



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
1/4/18	SM	Fav/1 amendment
1/11/18	JU	Fav/CS
1/23/18	GO	Favorable
	RC	

January 2, 2018

The Honorable Joe Negrón
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 52** – Judiciary Committee and Senator Mayfield
HB 6515 – Representative Altman
Relief of Cathleen Smiley

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM PREDICATED UPON A CONSENT JUDGMENT ENTERED AGAINST BREVARD COUNTY TO COMPENSATE THE CLAIMANT, CATHLEEN SMILEY, FOR INJURIES SUFFERED IN A MOTOR VEHICLE ACCIDENT AS A RESULT OF THE NEGLIGENT ACTIONS OF AN EMPLOYEE OF THE COUNTY.

FINDINGS OF FACT:

On June 18, 1998, Cathleen Smiley ("Claimant") was involved in a multi-vehicle accident caused by a bus owned and operated by Brevard County. Claimant was the driver of a 1994 Ford Ranger pickup truck that was stopped in the westbound inside lane of West Hibiscus Boulevard waiting to make a left turn. A van being driven by Howard Evarts was traveling behind Claimant at roughly 5 mph, also preparing to turn left, when a Brevard County transit bus traveling at 45 mph failed to brake and rear-ended the van leaving approximately 76 feet of skid marks. This collision caused the Evarts van to rear-end Claimant's vehicle. At the time of the accident, Claimant was wearing her seatbelt. The driver of the County bus, Dale McKale, was dismissed from county employment as a result of this accident.

Upon impact, Claimant's head hit the rear window of her pickup truck and she was knocked unconscious. She also sustained a laceration to her head which required 38 stitches. Injuries sustained by Claimant also included a post-traumatic cervical sprain, a post-traumatic thoracic sprain, post-traumatic headaches, a left shoulder injury, and a closed head injury with post-concussive syndrome. Claimant's neurologist, Dr. Christopher Prusinski, opined that she is at a point of maximum medical improvement and that she had suffered an 8 percent whole body impairment. To this day, Claimant experiences periodic neck and left shoulder pain.

After the accident, Claimant received substantial medical care with bills totaling \$22,437.42. Claimant testified that the accident caused a strain on her family life with her husband and young children. She could no longer perform her job as a certified nursing assistant due to the physically demanding nature of the position due to her injuries. But she has since found other work that is less physically demanding.

Collateral Sources

Claimant received \$8,650 from the County for property damage to her truck. She also received \$10,000 from Allstate Insurance from personal injury protection (PIP) coverage, which went towards her medical bills and support while she could not work.

Litigation History

Claimant and her husband filed suit against the Brevard County Board of Commissioners on or around February 29, 2000. The County filed an Answer in September 25, 2000. On May 27, 2014, Claimant and the County entered into a settlement agreement. The County agreed to pay Claimant \$25,000. Due to paying out other claims from the same accident, the county reached the \$200,000 sovereign immunity cap that was in place at the time of the accident, so the settlement agreement stipulates that Claimant will be compensated once a claims bill is passed. A consent judgment was entered on January 25, 2016. The Brevard County Board of County Commissioners has approved the settlement. The County is prepared to pay using risk management reserves, and payment of this claim bill will not affect county operations. The Legislature has already passed

two claim bills for the driver and passenger of the van involved in this same accident.¹

CONCLUSIONS OF LAW:

The County owned the bus driven by its employee, Mr. McKale and is covered by the provisions of s. 768.28, F.S. Section 768.28, F.S., generally allows injured parties to sue state or local governments for damages caused by their negligence or the negligence of their employees by waiving the government's sovereign immunity from tort actions. However, at the time of this accident, the statute limited the amount of damages that a plaintiff could collect from a judgment against or settlement with a government entity to \$100,000 per person and \$200,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the Legislature. The district has settled all claims associated with this accident except for Claimant's claim.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damages. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010) (quoting *Jefferies v. Amery Leasing, Inc.*, 698 So. 2d 368, 370-71 (Fla. 5th DCA 1997)).

The driver of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injuring persons within the vehicle's path. *Gowdy v. Bell*, 993 So. 2d 585, 586 (Fla. 1st DCA 2008). Reasonable care is the degree of care a reasonably careful person would have used under like circumstances. *Foster v. State*, 603 So. 2d 1312, 1316 n. 3 (Fla. 1st DCA 1992).

The long-standing doctrine of *respondeat superior* provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013). Florida's dangerous instrumentality doctrine imposes "vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another." *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000). Motor vehicles have been considered dangerous instrumentalities under Florida

¹ House Bills 797 and 799 (2003).

law for over a century. See *Anderson v. S. Cotton Oil Co.*, 74 So. 975, 978 (Fla. 1917). Mr. McKale was employed by the County and was acting within the scope of his employment at the time of the accident. Accordingly, the negligence of Mr. McKale is attributable to the district.

Duty & Breach

The County employee driving the bus was acting within the scope of his employment at the time of the accident. He had a duty to exercise reasonable care while operating the bus, which he breached when he failed to brake and collided into the rear of the van driven by Mr. Evarts, causing Mr. Evarts to rear-end Claimant. Brevard County admits that its employee, Dale McKale, operated the bus in a negligent manner and the county is liable.

Causation

The County's breach of the duty of care caused the accident that resulted in Claimant's injuries and damages.

Damages

Claimant suffered various serious injuries, with medical bills totaling \$22,437.42. She will have ongoing pain for the rest of her life, and will require lifelong treatment due to her injuries. After the accident she was unable to do her job as a certified nursing assistant, resulting in a lack of employment for some time. Her injuries also contributed to the strain on her marriage, which later ended in a divorce.

ATTORNEYS FEES:

The attorney in this case submitted an affidavit affirming that his fees will not exceed 25 percent of any recovery as required by s. 768.28, F.S. Outstanding costs are \$2,343.12.

SPECIAL ISSUES:

The undersigned recommends the bill is amended to reflect that Claimant's current married name is Cathleen L. Waller.

RECOMMENDATIONS:

Based on the above findings, I recommend that Senate Bill 52 be reported FAVORABLY, AS AMENDED.

January 2, 2018

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Respectfully submitted,

Kellie Cochran
Senate Special Master

cc: Secretary of the Senate
Senator Mayfield, Senate Sponsor
Representative Altman, House Sponsor
Jordan Jones, House Special Master

CS by Judiciary:

The committee substitute recognizes the Claimant's name change as the result of her marriage.