



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/1/11	SM	Favorable

December 1, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 16 (2012)** – Senator Oscar Braynon
Relief of Ronnie Lopez and Robert Guzman

SPECIAL MASTER'S FINAL REPORT

THIS IS A UNCONTESTED CLAIM FOR \$1,010,000 FROM MIAMI-DADE COUNTY BASED ON A COURT-APPROVED SETTLEMENT AGREEMENT TO COMPENSATE THE ESTATE OF ANAYENCY VELASQUEZ FOR HER DEATH, WHICH WAS CAUSED WHEN HER CAR WAS STRUCK BY A MIAMI-DADE COUNTY POLICE CRUISER.

FINDINGS OF FACT:

At about 5:15 a.m. on February 28, 2009, Anayency Velasquez, 23 years old, was returning from her job at the Latino Sport Bar when her car was struck at the driver-side front wheel by a Miami-Dade County police cruiser driven by Frank Rivera, who had run a stop sign and collided with Ms. Velasquez' car in the intersection of NW 11th Avenue and NW 112th Street in Miami.

It is estimated that Officer Rivera was traveling at 32 miles per hour when the collision occurred. Officer Rivera declined to give a statement, but the other officer in the cruiser said that they were engaged in a pursuit. The more persuasive evidence does not support this statement. For example, the cruiser's emergency lights and siren were not turned on, which police policy requires for a pursuit.

The collision caused Ms. Velasquez' car to be forced diagonally across the intersection, through a fence, and into a house where it caused extensive damage. She was killed in the collision from "blunt force trauma."

Blood samples taken from Ms. Velasquez showed a blood-alcohol level of .25, which is more than three times the legal limit, and there was cocaine in her system. However, the evidence does not show that these drugs contributed to her death. It was not shown that Ms. Velasquez could have avoided the collision if she had not been drunk. She was not speeding. The Office of the State Attorney considered Ms. Velasquez not at fault.

Officer Rivera was prosecuted for careless driving and running a stop sign, but was found not guilty based on the qualified immunity provided in section 316.072(5)(b)2, F.S., for drivers of emergency vehicles who proceed past a stop sign. He received a "record of counseling" from the Police Department.

Ms. Velasquez is survived by her three minor children, whose fathers are the co-representatives of her estate. Ronnie Lopez is the father of Ronnie Lopez, Jr., age 5 and Ashley Lopez-Velasquez, age 4. Robert Guzman is the father of Steven Guzman, age 9.

LITIGATION HISTORY:

In September 2010, a demand letter was served on Miami-Dade County on behalf of the estate of Ms. Velasquez. The parties then entered into pre-suit mediation, which resulted in a Mediation Agreement. The agreement provided that Miami-Dade County would pay \$150,000 to the co-representatives of the estate and would support a claim bill for an additional \$1,010,000.

A Petition to Approve Apportionment of Wrongful Death Settlement Proceeds recommended equal apportionment (one third shares) to the three surviving children of all monies received. The petition was approved by the circuit court in August 2011.

Miami-Dade County paid \$150,000 to the co-representatives of the estate. After attorney fees and costs were deducted, they received \$90,599. These funds were divided in three equal shares and deposited in three separate bank accounts

for the children. The use of these funds and any funds received from passage of the claim bill are subject to guardianship law for the care and benefit of Ms. Velasquez' three children.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine, based on the evidence presented to the Special Master, whether the Department is liable in negligence for the damages suffered by the Claimant and, if so, whether the amount of the claim is reasonable.

Officer Rivera had a duty to exercise reasonable care in operating his cruiser and, specifically, to exercise care when approaching the intersection and yield to Ms. Velasquez who had the right of way. The collision that occurred was a foreseeable consequence of failure to stop or otherwise exercise care.

Although, in the criminal action, Officer Rivera's guilt was not proved beyond a reasonable doubt, the preponderance of the evidence establishes that he drove carelessly and without due regard for the safety of other persons. Therefore, the qualified immunity provided by section 316.072(5)(b)2, F.S., is inapplicable.

Officer Rivera was acting within the course and scope of his employment at the time of the crash. As a result, his negligence is attributable to Miami-Dade County.

ATTORNEYS FEES:

The Claimants' attorney has agreed to limit attorney's fees to 25 percent of the claim in accordance with s. 768.28(8), F.S.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 16 (2012) be reported FAVORABLY.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Oscar Braynon
Debbie Brown, Interim Secretary of the Senate
Counsel of Record