



**STORAGE NAME:** h6519.CJC

**DATE:** 3/16/2017

March 16, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran  
Speaker, The Florida House of Representatives  
Suite 420, The Capitol  
Tallahassee, Florida 32399-1300

Re: HB 6519 - Representative Cortes  
Relief/Amie Draiemann O'Brien, Hailey Morgan Stephenson, and Christian Darby  
Stephenson II/Department of Transportation

**THIS IS A CLAIM FOR \$1,116,940 PAYABLE TO AMIE STEPHENSON FOR NEGLIGENCE OF THE DEPARTMENT OF TRANSPORTATION (DOT) IN FAILING TO MAINTAIN A DRAIN. THE CLAIM IS SUPPORTED BY A JURY VERDICT WHICH ASSESSED 36% OF THE FAULT TO DOT FOR THE DEATH OF CHRISTIAN DARBY STEPHENSON WHILE DRIVING HIS TANKER TRUCK OVER THE HART BRIDGE EXPRESSWAY IN JACKSONVILLE.**

FINDING OF FACT:

**The Road**

The Hart Bridge Expressway is a four-lane, divided roadway which makes a sharp curve to the left at the base of the bridge in the eastbound lanes. There is no shoulder on the left side of the roadway, and the eastbound and westbound lanes are separated by a concrete median. To the right is an exit for Atlantic Boulevard (State Road 10). Between the two expressway lanes and the exit is an area called the "gore," which is a striped 'safety zone' which was formerly used for a toll plaza. The toll booth has been removed and the area is flat and triangular-shaped with stripes.

The drain in question is a curb inlet located in the curve on the

left side of the left lane. The drain is part of a catch basin covered with a metal grate that is approximately 3 feet long, 18 – 24 inches wide, and 6 inches thick. Below the grate is a basin that is approximately 5 feet deep. A sump pump is located approximately 18-24 inches from the bottom of the basin, which drains into an 18-inch pipe. This drain is one of 11,786 maintained by the Florida Department of Transportation (DOT) in the Jacksonville maintenance area.

The particular drain in question was clogged, which caused ponding of water in the left hand lane of the east bound lane of the expressway. The pond measured 269 feet long, 11 feet wide, and 8 inches deep at the curb when measured by the Jacksonville Sheriff's Officer who investigated the crash. The Officer also reported that the pond was larger at the time of the crash and had receded prior to his investigation. The ponding water could not be seen by vehicles traveling down the bridge.

Alex Slaughter, the DOT maintenance officer responsible for clearing the clog, testified that it took a vacuum truck and three men two hours to remove the debris in the basin. Mr. Slaughter believed that the debris had been in the basin for approximately 6-8 months. He also found that the drain pipe was obstructed by a large piece of rubberized plastic which he couldn't describe and which was lost prior to trial.

DOT stipulates that it has an operational level duty to maintain the expressway and the drain. This duty was implemented by having a maintenance officer on call 24 hours a day to respond to maintenance requests from law enforcement, citizens, and other DOT employees. DOT also monitors accident reports to ascertain whether maintenance is needed at particular accident sites (either as a cause of an accident or as a result of an accident.) No evidence was presented that DOT had actual knowledge of this clogged drain prior to the accident.

Evidence was presented, however, that DOT should have known about the ponding due to the clogged drain at base of the Hart Bridge Expressway. There had been two accidents at the same site involving vehicles that hydroplaned in a pool of water at the same spot (one in July 2000, and one in June 1999). Witness testimony was also submitted attesting that water pooled at the spot in question at the base of the Hart Bridge if it rained for more than 30-45 minutes.

### **The Accident**

On August 12, 2000, Christian Darby Stephenson was traveling in his tanker truck across the Hart Bridge Expressway at approximately 6 p.m. He worked for Infinger Transportation and had just filled the tanker with 8,799 gallons of fuel. It had been raining and the road was wet.

