



## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

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409 The Capitol

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DATE	COMM	ACTION
3/30/23	SM	Favorable
4/4/23	JU	Favorable
4/12/23	ATD	Favorable
4/19/23	AP	Favorable

March 30, 2023

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

Re: **SB 2** – Senator Hooper  
**HB 6007** – Representative Abbott  
Relief of Estate of Molly Parker by the Department of Transportation

### SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLED CLAIM BILL FOR \$5,950,000, FROM UNAPPROPRIATED GENERAL REVENUE FUNDS. THE ESTATE OF MOLLY PARKER SEEKS DAMAGES FROM THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) CAUSED BY THE ALLEGED NEGLIGENCE OF AN FDOT EMPLOYEE, WHICH RESULTED IN THE DEATH OF MOLLY PARKER.

#### FINDINGS OF FACT:

##### The Accident

On the morning of December 12, 2019, Molly Parker was involved in a crash with a dump truck operated by a Florida Department of Transportation (FDOT) employee. This crash occurred at the intersection of State Road 2 (SR 2), which runs east-west, and County Road 167, which runs north-south. There are stop signs and stop lines on County Road 167 on each side of its intersection with SR 2; on the north side of County Road 167, the stop sign is approximately 40 feet behind the stop line. The posted speed limit at the relevant portion of SR 2 is 55 miles per hour.

Just prior to the crash, the FDOT employee stopped at the stop sign, approximately 40 feet behind the stop line, on the

north side of County Road 167, looked left and right multiple times, and did not see any cars on SR 2. However, the employee's view of SR 2 from the stop sign was obscured by trees.<sup>1</sup> The FDOT employee then entered the intersection and noticed a "brief glance of a car right there in the turning lane as I proceeded across the highway."<sup>2</sup> Ms. Parker's car then collided with the FDOT dump truck.

#### Damages

Ms. Parker suffered multiple injuries as a result of the crash. At the scene of the crash, witnesses stated that she had a pulse, but was unresponsive, and she was bleeding from her head.<sup>3</sup> Ms. Parker was intubated and airlifted to the nearest trauma care hospital, Southeast Alabama Medical Center. Ms. Parker underwent emergency hemicraniectomy and evacuation upon arrival. Doctors at the hospital diagnosed Ms. Parker with complex comminuted depressed left cranium skull fractures with intracranial hemorrhage, traumatic brain injury, extensive mid-face and skull fractures, a fractured sternum, multiple broken vertebrae, and a comminuted fracture of her right calcaneus (heel fracture).

On December 22, 2019, Ms. Parker died. She was 39 years old.<sup>4</sup> Expert witness Dr. Matthew Lawson concluded that, based on his review of relevant documents from Ms. Parker's medical records, "Molly Parker's severe traumatic brain injury and death were more likely than not directly caused by the trauma she sustained in the motor vehicle accident on December 12, 2019."<sup>5</sup>

Ms. Parker is survived by her husband, Tom Parker, and minor son. Mr. Parker has since been diagnosed with post-traumatic stress disorder and prolonged grief disorder by Michaelleen Burns, a licensed psychologist. Ms. Burns cites the cause of these diagnoses as "related to the trauma of witnessing Ms. Parker's condition" in the hospital for the ten days following the car accident, and witnessing the moment of her death.

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<sup>1</sup> Deposition of J.A.R., Oct. 5, 2021 at 123-124.

<sup>2</sup> Deposition of J.A.R., Oct. 5, 2021 at 60, lines 7-11. See also, *Fl. Dep't. of Transp. Vehicle Crash/Incident Report*, 1 (Jan. 13, 2020).

<sup>3</sup> Jackson County Sheriff's Office, Emergency CAD Report (911 call details) for Dec. 12, 2019.

<sup>4</sup> Molly Parker's Death Certificate (Dec. 22, 2019).

<sup>5</sup> Affidavit of Matthew F. Lawson, M.D., Apr. 14, 2022.

