



## Special Master's Final Report

The Honorable Daniel Perez  
Speaker, The Florida House of Representatives  
Suite 420, The Capitol  
Tallahassee, Florida 32399-1300

Re: [CS/HB 6509](#) - Representative Grow  
Relief/Estate of Mark LaGatta/Department of Transportation

### SUMMARY

This claim originated as a settled claim for \$2.2 million against the Florida Department of Transportation ("FDOT") for injuries and damages suffered by Mark LaGatta ("LaGatta") when an FDOT employee reversed a tractor with a box blade attachment into LaGatta's lane of travel after a flagger working on behalf of FDOT directed LaGatta, who was operating a motorcycle, to proceed in the lane. Despite trying to avoid the tractor, LaGatta's motorcycle impacted the tractor's box blade attachment, sending LaGatta off of the road and later resulting in the amputation of LaGatta's leg and his inability to return to work.

The settlement amount was presumably meant, in significant part, to compensate LaGatta for his future medical care and his lost future earnings. However, LaGatta died in August of 2024 from causes unrelated to the accident at issue in this claim bill, rendering his claim for the cost of future medical care and lost future earnings moot from the date of his death forward. On February 11, 2026, the Civil Justice & Claims Subcommittee adopted an amendment reducing the compensation payable to LaGatta's estate, should the bill pass, from \$2.2 million to \$1.2 million.

In light of the foregoing, the undersigned recommends that CS/HB 6509 be reported FAVORABLY.

### FINDINGS OF FACT

#### **Accident**

On the morning of July 27, 2020, then-57-year-old Mark LaGatta (LaGatta"), an Army veteran, husband, and father of five, took his daughter ("Ms. LaGatta" or "daughter") on a day trip to Cedar Key, in Levy County, Florida to celebrate her recent high school graduation. As it was a pleasant summer's day, LaGatta and his daughter traveled to Cedar Key on LaGatta's motorcycle, a red Harley Davidson Ultra Classic he had owned for approximately four years, with LaGatta operating the motorcycle and his daughter riding as a passenger.<sup>1</sup> While Ms.

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<sup>1</sup> The record indicates that LaGatta had a motorcycle endorsement on his drivers' license.

LaGatta wore a helmet for the ride, LaGatta himself did not.<sup>2</sup>

On that same day, the Florida Department of Transportation (“FDOT”) undertook repairs to a damaged portion of State Road 24,<sup>3</sup> the only roadway in or out of Cedar Key.<sup>4</sup> To facilitate such repairs, FDOT established a work zone, closing off the westbound lane with cones and leaving the eastbound lane open for travel, with flaggers present at both ends of the work zone to direct traffic.<sup>5</sup> LaGatta and his daughter passed through the work zone on their way to Cedar Key without incident.

After lunch, LaGatta and his daughter decided to return to their home in Lecanto, Florida, traveling again by way of State Road 24. As LaGatta and his daughter approached the work zone, LaGatta slowed his speed of travel<sup>6</sup> and, after a flagger indicated that he could proceed, began to pass through the work zone in the open eastbound lane; the time was approximately 2:15 p.m. Simultaneously, Russell Dunn (“Dunn”), an FDOT employee operating a tractor<sup>7</sup> with a box blade attachment in the closed westbound lane, began to reverse the tractor into the open eastbound lane.<sup>8</sup>

The record indicates that Dunn could not see directly behind the tractor, that there was no spotter present to assist Dunn in maneuvering the tractor, and that he did not see anyone in the lane before he began to reverse. Unfortunately, Dunn reversed the tractor directly into LaGatta’s path and, although LaGatta applied the motorcycle’s brakes, he was unable to stop before colliding with the tractor’s box blade attachment. The collision diverted the motorcycle onto the roadway’s south shoulder, where it ultimately overturned in a ditch, sending LaGatta and his daughter tumbling to the ground.<sup>9</sup>

### **Injuries and Treatment**

LaGatta testified that he remembered little about the accident except that he was calling out for his daughter and could not see, possibly due to a concussion he sustained in the accident.<sup>10</sup> Emergency responders applied a tourniquet to LaGatta’s left leg at the scene to stop arterial bleeding, and he was ultimately transported to the emergency department at Shands Hospital in Gainesville, Florida. Due to the extent of his injuries, LaGatta received blood transfusions and emergency surgical intervention, including vascular and orthopedic surgeries with four compartment fasciotomies, external fixation of a left leg fracture, and open reduction with internal fixation for a right leg fracture.

