



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/1/11	SM	Favorable

February 1, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 22 (2011)** – Senator Anthony C. Hill, Sr.
HB 629 (2011) – Representative Charles McBurney
Relief of Estate of Cesar Solomon

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$1,050,000.00, TO BE PAYABLE ANNUALLY OVER THREE YEARS BY EQUAL WARRANTS OF \$350,000, BASED ON A STIPULATED FINAL JUDGMENT BETWEEN THE ESTATE OF CESAR SOLOMON AND THE JACKSONVILLE TRANSPORTATION AUTHORITY, WHICH RESOLVED A CIVIL ACTION THAT AROSE FROM THE NEGLIGENT OPERATION OF A CITY BUS THAT CAUSED THE DEATH OF CESAR SOLOMON.

FINDINGS OF FACT:

This matter arises out of a collision that occurred on March 25, 2008, in Jacksonville, Florida, at the intersection of Commonwealth Avenue and Melson Avenue. Commonwealth Avenue is a four lane roadway that runs east to west, while Melson Avenue is a two lane road that runs north to south. The intersection is controlled by overhead traffic signals.

At approximately 1:00 p.m., Cesar Solomon, a traffic signal repairman employed by the City of Jacksonville, was in the intersection effecting repairs to the traffic light. While making the repairs, Mr. Solomon was standing on a platform lift that was attached to a city-owned truck. William Turner, a co-

employee of Mr. Solomon's, remained behind the lift truck and directed traffic through the intersection. The lift truck, which faced westbound on Commonwealth Avenue, featured numerous flashing lights on the rear of the vehicle that were readily observable. An orange traffic cone was also placed behind the lift truck to warn approaching drivers.

At 1:22 p.m., Gwendolyn Wells Mordecai, a City of Jacksonville employee, was driving westbound on Commonwealth Avenue in a bus owned by the Jacksonville Transportation authority. Although Ms. Mordecai turned onto Commonwealth Avenue at least four blocks from the intersection where Mr. Solomon was working, and no visual obstructions were present that would have made it difficult for her to observe the lift vehicle, Ms. Mordecai inexplicably failed to see the lift truck and struck it from behind. Moments before the collision, Mr. Turner darted across Commonwealth Avenue to avoid being hit.

Information subsequently retrieved from the bus's event data recorder showed that the bus was traveling approximately 37 MPH at the time of impact and that there was little or no braking prior to the collision. The posted speed limit on Commonwealth Avenue was 40 MPH.

As a result of the force of the impact, the lift truck was pushed well over 100 feet and jumped the curb on the other side of the intersection. Tragically, Mr. Solomon was thrown from the platform lift, the bottom of which was elevated nearly 13 feet from the ground. Mr. Solomon sustained fatal injuries and was pronounced dead at the scene of the crash. Ms. Mordecai was uninjured.

At 1:48 p.m., Detective R.D. Peck, a traffic homicide investigator with the Jacksonville Sheriff's Office, arrived at the scene. During his investigation, which was conducted over the course of several weeks, Detective Peck and a colleague questioned Ms. Mordecai, Mr. Turner, and three other eyewitnesses. During her interview, Ms. Mordecai stated that she did not remember the accident and could not explain what happened. On May 4, 2008, Detective Peck issued Ms. Mordecai a citation for careless driving.

On April 9, 2008, the Jacksonville Transportation Authority advised Ms. Mordecai in writing that her employment was

terminated due to her "gross negligence" in connection with the collision.

Mr. Solomon, who was 52 years old at the time of his death, retired from the United States Navy in 2004 after 20 years of service and had been employed with the City of Jacksonville since 2006. In addition to his employment with the City of Jacksonville, Mr. Solomon worked part-time as a real estate agent and managed several rental properties that he owned. Mr. Solomon is survived by his wife of 23 years, Mrs. Ruby Solomon, and two children, ages 22 and 19.

The undersigned has reviewed a report prepared by Dr. Bernard F. Pettingill, an economist retained by Mr. Solomon's estate. Applying standard economic principles regarding growth and discount rates, Dr. Pettingill estimates that the range of economic losses due to Mr. Solomon's death is between \$1.25 million and \$1.41 million. Dr. Pettingill's conclusions, which the undersigned credits, were not challenged by the Respondent.

Had the negligence action against the Jacksonville Transportation Authority proceeded to trial, it is likely that a jury would have returned an award far in excess of the \$1.25 million settlement, as the settlement amount reflects no damages other than the low range of future economic losses. Accordingly, the undersigned concludes that the settlement is both reasonable and responsible.

