



STORAGE NAME: h6517a.CIV

DATE: 1/27/2022

January 27, 2022

SPECIAL MASTER'S FINAL REPORT

The Honorable Chris Sprowls
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: CS/HB 6517 - Representative Aloupis
Relief/Yeilyn Quiroz Otero/Miami-Dade County

THIS IS AN UNCONTESTED EXCESS JUDGMENT CLAIM FOR \$3.8 MILLION BASED ON A SETTLEMENT AGREEMENT IN WHICH MIAMI-DADE COUNTY AGREED TO COMPENSATE Y.Q.O. A TOTAL AMOUNT OF \$4 MILLION RELATING TO THE INJURIES SUSTAINED BY Y.Q.O. BECAUSE OF THE NEGLIGENCE OF AN EMPLOYEE OF THE COUNTY. THE COUNTY HAS PAID THE STATUTORY LIMIT OF \$200,000.

FINDINGS OF FACT:

On October 6, 2016, at approximately 6:28 p.m., Officer Daniel Escarra was operating his marked patrol vehicle southbound on NW 57 Avenue. Officer Escarra was wearing his seatbelt and had his emergency equipment activated as he was responding Code 3¹ to a dispatch reference a perimeter.² It was still light out, but the weather

¹ A Code 3 emergency is defined by Miami-Dade Police Department's (MDPD) Standard Operating Procedure (SOP) as a situation which poses an actual threat of serious injury or loss of human life and which demands swift police action. See MDPD SOP, Chapter 30, Part 1, Section II, A, 1, a.

² At his deposition, Officer Escarra explained that he had been at a meeting with all the special response teams along with lieutenants, sergeants and a major due to Hurricane Matthew's approach. During that meeting, a call came in about an active subject, who had just bailed out of a stolen vehicle and was holding his waistband while

was rainy and windy as Hurricane Matthew was approaching and the area was being impacted by rain bands.³ The poor weather caused electrical outages, which affected traffic signals, such as the one located at the intersection of NW 57 Avenue and W. Flagler Street. Officer Escarra, traveling at 75 mph,⁴ failed to stop or yield at the inoperable traffic signal before entering the intersection.

NW 57 Avenue is a north and south, undivided, four-lane roadway that travels through a residential/business area of the City of Miami; a posted 40 mph speed limit is in effect on the roadway. W. Flagler Street is an east and west, undivided four-lane roadway. It, too, has a 40 mph limit in effect. W. Flagler Street is a through street at its intersection with NW 57 Avenue.⁵

A second vehicle, a 1998 Audi, being operated by Hector E. Meraz-Funez,⁶ was traveling eastbound on W. Flagler Street. In addition to Mr. Meraz-Funez, the Audi was occupied by seven passengers, including one-year old Y.Q.O.⁷ and her mother, Fany Otero, who were both in the front passenger seat.⁸ As the Audi reached the intersection of W. Flagler Street and NW 57 Avenue, Meraz-Funez failed to make a complete stop at the inoperable traffic signal, turned left onto NW 57 Avenue, and struck the right front portion of Officer Escarra's patrol car. Because none of the three adult occupants of the Audi, including the driver, were wearing seatbelts, all suffered injuries and were transported to a nearby hospital for treatment. Only one child was secured in a child restraint device; Y.Q.O. was not secured in a child restraint device and suffered life-threatening injuries.⁹

running through a residential neighborhood. Those in attendance could hear the officers on scene screaming; dispatch requested that the K-9 unit respond. The officers in attendance were directed to respond to the call. Escarra Dep.29:1-29:12; 30:2-31:5; 32:14-33:11; 34:24-36:3, Dec. 8, 2020.

³ At the time, Miami-Dade County had been declared in a state of emergency due to the weather conditions brought on by Hurricane Matthew.

⁴ The speed at which Officer Escarra was traveling just before impact was captured on his patrol car's event data recorder (EDR). See Exhibit 6 to Escarra Dep.

⁵ MDPD Case Summary at 2-3.

⁶ Hector E. Meraz-Funez was operating the vehicle without a valid driver's license, in violation of s. 322.03(1), F.S. (2016). MDPD Case Summary at 5. At the final hearing, counsel for Claimant advised that Mr. Meraz-Funez received a citation for driving without a valid driver's license on October 6, 2016, but I was unable to corroborate that on the Clerk of Court's website. The website did, however, reflect that he was cited on two separate occasions for driving without a valid license in 2015; both cases were dismissed after it appears he completed some sort of diversion program.

