



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

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DATE	COMM	ACTION
3/16/23	SM	Favorable
3/20/23	JU	Favorable
3/27/23	CA	Favorable
4/11/23	RC	Favorable

March 16, 2023

The Honorable Kathleen Passidomo
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 10** – Senator Gruters
HB 6019 – Representative Buchanan
Relief of Kristen A. Stewart by Sarasota County

SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLED CLAIM BILL FOR \$5,750,000, SUPPORTED BY SARASOTA COUNTY. KRISTEN A. STEWART SEEKS DAMAGES FROM SARASOTA COUNTY FOR PERSONAL INJURIES AND DAMAGES SUSTAINED IN A MOTOR VEHICLE ACCIDENT RESULTING FROM THE NEGLIGENT OPERATION OF A SARASOTA COUNTY VEHICLE.

FINDINGS OF FACT:

The Accident

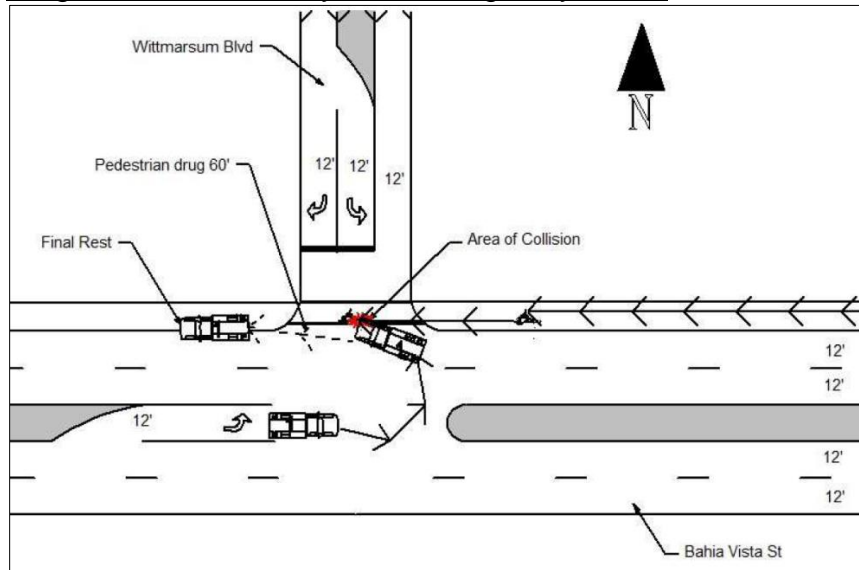
On May 13, 2020, at around 1:30 p.m., Claimant, Ms. Kristin A. Stewart was on her regular daily run traveling westbound on the sidewalk adjacent to Bahia Vista Drive in Sarasota County.¹ A Sarasota County utility vehicle operated by a county employee of 33 years,² Mr. Tsuguo Kanayama, struck her from behind, ran her over, and dragged her beneath the vehicle for a distance of approximately 60 to 65

¹ The Claimant was a second grade teacher at Southside Elementary School in Sarasota, Florida. During the time of accident, because of the Covid-19 pandemic, in-person classes were suspended and the claimant was teaching via remote technology. She had a mid-day break from teaching during this time and would run eight to ten miles, shower, and then resume teaching.

² Kanayama Deposition, Phipps Reporting, May 25, 2021, 18:8-13.

feet.³ The vehicle came to rest with the right front tire atop Ms. Stewart, who was awake and conscious throughout the incident. Ms. Stewart requested Mr. Kanayama back the utility vehicle off her body. Mr. Kanayama backed off of Ms. Stewart and then dialed 911.

Diagram of Accident by Florida Highway Patrol



Injuries⁴

Ms. Stewart sustained many internal and external injuries. She was transported from the scene to the emergency department as a level 1 trauma patient and initially presented with:

- Hypotension;
- Multiple large soft tissue defects to her abdomen and bilateral hips;
- Puncture wound to her left elbow; and
- Multiple areas of road rash.

