



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 6001 - Representative Massullo
Relief/Mark LaGatta/Department of Transportation

SUMMARY

This is a settled claim for \$2,200,000 against the Florida Department of Transportation ("FDOT") for injuries and damages suffered by Mark LaGatta when an FDOT employee reversed a tractor with a box blade attachment into his lane of travel, causing the motorcycle on which Mr. LaGatta was riding to impact the box blade attachment.

FINDINGS OF FACT

Accident

On the morning of July 27, 2020, 57-year-old Mark LaGatta ("Mr. LaGatta" or "Claimant"), 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, Mr. LaGatta and his daughter traveled to Cedar Key on Mr. LaGatta's motorcycle, a red Harley Davidson Ultra Classic he had owned for approximately four years, with Mr. LaGatta operating the motorcycle and his daughter riding as a passenger.¹ While Ms. LaGatta wore a helmet for the ride, Mr. LaGatta did not.²

On that same day, the Florida Department of Transportation ("FDOT") undertook repairs to a damaged portion of State Road 24,³ the only roadway in or out of Cedar Key.⁴ To facilitate their 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.⁵ Mr. LaGatta and his daughter passed through the work zone on their way to Cedar Key without incident.

¹ The record indicates that Mr. LaGatta had a motorcycle endorsement on his drivers' license.

² 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 Mr. LaGatta had such insurance.

³ State Road 24 is a two-way, undivided roadway.

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

⁵ 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.

After lunch, Mr. LaGatta and his daughter stopped at a gas station to refuel and then decided to return to their home in Lecanto, Florida, traveling again by way of State Road 24. As Mr. LaGatta and his daughter approached the work zone, Mr. LaGatta slowed his speed of travel⁶ 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 (“Mr. Dunn”), an FDOT employee operating a tractor⁷ with a box blade attachment in the closed westbound lane, began to reverse the tractor into the open eastbound lane.⁸

The record indicates that Mr. Dunn could not see directly behind the tractor, that there was no spotter present to assist Mr. Dunn in maneuvering the tractor, and that he did not see anyone in the lane before he began to reverse. Unfortunately, Mr. Dunn reversed the tractor directly into Mr. LaGatta’s path and, although Mr. 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 Mr. LaGatta and his daughter tumbling to the ground.⁹

Injuries and Treatment

Mr. 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.¹⁰ Emergency responders applied a tourniquet to Mr. 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, Mr. 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, Mr. 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 Mr. LaGatta to undergo several days of dialysis until his renal function normalized. Mr. LaGatta also underwent multiple left lower extremity debridement procedures due to poor healing to his initial orthopedic surgery site and soft tissue necrosis.

Ultimately, Mr. LaGatta’s left leg could not be saved, resulting in an above-the-knee amputation. Over a period of days, Mr. 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, Mr. 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. Mr. LaGatta also obtained two artificial legs, one provided by Medicaid that fit Mr. LaGatta poorly, causing him to frequently fall, and a more advanced model he purchased with money he received from an insurance payout.¹¹

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

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

⁸ According to the record, Mr. 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.

⁹ The record indicates that Mr. LaGatta’s motorcycle was disabled due to the accident.

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

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

Economic Damages

All told, Mr. 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 Mr. LaGatta might receive in connection with the July 27, 2020 accident. An Economic Analysis prepared for Mr. LaGatta estimates the present value of his future medical expenses at somewhere between \$4,400,000 and \$5,300,000, depending on whether he chooses to undergo optional osseointegration surgery.¹²

Additionally, Mr. LaGatta's Medical Functional Capacity Assessment indicates that his accident-related pain and physical limitations prevent him from maintaining gainful employment going forward, and estimates his life expectancy at 22.6 years.¹³ The record indicates that Mr. LaGatta is presently 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; the record also indicates that he 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.¹⁴

Investigation and Civil Action

Following a traffic crash investigation conducted by the Florida Highway Patrol, Mr. Dunn was issued a traffic citation for the offense of improper backing with serious bodily harm.¹⁵ On May 11, 2021, Mr. 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, Mr. LaGatta filed a Complaint against FDOT in the Circuit Court of the Eighth Judicial Circuit.¹⁶ Therein, Mr. LaGatta alleged that FDOT was negligent in and through the actions of its employee, Mr. Dunn, and as a result of such negligence, Mr. 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. On May 4, 2021, FDOT filed an Answer, Affirmative Defenses,¹⁷ 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 the benefit of Mr. LaGatta.¹⁸ The court ultimately entered a consent judgment in Mr. LaGatta's lawsuit, and FDOT paid Mr. LaGatta \$120,000 towards the amount owed to him.¹⁹

¹² The Economic Analysis, prepared by economists Brenda B. Mulder, MBA and Kristi S. Kirby, M.Ed., contemplates Mr. LaGatta receiving physical therapy for life and mental health treatment at least for the foreseeable future; however, Mr. LaGatta testified at the Special Master Hearing held in this matter on October 30, 2023, that he is 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). Mr. LaGatta also testified at the Special Master Hearing that he is undecided at this time as to whether he will undergo the osseointegration surgery.