⁷ Aside from suffering from poorly-managed asthma, Y.Q.O. appears to have been a healthy child prior to the accident.

⁸ MDPD Case Summary at 1; Claimant's counsel's statements made at final hearing.

⁹ MDPD Case Summary at 5.

Y.Q.O.'s diagnoses and conditions after the crash included: T-3 ASIA A complete paraplegia; traumatic brain injury; gastrostomy feeding tube; tracheostomy; neurogenic bowel and bladder; and autonomic dysreflexia.¹⁰

Officer Escarra suffered multiple contusions and was transported to a nearby hospital as well.

Miami-Dade Police Department's Internal Investigation

Traffic Homicide Detective Wanda Milian with the MDPD conducted an internal investigation into the crash and determined the facts cited above.

A crash review panel was convened to determine preventability with MDPD ultimately opining that the crash was preventable on Officer Escarra's part. MDPD's investigation led to a written reprimand being issued to Officer Escarra for failing to stop at the intersection, as required by s. 316.1235, F.S. (2016).

Officer Escarra's Position

At MDPD's written reprimand review on June 22, 2017, Officer Escarra explained that he had been dispatched to respond in emergency mode; that the weather was poor; that he was traveling as cautiously as possible but had little visibility due to the heavy rain and poor lighting conditions; and that when the Audi entered the intersection, he did not see it.¹¹

At his deposition taken on December 8, 2020, Officer Escarra repeatedly testified that he did not know that there was an intersection present at the site of the crash (because of the weather and inoperable traffic signal) and thus, did not know to slow down or stop for other traffic.¹²

The crash was captured on surveillance video from a nearby gas station and its footage reflects that it was not raining at the time of impact, although it was overcast outside and the roadway was wet. Visibility does not

¹⁰ Report of National Care Advisors, Aug. 20, 2021, at 3. Autonomic dysreflexia is a syndrome in which there is a sudden onset of excessively high blood pressure resulting from pain or discomfort below the level of a spinal cord injury. Autonomic Dysreflexia, https://craighospital.org/resources/autonomic-dysreflexia?gclid=EAlalQobChMIrtyGptLW8wIV2_6zCh0fDQkAEAAAYiAAEgIZMvD_BwE (last visited Oct. 19, 2021).

¹¹ Memorandum from Ariel Arttime, Chief, South Operations Division to Daniel Escarra, Police Officer, Special Patrol Bureau 2 (July 4, 2017).

¹² Escarra Dep. 8:4-8:17; 19:18-20:2; 48:15-48:21, Dec. 8, 2020.

appear to be an issue in the seconds leading up to and including the crash.

Y.Q.O.'s Current Situation

Today, six year-old Y.Q.O. resides with her father in a small apartment with other extended family members. Her father is employed, so Y.Q.O.'s primary caregiver is a nurse, who provides 24/7 skilled nursing care. Y.Q.O. is verbal, no longer appears to be suffering from the traumatic brain injury, and no longer receives nutrition via a G-tube. She still has her tracheostomy and is wheelchair-bound. She is frequently in and out of the hospital for treatment of secondary infections and other complications.

The medical treatment Y.Q.O. is receiving and will receive until she turns eighteen is expected to be covered by Medicaid. Thereafter, she will be responsible for some of expenses associated with her medical care and treatment.¹³ Her life expectancy is around 35 years of age.

LITIGATION HISTORY:

In February 2018, Fany Otero, as guardian and natural parent of Y.Q.O., filed a civil suit against Miami-Dade County, alleging negligence.

On February 23, 2021, the parties reached a settlement with the assistance of a court-appointed mediator, subject to the court's approval.

On June 15, 2021, Ms. Otero, through counsel, filed an Unopposed Motion to Substitute Party, seeking to transfer her right to maintain the civil suit on her daughter's behalf to Heather Hasandras, Esq., who had been appointed as guardian of the property of Y.Q.O. in a related case. The circuit court entered an order granting this request on the following day.

