



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	Favorable
President, The Florida Senate	12/03/98	RC	Favorable
Suite 409, The Capitol	1/7/99	FR	Favorable
Tallahassee, Florida 32399-1100			

Re: SB 6 - Senator Howard Forman
Relief of Ana Quintana-Marquez and Juan Marquez

THIS IS A CLAIM FOR \$375,000 BASED UPON A SETTLEMENT AGREEMENT BETWEEN THE CLAIMANTS AND METRO-DADE (NOW "MIAMI-DADE") COUNTY TO COMPENSATE THE CLAIMANTS FOR DAMAGES STEMMING FROM A COLLISION BETWEEN A COUNTY POLICE VEHICLE AND A VEHICLE DRIVEN BY MS. ANA QUINTANA-MARQUEZ.

FINDINGS OF FACT:

On November 6, 1996, shortly after 5 p.m., claimant Ana Quintana-Marquez, then age 30, was driving home alone from work westbound on Northwest 25th Street in Dade County. It was still daylight; the weather conditions were clear; and traffic was light. With a green light, Ms. Quintana-Marquez was proceeding through the intersection at Northwest 67th Avenue when her vehicle was struck broadside on the front driver's side by a Metro-Dade (now "Miami-Dade") police vehicle that was attempting to travel northbound on Northwest 67th Avenue in pursuit of a traffic violator.

A statement from a witness supports the finding that, immediately prior to the collision, the police vehicle was eastbound on Northwest 25th Street in the far right turn lane directly behind a truck that was also in the same right turn lane at the intersection. Apparently suspecting that the driver of the truck planned to make an illegal left

turn onto Northwest 67th Avenue from the right hand lane of Northwest 25th Street, the police officer was using the loudspeaker system on his vehicle to caution the driver of the truck against such action. When the driver of the truck nonetheless completed the left turn, the officer proceeded to do the same in pursuit of the truck, but in the process struck the oncoming vehicle driven by Ms. Quintana-Marquez in roughly the center of the intersection. Testimony of Ms. Quintana-Marquez and the witness' statement support the finding that the county police officer did not have his vehicle lights or siren on at the time of impact. In addition, there is competent evidence to support the finding that the police vehicle was traveling at a speed of at least 30 miles per hour when it struck the claimant's vehicle.

Ms. Quintana-Marquez, who was wearing her seat belt at the time of the accident, sustained severe injuries as a result of the collision. Taken by ambulance to Coral Gables Hospital, the claimant was ultimately diagnosed, in addition to a fractured pelvis and fractured ribs, with a perforation of the colon that necessitated emergency surgery. During this first procedure, the surgeon removed a significant portion of the claimant's left colon and transverse colon and performed a colostomy. The claimant's initial hospitalization was for a period of two weeks. Over the next eight to nine months, however, an invasive ultrasound procedure and two additional surgeries were required in order to strengthen the claimant's anal sphincter capacity in preparation for reversal of the colostomy, and to actually reverse the colostomy and connect a portion of the claimant's small bowel to her rectum.

The existence of the colostomy significantly restricted the claimant's movement and thereby hampered her ability to lift and otherwise care for her young sons. The colostomy also was an ongoing source of embarrassment and depression, in addition to the physical discomfort and burden associated with cleaning and dressing the colostomy wound and changing the colostomy bag over a period of nine months. Today, although the colostomy has been reversed, Ms. Quintana-Marquez experiences urgency and watery stools due to the loss of her colon.

She has significant and permanent scarring on her stomach associated with the surgeries and the colostomy.

Ms. Quintana-Marquez incurred medical bills totaling \$108,277.96 as a result of the injuries sustained in this accident. At the time of the accident, the claimant was employed at a salary of \$7.50 per hour. She was unable to work for a period of approximately 10 months following the accident, but has since returned to work with a different employer. Claimant Juan Marquez, Ana's husband, testified to a loss of his wife's society, affection, and companionship, as well as his own personal emotional distress, as a result of her injuries.