After examination it was determined that in addition to the severe external injuries, Ms. Stewart had sustained multiple life-threatening internal injuries, to include:

- Multiple pelvic fractures;
- Multiple rib fractures;
- Thoracic and lumbar transverse process fractures;
- Liver laceration; and

³ Florida Traffic Crash Report #88323999-03, May 13, 2020, 2. (Claimant's Exhibit #4).

⁴ Sarasota Memorial Hospital, Trauma Discharge Summary, May 13, 2020, 1-2.

- Kidney bruising.

The injuries were further detailed in the Settlement Agreement between Ms. Stewart and Sarasota County as “tearing the skin off her torso, both hips, both arms, and tearing the hair out of the top of her scalp. The weight of the Sarasota County truck crushed her pelvis with a grade 3 open book pelvis fracture, lacerated her liver nearly in half with a grade 4 laceration, injured her lungs, kidneys, and colon, in addition to breaking five of [her] ribs and her vertebral body transverse processes . . . [she] did not lose consciousness at any time before, during or after being run over and dragged . . . and was awake, aware and conscious of the injuries inflicted on her.”⁵

Ms. Stewart had a 15-day hospital admission followed by months of home health care, wound care, physical therapy, occupational therapy, surgical debridements, surgical removal of skin grafts, surgical harvesting of skin for grafting onto her injuries, wound revision surgery, and psychological treatment for post-traumatic stress disorder and anxiety.⁶

Settlement

Ms. Stewart and Sarasota County have entered into a settlement agreement for a total of \$5,950,000. Claimant has received \$200,000 from Sarasota County and seeks the remaining \$5,750,000.

Sarasota County supports the claim bill and reports that \$1,000,000 of the funds will be paid through a general liability insurance policy and the remaining \$4,750,00 from their self-funded risk pool, and that the relief will not affect the operations of the County.

CLAIM BILL HEARING:

On January 20, 2023, the House and Senate special masters held a half-day hearing in the matter of SB 10 (2023), Relief of Kristen A. Stewart by Sarasota County.

Both parties stipulated to all exhibits submitted into evidence by the Claimant. Respondent’s attorney made it clear that Sarasota was in full support of the claim bill and would not be presenting any evidence counter to the Claimant or settlement

⁵ Settlement Agreement, pg. 1 paragraph A.

⁶ Settlement Agreement, pg. 1 paragraph B.

agreement. Both parties cooperated fully with the House and Senate and responded to all requests for information.

Claimant's Case-in-Chief

Claimant's attorney presented a narrative recitation of the facts as stipulated by the parties detailing Ms. Stewart's life before the accident, the accident, the details of Ms. Stewart's life after the accident, injuries, recovery, and the related elements of a negligence claim

The Claimant, Ms. Stewart, testified as to the day of the accident, her quality of life before and after the accident, her injuries and ongoing recovery.

Respondent's Case-in-Chief

Sarasota County had previously admitted liability in a settlement agreement,⁷ waived its right to present a case-in-chief during the claim bill hearing, and reiterated its full support of the claim bill. The Respondent did not present or contest any evidence, theories, or arguments

CONCLUSIONS OF LAW:

Under the legal doctrine of *respondeat superior*, Sarasota County is responsible for the wrongful acts of its employees when the acts are committed within the scope of their employment.⁸ Because Mr. Kanayama was operating a county-owned vehicle in the course and scope of his employment at the time of the accident, the County is responsible for any wrongful acts, including negligence, committed by Mr. Kanayama.

Elements of Negligence

When a plaintiff seeks to recover financial damages in a negligence action, she must prove that the injury was caused by the defendant's negligence. Negligence is defined as the failure to use reasonable care. It is the care that a reasonably careful person would use under like circumstances.⁹

⁷ Settlement Agreement between Kristen A. Stewart and Sarasota County, signed July 20, 2022, pg. 2 para. G.