Ahead of Mr. Stephenson, a blue Saturn driven by Shana

Williams drove down the bridge, into the ponding water and hydroplaned. She hit the left guardrail and then pulled into the safety zone, or gore. Behind her a Channel 12 news truck driven by Doug Lockwood also drove into the ponding water, hydroplaned, hit the guardrail, and pulled into the safety zone and stopped. Lieutenant Vanaman was alerted to the two accidents, and arrived at the scene and pulled up in the safety zone. The next car over the bridge was a black jeep driven by Justin Keiffer, with Christian Stephenson's tanker truck behind the jeep. The jeep hit the ponding water in the left lane and hydroplaned but did not hit the wall. The jeep pulled through the right lane attempting to get into the safety zone.

At this point, Christian Stephenson was faced with running into the jeep that was changing lanes in front of him, running over the cars and people parked in the safety zone, or trying to make the exit onto Atlantic Boulevard. He chose the latter.

In an effort to make the exit, Christian Stephenson swerved suddenly to the right, skidded across the safety zone, swerved back to the left to avoid leaving the roadway, jackknifed, struck the guardrail, overturned, and exploded. Christian Stephenson died in the explosion.

The posted speed limit on the Hart Bridge Expressway was 45 miles per hour. Officer Vanaman, who was the officer stopped in the safety zone and who witnessed this accident, testified that the tanker was going 55-60 m.p.h., and traveling way too fast for the rainy conditions. Mr. Lockwood who was in the Channel 12 vehicle in the safety zone, testified that the tanker was going 60 m.p.h. A witness who was traveling behind Mr. Stephenson, Mr. Wagner, testified that Stephenson was going between 55-60 m.p.h. The experts testified that Stephenson was traveling anywhere ranging from a low of 46 m.p.h. (claimant's expert, Charles Benedict) to a high of 70 m.p.h. (respondent's expert, Richard Ryabik). In any case, it is clear that Stephenson's speed exceeded both the posted speed limit of 45 m.p.h. and a safe speed based on the rainy conditions coming down a bridge.

There was also conflicting testimony offered by the respondent that Stephenson was following the jeep too closely. However, the driver of the jeep testified that he wasn't aware that any vehicle was behind him, much less a 78,000 pound tanker truck.

#### **The Claimant**

At the time of the accident, Christian Stephenson was 29 years old and had been married to Amie for 5 years. Together they had a two-year-old daughter, Hailey, and Amie was 8 months pregnant with their son, Christian. He was working for Infinger Transportation, making short hauls in the tanker truck, and had been employed by Infinger for two years. Amie Stephenson

remarried five years after the accident, and has a daughter with her new husband, Kevin O'Brien. The Jacksonville Times Union newspaper hailed Mr. Stephenson a hero for preventing his tanker from hitting and likely killing the eight other people at the scene.

LITIGATION HISTORY:

A wrongful death suit was filed in the Fourth Circuit in and for Duval County. In addition to DOT, the following entities were sued:

- Multimedia Holdings Corp. d/b/a WTLV-TV and Doug Lockwood (the driver with Channel 12). Summary judgment was entered in favor of Multimedia and Lockwood, and fees and costs (\$5,148) were assessed against the plaintiff, which order was appealed. The order was affirmed on appeal and remains outstanding.
- Shana Williams (driver of the first Saturn that parked in the safety zone) and Peggy Hicks (owner of the Williams' vehicle). Summary judgment was entered in favor of Williams and Hicks. A final judgment was entered awarding fees (\$21,599) and costs (\$1,887.07) to Williams and Hicks, which order was appealed and affirmed on appeal. The amount remains outstanding.
- City of Jacksonville. Summary judgment was entered for the City of Jacksonville, who settled after judgment for \$10,000.
- Jason Keiffer (driver of the jeep in front of the Stephenson tanker). Summary judgment was entered in favor of Keiffer, who settled after the judgment for \$10,000.

The suit proceeded against DOT. After a two-week trial, the jury assigned 64% of the negligence to Christian Stephenson and 36% of the negligence to DOT. The jury determined total damages to be \$3,589,000.

Final judgment was entered against DOT for \$1,292,040 on April 21, 2005. Plaintiff's motions for new trial and mistrial were denied. The DOT paid claimant \$175,100 pursuant to the statutory caps on tort liability.

