



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/16/07	SM	Fav/1 amendment
	CJ	

February 16, 2007

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 76 (2007)** – Senator Gwen Margolis
Relief of Sandrine Tunc and her parents, Claude and Martine Tunc

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$1.3 MILLION BASED ON A STIPULATED CONSENT JUDGMENT AGAINST THE CITY OF MIAMI BEACH AND FOR CLAIMANTS SANDRINE TUNC AND HER PARENTS, CLAUDE AND MARTINE TUNC, FOR SANDRINE'S INJURIES AND HER SISTER STEPHANIE'S DEATH CAUSED WHEN A MIAMI BEACH POLICE OFFICER RAN OVER THEM AS THEY WERE SUNBATHING ON SOUTH BEACH.

FINDINGS OF FACT:

A hearing was been held before a Senate Special Master in 2004 regarding this claim. Because my review of the record leads me to the same findings of fact and conclusions of law as previously reported, those findings and conclusions are set forth here with minor changes.

Stephanie and Sandrine Tunc were sisters, in their 20s, and French citizens residing in London, England. In February 2003, they were on vacation in the Miami area. On February 22, 2003, Stephanie and Sandrine were sunbathing on South Beach. They chose a spot in the soft sand area of the beach near a lifeguard stand. The beach was crowded and there were many other sunbathers nearby.

Their eyes were closed and Stephanie was listening to music on headphones.

While the sisters were sunbathing, Miami Beach Police officers were responding to a report that robbery suspects had fled the scene of the robbery on foot and were on South Beach. In search of the suspects, several Miami Beach Police vehicles were driving on the hard-packed area of the beach. They were not using their sirens or flashing lights. Stephanie and Sandrine could not see or hear the approaching police vehicles. One officer, George Varon, driving a Miami Beach Police Ford Explorer SUV, left the hard-packed sand area and traveled into the soft sand area. Moving at about 5 MPH, the vehicle's wheels traveled over the entire length of the Tunc sisters' bodies.

Stephanie died from her injuries within hours of the incident. Sandrine suffered multiple injuries, including laceration of the liver, contusion of a lung, fracture of the sacrum and coccyx, fracture of a rib, and many abrasions. Sandrine has been hospitalized many times since the incident and continues to suffer serious injuries she received. She also continues to suffer from the psychological trauma of her sister's death and receives regular psychotherapy for depression.

The City of Miami Beach Police Department had a procedural manual that directed police officers to drive "in a defensive manner" when responding to calls. An internal Police Department investigation concluded that Officer Varon had violated this directive. Following the Tunc incident, the City of Miami Beach implemented a new policy that established several new restrictions on the use of police cars and trucks on the beach, including a prohibition against driving on the soft sand area of the beach.

Sandrine was employed full-time before the incident, but claims to be too weak since the incident to work. Her medical bills in the United States totaled \$37,000 to \$40,000. The medical costs incurred in an attempt to save Stephanie's life were about \$45,000.

Stephanie and Sandrine purchased travel insurance for their trip to the United States. The policy paid a death benefit to Sandrine of £50,000 (about \$80,000, depending on the exchange rate).

LITIGATION HISTORY:

The Claimants filed a lawsuit against the City of Miami Beach in September 2004, in the circuit court for Dade County. The case was settled before trial based on a stipulation for judgment for \$1.5 million. The City paid Sandrine \$100,000 and it paid Stephanie's parents (as representatives of her estate) \$100,000, exhausting the sovereign immunity cap and leaving \$1.3 million to request through this claim bill.

CLAIMANTS' POSITION:

- The City of Miami Beach Police officer had a duty of due care in the operation of his vehicle. He breached that duty and the breach was the proximate cause of the injuries suffered by Stephanie and Sandrine. The City is liable as the officer's employer.
- The settlement amount is fair and reasonable.

THE CITY'S POSITION:

The City did not admit liability, but agreed to cooperate with Claimants in the claim bill process. The City also agreed to advise the Legislature that the claim bill is in the City's best interest.

CONCLUSIONS OF LAW:

The duty to use due care in driving a motor vehicle has been established by statute and case law. Subsection 316.1925(1), Florida Statutes, 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 this statute is limited on its face to streets or highways, the same duty of due care should apply to persons who drive on a beach where sunbathers are present. By failing to look for and avoid sunbathers as he drove on South Beach looking for robbery suspects, Officer Varon breached his duty of due care and violated the Police Department directive to drive in a defensive manner when responding to calls. He was acting within the scope and

course of his employment and, therefore, the City of Miami Beach shared his duty of care and his liability for the injuries to Claimants which were proximately caused by the breach of duty.

There are many reasons for entering into a settlement agreement other than the perceived merits of the claim and, therefore, I am not precluded from reviewing the terms of the parties' settlement agreement in this matter and determining whether they are reasonable under the totality of the circumstances. Based upon my review of the record, I believe the settlement amount is fair and reasonable.

However, the proposed bill suggests that the claim would be paid to Sandrine and her parents equally. Sandrine is more in need of any amount that is paid by the Legislature because she has continuing physical and psychological problems as a result of the incident. Therefore, I believe a fairer allocation of the any amount paid would be 75 percent to Sandrine and 25 percent to her parents. If the full amount of the claim is paid, Sandrine should receive \$975,000 and her parents should receive \$325,000.

ATTORNEY'S FEES AND LOBBYIST'S FEES:

In compliance with s. 768.28(8), F.S., Claimants' attorneys will limit their fees to 25 percent of any amount awarded by the Legislature. The lobbyist's fee will be an additional 3 percent of any award. If the claim is paid, Claimants' attorneys will receive a fee of \$325,000 and their lobbyists will receive a fee of \$39,000.

LEGISLATIVE HISTORY:

Claim bills were filed for these Claimants in 2004 and 2005. In 2004, the Senate Special Master recommended that the bill be reported favorably. No report was issued in 2005.

OTHER ISSUES:

The City Commission of the City of Miami Beach passed Resolution No. 2004-25486, authorizing the payment of \$1.3 million from the City's Risk Management Fund to pay this claim bill if it is passed. Moneys in the Risk Management Fund are derived from the taxpayers of Miami Beach. There are sufficient moneys in the fund to pay the claim. Payment of the claim would not adversely affect the operations of the City of Miami Beach.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 76 (2007) be reported FAVORABLY, as amended

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Gwen Margolis
Faye Blanton, Secretary of the Senate
House Committee on Constitution and Civil Law
Counsel of Record