



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/1/01	SM	Favorable
	CA	
	FT	

December 1, 2001

The Honorable John M. McKay
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 62 (2002)** – Senator Kendrick Meek
HB 361 – Representative Renier Diaz de la Portilla
Relief of Millie Jackson

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$35,000, BASED ON A SETTLEMENT AGREEMENT BETWEEN MILLIE JACKSON AND MIAMI-DADE COUNTY, FOR INJURIES AND DAMAGES THE CLAIMANT SUSTAINED AS THE RESULT OF A COLLISION BETWEEN A METRO-DADE BUS ON WHICH CLAIMANT WAS A PASSENGER, AND A METRO-DADE POLICE VEHICLE.

FINDINGS OF FACT:

Ms. Jackson is 45 years of age and is employed as a customer service representative at Burdine's. Millie Jackson was the passenger on a Miami-Dade Transit Bus on the evening of December 7, 1999. She was seated in the right front seat of the bus.

At approximately 11:23 p.m., on December 7, 1999, Miami-Dade Transit Bus #9925 driven by Gerry Goodine was traveling westbound on Hibiscus Street. The posted speed limit for Hibiscus Street is 30 mph. At the same time, Miami-Dade Police Officer Roberto Luis Calderon was driving a marked police vehicle southbound on a Busway that is adjacent to and parallel to southbound U.S. 1. The Busway is a north/south, undivided, two-lane roadway. The Busway is a limited access roadway where buses and emergency vehicles are permitted access. Miami-Dade police officers

are responsible for patrolling the Busway. The Busway has a posted speed limit of 45 mph.

The two vehicles entered the intersection of Hibiscus Street and the Busway at the same time and the front of the bus struck the left front side of the police vehicle.

Millie Jackson called 911 from her cell phone just after the crash occurred. She was transported to Deering Hospital where she was treated and released. Four other passengers on the bus reported no injuries as the result of the accident.

The two police officers were riding in the patrol car that the bus hit, Officer Calderon and Officer Edgar Perez, were transported to Jackson Memorial Hospital. While Officer Perez was treated and released, Officer Calderon died on December 10, 1999, as the result of blunt trauma injuries he sustained in the accident.

Accident investigations were conducted by the Miami-Dade Police Department and the Miami-Dade Transit Department, both agencies of Miami-Dade County. An independent investigation of the accident by an entity outside of Miami-Dade County was not conducted. A major focus of the accident investigation was the question of whether Officer Calderon or the bus driver had the green light at the intersection of the Busway and Hibiscus Street.

The approach of the Busway to the intersection is equipped with a sensor, referred to as the up-stream loop that triggers the light to cycle from red to green. A traffic engineer reviewed the printout for the traffic signal and gave a statement that the light for the Busway would have begun its cycle immediately upon the police vehicle driving over the up-stream loop. The police vehicle would have received a green traffic signal 5 seconds after the cycle began, the cycle having been initiated when the police vehicle drove over the up-stream loop. The police vehicle, accordingly, would have had a green light for between 2 and 3 seconds prior to impact.

Based on an examination of a computer printout of the operation of the light at the intersection of the Busway and Hibiscus Street and speed calculations for the police vehicle and the bus, the accident investigator, Miami-Dade Police

Detective Buchanan drew the following conclusions regarding the cause of the accident:

- Officer Calderon was driving southbound on the Busway proceeding with a green traffic signal.
- The bus was traveling westbound on Hibiscus Street proceeding against a red traffic signal.
- As the bus turned right on Hibiscus Street from South Dixie Highway, the bus driver's traffic signal cycled from green to yellow. The bus driver accelerated in an attempt to beat the red light.
- The police vehicle was traveling at 49 mph and took no evasive action prior to the impact with the bus.
- The bus was traveling at 30 mph and the bus driver applied the brakes at the moment of impact with the police vehicle.
- The bus driver ran the red light and caused the accident.

An accident reconstruction expert, Dr. Neil Freeman, reviewed the speed level assumptions made by Detective Buchanan in his analysis of the accident. Dr. Freeman prepared a written report where he estimates that the police vehicle was traveling at 32-44 mph and the bus at 28-31 mph at the time of impact.

Gerry Goodine, the driver of the bus claims he had the green light when he proceeded through the intersection. At the time of the accident, the bus driven by Mr. Goodine was the only bus in the area and the bus was running about 10 minutes behind its intended schedule. The bus involved in the accident is equipped with a global positioning system that verifies the location of the bus at any given time.

After the accident, the passengers riding on the bus were interviewed and asked whether they saw the color of the light at the time the bus proceeded through the intersection. Two of these passengers, Mr. Harris and Mr. Johnson, reported that the bus driver had a green light. The Miami-Dade Police Department investigators discount this

testimony for two reasons. First, these witnesses were given a second interview under conditions where the police investigators applied a “voice stress analysis” to their taped interviews. The police investigators concluded that the voice stress analysis indicated deception at points where the bus driver and Mr. Harris and Mr. Johnson were questioned about the color of the traffic light.

