



## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

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409 The Capitol

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DATE	COMM	ACTION
1/29/26	SM	Favorable
2/3/26	JU	Favorable
2/12/26	ATD	Favorable
3/2/26	AP	Pre-Meeting

January 29, 2026

The Honorable Ben Albritton  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **SB 26** – Senator McClain and Senator Massullo  
**HB 6509** – Representative Grow  
Relief of the Estate of Mark LaGatta by the Department  
of Transportation

### SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR STATE FUNDS IN THE AMOUNT OF \$2.2 MILLION, PAYABLE BY THE DEPARTMENT OF TRANSPORTATION BASED ON A SETTLEMENT AGREEMENT BETWEEN MARK LAGATTA AND THE D.O.T. THE SETTLEMENT AGREEMENT RESOLVED A CIVIL ACTION THAT AROSE FROM THE ALLEGED NEGLIGENCE OF EMPLOYEES OF D.O.T. THAT CAUSED INJURY TO MARK LAGATTA AND HIS DAUGHTER FAITH LAGATTA. MR. LAGATTA RECENTLY PASSED AWAY APPARENTLY DUE TO NATURAL CAUSES, AND HIS ESTATE OWNS THE RIGHT TO RECOVERY.

#### FINDINGS OF FACT:

##### **General Overview of the Accident**

On Monday, July 27, 2020, Mark LaGatta, a 56 year old resident of Lecanto (Citrus County), Florida, went on a motorcycle ride with his 18 year old daughter Faith LaGatta as passenger. He was lawfully operating a 2010 Harley Davidson motorcycle. They travelled from Lecanto to Cedar Key for a seafood lunch on the water on what they described as a Daddy-Daughter Lunch Date. It was a perfect Florida day

for a Florida resident to become a Florida tourist with a trip to the coast on a bright and sunny day.

Prior to the accident, Mr. LaGatta was a physically active father of five children and husband to his wife who is the mother of their children. He was honorably discharged from the United States Army and had been an Army contractor in the Middle East after his discharge. He enjoyed time with his wife and children, fixing his home, and riding his motorcycle. In his early adulthood in New York state, he was arrested three times for DUI. He has not had any brushes with the law in his many years as a citizen of Florida.<sup>1</sup> Mr. LaGatta has an unremarkable Florida driving history and had a motorcycle endorsement on his driver's license.<sup>2</sup>

On the day of the accident the Florida Department of Transportation was undertaking repairs to the westbound lane of State Road 24. SR 24 runs from Cedar Key in the west to Waldo in the east, travelling through Rosewood, Archer and Gainesville. In a rural area approximately 0.2 miles east of the intersection with SW 95th Avenue, Cedar Key (and approximately 0.4 miles east of the Rosewood memorial marker), a small sinkhole had opened in the westbound lane of the roadway. A DOT-owned tractor with a box blade attached on the rear, operated by a DOT employee, was being used to make temporary repairs to the roadway. The westbound lane was cordoned off with cones, and flagmen were stationed at either end of the open travel lane with radio communication to manage the one-lane traffic using the eastbound lane. Contrary to normal procedure, there was no spotter being used to assist the tractor driver in operating the tractor. Also, DOT service trucks were parked near the sinkhole and in a manner that partially blocked the tractor driver's view of vehicles that were in the travel lane. The tractor driver testified that the design of the cab caused blind spots that interfered with his views during backing up maneuvers. The highway at the location of the accident is two lane, relatively straight and flat, with a wide shoulder that tapers off from the road, rural and lined with mature pine trees, and has a normal speed limit of 60 mph.

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<sup>1</sup> Given the history of DUIs, the Special Master felt compelled to request the blood test results from the emergency room medical records. The test result for alcohol was 0, showing that Mr. LaGatta was not under the influence of alcohol at the time of the accident.

<sup>2</sup> FHSMV driver record of Mark LaGatta, dated September 26, 2023.

Leaving Cedar Key, around 2:15 p.m., Mr. LaGatta and his daughter Faith were travelling eastbound when Mr. LaGatta slowed as he approached the construction zone. As directed by the flagman, he followed another vehicle into the construction zone. The tractor operator saw the other vehicle pass and proceeded to back into the eastbound travel lane, assuming that the vehicle was the only one sent through by the flagmen and thus not seeing the motorcycle. A nearby witness foresaw the imminent collision and immediately honked his horn, but to no avail. The witness testified that Mr. LaGatta appeared to apply brakes and attempted to steer away from the box blade, although pictures from the scene do not show skid marks. There was no evidence as to whether the construction zone had a special speed limit. The witness estimated the motorcycle was travelling at 30 miles per hour when the tractor with box blade entered the travel lane, which would appear to be a safe and appropriate speed for the conditions.

