



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
01/09/02	SM	Favorable
01/28/02	TR	Favorable
2/28/02	FT	Favorable/CS

January 9, 2002

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

Re: **CS/SB 82 (2002)** – Finance and Taxation Committee and Senator Alex Diaz de la Portilla
HB 469 – Representative Allan Bense
Relief of Veronica Barcos and Zuleima Torres

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED TOTAL CLAIM FOR \$800,000, BASED ON A SETTLEMENT AGREEMENT BETWEEN THE DEPARTMENT OF TRANSPORTATION AND MARIA VERELA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF VERONICA BARCOS, DECEASED, AND ON BEHALF OF JANESSA BARCOS AND NATALEE BARCOS, MINOR CHILDREN OF VERONICA BARCOS AND BETWEEN LIGIA IGLESIAS AND ALBA LUZ AVENDANO, AS CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF ZULEIMA TORRES, DECEASED, AND ON BEHALF OF FASHLEY BARCOS AND GIANNI BARCOS, MINOR CHILDREN OF ZULEIMA TORRES, FOR INJURIES AND DAMAGES SUSTAINED BY THE CLAIMANTS AS A RESULT OF THE DEATHS OF VERONICA BARCOS AND ZULEIMA TORRES.

FINDINGS OF FACT:

On September 1, 1997, at approximately 12:00 a.m. Zuleima Torres was driving a Toyota SR5 4Runner vehicle across the 17th Street Causeway Bridge in Ft. Lauderdale, in a westbound direction when she lost control of the vehicle. The vehicle then crossed the oncoming lanes of traffic and vaulted the retaining wall and railing of the bridge and fell into the Intracoastal Waterway. As a result, Ms. Torres and

Veronica Barcos, who was a passenger in the right front seat, died. Autopsy reports list the cause of death as drowning, with multiple blunt force trauma as contributory causes.

The posted speed limit is 35 miles per hour for the bridge. It had been raining intermittently for several hours prior to the accident and the roadway and steel grating of the bridge were slick.

According to witnesses, the vehicle began to fishtail, either just before or as it passed over the metal bridge grating. The vehicle then rotated and traveled across the eastbound lanes in a west-southwestwardly direction, finally completing a rotation of 180 degrees, until the right side tires struck the sidewalk curb on the south side of the bridge, and the vehicle catapulted over the retaining wall and sidewalk railing, breaking the railing and falling into the water below.

A few minutes before the accident, a BMW vehicle driven by Wosenyeleh Wolde was crossing the bridge in the same direction as the decedent's Toyota. The BMW also spun out of control as it crossed the metal grating; coming to rest facing in an easterly direction, toward the approaching Toyota as it came to the bridge.

As a result of the Wolde vehicle's crash, Lorain Jackson, the bridge tender at the 17th Street Causeway Bridge, left her station and went to the disabled vehicle. In doing so, she did not lower the gate, which permitted traffic to continue onto the westbound portion of the bridge. I consider it significant that Ms. Jackson failed to lower the traffic gate on the bridge, as doing so would have prevented the Torres vehicle from entering upon the bridge and into what appears to have been an "emergency" situation with the Wolde vehicle facing Ms. Torres as she crossed the bridge onto the metal grating.

Ms. Jackson was aware of the Wolde vehicle facing eastbound in the westbound lanes prior to the arrival of the Torres vehicle, but in failing to warn oncoming westbound traffic or stop such traffic until the disabled Wolde vehicle was cleared from the roadway, I believe she created a dangerous situation.

The metal grating of the bridge was slick, due to rain. Traffic Homicide Investigator Shawn M. Perez, in the Traffic Crash Report stated that, "The roadway was damp and the metal (steel) grating portion of the bridge span opening was extremely slick." In his conclusion he states, "While I was taking measurements, as I walked across the metal grating in tennis shoes, I slipped several times due to the slickness of the grate. There was little to no traction due to the wet weather and the worn metal grate."

The record reflects extensive evidence regarding problems with the subject bridge, most of which is unrelated to the situation involved in this case. However, it shows that the Department of Transportation was on notice that this bridge, as well as several others in the area, posed a potential hazard when wet. A prior accident on September 12, 1979 involving a Lincoln Continental was very similar to this accident. There is no compelling evidence in the record to show that the department attempted to address and correct this "slippery when wet" problem.

There is no evidence in the record to indicate that either decedent contributed to the crash that claimed their lives. Autopsy reports show that neither had consumed any alcohol or controlled substance. Although neither was wearing a seat belt, there is no evidence in the record to indicate that such failure was a contributing factor.

