



**STORAGE NAME:** h0185.CVJS

**DATE:** 4/11/2011

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

**Bill #:** HB 185; Relief/Angela Isham/City of Ft. Lauderdale

**Sponsor:** Mayfield

**Companion Bill:** SB 34 by Dean

**Special Master:** Thomas

**Basic Information:**

**Claimants:** Angela Isham, individually, and as co-personal representative of the Estate of David Isham

**Respondent:** City of Fort Lauderdale

**Amount Requested:** \$600,000

**Type of Claim:** Local equitable claim; result of a settlement agreement.

**Respondent's Position:** Agrees that the settlement in this matter and the passage of this claim bill is appropriate.

**Collateral Sources:** None.

**Attorney's/Lobbying Fees:** The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.

**Prior Legislative History:** HB 827 (2009) was filed by Representative Poppell. The bill was referred to the Civil Justice & Courts Policy Committee and died in that committee.

SB 40 (2009) was introduced by Senator Pruitt. The bill was referred to the Criminal Justice Committee where it was amended and passed by the Committee. The bill passed the Senate and died in Messages.

HB 1119 (2010) was filed by Representative Poppell. The bill was referred to the Civil Justice & Courts Policy

Committee and died in that committee.

SB 38 (2010) was filed by Senator Dean. The bill was referred to the Senate Special Master where it died.

**Procedural Summary:** Claimant filed a lawsuit against the City of Ft. Lauderdale in 2003 in the circuit court for Broward County on behalf of herself and the estate of David Isham, her husband. Prior to trial, the parties stipulated to economic damages of \$1,270,438.50, but not on liability. In February 2008, after a five-day trial, the jury found that the City and the BMW driver were each 50 percent liable for Mr. Isham's death. The jury also determined that Angela Isham's damages for the loss of her husband's companionship and for pain and suffering was \$600,000. Based upon the division of damages under the version of s. 768.81, F.S, then in effect, the City is liable for \$1,435,219.25. Of this amount, the City has already paid the sovereign immunity limit of \$200,000, leaving \$1,235,219.25. However, in 2010, the parties reached a settlement agreement that requires the City to pay \$600,000, in addition to the \$200,000 already paid, to resolve this matter.

**Facts of Case:** In the late afternoon of November 15, 2001, three Ft. Lauderdale narcotic detectives were patrolling an area of the City where drug transactions frequently occur. The detectives were in an unmarked car driven by Detective Carl Hannold. They were wearing black t-shirts with the word "POLICE" printed in large letters across the front. Although the detectives were in an unmarked vehicle, many people in the neighborhood saw the vehicle frequently and knew it was a police car. The detectives observed a parked BMW with several persons standing around it. When the driver of the BMW saw the police vehicle, he immediately sped off with tires squealing. No drug related activity was seen by the detectives.

The detectives turned around to follow the BMW. The driver of the BMW took evasive maneuvers on the neighborhood streets and the detectives lost sight of the BMW for several minutes. The detectives circled back and spotted the BMW again. Detective Hannold pulled behind the BMW, which made a right turn at the next intersection without stopping at the stop sign. Detective Hannold followed. The detectives got behind the BMW and turned on their blue light inside the police car. The BMW accelerated away and ran the next stop sign at the intersection with a busy four-lane road. The BMW collided with a pickup truck driven by 42-year-old David Isham. Mr. Isham died at the scene from his injuries.

The driver of the BMW was identified as Jimmie Jean Charles, 20 years old. Charles was injured in the collision and was hospitalized for a short time. The BMW he was driving had been stolen. Charles was tried and convicted of vehicular homicide. He was sentenced to 15 years in prison.

The central dispute in this case was whether Detective Hannold was engaged in a pursuit of the BMW. The Ft. Lauderdale Police Department's policy manual defines a "pursuit" as:

The operation or use of a police vehicle so as to pursue and attempt to apprehend a subject operating a motor vehicle who willfully or knowingly uses either high speed, illegal, or evasive driving tactics in an effort to avoid detention, apprehension, or arrest.

The pursuit policy prohibits police pursuit in an unmarked car "except when it is necessary to apprehend an individual who has caused serious bodily harm or death to any person." Pursuit for a traffic violation would be contrary to the policy. The pursuit policy also states that "accountability cannot be circumvented by verbally disguising what is actually a pursuit by using terms such as monitoring, tracking, shadowing, or following."

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The City's pursuit policy was revised in 1996 to make it more restrictive. Doing so was consistent with a trend for police departments throughout the United States in response to the injuries, deaths, and associated liability that often resulted from high speed police pursuits. Detective Hannold said he was familiar with the pursuit policy and that he was not engaged in a pursuit. He claims that he followed the BMW because it is common for drug dealers to speed away and then "ditch" their cars and run away on foot. Hannold said that when the BMW sped away again when the blue light was activated in the unmarked police car, he did not accelerate to overtake the BMW, but, instead, came to a stop "to make it clear [to the driver of the BMW] that we were in no manner trying to catch up with him."

At the scene of the collision, there was a large gathering of people from the neighborhood and some of them were telling media representatives and police investigators that the police were pursuing the BMW in a high-speed chase. The Police Department obtained several witness statements. One teenage boy said the police car was a block behind the BMW when the collision occurred, but the other witnesses, including two adult women closer to the scene of the collision, testified that the unmarked car was close behind the BMW and that both cars were going fast. One woman said that when the police car turned on its blue light, the BMW immediately accelerated away and the police car also "gunned it." The speed limit on the narrow residential street was 25 mph.

A traffic accident reconstruction conducted by the Police Department estimated that the BMW was traveling about 54 mph when it struck David Isham's truck. At trial, the City presented another accident reconstruction that concluded the BMW was going between 61 and 70 mph.

The action of Detective Hannold, the reaction of the BMW driver, and the crash that killed David Isham, fall squarely within the predictable scenarios that the City's pursuit policy was designed to avoid. Pursuing a "subject" who is trying to avoid apprehension can cause the subject to react by driving dangerously so as to cause injury or death. Therefore, a pursuit is prohibited if the only infraction known to the police officer is a traffic violation.

**Recommendation:** For the reasons set forth above, I respectively recommend that House Bill 185 (2011) be reported FAVORABLY.

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Tom Thomas, Special Master

Date: April 11, 2011

cc: Representative Mayfield, House Sponsor  
Senator Dean, Senate Sponsor  
Judge Bram D.E. Canter, Senate Special Master