



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
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December 31, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 84** – Senator Soto
Relief of Sharon Robinson and Mark Robinson

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED PERSONAL INJURY CLAIM FOR \$3 MILLION IN GENERAL REVENUE FUNDS ARISING OUT OF AN COLLISION IN KISSIMMEE, FLORIDA IN WHICH A BUS STRUCK TWO PEDESTRIANS, MATTHEW ROBINSON AND MARK ROBINSON. MATTHEW ROBINSON WAS KILLED IN THE COLLISION.

FINDINGS OF FACT:

This claims bill arises from an incident that took place on November 4, 2010, at the intersection of Dyer Boulevard and Columbia Avenue in Kissimmee, Florida. Between approximately 6 P.M. and 7 P.M. a Lynx public transportation bus traveling north on Dyer Boulevard stopped in the left turn lane at the intersection of Columbia Avenue. Upon the light turning green the bus, driven by Fernando Vega, began turning left onto Columbia Avenue.

Concurrently, brothers Matthew Robinson and Mark Robinson arrived at the crosswalk at the southwest corner of the intersection of Dyer Boulevard and Columbia Avenue. Upon receiving a signal at the crosswalk indicating that pedestrians may walk, Matthew and Mark Robinson entered the crosswalk and began walking north to cross Columbia Avenue. As Matthew and Mark Robinson were walking in the crosswalk,

the Lynx bus struck them. Matthew Robinson was killed, coming to rest near the left rear tires of the bus. Mark Robinson survived the collision, coming to rest on the curb at the north end of the crosswalk, just past Columbia Avenue.

Mark Robinson began calling for help after the collision. A pedestrian, Harold Perez, allowed Mark to use his cell phone to call his mother, Sharon Robinson. Mr. Perez then called 911 emergency services to report the accident. Sharon Robinson left her nearby apartment and began walking to the accident scene.

The Kissimmee Police Department and Kissimmee Fire Department arrived at the accident scene shortly before 7 P.M. Matthew Robinson was pronounced dead at 6:55 P.M. by paramedic Eric Gentry of the Kissimmee Fire Department. Officer Charles Conrad of the Kissimmee Police Department responded at the accident scene and created the accident report. Officer Conrad's report found that a contributing cause of the accident was the failure of bus driver Fernando Vega to yield right-of-way.

An autopsy of Matthew Robinson was performed by Associate Medical Examiner Joshua D. Stephany, MD, of the Office of the Medical Examiner, District Nine in Orlando, Florida. The autopsy results indicate that Matthew Robinson died due to blunt force trauma injuries, primarily to his head, neck, and torso. His injuries included severe cranial and facial fractures.

Mark Robinson was immediately taken from the accident scene to the emergency room at the Arnold Palmer Hospital For Children in Orlando, Florida. Mark Robinson was treated for lower back pain that was identified as a spondylolisthesis (forward displacement) of the lumbar spine at L5-S1. The lumbar spine injury was treated without an operation. Mark Robinson was also treated for a right knee sprain. Medical records reviewed by the undersigned indicate that the forward displacement of Mark Robinson's lumbar spine has remained stable as of January 2014 and that his right knee has no injuries related to the accident.

Both Sharon Robinson and Mark Robinson have been diagnosed as suffering from Post-Traumatic Stress Disorder (PTSD). Sharon Robinson testified at the Special Master Hearing on November 7, 2014, that both she and her son

Mark have struggled emotionally since the death of Mark. Neither is currently receiving regular treatment for PTSD. Documentation provided by the Claimant indicates that Sharon Robinson and Mark Robinson have incurred \$27,137.90 in medical bills.

The undersigned reviewed an earning capacity assessment of Matthew Robinson performed by Jerry Adato of Adato Vocational Services, Inc. Mr. Adato opined that Matthew Robinson's lifetime lost earnings would be \$2,167,514.80 over the course of 40 years of work.

On July 16, 2014, a Consent Judgment was entered between Sharon Robinson and the Central Florida Regional Transit Authority. The Consent Judgment awarded \$3.2 million to the Sharon Robinson, individually and as the personal representative of the estate of Matthew Robinson, and as the Guardian of Mark Robinson. The Consent Judgment findings of fact included that Fernando Vega operated the Lynx bus in a negligent manner, violating s. 316.1925, F.S., while in the course and scope of his employment.