LITIGATION HISTORY:

On October 20, 2008, in the circuit court for Duval County, Mrs. Ruby Solomon, as the personal representative of the estate of Mr. Solomon, filed an Amended Complaint against the Jacksonville Transportation Authority, Ms. Mordecai, and Jax Transit Management Corporation. The Amended Complaint alleged that Mr. Solomon's untimely death was the direct and proximate result of Ms. Mordecai's negligent operation of the bus owned by the Jacksonville Transportation Authority.

On June 30, 2010, the estate of Mr. Solomon and the Jacksonville Transportation Authority entered into a Stipulated Final Judgment, in which the parties agreed that Ms. Mordecai was negligent and that there was no comparative fault by Mr. Solomon. The parties also agreed

that the harms and losses far exceed the statutory limit and would likely garner a multi-million dollar verdict. Based upon the foregoing, the Jacksonville Transportation Authority stipulated to the entry of a judgment in the amount of \$1,250,000.00, and further agreed to remain neutral with respect to the passage of a claim bill.

The Jacksonville Transportation Authority has already paid \$200,000 against the judgment, leaving \$1,050,000, which is the amount sought through this claim bill.

CLAIMANT'S POSITION:

Mr. Solomon's death was the direct and proximate result of Ms. Mordecai's negligent operation of a Jacksonville Transportation Authority bus.

RESPONDENT'S POSITION:

The Jacksonville Transportation Authority has remained neutral in this proceeding and has taken no action adverse to the passage of a claim bill.

CONCLUSIONS OF LAW:

Ms. Mordecai had a duty to operate the bus at all times with consideration for the safety of pedestrians and other drivers. Pedigo v. Smith, 395 So. 2d 615, 616 (Fla. 5th DCA 1981). Specifically, it was Ms. Mordecai's duty to observe the lift truck as she approached and bring her vehicle under such control as the situation required. Ms. Mordecai breached this duty of care and the breach was the proximate cause of Mr. Solomon's death.

The Jacksonville Transportation Authority, as Ms. Mordecai's employer, is liable for her negligent act. Mercury Motors Express v. Smith, 393 So. 2d 545, 549 (Fla. 1981) (holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment); see also Aurbach v. Gallina, 753 So. 2d 60, 62 (Fla. 2000) (holding that the dangerous instrumentality doctrine "imposes strict 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"); City of Tampa v. Easton, 198 So. 753, 755 (Fla. 1940) ("When a municipality owns a motor truck, a dangerous instrumentality when in operation, that is being operated with the knowledge

and consent of the municipality through its officers or employees and used on the streets for lawful . . . purposes, the municipality may be liable for injuries to persons or property proximately caused by negligence of the truck driver in operating the truck.").

LEGISLATIVE HISTORY:

This is the first claim bill presented to the Senate in this matter.

ATTORNEY'S FEES:

The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), Florida Statutes. Lobbyist's fees are included with the attorney's fees.

FISCAL IMPACT:

The Jacksonville Transportation Authority has reserves in the amount of \$1.8 million. Therefore, operations would not be adversely affected if this claim bill is approved.

SPECIAL ISSUES:

The Estate of Cesar Solomon is presently engaged in litigation in Duval County circuit court with the manufacturer of the lift mechanism. The basis of the claim is that the platform lift was defective because the height of the railing was insufficient. After a careful review of the evidence in this matter, the undersigned does not believe that the Claimant's suit against the lift manufacturer will likely result in any meaningful recovery. Accordingly, the ongoing litigation should not militate against the passage of the instant claim bill. See also Fla. S. Rule 4.81(6) (2010) ("The hearing and consideration of a claim bill shall be held in abeyance until all available administrative and judicial remedies have been exhausted; except that the hearing and consideration of a claim that is still within the judicial or administrative systems may proceed where the parties have executed a written settlement agreement.") (Emphasis added).

As a result of Mr. Solomon's untimely death, Mrs. Solomon received funds from various collateral sources, including: \$100,000 in insured motorist coverage; \$58,000 in proceeds from a life insurance policy issued by Prudential Insurance Company; a \$255 Social Security death benefit; and various other death benefits totaling \$357,000.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 22 (2011) be reported FAVORABLY.

Respectfully submitted,

Edward T. Bauer
Senate Special Master

cc: Senator Anthony C. Hill, Sr.
Representative Charles McBurney
R. Philip Twogood, Secretary of the Senate
Counsel of Record