¹³ Dr. Craig H. Lichtblau prepared the Medical Functional Capacity Assessment.

¹⁴ At the Special Master Hearing held in this matter, Mr. 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 has not yet done so as he has always worked with his hands and is not sure he could do other types of work at this stage of his life.

¹⁵ 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.

¹⁶ Mrs. LaGatta (the Claimant's wife) and Ms. LaGatta (the Claimant's daughter) joined the Complaint as plaintiffs.

¹⁷ 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.

¹⁸ FDOT's Secretary executed the settlement agreement on February 9, 2023.

¹⁹ Under the terms of the settlement agreement, FDOT also agreed to pay \$150,000 to Ms. LaGatta (the Claimant's daughter) and \$30,000 to Mrs. LaGatta (the Claimant's wife) in full satisfaction of their respective claims; these amounts have since been paid and are not the subject of this claim bill.

Personal Impact

Mr. LaGatta's wife ("Mrs. LaGatta") testified that, during her husband's time in the hospital and the rehabilitation facility, she traveled from their home to visit Mr. LaGatta daily, all while caring for their children and managing their household.²⁰ Mrs. LaGatta also testified that she was a homemaker before the accident but has since gained employment to support their family financially. According to the testimony of both Mr. and Mrs. LaGatta, this, along with the fact that Mr. LaGatta can no longer perform home improvements in the manner he would before the accident, has left Mr. LaGatta feeling depressed, as he once took great pride in financially supporting his family and maintaining their home.

Mr. LaGatta also testified that he is no longer able to enjoy many of the other activities he took pleasure in before the accident, including riding a motorcycle, and that he has since gained weight, has developed hypertension, fatigues easily, and has nightmares. Frequent falls have left Mr. LaGatta in fear of falling, and he is only able to walk short distances before needing to utilize a mobility assistance device, such as a wheelchair or scooter. Consequently, Mr. LaGatta testified that he had to remodel a bathroom in his home to install a roll-in shower, and veterans from the local community built him a ramp to assist him in entering and leaving his home.

CONCLUSIONS OF LAW

Pursuant to House Rule 5.6(b), stipulations 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 support the claim. In the instant matter, Mr. LaGatta raises a negligence claim, the elements of which are duty, breach, causation, and damages.

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; thus, Mr. Dunn had a duty to abide by s. 316.1985(1), F.S.

Breach

The evidence presented demonstrates that Mr. Dunn breached the duties described above when he improperly reversed the tractor he was operating directly into the path of Mr. LaGatta's motorcycle while being unable to see behind him and without having a spotter to guide him.

Causation

The July 27, 2020 accident and Mr. LaGatta's consequential injuries were the direct and proximate result of Mr. Dunn's breach of the duties described above. But for Mr. Dunn's improper backing maneuver, the accident would not have occurred.

Damages

Mr. LaGatta settled the instant matter with FDOT for \$2,320,000, \$120,000 of which has already been paid; thus, this claim bill is for \$2,200,000 to compensate Mr. LaGatta for his physical injuries caused by the July 27, 2020 accident and the economic damages he suffered due to said injuries.

Respondeat Superior

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

²⁰ Mrs. LaGatta entered into a separate settlement agreement with FDOT and her damages are not the subject of this claim bill.

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.²¹

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.²²

Because Mr. Dunn was at all times relevant to the instant matter employed by FDOT as a senior 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, FDOT is liable for Mr. Dunn's breach under the common law *respondere superior* doctrine.

POSITIONS OF CLAIMANT AND RESPONDENT

Claimant's Position

Mr. LaGatta asserts that he is entitled to the remaining \$2.2 million authorized by the settlement agreement entered into with FDOT in his underlying civil action.

Respondent's Position

FDOT supports the passage of the claim bill and indicated, through counsel, that it believes the settlement amount to be fair and to account for any affirmative defense it may have raised had the matter gone to trial. Should the claim bill pass, the money will be drawn upon FDOT funds in the State Treasury and should have no impact on FDOT's operations.

LEGISLATIVE HISTORY

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

ATTORNEY AND LOBBYING FEES

Under the terms of the claim bill, attorney fees may not exceed 25 percent of the total award – that is, \$550,000 – while lobbying fees are unaddressed. However, pursuant to an agreement between Mr. LaGatta's counsel and lobbyist, attorney fees will be 18 percent of the aforementioned 25 percent and lobbying fees will be 7 percent of the 25 percent. Thus, attorney fees may not exceed \$396,000 and lobbying fees may not exceed \$154,000.

RECOMMENDATION

Based on the foregoing, I recommend that House Bill 6001 be reported FAVORABLY.

²¹ *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353 (Fla. 3d DCA 2001).

²² *Spencer v. Assurance Co. of Am.*, 39 F.3d 1146 (11th Cir. 1994) (applying Florida law).

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Caitlin R. Mawn". The signature is fluid and cursive, with a horizontal line crossing through the middle of the letters.

CAITLIN R. MAWN,
House Special Master