CLAIMANT'S POSITION:

Claimant asserts DOT was negligent by failing to keep the drainage basin free of debris, which caused water to overflow onto the road creating an unsafe condition that led to Mr. Stephenson's death. Additionally, DOT had at least constructive notice of the dangerous condition created by the clogged drainage basin as a result of prior crashes at the location caused by standing water.

RESPONDENT'S POSITION:

DOT did not have actual notice of the clogged drainage basin or the resulting dangerous roadway condition. Additionally, DOT asserts the primary cause of the crash that killed Mr. Stephenson was his own negligence, namely his excessive speed for the wet road conditions that existed at the time of

the crash.

CONCLUSION OF LAW:

Whether or not there is a jury verdict or a settlement agreement every claim bill against the State must be reviewed de novo against the four standard elements of negligence.

**Duty**

The Florida Department of Transportation was responsible for maintaining the Hart Bridge Expressway drain at the accident site, which responsibility is an operational level duty to which immunity does not apply.<sup>1</sup> No evidence was presented showing that DOT had actual knowledge of the clogged drain. However, I find that sufficient evidence was presented that DOT should have known that this drain was clogged. At trial, several individuals testified that they traveled the area regularly and often saw ponding of water in the area at issue, and there were at least two hydroplaning accidents at the same spot within one year of the accident at issue.

**Breach**

DOT breached their duty to maintain the road by failing to maintain the drain and allowing it to become so clogged that it created a substantial pond of water in the roadway.

**Causation**

While there were numerous factors that contributed to the accident, it is clear that but for the ponding of the water Stephenson's tanker truck would not have made the evasive actions that ultimately led to the truck's explosion and Stephenson's death.

It is also clear that Stephenson's own actions also contributed to his death. There was undisputed evidence that Stephenson was exceeding the posted speed limit in rainy, wet conditions, in violation of section 316.183(1), F.S.:

No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event, speed shall be controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance or object on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

Even though there was no expert testimony presented that speed was a causative factor, the jury appeared to apply

---

<sup>1</sup> *Capo v. State Dept. of Transportation*, 642 So.2d 37 (Fla. 3rd DCA 1994).

reason and common sense to the evidence presented, and I find no evidence sufficient to deviate from the jury's assessment.

The determination of the jury that Stephenson was 64% at fault and that DOT was 36% at fault is reasonable and adopted as a conclusion of law.

### **Damages**

The jury determined damages as follows:

• Damages to the estate	\$ 1,300,000
• Damages to Amie Stephenson	763,000
• Damages to Hailey Stephenson	1,000,000
• Damages to Christian Stephenson, II	<u>526,000</u>
TOTAL	\$3,589,000

The final judgment reflected a reduction of the total amount by 64%, and awarded \$1,292,040, plus interest, to Amie Stephenson. Expert testimony presented indicated that \$1,829,700 would compensate Mrs. Stephenson for present and future economic losses. Thus, I find that the amount awarded in the final judgment is reasonable in light of all the circumstances.

### COLLATERAL SOURCES:

Mrs. Stephenson has received the following amounts:

- \$104,581.34 in workers compensation disability payments and funeral expenses. Gates McDonald has asserted a lien on any recovery
- \$5,000 in PIP death benefits from State Farm
- \$100,000 uninsured motorist payment from State Farm
- \$659 per month for Amie and each of the 2 children in Social Security payments. Amie's payments ceased upon her remarriage, and the children's payments increased to \$917 per month until they reach 18
- \$50,000 in personal life insurance
- \$25,000 from Mr. Stephenson's employer's life insurance
- \$22,000 in donations from the St. Vincent's hospital foundation
- \$10,000 in settlement with Jason Keiffer
- \$10,000 in settlement with City of Jacksonville

### ATTORNEY'S/ LOBBYING FEES:

Claimant's attorney has agreed to waive his 25% fee. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees. Outstanding costs total \$223,388.00.

### RECOMMENDATIONS:

Accordingly, I respectfully recommend that House Bill 6519 be reported **FAVORABLY**.

Respectfully submitted,

**PARKER AZIZ**

House Special Master

cc: Representative Cortes, B., House Sponsor  
Senator Artilles, Senate Sponsor  
James Knudson, Senate Special Master