

# DAILY REPORT

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## \$1.75M deal ends appeal

**SOUTHWEST REGIONAL COMMISSION** settles suit, scuttling appeal over sovereign immunity

**KATHERYN HAYES TUCKER**  
ktucker@alm.com

**THE SOUTHWEST** Georgia Regional Commission has settled a wrongful death case for \$1.75 million, ending an appeal that would have tested whether the state's 12 regional commissions are entitled to sovereign immunity from lawsuits.

The money goes to the family of an Arlington woman who was killed while riding in a Ford Explorer driven by a man hired by the commission to transport Medicaid patients. The woman was the guardian of a Medicaid-supported 7-year-old girl, whose parents had been unable to care for her. The child screamed and cried "Momma" as she watched the woman die in a ditch beside Interstate 75, according to the initial complaint.

Dougherty County State Court Judge John Salter denied a motion by the Southwest Georgia Regional Commission (SWGRC) for a dismissal on sovereign immunity grounds. The commission's lawyers, Raleigh Rollins and James Garland of Alexander & Vann in Thomasville,



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**Brandon Peak's** brief for the plaintiff's side was compelling enough to prompt a deal, his opposing counsel said.

requested immediate review by the Court of Appeals, arguing that as an organization of state and local government entities, the SWGRC was covered by sovereign immunity.

But Rollins said the plaintiffs' response, authored by lawyer Brandon Peak of Butler, Wooten & Fryhofer, propelled the parties to an agreement. "Brandon made a compelling

argument,” said Rollins. Of course, Rollins added that he, too, had made a compelling argument.

“I read mine and I liked it,” he said. “Then I read his, and I liked it.”

The plaintiffs’ 28-page brief in response said that the commission’s motion and brief were “directly at odds with its past conduct and representations to courts.”

Peak’s brief detailed other occasions where the commission had initiated and defended lawsuits. The brief also cited enabling legislation allowing the commission to “access the judicial system,” as well as insurance coverage for its medical transportation services, which wouldn’t be necessary if it couldn’t be sued or had immunity. The insurer was not identified.

“Despite having utilized the judicial system on multiple prior occasions to both file suit and defend suits brought against it, defendant SWGRC now contends that plaintiffs’ claims against it should be dismissed because it is an entity incapable of suing or being sued,” said the plaintiffs’ brief. “The SWGRC can’t use the judicial system to file suit when doing so benefits the SWGRC, but then contend that others are forbidden to use the very same judicial system to hold it accountable for its tortious misconduct.”

The plaintiffs’ brief went on to accuse the commission of attempting to play “fast and loose” with the appellate court and the people of Georgia, and said it would be “fundamentally unfair” to allow the commission to assert its contentions, which were “simply wrong.”

The plaintiffs’ brief was signed by Peak and included the names of two of his partners at Butler, Wooten & Fryhofer in Columbus—James Butler and Mary Weeks—plus Alfred Corriere of Vansant & Corriere of Albany.

Both Rollins and Peak said the resolution was the best result for their clients, given the risk that the appellate court would rule against them.

But the deal left lawyers on both sides feeling some regret, too.

“It’s a case we did want to try,” said Peak.

“You spend a year and a half not knowing an answer to a question, and you don’t get the answer,” said Rollins. He said he hopes to have another opportunity to seek an opinion from the court of appeals on whether regional commissions can be subject to judgments. “But I agreed with Brandon that this was not the case to use as a test,” Rollins said.

Nancy Mae Glover, 57, of Arlington in Early County, near Blakely, died on Sept. 10, 2010, in Crisp County. She was returning home with her great-niece Chenee Thomas from a medical appointment in Augusta where a doctor was treating the facial deformities with which the child was born. Glover and her husband, James, had taken Chenee and her brother into their home and were raising them as their own children, the lawsuit said.

The driver of the Explorer, Hubert Thomas of Bainbridge, had been hired by the commission to transport Medicaid patients to medical appointments, according to court documents from both sides. Plaintiffs’ counsel said in the lawsuit they had found 30 prior traffic offenses for Thomas, “including multiple instances where Thomas was caught driving over 20 miles per hour in excess of the speed limit.” In a mediation statement, Peak said, “One thing is clear—the SWGRC did not take its job of monitoring driver qualifications or vehicle safety seriously.”

The Explorer also had four mismatched bald tires that the lawsuit said the driver bought used.

One of them failed and caused the Explorer to roll over, ejecting Glover and sending her across traffic lanes of I-75 into a ditch, according to the complaint.

“This is a case that can change conduct,” said Peak. “That’s why we brought the case and pursued the case. At the end of the day, what my client wants and what we want is for this not to happen again. Our hope is that the Southwest Georgia Regional Commission and other agencies that transport people will do a better job of checking out the drivers before they contract with people.”

The case is *Glover v. Southwest Georgia Regional Commission*, No. 11SCV135. 