⁸ *Cintron v. St. Joseph's Hospital, Inc.*, 112 So. 3d 685, 686 (Fla. 2d DCA 2013) (employers are "liable for the negligence of their employees for wrongful acts committed within the course and scope of their employment.").

⁹ Fla. Std. Jury Instr. (Civ.) 401.4, *Negligence*.

The plaintiff bears the burden of proving, by the greater weight of the evidence, that the defendant's action was a breach of the duty that the defendant owed to the plaintiff. The "greater weight of the evidence" burden of proof means the more persuasive and convincing force and effect of the entire evidence in the case.¹⁰ Some explain the "greater weight of the evidence" concept to mean that, if each party's evidence is placed on a balance scale, the side that dips down, even by the smallest amount, has met the burden of proof by the greater weight of the evidence.

To establish liability, a Claimant must prove these elements, by the greater weight of the evidence:

- (1) Duty: The County owed a duty, or obligation, of care to Claimant;
- (2) Breach: The County breached that duty by not conforming to the standard required;
- (3) Causation: The breach of the duty was the legal cause of Claimant's injury; and
- (4) Damages: The Claimant suffered actual harm or loss.

In this case, the County's liability depends on whether the County breached its duty of care to Claimant and whether that breach caused her damages. Or, the issue is whether the County employee negligently operated the utility vehicle and whether that negligent operation caused Claimant's resulting physical injuries.

Duty

Mr. Kanayama, operating a county-owned vehicle in the course and scope of his employment with Sarasota County, was responsible for exercising a duty of reasonable care to all others while driving.

Florida law requires that a driver operate a vehicle in a careful and prudent manner, having regard for traffic and all other attendant circumstances, so as to not endanger the life, limb, or property of any person.¹¹

¹⁰ Fla. Std. Jury Instr. (Civ.) 401.3, *Greater Weight of the Evidence*.

¹¹ Section 316.1925, F.S.; *Gowdy v. Bell*, 993 So. 2d 585, 586 (Fla. 1st DCA 2008).

Florida law also requires that a driver shall not turn a vehicle so as to proceed in the opposite direction upon any street unless such movement can be made in safety and without interfering with other traffic.¹²

Furthermore, Florida law defines “traffic” as “[p]edestrians . . . and vehicles . . . while using any street or highway for purposes of travel.”¹³

There was no evidence presented by the Respondent that challenged or countered the facts as presented above.

Breach

Based on the stipulated facts and exhibits presented by the Claimant, it is evident that Mr. Kanayama violated ss. 316.1515 and 316.1925, F.S., as well as the required standard of reasonable care owed Ms. Stewart and all others when, during his operation of a county-owned utility vehicle, he struck, ran over, and dragged Ms. Stewart.

Mr. Kanayama's Breach

- 1) *Attempting a U-turn with insufficient space and time and driving into the marked pedestrian crosswalk.*

Mr. Kanayama attempted to execute a U-turn on Bahia Vista Street in an area that was too small to accommodate the large turning radius of the county utility vehicle he was operating and attempted that U-turn quicker than was reasonable. Mr. Kanayama was cited for careless driving at the scene¹⁴ and pled “admit/guilty” to the careless driving with serious bodily injury, adjudication withheld, resulting in the suspension of his driver’s license for three months and various fines.¹⁵

Mr. Kanayama admits to knowing what a turning radius is and that he knew before executing the U-turn that the utility vehicle’s turning radius was too large to make the U-turn without driving into the pedestrian walkway.¹⁶

¹² Section 316.1515, F.S.

¹³ Section 316.003(97), F.S.

¹⁴ See *supra* note 3, 2; Florida Uniform Traffic Citation, #ABSW11E.

¹⁵ Civil Hearing Court Appearance Record, County Court in and for Sarasota County, Florida, Case 2020-TR-014331-NC, August 6, 2020.

¹⁶ Kanayama Depo., 30:16-25 and 31:1-13.

