



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/7/11	SM	Fav/1 amendment
3/29/11	RC	Fav/CS

February 7, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 324 (2011)** – Rules Committee and Senator Flores
Relief of James D. Feurtado

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$1,150,000, IN LOCAL FUNDS, AGAINST MIAMI-DADE COUNTY FOR THE NEGLIGENCE OF A BUS DRIVER WHO STRUCK AND SERIOUSLY INJURED JAMES FEURTADO AS HE WAS CROSSING A ROADWAY.

FINDINGS OF FACT:

On February 12, 2009, at approximately 7:50 p.m., the Claimant, James D. Feurtado, was jogging along Pisano Avenue in Coral Gables, Florida. The Claimant, a 37-year-old pharmaceutical sales representative who was in excellent health, was proceeding eastbound toward University Drive, which runs from north to south and intersects Pisano Avenue at a right angle. The intersection of Pisano Avenue and University Drive is a four-way stop controlled by posted stop signs.

When he reached the intersection described above, the Claimant used appropriate caution and began to lawfully cross University Drive. At the same time, a Miami-Dade County bus operated by Mr. Donnell Rollins approached the intersection headed westbound on Pisano Avenue at a rate of speed between 16 and 24 MPH. Although Mr. Rollins slowed the bus to approximately 6.6 MPH, he ignored the posted stop sign and failed to bring the vehicle to rest. As

Mr. Rollins made a right turn onto University Drive, the bus accelerated to 10.1 MPH and struck the Claimant, who was slightly more than halfway through the intersection (footage from the bus' onboard video system reveals that Mr. Rollins' attention was diverted to the left as he made the right turn).

Shortly thereafter, Officer Eduardo Cabral of the Coral Gables Police Department arrived at the scene and initiated an accident investigation. Officer Cabral determined that Mr. Rollins had violated s. 316.123(2)(a), Florida Statutes, by running the stop sign, and was therefore solely at fault.

The Claimant, whose face and skull had been crushed by the impact with the bus, was rushed to the Jackson Memorial Hospital Ryder Trauma Unit. Upon the Claimant's arrival at the hospital, an examination revealed multiple injuries to his brain, which included a large hematoma in the left hemisphere, a subarachnoid hemorrhage, and several hemorrhagic contusions. In addition, the Claimant sustained a right maxillary sinus fracture.

During surgery, the Claimant underwent a left frontoparietal craniectomy (i.e., a portion of the Claimant's skull was removed) and the placement of a drain. Unfortunately, the Claimant developed hydrocephalus following his first surgery, which required the placement of a shunt during a later surgical procedure. Although the Claimant's physicians were able to replace a portion of the Claimant's skull approximately eight months after the accident (the skull was kept frozen), a visible defect is still present.

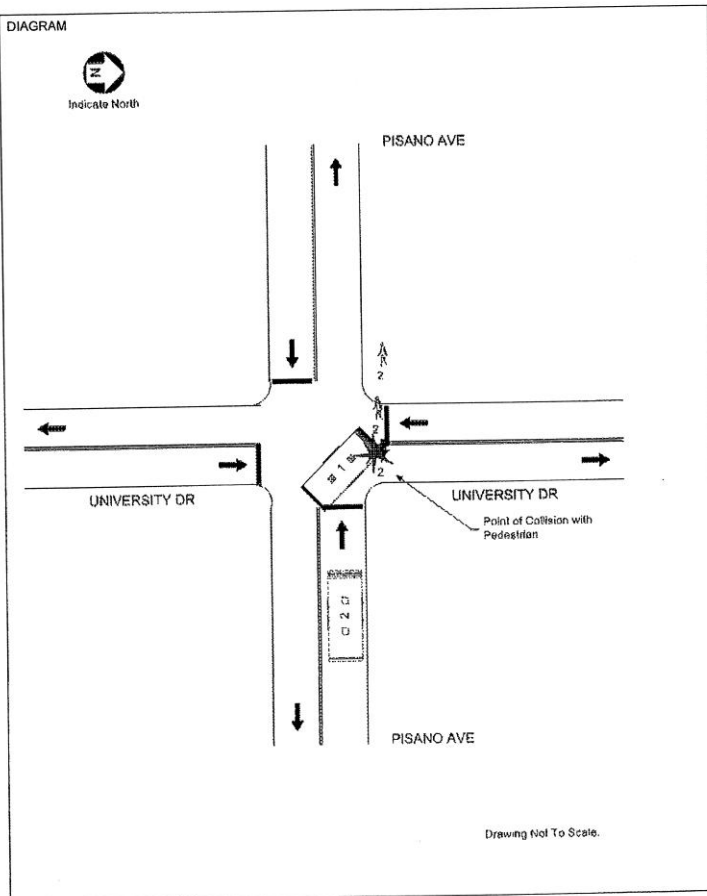
At the time of the final hearing before the undersigned, the Claimant remains with permanent mild to moderate traumatic brain damage as a result of the collision. In addition, the Claimant continues to suffer from deafness in one ear, vertigo, headaches, scarring, and mild psychiatric issues.

