



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/30/23	SM	Favorable
4/3/23	JU	Fav/CS
	CA	
	RU	

March 30, 2023

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

Re: **CS/SB 12** – Committee on Judiciary and Senator Polsky
HB 6021 – Representative Tuck
Relief of Ricardo Medrano-Arzate and Eva Chavez-Medrano by the
Okeechobee County Sheriff's Office

SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$1,200,000, PAYABLE BY THE OKEECHOBEE COUNTY SHERIFF'S OFFICE TO RICARDO MEDRANO-ARZATE AND EVA CHAVEZ-MEDRANO AS COMPENSATION FOR DAMAGES AWARDED IN CONNECTION WITH THE DEATH OF THEIR DAUGHTER HILDA MEDRANO.

FINDINGS OF FACT:

Overview of Accident

On December 1, 2013, Elizabeth Arellano Renteria was driving a 2000 Ford Focus, with two passengers: Hilda Medrano in the front seat and Isamar Jaimes in the back seat. At 2:16 am, Renteria was traveling eastbound on State Road 70 and was attempting to make a left-hand turn into a McDonald's restaurant when Okeechobee County Sheriff's Office Deputy Sheriff Joseph A. Gracie struck the Focus with his police car.

Gracie was responding as backup to another call¹ and driving at speeds over 90 miles per hour (mph) on State Road 70, which had a 35 mph speed limit. At the time, Gracie was operating his police vehicle without any emergency lights or sirens. Gracie struck the Focus at 87 mph, which caused the Focus to travel 211 feet down the street. The impact killed Hilda Medrano and the driver, Renteria. Ms. Medrano was pronounced deceased at the scene of the accident at 3:09 am.² The backseat passenger, Isamar Jaimes was also severely injured.

Liability of Okeechobee County Sheriff's Office

Deputy Gracie was a deputy for the Okeechobee County Sheriff's Office at the time of the accident and was operating his police cruiser within the course and scope of his employment. The police cruiser was owned by the Sheriff's Office and was operated with the authority, permission, and consent of the Sheriff's Office. The Sheriff's Office is responsible for any negligence of Deputy Gracie.³

LITIGATION HISTORY:

On April 30, 2014, the claimant filed a Complaint for Negligence and Demand for Jury Trial in the Nineteenth Judicial Circuit, in and for Okeechobee County.⁴

Prior to commencing trial, the parties participated in non-binding arbitration by a retired circuit court judge Robert Makemson. On May 16, 2018, the arbitrator filed his decision finding the sole and proximate cause of the motor vehicle accident and fatalities was the excessive speed of Deputy Gracie and his failure to use emergency equipment. The arbitrator awarded the claimants \$4,700,000.⁵

On August 20, 2018, a three-day jury trial of the claimant's negligence claim was begun. On August 22, 2018, the jury

¹ The call was a reported domestic disturbance nearby. Prior to Deputy Gracie's response, Lieutenant K.J. Ammons had already advised dispatch that he was close to the address and would be providing backup to the Deputy Sheriff responding to the call. Okeechobee County Sheriff's Office, Office of Special Investigations, Internal Investigation Case # 2013-12-01, Claimant's Exhibit 20.

² In the Medical Examiner's Report, Dr. Linda O'Neil concluded that Ms. Medrano's cause of death was multiple blunt trauma injuries.

³ The facts regarding the liability of the Okeechobee County Sheriff's Office were stipulated to by the parties at trial. Transcript of Proceedings, Volume II, Respondent's Exhibit D.

⁴ The claimants sued the Sheriff in his official capacity based on the actions of Deputy Gracie in the course and scope of his employment as an Okeechobee County Sheriff's Deputy; Roberta Arellano, as personal representative of the Estate of Elizabeth Arellano Renteria; and Roberta Arellano, individually.

