



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
404H The Capitol

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DATE	COMM	ACTION
3/17/21	SM	Favorable
3/22/21	JU	Fav/CS
4/2/21	RC	Favorable

March 17, 2021

The Honorable Wilton Simpson
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 398** – Senator Rodriguez
HB 6503 – Representative Rodriguez
Relief of the Estate of Emilio Jesus Vizcaino-Aday

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$350,000. THIS AMOUNT IS THE REMAINING UNPAID BALANCE OF A SETTLEMENT REGARDING THE NEGLIGENCE OF A MIAMI-DADE POLICE OFFICER, WHICH RESULTED IN THE DEATH OF EMILIO JESUS VIZCAINO-ADAY.

FINDINGS OF FACT:

The Crash on March 6, 2018

At approximately 1:23 a.m., on the morning of March 6, 2018, Mr. Emilio Jesus Vizcaino-Aday, a forty-five year old man, was struck by a vehicle operated by Officer John Young Song, an on-duty Miami-Dade Police officer.

Prior to the crash Officer Song was following a car suspected of involvement in a recent home burglary where two vehicles were stolen. Officer Song was accompanied by his partner, Officer Cesar Echaverry. The officers traveled at a high speed in this pursuit, but did not activate the vehicle's emergency lights or siren, and did not initiate a traffic stop.

Officer Song approached the intersection where the crash occurred at a speed of 86 miles per hour according the Event

Data Recorder on board the vehicle. The posted speed limit is 40 miles per hour. Officer Song passed but did not yield to a stop sign, which was visible and unobstructed, and struck Mr. Vizcaino-Aday's vehicle on the driver's side in the intersection at 68 miles per hour. According to the accident reconstruction report, Mr. Vizcaino-Aday travelled at approximately 31 miles per hour, and did not have a stop sign on his route into the intersection.

Mr. Vizcaino-Aday was pronounced dead on the scene from blunt force trauma experienced in the crash.

Mr. Vizcaino is survived by his wife, Ailin Aday, and son, Neiser Josa Vizcaino Rojas.

Settlement

More than a year of litigation followed the crash. Miami-Dade County admits the facts above, and defended solely on a theory of Officer Song's actions exhibiting "wanton and willful disregard of human rights, safety, or property," as provided in section 768.28(9) of the Florida Statutes.¹

Claimant and Miami-Dade County entered a post-mediation settlement agreement for \$650,000. Claimant received \$300,000 from Miami-Dade County and seeks the remaining \$350,000.

Miami-Dade County supports the relief and reports that the funds will be dispersed from their self-funded Insurance Trust Fund, and will not affect the operations of the County.

CONCLUSIONS OF LAW:

Section 768.28, Florida Statutes (2018), waives sovereign immunity for tort liability for a claim or judgment by one person up to \$200,000 and up to \$300,000 per incident. Sums exceeding this amount are payable by the State and its agencies or subdivisions by further act of the Legislature.

A county is liable for a negligent act committed by an employee acting within the scope of employment.² Mr. Song was an on-duty Miami-Dade police officer operating his police cruiser within the scope of his employment, thereby making

¹ *Emilio Jesus Vizcaino-Aday v. Miami-Dade County*, Case No. 19-21301 CA 01 (Cir. Ct. Miami-Dade County, 2020), Miami Dade County's Answer to Plaintiff's Second Amended Complaint.

² Section 768.28, F.S.

Miami-Dade County liable for any negligent acts committed by him.

Regardless of any jury verdict or settlement, claim bills are reviewed *de novo*, and each element of negligence must be found within the evidence.

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages – actual harm.³

Duty

Officer Song had a duty to operate his vehicle at all times with consideration for the safety of other drivers.⁴ A police officer owes a duty to exercise reasonable care to protect bystanders when their duties produce foreseeable risk. Following a suspected stolen vehicle at more than twice the posted speed limit undoubtedly created a zone of risk. Therefore, it was Officer Song's duty to take actions that would lessen the risk of foreseeable harm created by this zone of risk.

Furthermore, Officer Song is authorized as an emergency vehicle in pursuit of a suspected violator of the law to "proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation" and "exceed the maximum speed limits so long as the driver does not endanger life or property."⁵

Breach

As the evidence demonstrates, Officer Song violated statutes and breached the required duty of care. Officer Song proceeded past the stop sign without sufficient slowing, and exceeded the speed limit in a manner that did endanger life and property. Officer Song also failed to activate his lights and

³ Williams v. Davis, 974 So.2d 1052, at 1056-1057 (Fla. 2007).

⁴ See *City of Pinellas Park v. Brown*, 604 So.2d 1222, 1226 (Fla. 1992) (holding officers conducting a high-speed chase of a man who ran a red light had a duty to reasonably safeguard surrounding motorists); *Brown v. Miami-Dade Cnty.*, 837 So.2d 414, 417 (Fla. 3d DCA 2001) ("Florida courts have found that police officers do owe a duty to exercise reasonable care to protect innocent bystanders... when their law enforcement activities create a foreseeable zone of risk").

⁵ Section 316.072(5), F.S.

sirens to notify passersby of the foreseeable risk. These factors combined show that Officer Song clearly violated statutes and failed to uphold his required duty of care.

Causation

Officer Song's breaches of duty, including his failure to activate lights and sirens, failure to slow adequately before proceeding past the stop sign, and failure to safely exceed the maximum speed limits are the direct cause of the resulting damages. A collision was a foreseeable outcome from the risk produced by Officer Song's high speed pursuit and failure to obey the stop sign. But for Officer Song approaching the intersection at an unsafe speed without sirens or lights activated, the crash would not have happened in the same manner, if at all. The evidence therefore demonstrates that Officer Song was at fault for the crash that resulted in damages.

Damages

As an immediate result of the March 6, 2018, crash, Mr. Vizcaino-Aday died. The amount of damages sought in this bill, \$350,000, is reasonable given the outcome of the accident. Mr. Vizcaino-Aday is survived by his wife and adult son, and worked both a full-time and part-time job in order to help provide financially for both of them. The agreed amount settled upon represents the pain and suffering, as well as loss of consortium and financial support experienced by Mr. Vizcaino-Aday's wife and child.

ATTORNEY FEES:

The bill states that the total amount paid for attorney fees, lobbying costs, and similar expenses may not exceed 25 percent of the amount awarded.

RECOMMENDATIONS:

The undersigned recommends changing the references to "the Estate of Neiser Josa Vizcaino Rojas" on lines 30, 39, and 48 to correctly refer to "the Estate of Emilio Jesus Vizcaino-Aday."

For the reasons set forth above, the undersigned finds that the claimant has demonstrated the elements of negligence by the greater weight of the evidence and the amount sought is reasonable. The undersigned recommends the bill be reported FAVORABLY.

Respectfully submitted,

Jack O. Hackett, III
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary

The committee substitute clarifies that the recipient of the proceeds of the claim bill is the estate of Emilio Jesus Vizcaino-Aday, the person whose death was the basis of the claim bill.