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DATE: 1/30/18 1/30/2018

January 30, 2018

SPECIAL MASTER'S FINAL REPORT

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

Re: CS/HB 6543 - Representative Perez
Relief/Estate of Eric Scott Tenner/Miami-Dade County

THIS IS A CLAIM FOR \$1.45 MILLION BASED ON A SETTLEMENT AGREEMENT BETWEEN THE ESTATE OF ERIC SCOTT TENNER AND MIAMI-DADE COUNTY, RELATING TO THE WRONGFUL DEATH OF ERIC SCOTT TENNER BECAUSE OF THE COUNTY'S NEGLIGENCE. THE COUNTY HAS PAID \$300,000 PURSUANT TO S. 768.28, F.S.

FINDINGS OF FACT:

This matter arises out of an accident that occurred in the early morning hours of October 8, 2014, in unincorporated Miami-Dade County on a road known as the "Busway." The portion of the Busway where the accident occurred is a two-lane road open only to emergency vehicles and buses, running parallel to U.S. Highway 1. It is paved, straight, and level. The speed limit is 45 miles per hour, and there are posted signs prohibiting bicycles on the Busway. There is a designated path for pedestrians and bicycles on the west side of the Busway. At the time of the accident, it was still dark, with operative street lights on the Busway. The weather was warm, clear, and dry.

Eric Scott Tenner, a husband and father of two, was riding his bicycle on the Busway in the early morning hours of October 8, 2014, when he was run over from behind by a transit bus

owned and operated by Miami-Dade County. Mr. Tenner was training for a triathlon. The driver of the bus, Jose Sequeira, did not stop after hitting Mr. Tenner but instead continued on his bus route. Mr. Sequeira said in a written statement that he did not know he had hit a bicycle. A bus driver trailing behind Mr. Sequeira's bus saw the accident and radioed Mr. Sequeira to return to the scene.

Several people witnessed the accident, including Christopher Hanna, a high school student and passenger on Mr. Sequeira's bus. Mr. Hanna stated that he saw a bicyclist with blinking lights on the roadway. He said that when the collision occurred, other passengers acknowledged a loud sound and a "jolt," but Mr. Sequeira continued on his route. According to Mr. Hanna, Mr. Sequeira looked to the right, bowed his head, and looked shocked. Mr. Hanna stated he later exited the bus and ran back to the scene of the accident to render aid, while Mr. Sequeira continued on his bus route.

Also witnessing the accident was Miguel Mora, the driver of the bus travelling behind Mr. Sequeira's bus. Mr. Mora stated that when there was a distance of about 100 feet between his bus and the bus ahead, he saw a bicyclist "tumble out" from in front of the bus ahead. Mr. Mora stated he stopped his bus, exited, and went to check on Mr. Tenner, who was in a fetal position in the grass, convulsing with his eyes open.

Mike Santiago, another witness, was a passenger on Mr. Mora's bus. Mr. Santiago stated that he had an unobstructed view out of the front window of the bus. Mr. Santiago saw a bicyclist travelling north on the roadway, just inside the white line, with a visible blinking red light on the bicycle's rear. Mr. Santiago stated he saw the bus up ahead strike Mr. Tenner, sending Mr. Tenner off the roadway. Mr. Santiago stated that the bus he was on stopped, and he exited immediately and ran to check on Mr. Tenner, while Mr. Sequeira's bus continued on its way.

A Miami-Dade police officer arrived at the scene of the accident. He saw Mr. Tenner lying in a grassy area east of the Busway, still wearing his helmet. The front and rear lights on his bicycle were still flashing.

Mr. Tenner was transported to Kendall Regional Hospital Trauma Center for treatment. Three days later, Mr. Tenner died as a result of blunt force trauma due to the accident. He left behind his wife, Maria Tenner, and two minor sons, then 8 and 9 years old.

Mr. Sequeira was arrested and charged with leaving the scene of an accident, in violation of s. 316.027(2), F.S. The charge was later dropped.

LITIGATION HISTORY:

On May 22, 2015, Mr. Tenner's estate ("Claimant") filed suit against Miami-Dade County ("Respondent") and Jose Sequeira individually. Trial was set for July 10, 2017. About a month before trial, the case was successfully mediated, with Respondent agreeing to pay Claimant a total of \$1.75 million. Pursuant to the statutory limit, Respondent paid \$300,000, leaving an excess amount of \$1.45 million, which Claimant seeks to recover by this claim bill.

CLAIMANT'S POSITION:

Claimant seeks to recover the remainder of the settlement against Miami-Dade County in the amount of \$1,450,000. Claimant concedes that the lane in which Mr. Tenner was biking at the time of his death was a lane reserved for buses and emergency vehicles only. However, Claimant argues that it was accepted practice that the lane was used for training by competitive cyclists. Claimant argues that this accepted practice of cyclists using the Busway is shown by a video recording of the incident, where a police officer can be seen passing Mr. Tenner with apparent tolerance of Mr. Tenner's use of the Busway. Claimant argues that Respondent was liable for the actions of its driver, Mr. Sequeira, in negligently operating the bus and causing Mr. Tenner's death. Claimant argues that Mr. Tenner was operating his bicycle with proper lights and clothing and should have been highly visible to Mr. Sequeira.