⁵ Notice of Filing Arbitrator's Decision under Seal, Claimant's Exhibit 9.

rendered a verdict in favor of the claimant and awarded \$5 million in damages to the estate of Ms. Medrano for the mental pain and suffering sustained by the claimants.⁶ The jury found the negligence of Sheriff Stephen, as Sheriff for Okeechobee County, and Ms. Renteria were legal causes of Ms. Medrano's death. The jury found that Sheriff Stephen was 88.5 percent negligent and Ms. Renteria was 11.5 percent negligent.⁷

On October 31, 2018, Circuit Judge Laurie E. Buchanan issued a final judgment for the claimant against Sheriff Stephen totaling \$4,425,000, the proportion of the total verdict attributed to the negligence of the Sheriff's Office. The final judgment stated that this amount shall be reported to the Legislature and may only be paid by further act of the Legislature pursuant to the claim bill process.

Further appeals and motions for a new trial by the Defendant were denied.⁸

Separately, claimants brought a federal section 1983 civil rights claim against the Sheriff's Office, alleging that two conflicting Sheriff's Office policies caused Ms. Medrano's death. This claim was rejected by the trial court, federal appellate court, and United States Supreme Court.⁹

On February 25, 2021, a special master, held a hearing on a previous version of this bill, SB 226 (2021). The Legislature is not bound by settlements or jury verdicts when considering a claim bill, passage of which is an act of legislative grace.

CONCLUSIONS OF LAW:

Section 768.28, Florida Statutes, waives sovereign immunity for tort liability up to \$200,000 per person and \$300,000 for all claims or judgments arising out of the same incident. Sums exceeding this amount are payable by the State and its agencies or subdivisions by further act of the Legislature.

⁶ The jury determined that Ms. Medrano's parents were each entitled \$2.5 million in damages for their pain and suffering.

⁷ Jury Verdict, Claimant's Exhibit 13.

⁸ Order Denying Defendant's Motion for New Trial, Claimant's Exhibit 17, and Fourth District Court of Appeal Order, Claimant's Exhibit 18.

⁹ Claimant's Brief Summary of Case. See Complaint and Amended Complaint [S.D. of Florida], 11th Circuit Opinion, and Supreme Court of the United States Denial of Petition for Writ of Certiorari, Claimant's Exhibits 5-8.

Negligence

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.¹⁰

Duty

Section 316.1925(1), Florida Statutes, provides that “any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section.”

Pursuant to section 316.126(3), of the Florida Statutes, an emergency vehicle traveling to an existing emergency “shall warn all other vehicular traffic along the emergency route by an audible signal, siren, exhaust whistle, or other adequate device or by a visible signal by the use of displayed blue or red lights. While en route to such emergency, the emergency vehicle shall otherwise proceed in a manner consistent with the laws regulating vehicular traffic upon the highways of this state.” Section 316.126(5), of the Florida Statutes, further states that “this section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.”

Deputy Gracie, as an officer of the Okeechobee County Sheriff's Office, had a clear duty to use his sirens or lights while responding to an emergency. Regardless of whether he was responding to an emergency, Deputy Gracie had a clear duty to operate his vehicle in a careful and prudent manner with due regard for the safety of other drivers using the roadway.

Breach

Under Florida law, law enforcement officers are required to obey traffic laws, including speed limits, and must use lights

¹⁰ *Williams v. Davis*, 974 So.2d 1052, at 1056–1057 (Fla. 2007).

and sirens to alert other motorists of their presence. Deputy Sheriff Gracie violated these laws and operated his vehicle at speeds 55-60 mph over the speed limit without using his vehicle's lights or sirens. Evidence presented shows Deputy Gracie had sufficient time to activate the emergency equipment on his patrol car.

Gracie received a traffic citation from the Florida Highway Patrol for violation of section 316.1925(1), of the Florida Statutes, for careless driving, and violation of section 316.126(3), of the Florida Statutes, for failing to use a warning device.¹¹ Gracie pled guilty to these violations and received six-month suspension of his license and was fined \$1000 and \$250.¹²

Causation

The Florida Highway Patrol Traffic Homicide Report concluded that the cause of the accident, deaths of Ms. Renteria and Ms. Medrano, injuries to Ms. James, and property damage were solely due to Deputy Gracie's speed.¹³ The report also noted Deputy Gracie was a sworn police officer who was on duty and driving a marked police car to an active emergency call without the vehicle's emergency equipment engaged.

