



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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November 25, 1998

<u>SPECIAL MASTER'S FINAL REPORT</u>	<u>DATE</u>	<u>COMM</u>	<u>ACTION</u>
The Honorable Toni Jennings	11/25/98	SM	Fav/1 amend
President, The Florida Senate	12/01/98	CA	Fav/1 amend
Suite 409, The Capitol	1/7/99	FR	Fav/1 amend
Tallahassee, Florida 32399-1100			

Re: SB 22 - Senator Ron Silver
Relief of Children of Elionne Joseph

THIS IS A CLAIM FOR \$1.3 MILLION IN LOCAL FUNDS BASED UPON A SETTLEMENT AGREEMENT WITH METRO-DADE (NOW "MIAMI-DADE") COUNTY TO COMPENSATE THE THREE SURVIVING CHILDREN OF MS. ELIONNE JOSEPH, WHO WAS KILLED WHEN HER VEHICLE WAS STRUCK BY A VEHICLE OCCUPIED BY SEVERAL BURGLARY SUSPECTS WHO WERE BEING PURSUED BY THE POLICE.

FINDINGS OF FACT:

Shortly before dawn on March 6, 1995, Ms. Elionne Joseph was returning home alone after dropping her former husband off at a rail station in North Miami for his daily commute to work. At the intersection of Northwest 135th Street and Northwest 6th Court, almost directly below an overpass of Interstate 95 (I-95), Ms. Joseph's vehicle was struck broadside on the driver's side by a speeding vehicle that was occupied by four males and that had exited the interstate approximately one block to the north. The impact undoubtedly was horrific, with both vehicles propelled more than 100 feet toward an interstate retaining wall and Joseph's vehicle coming to rest on its side. Ms. Joseph and three of the four occupants of the other vehicle were killed as a result of the collision. Ms. Joseph was 38 years old at the time of her death and was survived by three daughters, then ages 11, 10, and 5.

Relating to Liability: The exact circumstances and conditions preceding the collision are the subject of inconsistent and, in some cases conflicting, evidence in the record. Considering such evidence in total, however, the Special Master makes the following findings of fact:

- At approximately 4:50 a.m. on March 6, 1995, a police dispatcher issued notice of a burglary in process at a shopping mall on 163rd Street. A recording of the transmission demonstrates that the dispatcher clearly used the code "26", which signifies a burglary.
- Moments later a Metro-Dade police officer driving in the opposite direction spotted two of the three suspect vehicles -- a blue Chrysler LeBaron containing five young males and a red Chrysler LeBaron containing four young males -- traveling west on State Road 826 (167th Street) toward the Golden Glades Interchange that provides access to I-95. The record indicates that the officer turned around and began to follow the two vehicles. At least one other Metro-Dade police officer who heard the dispatcher's call was positioned near the interchange.
- One of the passengers in the blue suspect vehicle testified that the driver of the vehicle in which he was riding drove around a median and into oncoming traffic in order to circumvent two police vehicles that were impeding access to the interstate. The blue and red vehicles accessed the on-ramp to I-95 and proceeded south on the interstate, with at least three, and possibly more, Metro-Dade police vehicles following.
- The speeds and distances with which the suspect and police vehicles were traveling on the on-ramp to the interstate and southbound on the interstate itself are subject to differing evidence. Two of the passengers in the blue suspect vehicle testified that their vehicle reached speeds ranging from 90 to 120 miles per hour. They also testified that the red

vehicle appeared to be traveling at a similar speed, although they noted that it was slightly behind the blue vehicle. One passenger testified that one of the police vehicles was within approximately five yards of the red vehicle at a time when the red vehicle was estimated to be traveling close to 90 miles per hour. One of the Metro-Dade police officers was close enough to both suspect vehicles to radio in their license tag numbers, although he testified that at the time he was traveling 50 to 55 miles per hour and that he was 90 feet behind the suspect vehicles. At a minimum, the evidence supports a finding that the suspects were traveling well above the speed limit while on I-95 and that some of the officers were pursuing the suspects in close proximity. From the evidence, a jury could reasonably find that at least some of the officers were exceeding the speed limit of 55 miles per hour.

- The record contains conflicting evidence on whether the police vehicles following the suspects were operating their lights or sirens.
- In their deposition testimony, two passengers in the blue vehicle repeatedly characterized the police action as a chase.
- At 135th Street, which is the first available exit off I-95 south, the red vehicle exited the interstate, but the blue vehicle did not. During deposition testimony, two of the individuals in the blue suspect vehicle marked photographic exhibits, and those markings demonstrate that when the red vehicle exited the interstate it was followed in close proximity by two police vehicles. Upon exiting, the red vehicle crossed Opa-Locka Boulevard, ran a red light at the intersection with 135th Street, and smashed into the vehicle being driven through the intersection by Ms. Joseph.
- The county has stipulated that its accident reconstructionist calculated the speed of the red vehicle to be 79 miles per hour at the time of impact. The attorney for the claimant proffered that its

accident reconstructionist calculated the speed to be 100 miles per hour. The Metro-Dade police homicide report concludes that Ms. Joseph entered the intersection with a green light. The collision occurred approximately five minutes after the initial radio announcement of the burglary in progress.

Relating to Damages: Ms. Joseph was not working at the time of her death; however, she was trained and had worked previously as a nursing assistant. She also brought supplemental income to the family by cutting and braiding hair. Although she was reunited with her former husband, Mr. Joseph Dorival, the couple had not remarried. Mr. Dorival has no legal claim for Ms. Joseph's death, but he is the appointed guardian for the property of the minor children.