Zuleima Torres was 27 years old and divorced from Ricardo Barcos at the time of her death. Two daughters, Ashley and Gianni, who were 8 and 3 years old, respectively at the time of her death, survive her.

The passenger in the vehicle, Veronica Barcos, was 29 years old and divorced from Carlos Barcos, the brother of Ms. Torres' ex-husband, at the time of her death. Two daughters, Janessa and Natalee Barcos, who were ages 11 and 3, respectively, at the time of her death, survive her. Ms. Barcos was employed by American Airlines as a passenger service representative and worked approximately 35 hours per week in the baggage department. She was also attending classes and clinical studies in physical therapy, intending to become a physical therapist.

Claimants in the Barcos case have recovered the following amounts from collateral sources:

Uninsured motorist coverage from State Farm	\$100,000
Confidential settlement with Toyota	\$750,000
Pending settlement with third party liability coverage of Zuleima Torres	\$ 10,000
Social Security payments presently being paid to Janessa Barcos (monthly)	\$ 992
Social Security payments presently being paid to Natalee Barcos (monthly)	\$ 992

Plaintiffs in the Torres case have recovered the following amounts from collateral sources:

Confidential settlement with Toyota	\$450,000
Confidential settlement with David Volkart & Associates	\$ 45,000
Social Security payments presently being paid to Ashley Barcos (monthly)	\$ 610
Social Security payments presently being paid to Gianni Barcos (monthly)	\$ 610

Representatives of both parties commenced litigation against the Department of Transportation and others in separate actions. The action filed on behalf of the Estate of Zuleima Torres and others, hereinafter referred to as the Torres suit, was case number 98-007776-04 in the Circuit Court for the 17th Judicial Circuit in and for Broward County, Florida, asserting that DOT was negligent and responsible for the death of Ms. Torres.

The action filed on behalf of the Estate of Veronica Barcos and others, hereinafter referred the Barcos suit, was case

number 97-020391-03 in the Circuit Court for the 17th Judicial Circuit in and for Broward County, Florida, asserting that DOT was negligent and responsible for the death of Ms. Barcos.

Stipulated settlement agreements were entered into between the Department of Transportation the plaintiffs in both actions. The Torres settlement provided for the entry of a consent final judgment in the amount of \$416,666.67. The Barcos settlement provided for the entry of a consent final judgment in the amount of \$583,333.33. In view of the sovereign immunity limits, the department agreed to pay \$100,000 to the Barcos claimants and \$100,000 to the Torres claimants and to support the passage of a claim bill in the Torres suit in the amount of \$316,666.67 and in the Barcos suit in the amount of \$483,333.33. A Final Consent Judgment was entered in the Torres suit in the amount of \$416,666.67 and in the Barcos suit in the amount of \$583,333.33 on July 31, 2001.

Because settlements are sometimes entered into for reasons that may have little to do with the merits of a claim or the validity of a defense, stipulations or settlement agreements between parties to a claim bill are not binding on the Legislature or the Special Master. However, all such agreements must be evaluated. If found to be reasonable and based on equity, they can be given effect by the Special Master.

Based on the evidence, I find the damages agreed to in the consent judgment to be reasonable.

CONCLUSIONS OF LAW:

There is competent evidence to support a finding of causation and liability on the part of the department and to support the damages of the claimants in the amount of \$316,666.67 for the Torres claimants and in the amount of \$483,333.33 for the Barcos claimants.

The Department of Transportation had a duty to maintain the 17th Street Causeway Bridge in a manner to ensure that the bridge would be safe for vehicular traffic in wet weather. I conclude that the department breached that duty and that such breach is responsible for the accident that resulted in the deaths of Veronica Barcos and Zuleima Torres. I further

conclude that the bridge tender, Lorain Jackson, who was acting within the scope of her employment, was negligent when she failed to close the westbound lane to traffic immediately after the crash of the Wolde vehicle, and that her negligence contributed to the accident.

ATTORNEYS FEES:

Attorney's fees are limited to 25 percent of recovery, pursuant to the provisions of §768.28, F.S. Attorney's fees and costs are included in the settlement amount.

RECOMMENDATIONS:

Based on the foregoing, I recommend that Senate Bill 82 be reported FAVORABLY.

Respectfully submitted,

M. James Griner
Senate Special Master

cc: Senator Alex Diaz de la Portilla
Representative Allan Bense
Faye Blanton, Secretary of the Senate
Nathan Bond, House Special Master

Statement of Substantial Changes for CS/SB 82:

The Committee Substitute changes the type of fund that the money is appropriated from in the bill. Instead of the money being appropriated from the General Revenue Fund, the Committee Substitute directs the Executive Office of the Governor to establish spending authority from unappropriated trust fund balances in the Department of Transportation.