



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
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DATE	COMM	ACTION
12/31/14	SM	Favorable
	JU	
	CA	
	FP	

December 31, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 78** – Senator Flores
Relief of Maricelly Lopez, as Personal Representative of the Estate of
Omar Mieles

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$1,611,237 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.

CONCLUSIONS AND RECOMMENDATIONS:

On February 11, 2011, an administrative law judge from the Division of Administrative Hearings, serving as a Senate Special Master, held a de novo hearing on a previous version of this bill, SB 342 (2011), filed on January 3, 2011. After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably with one amendment. That bill was never heard in committee. The bill was subsequently filed in the next legislative session – SB 58 (2012) – and Special Master Bauer updated his report. That report is attached as an addendum to this report. The bill has been filed subsequently in each successive legislative session - SB 36 (2013), SB 40 (2014), and SB 78 (2015).

Due to the passage of time since the hearing, the Senate President reassigned the claim to me. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

The prior claim bill upon which a Special Master's Report was conducted, SB 58 (2012), is substantially similar to the claim bill filed for the 2015 Legislative Session.

According to counsel for Ms. Lopez, no changes have occurred since the hearing that might have altered the findings and recommendations in the report. Counsel for the City of Miami raise several issues:

1. The Plaintiff failed to exhaust all remedies pursuant to Senate Rule 4.81(6) because plaintiff did not appeal the final judgment.
2. The Plaintiff's claim is time barred by operation of section 11.065, Florida Statutes.
3. The bill fails to accurately reflect the driver of the vehicle in which Omar Mieleles was a passenger caused the accident.
4. The bill fails to accurately reflect that Omar Mieleles was not wearing his seatbelt, thus contributing to his injuries.
5. The passage of the bill would create a financial strain on the City's general revenue fund that would "significantly hurt the critical municipal services that the City provides to its residents" as well as "negatively impact both the city's internal functions but also the residents it serves."

Addressing each point in turn, I find the City's contentions to be insufficient to justify disturbing the original findings and recommendations contained in Senate Special Master's Report.

Senate Rule 4.81 provides "[t]he hearing and consideration of a claim bill shall be held in abeyance until all available administrative and judicial remedies have been exhausted." The plaintiff's failure to appeal a judgment with which they were apparently content is not the failure to exhaust administrative and judicial remedies. There is nothing in the

rule that requires a claimant to resort to appeals that may be deemed unnecessary or undesirable if they are content with their judgment. The essence of the rule is that all relevant proceedings be final, not that each party be required to pursue litigation to the highest permissible point of the administrative and judicial processes. The underlying case became final for judicial relief when the time for appeal passed. As such, the case is ripe for relief within the parameters of Senate Rule 4.81.

Likewise, the claim that the bill is now time barred from consideration by the legislature is without merit. While it is an open question whether section 11.065(1), Florida Statutes, could prevent a future legislature from taking up a bill that presents a claim outside the limitation period, one need not decide that question at this time. As noted in the introduction, the initial bill was presented and filed in the Legislature on January 3, 2011- within four years of both the accident that occurred on November 11, 2007, and the final judgment entered on April 21, 2010. Moreover, the bill has been presented for consideration in every subsequent legislative session. Claimants have plainly presented their claims in a timely manner that is entirely consistent with section 11.065, Florida Statutes.

As to the third and fourth points, the bill adequately describes relevant facts reflected in both the jury's verdict and the Special Master's Report, and plaintiffs' arguments are merely attempts to re-litigate those conclusions. The introductory clauses clearly set forth "the jury apportioned 50 percent of the responsibility for the death of Omar Mieles to the City of North Miami, and 50 percent to the driver of the vehicle in which Omar Mieles was traveling as a passenger." The claim bill is not made against the driver, but against the City of Miami whose officer was traveling at 60 mph in a nonemergency situation – twice the posted legal limit. The fault of the driver as well as Mr. Mieles' failure to wear his seatbelt are simply attempts to question the findings of both the jury and the Special Master which apportioned fault and re-litigate those conclusions. The City presented no new evidence to support their position. As such, I find no compelling reason to set aside or overturn the reasonable findings and recommendations of either the jury or Special Master Bauer.

Finally, the City argues the financial hardship to the general revenue fund that will result if SB 78 passes. The original Special Master's Report noted that the City had "\$252,000 available in a claims payment account, as well as \$538,000 in a risk management reserve account" as of February 2011 for payment of the claim. The City did not provide any additional information concerning either of these accounts or the general revenue fund or evidence of any kind in support of its claim for financial hardship. Accordingly, I am unable to assess the merits of the City's claim. Additionally, no alternative proposal or solution was suggested by the City in the event the claim bill was passed by the Legislature and they become obligated to pay the judgment. In any event, such a question does not go to the merits of the claim and is best left to the discretion of legislators deciding whether to bestow legislative grace through the passage of legislation.

Accordingly, the findings of the original Senate Special Master are adopted by the undersigned.

Respectfully submitted,

George Levesque
Senate Special Master

cc: Debbie Brown, Secretary of the Senate



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SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
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DATE	COMM	ACTION
12/2/11	SM	Favorable

December 2, 2011

The Honorable Mike Haridopoulos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 58 (2012)** – Senator Anitere Flores
Relief of Maricelly Lopez, as Personal Representative of the Estate of
Omar Mieles

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$1,611,237 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.

