



**STORAGE NAME:** h6503a.CIV

**DATE:** 3/4/2021

March 4, 2021

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 6503 - Representative Rodriguez  
Relief/Emilio Jesus Vizcaino-Aday/Miami-Dade County

**THIS IS AN EXCESS JUDGMENT CLAIM FOR \$350,000 BASED ON A SETTLEMENT AGREEMENT BETWEEN THE ESTATE OF EMILIO JESUS VIZCAINO-ADAY AND MIAMI-DADE COUNTY, RELATING TO THE WRONGFUL DEATH OF EMILIO JESUS VIZCAINO-ADAY DUE TO THE COUNTY'S NEGLIGENCE. THE COUNTY HAS PAID \$300,000 PURSUANT TO S. 768.28, F.S.**

FINDINGS OF FACT:

On March 6, 2018, at approximately 1:30 a.m., Emilio Jesus Vizcaino-Aday was traveling southbound on SW 147 Avenue in Miami-Dade County on his way to work. Officer John Young Song, a three-year veteran of the Miami-Dade Police Department was on duty, driving a marked patrol car westbound on SW 260 Street, with a police trainee in the front passenger seat. Earlier in the shift, officers had been advised to be on the lookout for two vehicles that had been stolen during a residential burglary. Officer Song, in pursuit of what he believed to be one of the stolen vehicles, traveled without lights and siren activated and approached the intersection of SW 260 Street and SW 147 Avenue

traveling at least 86 mph. Officer Song disregarded a stop sign for westbound traffic, and entered the intersection at speeds well above the 40 mph speed limit. The front of Officer Song's patrol car struck Mr. Vizcaino-Aday's driver's door. Mr. Vizcaino-Aday died in the drivers' seat from the force of the impact.<sup>1</sup> Both officers were airlifted to Jackson Memorial Hospital Ryder Trauma Center in stable condition and released later that day.<sup>2</sup>

Detective Marc J. Martinez with Miami-Dade Police Department's (MDPD) Traffic Homicide Unit conducted an investigation, arriving on scene shortly after the crash. Detective Martinez noted that it was dark outside and the street was not illuminated. The weather was clear and dry. SW 147 Avenue is a north/south undivided, two-lane roadway that travels through a rural area of Miami-Dade County, with a posted 40 mph speed limit. SW 147 Avenue is a through street at its intersection with SW 260 Street. SW 260 Street is an east/west undivided, two-lane roadway. A 40 mph speed limit is in effect. SW 260 Street is controlled east and west by posted stop signs.<sup>3</sup> The stop sign at the intersection of SW 147 Avenue and SW 260 Street was clearly visible.

Detective Martinez determined that both vehicles rotated before reaching their final rest in a plant nursery located off the roadway.<sup>4</sup> A Momentum Speed Reconstruction of the crash revealed that a minimum impact speed of 68 mph was obtained for Officer Song's patrol car and a minimum impact speed of 31 mph was obtained for Claimant's vehicle.

Officer Song was charged with Vehicular Homicide/Reckless Manner.<sup>5</sup> Florida Reconstruction LLC, was hired by the Office of the Miami-Dade State Attorney, to assist in the criminal prosecution of Officer Song. Its owner, Bill Wright, reviewed MDPD's Traffic Homicide Unit Report, along with other reports and memorandums prepared by members of MDPD. Mr. Wright concluded his investigation with a report of his own.<sup>6</sup> His report indicates that MDPD determined that Officer Song was traveling in excess of the speed limit without his lights and siren

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<sup>1</sup> Mr. Vizcaino-Aday was wearing his seat belt at the time of the crash.

<sup>2</sup> Miami-Dade Police Department Traffic Homicide Unit Report, Case No.: PD180305086170 at 2.

<sup>3</sup> *Id.* at 2-3.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* at 6.

<sup>6</sup> Bill Wright Florida Reconstruction L.L.C. Report concerning State of Florida v. John Song, dated July 17, 2019.

activated. Officer Song was not interviewed due to his pending criminal prosecution and his trainee, Officer Cesar Echaverry, claimed no recollection of the crash or the events leading up to it.<sup>7</sup> Mr. Wright agreed with MDPD's estimation of "at impact" speeds of both vehicles. He also reviewed the Event Data Recorder (EDR)<sup>8</sup> from Officer Song's patrol car.<sup>9</sup> Mr. Wright noted that Officer Song's patrol car was being slowed at the time the 86 mph speed was recorded, thus, he reasoned the patrol car's maximum speed was greater than 86 mph.<sup>10</sup>

