



STORAGE NAME: h3509.CJS

DATE: 1/29/2016

Florida House of Representatives Summary Claim Bill Report

Bill #: HB 3509; Relief/Andrea Castillo/City of Hialeah

Sponsor: Nuñez

Companion Bill: SB 44 by Garcia

Special Master: Parker Aziz

Basic Information:

Claimants: Susana Castillo, individually and as personal representative of the Estate of Andrea Castillo

Respondent: The City of Hialeah ("Hialeah")

Amount Requested: \$455,000

Type of Claim: Local equitable claim related to the wrongful death of Andrea Castillo; result of a settlement agreement.

Respondent's Position: The Hialeah City Council approved the settlement of the instant claim on June 9, 2015. Hialeah supports the passage of the claim bill provided payment does not exceed \$155,000 in any single Fiscal Year.

Collateral Sources: The claimants collected \$10,000 from State Farm Automobile Insurance Company under an uninsured motorist coverage policy.

Attorney's/Lobbying Fees: The bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.

Prior Legislative History: This is the first time this claim has been introduced to the Legislature.

Procedural Summary: On May 7, 2013, Susana Castillo, the decedent's mother, as personal representative of the Estate of Andrea Castillo, filed a wrongful death action in the 11th Judicial Circuit Court, in and for Dade County, against the City of Hialeah and Officer Raul Somarriba, individually, related to a motor vehicle accident on October 19, 2012, which resulted in the death of Andrea Castillo.

On June 9, 2015, a settlement was reached as to all claims involving the accident for \$750,000. The City has paid \$300,000 of the settlement, pursuant to the statutory limits/caps, of which \$5,000 was paid to resolve claims against Officer Somarriba, individually. \$150,000 of the initial payment was distributed to Marcos Barrios and the remainder to the Estate. According the terms of the settlement agreement, if a claim bill is approved, the remaining amount of the settlement will be paid in three payments as follows: \$150,000 on May 1, 2016, \$150,000 on May 1, 2017, and \$155,000 on May 1, 2018.

Facts of Case: On October 19, 2012, 21-year-old Andrea Castillo ("Andrea") was a passenger in a Jeep Compass belonging to her boyfriend, Marco Barrios, as they traveled to the Hard Rock Café & Casino in Hollywood, Florida to celebrate Andrea's recent birthday. Along the route, Marco pulled into a Hess gas station at the intersection of E. 49th Street and E. 9th Court in Hialeah to refuel. Upon departing the Hess station, Marco pulled up to the stop sign, facing north, at the intersection.

The intersection at E. 49th Street and E. 9th Court is a two-way stop with four lanes of traffic going eastbound and westbound on E. 49th Street with the right-of-way and no stop signs at the intersection. Traffic on two lane E. 9th Court, heading north and southbound, has a stop sign. It was approximately 9:45pm, dark, but the intersection was well-lit with gas stations and a used car sales lot in the immediate vicinity. Marco stopped at the stop sign and then edged out into E. 49th Street, attempting to turn left and go westbound on E. 49th Street.

At the same time, Officer Raul Somarriba, a Hialeah police officer, was on duty and driving eastbound on E. 49th Street in an unmarked patrol car. Officer Somarriba was traveling at approximately 62 MPH, 22 miles-per-hour over the posted speed limit, with his emergency lights activated but no siren. Marco slowly drove his SUV into the intersection, attempting to turn left and head westbound on E. 49th Street, but stopped within the eastbound lanes. Officer Somarriba's patrol car struck Barrios' SUV, causing a violent collision in which the SUV flipped repeatedly, coming to rest on its side. Andrea was ejected from the front passenger seat and later found in the SUV's back hatch area.

Marco, Officer Somarriba and Andrea all suffered severe injuries. When Hialeah Fire Rescue arrived at the scene, it was discovered that Andrea had massive blunt trauma injuries to her head and torso. She was unresponsive. Officer Somarriba broke his arm and his femur in the crash. Barrios fractured his pelvis. The EMS decided to use the only air-rescue unit called to the scene on Officer Somarriba and not Andrea, despite her near comatose state. As a result, Andrea arrived at Ryder Trauma Center at Jackson Memorial Hospital approximately 23 minutes after Officer Somarriba. She died three days later.