In the Medical Examiner's Report, Dr. Linda Rush O'Neil concluded Ms. Medrano's cause of death was multiple blunt trauma injuries. Dr. O'Neil also testified that Ms. Medrano's lacerated aorta, caused by the impact of the crash, would have also separately caused her death.¹⁴

It was argued in the underlying case that Ms. Medrano was comparatively negligent in not wearing a seatbelt.¹⁵ However, case law is clear that whether a victim wore a seat belt only affects a finding of negligence if the seat belt would have made a difference in the accident.¹⁶ The medical examiner

¹¹ Florida Highway Patrol, Traffic Homicide Report, Respondent's Exhibit E.

¹² Excerpt of Deputy Joseph A. Gracie Deposition, Respondent's Exhibit I.

¹³ Florida Highway Patrol, Traffic Homicide Report, Respondent's Exhibit E.

¹⁴ Deposition of Dr. Linda Rush O'Neil, Claimant's Exhibit 48.

¹⁵ Defendant Roberta Arellano's Answer to Plaintiff's Complaint, Claimant's Exhibit 2, and Defendant Okeechobee County Sheriff's Answer/Affirmative Defenses, Claimant's Exhibits 3 and 4.

¹⁶ *Insurance Co. of North America v. Pasakarnis*, 451 So. 2d 447, 454 (Fla. 1984).

concluded a seatbelt would not have prevented Ms. Medrano's injuries and death.¹⁷

Additionally, it was argued in the underlying case that the driver, Ms. Renteria, was negligent in making the left turn and should bear some responsibility for the collision.¹⁸ However, the traffic homicide report concluded that speed was the cause of the accident, despite the left turn made by the driver.¹⁹

Florida law requires "[t]he driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway [to] yield the right-of-way to any vehicle approaching from the opposite direction, or vehicles lawfully passing on the left of the turning vehicle, which is within the intersection or so close thereto as to constitute an immediate hazard"²⁰ (emphasis added).

The accident reconstruction expert concluded Ms. Renteria could not have known Deputy Gracie was an immediate hazard,²¹ and would not have been able to accurately judge his speed or approach due to his not using his emergency lights or sirens. Despite this, the jury verdict and final judgment allocated comparative negligence to both Deputy Gracie and Ms. Renteria.

Damages

Through the provision of medical records and supporting evidence, claimants established that the jury verdict and final judgment of \$4,425,000 for the mental pain and suffering²² of Ms. Medrano's parents is reasonable.

Sovereign Immunity

The Okeechobee Sheriff's Office had \$500,000 in insurance coverage, which was paid out to the other two victims of the accident.²³ Insurance coverage was provided in the amount

¹⁷ Deposition of Dr. Linda Rush O'Neil, Claimant's Exhibit 48.

¹⁸ Section 316.122, of the Florida Statutes states that "the driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction, or vehicles lawfully passing on the left of the turning vehicle, which is within the intersection or so close thereto as to constitute an immediate hazard."

¹⁹ Florida Highway Patrol, Traffic Homicide Report, Respondent's Exhibit E.

²⁰ Section 316.122, F.S.

²¹ Excerpt of Trial Transcript: Direct and Redirect of Michael Knox, Claimant's Exhibit 52.

²² Section 768.21, F.S. authorizes damages for wrongful death.

²³ Respondent Sheriff's Statement Regarding Self-Insurance/Payment, Respondent's Exhibit 2.

of \$300,000, the statutory cap on damages, plus an additional \$200,000 in contingent claim bill coverage. \$100,000 was paid to the rear-seated passenger, Isamar Sanchez Jaimes. The claimants were offered the remaining \$400,000, but elected to proceed to trial. As a result, the remaining \$400,000 was offered to the family of the deceased driver, Elizabeth Arellano Renteria, who accepted payment of the \$400,000.

