



STORAGE NAME: h6019c.JDC

DATE: 3/31/2023

(March 31, 2023)

SPECIAL MASTER'S FINAL REPORT

The Honorable Paul Renner
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6019 - Representative Buchanan
Relief/Kristin A. Stewart/Sarasota County

THIS IS A SETTLED CLAIM FOR \$5.75 MILLION AGAINST SARASOTA COUNTY FOR INJURIES AND DAMAGES SUFFERED BY KRISTIN A. STEWART WHEN SHE WAS STRUCK BY A SARASOTA COUNTY UTILITY TRUCK ON MAY 13, 2020.

FINDINGS OF FACT:

Accident

On the afternoon of May 13, 2020, 33-year-old Kristin A. Stewart ("Stewart") was out on what she thought would be a routine run, heading westbound along Bahia Vista Drive in her hometown of Sarasota, Florida. An avid runner, Stewart routinely ran eight to ten miles at her workday's end, and she had planned to do so again on this bright, clear day. At the same time, a Sarasota County Ford F-550 utility truck operated by Tsuguo Kanayama ("Kanayama"), a Sarasota County employee,¹ was traveling eastbound on Bahia Vista Drive and approaching the Witmarsum Boulevard intersection ("the intersection").

Shortly after 1:00 p.m., Kanayama, who was initially following a route that would have taken him straight through the intersection and on to a Sarasota County workshop, suddenly remembered that he had left a flashlight at his last job site and decided to turn around to retrieve it. Kanayama later testified in

¹ At the time of the accident, Sarasota County employed Kanayama as a Skilled Trade Worker. His duties involved water and sewer valve maintenance.

a deposition that, knowing that the truck could not properly execute a U-turn due to its turning radius, he initially intended to make a left turn onto Witmarsum Boulevard but found it was closed due to construction; Kanayama then decided to execute the U-turn.

At the same time, Stewart attempted to cross Witmarsum Boulevard by entering its marked pedestrian crosswalk. At all times relevant to this inquiry, Stewart remained in the marked crosswalk and had the right of way. However, Kanayama, who testified that he did not observe Stewart, continued to execute the U-turn, swinging the truck wide into the pedestrian crosswalk, striking Stewart with the truck's front right corner, and pulling her under the truck. Kanayama also testified that, unaware that he had struck Stewart, he continued to drive the truck for an additional sixty to sixty-five feet, dragging Stewart all the way. In fact, it wasn't until Kanyama heard Stewart screaming that he stopped the truck, coming to rest partially on the sidewalk along which he had apparently been driving.

Upon exiting the truck, Kanayama allegedly saw Stewart for the first time, pinned under the truck's front right wheel. Stewart, who had remained conscious throughout the ordeal, testified in her deposition that she had to ask Kanayama to back the truck up so that its wheel was no longer resting on her body. Kanayama then moved the truck as requested and called 911, informing the operator that he had hit a female pedestrian who was injured and needed help.

Emergency services and law enforcement quickly responded to the scene. Law enforcement officers began documenting the crash, investigating what they thought at the time would be a traffic homicide; this investigation included photographing a debris field showing how far the truck dragged Stewart from the point of impact, scattering her personal effects, blood, and tissue along the way. It also included photographing the truck's front right wheel, in which Stewart's blood and tissue was embedded, and her shredded clothing. As a result of the investigation, Kanayama was cited for careless driving, a violation of s. 316.1925(1), F.S.

Physical Injuries

Stewart presented to the Emergency Room as a Trauma 1 Patient, meaning she was in critical condition and her chances of survival were unknown. The medical team found that Stewart was in acute respiratory failure, having suffered a right-lung pneumothorax, and in hemorrhagic shock due to a lack of oxygen resulting from blood loss. To stabilize her, the medical team placed Stewart into a medically-induced coma. They then intubated her, placing her on mechanical ventilation, and obtained CT scans to assess for internal injuries.