After his initial surgical interventions, LaGatta was admitted to the Intensive Care Unit (“ICU”), where he was placed in a medically-induced coma and put on a ventilator. While in the ICU, he received treatment for his pain, multiple fractures, including fractured teeth, multiple lacerations, pneumonia, and rhabdomyolysis, which ultimately required LaGatta to undergo several days of dialysis until his renal function normalized. LaGatta also underwent multiple left lower extremity debridement procedures due to poor healing to his initial orthopedic surgery site and soft tissue necrosis.

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<sup>2</sup> Florida law does not require a person over 21 years of age to wear a helmet while operating or riding on a motorcycle if such person is covered by an insurance policy providing for at least \$10,000 in medical benefits for injuries incurred as a result of a crash while operating or riding on a motorcycle. The record indicates that LaGatta had such insurance.

<sup>3</sup> State Road 24 is a two-way, undivided roadway.

<sup>4</sup> Sinkholes caused the damage FDOT had undertaken to repair on July 27, 2020.

<sup>5</sup> The record indicates that the flaggers present at the work zone on July 27, 2020 were Florida Department of Corrections inmates on a prisoner work detail.

<sup>6</sup> The record indicates that LaGatta was traveling at a speed of approximately 30 mph at the time of the collision, while the posted speed limit was 60 mph.

<sup>7</sup> The record indicates that the tractor operated by Dunn was JCB 3CLL tractor # 11906, owned by FDOT.

<sup>8</sup> According to the record, Dunn held the position of senior heavy equipment operator for FDOT on July 27, 2020. He testified that he was reversing the tractor so that he could use the bucket on the tractor’s front to push plates off of a sinkhole so it could be repaired.

<sup>9</sup> The record indicates that LaGatta’s motorcycle was disabled due to the accident.

<sup>10</sup> Ms. LaGatta was also injured in the accident but her injuries are not the subject of this claim bill.

Ultimately, LaGatta's left leg could not be saved, resulting in an above-the-knee amputation. Over a period of days, LaGatta was medically stabilized and transitioned out of the ICU into regular in-patient care, where he continued to receive multiple weekly wound vacuum system changes. On August 16, 2020, LaGatta was again transitioned, this time to an in-patient rehabilitation facility in Ocala, Florida, where he remained for several weeks until he was discharged to his home for outpatient care, including physical therapy and mental health treatment for Post-Traumatic Stress Disorder. LaGatta also obtained two artificial legs, one provided by Medicaid that fit LaGatta poorly, causing him to frequently fall, and a more advanced model he purchased with money he received from an insurance payout.<sup>11</sup>

## **Economic Damages**

All told, LaGatta, who was insured through Medicaid at the time of the accident, incurred \$800,354.04 in medical bills. After an adjustment, Medicaid paid a total of \$166,567.48, imposing a lien in that amount against any recovery LaGatta might receive in connection with the July 27, 2020 accident. An Economic Analysis prepared for LaGatta also estimated the present value of his future medical expenses at somewhere between \$4.4 million and \$5.3 million.<sup>12</sup>

Additionally, LaGatta's Medical Functional Capacity Assessment indicated that his accident-related pain and physical limitations prevented him from maintaining gainful future employment, and estimated his life expectancy at 22.6 years.<sup>13</sup> The record also indicates that, after the accident at issue in the claim bill, LaGatta was indeed unemployed but that, before the accident, he held a maintenance engineer position at a country club, making \$35,000 per year in addition to receiving a holiday bonus.<sup>14</sup> The record also indicates that LaGatta had held similar positions for the majority of his working life and did side jobs, including HVAC repair and electrical work, to supplement his income.

## **Investigation and Civil Action**

Following a traffic crash investigation conducted by the Florida Highway Patrol, Dunn was issued a traffic citation for the offense of improper backing with serious bodily harm.<sup>15</sup> On May 11, 2021, Dunn entered a not guilty plea but the court ultimately adjudicated him guilty, suspending his driver's license for three months and ordering him to pay a \$500 fine and complete Advanced Defensive Driving School.

