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DATE: 3/29/2010

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 1017; Relief of Edwidge Valmyr/City of North Miami
Sponsor: Representative Galvano
Companion Bill: SB 46 by Senator Peaden
Special Master: Tom Thomas

Basic Information:

Claimants: Edwidge Valmyr

Respondent: City of North Miami

Amount Requested: \$750,000, plus up to an additional \$40,000 for payment towards any medical lien.

Type of Claim: Local equitable claim; result of a settlement agreement.

Respondent's Position: Agrees that the settlement in this matter and the passage of this claim bill is appropriate. The City has agreed to support the passage of the Claim Bill through the submission of a letter, which is on file with the Special Master.

Collateral Sources: None

Attorney's/Lobbying Fees: The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.

Prior Legislative History: This is the first year that this claim bill has been brought before the Legislature.

Procedural Summary: On April 25, 2008, Edwidge Valmyr, as Personal Representative of the estate of Stanley Valmyr, a deceased minor, and on her own behalf as surviving mother, sued the City of North Miami in the 11th Judicial Circuit in and for Miami-Dade County, alleging wrongful death. Prior to trial, the parties entered into a settlement agreement for \$950,000, plus a provision that the City would also pay half of the negotiated medical lien, up to \$40,000. Of this settled amount, \$200,000 has already been paid to the claimant pursuant to the statutory cap on liability imposed by section 768.28, Florida Statutes. This \$200,000 remains in the trust account of the Claimant's attorney.

The settlement also requires the city to make permanent a policy at the Thomas Sasso Pool that at least two lifeguards shall, at all times, be on duty and seated in a lifeguard chair with at least one additional lifeguard roving around the perimeter of the pool. This policy is to be named after Stanley Valmyr in honor of his memory.

A Special Master hearing was held on this claim bill on October 5, 2009, via video-teleconference between Tallahassee and Miami. The Claimant was present at the hearing and both parties were represented by counsel. Special Masters were present on behalf of both the House of Representatives and the Senate.

Facts of Case: On March 28, 2007, Edwidge Valmyr registered her six year-old son, Stanley Valmyr, for a "Fun Day Camp" run by the City of North Miami. The "Fun Day Camp" was to be held two days later and was to consist of art and crafts activities at the community center. On the day of the "Fun Day Camp," March 30, 2007, at approximately 8:00 a.m., Ms. Valmyr took her son to the community center, only to learn that the day's activities had been changed to include a trip to the Thomas Sasso pool, a pool owned and operated by the City. No one, including parents and camp counselors, had been notified of the change. Though Stanley did not have a swimsuit, he did have a change of clothes, including basketball shorts. The camp counselors also did not have swimsuits. Stanley's Mother decided to let Stanley stay and attend the "Fun Day Camp," including going to the pool.

Ten children were taken to the pool where they were given swim tests. Stanley, along with some of the others, was unable to swim and these children were sent to the shallow area of the pool. Because the counselors did not have their swimsuits, they did not get into the pool with the children as they would typically have done.

The City had four lifeguards on duty that day. While the children swam, only one lifeguard was outside by the pool in the lifeguard chair furthest from the area where the non-swimmer children were wading. At some point, one of the other children called out to the counselors that something was wrong with Stanley. Stanley was submerged under water and the other child pulled Stanley to the side of the pool where the counselors pulled him out of the pool and began to administer CPR. Fire Rescue was called to the scene. A counselor called Ms. Valmyr and told her that something was wrong with Stanley and that she should come to the pool right away.

When Fire Rescue arrived, Stanley's pulse was weak and he was not breathing. Stanley was intubated by Fire Rescue for manual respiration and was transported to Parkway/Jackson North Hospital. Once Stanley was stabilized with assisted respiration, he was transported to Joe DiMaggio Hospital. These efforts were not successful and Stanley remained unconscious until his death four months later on July 26, 2007.

The City of North Miami owed a duty of reasonable care to Stanley Valmyr to provide a safe camp experience and safe premises.¹ The City had the duty to provide supervision through counselors and lifeguards. The City breached that duty and that breach was the proximate cause of his drowning and resulting death.

The City was deficient in several areas which support the ultimate finding that its negligence was the proximate cause of Stanley's death. While some of these factors may have contributed more than others, it is clear that if none of these deficiencies existed, Stanley most likely would not have drowned that day. These deficiencies are: 1) at least two lifeguards should have been outside by the pool; 2) the counselors should have been told to bring their swimsuits that day so they could be in the pool with the children; and 3) the lifeguard and counselors should have better supervised the children so that Stanley's situation would have been observed immediately.

¹ See Breaux v. City of Miami Beach, 899 So.2d 1059, Fla. 2005), and Avallone v. Board of County Commissioners of Citrus County, 493 So.2d 1002 (Fla. 1986).

Claimant's Counsel submitted an affidavit of Diligent Search for the father of Stanley Valmyr, Edgar Osias. The search was unable to locate Mr. Osias. The search was made for purposes of this claim as well as for administration of the estate in Probate Court.

Damages: This case has been settled for \$950,000, plus up to an additional \$40,000 for payment towards any medical lien. This amount is clearly low compared to what a jury would likely award in a wrongful death case of a six year-old child. There is no reason to believe that Stanley would not have led a long and productive life. In addition, the pain and suffering to his family is enormous and ongoing. I find that the settlement in this case is a reasonable amount.

Source of Funds: The City of North Miami does not have insurance to cover this type of claim and it has not set aside any funds to pay for such lawsuits. Any funds paid by the City for this claim will come from the City's general operating budget. The settlement agreement between the parties and the bill as filed call for the \$750,000 to be paid in eight annual payments of \$93,750, plus up to an additional \$40,000 for payment towards any medical lien.

Drafting Comments: The bill should be amended to reflect the final amount of payment owed by the City due to the negotiated medical lien. Further, the bill should be amended to reflect the Claimant's legal name since her marriage – "Edwidge Valmyr-Gabriel."

Recommendation: Accordingly, based on the foregoing, I recommended this claim be reported FAVORABLY, with the changes suggested above.

Tom Thomas, Special Master

Date

cc: Representative Galvano, House Sponsor
Senator Peaden, Senate Sponsor
Judge John G. VanLaningham, Senate Special Master