

STORAGE NAME: h0359.cla
DATE: December 21, 2001

Florida House of Representatives
Committee on Claims
Summary Claim Bill Report

Bill #: HB 359
Sponsor: Rep. Diaz de la Portilla
Companion Bill: SB 64 by Sen. Klein
Special Master: Eric Haug, Esq.

A. Basic Information:

- 1. Claimants:** Surviving spouse, Jesnor Exanor, and two surviving minor children ages 6 and 7 months (date of incident).
- 2. Respondent:** City of Delray Beach.
- 3. Amount Requested:** \$ 1,305,000 of local funds.
- 4. Type of Claim:** Equitable – based on a settlement agreement.
- 5. Respondent's Position:** The City of Delray Beach agreed to affirmatively support, cooperate with, and assist the claimant in the passage of the bill.
- 6. Collateral Sources:** None.
- 7. Prior Legislative History:** None.

B. Procedural Summary: Mr. Exanor filed an action under the Florida Wrongful Death Act [§§768.16-768.26, F.S. (2000)], as the personal representative of the estate of Ms. Mervil. The action was brought on his behalf, as the surviving spouse, and on behalf of Ms. Mervil's two surviving children, Taisha Exanor and Orlens Poulard. The action named as defendants the City of Delray Beach and the police officer involved in the accident. The police officer was later dropped as a defendant because he lacked liability coverage.

In its answer to the complaint, the City of Delray Beach admitted that the negligence of its employee caused the accident. Before trial, the parties entered into mediation that resulted in a \$1.5 million settlement, under which the city agreed to pay \$195,000 in cash and agreed to support passage of a claim bill for the balance (\$1,305,000), with the balance to be paid under a structured settlement. (Approximately \$5,000 previously had been paid for vehicle damage.)

Of the \$195,000 previously paid by the city, after a reduction for attorney's fees, advanced costs, and a future cost retainer, 40 percent of the balance (\$56,646.30) was paid to Mr. Exanor, and 30 percent was paid on behalf of each of the children (\$42,484.72 each).

The Civil Division of the Circuit Court for Palm Beach County issued an order approving the settlement, based upon a motion from the claimant's attorney which specified that the net settlement proceeds from a claim bill also would be distributed on the basis of 40 percent to Mr.

Exanor and 30 percent on behalf of each of the children, with the children's portion to be used to purchase annuities for their benefit. Draft annuity plans have been prepared for Mr. Exanor and for the children. A guardian ad litem submitted a report to the court stating that the settlement agreement and the proposed distribution of settlement proceeds is in the best interests of the minor children.

The Probate Division of the Circuit Court for Palm Beach County has issued letters of plenary guardianship naming Mr. Exanor as the guardian of the property of Taisha Exanor and naming Ms. Gertha Desir, who is Ms. Mervil's sister, as the guardian of the property of Orlens Poulard. Ms. Desir has adopted Orlens. The claimant's attorney reports that guardianship accounts have been established at a financial institution.

- C. Facts of Case:** At approximately 9:38 p.m., on July 27, 2000, 24-year-old Nancy Mervil pulled her vehicle into a left-turn lane adjoining the two eastbound through lanes of Linton Boulevard (also known as County Road 782) in the City of Delray Beach. She stopped her vehicle in the turn lane, evidently waiting for the westbound lanes of traffic to clear so that she could turn left onto Catherine Drive, en route to pick up her infant daughter. While Ms. Mervil was stopped at the intersection, a City of Delray Beach police vehicle, driven by an on-duty police officer, slammed into the rear of Ms. Mervil's vehicle, causing it to spin counterclockwise, roll over, become airborne, and crash onto the hood of an oncoming, westbound vehicle. Ms. Mervil's vehicle ultimately came to rest upside down, facing west, with Ms. Mervil still restrained in the seatbelt. Ms. Mervil died in the accident, as a result of blunt head trauma.

Through its traffic homicide investigation, the Florida Highway Patrol found that the police officer involved in the automobile accident was approximately 1.8 miles west of the site of the eventual accident when the police radio dispatcher issued notice of a domestic disturbance between a man and a woman. The dispatcher sent three other officers to the scene of the disturbance. Hearing the communications, the police officer notified the dispatcher that he had made an arrest at the same address a week earlier and that he was proceeding to the scene of the domestic disturbance. While the police vehicle was traveling eastbound in the outside lane of Linton Boulevard, its right tires left the paved road and traveled onto the grass shoulder. The police vehicle then traveled back fully onto the paved road and veered leftward toward a raised median dividing the eastbound and westbound lanes. The vehicle then began to slide sideways and spin in a clockwise direction. Ultimately, the police vehicle spun approximately 180 degrees, and its rear struck the rear of Ms. Mervil's vehicle.

The investigator determined that the police vehicle was traveling at approximately 85-90 miles per hour when it spun out of control. The posted speed limit was 45 miles per hour. There are conflicting witness-statement summaries in the traffic homicide report regarding whether the overhead emergency lights on the police vehicle were illuminated. None of the witnesses reported hearing a siren. The traffic homicide investigator concluded that the police officer violated a provision of the Florida Statutes specifying that the operator of an emergency vehicle is not relieved of his or her duty to drive with due regard for the safety of others.

[See §316.072(5)(c), F.S. (2000).]

At the time of the accident, Ms. Mervil was married to Mr. Jesner Exanor. She had a 7-month old daughter, Taisha, with Mr. Exanor, and a 6-year-old son, Orlens, from a prior relationship. Ms. Mervil was a native of Haiti with permanent-residency status in the United States. Her son was living in Haiti with his maternal grandmother; her daughter was born in the United States and was living with Ms. Mervil and Mr. Exanor. (Mr. Exanor testified at the Special Master's hearing that he and Ms. Mervil were helping to provide financial support for Orlens and intended for him to come to the United States to live with them.) Ms. Mervil was employed as a housekeeper at a South Florida

resort and club. She was at the conclusion of a 75-clock-hour program of evening coursework at FLC Nursing Tutorial Services to become a home health aide. The completion date for the program was July 28, 2000 – one day after her death. The claimant presented evidence that Ms. Mervil desired to enroll subsequently in a nursing-assistant program.

SM: _____ SD: _____ Date: _____
Eric S. Haug Stephanie O. Birtman