Mr. Dorival testified during the Special Masters' hearing that, following Ms. Joseph's death, his income alone was insufficient to maintain the mortgage payments on the couple's house. The house was ultimately lost to foreclosure after attempts by Mr. Dorival to sell it failed. Today Mr. Dorival and his three daughters, now ages 14, 13, and 9, rent an apartment for \$775 per month. Mr. Dorival, who earns a wage of approximately \$9.70 per hour, testified that Ms. Joseph's death has resulted in a financial hardship on the family and has made it difficult in some instances to provide for the needs of the children, such as school and social activities.

CONCLUSIONS OF LAW:

At the time of this crash, Metro-Dade police had in place a policy authorizing officers to "engage in pursuits when they have a reasonable belief that the fleeing suspect has committed or attempted to commit a violent felony" (Administrative Order 2-43, Emergency Vehicle Operations, *Metro-Dade Police Departmental Manual 1995 Part I*, 2-43.1). Pursuit is defined in the policy as the "active attempt by an officer in an authorized emergency vehicle to apprehend a suspect fleeing in a motor vehicle, provided the officer reasonably believes the suspect knows he was directed to stop, refuses to stop, and is willfully fleeing in an attempt to avoid capture by using high speed driving or other evasive tactics such as driving off a highway, making sudden or unexpected

movements, or driving on the wrong side of the roadway” (*id* at 2-43.3). Burglary is not among the crimes within the policy’s definition of a violent felony.

In *City of Pinellas Park v. Brown*, 604 So. 2d 1222 (Fla. 1992), the Florida Supreme Court placed a duty of care on the police in a comparable high-speed pursuit scenario even though the accident did not involve a police vehicle, because a substantial portion of the risk of injury to a foreseeable victim was being created by the police themselves. The Court held that the duty would have existed regardless of whether a specific policy governing such pursuits were in place. Further, the Court, in finding that the issue of the city’s liability was a jury question, concluded that the actions of the police were operational in nature and not entitled to sovereign immunity.

In the present case, the police dispatcher clearly identified the suspects’ alleged crime as being burglary, which was outside the scope of the Metro-Dade police pursuit policy. Nonetheless, more than one police vehicle began to follow the suspects and continued to do so even as the suspects were gaining speed as they entered the on ramp and continued south on the interstate. At least one officer, who testified that his vehicle was in a stopped position when the suspects initially passed him shortly before reaching the interstate, ultimately maneuvered close enough to read license plates on both vehicles. Two of the passengers in the suspect vehicle not involved in the accident marked diagrams illustrating that the police were in close proximity to the red suspect vehicle as it exited the interstate at very high rate of speed, shortly before colliding with the vehicle driven by Ms. Joseph. From the evidence in the record, a jury could reasonably conclude that the officers’ conduct amounted to a pursuit of the suspects on Interstate 95 in direct violation of the county’s own policy.

Notwithstanding the existence of the pursuit policy, the record still supports a conclusion that the Metro-Dade police breached a duty of care to Ms. Joseph under the *Pinellas Park* decision. The suspects testified that they

were traveling well above the speed limit and that the police were chasing them. The police continued to follow the speeding suspects even though the suspects had evidenced no willingness to stop or slow down and even though they were aware that the vehicle occupants were suspects in a non-violent felony. The radio dispatcher failed to communicate a message from an officer who had spotted the vehicles earlier and who apparently advised the pursuing officers to drop back from the suspect vehicles because he felt he was undetected by the suspects. The recording of the radio transmission also indicates that a Metro-Dade police lieutenant was monitoring the events as they were unfolding but made no suggestion for the officers to stop following the suspects until after the report of the collision with Ms. Joseph's vehicle. From this evidence, a jury could reasonably conclude that, while recognizing the fault of the suspects themselves, the police also were negligent in maintaining a course of action contributing to the foreseeable risk of injury to Ms. Joseph.

ATTORNEY FEES:

The attorney for the claimants has provided an affidavit stating that the attorney fees in this case are limited to 25 percent of the recovery in accordance with §768.28, F.S.

FISCAL IMPACT:

According to the county, there is no insurance covering this claim. The claim would be paid from the county's general funds.

COLLATERAL SOURCES:

The children of Ms. Joseph each receive \$213.00 per month in Social Security. They have received no other collateral sources.

SPECIAL ISSUES:

Guardianship: At the time of Ms. Joseph's death, she was living with Mr. Joseph Dorival, her former husband and the father of the three surviving children. Ms. Joseph and Mr. Dorival had not remarried. Mr. Dorival has been appointed the guardian of the property of the minor children.

Settlement: In June 1998, the parties agreed to settle this matter fully for \$1,500,000, with \$200,000 payable by the county pursuant to §768.28(5), F.S., and \$1,300,000 payable upon the Legislature's passage of a claim bill.

The amount approved in the claim bill is to be a "structured settlement," the exact terms and payments to be determined in the best interests of the children at a later date. On October 9, 1998, the parties signed a stipulation for settlement, and on November 18, 1998, a consent judgment in the amount of \$1,500,000 was entered against the county, with the court approving the stipulation of settlement.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that SB 22 be amended to \$1,300,000 and be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Eric W. Maclure
Senate Special Master

cc: Senator Ron Silver
Faye Blanton, Secretary of the Senate
Leonard Schulte, House Special Master