Florida Highway Patrol Trooper Cantwell notes that Mr. Kanayama stated “he **observed eastbound traffic approaching** and made the U-turn in a **fast manner**.”¹⁷

Given the facts in record, it is easy to imagine how Mr. Kanayama determined that he needed to perform a U-turn and would need to cross into the marked crosswalk due to the turning radius of the utility vehicle. Then, noting the speed and distance of oncoming traffic, to quickly attempt to execute a U-turn knowingly entering the marked crosswalk before oncoming traffic was upon him. He breached his duty of care when he attempted to execute this U-turn with insufficient space and time and failed to yield to Ms. Stewart crossing in the marked crosswalk.

There was no evidence presented by the Respondent that challenged or countered the facts as presented above.

2) *Failing to see Ms. Stewart and striking her within a pedestrian zone.*

The conditions at the time of the accident are recorded as daylight, clear, and dry.¹⁸

The utility vehicle was a truck Mr. Kanayama drove every day, it was in good working order, and nothing was noted as wrong or out of the ordinary with the vehicle.¹⁹

Mr. Kanayama stated that he was not distracted and his vision was not obstructed.²⁰ Furthermore, Mr. Kanayama admitted that he did not see Ms. Stewart in the marked crosswalk.²¹

During the U-turn, he reports that he felt a shock and thought it was the vehicle going over the concrete gutter and continued to execute the U-turn to get the rear part of the vehicle out of oncoming traffic approaching on

¹⁷ See *supra* note 3.

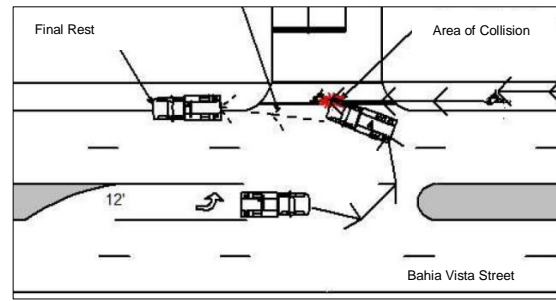
¹⁸ See *supra* note 3, 1.

¹⁹ Kanayama Depo., 26:8-15

²⁰ *Id.*

²¹ Kanayama Depo., 33:6-18.

Bahia Vista St.²² Mr. Kanayama only realized he had struck, run over, and dragged Ms. Stewart after he heard a sound, stopped the truck to investigate, and saw Ms. Stewart under the front of the utility vehicle.²³



Mr. Kanayama admitted in his deposition that he simply did not see Ms. Stewart in the marked crosswalk before, during, or immediately after his collision with her. He breached his duty of reasonable care when he attempted a U-turn that he knew would enter a marked pedestrian crosswalk and failed to sufficiently scan the area he was entering to see if anyone was in the crosswalk before driving his vehicle through.

There was no evidence presented by the Respondent that challenged or countered the facts as presented above.

Causation

Negligence is “a legal cause of loss, injury or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, injury or damage, so that it can reasonably be said that, but for the negligence, the loss, injury or damage would not have occurred.”²⁴

Comparative Negligence

Comparative negligence is the legal theory that a defendant may diminish his or her responsibility to an injured plaintiff by demonstrating that another person, sometimes the plaintiff and sometimes another defendant or even an unnamed party, was also negligent and that negligence contributed to the plaintiff’s injuries. The goal

²² Kanayama Depo., 35: 5-11

²³ Kanayama Depo., 35:12-23.

²⁴ Florida Civil Jury Instructions, 401.12(a) - Legal Cause, Generally.

of proving a successful comparative negligence defense is to hold other people responsible for the injuries they cause to a plaintiff. By apportioning damages among all who are at fault, it will ultimately reduce the amount of damages owed by a defendant.

While Sarasota County did raise comparative negligence as an affirmative defense in the initial answer to Ms. Stewart's complaint,²⁵ there has been no evidence presented that would attribute any negligence to Ms. Stewart or any other unnamed third party prior to the eventual settlement.