Once stabilized, trauma surgeons performed an exploratory laparotomy to determine the extent of her injuries, discovering or confirming:

- A grade IV liver laceration;
- A bruised hepatic flexure;
- A right kidney laceration and contusion;
- Internal bleeding;
- A right shoulder abrasion;
- Bilateral elbow wounds with exposed fascia;
- Traumatic hair loss due to a scalp injury;
- Bilateral central abdominal avulsions with exposed fascia and muscle;
- Significant left torso road rash;
- Bilateral hand lacerations and abrasions;
- A buttock abrasion;
- Bilateral lower quadrant defects with exposed fascia and the right defect open to her anterior superior iliac spine;
- A lateral compression Grade III open book pelvic fracture;
- Displaced fractures of her right lower ribs; and
- Bilateral transverse process fractures.

During the laparotomy, the trauma surgeons also embolized her right hepatic artery to stem its bleeding, placed a thoracostomy tube in her right chest due to the collapsed lung, and irrigated and debrided Stewart's abdomen, leaving it open but covered with a wound vacuum in the knowledge that she would need further surgeries. Stewart subsequently had:

- Her liver surgically repaired with chromic sutures;
- Her pelvis fractures surgically repaired with the placement of two cannulated screws into the bones;
- Skin grafts placed on her abdomen, right and left elbows, right groin, and right and left hips; and
- Multiple debridements and skin graft revisions.

Stewart ultimately spent fifteen days in the hospital, received months of home health care, and underwent additional procedures related to injuries stemming from the accident. According to the record, costs for Stewart's past medical care amounted to \$917,251.49.

Further, a Continuation of Care Plan completed by Dr. Craig Lichtblau ("Lichtblau"), a Pain Management and Rehabilitation Specialist and Physiatrist, estimates that Stewart's future care needs, when reduced to present value, amount to \$388,538.

Loss of Wages, Future Earnings, and Benefits

Before the accident, Stewart taught at Bayshore Elementary School, where, according to her testimony in the Special Master hearing held in this matter, she was a popular teacher

often requested for younger siblings by the parents of children she had previously taught. She loved her profession and had planned to dedicate the rest of her working life to it. Such was her devotion that Stewart attempted to return to teaching a few months after the accident, conducting class virtually from home due to the ongoing COVID-19 pandemic. Unfortunately, the demands of working while seeing numerous medical providers, receiving physical therapy, and coping with chronic pain proved to be too much, and Stewart had to resign.

Stewart subsequently underwent a disability evaluation, conducted by Lichtblau, who found that Stewart has a partial permanent disability and will not be able to maintain gainful employment in the competitive open labor market or in a sheltered environment with a benevolent employer due to her acute, intermittent chronic pain. According to the record, Stewart's lost wages and future earning capacity, when reduced to present value, is \$1,927,484.

Further, in losing her employment, Stewart also lost her health insurance benefits. According to the record, Stewart will have to pay \$156,568 over the course of her life to maintain future health insurance coverage.

Non-Economic Damages

Before the accident, Stewart led an active lifestyle that included the aforementioned runs, award-winning competitive skiing, swimming, boating, hiking, and many other activities. She shared these activities with her then-fiancé, whom she had known since 2012 and to whom she had become engaged only three months before the accident. Stewart and her fiancé have since married and welcomed a daughter, but, due to pain and physical limitations resulting from the accident, Stewart is now unable to participate in many of the activities she and her now-husband once enjoyed together.²

Stewart also lives with post-traumatic stress disorder, causing flashbacks, intrusive thoughts, nightmares, and at times the avoidance of certain activities or places that might trigger memories of the accident. She testified that she also suffers from anxiety, particularly relating to the safety of her daughter and husband as she worries about what might happen to them.

Litigation History

In late 2020, Stewart filed a lawsuit against Sarasota County, amending her complaint on December 16, 2020. On June 20, 2022, Stewart and Sarasota County entered into a settlement agreement for \$5.95 million in which the County agreed to pay

² Stewart's orthopedic surgeon testified in a deposition that, although the anatomy of Stewart's pelvis was restored and he did not impose restrictions on her activities, her biggest limiting factor is pain, which can be unpredictable due to the severity of her injury. He also noted that the screws in her pelvis would limit her range of motion, making running difficult.

the \$200,000 sovereign immunity limits and support a claim bill for the balance. In the settlement agreement, the County admitted that Kanayama was solely at fault for running over Stewart; that Kanayama was acting within the course and scope of his employment at the time of the accident; that Stewart was not negligent and did not contribute to causing the accident; and that Sarasota County's negligence, by and through Kanayama, was the sole cause of Stewart's injuries.

