

# MISSOURI LAWYERS WEEKLY

## St. Louis hit with \$1.2M verdict over fatal collision with police



Donald L. Schlappizzi

BY MO LAWYERS MEDIA STAFF

In a groundbreaking case, the City of St. Louis has been hit with a \$1.2 million verdict awarded to the family of a woman who ultimately died following a collision with a St. Louis City police car.

"This is the first case where the City of St. Louis has been held liable for a police officer's negligence under an agency theory," said Donald L. Schlappizzi of St. Louis, attorney for the family.

The family also brought the wrongful death suit against the St. Louis Board of Police Commissioners and the officer driving the police car, but the Board settled for the statutory cap of \$335,188 each and the family proceeded to trial against the City of St. Louis. The verdict was offset by the \$670,236 settlement and ultimately reduced to the \$335,118 cap for the city.

"This situation occurs by reason of the dual relationship that the St. Louis Police Officers have with the City of St. Louis and the State of Missouri," Schlappizzi said. He explained that the Missouri Legislature created the police departments in the cities of St. Louis and Kansas City by statute more than 100 years ago. The legislative sections apply only to "constitutional charter cities" that then, or at any time, will have a population of 700,000 or more – and St. Louis and Kansas City were the only two such cities, he said.

As a result, this case will impact future cases in the cities of St. Louis and Kansas City "where a police officer is involved in a vehicular collision or is involved by some other conduct and, because of the severity of injury or death and economic losses, there is a need to exceed the sovereign immunity cap available from the Board and/or the police officer individually, and where there is evidentiary support to establish the agency relationship between the city and the police officer involved," Schlappizzi said.

Attorneys from the St. Louis City Counselor's Office declined to comment on the Nov. 3 verdict in *Hodges v. City of St. Louis*.

### Collision

Ann Martin and her husband operated Martin Liquor & Food on the north side of the City of St. Louis, and Martin took over sole operation of the business after her husband died. The store housed a small bedroom in the back, where she sometimes

slept to avoid commuting back and forth from her home in the University City area.

On March 4, 2003, Martin had been out with a female friend and was en route to spend the night at the store. Martin, 58, was driving her Buick LeSabre eastbound on Aldine Avenue, near the intersection with Annie Malone Drive.

According to testimony from Martin and two eye witnesses, St. Louis City Police Officer Willie James Walker Jr. was racing in his Chevrolet Impala police car westbound on Aldine – a one-way eastbound street. They said he did not have his police lights or sirens turned on when he collided with Martin.

Schlappizzi said Officer Walker later claimed he was driving with his lights and siren on, en route to assist another officer who was chasing a suspect on foot. The police dispatcher had radioed a request for backup assistance to all cars in the area, but Walker's car was never identified as responding.

The impact from the collision flipped Martin's vehicle and sent it crashing into a light pole, which fell on top of her car. She was trapped in her overturned vehicle for almost an hour before the fire department removed her with the "jaws of life."

Martin was rushed to Barnes-Jewish Hospital, where she was treated for a gash in her head, seven broken ribs, a broken left arm and right wrist, a broken left leg, lumbar spine fractures and had the tip of her right middle finger amputated. She spent two

and a half months in the hospital followed by another month in rehabilitation, and her medical and hospital bills accumulated to over \$486,000.

Officer Walker suffered only minor injuries. He was treated and released from the hospital within a couple hours of the accident, Schlappizzi said.

While Martin was in the emergency room immediately following the accident, her injuries necessitated a tube down her throat to save her life, he said. The tube was replaced with a tracheotomy, which created scar tissue and ultimately reduced her airway to the size of a straw, compromising her ability to breathe.

Martin continued to suffer breathing problems over the next 22 months, requiring at least four trips back to the hospital for treatment and therapy. Her last visit to Barnes occurred on Jan. 3, 2005, when she was treated and released. She died two days later after she was found unresponsive in her car in a Walgreens parking lot.

Martin had filed a personal injury lawsuit against Officer Walker, the St. Louis Board of Police Commissioners and the City of St. Louis in June 2003. Following her death, her 39-year-old daughter, Kimberly Hodges, took over as plaintiff in the wrongful death suit.

