



STORAGE NAME: h6525b.JDC

DATE: 4/1/2019

April 1, 2019

SPECIAL MASTER'S FINAL REPORT

The Honorable Jose R. Oliva
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: CS/HB 6525 - Representative Fernández
Relief/Dominguez Family/Hillsborough County

THIS IS AN UNCONTESTED CLAIM FOR \$400,000 TO BE PAID OVER TWO YEARS, BASED ON A SETTLEMENT AGREEMENT BETWEEN JORGE L. DOMINGUEZ AND HILLSBOROUGH COUNTY, FOR THE WRONGFUL DEATH OF HIS WIFE CAUSED BY A COUNTY EMPLOYEE. RESPONDENT HAS PAID \$200,000 PURSUANT TO THE SOVEREIGN IMMUNITY CAP.

FINDINGS OF FACT:

On February 6, 2010, Darcia Dominguez, a 39-year-old registered nurse, was traveling northbound on Veteran's Highway¹ when her car crashed into a stopped tractor trailer rig owned by Hillsborough County (Respondent). The rig had lost all power and was sitting idle in the inner lane of traffic, halfway on the roadway and halfway off the shoulder, without any illuminated hazard or flashing lights. The vehicle's driver had placed safety triangles near the center of the road at a maximum distance of approximately 50 feet behind the vehicle.

There were no eyewitnesses to the accident, and therefore, many of the facts are unknown. There is no evidence in the record suggesting that Ms. Dominguez was intoxicated or using

¹ Veteran's Highway is a state road in Tampa also known as SR-589.

a cell phone. Moments before the accident, a motorist dialed 911 and reported the disabled rig on the side of the road, emphasizing that he had almost crashed into the rig himself.

Ms. Dominguez sustained brain injuries from the crash. When medical aid arrived at the scene, she was already unresponsive. She was transferred to St. Joseph's Hospital and intubated. Five days later, she died from injuries sustained in the accident.

LITIGATION HISTORY:

Jorge L. Dominguez (Claimant) filed a wrongful death action, seeking damages against Respondent for its negligence. Although Respondent was insured by Star Insurance (Star), Star refused to pay until a claim bill passed. In turn, Respondent sued Star but ultimately decided to settle the case directly with Claimant for \$600,000. Claimant settled separately with Star for \$50,000.

CLAIMANT'S POSITION:

Claimant argues that Respondent's negligence in inadequately training its employee and the negligence of Respondent's employee himself caused his wife's death. Claimant argues that the settled amount of \$400,000, to be paid in two installments, is wholly reasonable.

RESPONDENT'S POSITION:

Respondent fully supports this claim bill and urges its passage.

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. In this case, Respondent concedes that all of the elements of negligence are satisfied.

Duty & Breach

Florida law generally prohibits a person from parking or leaving his or her vehicle upon the paved portion of a roadway.² When a vehicle becomes disabled upon a roadway and the driver is unable to move it, the driver must immediately activate the vehicle's hazard-warning signal lamps. Additionally, if the vehicle remains disabled for at least 10 minutes upon a divided one-way highway, the driver must display two red flags or two read portable emergency reflectors as follows:

- The first, approximately 100 feet to the rear of the disabled vehicle in the middle of the roadway; and
- The second, approximately 200 feet to the rear of the disabled vehicle in the middle of the roadway.³

Respondent owed a duty to Claimant to first move its tractor trailer rig out of the lane of travel, and then, if unable to do so, to turn the flashing hazard lights on and place the emergency triangles 100 and 200 feet behind the disabled vehicle to warn

² S. 316.194, F.S.

³ S. 316.301(7), F.S.

motorists of the danger.

Respondent's driver, in failing to remove his disabled vehicle from the highway, turn on his hazard lights, and place safety triangles a lawful distance from his vehicle, violated Florida law, breaching his duty to Ms. Dominguez. Respondent's driver created a dangerous condition on the roadway that ultimately led to Ms. Dominguez's untimely death. Respondent's driver was acting within the scope of employment with Hillsborough County; thus, Respondent is liable for the actions of its driver under the doctrine of respondeat superior.

Causation

Whether there was any negligence on the part of Ms. Dominguez contributing to the accident is unclear. However, there is no evidence to suggest she was intoxicated or using her cell phone when the accident occurred. Moreover, a 911 call that was received moments before the accident occurred indicates that Respondent's breach in leaving an unlit tractor trailer upon the roadway posed a threat to other motorists as well. Based on the evidence presented in the record and at the Special Master hearing, I find Respondent's breach directly caused Ms. Dominguez's death. It is possible that Ms. Dominguez's negligence also contributed to the accident; however, the reduced settled amount of \$600,000 fully accommodates any comparative negligence that Ms. Dominguez may have contributed to the accident.

Damages

In one of the filings with the Special Masters, Respondent acknowledged that the total settlement amount of \$600,000 is "much less than the amount" a jury could award. Respondent admitted that, given economic damages alone were undisputed to be \$1.7 million, a jury could return a multi-million dollar verdict. I find that the settled amount, of which \$400,000 is sought in this claim bill, is wholly reasonable under the circumstances.

ATTORNEY'S/ LOBBYING FEES:

If the claim bill passes, the attorney fee will not exceed \$100,000, and no amount will be paid for lobbying fees. Outstanding costs are \$5,892.83.

COLLATERAL SOURCES:

Star Insurance paid Claimant \$50,000. Claimant has also received about \$8,000 for funeral expenses.

RESPONDENT'S ABILITY TO PAY:

If the claim bill passes, it will be funded directly from Respondent, which states it will have no adverse effect on operations.

LEGISLATIVE HISTORY:

This is the second session this claim has been presented to the Legislature. Last session, SB 1010 was not heard in any committee and no companion bill was filed in the House.

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RECOMMENDATION:

I recommend that Committee Substitute for House Bill 6525 be reported **FAVORABLY**.

Respectfully submitted,

JORDAN JONES

House Special Master

cc: Representative Fernandez, House Sponsor
Senator Taddeo, Senate Sponsor
Christie Letarte, Senate Special Master