

CASE INFORMATION SHEET
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COUNTY AND COURT:

Broward County, Circuit Court

NAME OF CASE:

CHALUNDA BOSTON as Personal Representative of the Estate of
KEITH L. JACKSON, JR.,

Plaintiffs,

v.

PUBLIX SUPER MARKETS, INC. and EDWARD JAVIER RAMOS,

Defendants.

CASE DOCKET NO.: 08-25923 **JUDGE:** Jack Tuter

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL:

Paul M. Adams, Esquire
Young & Adams, P.A.
2300 Glades Road
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Boca Raton, FL 33431

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:

John P. Daly, Esquire
Rissman, Barrett, Hurt,
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201 East Pine Street
Suite 1500
Orlando, FL 32801
Attorneys for Publix Super Markets, Inc.

Francisco R. Angones, Esquire
Angones, McClure & Garcia
800 Courthouse Tower
44 West Flagler Street
Miami, FL 33130
Attorneys for Edgar Javier Ramos

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:

38 year old tractor driver.

FOR WRONGFUL DEATH CASES, PLEASE GIVE AGE AND RELATIONSHIP OF SURVIVORS:

Chalunda Boston, wife - 35 years old.

Kevon Lamar Jackson, son - 8 years old.

Keith Lamar Jackson, Jr., son - 14 years old.

Keyon Jackson, son - 16 years old.

Zah'kiah E. Anderson, daughter - 2 years old.

Ke'Maree Anderson Jackson, daughter - 5 years old.

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

April 9, 2007; Publix Warehouse, Deerfield Beach, Florida.

CAUSE OF INJURY:

On April 9, 2007, a Publix tractor-trailer driver dropped off a trailer at one of the bay doors so that that it could be unloaded. After dropping off the trailer, the tractor-trailer driver detached his semi-tractor from the trailer and drove away. Several moments later, a warehouse worker noticed that there was a gap between the trailer and the loading bay dock.

A co-worker of Keith Jackson used a two-way radio to call for a spotter driver to back the trailer up to the correct position of the bay. A spotter driver is assigned to move Publix's equipment around the distribution facility using an Ottawa tractor. An Ottawa tractor is smaller than a typical delivery tractor and is designed for use at the Publix warehouse, and not highway driving.

Mr. Jackson and co-defendant Edgar Ramos, both of whom were spotter drivers, were parked in their Ottawa tractors in the vicinity of the trailer. Mr. Ramos acknowledged the call and proceeded to the bay with his Ottawa tractor.

At the same time, Mr. Jackson also approached the area in his Ottawa tractor. Mr. Jackson parked his Ottawa tractor facing the loading dock and trailer.

Mr. Ramos backed his tractor in position to hook it up to the trailer. While Mr. Ramos was preparing his tractor to reverse the trailer, Mr. Jackson, for unknown reasons, walked between the trailer and the loading dock pad.

Mr. Ramos lifted the trailer, released the air brakes and backed the trailer so that it was flush with the loading dock pad. While the Ottawa tractor that Mr. Ramos was utilizing was equipped with a backup alarm, the alarm was not functioning at the time of the accident.

Another delivery driver, Richard Fulcher, approached the area attempting to pull into an adjacent loading dock. Mr. Fulcher noticed that Mr. Jackson was pinned between the trailer and the loading dock and began to gesture and yell for Mr. Ramos to pull forward. Mr. Ramos pulled the Ottawa tractor forward and the Publix's emergency team, Broward County Sheriff's Office and EMS arrived at the scene to attend to Mr. Jackson. Mr. Jackson was taken to the hospital by ambulance, but died as a result of crush injuries while being transported.

Following the accident the Occupational Safety & Health Administration ("OSHA") investigated the accident and issued a citation against Publix for having an inoperative back up alarm on the Ottawa in question.

It was undisputed that Mr. Jackson was within the course and scope of Mr. Jackson's employment at the time of the accident.

NATURE OF INJURY:

Death from crush injuries resulting from being pinned between the rear of a trailer and the loading dock pad.

PLAINTIFF'S EXPERT WITNESSES:

Gary C. Hay
West Palm Beach, FL
Occupational Safety Expert

Mr. Hay, by affidavit, testified that Publix violated several OSHA standards. It was undisputed that Publix received one OSHA citation, but Mr. Hay testified that there were approximately 19 other violations that OSHA missed.

Mr. Hay further testified that Publix "engaged in conduct that [they] knew based on explicit warnings specifically identifying a known danger was virtually certain to result in injury or death." This language essentially tracked the language of the workers' compensation immunity intentional tort exception statute.

Defendants moved to strike Mr. Hay's affidavit, arguing that the affidavit drew impermissible legal conclusions, but both motions were denied.

DEFENDANTS' EXPERT WITNESSES:

None.

OUTCOME:

Summary Judgment for both Defendants.

DATE OF SUMMARY JUDGMENT:

March 30, 2011

DEFENDANTS' OFFER:

\$200,001 proposal for settlement.

PLAINTIFF'S DEMAND:

\$2.7 million

ATTORNEY'S COMMENTS:

The most important aspect of this case was whether workers' compensation immunity applied. Under Florida law, workers' compensation is the exclusive remedy for any injuries that arise out of the course and scope of employment. The exception to this is whether the employer committed an intentional tort. The employer's actions are deemed to constitute an intentional tort when the employee proves, by clear and convincing evidence, that:

1) the employer deliberately intended to injure the employee;
or

2) the employer engaged in conduct that the employer knew, based on prior similar accidents or on explicit warnings specifically identifying a known danger, was virtually certain to result in injury or death to the employee, and the employee was unaware of the risks because the danger is not apparent and the employer deliberately concealed and misrepresented the danger so as to prevent the employee from exercising informed judgment about whether to perform the work.

§440.11(1)(b), Fla. Stat.

Immunity is also extended to fellow employees. However, immunity is not applicable when the fellow employee acts with willful and wanton disregard or unprovoked physical aggression or with gross negligence.

What was unquestioned was that the decedent's accident arose out of the course and scope of his employment. As such, it was a question of law whether the undisputed facts rose to the level of the intentional tort exception. The new trend to avoid summary judgment in these cases is to have an expert opine, by affidavit, that the employer's actions were "virtually certain" to result in injury or death, as was done in this case.

Notwithstanding the plaintiff's attempt in this case, Judge Tuter found the actions leading to the Mr. Jackson's death amounted to no more than simple negligence.

This case is currently pending appeal before the 4th DCA.

Submitted **Jennings L. Hurt III**
By: **Sean M. Crocker**

Date: **November 15, 2011**

Firm: **Rissman, Barrett, Hurt,**
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