Also on June 15, 2021, the circuit court entered an order appointing a Guardian ad Litem to review the proposed settlement and to determine whether the best interest of Y.Q.O. was adequately served with the proposed settlement. The Guardian ad Litem (GAL), Jonathan Friedland, Esq., prepared a report reflecting that he had spoken with counsel for the Claimant and Ms. Hasandras, guardian of Y.Q.O.'s property; he reviewed records, including pleadings filed in circuit court, Medicaid liens, a

¹³ While Medicaid will likely cover her placement into a 24/7 nursing facility after she reaches the age of eighteen that would mean that she would have to be admitted into a nursing home caring for the elderly, which Claimant's attorney argues would be inappropriate for an eighteen-year-old woman.

proposed general release and closing statement, as well as the video of the crash, photographs, the police report, and other evidence. The GAL determined that the proposed settlement was a fair and reasonable resolution of the matter from the perspective of Y.Q.O. and that it was in her best interest. The GAL recommended that the circuit court approve the proposed settlement, which the court did on July 1, 2021.

Thereafter, Miami-Dade County and Claimant executed a Release for \$4,000,000¹⁴ and Miami-Dade County paid the statutory limit of \$200,000 under section 768.28, Florida Statutes. As terms of the Release, Miami-Dade County acknowledged that Claimant would be presenting a claim bill for payment of the additional \$3,800,000 to the Legislature and the County agreed not to oppose the passage and enactment of a claim bill authorizing the additional payment of \$3,800,000.

CLAIMANT'S POSITION:

Claimant argues she is entitled to the remaining amount of \$3,800,000 under the settlement agreement.

RESPONDENT'S POSITION:

Consistent with the terms of the settlement agreement, Respondent does not oppose the claim bill.

CONCLUSIONS OF LAW:

Regardless of whether there is a jury verdict or settlement, each claim bill is reviewed *de novo* in light of the elements of negligence.

Duty

The driver of a vehicle has a duty to take reasonable care and to follow all applicable laws to prevent injury to others within the vehicle's path.

Section 316.1235, F.S. (2016) provides that the driver of a vehicle approaching an intersection at which the traffic lights are inoperative shall stop as if the driver has approached a stop sign before yielding the right-of-way to any vehicle that has entered the intersection from another highway.

MDPD's Standard Operating Procedure (SOP) Chapter 5, Part 1, Section IV, A - Compliance with Laws and Directives - requires a county employee to operate a vehicle in

¹⁴ This amount was reached with the liability of both drivers and the failure of Y.Q.O.'s mother to secure her in a car seat being considered. At the final hearing, Claimant's counsel explained that the parties agreed (for settlement purposes) to assign one third of the liability to Officer Escarra.

compliance with State traffic laws, County ordinances, and County and departmental directives.

SOP Chapter 30, Part 1, Section II, A, 2, d - Emergency Response – allows the operator of a patrol vehicle responding to an emergency to exceed the posted speed limit by no more than 20 miles per hour.

SOP Chapter 5, Part 1, Section II, A, 2, f - Emergency Response - requires the operator of a vehicle responding to an emergency to slow down or stop at a stop signal, as may be necessary for safe operation, before proceeding through the stop signal.

Breach

The EDR reflects that Officer Escarra was traveling 75 mph, in a 40 mph zone, seconds before impact. At deposition, he testified that he was responding Code 3, pursuant to which he could only exceed the posted speed limit by 20 mph. Officer Escarra testified that traveling at 75 mph would constitute a violation of SOP Chapter 30, Part 1, Section II, A, 1 and 2.¹⁵

The surveillance video demonstrates that he did not stop for the intersection as required by statute and department policy.

Officer Escarra, the driver of the MDPD patrol vehicle, owed a duty to the car in which Y.Q.O. was riding. Officer Escarra breached his duty to Y.Q.O. when he proceeded through the intersection, traveling 35 mph in excess of the posted speed limit, without stopping or even yielding. When Officer Escarra breached this duty, he was driving a marked Miami-Dade Police Department patrol car as a Miami-Dade county employee on duty. Thus, Respondent is liable for Officer Escarra's actions under the doctrine of respondeat superior.

