



**STORAGE NAME:** h3557.CJS

**DATE:** 4/3/2015

## **Florida House of Representatives Summary Claim Bill Report**

**Bill #:** HB 3557; Relief/Maricelly Lopez/City of North Miami

**Sponsor:** Harrison

**Companion Bill:** CS/SB 78 by Judiciary, Flores

**Special Master:** Parker Aziz

### **Basic Information:**

<b>Claimants:</b>	Maricelly Lopez, individually and as personal representative of the Estate of Omar Miele.
<b>Respondent:</b>	City of North Miami
<b>Amount Requested:</b>	\$200,000.00
<b>Type of Claim:</b>	Local equitable claim; result of a settlement agreement.
<b>Respondent's Position:</b>	The City of North Miami does not oppose the enactment of this claim bill.
<b>Collateral Sources:</b>	Prior to the litigation against the City of North Miami, the Claimant recovered the bodily injury limits from Ms. Ibarra's (the driver) GEICO policy in the amount of \$10,000, as well as \$10,000 from the Claimant's underinsured motorist coverage.
<b>Attorney's/Lobbying Fees:</b>	The Claimants' attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), Florida Statutes. Lobbyist's fees and costs are included with the attorney's fees.
<b>Prior Legislative History:</b>	<p>Senate Bill 40 by Senator Flores was filed during the 2014 Legislative Session. It was withdrawn prior to introduction. A House bill was never filed.</p> <p>House Bill 1417 by Representative Manny Diaz and Senate Bill 35 by Senator Flores were filed during the 2013 Legislative Session. The House bill was never considered in the House and died in the Select Committee on Claim Bills. The Senate bill was never heard and died in Judiciary.</p>

House Bill 985 by Representative Pilon and Senate Bill 58 by Senator Flores were filed during the 2012 Legislative Session. As a proposed committee substitute, the House bill was heard and voted down in Civil Justice Subcommittee. The Senate Bill was reported favorably by the Senate Special Master but was never considered in the Senate and died in the Senate Rules Committee.

House Bill 1443 by Representative Patronis and Senate Bill 342 by Senator Evers were filed during the 2011 Legislative Session. The House bill was never considered in the House and died in the Civil Justice Subcommittee. The Senate bill was reported favorably by the Senate Special Master but was never considered in the Senate and died in the Senate Rules Committee.

**Procedural Summary:** On June 23, 2008, Maricelly Lopez, in her individual capacity and as the personal representative of the estate of Omar Mieles, filed a complaint for damages in Miami-Dade County circuit court against the City of North Miami. The complaint alleged that Officer Thompson's operation of his police vehicle on November 11, 2007, was negligent, and that such negligence was the direct and proximate cause of Mr. Mieles' death. In addition, the complaint alleged that Mr. Mieles' estate sustained various damages, which included medical and funeral expenses, as well as lost earnings. The complaint further asserted that Ms. Lopez sustained damages in her individual capacity, such as the loss of past and future support and services, past and future mental pain and suffering, and loss of companionship.

The matter subsequently proceeded to a jury trial, during which the parties presented conflicting theories regarding the cause of the accident. Specifically, the plaintiff contended that Ms. Ibarra had properly stopped at the intersection and that Officer Thompson was solely responsible for the collision, while the City of North Miami argued that Ms. Ibarra had run the red light and was entirely at fault. In addition, both sides presented conflicting expert testimony regarding whether Mr. Mieles would have sustained fatal injuries had he been wearing a seatbelt. In particular, the plaintiff's expert opined that due to the location of the collision (the right rear passenger's door of the Ford Focus) and its force, Mr. Mieles would have been killed even if he had been properly restrained. In contrast, the City of Miami presented expert testimony indicating that the use of a seatbelt would have saved Mr. Mieles' life.

On March 19, 2010, the jury returned a verdict, in which it determined that the City of North Miami and Ms. Ibarra were negligent, and that each was 50 percent responsible for Mr. Mieles' death. The jury apportioned no fault to Mr. Mieles. The jury further concluded that Mr. Mieles' estate and Ms. Lopez sustained the following damages:

Damages to the Estate

- \$163,950.15 for medical expenses.
- \$1,630 for funeral expenses.

Damages to Maricelly Lopez

- \$2,000 for loss of past support.
- \$40,000 for loss of future support.
- \$1,750,000 for past pain and suffering.
- \$1,750,000 for future pain and suffering.

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Based on the jury's finding that the City of North Miami was 50 percent responsible, final judgment was entered against it in the amount of \$1,719,808.63 (this figure is comprised of \$1,688,195.10, which represents fifty percent of the total damages outlined above, minus various setoffs, plus costs of \$31,613.53).