The Central Florida Regional Transit Authority paid \$200,000 in damages, which is the limit of the sovereign immunity exception in s. 768.28(5), F.S. Sharon Robinson agreed to seek the remaining \$3 million through the legislative claims process. Lynx also agreed to support the payment of \$3 million via a claims bill. Counsel for Lynx represented to the Special Master that the Central Florida Regional Transit Authority has sufficient reserves to pay the claim, if SB 84 is passed by the Legislature.

CLAIMANT'S ARGUMENTS:

Claimant asserts that the Central Florida Regional Transit Authority is responsible for the negligence of its bus driver, Fernando Vega, whose negligent operation of a Lynx bus was the sole cause of the death of Matthew Robinson and permanent injury to Mark Robinson.

RESPONDENT'S ARGUMENTS:

Respondent agrees that the Central Florida Regional Transit Authority is responsible for the negligence of its bus driver, Fernando Vega, whose negligent operation of a Lynx bus was the sole cause of the death of Matthew Robinson and permanent injury to Mark Robinson.

Respondent also supports the payment of \$3,000,000 to the claimants pursuant to the passage of a claim bill.

CONCLUSIONS OF LAW:

As provided in s. 768.28, F.S., sovereign immunity shields the Central Florida Regional Transit Authority against tort liability in excess of \$200,000 per occurrence. Unless a claim bill is enacted, Sharon Robinson and Mark Robinson will not realize the full benefit of the settlement agreement they have made with the Central Florida Regional Transit Authority.

Fernando Vega breached his 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). Mr. Vega violated s. 316.130(7)(a), F.S., which requires the driver of a vehicle at an intersection that has a traffic control signal in place to stop before entering a crosswalk and allow a pedestrian with a permitted signal to cross a roadway. This negligent act was the direct cause of the accident that resulted in the death of Matthew Robinson.

The Central Florida Regional Transit Authority, as the employer of Fernando Vega, is liable for his negligent act. An employer is vicariously liable for an employee's negligent acts if the employee was acting to further the employer's interests within the course and scope of his employment. See Mercury Motors Express v. Smith, 393 So.2d 545, 549 (Fla. 1981). Florida's dangerous instrumentality imposes "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." Aurbach v. Gallina, 753 So.2d 60, 62 (Fla. 2000). Motor vehicles have been considered dangerous instrumentalities under Florida law for nearly a century. See Anderson v. S. Cotton Oil Co., 74 So. 975, 978 (Fla.1917).

ATTORNEYS FEES:

The Claimants' attorneys executed an affidavit stating that the Claimant retained their firm on a contingent fee based upon 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), F.S.

SPECIAL ISSUES:

The father of Matthew Robinson is Warren Robinson, who is not named in the claim bill. Warren Robinson was not a named party to the litigation between the Claimants and Respondent, but did receive a disbursement of a portion of the \$200,000 settlement payment from the Respondent.

Sharon Robinson and Claimant's counsel state that Warren Robinson was estranged from Matthew and Mark and does not regularly interact with Mark. The 4-year statute of limitations for Warren Robinson to bring a negligence based claim based on the accident has passed.

The claim bill contemplates a single lump sum payment to Sharon Robinson, individually, as guardian of Mark Robinson, and as personal representative of the Estate of Matthew Robinson. Both Mark Robinson and Sharon Robinson suffered from the loss of Matthew Robinson. Accordingly, I recommend that the claim bill specifically apportion part of the recovery to Mark Robinson, to be held in trust because he is a minor. Counsel for the Claimant recommends an amendment that will apportion the \$3,000,000 claim award as follows:

Sharon Robinson as the Personal Representative of the estate of Matthew Robinson	\$58,529.34
Sharon Robinson individually as mother	\$821,838.99
Warren Robinson individually as father	\$61,250.00
Mark Robinson (to be placed in a trust account, guardianship, or structure to provide income)	\$1,308,481.67
Attorney fees and lobbying costs	\$749,900.00

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 84 (2015) be reported FAVORABLY, with amendment.

Respectfully submitted,

James Knudson
Senate Special Master

cc: Debbie Brown, Secretary of the Senate