FINDINGS OF FACT:

The instant claim arises out of a traffic accident that occurred in Miami on November 11, 2007, 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., 19-year-old Omar Mieles was traveling east on Northwest 46th Street in a 2005 Ford Focus, which was being driven by Madelayne Ibarra. The vehicle was owned by Ms. Ibarra's mother, who was not present. Mr. Mieles' girlfriend, Raiza Areas, was positioned in the front passenger's 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.

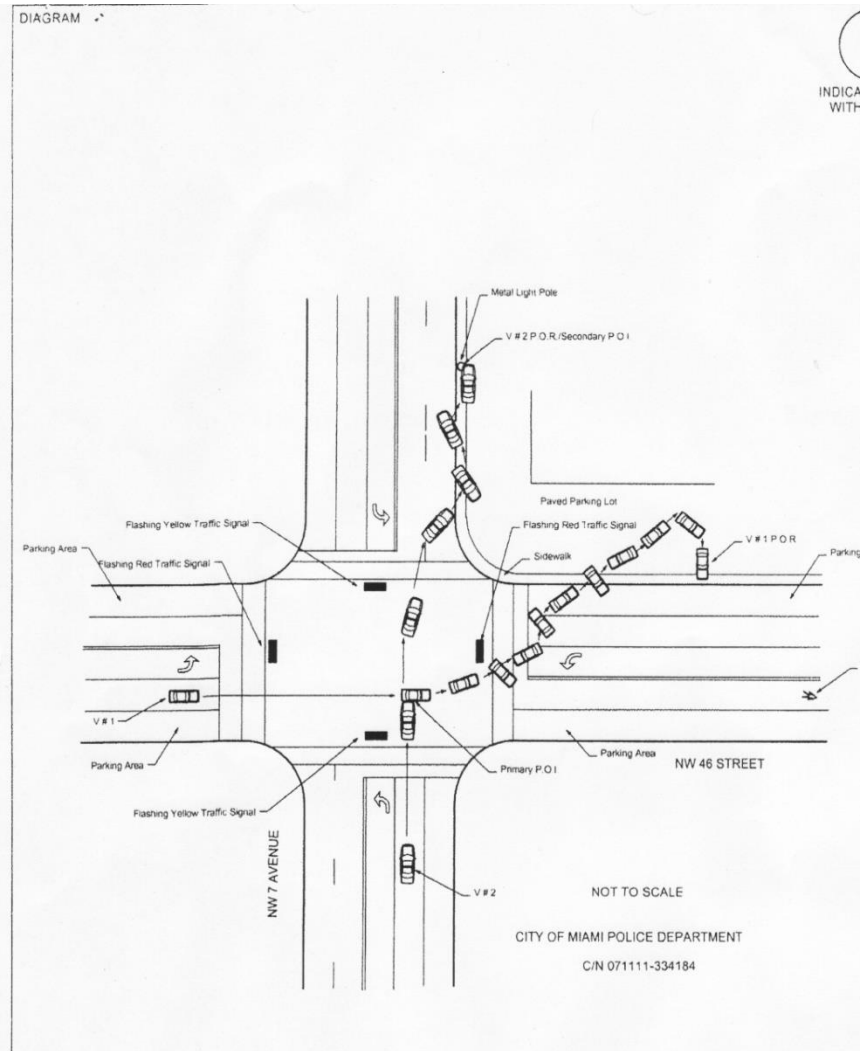
Officer Thompson, who likewise was not significantly injured in the collision, immediately radioed for emergency assistance. Paramedics responded to the scene minutes later and transported Mr. Mieles to Jackson Memorial Hospital. Soon after his arrival at the hospital, Mr. Mieles was pronounced brain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

DIAGRAM:



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 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.

CLAIMANT'S POSITION:

The City of North Miami is vicariously liable for the negligence of Officer Thompson, which was the direct and proximate cause of Omar Mieles' death. The Claimant further argues that Mr. Miles did nothing to contribute to his death.

RESPONDENT'S POSITION:

The City of North Miami objects to any payment to the Claimant through a claim bill. The City of Miami also contends that Mr. Mieles' catastrophic head injuries would have been avoided had he been properly restrained by a seat belt, and that the jury should not have apportioned any fault to Officer Thompson.

CONCLUSIONS OF LAW:

Like any motorist, Officer Thompson had a duty to operate his patrol vehicle with consideration for the safety of other drivers. Pedigo v. Smith, 395 So. 2d 615, 616 (Fla. 5th DCA 1981). 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. See § 316.076(1)(b), Fla. Stat. (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), Fla. Stat. (2007) ("On all streets or highways, the maximum speed limits for all vehicles must be 30 miles per hour in business . . . districts"). 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. 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").

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.

LEGISLATIVE HISTORY:

This is the second year that a bill has been filed on the Claimant's behalf. During the 2011 session, the bill (SB 342) died in Committee.

ATTORNEYS FEES:

The Claimant's 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 are included with the attorney's fees.

FISCAL IMPACT:

As the City of North Miami is self-insured, its general funds would be used to satisfy the instant claim bill. In February 2011, the City of North Miami reported that it had \$252,000 available in a claims payment account, as well as \$538,000 in a risk management reserve account.

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.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 58 (2012) be reported FAVORABLY.

SPECIAL MASTER'S FINAL REPORT – SB 58 (2012)

December 2, 2011

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Respectfully submitted,

Edward T. Bauer
Senate Special Master

cc: Senator Anitere Flores
Debbie Brown, Interim Secretary of the Senate
Counsel of Record