No appeal of the final judgment was taken to the Third District Court of Appeal.

The City of North Miami has tendered \$108,571.30 against the final judgment, leaving \$1,611,237.33 unpaid.

On March 19, 2015, the City of North Miami and claimant agreed to settle the existing claim bill in the amount of \$200,000.00

**Facts of Case:** On November 11, 2007, a traffic accident occurred in Miami at the intersection of Northwest 7th Avenue and Northwest 46th Street. Northwest 46th Street runs from east to west, and intersects Northwest 7th Avenue (which runs from north to south) at a right angle. At the time of the accident, the intersection was controlled by four traffic signals: two blinking red lights that directed vehicles traveling east and west on Northwest 46th Street to stop, and two blinking yellow lights for vehicles proceeding north and south on Northwest 7th Avenue.

At approximately 4:10 a.m., Madelayne Ibarra was driving her 2005 Ford Focus east on Northwest 46th Street in a 2005 Ford Focus, which was being driven by. The vehicle was owned by Ms. Ibarra's mother, who was not present. 19-year-old Omar Mies was in the back seat and his girlfriend, Raiza Areas, was in the front passenger seat. Although Ms. Ibarra and Ms. Areas were both wearing seatbelts, Mr. Mies was lying down unrestrained on the back seat, with his head behind the front passenger's seat. Mr. Mies, Ms. Areas, and Ms. Ibarra had spent the evening eating dinner in Coconut Grove and socializing with friends in South Beach.

Although Ms. Ibarra was not under the influence of alcohol or controlled substances, she was unfamiliar with the area and fatigued due to the late hour. As a consequence, Ms. Ibarra failed to come to a complete stop at the red traffic signal prior to entering the Northwest 7th Avenue intersection. At the same time, a City of North Miami police cruiser traveling north on Northwest 7th Avenue entered the intersection through the yellow caution light. The police vehicle, which was on routine patrol and not operating in emergency mode (i.e., the siren and emergency lights were not activated), was substantially exceeding the 30 MPH limit.

Tragically, the police cruiser, which was being operated by Officer James Thompson, struck the right rear passenger door of Ms. Ibarra's Ford Focus. Mr. Mies, who was ejected through a rear window due to the force and location of the impact, landed approximately 35 feet from the final resting position of Ms. Ibarra's vehicle. Although Mr. Mies sustained catastrophic head injuries as a result of the accident, neither Ms. Ibarra nor Ms. Areas was seriously injured.

Officer Thompson, who likewise was not significantly injured in the collision, immediately radioed for emergency assistance. Paramedics responded to the scene minutes later and transported Mr. Mies to Jackson Memorial Hospital. Soon after his arrival at the hospital, Mr. Mies was pronounced brain dead. On November 14, 2007, with the consent of Maricelly Lopez (Mr. Mies' mother and the Claimant in this proceeding), hospital staff harvested Mr. Mies' heart, liver, and kidneys for donation, at which point he expired.

Approximately 90 minutes after the collision, K. Andrews, a detective employed with the City of Miami Police Department, arrived at the scene of the crash and initiated an accident investigation. During the investigation, Officer Thompson advised Detective Andrews that Ms. Ibarra had failed to stop at the red light and that he was unable to avoid the accident. However, Officer Thompson

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failed to mention that he was needlessly exceeding the speed limit at the time of the crash. Based upon the incomplete information in her possession, Detective Andrews concluded that Ms. Ibarra was solely at fault in the accident and issued her a citation for running a red light.

During the ensuing litigation between Mr. Mieles' estate and the City of North Miami, it was determined (based upon data from the patrol vehicle's "black box") that one second prior to the crash, Officer Thompson was traveling 61 MPH. As noted above, the speed limit on Northwest 7th Street at the accident location was 30 MPH.

At the time of his death, Mr. Mieles had recently graduated from high school and was working two jobs. In addition, he had been accepted to Valencia Community College and was scheduled to begin classes in January 2008. Mr. Mieles, who is survived by his mother, stepfather, and two siblings, was by all accounts a hard-working and well-liked young man.

**Recommendation:** Because settlement agreements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense, stipulations or settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature or its committees, or on the Special Master. However, all such agreements must be evaluated. If found to be reasonable and based on equity, then they can be given effect, at least at the Special Master's level of consideration. I find that the settlement agreement in this case is reasonable and equitable in light of the negligence surrounding Mr. Mieles' accident and his tragic death and recommend that the settlement be given effect by the Legislature.

I respectfully recommend House Bill 3557 be reported **FAVORABLY**.

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Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Harrison, House Sponsor  
Senator Flores, Senate Sponsor  
George Levesque, Senate Special Master