As part of Officer Song's criminal prosecution, depositions were taken. Detective Monica Herrera testified that she had been following Officer Song's vehicle before being caught at a red light on SW 260 Street. Once the light turned green, she proceeded and came upon the crash scene near the intersection of SW 260 Street and SW 147 Avenue.<sup>11</sup> Detective Herrera testified that neither she nor Officer Song had their emergency equipment activated prior to the crash.<sup>12</sup> Finally, she described the area as rural, "very dark, full of nurseries, plants, and . . . no lighting."<sup>13</sup>

LITIGATION HISTORY:

Civil Suit

On July 18, 2019, Alin Avalos and Neisis Zavala, as Co-Personal Representatives of the Estate of Emilio Jesus Vizcaino-Aday (Claimant) filed a wrongful death action against the Miami-Dade County Board of County Commissioners and Miami-Dade County (Respondent) and John Y. Song.

During discovery, the County responded to Claimant's Request for Admissions with admissions that Officer Song did not have his emergency lights and siren activated; that he was traveling in excess of the speed limit; and that he failed to stop at a properly placed stop sign at the intersection of the crash.

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<sup>7</sup> *Id.* at 5.

<sup>8</sup> The EDR is a device installed in a motor vehicle to record technical vehicle and occupant information for a brief period of time (typically seconds) before, during and after a crash. Research & Data, Event Data Recorder, <https://www.nhtsa.gov/research-data/event-data-recorder> (last visited Feb. 2, 2021). Thus, the EDR can be likened to a plane's black box. The EDR in this matter recorded data about the crash, including the speed of the patrol car and braking. There is no evidence in the record that the vehicle driven by Mr. Vizcaino-Aday was equipped with an EDR, or if it was, that it was analyzed.

<sup>9</sup> Bill Wright Florida Reconstruction L.L.C. Report at 2.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> Herrera Dep. 15:1-15:10, 17:18-17:24, February 6, 2020.

<sup>12</sup> *Id.* at 19. Officer Cesar Echaverry was also deposed but testified he had no memory as to whether Officer Song activated his lights and siren prior to the crash. (Echaverry Dep. 12:12-12:17, February 6, 2020.)

<sup>13</sup> *Id.* at 33.

Claimant amended its complaint twice before the parties entered into a stipulated settlement agreement in which Respondent agreed to pay a total of \$650,000. The settlement acknowledged the \$300,000<sup>14</sup> sovereign immunity cap. Respondent therefore agreed to pay \$300,000 and support a claim bill for the remaining \$350,000.<sup>15</sup> The court was provided with a notice of settlement and entered an order of dismissal.

#### Criminal Prosecution of Officer John Young Song

On November 14, 2018, Officer John Young Song was arrested and charged with vehicular homicide, a second degree felony, as a result of the collision. The case remains pending before the Circuit Court in Miami-Dade County.

#### CLAIMANT'S POSITION:

Claimant seeks to recover \$350,000, the remainder of the settlement against Miami-Dade County.

#### RESPONDENT'S POSITION:

Respondent indicates this is an agreed-upon claim bill that is the result of a settlement reached post-mediation and that the facts of events that transpired on March 6, 2018 are undisputed.<sup>16,17</sup>

#### 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 & Breach

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 316.126(3), F.S. (2018), provides that an "authorized emergency vehicle, when en route to meet an existing emergency, shall warn all other vehicular traffic along the emergency route by an audible signal, siren . . .

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<sup>14</sup> Pursuant to s. 768.28(5), F.S. (2018), the \$300,000 cap applied because of damage sustained to the plant nursery as part of this incident.

<sup>15</sup> Under s. 768.28(5), F.S. (2018), any liability of a governmental entity exceeding \$300,000 per incident can be paid only as directed by the Legislature through a claim bill.

<sup>16</sup> At the Special Master hearing, the County established that Ms. Avalos and Mr. Vizcaino-Aday had been separated for a few months leading up to the date of the crash. Although they were separated, Ms. Avalos testified that they were still talking daily, seeing each other, trying to reconcile, and never spoke of divorce.

