



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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November 19, 1999

<u>SPECIAL MASTER'S FINAL REPORT</u>	<u>DATE</u>	<u>COMM</u>	<u>ACTION</u>
The Honorable Toni Jennings President, The Florida Senate Suite 409, The Capitol Tallahassee, Florida 32399-1100	11/19/99	SM CJ FR	Favorable

Re: SB 16 - Senator Mandy Dawson
Relief of Elizabeth Menendez

THIS IS AN EQUITABLE CLAIM AGAINST PALM BEACH COUNTY BASED UPON A SETTLEMENT AGREEMENT FOR \$2.4 MILLION FROM COUNTY FUNDS (\$100,000 HAS ALREADY BEEN PAID PURSUANT TO THE STATUTORY LIMITS) TO COMPENSATE ELIZABETH MENENDEZ FOR DAMAGES SUSTAINED AS A RESULT OF THE PALM BEACH COUNTY SHERIFF'S OFFICE'S NEGLIGENCE IN A CAR CRASH.

FINDINGS OF FACT:

THE ACCIDENT

1. On July 4, 1990, at approximately 1:30 a.m., claimant Elizabeth Menendez, who was then 22 years old, was operating a motor vehicle and was attempting to make a left turn at Southern Boulevard and I-95 in West Palm Beach.
2. At that time, Anthony Marinucci was being pursued by the Palm Beach County Sheriff's Department for a noncriminal traffic violation. The high-speed pursuit covered approximately four miles at speeds in excess of 100 mph.
3. Mr. Marinucci's vehicle struck Ms. Menendez's vehicle head-on. Both Ms. Menendez and Mr. Marinucci were taken from the scene to Good

Samaritan Hospital. However, Ms. Menendez sustained life-threatening injuries whereas Mr. Marinucci was treated for minor injuries and released from the hospital.

ELIZABETH MENENDEZ'S INJURIES

4. As a result of the crash, Ms. Menendez suffered internal injuries, injuries to her right arm, brain injury, and injuries to her face. She was transported by paramedics to Good Samaritan Hospital and admitted for 22 days in the intensive care unit. She spent a total of 37 days in this hospital and underwent multiple surgeries, including repair of internal injuries (a splenectomy, an 80% subtotal pancreatectomy, liver laceration repair, and a ruptured left diaphragm repair), and repair of her eye and arm.
5. Ms. Menendez was thereafter transported to Miami Children's Hospital and underwent back surgery. She was later transferred to St. Mary's Hospital, where she underwent rehabilitation for 3 months. After her release from the rehabilitation program, Ms. Menendez suffered fainting spells and was referred to a neurosurgeon. The neurosurgeon diagnosed an aneurysm in her brain and performed surgery.

LEGAL PROCEEDINGS

6. An investigation into Mr. Marinucci's financial resources revealed that a cause of action against him would be fruitless.
7. Carlos and Teresita Menendez, as guardians of Ms. Menendez, sued the Sheriff of Palm Beach County for damages sustained as a result of an accident with a vehicle involved in a high-speed pursuit by the Palm Beach County Sheriff's office. Litigation continued for approximately 7 years.
8. While the jury was deliberating, the parties entered into a settlement agreement, which was approved by the circuit court on October 21, 1998.

9. The settlement agreement requires the Sheriff to pay the sum of \$2.5 million to Carlos and Teresita Menendez for the use and benefit of Ms. Menendez.
10. The Sheriff has already paid the first \$100,000 of the settlement, as allowed by §768.28, F.S., leaving \$2.4 million to be paid pursuant to the claim bill.
11. In accordance with the terms of the settlement agreement, the Sheriff of Palm Beach County actively supports the passage of this bill.
12. This claim bill was heard and passed favorably out of the Florida House of Representatives last year. However, it was not heard in the Florida Senate as it was not timely filed.

CONCLUSIONS OF LAW:

1. This is a local bill that has been properly advertised.
2. **DUTY**--The Palm Beach County Deputy Sheriffs had a duty of due care with reference to their driving during the high speed chase of Marinucci. 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. In this case, there were policies and procedures in place which only allowed pursuits when the driver intentionally avoided apprehension by fleeing and when the pursuing deputy has reason to believe that the pursuit can be successfully concluded within a short distance and time with little or no risk to persons or property, and the violent or hazardous nature of the crime or violation requires immediate pursuit. See Palm Beach County Sheriff's Office Operational Manual, procedure # 511.00.

