effect by the legislature.

ATTORNEYS FEES:

The claimant's attorney submitted an affidavit affirming that his fees do not exceed 25% of the award as limited by s. 768.28, F.S. Costs, in the amount of \$111,772.89 were deducted from the initial payment of \$150,000.

RECOMMENDATIONS:

The bill needs to be amended to reflect that the proper source of payment is from unappropriated trust fund balances within the Department of Transportation.

Based on the foregoing, I recommend HB 245, FAVORABLY, AS AMENDED.

Respectfully submitted,

Stephanie Birtman  
House Special Master

cc: Rep. Prieguez, House Sponsor  
Senator Margolis, Senate Sponsor  
Jay Cassack, Senate Rules Committee