### **Litigation History and Settlement**

Mr. Parker, acting as a representative of Ms. Parker's estate, filed a civil cause of action in Leon County Circuit Court seeking relief as a result of this incident.<sup>6</sup> Prior to trial, the parties arrived at a settlement agreement<sup>7</sup> and the case was subsequently closed.<sup>8</sup>

#### *Settlement*

Counsel for claimant's estate believe the potential jury verdict value of this matter would be in excess of \$6 million. The respondent did not admit responsibility for the incident, but did reach a settlement agreement of \$6.25 million. As part of the agreement, the respondent agreed to support the passage of a claim bill, and did not present a case or argument at the special master hearing.<sup>9</sup>

### **Funds Received by Claimants**

The claimant has received the full amount of the respondent's statutory limit (\$300,000 per incident) from the FDOT and seeks the remaining balance of the settlement (\$5.95 million) through this claim bill. According to the claimant's attorney, these funds will be partially held in a trust for the education and care of Ms. Parker's minor child.

### **CONCLUSIONS OF LAW:**

The claim bill hearing held on February 4, 2023, was a *de novo* proceeding to determine whether FDOT is liable in negligence for damages suffered by the claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the special master prior to, during, and after the hearing. The Legislature is not bound by settlements or jury verdicts when considering a claim bill, the passage of which is an act of legislative grace.

Section 768.28, of the Florida Statutes, limits the amount of damages a claimant can collect from the state or any of its agencies as a result of its negligence or the negligence of its

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<sup>6</sup> Complaint (Dec. 11, 2020), *Parker, as Personal Representative of the Estate of Molly Morrison Parker, and on behalf of all survivors v. Fl. Dep't. of Transp.*, Case No: 2020-CA-2294 (Fla. 2<sup>nd</sup> Jud. Circ. 2022).

<sup>7</sup> Stipulated Settlement Agreement (June 21, 2022), *Parker, as Personal Representative of the Estate of Molly Morrison Parker, and on behalf of all survivors v. Fl. Dep't. of Transp.*, Case No: 2020-CA-2294 (Fla. 2<sup>nd</sup> Jud. Circ. 2022).

<sup>8</sup> Final Judgment (June 23, 2022), *Parker, as Personal Representative of the Estate of Molly Morrison Parker, and on behalf of all survivors v. Fl. Dep't. of Transp.*, Case No: 2020-CA-2294 (Fla. 2<sup>nd</sup> Jud. Circ. 2022).

<sup>9</sup> Stipulated Settlement Agreement, *supra* at 6.

employees to \$200,000 for one individual and \$300,000 for all claims or judgments arising out of the same incident. Funds in excess of this limit may only be paid upon approval of a claim bill by the Legislature. Thus, the claimant will not receive the full amount of the judgment unless the Legislature approves this claim bill authorizing the additional payment.

In this matter, the claimant alleges negligence on behalf of an employee of the FDOT. The State is liable for a negligent act committed by an employee acting within the scope of his or her employment.<sup>10</sup>

### **Negligence**

Negligence is “the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances;”<sup>11</sup> and “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.”<sup>12</sup>

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.<sup>13</sup>

### *Duty*

Statute, case law, and agency policy describe the duty of care owed by the operator of a motor vehicle. Generally, the operator of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injury to persons within the vehicle's path.<sup>14</sup>

The FDOT employee had two additional statutory duties pursuant to section 316.123(2)(a), F.S. The first: to “stop at a

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<sup>10</sup> *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4<sup>th</sup> DCA 2013).

<sup>11</sup> Florida Civil Jury Instructions, 401.4 – Negligence.

<sup>12</sup> Florida Civil Jury Instructions, 401.12(a) - Legal Cause, Generally.

<sup>13</sup> *Williams v. Davis*, 974 So.2d 1052, at 1056-1057 (Fla. 2007).

<sup>14</sup> See *Gowdy v. Bell*, 993 So. 2d 585, 586 (Fla. 1st DCA 2008); and *Williams v. Davis*, *supra* at 13,1063.

clearly marked stop line...before entering the intersection [.]” The second: to “yield the right-of-way to any vehicle [...] which is approaching so closely on said highway as to constitute an immediate hazard.” These duties required the FDOT employee to (1) stop his dump truck at the stop line, rather than the stop sign, and (2) yield the right-of-way to any vehicle which is approaching so closely as to constitute an immediate hazard.