Settlement with Estate of Elizabeth Arellano Renteria

The claimants settled their claim against the estate of Ms. Renteria through a confidential settlement made before the trial. During the special master hearing, claimant's counsel testified that claimants received \$21,185.64 in net settlement proceeds from Ms. Renteria's motor vehicle insurance coverage.²⁴ Claimant's counsel stated that he could not disclose the full amount of the settlement due to a confidentiality agreement with the insurance company.²⁵ However, claimant's counsel received \$44,126.50 in settlement proceeds.²⁶ Claimant's counsel attested that no settlement funds were derived from the \$400,000 payment made by the Florida Sheriff's Risk Management Fund.²⁷

Conclusion

Deputy Sheriff Gracie's negligence led to the traffic accident and fatality of Hilda Medrano and the Okeechobee County Sheriff's Office is responsible for the acts of their employees. The claimants introduced sufficient evidence to prove, by a preponderance of the evidence that Detective Gracie breached a duty of care and caused Ms. Medrano's death.

ATTORNEY FEES:

Section 768.28(8), of the Florida Statutes, states that no attorney may charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of any judgment or settlement.

The claimant's attorneys have submitted an affidavit to limit attorney fees to 25 percent of the total amount awarded under

²⁴ Recording of Special Master Hearing, discussion of confidential settlement beginning at about 1 hour, 22 minutes; Sworn Amended Affidavit of Edward H. Zebersky.

²⁵ *Id.*

²⁶ Sworn Affidavit of Edward H. Zebersky, Claimant's Exhibit 66 and additional Affidavit of Edward H. Zebersky, (Dec. 1, 2022).

²⁷ Recording of Special Master Hearing, discussion of Claimants' use of award beginning at about 1 hour, 25 minutes.

the claim bill and lobbying fees to 5 percent of the total amount awarded under the claim bill.²⁸

FISCAL IMPACT:

Impact of Award to Claimants

During the special master hearing, Mrs. Chavez-Medrano indicated if the Legislature passed the claim bill, the family would use the award for living expenses and would support the community by funding scholarships for students going to college.²⁹ Mr. Medrano-Arzate stated further that he would like to create a scholarship in his daughter's name for students who are studying ultrasound, as his daughter was at the time of her death, and for students who need financial assistance to attend college.³⁰

Impact of Award to Respondent

The respondent has already paid the total coverage provided by the Florida Sheriff's Risk Management Fund. The Respondent attests it has no other insurance coverage for the claim.³¹ This includes the statutory maximum of \$300,000.00,³² as well as \$200,000.00 in contingent claim coverage.

The attorneys for the claimant and respondent have reached an agreement to settle this claim for \$1,200,000. The first \$300,000 will be paid within 30 days of the bill becoming law. The three remaining payments will be paid by July 1 of each of the following years.

The total amount of attorney fees paid for this claim may not exceed \$240,000; the total amount paid for lobbying fees may not exceed \$60,000; and the total amount paid for costs or other similar expenses may not exceed \$4,945.49

The amount awarded and paid by the Okeechobee County Sheriff's Office under this claim bill is intended to provide the sole compensation for all present and future claims arising from this accident.

²⁸ Sworn Affidavit of Edward H. Zebersky, Claimant's Exhibit 66 and additional Affidavit of Edward H. Zebersky, (Dec. 1, 2022).

²⁹ *Id.*, discussion of claimants' use of award beginning at about 1 hour, 31 minutes.

³⁰ *Id.*, discussion of claimants' use of award beginning at about 1 hour, 52 minutes.

³¹ Affidavit of Sheriff Noel E. Stephen, Respondent's Exhibit A, (Nov. 30, 2022).

³² The negligence claim involved three claimants, so the cap on damages is \$300,000. Section 768.28(5), F.S.

RECOMMENDATIONS:

Based upon the foregoing, I recommend the bill be amended to reflect the terms of the settlement discussed above and SB 12 be reported FAVORABLY.

Respectfully submitted,

Eva M. Davis
Senate Special Master

cc: Tracy Cantella, Secretary of the Senate

CS by Judiciary:

The committee substitute differs from the underlying bill by incorporating the terms of the settlement reached between the parties. According to the settlement, the Okeechobee County Sheriff's Office will pay \$1,200,000 to the Medrano family in four installments of \$300,000, with the first payment due within 30 days after the bill becomes law and each succeeding payment made by July 1 of each following year. Attorney fees may not exceed \$240,000, lobbying fees may not exceed \$60,000, and costs may not exceed \$4,945.49.