On April 13, 2021, LaGatta, joined as plaintiff by his wife and daughter, filed a Complaint against FDOT in the Circuit Court of the Eighth Judicial Circuit. Therein, LaGatta alleged that FDOT was negligent in and through the actions of its employee, Dunn, and as a result of such negligence, LaGatta suffered bodily injury and resulting pain and suffering; disability; disfigurement; mental anguish; loss of capacity for the enjoyment of life; medical expenses; loss of property; loss of earnings; and loss of ability to earn money. His wife and daughter separately raised claims asserting their own damages.

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<sup>11</sup> According to the record, LaGatta received a \$30,000 payment from State Farm under his uninsured motorist coverage.

<sup>12</sup> The Economic Analysis, prepared by economists Brenda B. Mulder, MBA and Kristi S. Kirby, M.Ed., contemplates LaGatta receiving physical therapy for life and mental health treatment at least for the foreseeable future; however, LaGatta testified at the Special Master Hearing held in this matter on October 30, 2023, that he was not presently receiving physical therapy (as he was told there would be no benefit to continuing with physical therapy) or mental health treatment (as his provider with the Veterans' Administration left and he had yet to establish himself with a new provider).

<sup>13</sup> Dr. Craig H. Lichtblau prepared the Medical Functional Capacity Assessment.

<sup>14</sup> At the Special Master Hearing held in this matter, LaGatta testified that he may in the future look for some kind of desk work or other position that would not involve physical labor; he indicated that he had not yet done so as he has always worked with his hands and was not sure he could do other types of work at this stage of his life.

<sup>15</sup> See case #2020-TR-002749. Improper backing with serious bodily harm is a violation of s. 316.1985(1), F.S. It is a civil traffic infraction, meaning a noncriminal violation that may require community service hours, but it is not punishable by incarceration and there is no right to a jury trial or to court-appointed counsel. Ss. 316.1985(3) and 318.13(3), F.S.

On May 4, 2021, FDOT filed an Answer, Affirmative Defenses,<sup>16</sup> and Demand for Jury Trial. However, on January 9, 2023, the parties entered into a stipulated settlement agreement in the amount of \$2,500,000, \$2,320,000 of which was for LaGatta's benefit; FDOT also agreed to pay \$150,000 to LaGatta's daughter and \$30,000 to LaGatta's wife in full satisfaction of their respective claims. The court ultimately entered a consent judgment in the lawsuit, and FDOT subsequently paid LaGatta \$120,000 towards the amount owed to him and all of the amount collectively owed to LaGatta's wife and daughter.

## Recent Developments

LaGatta filed a claim bill to recover the balance of the settlement amount (that is, \$2.2 million) during the 2024 legislative session; the undersigned issued a Special Master Report recommending that the Legislature report the bill favorably, and the bill passed its first committee stop in the House but did not move in the Senate. However, in August of 2024, LaGatta died from causes unrelated to the accident.<sup>17</sup> His estate filed a claim bill for the 2025 legislative session asking for the full \$2.2 million settlement amount balance, which amount was presumably, in significant part, meant to compensate LaGatta for damages which, due to his death, he will not sustain; moreover, some of his survivors (that is, his widow and daughter) previously settled any claims they may have had against FDOT. In any event, the bill was not heard in any committee of reference in either the House or the Senate.

The estate then filed a claim bill for the instant legislative session, originally seeking the full \$2.2 million settlement amount balance. However, on February 11, 2026, the Civil Justice & Claims Subcommittee adopted an amendment reducing the compensation payable to the estate, should the bill pass, to \$1.2 million.

## CONCLUSIONS OF LAW

Pursuant to House Rule 5.6(b), settlement agreements entered into by the parties to a claim bill 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 independently support the claim. In the instant matter, the Claimant raises a negligence claim, the elements of which are duty, breach, causation, and damages, and alleges that FDOT is responsible for such negligence under the *respondeat superior* doctrine.

## 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.<sup>18</sup>

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.<sup>19</sup>

Because Dunn was at all times relevant to the instant matter employed by FDOT as a senior

<sup>16</sup> FDOT's affirmative defenses included: comparative negligence; collateral sources and set-off; failure to mitigate; a "Fabre" defense; and a defense under the Florida Automobile Reparations Reform Act.