The investigation performed by the City of Hialeah Police Department determined that none of the parties wore a seat belt. Officer Somarriba buckled the passenger seatbelt into the driver's seatbelt receiver. Both Marco's and Andrea's belts were in a locked and retracted position, indicating they were not in use at the time of the collision and the positions of their bodies within the SUV following the collision were consistent with not wearing a seatbelt. While Florida law requires passengers to

wear a seatbelt¹, in a civil case, the failure to wear a seat belt may be considered only as evidence of comparative negligence.²

It is unclear why Officer Somarriba was traveling at such an excessive speed or why his lights were activated but not his siren. He does not remember anything concerning the accident. Two witnesses came forward stating they saw the officer pursuing a speeding red Toyota Camry. Their testimony, however, is conflicting and no video surveillance from the accident shows a vehicle matching that description. If Officer Somarriba was in pursuit of a vehicle,³ he violated Hialeah Police Department operating procedures for pursuing vehicles. However, General Order 22.04 requires police officers to engage both their siren and lights and to refrain from exceeding the posted speed limit by more than 10 miles per hour when pursuing vehicles. The policy is a further limitation on s. 316.072(5)(b)3., F.S., which provides that authorized emergency vehicles may exceed the maximum speed limits when in pursuit of suspected violator of the law, provided that such excessive speed does not endanger life or property.

Claimant's expert testified that four seconds elapsed from the time Marco's SUV entered into the intersection and the time of impact. In those four seconds, Officer Somarriba took no evasive actions or decreased his speed. The same expert testified that Officer Somarriba's speed before the impact, calculated from surveillance videos, exceeded even the 60MPH at time of impact. Hialeah's expert also testified that Officer Somarriba's speed far exceeded the posted speed limit of 40MPH. The City of Hialeah police investigation concluded that the Officer's speed was a contributing cause of the accident.

Following the accident, Marco's blood was taken for blood-alcohol analysis and the results of the toxicology report showed he did not have any alcohol or drugs in his system.

Andrea was a student at Miami Dade College with hopes of one day becoming a teacher. She is survived by her mother, Susana, her father, Osvaldo, her father, and her brother Kevin. The family founded the Andrea Castillo Foundation to honor her memory and love of education. The foundation provides a scholarship at Miami Dade College and Florida International University for students pursuing a degree in education. If the claim is approved by the Legislature, the award would be distributed to the Estate, and specifically Susana Castillo. Osvaldo and Marco have satisfied their claims from the initial settlement payment.

Recommendations: Settlement agreements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense. Stipulations or settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature or its committees, or on the Special Master. However, all such agreements must be evaluated. If found to be reasonable and based on equity, the settlement agreements can be given effect, at least at the Special Master's level of consideration.

There are several factors in this case that would cause a jury consternation at trial. The negligence of each actor appears to have contributed to the accident. Andrea was not wearing her seatbelt. Officer Somarriba was clearly traveling at excessive speeds, in violation of department operating procedures and Florida law, without his siren on and endangering life and property around him. Marco, inexplicitly, pulled out into a busy street and stopped his SUV while attempting to make a left turn. It is unclear whether he did not see the unmarked patrol car, or by the time he saw it he

¹ Section 316.614(5), F.S., states "It is unlawful for any person 18 years of age or older to be a passenger in the front seat of a motor vehicle unless such person is restrained by a safety belt when the vehicle is in motion." A person who violates this section commits a nonmoving traffic violation.

² *Ridley v. Safety Kleen Corp.*, 693 So. 2d 934, 943 (Fla. 1996).

³ Hialeah Police Department General Order 17.06 states that unmarked police vehicles may engage in pursuit when there is a reasonable belief that the fleeing suspect committed or attempted to commit a forcible felony.

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attempted to stop and allow it to pass before completing his turn. Under either scenario, Marco's SUV was still in the middle of eastbound traffic. Nevertheless, although Officer Somarriba had the right-of-way, Florida law still required him to "take reasonable steps available to him to avoid the collision."⁴ Officer Somarriba's excessive speed, in violation of Hialeah Police Department's code, and his lack of evasive maneuvers were not reasonable steps to avoid the collision.

Given the negligence of each party, the settlement agreement is an appropriate compromise. The damages in this claim are tragic and there is no reason to believe Andrea would not have led a long and productive life. I find that the settlement agreement in this case is reasonable and equitable in light of the negligence surrounding the accident and recommend that the settlement be given effect by the Legislature.

I respectfully recommend that HB 3509 be reported **FAVORABLY**.

Parker Aziz, Special Master

Date

cc: Representative Nuñez, House Sponsor
Senator Garcia, Senate Sponsor
Ashley Peacock, Senate Special Master

⁴ *Gordon's Tractor Serv., Inc. v. Bilello*, 336 So. 2d 1208, 1209 (Fla. 2d DCA 1976).