### Agency Relationship

By including the City of St. Louis as a defendant in this case, Schlappizzi's theory was that Officer Walker was simultaneously an agent of the city

and an employee of the Board of Police Commissioners. To support this theory, he cited Sect. 84.330 R.S. Mo., which specifically declares: "Members of the police force are hereby declared to be officers of the city under the ordinances thereof, and shall be so deemed in all courts"

Meanwhile, he said, Sect. 84.010 R.S. Mo. specifically authorizes the City of St. Louis "to pass ordinances that are not inconsistent with and do not interfere with or obstruct the Board of Police Commissioners or its officers," such as "ordinances for preserving order, securing property, and promoting the interests of good government of the city."

In furtherance of this legislative authority, he said the City of St. Louis passed ordinances granting officers "the power to arrest, the power to direct traffic and persons, and to issue citations for which fines can be generated and paid to the City of St. Louis Treasury." Thus, he said, "The city had the authority to control the physical conduct of police officers to this extent."

Additional evidence of an agency relationship, according to Schlappizzi, included: the city insured the officer at the time of the crash; the officer wore a St. Louis City Police badge and shoulder emblem; the officer drove a police car emblazoned with the city name and emblem; and the city issued citations for officers' use with directions to the offender for making a fine payment to the City of St. Louis. Furthermore, he said the city issued paychecks to Officer Walker and other officer witnesses who testified that they worked for the City of St. Louis.

"None of the city ordinances, nor the other indicia of agency established at the trial, in any way conflicted with, obstructed,

or interfered in any way with the Board of Police Commissioners," he said. "This dual relationship of a police officer with the city and state has been in existence for years and from all appearances has been ratified by the Board of Police Commissioners."

The defendants did not raise an emergency response defense, Schlappizzi said. On the morning trial began on Oct. 31, the Board of Police Commissioners settled on behalf of itself and Officer Walker for the current statutory cap of \$335,118 for each party, entitling the city to offset any verdict by \$670,236. The case then proceeded to trial against the city.

At trial, Schlappizzi said the City of St. Louis argued that "the statutes passed by the Missouri Legislature established that the St. Louis Board of Police Commissioners, as a state agency, was granted broad powers over the City of St. Louis Police Department operations." Because of these powers, he said the city maintained that it "could not have an agency relationship with a police officer because the officers are employees of the Board of Police Commissioners," which thereby rendered the city unable to exercise the necessary control of police officers to create an agency relationship.

At the conclusion of the four-day trial, the jury returned a 10 to 2 verdict against the city, awarding Hodges \$1.2 million. The city then requested a

reduction to the statutory cap, and the court responded by reducing the verdict to \$335,118.

In a prepared statement provided to the St. Louis Post-Dispatch, City Counselor Patricia Hageman indicated that the city will appeal. Schlappizzi said he will file a cross-

appeal on the verdict reduction.

"Plaintiff believes that the city is only entitled to reduce the \$1.2 million verdict by the total amounts paid in settlement by the Board of Police Commissioners and the police officer, which would result in a net verdict and judgment of \$549,764," he explained. "The further reduction to the statutory cap of \$335,118 will be constitutionally challenged on a number of grounds, including violation of the fundamental right of an individual to enjoy the gains of her labor, interference with her right to a trial by jury, open access to the courts and a violation of the uniformity of taxation, as well as equal protection."

### **No Emergency**

Reflecting on the outcome of this case, Schlappizzi said it was "essential" to establish that the police car was running without emergency lights and sirens at the time of the collision. "If the police car had its emergency lights and sirens operating, it would have been permissible for the officer to violate rules of the road," he said.

Finally, he noted that the emergent situation that Officer Walker was purportedly responding to had been over for four minutes before he collided with Martin.

"We were able to provide this evidence by obtaining the police dispatcher tapes that clearly showed that the earlier supposed emergency ran from 1:01 a.m. to 1:04 a.m., which had clearly been on the radio dispatch for all officers to hear," he said. "Since the police department's records showed that the crash involving Mrs. Martin occurred at 1:08 a.m., the earlier incident had clearly ended."