In addition, subsequent investigation of the bus driver revealed that Mr. Goodine is a convicted felon, and that he had a stolen firearm in his possession, stowed on the bus with other personal belongings, at the time of the accident.

More compelling to the Special Master, however, are the results of a reenactment of the accident where individuals seated where the witnesses claimed to be seated at the time of the accident, testified that they could not see the traffic light from the vantage point of their seat.

Damages

After the accident, Ms. Jackson was treated at Deering Memorial Hospital and incurred \$1,002.97 in medical expenses. At the hospital she complained of head, neck and back pain. She was evaluated and treated with Tylenol and released. Subsequent to the day of the accident, Ms. Jackson continued to suffer neck and shoulder pain, and mid back and lower back pain. She was treated by a chiropractor from January 10, 2000 to June 28, 2000. On February 28, 2000 she received an MRI of her cervical spine which revealed disc bulges at C3-4 and C4-5 and a broad based disc herniation at C4-5 which was contained, but elevating the posterior longitudinal ligament. A neurologist, Dr. Victor Barredo, examined Ms. Jackson and opined that “the herniated disc and the elevation and detachment of the posterior longitudinal ligament was due to the accident on December the seventh, 1989 [1999].”

At the time of the accident, Ms. Jackson was employed as a salesperson of dresses at Burdines. Because of her injuries, she was unable to work for approximately 5 months because her job responsibilities required bending, lifting boxes and dresses and standing on her feet for long periods of time. During this period of unemployment she lost approximately \$8,000 in wages. At the hearing, the claimant provided

documentation that she received approximately \$389 a week in wages.

Ms. Jackson's total medical expenses associated with the accident total \$16,720.50. In addition, Ms. Jackson's Chiropractic Physician rated her injuries as causing a 7 percent medical impairment of the whole person of the lumbar spine, plus 6 percent of the whole person of the cervical spine, resulting in a 13 percent loss to the whole body as a result of her injuries sustained in the accident. A specific dollar number was not attached to this impairment, although this impairment should be considered in a calculation of damages. In addition, Ms. Jackson's Health Plan filed a collateral source lien for \$17.53 and provided notice of this lien in accordance with s. 768.76(7), F.S.

Economic damages associated with lost wages total approximately \$8,000, based on 5 months of lost wages. In July 2000, Ms. Jackson resumed her employment with Burdines. Because of her injuries, she is working as a customer service representative instead of as a salesperson.

Because settlements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense, stipulations or settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature or its committees, or on the Special Master assigned to the case by the Senate President. However, all such agreements must be evaluated. If found to be reasonable and based on equity, then they can be given effect, at least at the Special Master's level of consideration.

Based on the evidence presented in the case, I find the damages amount of \$35,000 to be reasonable.

Procedural History

On January 14, 2000, the attorney for Ms. Jackson filed a "Notice of Intent Pursuant to Florida Statute s. 768.28" to pursue a negligence claim against Miami-Dade County based on the injuries sustained by Ms. Jackson in the accident of December 7, 2001. On July 11, 2000, the attorney for Ms. Jackson sent a final demand letter to Miami-Dade County seeking \$75,000 in damages.

A complaint was subsequently filed against Miami-Dade County which was answered by the County. One of the county's affirmative defenses, which was later withdrawn, that "Dade County cannot pay any amount on this claim, whether in settlement or to satisfy a judgment, in the absence of a claim bill, because it has paid the cap on damages to other parties as a result of the instant accident, F.S. 768.28(5)." This is because Miami-Dade County paid the family of Roberto Calderon (the police officer killed in the accident) \$200,000, the statutory cap on the damages a government entity can pay for damages resulting from an accident without a waiver of sovereign immunity.

On February 21, 2001, the attorney for Miami-Dade County sent a letter to Ms. Jackson's attorney confirming that the county will not oppose a claim bill in the amount of \$35,000.

As no formal settlement agreement was entered in this case, Ms. Jackson executed a release whereby she agrees to discharge Miami-Dade County of any liability associated with the accident of December 7, 1999, if Miami-Dade County agrees to support a claim bill in the amount of \$35,000.

CONCLUSIONS OF LAW:

Because the accident involved a collision between a bus owned and operated by Miami-Dade County and a police vehicle owned and operated by Miami-Dade County, the issue of negligence is clear cut as only an employee of the county could have been responsible for the accident, whether fault resides with the bus driver, Gerald Goodine, or the driver of the police vehicle, Roberto Calderon. In addition, the evidence supports the conclusion that the accident was the proximate cause of Ms. Jackson's injuries.

ATTORNEYS FEES:

The attorney for Ms. Jackson, Mitchell J. Panter, has provided an affidavit providing that the attorney fees assessed for handling the case will be 25 percent plus costs.

RECOMMENDATIONS:

Based on the foregoing, I recommend that Senate Bill 62 be reported FAVORABLY.

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Respectfully submitted,

Janet Bowman
Senate Special Master

cc: Senator Kendrick Meek
Representative Renier Diaz de la Portilla
Faye Blanton, Secretary of the Senate
House Claims Committee