



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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302 The Capitol

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DATE	COMM	ACTION
3/6/19	SM	Report Submitted
3/11/19	JU	Fav/CS
3/25/19	GO	Favorable
	RC	

March 6, 2019

The Honorable Bill Galvano
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 42** – Judiciary Committee and Senator Taddeo
HB 6525 – Representative Fernandez
Relief of Jorge L. Dominguez, Chelsea Beatrice Dominguez, Brittney Delores
Dominguez, and Tori Alexis Dominguez

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$400,000. THIS AMOUNT IS THE REMAINING UNPAID BALANCE OF A SETTLEMENT REGARDING THE NEGLIGENCE OF A HILLSBOROUGH COUNTY EMPLOYEE, WHICH RESULTED IN THE DEATH OF DARCIA LYNN DOMINGUEZ.

FINDINGS OF FACT:

The Crash on February 6, 2010

On the morning of February 6, 2010, Mrs. Darcia Lynn Dominguez, a 39 year-old registered nurse, traveled northbound on Veterans Express Highway in Tampa and crashed into a tractor-trailer truck owned and maintained by Hillsborough County. The vehicle was driven by Mr. Santiago Hasbun who had a commercial driver license (CDL) and was a Hillsborough County employee.

Prior to the incident, the truck was serviced by Hillsborough County and batteries were replaced.

The truck experienced an electrical malfunction which resulted in the Vehicle Management Control System (VMAC) on the dashboard indicating that voltage was decreasing. As stipulated by the parties, it would have taken fifteen minutes or more for the volt meter gauge to fall from its normal operating position to the position where the decreasing voltage triggered the illumination of a lightning bolt on the dashboard. Once the lightning bolt illuminated on the volt meter gauge, the truck shut down within fifteen minutes. At the time the vehicle shut down, Mr. Hasbun had, approximately, another 27 seconds to pull off of the highway.

The divided highway had two northbound and two southbound lanes and was divided by guardrails. The grass median available to the left of the northbound lanes was at least 21 feet wide and the paved shoulder available to the right of the northbound lanes was 10 feet wide.

Mr. Hasbun did not pull the truck off of the road. The vehicle remained in the left travel lane of the highway without functioning hazard or flashing lights because of the complete loss of power.

Mr. Hasbun placed orange triangles on the hash marks of the highway with the farthest triangle being placed 75 feet back from the end of the truck.

At approximately 8:17 a.m., Mrs. Dominguez crashed into the back of the truck. The crash occurred shortly after someone called 911 to report that, while going the speed limit, the caller almost drove into the back of the broken down truck in the left travel lane. Parties agreed that Mrs. Dominguez's phone records were investigated and she was not using her phone to call or text at the time of the accident.

Mrs. Dominguez suffered traumatic brain injuries and scalp avulsion as well as numerous fractures to the skull, left arm, a rib, and both femurs.

On February 11, 2010, Mrs. Dominguez died as a result of the traumatic brain injuries.

Mrs. Dominguez had three daughters: Ms. Chelsea Dominguez, Ms. Brittney Dominguez, and Ms. Tori

Dominguez, who were 18, 16, and 10, respectively, at the time of the crash. Mrs. Dominguez was the wife of Mr. Jorge Dominguez, although they were separated at that time.

Mr. Gary Anderson, Ph. D., economist, testified that past losses and the present value of future losses as a result of the Mrs. Dominguez's death totals \$1,724,243.

Settlement

The parties stipulated that a jury could have attributed 60 – 90 percent of the negligence involved to the County and that a jury may have found \$4 – 8 million as a “reasonable range” of damages.

Claimants and Hillsborough County entered a settlement agreement for \$600,000. Claimants received \$200,000 from Hillsborough County and seek the remaining \$400,000 in two payments of \$200,000.

Additionally, claimants settled separately with the County's insurance carrier and received \$50,000 from that agreement.

Claimant also reported that personal injury protection (PIP) insurance covered the cost of Mrs. Dominguez's funeral, which was less than \$10,000.

CONCLUSIONS OF LAW:

Section 768.28, Florida Statutes (2010), waives sovereign immunity for tort liability up to \$200,000. Sums exceeding this amount are payable by the State and its agencies or subdivisions by further act of the Legislature.

A county is liable for a negligent act committed by an employee acting within the scope of employment. Mr. Hasbun was operating the tractor-trailer truck within the scope of his employment thereby making Hillsborough County liable for any negligent acts committed by him.