The motorcycle struck the box blade, causing Mr. LaGatta and his daughter to be thrown from the motorcycle. Both were injured, the more serious injuries being suffered by Mr. LaGatta.

The DOT employee at fault in the accident was issued a citation. The traffic court found him guilty and assessed a \$500 fine with 3 months driver license suspension and a requirement to attend the Advanced Defensive Driving School.<sup>3</sup>

#### **Mr. LaGatta's Injuries and Immediate Care**

Mr. LaGatta was not wearing a helmet but fortunately did not suffer a head injury that required treatment. Mr. LaGatta was taken by ambulance from the accident site to Shands Hospital in Gainesville, approximately 45 miles from the accident scene. He does not recall the ride, but medical records show that he was administered multiple doses of strong pain medications during the lengthy ride. Upon arrival at Shands it was noted that he had left leg open fractures<sup>4</sup> of the tibia and fibula<sup>5</sup>, arterial bleeding at the injury site of the left leg, closed fractures of the right tibia and fibula, multiple facial

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<sup>3</sup> Levy County Clerk of Court records of Russell Dunn.

<sup>4</sup> An "open" fracture refers to a severe fracture where the skin is cut or otherwise open, exposing the bone.

<sup>5</sup> The tibia and fibula are the two long bones of the lower leg, the tibia being the larger of the two and the one that bears most of the body's weight. Breaking both is commonly referred to as a "tib-fib fracture," and is an unfortunately common result of motorcycle collisions.

lacerations, and a transoral laceration of the mandibular fold. He was awake and alert. The facial lacerations were treated in the emergency room and the right leg fractures were set. The left leg injuries, however, would require significantly more medical attention.

In the emergency room, Mr. LaGatta required immediate orthopedic and vascular surgery including 4 compartment fasciotomies and external fixation. He was admitted to the intensive care unit for management of his pain, fractures and severe rhabdomyolysis requiring CVVH therapy.<sup>6</sup> He was intubated and placed in an induced coma. Over the next five days the lower leg injuries required multiple debridements that were unsuccessful in saving the leg from necrosis, and on August 2, 2020 (five days after the accident) the left leg was amputated at the mid-femur. The next day, another surgery was performed for further debridement of the left leg stump, pinning of the right tibia, and a tracheostomy to replace the intubation.

By August 15 (18 days post-accident), Mr. LaGatta was off the ventilator, his tracheostomy had been removed, his renal function was normal, and he was eating a normal diet. He transitioned in stable condition from the ICU to a regular hospital room. The next day he was discharged from Shands and transferred to a rehabilitation facility.

### **Faith LaGatta**

Mr. LaGatta's daughter Faith was 18 years old on the date of the accident. She was wearing a helmet. She suffered unspecified serious injuries in the accident, but her injuries appear far less serious than those of her father. Her claims have been settled in full within the sovereign immunity limits.

### **Follow up Medical Care**

Mr. LaGatta had follow-up care for his injuries. Significantly, he has received post-traumatic stress disorder (PTSD) care from the Veteran's Administration (VA). He was fitted for a basic prosthetic leg, which he considered unusable. He paid out-of-pocket for an advanced prosthetic leg which allowed him to walk short distances.

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<sup>6</sup> Rhabdomyolysis is kidney failure, which can be caused by severe trauma to other parts of the body. CVVH therapy is the temporary use of a mechanical external machine that simulates the functions of the kidneys.

Mr. LaGatta anticipated continuing PTSD treatment through the VA.

Mr. LaGatta lost numerous teeth because of the accident. He could not afford dental treatment and had not sought an estimate of the cost or feasibility of dental work. Had this claim bill passed during his lifetime it seems likely that he would have pursued extensive dental work.

The claimant furnished an economic report that he would have relied on had the case gone to a jury. The report estimated lifetime medical expenses related to the accident for Mr. LaGatta would be in the range of \$4.4 million to \$5.3 million.<sup>7</sup> However, this estimate assumed that the claimant would utilize several medical procedures and therapies that were not actually being pursued and did not appear to be planned in the future. For instance, the plan proposed a dorsal column stimulator for pain relief (as much as \$158,179), a procedure that was not done. The plan contemplated lifetime costs for a prosthetic leg at between \$2.2 million and \$2.8 million, yet Mr. LaGatta bought his prosthesis for \$40,000. The plan proposed a lifetime of home health aides at a cost of \$1.8 million to \$1.9 million, no home health aides were employed. Mr. LaGatta died August 14, 2024, of natural causes at the age of 60. The evidence is sparse, but the Special Master estimates that unpaid medical expenses related to the immediate aftermath of the accident plus those incurred afterwards through his lifetime, and not covered by Medicaid or the VA, are perhaps \$200,000.

