



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
408 The Capitol
Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

November 25, 1998

<u>SPECIAL MASTER'S FINAL REPORT</u>	<u>DATE</u>	<u>COMM</u>	<u>ACTION</u>
The Honorable Toni Jennings President, The Florida Senate Suite 409, The Capitol Tallahassee, Florida 32399-1100	11/25/98 12/2/98	SM TR FR	Fav/1 amend Fav 1/amend

Re: SB 46 - Senator Daryl Jones
Relief of Martha Sosa

THIS IS A VERDICT-BASED EXCESS JUDGMENT CLAIM FOR \$1,574,000 PLUS COURT-AWARDED COSTS AGAINST METRO-DADE (NOW "MIAMI-DADE") COUNTY TO COMPENSATE THE CLAIMANT FOR INJURIES SUSTAINED WHEN A COUNTY OPERATED BUS DROVE OVER HER ARM. IN A POST-TRIAL SETTLEMENT, HOWEVER, THE PARTIES AGREED TO REDUCE THE REQUESTED CLAIM BILL AMOUNT TO \$900,000.

FINDINGS OF FACT:

On October 27, 1995, at approximately 6:30 p.m., claimant Martha Sosa, then age 39, stepped off a westbound bus onto the sidewalk adjoining Flagler Street near the corner of West 49th Avenue in Miami. Before the bus began to drive away from the bus stop, the claimant walked a few feet to a bus bench to tie her shoelace. With one foot positioned on the bench, or in the process of lifting one foot onto the bench, Ms. Sosa lost her balance, fell backward toward the street, and landed with her body completely on the street in front of the right rear tire of the bus. The claimant was able to extricate all but her right arm from under the bus before the vehicle began to pull away from the curb. The right rear tire ran over the claimant's right arm. Although the specific bus and its driver were never positively located, testimony of the claimant and of two witnesses supports

the finding that the vehicle that drove over the claimant's arm was a "Route 11" bus operated by Metro-Dade (now "Miami-Dade") County.

Ms. Sosa suffered what her orthopedic surgeon described as a "degloving" wound in which skin and tissue were pulled from her arm in an area from approximately her shoulder to her wrist, removing a significant amount of muscle from her forearm, exposing bone in her forearm region, and fracturing her forearm and upper arm. Treated at Ryder Trauma Center at the University of Miami/Jackson Memorial Hospital medical complex, the claimant underwent six surgeries, including multiple procedures to clean the wound and remove dead tissue. The operations also included transferring tissue from the claimant's stomach muscles to her forearm in order to cover the exposed bone, removing skin from her thighs and grafting it onto her arm, and transferring a tendon and muscle from one portion of her forearm to another portion of her forearm in order to facilitate wrist movement. Ms. Sosa was hospitalized for nearly one month and underwent 5 months of occupational therapy, two to three visits per week, as an out-patient. Ms. Sosa was advised to wear pressure garments on her arm and legs for approximately a year and a half following her surgery in an effort to keep the scars as smooth as possible.

Today the claimant's right arm is severely disfigured and scarred, and the claimant has permanent and extensive scarring on her stomach and on both thighs. Ms. Sosa has near normal range of arm motion but a significant reduction in fine motor skills, including decreased ability to grasp and pinch and to turn her hand up and down. The claimant is right-handed, and these conditions not only slow down the speed with which she can complete tasks but also limit the claimant's ability, for example, to open jars and lift heavier household objects. Although some improvement may occur over time, Ms. Sosa's dexterity is not likely ever to return to normal. The deformity and scarring in the claimant's arm, as well as her diminished physical capacity, are a source of ongoing humiliation and depression.

At the time of the accident, the claimant was employed in a factory where she inspected and folded shirts and earned a wage slightly above the then minimum wage. Ms. Sosa could not work for approximately 8 months after the accident. The claimant testified that, when she rejoined the workforce with a new employer, her slowness impeded her ability to operate a manufacturing-related computer and prompted her employer to suggest that she become a cleaning woman. She has since returned to the same factory where she worked prior to the accident and today is earning a wage slightly above the current minimum wage. The claimant's medical expenses of approximately \$114,000 were covered by Medicaid, which has a lien of \$21,970.84 against any recovery by the claimant. Additional surgeries -- at least two and possibly more -- would be necessary in order to improve markedly the appearance of Ms. Sosa's arm. Those procedures would entail expanding skin on the back of Ms. Sosa's arm to wrap over the existing skin grafts.

CONCLUSIONS OF LAW:

As to Metro-Dade County, Florida case law imposes on common carriers the highest duty of care in guarding against dangers to passengers that may naturally be expected to occur. (See, e.g., *DeLucia v. Metropolitan Dade County*, 451 So. 2d 1008, 1009 (Fla. App. 3 Dist. 1984).) The claimant presented competent and substantial evidence to establish that the standard of care for the county's operation of the bus included taking specific steps, such as positioning the bus mirrors, checking those mirrors, and checking blind spots, to ensure that passengers and pedestrians were clear of the bus, and specifically had not fallen under the wheels of the bus, before moving the vehicle. The record supports a conclusion that the county, through the actions of its driver, breached its duty to the claimant by either failing to properly position the mirrors or failing to properly check the mirrors or otherwise ensure the vehicle's clearance, and that this negligence was a substantial cause of the claimant's injuries.

As to the claimant, Ms. Sosa admitted that she fell under the bus while tying or preparing to tie her shoe lace by propping one foot on a bus bench. Ms. Sosa was unable to attribute the cause of her fall to anything more specific

than losing her balance. The bus bench was positioned approximately three feet from Flagler Street, which is heavily traveled vehicular thoroughfare, particularly at the time of day of this accident. Consequently, the record supports the conclusion that the claimant was comparatively negligent, and that this negligence was a contributing cause of her injuries.

ATTORNEY FEES:

The claimant's attorney has submitted into the record an affidavit stating that the attorney fees in this case are limited to 25 percent of the recovery in accordance with §768.28, F.S.

FISCAL IMPACT:

According to the county, there is no insurance covering this claim. The claim would be paid from the county's general funds.

COLLATERAL SOURCES:

Claimant medical expenses of approximately \$114,000 were paid by Medicaid. Under the Medicaid Third-Party Liability Act, §409.910, F.S., Medicaid has a lien in the amount of \$21,970.84 against any recoveries by the claimant.

SPECIAL ISSUES:

At trial a jury found Metro-Dade County 65 percent negligent and Ms. Sosa 35 percent negligent. The jury awarded total past and future economic and non-economic damages of \$2,576,000. The breakdown of damages awarded by the jury is as follows:

Type of Damage	Jury Award Amount
Past Medical Bills	\$ 110,000
Future Medical Bills	\$ 50,000
Past Lost Earnings	\$ 16,000
Future Lost Earning Capacity	\$ 775,000
Past Non-Economic Losses	\$ 775,000
Future Non-Economic Losses	\$ 850,000
Total	\$2,576,000

After a reduction for the claimant's comparative negligence, the recovery due to Ms. Sosa from the county was \$1,674,000.

The parties, however, entered into mediation following the trial, and on September 14, 1998, agreed to settle the claim for \$1,000,000, contingent upon \$100,000 being paid under §768.28, F.S., and \$900,000 being secured through passage of a claim bill. During the Special Masters' hearing, the county attorney explained that, in light of the jury verdict and award amount, and based upon a review of its appellate options, the county concluded that it was in its best interest to settle the case.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that SB 46 be amended to \$900,000 and be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Eric W. Maclure
Senate Special Master

cc: Senator Daryl Jones
Faye Blanton, Secretary of the Senate
Leonard Schulte, House Special Master