CONCLUSIONS OF LAW:

Pursuant to House Rule 5.6(b), stipulations entered into by the parties to a claim bill (including settlement agreements) are not binding on the Special Master or the House or any of its committees of reference. Thus, each claim is heard *de novo*, and the Special Master must make findings of fact and conclusions of law which support the claim. In the instant matter, the Claimant raises a negligence claim, the elements of which are duty, breach, causation, and damages.

Duty

The driver of a motor vehicle has a duty to take reasonable care and to follow all applicable laws to prevent harm to those within the vehicle's path.

Section 316.1925(1) F.S., provides that any person operating a vehicle on 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 person who commits such a violation commits a moving violation.³

Breach

The evidence presented demonstrates that Kanayama breached the duties described above when he failed to execute a U-turn in a careful and prudent manner, and to have due regard for the truck's turning radius and the presence of a pedestrian, thereby crossing into a pedestrian crosswalk and causing the Ford-F550 to collide with and drag Stewart.

Causation

Stewart's injuries were the direct and proximate result of Kanayama's breach of the duties described above. But for Kanayama's failure to execute a U-turn in a careful and prudent manner, and to have due regard for the truck's turning radius and the presence of a pedestrian, the traffic crash which caused Stewart's injuries on May 13, 2020, would not have occurred.

³ S. 316.1925(2), F.S.

Damages

The Claimant settled the instant matter with Sarasota County for \$5.95 million, and the County paid the \$200,000 sovereign immunity limits; thus, this claim bill is for \$5.75 million to compensate the Claimant for her severe and permanent physical injuries; past and future medical expenses; lost wages and future earning capacity; lost benefits; mental pain and anguish; disability; pain and suffering; and loss of ability to enjoy life due to Kanayama's negligence. I find the settlement amount is reasonable based on the evidence presented, case law, and comparable jury awards.

Respondeat Superior

Under the common law *respondeat superior* doctrine, an employer is liable for the negligence of its employee when the:

- Individual was an employee when the negligence occurred;
- Employee was acting within the scope of his or her employment; and
- Employee's activities were of a benefit to the employer.⁴

For conduct to be considered within the course and scope of the employee's employment, such conduct must have:

- Been of the kind for which the employee was employed to perform;
- Occurred within the time and space limits of his employment; and
- Been due at least in part to a purpose serving the employment.⁵

Because Kanayama was at all times relevant to the instant matter employed by Sarasota County and was acting within the scope of his employment, which employment benefitted the County, the County is liable for Kanayama's negligence under the common law *respondeat superior* doctrine.

CLAIMANT'S POSITION:

The Claimant asserts that she is entitled to the remaining \$5.75 million authorized by the settlement agreement.

RESPONDENT'S POSITION:

Consistent with the terms of the settlement agreement in this matter, Sarasota County supports the claim bill.

RESPONDENT'S ABILITY TO PAY:

Sarasota County indicated that it maintains a self-insurance program and an excess liability insurance policy. The County also indicated that, should the claim bill pass, paying the claim bill will not impact the County's operations.

⁴ *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353 (Fla. 3d DCA 2001).

⁵ *Spencer v. Assurance Co. of Am.*, 39 F.3d 1146 (11th Cir. 1994).

SPECIAL MASTER'S FINAL REPORT--

Page 7

ATTORNEY'S/
LOBBYING FEES:

If the claim bill passes, attorney fees relating to the claim bill may not exceed \$1.25 million, while lobbying fees relating to the claim bill may not exceed \$287,500.

LEGISLATIVE HISTORY:

The claim bill is presented to the Legislature for the first time.

RECOMMENDATIONS:

Based on the foregoing, I recommend that House Bill 6019 be reported FAVORABLY.

Respectfully submitted,

CAITLIN R. MAWN,
House Special Master

cc: Representative Buchanan, House Sponsor
Senator Gruters, Senate Sponsor
Tyler Tuszynski, Senate Special Master