



**STORAGE NAME:** h0985.CVJS

**DATE:** 2/15/2012

February 15, 2012

SPECIAL MASTER'S FINAL REPORT

The Honorable Dean Cannon  
Speaker, The Florida House of Representatives  
Suite 420, The Capitol  
Tallahassee, Florida 32399-1300

Re: HB 985 - Representative Pilon  
Relief/Maricelly Lopez/City of North Miami

**THIS IS A CONTESTED CLAIM FOR \$1,611,237.33 BASED ON A JURY VERDICT AGAINST THE CITY OF NORTH MIAMI, IN WHICH THE JURY DETERMINED THAT THE CITY OF NORTH MIAMI WAS 50 PERCENT RESPONSIBLE FOR THE DEATH OF OMAR MIELES DUE TO THE NEGLIGENT OPERATION OF A PATROL VEHICLE BY ONE OF ITS OFFICERS.**

FINDING OF FACT:

On November 11, 2007, a traffic accident occurred in Miami at the intersection of Northwest 7th Avenue and Northwest 46th Street. Northwest 46th Street runs from east to west, and intersects Northwest 7th Avenue (which runs from north to south) at a right angle. At the time of the accident, the intersection was controlled by four traffic signals: two blinking red lights that directed vehicles traveling east and west on Northwest 46th Street to stop, and two blinking yellow lights for vehicles proceeding north and south on Northwest 7th Avenue.

At approximately 4:10 a.m., Madelayne Ibarra was driving her 2005 Ford Focus east on Northwest 46th Street in a 2005 Ford Focus, which was being driven by. The vehicle was owned by Ms. Ibarra's mother, who was not present. 19-year-old Omar Mieles was in the back seat and his girlfriend, Raiza Areas, was in the front passenger seat. Although Ms. Ibarra and Ms. Areas

were both wearing seatbelts, Mr. Mieles was lying down unrestrained on the back seat, with his head behind the front passenger's seat. Mr. Mieles, Ms. Areas, and Ms. Ibarra had spent the evening eating dinner in Coconut Grove and socializing with friends in South Beach.

Although Ms. Ibarra was not under the influence of alcohol or controlled substances, she was unfamiliar with the area and fatigued due to the late hour. As a consequence, Ms. Ibarra failed to come to a complete stop at the red traffic signal prior to entering the Northwest 7th Avenue intersection. At the same time, a City of North Miami police cruiser traveling north on Northwest 7th Avenue entered the intersection through the yellow caution light. The police vehicle, which was on routine patrol and not operating in emergency mode (i.e., the siren and emergency lights were not activated), was substantially exceeding the 30 MPH limit.

Tragically, the police cruiser, which was being operated by Officer James Thompson, struck the right rear passenger door of Ms. Ibarra's Ford Focus. Mr. Mieles, who was ejected through a rear window due to the force and location of the impact, landed approximately 35 feet from the final resting position of Ms. Ibarra's vehicle. Although Mr. Mieles sustained catastrophic head injuries as a result of the accident, neither Ms. Ibarra nor Ms. Areas was seriously injured.

Officer Thompson, who likewise was not significantly injured in the collision, immediately radioed for emergency assistance. Paramedics responded to the scene minutes later and transported Mr. Mieles to Jackson Memorial Hospital. Soon after his arrival at the hospital, Mr. Mieles was pronounced brain dead. On November 14, 2007, with the consent of Maricelly Lopez (Mr. Mies' mother and the Claimant in this proceeding), hospital staff harvested Mr. Mieles' heart, liver, and kidneys for donation, at which point he expired.

Approximately 90 minutes after the collision, K. Andrews, a detective employed with the City of Miami Police Department, arrived at the scene of the crash and initiated an accident investigation. During the investigation, Officer Thompson advised Detective Andrews that Ms. Ibarra had failed to stop at the red light and that he was unable to avoid the accident. However, Officer Thompson failed to mention that he was needlessly exceeding the speed limit at the time of the crash. Based upon the incomplete information in her possession, Detective Andrews concluded that Ms. Ibarra was solely at fault in the accident and issued her a citation for running a red light.

During the ensuing litigation between Mr. Mieles' estate and the City of North Miami, it was determined (based upon data from the patrol vehicle's "black box") that one second prior to the crash, Officer Thompson was traveling 61 MPH. As noted

above, the speed limit on Northwest 7th Street at the accident location was 30 MPH.

At the time of his death, Mr. Mieles had recently graduated from high school and was working two jobs. In addition, he had been accepted to Valencia Community College and was scheduled to begin classes in January 2008. Mr. Mieles, who is survived by his mother, stepfather, and two siblings, was by all accounts a hard-working and well-liked young man.