FDOT policy requires its employees to operate the Department’s motor vehicles and heavy equipment in a safe manner.<sup>15</sup>

#### *Breach*

As the evidence demonstrates, the FDOT employee violated section 316.123(2)(a), of the Florida Statutes., and breached the required standard of care when he failed to stop his vehicle at the stop line, and when he entered the intersection in violation of Ms. Parker’s right-of-way, resulting in a collision. This constitutes a failure to use reasonable care to prevent injury to persons within his vehicle’s path.

The FDOT employee was cited for his violation of section 316.123(2)(a), of the Florida Statutes, by the Florida Highway Patrol and ultimately found guilty of that violation at a hearing on March 11, 2021.

FDOT issued an official written reprimand to the employee in question for his violation of the FDOT Disciplinary Standards of Conduct, which required he exercise due care and reasonable diligence in the performance of his job duties.<sup>16</sup>

#### *Causation*

Ms. Parker’s death was the natural and direct consequence of the FDOT employee’s breach of his duties. A collision was a foreseeable outcome from the risk produced by the FDOT employee’s failure to yield the right-of-way and failure to use reasonable care upon entering the intersection. But for these failures, the accident would not have occurred, Ms. Parker

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<sup>15</sup> FDOT Policy 13.5.1(C)(1) requires operators of motor vehicle/heavy industrial equipment to “...safely operate all vehicles or equipment they are assigned to operate.” Additionally, FDOT Policy 10.11.1 states that it is the operator’s responsibility to safely operate FDOT motor vehicles or equipment. FDOT, *Safety and Loss Prevention Manual*, 107 (May 16, 2018).

<sup>16</sup> The FDOT employee reprimand also cited Policy 10.11.1 of its Safety Loss and Prevention Manual, which states that the “safe operation of Department motor vehicles or equipment is the responsibility of the operator.”

would not have been severely injured, and she would not have ultimately died as a result of those injuries.

The employee was acting within the course and scope of his employment with FDOT at the time of the crash. As the employer, FDOT is liable for damages caused by its employee's negligent act.<sup>17</sup>

#### *Damages*

Ms. Parker is survived by her husband and minor son, and worked both a full-time and part-time job to help provide financially for them. Additionally, Ms. Parker performed numerous unpaid tasks in and around the home, and in connection with the care of her son and family.

According to the economic analysis done by the Raffa Consulting Economists, Ms. Parker's estate suffered damages of at least \$2,365,284.51 due to her premature death.<sup>18</sup> Ms. Parker's funeral expenses totaled \$2,549.

Ms. Parker's medical bills initially totaled \$255,347.49, but according to documentation submitted by the claimant's attorney, were reduced by partial payments to \$164,395.75. According to the terms of the bill, lien interests relating to the care and treatment of Molly Parker will be waived and extinguished, excluding the federal portions of any liens.

In addition, Mr. Parker endured and continues to experience pain and suffering relating to the death of his wife, Ms. Parker.

A representative of Ms. Parker's estate and the FDOT have agreed to settle this matter for \$6,250,000. This figure is reasonable based on the evidence and case law. The agreed amount settled upon represents the pain and suffering, expenses incurred, and the loss of services and financial support experienced by Ms. Parker's husband and minor child.

#### ATTORNEY FEES:

Section 768.28(8), of the Florida Statutes, limits a claimant's attorney fees to 25 percent of any judgment or settlement.

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<sup>17</sup> Florida Civil Jury Instructions, 401.14(a), *Vicarious Liability - Owner, Lessee, or Bailee of Vehicle Driven by Another*, and 401.12(a) - 401.14(b)(1), *Vicarious Liability – Agency, Master and Servant*.

<sup>18</sup> Raffa Consulting Economists, Economic Damages Analysis for Molly Parker (May 20, 2022).

Claimant's attorney has agreed to this limit and included related lobbying fees within the limit, as follows:

- Attorney fees: 20 percent (\$1,119,000); and
- Lobbyist fees: 5 percent (\$297,500).

RECOMMENDATIONS:

For the reasons set forth above, the undersigned finds the claimant has demonstrated the elements of negligence by the greater weight of the evidence and the amount sought is reasonable. The undersigned recommends the bill be reported FAVORABLY.

Respectfully submitted,

Jessie Harmsen  
Senate Special Master

cc: Secretary of the Senate