Causation

After reviewing Claimant's medical records, Claimant's expert witness, Craig Lichtblau, M.D., a board certified physiatrist, opined that Claimant's complete paraplegia is a direct result of injuries sustained in the crash that occurred on October 6, 2016.¹⁶ Based on all of the evidence

¹⁵ Escarra Dep. 26:18-26:20, Dec. 8, 2020.

¹⁶ Report of Preliminary Comprehensive Rehabilitation Evaluation, prepared by Craig H. Lichtblau, M.D., Sept. 9, 2019 at 19.

presented to the Special Masters, I agree with this assessment.

Officer Escarra and Mr. Meraz-Funez each bear some of the blame for the accident. The surveillance video of the crash reveals that neither party stopped at the intersection to yield the right-of-way to the other vehicle in the seconds before impact. The evidence obtained from Officer Escarra's patrol car, however, reveals that he was traveling 75 mph as he approached the intersection. The Audi was not equipped with an EDR, so its speed could not be determined, however it was making a turn onto NW 57 Avenue seconds before impact, so it is unlikely to have been exceeding the posted speed limit.

Based on the evidence presented in the record and at the Special Master hearing, I find Respondent at least 33% at fault for the accident, consistent with the apportionment of liability agreed to by the parties in reaching the settlement amount.

Damages

Y.Q.O. was only one year old at the time of the crash. She sustained severe, traumatic injuries and as a result will spend the rest of her life as a paraplegic, requiring continuous care and treatment.

Dr. Lichtblau opined that Y.Q.O. will remain dependent for the rest of her life and will be unable to participate in or maintain gainful employment. He further opined that as Y.Q.O. grows older, her disability will increase over time.¹⁷

Ann Koerner, RN, BSN, CRRN, of National Care Advisors, opined that Y.Q.O.'s future medical expenses total \$11,277,682.10.¹⁸ Even if this figure overestimates the cost of her future care, Y.Q.O. will be dependent and require care for the rest of her life. Additionally, Claimant has an outstanding Medicaid lien in the amount of \$1,772,320.52, which she must satisfy with the award of this claim bill, for a total of \$13,050,002.62 in medical damages. The settlement amount of \$4,000,000 is a reasonable amount to compensate Y.Q.O. for her injuries.

¹⁷ Report of Preliminary Comprehensive Rehabilitation Evaluation, prepared by Craig H. Lichtblau, M.D., Sept. 9, 2019 at 10.

¹⁸ This amount was reached using amounts Medicaid paid in 2020 for Y.Q.O.'s medical expenses, which is significantly lower than the amounts Medicaid was billed. This amount also does not take into account inflation and assumes that Y.Q.O. will not outlive her estimated life expectancy of 35 years.

A Pooled Special Needs Trust¹⁹ has been established for Y.Q.O. to shelter the funds sought in this claim bill so that they will not interfere with her financial eligibility for Medicaid and Medicaid Waiver benefits.²⁰ The court-appointed guardian of the property of Y.Q.O., Heather Hasandras, will be directing payments associated with Y.Q.O.'s expenses; she will also be providing the circuit court with annual accountings of the trust expenditures. The parents of Y.Q.O. will have no control over the use of the trust assets.

ATTORNEY'S/LOBBYING FEES:

If the claim bill passes, the attorney fee will not exceed \$760,000 and the lobbyist fee will not exceed \$190,000. Outstanding costs are \$12,275.05.

RESPONDENT'S ABILITY TO PAY:

Respondent states that it is able to pay the amount sought in this claim bill out of its self-insurance fund without affecting county operations.

LEGISLATIVE HISTORY:

This is the first session this bill has been presented to the Legislature.

RECOMMENDATION:

Based on the foregoing, I recommend that Committee Substitute for House Bill 6517 be reported FAVORABLY.

Respectfully submitted,

Carine Mitz

CARINE MITZ
House Special Master

cc: Representative Aloupis, House Sponsor
Senator Rodriguez, Senate Sponsor
Eva Davis, Senate Special Master

¹⁹ A Pooled Special Needs Trust is a trust established by a non-profit organization with individual beneficiaries creating accounts within the larger trust. Although the funds placed in a pooled trust are invested together, each beneficiary's account remain his/her own. The funds in a pooled trust are used to supplement a beneficiary's government benefits.

²⁰ Y.Q.O. is entitled to receive approximately \$794 per month in Social Security disability payments. It is unclear whether she is currently receiving those benefits.