



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/23/14	SM	Favorable
3/31/15	JU	Favorable
	CA	
	FP	

December 23, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 44** – Senator Grimsley
HB 3505 – Representative Steube
Relief of Estate of Lazaro Rodriguez by the City of Hialeah

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$485,000 BASED ON A SETTLEMENT AGREEMENT WITH THE CITY OF HIALEAH FOR THE DEATH OF LAZARO RODRIGUEZ DUE TO THE NEGLIGENT OPERATION OF A PATROL VEHICLE BY ONE OF ITS POLICE OFFICERS.

FINDINGS OF FACT:

At about 10:15 p.m. on July 30, 2000, 29 year old Lazaro Rodriguez was on his way home from work when his Ford Explorer was struck on the left front side by a City of Hialeah police cruiser driven by Officer Jorge Rodriguez. Lazaro Rodriguez was driving west on East 32nd Street and Officer Rodriguez was driving north on Palm Avenue when the accident occurred in the intersection of the two roads. The collision caused Lazaro Rodriguez' vehicle to run into the curb, where it tipped and struck a large concrete pole on the roadside. The impact with the pole crushed the roof above the driver, but the vehicle righted itself and continued moving before striking a third vehicle. Lazaro Rodriguez died at the scene as a result of blunt trauma injuries. He was not wearing his seat belt, but the use of a seat belt would not have prevented his death.

Just prior to the accident, Officer Rodriguez and another police officer had concluded working a domestic violence incident. The other officer was dispatched to a separate incident and Officer Rodriguez chose to respond as well. Both officers proceeded north on Palm Avenue with lights and sirens activated. The traffic light was red as they approached the intersection with East 32nd Street. The other officer, who was in the right northbound lane and slightly ahead of Officer Rodriguez, stopped at the light and made a right turn onto East 32nd Street. Officer Rodriguez, who was in the left northbound lane, slowed at the intersection. Perceiving that his path was clear, he accelerated straight through the light. His police car struck Lazaro Rodriguez' vehicle in the westbound through lane of East 32^d Street as it moved from Officer Rodriguez' right. There is no indication that either vehicle took evasive maneuvers, and Officer Rodriguez stated that he did not see Lazaro Rodriguez' vehicle until immediately before the impact.

Two vehicles were stopped in the left turn lane of eastbound 32nd Avenue East and may have obscured each driver's view of the other vehicle. In addition, there was a concrete sign, foliage, and a chain link fence on the corner that may also have obscured the drivers' views.

Officer Rodriguez was traveling at 20-24 miles per hour when the collision occurred, having accelerated after slowing down to ascertain whether the intersection was clear. Lazaro Rodriguez was traveling 35-45 miles per hour at the time of impact, equal to or in excess of the 35 mile per hour speed limit on 32nd Avenue East.

Section 316.072(5)(b)2., F.S., authorizes the operator of an emergency vehicle to proceed past a red stop signal when responding to an emergency call. However, the driver may do so only after slowing down as may be necessary for safe operation and is not relieved from the duty to drive with due regard for the safety of all persons. A City of Hialeah Police Department administrative order imposes an additional requirement that the driver of a police car come to a complete stop before proceeding through an intersection against a stop signal. Officer Rodriguez slowed down, but did not stop, before proceeding into the intersection. He was issued traffic citations for violation of s. 316.075, F.S.

(Running a Red Light) and s. 316.1925 (Careless Driving), but the disposition of the traffic violations is not known.

With regard to Lazaro Rodriguez' actions, s. 316.126(1), F.S., provides: "Upon the immediate approach of an authorized emergency vehicle, while en route to meet an existing emergency, the driver of every other vehicle shall, when such emergency vehicle is giving audible signals by siren, exhaust whistle, or other adequate device, or visible signals by the use of displayed blue or red lights, yield the right-of-way to the emergency vehicle and shall immediately proceed to a position parallel to, and as close as reasonable to the closest edge of the curb of the roadway, clear of any intersection and shall stop and remain in position until the authorized emergency vehicle has passed, unless otherwise directed by a law enforcement officer." Lazaro Rodriguez did not stop, and there was no evidence that he slowed down or swerved prior to the collision.

Tests of blood samples taken from Officer Rodriguez and from Lazaro Rodriguez' body detected no alcohol or drugs in either driver's system.