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is

foreseeably and substantially the cause of the resulting damages; and (4) damages – actual harm.¹

Duty

Motorists have a duty to use reasonable care to avoid accidents and injury to themselves and others.² The driver of an automobile, a “dangerous instrumentality,” is responsible for maintaining control of the vehicle, commensurate with the setting, and being “prepared to meet the exigencies of an emergency within reason and consistent with reasonable care and caution.”³ Mr. Hasbun and Mrs. Dominguez both had the duty to use reasonable care while operating their vehicles.

In this particular situation, Mr. Hasbun also had specific statutory duties relevant to his operation of the truck. Sections 316.194(1), and 316.301, Florida Statutes, respectively, require a driver to remove a vehicle such as Mr. Hasbun’s from the highway when practicable to do so and, if disabled or stopped for more than 10 minutes, to place warning devices at 10 feet, 100 feet, and 200 feet from the stopped vehicle, in the center of the lane, and in the direction of traffic approaching that lane. The CDL Manual also required placement of cones at the aforementioned intervals.

Breach

As the parties have also stipulated and the record demonstrates, Mr. Hasbun violated both statutes and breached the required duty of care.

Mr. Hasbun was required to remove the tractor trailer from the road if practicable. Stipulations and evidence submitted demonstrate that Mr. Hasbun had time to remove the vehicle from the road but did not do so. Once the lightning bolt illuminated on the volt meter gauge, he had approximately 15 minutes to exit the highway or pull off of the road and he did neither. After the vehicle completely shut down, there was another 27 seconds, approximately, within which Mr. Hasbun could have pulled off of the highway and onto the 21 foot wide grassy median to the left or the 10 foot paved shoulder to the right but he did neither. He brought the vehicle to a stop in the left travel lane.

¹ Williams v. Davis, 974 So.2d 1052, at 1056–1057 (Fla. 2007).

² *Id.*, 974 So.2d at 1063.

³ Nelson v. Ziegler, 89 So.2d 780, 783 (Fla. 1956).

Once the vehicle was stopped in the left travel lane, Mr. Hasbun breached his duty to provide proper warning to approaching motorists. Again, stipulations and evidence show that Mr. Hasbun did not properly place orange triangles as the farthest back he placed a cone was 75 feet when statute and the CDL manual required that they be placed at intervals of 10 feet, 100 feet, and 200 feet from the vehicle. Additionally, rather than the cones being placed in the middle of the obstructed travel lane, they were placed on the hashmarks that divide the inside and outside lanes.

Mrs. Dominguez also had a duty to operate her vehicle with reasonable care, however, nothing has been submitted to demonstrate that this duty was breached. Both parties agreed that discovery demonstrated that Mrs. Dominguez was not on her phone at the time of the incident. Additionally, there is no known eyewitness to the crash or preceding events.

Causation

Mr. Hasbun's breaches of duty, including his violations of statutes and CDL manual requirements, in not removing the truck from the highway and improperly placing warning devices are the cause of the resulting damages. A collision was foreseeable when the truck was brought to a stop in the left travel lane of the highway, and warning devices were improperly placed. The existence of the vehicle in the left travel lane of the highway and the truncated warning of a danger (as a result of the misplaced triangles) were the substantial causes of the collision resulting in the death of Mrs. Dominguez.

Although the parties stipulated that a jury could have apportioned 60 – 90 percent of the negligence to Hillsborough County (thereby suggesting comparative fault of Mrs. Dominguez ranging from 10 – 40 percent of the negligence), the undersigned does not find comparative negligence on behalf of Mrs. Dominguez. This conclusion is based upon there being no known eyewitness to the moments preceding the collision and no other facts in evidence demonstrating negligence of Mrs. Dominguez.

Damages

As a result of the February 6, 2010 collision, Mrs. Dominguez suffered traumatic brain injuries, scalp avulsion, fractures to

the skull, left arm, a rib, and both femurs. On February 11, 2010, Mrs. Dominguez died due to these injuries.

Mrs. Dominguez's death also resulted in economic losses estimated at \$1,724, 243.

ATTORNEY FEES:

The bill states that attorney fees may not exceed 25 percent of the amount awarded.

Outstanding costs amount to \$5,892.38.

RECOMMENDED
AMENDMENT:

The undersigned recommends changing the date on line 12 of the bill from "February 26, 2010" to "February 6, 2010" to accurately reflect the date of the incident. The recommended amendment is appended.

FINDING:

For the reasons set forth above, the undersigned finds that the claimant has demonstrated the elements of negligence by the greater weight of the evidence and the amount sought is reasonable.

Respectfully submitted,

Christie M. Letarte
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary on March 11, 2019:

This amendment corrects the date of the automobile accident that is the basis for the claim bill.