Based on the filings of the parties, the testimony at the claim hearing, and a thorough review of all relevant materials, I find that the greater weight of evidence demonstrates that Mr. Kanayama, as an agent of the County, had a duty of reasonable care to the public, failed to exercise that reasonable care, and that breach was the legal or proximate cause of the accident and responsible for the injuries that Ms. Stewart sustained. I also find that there is no comparative negligence by Ms. Stewart or any other unnamed third party.

Damages

As a result of the accident, doctors have indicated both physical and mental injuries that will require lifelong care and treatment. A plaintiff's damages are computed by adding economic and non-economic damages together.

Economic Damages

The claimant's attorney presented voluminous medical bills, statements, financial data, and economic reports that project Ms. Stewart's total damages to be \$5,950,000.

The Economic Loss Analysis presented by Ms. Stewart states that she has a remaining life expectancy of 44.81 years with work-life expectancy of 29.41 years.²⁶ The analysis calculates her pre-incident earning capacity as \$61,274.54 per year and her post-incident earning capacity as \$0. This post-incident earning capacity is based on the reports of Dr. Craig H. Lichtblau, that in his "medical opinion as a Board Certified

²⁵ Sarasota County's Answer, filed in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida on January 12, 2021, Second Affirmative Defense, 3.

²⁶ Economic Loss Analysis in the Matter of Stewart, Kristin A. vs. Sarasota County, Raffa Consulting Economists, Inc., May 6, 2022, 2nd Revised Report, 2.

Physiatrist that this patient would not be able to maintain gainful employment in the competitive open labor market or in a sheltered environment with a benevolent employer secondary to acute, intermittent, exacerbations of chronic pain.”²⁷

Economic Damages	
Past Medical Care	\$917,251.49 ²⁸
Future Care Needs	\$388,538.00 ²⁹
Past Lost Earnings and Future Earning Capacity	\$1,927,498.00 ³⁰
Cost of future health/dental/vision insurance	\$156,568.00 ³¹
Total	\$3,389,855.49

Non-Economic Damages

At the special master hearing, the Claimant’s attorney did not provide evidence of a specific dollar amount for this category. However, it should be noted that the Florida Standard Jury Instructions state that there is no exact standard for measuring these damages. The jury instructions state that the amount should be a “fair and just” amount in light of the evidence presented to the jury.³² Based on the settlement agreement and the total of economic damages, the remaining difference of the settled amount is \$2,560,144.51

Conclusion

Economic Damages: \$3,389,855.49

Non-Economic Damages: \$2,560,144.51

The settled claim amount of \$5,950,000, to be paid by the County, seems reasonable based on the evidence presented.

There was no economic evidence presented by the Respondent to challenge or counter the reports and evidence submitted by the Claimant.

ATTORNEY FEES:

Section 768.28, Florida Statutes, limits the claimant’s attorney fees to 25 percent of the claimant’s total recovery reached by any judgment or settlement in a sovereign immunity claim. The Claimant’s attorney has acknowledged this limitation and

²⁷ Craig H. Lichtblau, M.D., P.A., Updated Summary Report for Kristen A. Stewart, February 15, 2022, 9.

²⁸ Settlement Agreement, 1 para. B.

²⁹ Economic Loss Analysis, Table 3, Option I – Most Probable Case Scenario, Present Value, 10.

³⁰ Economic Loss Analysis, Table 1, Present Value Analysis of the Loss of Earning Capacity, 7.

³¹ Economic Loss Analysis, Table 2, Present Value Analysis of Cost to Maintain Insurance, 8.

³² 501.2a, Personal Injury and Property Damages: Elements.

verified in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorney and lobbyist fees.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that SB 10 be reported FAVORABLY.

Respectfully submitted,

Tyler C. Tuszynski
Senate Special Master

cc: Secretary of the Senate