Metro-Dade County has agreed to settle this claim for a total of \$575,000, with \$200,000 payable under §768.28, F.S., and \$375,000 to be pursued through a claim bill.

CONCLUSIONS OF LAW:

Under §316.122, F.S., the driver of a vehicle intending to turn left within an intersection shall yield the right-of-way to any vehicle approaching from the opposite direction that is within the intersection or close enough to the intersection to constitute an immediate hazard. In addition, although §316.072(5), F.S., allows the driver of an authorized emergency vehicle to disregard certain traffic control provisions when responding to an emergency call, the statute specifies that the driver is not relieved of his or her duty to drive with due regard for the safety of others. Further, Metro-Dade's own police policy authorizes pursuits only when an officer has a reasonable belief that a fleeing suspect has committed or attempted to commit a violent felony. Florida common law also imposes a duty of care on public officials and employees, such as police officers, in the operation of motor vehicles during the course of employment. (See, e.g., *Trianon Park Condominium Ass'n, Inc. v. City of Hialeah*, 468 So. 2d 912, 920 (Fla. 1985).)

There is competent and substantial evidence that the police officer in this case breached his duty of care to the claimant by making an improper left turn across three lanes of traffic and attempting to accelerate through an intersection at a high rate of speed in a non-emergency

situation, without due regard for or warning to oncoming traffic that was traveling with the right-of-way. This accident was one the claimant could do nothing to avoid. Further, the evidence establishes that but for the officer's negligent conduct, the claimants would not have sustained their damages, including the surgical removal of Ms. Quintana-Marquez's colon. Consequently, the record in this case supports a finding of liability against Metro-Dade County through the actions of its employee.

The deposition testimony of the police officer involved in this traffic accident varied markedly from the testimony of the claimant and the claimant's witness. For example, the officer testified that he proceeded into the intersection as the green arrow for traffic turning from Northwest 25th Street eastbound onto Northwest 67th Avenue northbound was changing from green to yellow. The officer also testified that he activated his siren and his air horn prior to the accident, and that he was moving at a speed of five or six miles per hour. The officer does not, however, contend that the claimant was improperly proceeding through the intersection when his vehicle struck hers. Consequently, even if it is assumed that the officer's version of the facts is correct, it can still be reasonably concluded from the evidence that the officer did not properly yield the right of way to the claimant and was negligent in not clearing the intersection before the claimant's light turned green and she rightfully proceeded into the intersection. It was reasonably foreseeable that he would not be able to clear the intersection. The extent of the physical damage to the police vehicle and the claimant's vehicle casts doubt on the officer's testimony that he was traveling at five or six miles per hour as he crossed the intersection.

ATTORNEY FEES:

The claimants' attorney has submitted into the record a verified statement 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:

Claimant was covered by private health care insurance; however, there was a right of reimbursement, which required the claimant to pay back medical bills that the private health care insurance paid for as a result of the accident. There are no other sources of recovery for the claimants.

SPECIAL ISSUES:

Approximately six months prior to the automobile accident, Ms. Quintana-Marquez was diagnosed with a condition called ulcerative colitis, which causes the colon to become inflamed and can result in ulcers. At the time of the accident, however, the condition was in remission. The surgeon who treated Ms. Quintana-Marquez for her accident-related injuries testified that the condition generally does not result in perforations of the colon. He testified that, although he identified an abscess in the sigmoid colon that likely pre-dated the accident, the perforation or laceration that actually necessitated the emergency surgery was a result of trauma. He further testified that, based upon her condition immediately prior to the accident, surgical removal of her colon was not necessary. The record, therefore, supports a finding that the ulcerative colitis was not a cause of the claimant's damages and that, but for the accident, Ms. Quintana-Marquez would not have required removal of her colon at that time.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that SB 6 be reported FAVORABLY.

Respectfully submitted,

Eric W. Maclure
Senate Special Master

cc: Senator Howard Forman
Faye Blanton, Secretary of the Senate
Leonard Schulte, House Special Master