Although the Claimant recently transitioned back to work (in the same pharmaceutical sales position he held prior to the accident), he is finding it difficult to perform his duties as efficiently as he did prior to his brain injury. In particular, the Claimant's ability to remember pertinent information has been impaired, and he often loses his train of thought when speaking with customers. In addition, the Claimant is much

less able to learn new product information and keep himself organized. Further, the Claimant's deafness in one ear makes it nearly impossible for him to successfully interact in social situations with physicians and other customers, which is an essential component of pharmaceutical sales.

The total present value of the Claimant's economic damages from the collision is \$1,823,468. This amount is comprised of future and past lost earning capacity of \$508,083, anticipated future medical expenses of \$1,176,840, and past medical expenses of \$138,545.

DIAGRAM:



LITIGATION HISTORY:

On November 13, 2009, in the circuit court for the Eleventh Judicial Circuit, the Claimant filed a complaint for damages against Miami-Dade County. The complaint alleged that Miami-Dade County was vicariously liable for the injuries the Claimant sustained as a result of Mr. Rollins' negligent operation of a city bus.

On November 3, 2009, the parties successfully reached a mediated settlement in the amount of \$1,250,000. Pursuant to the terms of the settlement, Miami-Dade County agreed to tender \$100,000 to the Claimant upon the approval of the settlement by the Board of County Commissioners. Miami-Dade County further agreed not to oppose a claim bill in the amount of \$1,150,000.

Following the approval of the settlement agreement by the Board of County Commissioners, Miami-Dade County tendered \$100,000 to the Claimant. After the deduction of attorney's fees, costs, and the partial satisfaction of a medical lien, the Claimant's net proceeds totaled \$32,305.29.

CLAIMANT'S POSITION:

Miami-Dade County is vicariously liable for the negligence of its employee, who breached the duty of a motorist to use reasonable care toward a pedestrian by running a stop sign and striking the Claimant.

RESPONDENT'S POSITION:

Miami-Dade County supports this claim bill.

CONCLUSIONS OF LAW:

Mr. Rollins had a duty to operate the bus at all times with consideration for the safety of pedestrians and other drivers. Pedigo v. Smith, 395 So. 2d 615, 616 (Fla. 5th DCA 1981). While "the rights of motorists and pedestrians are reciprocal," the motorist "must exercise ordinary reasonable and due care toward a pedestrian." Edwards v. Donaldson, 103 So. 2d 256, 259 (Fla. 2d DCA 1958).

In this case, Mr. Rollins was required to bring the bus to a complete stop in at the intersection of University Drive and Pisano Avenue, in accordance with the posted stop sign. See § 316.123(2)(a), Fla. Stat. (2009) ("[E]very driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at a clearly marked stop line"); see also § 316.130(15), Fla. Stat. (2009) ("[E]very driver of a vehicle shall exercise due care to avoid colliding with any

pedestrian"). By failing to come to a complete stop, Mr. Rollins breached the duty to use reasonable care for the safety of the Claimant. Mr. Rollins' negligence was the direct and proximate cause of the Claimant's injuries.

Miami-Dade County, as Mr. Rollins' employer, is liable for his negligent act. Mercury Motors Express v. Smith, 393 So. 2d 545, 549 (Fla. 1981) (holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment); see also Aurbach v. Gallina, 753 So. 2d 60, 62 (Fla. 2000) (holding that the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another").

Finally, the undersigned concludes that given the nature of the Claimant's injuries and his continuing medical needs, the sum Miami-Dade County has agreed to pay the Claimant (\$1.25 million, minus the \$100,000 already tendered) is both reasonable and responsible.

LEGISLATIVE HISTORY:

This is the first claim bill presented to the Senate in this matter.

ATTORNEYS FEES:

The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), Florida Statutes. Lobbyist's fees are included with the attorney's fees.

SOURCE OF FUNDS:

If Senate Bill 324 is approved, Miami-Dade Transit operating funds will be used to satisfy the claim.

SPECIAL ISSUES:

Although the Claimant was 37 years old at the time of the accident, Senate Bill 324 erroneously provides that the Claimant was 38 years old. Accordingly, the bill should be amended to reflect the Claimant's correct age.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 324 (2011) be reported FAVORABLY, as amended.

Respectfully submitted,

Edward T. Bauer
Senate Special Master

cc: Senator Anitere Flores
R. Philip Twogood, Secretary of the Senate
Counsel of Record

CS by Rules:

Language in the title is amended to change the age of James D. Fuertado, III, from 38 to “37 at the time of the accident.”