### **Mr. LaGatta's Employment and Lost Wages**

At the time of the accident, Mr. LaGatta earned approximately \$35,000 annually as a maintenance engineer at a local golf course. He previously worked in maintenance at a hotel. These maintenance jobs required extensive physical exertion encompassing mobility, lifting and climbing. He maintained that due to the left leg amputation together with continued right leg pain and instability he was unable to work as a maintenance engineer. He further contended that due to age and injuries he was unable to work in or train for a sedentary career.

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<sup>7</sup> Kirby, *Analysis of Economic Damages*, RE: Mark LaGatta, page 2.

Mr. LaGatta had been evaluated by an expert in rehabilitative care who had assigned a 37% whole body permanent impairment rating.<sup>8</sup>

Given the impairment rating, his history of active physical labor, his age, his overall health, and the continuing effects of his injuries, it is reasonable to find that Mr. LaGatta has suffered a total loss of income, which loss cannot be reasonably mitigated. Thus, a jury may have awarded 11 years of lost wages totaling approximately \$385,000.<sup>9</sup> His widow should have benefited from that lost income, and the loss has likely negatively impacted her future federal benefits as a surviving spouse. It appears equitable to award this lost income despite Mr. LaGatta's early demise.

### **Collateral Sources**

Mr. LaGatta had the minimum personal injury protection (PIP) coverage (\$10,000), and he received \$25,000 in uninsured motorist coverage from his own policy. Medicaid paid \$166,604.23 for medical bills related to the accident.<sup>10</sup> The VA provided some care without charge. While technically not a collateral source, Mr. LaGatta has already received \$120,000 from the State DOT in partial satisfaction of this claim.

### **Noneconomic Damages**

Mr. LaGatta suffered significant noneconomic damages in the form of pain and suffering damages. He was likely to continue to suffer the rest of his life, the missing leg a painful reminder of an accident he should never have had to suffer. In addition to his actual pain, he continued to blame himself for the injuries to his daughter Faith, even though there is no apparent legal or moral fault on him and the DOT appears to be 100 percent at fault in the collision.

No amount of money can truly compensate an accident victim for his or her pain and suffering, but money is the only tangible thing that can be awarded to an accident victim. As this is a settlement without the benefit of a jury trial, and because there is no formula or fixed criteria for an award, we don't know how

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<sup>8</sup> Lichtblau, *Comprehensive Rehabilitation Evaluation of Mark LaGatta*, page 54.

<sup>9</sup> He was 56 at the time of the accident, and full retirement age for Social Security purposes for a person of his age at the time of the Special Master hearing, before his passing, is 67. In a trial, the plaintiff can argue for anticipated future inflationary increases in salaries, and the defense can argue that a judgment is paid today and that investment earnings should be considered. Given that the parties settled and did not present evidence in either regard, the Special Master considered this a "wash" and utilized a straight-line calculation of lost wages.

<sup>10</sup> The charged amount was \$770,354.04.

much a jury might have been awarded had this matter gone to trial.

### **Litigation History and Settlement:**

#### *Litigation History*

The underlying case was filed on April 13, 2021, as a civil action in Levy County. The plaintiffs were Mark LaGatta, the claimant now being his estate, his wife Margaret LaGatta, and his daughter Faith LaGatta.

The plaintiff alleged that DOT was negligent in the operation of a tractor with box blade attachment, and that such negligence resulted in permanent injuries to Mr. LaGatta, permanent injuries to Faith LaGatta, and a loss of consortium claim by Margaret LaGatta. The defendant DOT denied all allegations of negligence.

#### *Settlement*

The parties entered into a settlement agreement resolving all claims that had been or could have been raised by claimants. The agreement paid Faith LaGatta the sum of \$150,000, and paid Margaret LaGatta the sum of \$30,000, both in full payment of their claim. The agreement also paid the remaining \$120,000 of the immunity limit to Mark Lagatta in partial payment of the settlement. From the \$120,000, there was a partial payment of the Medicaid lien as required by the applicable statutes, reducing the Medicaid lien by \$32,846.47.<sup>11</sup>

The total settlement between the DOT and Mr. LaGatta is for \$2.32 million, \$120,000 of which was paid upon execution of the settlement. DOT has agreed to support a claim bill payable to the Estate of Mark LaGatta for the additional sum of \$2.2 million.

### **CONCLUSIONS OF LAW:**

A *de novo* hearing was held on October 30, 2023. 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, waives the state's sovereign immunity for tort liability up to \$200,000 per person and \$300,000 for all claims or judgments arising out of the

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<sup>11</sup> The current outstanding balance is \$133,757.76.

same incident. Sums exceeding these amounts are payable by the State and its agencies or subdivisions only by further act of the Legislature.

### **Agency Liability**

There are three main types of agency liability in which a principal is responsible for the tortious conduct of its agent: *respondeat superior*, actual authority, and apparent authority.