Lazaro Rodriguez was a native of Cuba who entered the United States in March 1995 by way of an airline flight from Spain. At the time of his entry, immigration officials detected that he presented another man's Spanish passport as his own. He was detained and his legitimate Cuban passport was found on his person. He was paroled (allowed to remain in the United States) pending an exclusion hearing before an immigration judge. On April 22, 1997, Lazaro Rodriguez was ordered excluded and deported from the United States. However, he was allowed to remain in the United States while he pursued legal avenues, including requesting asylum due to persecution by the Cuban government and requesting waiver of inadmissibility due to extreme hardship. His extreme hardship waiver request was denied months before his death because his U.S. citizen daughter (Kathryn) was not a qualifying relative for purposes of waiver and he was not yet married to Beatrice Luquez, who is a permanent resident alien. Subsequent to that denial, he applied for adjustment of status as a NACARA applicant. Also, he and Beatrice Luquez were married in April 2000 and she petitioned for him to receive an immigrant visa as the spouse of a permanent resident alien. These petitions were pending

at the time of Lazaro Rodriguez' death. Lazaro Rodriguez had no criminal record, and he worked and paid federal income taxes throughout his five-year stay in the United States.

Lazaro Rodriguez is survived by his wife, Beatriz Luquez, with whom he lived for five years before getting married shortly before his death. He is also survived by his 22 year old son, Lazaro, Jr., and his 17 year old daughter, Katherine. Katherine will turn 18 on March 5, 2015. Lazaro is the child of Lazaro Rodriguez and his first wife. Katherine is the child of Lazaro Rodriguez and Beatriz Luquez.

In 2001, the claimants filed a wrongful death claim against the City of Hialeah and Hialeah, Inc. Hialeah, Inc. was owner of the land at the corner of the intersection and was alleged to be responsible for the obscured view.¹ The City settled in 2011, after nearly ten years of pre-trial discovery and motions, for \$685,000 plus \$25,000 in costs. The City has paid the statutory sovereign immunity limit of \$200,000 and the costs, and has budgeted the amount of each additional payment from July 2012 through July 2016.

CONCLUSIONS OF LAW:

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

Officer Rodriguez had a duty to exercise reasonable care in operating his police cruiser. Although he was authorized by s. 316.072(5)(b)2., F.S., to proceed through the red stop signal because he was responding to an emergency call, he was permitted to do so "only after slowing down as may be necessary for safe operation." His department had imposed a more restrictive requirement to come to a complete stop before proceeding through a stop signal. Although he slowed down and was driving under the speed limit, the fact that his vehicle collided with Lazaro Rodriguez' vehicle indicates that he did not proceed appropriately under the circumstances. Although Lazaro Rodriguez may have been speeding as much as ten miles per hour over the speed limit, his speed

¹ Hialeah, Inc., which owns and operates Hialeah Park Racing & Casino, settled with claimants for \$60,000.

was not so excessive as to completely relieve Officer Rodriguez of responsibility. Therefore, the qualified immunity provided by section 316.072(5)(b)2., F.S., is inapplicable.

Officer Rodriguez was acting within the course and scope of his employment at the time of the crash. Therefore, his negligence is attributable to the City of Hialeah.

Lazaro Rodriguez also had a duty to exercise reasonable care in operating his motor vehicle. Although there is insufficient evidence to conclude that he was speeding, s. 316.126(1), F.S., required him to stop his vehicle clear of the intersection until the Officer Rodriguez' police car had passed. It is possible that Lazaro Rodriguez saw the first police car turning from Palm Avenue and did not perceive that there was a second police car continuing through the intersection. Nevertheless, he was negligent in failing to stop until Officer Rodriguez' vehicle had cleared the intersection.

After considering all of the factors in this case, I conclude that the amount of this claims bill is appropriate.

ATTORNEYS FEES:

From the \$225,000 already paid by the City (\$200,000 of the settlement amount plus \$25,000 in costs), trial and appellate counsel received \$67,500 in attorney fees and the client was charged \$44,243.29 for costs and expenses. A total of \$87,908.04 has been paid by claimants for costs and expenses.

Information provided by claimants' counsel indicates that the claimants have entered into attorney fee agreements for payment of a total of 37%, plus costs, for trial counsel (25%), appellate counsel (5%), and claims bill counsel (7%). However, the bill provides that the total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to the claim may not exceed 25 percent of the total amount awarded under the act. The Florida Supreme Court has held that the Legislature has the authority to limit attorney fees in a claim bill even if the attorney has contracted for a higher amount. *Gamble v. Wells*, 450 So.2d 850 (Fla. 1984).

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 44 (2015) be reported FAVORABLY.

Respectfully submitted,

Scott E. Clodfelter
Senate Special Master

cc: Debbie Brown, Secretary of the Senate