**Litigation History:** On June 23, 2008, Maricelly Lopez, in her individual capacity and as the personal representative of the estate of Omar Mieles, filed a complaint for damages in Miami-Dade County circuit court against the City of North Miami. The complaint alleged that Officer Thompson's operation of his police vehicle on November 11, 2007, was negligent, and that such negligence was the direct and proximate cause of Mr. Mieles' death. In addition, the complaint alleged that Mr. Mieles' estate sustained various damages, which included medical and funeral expenses, as well as lost earnings. The complaint further asserted that Ms. Lopez sustained damages in her individual capacity, such as the loss of past and future support and services, past and future mental pain and suffering, and loss of companionship.

The matter subsequently proceeded to a jury trial, during which the parties presented conflicting theories regarding the cause of the accident. Specifically, the plaintiff contended that Ms. Ibarra had properly stopped at the intersection and that Officer Thompson was solely responsible for the collision, while the City of North Miami argued that Ms. Ibarra had run the red light and was entirely at fault. In addition, both sides presented conflicting expert testimony regarding whether Mr. Mieles would have sustained fatal injuries had he been wearing a seatbelt. In particular, the plaintiff's expert opined that due to the location of the collision (the right rear passenger's door of the Ford Focus) and its force, Mr. Mieles would have been killed even if he had been properly restrained. In contrast, the City of Miami presented expert testimony indicating that the use of a seatbelt would have saved Mr. Mieles' life.

On March 19, 2010, the jury returned a verdict, in which it determined that the City of North Miami and Ms. Ibarra were negligent, and that each was 50 percent responsible for Mr. Mieles' death. The jury apportioned no fault to Mr. Mieles. The jury further concluded that Mr. Mieles' estate and Ms. Lopez sustained the following damages:

Damages to the Estate

- \$163,950.15 for medical expenses.
- \$1,630 for funeral expenses.

Damages to Maricelly Lopez

- \$2,000 for loss of past support.
- \$40,000 for loss of future support.
- \$1,750,000 for past pain and suffering.
- \$1,750,000 for future pain and suffering.

Based on the jury's finding that the City of North Miami was 50 percent responsible, final judgment was entered against it in the amount of \$1,719,808.63 (this figure is comprised of \$1,688,195.10, which represents fifty percent of the total damages outlined above, minus various setoffs, plus costs of \$31,613.53).

No appeal of the final judgment was taken to the Third District Court of Appeal.

The City of North Miami has tendered \$108,571.30 against the final judgment, leaving \$1,611,237.33 unpaid.

CONCLUSION OF LAW:

Like any motorist, Officer Thompson had a duty to operate his patrol vehicle with consideration for the safety of other drivers.<sup>1</sup> Specifically, Officer Thompson owed a duty to observe the 30 MPH posted speed limit and to use caution (as directed by the yellow flashing light) as he entered the intersection.<sup>2</sup> By entering the intersection at 61 MPH, Officer Thompson breached his duty of care, which was a direct and proximate cause of Mr. Mieles' death. The City of North Miami, as Officer Thompson's employer, is liable for his negligent act.<sup>3</sup>

As discussed above, the jury determined that Officer Thompson and Ms. Ibarra, based upon the negligent operation of their respective vehicles, were equally at fault in this tragic event. Further, in apportioning no fault to Mr. Mieles, the jury presumably found that Mr. Mieles would have been killed in the collision even if he had been properly restrained. These conclusions are reasonable and will not be disturbed by the undersigned. The undersigned also concludes that the damages awarded by the jury were appropriate.

**Collateral Sources:** Prior to the litigation against the City of North Miami, the Claimant recovered the bodily injury limits from Ms. Ibarra's GEICO policy in the amount of \$10,000, as well as \$10,000 from the Claimant's underinsured motorist coverage.

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<sup>1</sup> *Pedigo v. Smith*, 395 So.2d 615, 616 (Fla. 5th DCA 1981).

<sup>2</sup> *See* § 316.076(1)(b), F.S. (2007)("When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution."); § 316.183(2), F.S. (2007)("On all streets or highways, the maximum speed limits for all vehicles must be 30 miles per hour in business . . . districts").

<sup>3</sup> *Mercury Motors Express v. Smith*, 393 So.2d 545, 549 (Fla. 1981)(holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment); *see also Aurbach v. Gallina*, 753 So.2d 60, 62 (Fla. 2000)(holding that the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another").

**Prior Legislative History:** HB 1443 by Representative Patronis and SB 342 by Senator Evers were filed during the 2011 Legislative Session. HB 1443 was never considered in the House and died in the Civil Justice Subcommittee. SB 342 was reported favorably by the Senate Special Master but was never considered in the Senate and died in the Senate Rules Committee.

ATTORNEY'S/  
LOBBYING FEES:

The Claimants' attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), Florida Statutes. Lobbyist's fees and costs are included with the attorney's fees.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that House Bill 985 be reported FAVORABLY.

Respectfully submitted,

**TOM THOMAS**  
Special Master

cc: Representative Pilon, House Sponsor  
Senator Flores, Senate Sponsor  
Judge Edward T. Bauer, Senate Special Master