<sup>17</sup> LaGatta's death certificate reveals that he died from cardiac arrest secondary to coronary artery disease and tobacco use.

<sup>18</sup> *Iglesia Cristiana La Casa Del Señor, Inc. v. L.M.*, 783 So. 2d 353 (Fla. 3d DCA 2001).

<sup>19</sup> *Spencer v. Assurance Co. of Am.*, 39 F.3d 1146 (11th Cir. 1994) (applying Florida law).

heavy equipment operator and was acting within the scope of his employment at the time the July 27, 2020 accident occurred, which employment benefitted FDOT, the undersigned finds that FDOT is liable for Dunn's negligence, as discussed below, under the common law *respondeat superior* doctrine.

### **Duty**

Section 316.1985(1), F.S., prohibits a motor vehicle driver from reversing the vehicle unless such movement can be made safely and without interfering with other traffic. A motor vehicle driver has a duty to take reasonable care and to follow all applicable laws to prevent harm to those within the vehicle's path. Based on the foregoing, I found that FDOT, through its employee Dunn, had a duty to abide by s. 316.1985(1), F.S.; thus, the Claimant proved the first element of negligence.

### **Breach**

The evidence presented demonstrates that FDOT, through its employee Dunn, breached the duties described above when Dunn improperly reversed a tractor directly into the path of LaGatta's motorcycle while being unable to see behind him and without having a spotter to guide him. Thus, the undersigned finds that the Claimant proved the second element of negligence.

### **Causation**

The record reveals that the July 27, 2020, accident and LaGatta's consequential injuries were the direct and proximate result of FDOT's breach of the duties described above; but for Dunn's improper backing maneuver, the accident would not have occurred. Thus, the undersigned finds that the Claimant proved the third element of negligence.

### **Damages**

LaGatta settled the instant matter with FDOT for \$2.32 million, \$120,000 of which FDOT already paid him pursuant to the severing immunity caps in s. 728.28, F.S. Thus, the original claim bill was for \$2.2 million to compensate LaGatta for his physical injuries caused by the July 27, 2020 accident and the economic damages he suffered due to said injuries, which damages included, in significant part, the anticipated cost of LaGatta's future medical care and his lost future earnings.

However, as previously mentioned, LaGatta died in August of 2024 from causes unrelated to the accident at issue in this claim bill. His estate originally sought the full balance of the settlement amount, but, on February 11, 2026, the Civil Justice & Claims Subcommittee adopted an amendment reducing the compensation payable to the estate from \$2.2 million to \$1.2 million.

## POSITIONS OF CLAIMANT AND RESPONDENT

### **Claimant's Position**

The Claimant filed the original claim bill, seeking the remaining \$2.2 million authorized by the settlement agreement LaGatta entered into with FDOT in his underlying civil action. However, the Civil Justice & Claims Subcommittee amended the bill to reduce the compensation payable to the Claimant to \$1.2 million.

### **Respondent's Position**

FDOT supported the passage of the claim bill when it was heard by the Special Masters in 2024. However, FDOT's counsel has not responded to any correspondence sent by the Special Masters since then; consequently, the undersigned is unable to confirm that FDOT still supports the passage of the claim bill in light of LaGatta's death. In any event, should the claim bill pass, the money will be drawn upon FDOT funds in the State Treasury and should not impact FDOT's operations.

### LEGISLATIVE HISTORY

The claim bill is presented to the Legislature for the third time. It previously came before the legislature during the 2024 and 2025 legislative sessions.

### ATTORNEY AND LOBBYING FEES

Under the terms of the claim bill, attorney fees may not exceed 25 percent of the total award – that is, \$300,000 – while lobbying fees are unaddressed. However, pursuant to an agreement between LaGatta's counsel and lobbyist, attorney fees will be 18 percent of the total claim, while lobbying fees will be 7 percent of the claim. Thus, attorney fees may not exceed \$216,000 and lobbying fees may not exceed \$84,000.

### RECOMMENDATION

Based on the foregoing, the undersigned recommends that CS/HB 6509 be reported FAVORABLY.

Respectfully submitted,

**CAITLIN R. MAWN**



House Special Master