



## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

*Location*

402 Senate Office Building

*Mailing Address*

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

DATE	COMM	ACTION
12/1/04	SM	Favorable

December 1, 2004

The Honorable Tom Lee  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **SB 34 (2005)** – Senator Gwen Margolis  
Relief of Sandrine Tunc and Claude and Martine Tunc, Individually and  
as Personal Representatives of the Estate of Stephanie Tunc

### SPECIAL MASTER'S FINAL REPORT

THIS IS A STIPULATED JUDGMENT CLAIM FOR \$1.3 MILLION RESULTING FROM AN ACCIDENT IN WHICH SANDRINE AND STEPHANIE TUNC WERE RUN OVER WHILE SUNBATHING ON SOUTH BEACH BY A MIAMI BEACH POLICE SUV. SANDRINE TUNC WAS SEVERELY INJURED DURING THE ACCIDENT, AND STEPHANIE TUNC WAS KILLED. THE CITY OF MIAMI BEACH HAS ALREADY PAID \$200,000 TO THE CLAIMANTS. THE REMAINING \$1.3 MILLION WILL BE PAID FROM LOCAL FUNDS. THE CITY SUPPORTS THE BILL.

#### FINDINGS OF FACT:

Stephanie and Sandrine Tunc were sisters, in their mid to late 20s, who were on vacation in the Miami area in February 2003. They were French citizens and residents of London, England.

On February 22, 2003, Stephanie and Sandrine decided to sunbathe on South Beach. The beach in that area was divided into two areas by a row of trash cans. The sand in the area nearest the water and to the east of the row of trash cans was soft. The sand to the west was hard-packed. The particular location at which Stephanie and Sandrine chose to sunbathe was in the soft sand about 30 feet from a lifeguard

tower. Other sunbathers were nearby. Both girls sunbathed with their eyes closed. Stephanie listened to music on her headphones.

While Stephanie and Sandrine were sunbathing, the Miami Beach Police were responding to a report that robbery suspects were nearby on the beach. In order to locate the suspects, several Miami Beach Police vehicles traveled down the hard-packed sand portion of the beach toward Stephanie and Sandrine. None of the vehicles were using their sirens. As a result, the sound of the approaching vehicles could not be heard above the sound of the wind and the waves.

As the vehicles neared the location at which Stephanie and Sandrine were sunbathing, an officer driving a Miami Beach Police Ford Explorer turned the vehicle toward the water and onto the soft sand portion of the beach. Shortly after entering the soft sand the wheels of the vehicle traveled over the Tunc sisters. The wheels of the vehicle traveled down almost the entire length of their bodies. The vehicle was traveling about 5 mph at the time.

Stephanie died from her injuries within hours of the accident. Sandrine received the following injuries according to her medical records from Jackson Memorial Hospital:

- Laceration of liver, moderate.
- Contusion of lung.
- Closed fracture of sacrum and coccyx.
- Laceration of spleen extending into parenchyma.
- Traumatic pneumothorax.
- Anemia.
- Abrasion or friction burn of face, neck, and scalp, except eye.
- Abrasion or friction burn of hip, thigh, leg, and ankle.
- Contusion (hematoma) abdominal wall.
- Buttock contusion.
- Closed fracture of one rib.

Sandrine continues to suffer as the result of the accident from a hole in her lung, the hematoma on her abdominal wall, memories of the accident and the death of her sister, scars, weakness, anorexia, insomnia, depression, digestive

problems, and physical pain. She also receives regular psychological treatment and has been hospitalized several times as a result of the accident since leaving Miami. She has been too weak to work since the accident. Sandrine's medical bills in the U.S. totaled \$37,000 to \$40,000. Despite dying within hours of the accident, Stephanie incurred about \$45,000 in medical expenses.

CONCLUSIONS OF LAW:

Under Senate Rule 4.81(3), SB 34 was assigned by the President to this Special Master to conduct a hearing to determine whether the elements of negligence are satisfied: duty, breach, proximate cause, and damages.

The duty to drive carefully has been established by statute and case law. Section 316.1925(1), F.S., which prohibits careless driving, states:

Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person.

Although §316.1925(1), F.S., appears to be limited to streets and highways, no reason exists to explain why a similar duty should not apply to drivers on a beach with sunbathers.

According to case law, motor vehicle drivers have a duty to attempt to avoid pedestrians on and off roadways. See, e.g., *City of Tallahassee v. Kaufman*, 87 Fla. 119 (1924) (imposing liability on the City of Tallahassee for damages caused by a trailer pulled behind a fire truck that swept across a street corner and injured a pedestrian); *Craig v. School Board of Broward County*, 679 So. 2d 1219, 1222 (Fla. 4th DCA 1996) (finding the existence of a duty of a high degree of care is owed by a driver of a motor vehicle to children when children are present and a reasonably prudent driver would see them). Additionally, prior Special Master reports have found negligence on the part of local governments for beach run-over accidents. Steve Kahn, *Special Master's Final Report for HB 110*, May 21, 1987, and *Special Master's Final Report for HB 59*, May 21, 1987. Accordingly, I believe that a person driving on a beach,

especially where driving is generally prohibited, owes a high degree of care to sunbathers.

By failing to properly look for and avoid sunbathers as he proceeded to drive in the soft sand area of the beach, the Miami Beach police officer breached his duty to Stephanie and Sandrine Tunc. Stephanie was killed and Sandrine was severely injured as the result of the police officer's failure to properly look for and avoid them. Because the police officer was an employee of Miami-Dade County acting within the scope of his employment, Miami-Dade County is liable for the damages caused by its employee. See, e.g., *Stinson v. Prevatt*, 84 Fla. 416 (1922).

The evidence in this case was reviewed with recognition of the parties' settlement agreement. Settlements may be entered into for reasons unrelated to the actual merits of a claim or the validity of a defense. Consequently, settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature, its committees, or the Special Master. All such agreements, however, must be evaluated and can be given effect, at least at the Special Master's level, if they are found to be reasonable. As such, the Special Master finds that this settlement agreement is reasonable and was negotiated in good faith by the attorneys representing the parties, and should be given effect. Further, the settlement amount is within the ranges approved by the Legislature in claim bills for similar injuries.

ATTORNEYS FEES:

Section 768.28, F.S., limits attorneys' fees to 25 percent of a claimant's total recovery by way of any judgment or settlement obtained pursuant to §768.28, F.S. The attorney for the claimant has submitted documentation attesting to compliance with this limitation.

LOBBYING EXPENSES:

The agreement between the claimants' attorney and the claimants' lobbyist firm provides that the lobbying firm will be paid a 3 percent contingency fee.

PROCEDURAL HISTORY:

The Claimants filed a lawsuit against the City of Miami Beach on September 18, 2004. Shortly thereafter, the Claimants offered to settle their claim for \$1.5 million. The city accepted the settlement offer immediately.

FISCAL IMPACT:

The City of Miami Beach City Commission Resolution No. 2004-25486 authorized the payment of \$1.3 million from the city's Risk Management Fund to fund this claim bill. The moneys in the Risk Management Fund have been collected from the taxpayers of the City of Miami Beach.

COLLATERAL SOURCES:

Stephanie and Sandrine purchased travel insurance before their trip to the United States Sandrine received a £50,000 (\$80,000 to \$95,000 depending upon the exchange rate over the last year) death benefit from Stephanie's travel insurance.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that Senate Bill 34 be reported FAVORABLY.

Respectfully submitted,

Thomas Cibula  
Senate Special Master

cc: Senator Gwen Margolis  
Faye Blanton, Secretary of the Senate  
House Claims Committee