

# Fla. Judge Orders Elon Musk To 'Be Prepared' For Deposition

By **David Minsky**

Law360, Fort Lauderdale, Fla. (September 6, 2023, 8:02 PM EDT) -- A Florida state court judge ordered Elon Musk to answer questions about a phone conversation with a victim's father within 21 days of an adverse appellate court ruling in a Tesla fatal crash lawsuit, saying Wednesday he should "be prepared" because the deposition has been "lurking for a while."

During a remote hearing in Fort Lauderdale, Broward County Senior Judge Mark A. Speiser heard arguments from attorneys representing Tesla, who challenged an earlier order to Florida's Fourth District Court of Appeal compelling Musk to answer questions about a phone call with James Riley, the father of a second victim who died in the 2018 crash.

The deposition would occur 21 days after either the Fourth DCA denies Tesla's appeal or the circuit court rules to show cause after the appellate court's final determination.

"He knows this is lurking here, this is lurking and it [has] been lurking for a while that he has to be prepared for a deposition," Judge Speiser said. "If in fact ... the Fourth DCA rules against you, then another 45 days from that point I think is asking too much."

The lawsuit stems from a fatal Tesla Model S crash that occurred in May 2018. Barrett Riley and Edgar Monserratt, both 18 years old, died after the vehicle collided into a wall near the intersection of A1A and Harbor Beach Parkway in Fort Lauderdale and caught fire. Riley drove the vehicle while Monserratt was his front-seat passenger. A third male teenager sitting in the backseat was ejected from the vehicle, but survived.

Defendants in the lawsuit include James Riley, who is listed as the owner of the vehicle, as well as Tesla Inc. and a Tesla service technician accused of removing the speed limiter in the Model S.

Court documents show that following the crash, Musk called Riley to extend condolences regarding his son, in addition to exchanging emails.

Riley alleged in a deposition that Musk said on the phone something to the effect of "perhaps we should not have removed the limiter" and "we will have to review and revise our policies." Musk, however, said in a sworn declaration that he did not recall saying that during the call and reiterated that statement in a set of questions he also provided, court records show.

In late July, Judge Speiser granted Monserratt's motion to compel Musk's deposition within 60 days of his order. Musk's attorneys later appealed that order on Aug. 25 with the Fourth DCA, arguing that the plaintiffs haven't proven his previous responses are inadequate. Court records show Tesla filed a motion with the circuit court to halt the deposition five days later.

"Quite simply, there is nothing more that will be accomplished by a deposition given that Mr. Musk has already — twice — stated under oath that he does not have a recollection of the matters alleged by Mr. Riley," the appeal stated.

Wendy Lumish of Bowman and Brooke LLP, representing Tesla, told Judge Speiser that absent a stay, her client is "deprived a meaningful opportunity" to obtain review from the Fourth DCA. She added that her client is entitled to an appellate review and told the judge there's no deadline for the ruling, adding she is "completely at the appellate court's mercy."

"Because of all we've argued about this and everyone knows about all of the companies that Mr. Musk is involved in, this is not a simple thing of 'OK, we'll just set a depo next week,'" Lumish said. "It needs time, it needs to be scheduled out."

Jonathan Gdanski of Schlesinger Law Offices PA, representing Edgar and Esperanza Monserratt, agreed that it would be prudent to stay Musk's deposition until the Fourth DCA issues an opinion, but added that he should not have to wait 60 more days for the deposition to proceed if the appellate court ultimately rules against Tesla.

Tesla attorney Jeff Patterson of Bowman and Brooke LLP requested 45 days for the deposition and said even that would be "really tight" given the difficulty in scheduling Musk, adding that setting a date without a ruling would continue occupying Musk's calendar "over and over again."

Patterson asked to "split the baby" by allowing Musk to complete the deposition within 30 days of an adverse ruling.

"We just wait for the Fourth DCA to either issue an order to show cause and respond, or to dismiss the appeal," Gdanski said. "If it's stayed now once there's a ruling from the Fourth DCA and if that ruling allowed the deposition to proceed, then we should not have to wait 60 more days. I think we've waited long enough to get this done. I'm not here to negotiate."

Monserratt is represented by Philip Corboy of Corboy & Demetrio, Jonathan Gdanski of Schlesinger Law Offices PA, and Bard D. Rockenbach of Burlington & Rockenbach PA.

James B. Riley and the Estate of Barrett Riley are represented by Laurie A. Primus of Sellers Marion & Bachi PA.

Tesla is represented by Jeff Patterson, Wendy Lumish, Whitney Cruz and Robert J. Rudock of Bowman and Brooke LLP.

The case is Monserratt v. Tesla Inc. et al., case number CACE19000422, in the Seventeenth Judicial Circuit Court of Florida.

--Editing by Scott Russell.