3. **BREACH**--The Palm Beach County Deputy Sheriffs breached that duty of due care and were otherwise negligent as follows:
 - a. By initiating a high speed chase without probable cause;
 - b. By commencing and engaging in a high speed chase of Mr. Marinucci whose commission of noncriminal traffic infractions was not so serious to warrant risk to innocent bystanders;
 - c. By engaging in a high speed chase for an unreasonable duration and distance;
 - d. By failing to discontinue the chase at a reasonable distance before the intersection of Southern Boulevard and I-95 where it was foreseeable that other vehicles would have entered the intersection at the time that Marinucci's vehicle and/or the Deputy Sheriffs' vehicles entered the intersection at an unreasonably high speed; and
 - e. By violating Palm Beach County Sheriff's Office policy and practice concerning high speed chases.
4. **CAUSATION**--The actions of the Palm Beach County Deputy Sheriffs were a contributing cause of Ms. Menendez's injuries.

Mr. Marinucci's actions were a contributing cause of the Ms. Menendez's injuries.

Ms. Menendez had the right-of-way, was wearing her seat belt, and was not under the influence of any drugs or alcohol. Ms. Menendez's actions were not a contributing cause of her injuries.

5. **DAMAGES**--Ms. Menendez is permanently brain damaged. She has limited short-term memory; requires 24-hour supervision; has permanent fixtures in her back and right arm; and will require medical

care for the balance of her lifetime, which is estimated to be another 53.9 years.

An Order Determining Incapacity ("Incapacitation Order") was entered on June 24, 1993. The Court found by clear and convincing evidence that Ms. Menendez was incapacitated within the meaning of §744.102(10), F.S. In the Incapacitation Order, the Court significantly limited Ms. Menendez's ability to make decisions about her person or property; removed certain rights from Ms. Menendez; and delegated powers and duties to her co-guardians, Carlos and Teresita Menendez, her parents.

At the time of the accident, Ms. Menendez was attending Florida Atlantic University with a major in psychology. She was close to completing her education (102 total credits). She planned to pursue a graduate education in psychology and eventually to practice as a licensed psychologist.

Because of her injuries, Ms. Menendez is no longer able to realize her former career goals. Additionally, her daily life has been significantly impacted and she is no longer able to engage in many activities that she previously enjoyed. She finds, to her particular frustration, that she is unable to interact with others, especially her younger relatives, the way she once did. These limitations have had an obvious and tragic effect on Ms. Menendez's life.

According to examining physicians, Ms. Menendez has and will continue to have problems with memory processing, logical thinking, manipulating concepts, attention and concentration, and difficulty with the ability to cope. Due to these, and other more obvious physical limitations, Ms. Menendez will be unable to obtain any type of gainful employment. Moreover, it is unlikely that Ms. Menendez will ever be able to live independently.

To date, Ms. Menendez has incurred approximately \$392,000 in medical bills, to say nothing of her future medical needs, and past and future pain and suffering.

The Sheriff of Palm Beach County provided that the defense's own economist, Dr. Merle Dimbath, put Ms. Menendez's lifetime economic damages in excess of \$6 million. The plaintiff's economist put Ms. Menendez's economic damages in excess of \$20 million.

Therefore, the \$2.4 million contemplated by the settlement agreement represents an amount less than the most conservative estimate of Ms. Menendez's economic damages.

Nevertheless, Ms. Menendez bargained for, and received important concessions from the Palm Beach County Sheriff's Office regarding the pursuit of this claim bill, and avoided the prospect of time-consuming litigation and the uncertainty inherent in trial verdicts.

Medicare has a lien in the amount of \$5,603. Also, an agreement has been reached with Florida Crystals Corporation, Carlos Menendez's former employer, in which \$100,000 will be paid to Florida Crystals Corporation for full satisfaction of any and all lien and subrogation rights held by the corporation and the Travelers Insurance Company relative to this matter.

Ms. Menendez receives \$466 per month in Social Security benefits.

ATTORNEYS FEES:

Section 768.28(8), F.S., provides that no attorney may charge or receive legal fees in excess of 25 percent of any judgment or settlement. Claimant's counsel has filed a fee affidavit in accordance with this section.

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RECOMMENDATIONS:

For the foregoing reasons, I recommend that Senate Bill 16 be reported FAVORABLY.

Respectfully submitted,

Gary D. Wimsett, Jr.
Senate Special Master

cc: Senator Mandy Dawson
Faye Blanton, Secretary of the Senate
Stephanie Birtman, House Special Master