<sup>17</sup> At the Special Master hearing, the County explained that it had taken the position that Officer Song's excessive speed, without the use of lights and siren while running a stop sign constituted "wanton and willful disregard of human rights" and as such, under s. 768.28(9), F.S., the County should not be liable for his actions. Despite raising this legal argument, the County maintained that in the best interests of all parties, it reached a settlement with the Claimant, has agreed to this claim bill, and will not contest it.

or by a visible signal by the use of displayed blue or red lights.” That section also requires that the emergency vehicle proceed “in a manner consistent with the laws regulating vehicular traffic....”<sup>18</sup> Thus, Officer Song had a duty to use his lights or siren and not exceed the speed limit.<sup>19</sup> There is undisputed evidence that Officer Song was traveling without his lights and siren activated. As a result, the motoring public traveling in that rural, dark area, including Emilio Jesus Vizcaino-Aday, was unaware that Officer Song was approaching at speeds in excess of 80 mph. Officer Song’s excessive speed was inconsistent with the laws regulating vehicular traffic. Officer Song breached his duty when he failed to activate his emergency equipment leaving Mr. Vizcaino-Aday with no way of knowing he was approaching at over 80 mph.<sup>20</sup> When Officer Song 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 Song’s actions under the doctrine of respondeat superior.<sup>21</sup>

Section 316.183(1), F.S. (2018), requires that a person operating a vehicle not drive the vehicle “at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.” At the time of the collision, the speed limit on SW 260 Street was 40 mph; Officer Song was traveling over 80 mph. Officer Song breached his duty when he proceeded through the intersection, exceeding the posted speed limit. When Officer Song 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 Song’s actions under the doctrine of respondeat superior.

Section 316.123(2)(a), F.S. (2018), requires every driver approaching a stop sign at an intersection to stop and, after stopping, to yield the right of way to any vehicle in the

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<sup>18</sup> S. 316.126(5), F.S. (2018).

<sup>19</sup> See also *Bryant v. City of Tampa*, 100 So.2d 665 (Fla. 2d DCA 1958) (holding that police officer who exceeded the speed limit while pursuing another vehicle without his light or siren activated constituted prima facie negligence on the part of the defendant city).

<sup>20</sup> See *Franklin v. Dade County*, 230 So.2d 730 (Fla. 1970) (reversing directed verdict for the County and holding that evidence raised a jury question as to the county’s negligence in respect to operation of patrol car in emergency action in nature of high speed chase on cross street without slowing down for stop sign and without activating lights and siren).

<sup>21</sup> The common law doctrine of respondeat superior provides that an employer may be held liable for the actions of its employee if the employee was acting within the scope of his employment when he committed the tortious act. This doctrine extends to negligent acts occurring within the scope of the employment. *Mercury Motors Exp., Inc. v. Smith*, 393 So.2d 545, 549 (Fla. 1981).

intersection or any vehicle which is approaching so closely as to constitute a hazard.<sup>22</sup> Officer Song breached his duty when he proceeded through the intersection in excess of the 40 mph speed limit and in complete disregard for the stop sign. When Officer Song 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 Song's actions under the doctrine of respondeat superior.

#### Causation

Officer Song's failure to operate his patrol car with his emergency equipment activated while exceeding the speed limit and disregarding a stop sign as he was pursuing a vehicle matching the description of a vehicle reported stolen, at night in a dark, rural area was the direct and proximate cause of Emilio Jesus Vizcaino-Aday's death.

#### Damages

The amount of damages sought in this claim bill - \$350,000 - is reasonable considering the outcome of the accident.

Mr. Vizcaino-Aday is survived by his wife of six years<sup>23</sup> and an adult son. At the time of his death, his son was a minor residing in Cuba and Mr. Vizcaino-Aday contributed financially to his upbringing. He also maintained a strong bond with son, being in communication on nearly a daily basis. Mr. Vizcaino-Aday held full-time employment at a bakery and part-time employment mowing lawns in order to be able to contribute financially to his household and his son in Cuba. Given the pain and suffering experienced by his widow and son because of the death of Mr. Vizcaino-Aday, I find that damages in the amount of \$350,000 is reasonable.

#### ATTORNEY'S/ LOBBYING FEES:

Claimant's attorney has agreed to a total fee of 20 percent of the total recovery and claimant's lobbyist has agreed to a total fee of 5 percent of the total recovery. There are no outstanding costs.

#### COLLATERAL SOURCES:

Claimant testified at the Special Master hearing that she received \$5,000, which she believed was from the car

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<sup>22</sup> S. 316.123(2)(a), F.S. (2018).

<sup>23</sup> Ms. Avalos testified at the Special Master hearing that the two were married for six years, but together thirteen years.

insurance for the destruction of the vehicle driven by Mr. Vizcaino-Aday.

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.

RECOMMENDATIONS:

Based on the foregoing, I recommend that Committee Substitute for House Bill 6503 be reported **FAVORABLY**.

Respectfully submitted,

*Carine Mitz*

**CARINE MITZ**

House Special Master

cc: Representative Rodriguez, House Sponsor  
Senator Rodriguez, Senate Sponsor  
Jack Hackett, Senate Special Master