#### *Respondeat Superior*

Under the doctrine of *respondeat superior*, an employer is liable for acts of employees performed within the course of their employment.<sup>12</sup>

In this case, the tractor driver and the employees on site were all employees of DOT. The flagmen were not DOT employees but were under the direction and control of DOT.<sup>13</sup> The undersigned finds that all individuals liable for this accident and injuries fall under the concept of *respondeat superior*. The DOT is legally liable for the negligent acts of its employees and agents performed within the course of their employment.

Because *respondeat superior* applies, there is no cause to examine actual authority or apparent authority.

### **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.<sup>14</sup>

#### *Duty*

An operator of any vehicle generally has a duty to operate the vehicle safely and in a manner that is not harmful to other vehicles, pedestrians, or property.

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<sup>12</sup> *Dieas v. Assoc. Loan Co.*, 99 So.2d 279, 280-281 (Fla. 1957); *Stinson v. Prevatt*, 94 So. 656, 657 (Fla. 1922).

<sup>13</sup> The flagmen were state prisoners assigned to DOT. If asked to assign liability to them, the Special Master would find that the flagmen acted appropriately and should not be assigned any liability. It is unclear why DOT did not ask for a third inmate to act as a spotter for the tractor driver. A spotter is common in the construction industry and it was negligent not to have one. If there had been a spotter it is far less likely that this accident would have occurred.

<sup>14</sup> *Williams v. Davis*, 974 So.2d 1052, at 1056–57 (Fla. 2007).

*Breach*

The DOT breached its duty by driving a tractor directly in front of a vehicle that was lawfully and safely operating on the highway. Mr. LaGatta had the right-of-way. The DOT also breached its duty by not assigning a spotter, parking large vehicles that partially blocked the views of the tractor operator, and not providing a radio to the tractor driver so that he could listen to the flagmen.

*Causation*

The breaches directly caused the accident.

*Damages*

Through the provision of medical records and supporting evidence, the claimant has established that he suffered significant and permanent injuries. A jury that would have heard this case is likely to have resulted in an award of significant damages for past and future medical expenses, past and future lost income, and past and future noneconomic (pain and suffering) damages.

Note that the settlement appears to have contemplated that Mr. LaGatta would live approximately twenty years longer than he did. A considerable amount of the settlement amount was apparently intended as compensation for anticipated future medical expenses that now are not needed. This would not be considered post-trial in a private action but is an equitable factor that the Legislature may consider in determining an equitable amount to award.

*Comparative Fault*

The damages award to a plaintiff in a personal injury action may be reduced if the finder of fact determines that the plaintiff was partially liable for his or her own injuries.

**Conclusion**

DOT was clearly negligent in several ways that led to the tragic outcome of this accident. The tractor driver was negligent in backing up into the travel lane without ensuring that the lane was clear, which liability is legally imposed upon DOT. DOT was also negligent in improperly training and supervising the tractor driver, in not assigning one of the employees on site to act as a spotter, in not giving the tractor driver a radio to listen to the flagmen, and in parking support vehicles in a manner that partially obscured the tractor operator's view of the travel lane. All the while, Mr. LaGatta

was driving in a reasonable manner and at a safe speed for conditions. It is reasonable and likely that a jury would find 100 percent of fault attributable to DOT and no comparative fault on the part of Mr. LaGatta. The special master therefore recommends a finding that Mr. LaGatta did not contribute to his injuries, and thus recommends a finding that DOT is legally 100 percent at fault in this accident.

As to the appropriate measure of compensation, the Legislature may decide whether the claim bill should accept the settlement with DOT or should equitably reduce the claim amount to take into consideration Mr. LaGatta's untimely death. The amount paid by this claim bill will be reduced before payment to the family by attorney's fees and the existing Medicaid lien.<sup>15</sup>

ATTORNEY FEES:

Language in the bill states that attorney fees may not exceed 25 percent of the amount awarded. Correspondence from the attorney for the claimant confirms that the attorney will comply with this limit should the claim bill be enacted.

RECOMMENDATIONS:

**Recommended Amendments**

No technical amendments are recommended.

**Recommendation on the Merits**

Based upon the arguments and documents provided before, during, and after the special master hearing, I find that the claimant met the burden of proving that the State of Florida (Florida Department of Transportation) was negligent, resulting in injuries to Mark LaGatta. The equitable right to the claim passed to the estate. I recommend that Senate Bill 78 (2025) be reported FAVORABLY as amended in the discretion of the Legislature.

Respectfully submitted,

Nathan L. Bond  
Senate Special Master

cc: Senator McClain  
Tracey Cantella, Secretary of the Senate

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<sup>15</sup> Attorney fees are 25% of the award. The outstanding Medicaid lien is \$133,757.76.

Counsel of Record