Claimant argues that if the case had gone to trial and a jury had found Mr. Tenner even 50 percent responsible for the accident, economic damages alone would still exceed the amount sought in the claim bill.

RESPONDENT'S POSITION:

Respondent states the Busway upon which Mr. Tenner was riding his bicycle at the time of his death was a dedicated road for buses and emergency vehicles, and that the Busway had numerous signs explicitly prohibiting bicycles. Respondent indicates that this is an agreed claim bill and that the facts are mainly undisputed.

CONCLUSIONS OF LAW:

Regardless of whether there is a jury verdict or settlement, each claim bill is reviewed *de novo* in light of the elements of negligence.

Duty & Breach

The driver of a vehicle has a duty to use reasonable care to prevent injuring persons within the vehicle's path.¹ On the morning of the accident, Mr. Tenner was illegally biking on the Busway. Nonetheless, Mr. Sequeira, as the driver of the county bus, had a duty to use reasonable care to avoid a collision with Mr. Tenner.

¹ See *Gowdy v. Bell*, 993 So. 2d 585, 586 (Fla. 1st DCA 2008) (where a vehicle hit a pedestrian who had erratically staggered out onto the roadway directly into the vehicle's path, the driver of the vehicle still had a duty to "use reasonable care, in light of the attendant circumstances, to prevent injury to persons within the vehicle's path").

The evidence shows that on the morning of the accident, Mr. Sequeira should have seen Mr. Tenner's bicycle, which had a flashing light on the back of it. I find that Mr. Sequeira breached his duty to Mr. Tenner when his bus struck Mr. Tenner from behind. Mr. Sequeira was acting within the scope of employment with Miami-Dade County; thus, Respondent is liable for Mr. Sequeira's actions under the doctrine of respondeat superior.

Causation

Mr. Tenner and Respondent each bear some of the blame for the accident. Mr. Tenner was illegally riding a bicycle in a lane dedicated to buses and emergency vehicles, and Respondent's bus driver unreasonably and negligently struck Mr. Tenner.

Based on the evidence presented in the record and at the Special Master hearing, I find Respondent was at least 50 percent at fault for the accident. Even though the dedicated Busway explicitly prohibited bicycles, the record indicates this prohibition was not consistently enforced. Moreover, in view of witness statements that Mr. Tenner's bicycle had a flashing light on its rear and was visible, Mr. Sequeira should have seen Mr. Tenner's bicycle in front of him on the road.

Damages

Mr. Tenner is survived by his wife of eighteen years, Maria Tenner, and two minor sons. Mr. Tenner's death has clearly had a devastating impact on Mrs. Tenner, and it has also affected their sons. Mrs. Tenner is now a single mother who is trying to fulfill the role of both mother and father for her sons.

Mrs. Tenner testified at the Special Master hearing that her sons require a good deal of therapy. Her older son is still unable to say his father's name or get out of the car at the cemetery to visit his father's grave. Her younger son will not go on any school field trips because he would be required to get on a bus.

Claimant's expert economist, Dr. Fred Raffa, calculated past and future economic losses at around \$3.5 million, based on Mr. Tenner's remaining life span and earning capacity. At the time of the accident, Mr. Tenner was 45 years old and employed with ADP, a global human resources management company. He was making a base salary of about \$177,410 annually plus \$8,973 from an S-Corporation. The \$3.5 million amount was uncontested by Respondent and does not account for the emotional losses suffered by Mrs. Tenner and her sons.

The negotiated total amount of \$1.75 million is reasonable and reflects the weaknesses and strengths of each party's respective positions. Even if Mr. Tenner were 50 percent at fault for the accident, the economic damages alone would be

roughly the amount Claimant seeks. Therefore, I find that the amount sought by Claimant is reasonable.²

ATTORNEY'S/
LOBBYING FEES:

Claimant's attorneys will limit their fees to 25 percent of any amount awarded by the Legislature. Out of these fees, a lobbyist fee of 5 percent of the total award will be paid. Outstanding costs are \$2,452.64.

COLLATERAL SOURCES:

Mr. Tenner had a \$1,000,000 life insurance policy that was paid upon his death. This amount was discussed at mediation in the context of the negotiated settlement.

RESPONDENT'S ABILITY
TO PAY:

Any funds awarded by this claim bill would be paid from Respondent's general revenue fund. Respondent states it has the monies for this claim bill available in its risk management fund.

LEGISLATIVE HISTORY:

This is the first time this claim bill has been presented to the Legislature.

RECOMMENDATION:

I recommend that Committee Substitute for House Bill 6543 be reported **FAVORABLY**.

Respectfully submitted,

JORDAN JONES

House Special Master

cc: Representative Perez, House Sponsor
Senator Garcia, Senate Sponsor
Dan Looke, Senate Special Master

² In its Order on Petition to Approve Settlement, the court stated that the net proceeds of any monies received through a claim bill would be allocated as follows: 50 percent to Maria Tenner, 25 percent to Logan Tenner (as a surviving son), and 25 percent to Ryan Tenner (as a surviving son), through guardianship or restricted trust as required by law.