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WEEKLY

Police cruiser crash case settles for \$1M

Plaintiff recovers from city and police board



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BY ANNE C. VITALE

A passenger injured in a collision with a police cruiser has reached a \$1 million settlement of her Jackson County case against Kansas City, the Kansas City Board of Police Commissioners and the two officers in the cruiser.

“This settlement emphasizes the rule of the Hodges case,” said St. Louis plaintiffs’ attorney Donald L. Schlappizzi, referring to the 2007 Missouri Supreme Court decision

in Hodges v. City of St. Louis. “It was not until the Supreme Court decided Hodges that in both St. Louis and Kansas City a recovery could be made against both the respective police boards and the cities.

“Since sovereign immunity is involved, this rule permits multiple caps to be applied,” Schlappizzi added. “Also, in these non-emergent police crashes, the police officer does not have protection of either the public duty doctrine or official immunity, which also exposes the officer to personal liability.”

G. Steven Diegel, assistant city attorney for Kansas City, said it is an “open question as to whether multiple damage caps would apply, as both the city and the board are public entities, and this case involved the same occur-

rence.”

Diegel noted that the tort liability statute limits recovery from governmental entities to \$300,000. “The reason the settlement exceeded the damage cap is that, in facts particular to this case, the police officers were not covered by that damage cap or other statutory protections,” he said.

Plaintiff Stacey Smith, 32, was a passenger in a 1995 Acura Integra driven by Stephanie Horner on Feb. 24, 2006. Horner was making a left turn from Wornall Road onto 82nd Street in Kansas City at 10:30 p.m.

Brandon M. Harpold and Michael Holsworth, officers for the Kansas City Police Department, were traveling on Wornall Road in an Interceptor police car without emergen-

\$1 Million Settlement

PERSONAL INJURY/VEHICULAR

■ **Court:** Jackson County Circuit Court

■ **Case Number/Date:** 0716-CV26245/June 25, 2009

■ **Judges:** David M. Byrn

■ **Plaintiffs’ Experts:** John C. Glennon, Lenexa, Kan. (accident reconstruction); Dr. Terrance Pratt, Kansas City (physical medicine and rehabilitation); Dr. Lance Snyder, Kansas City, (orthopedic surgeon)

■ **Defendants’ Experts:** Tim Harms, Kansas City (accident reconstruction); Christopher Long, St. Louis (toxicology); Robert S. McKenzie, Olathe, Kan. (accident reconstruction)

■ **Special Damages:** \$212,000 past medical expenses; \$100,000 past lost earnings; unspecified future lost wages and medical expenses

■ **Insurer:** Self-insured

■ **Caption:** Stacey Smith and Shane Smith v. City of Kansas City, Mo., Kansas City Board of Police Commissioners, Brandon M. Harpold and Michael Holsworth

■ **Plaintiffs’ Attorneys:** Donald L. Schlappizzi and Linda C. Powers, Donald L. Schlappizzi, P.C., St. Louis; Mitchell L. Burgess and Keith C. Lamb, Burgess & Lamb, P.C., Kansas City

■ **Defendants’ Attorney:** Virginia H. Murray, assistant Missouri attorney general, Kansas City; G. Steven Diegel, assistant city attorney, Kansas City

cy lights and sirens activated. At an alleged speed of 75 to 100 mph in a 35 mph zone, the police car crashed into the right side of Horner's vehicle.

The officers contended that they had just terminated pursuit of a speeding motorcycle, said Nanci Gonder, spokesperson for the Missouri Attorney General's Office. "It was our position that the officers had turned off the emergency lights and siren when they realized they could not apprehend the speeding motorcycle, and that accident occurred a few moments after they terminated the pursuit," Gonder said.

Smith suffered fractures to her spine, ribs, pelvis, sacroiliac and shoulder blade. She also sustained torn cartilage in both knees.

Stacey Smith and her husband, Shane,

sued Kansas City, the Kansas City Board of Police Commissioners, and officers Harpold and Holsworth. They alleged violation of the speed limit and negligence per se.

Plaintiffs sought punitive damages against the individual police officers. Such claims are statutorily prohibited and are not recoverable from public entities such as the city or board, Diegel said.

To support its case, plaintiffs cited Hodges, which held that police officers in St. Louis and Kansas City are not only employees of the respective board of police commissioners but are also agents of the respective cities where they work – a dual agency arrangement, Schlappizzi said. The Hodges court held that these police officers are statutory agents of their respective cities as a matter of

law.

The defendants contended that Horner was intoxicated, and Smith was comparatively at fault for riding with her. Smith settled her case against Horner in 2007.

Defendants' accident reconstruction expert estimated a lower speed for the police cruiser and also opined that Horner should have seen the approaching police car, Diegel said. Kansas City further contended that the police officers were not the city's agents, despite the Hodges decision.

A month before trial was scheduled to begin on July 27, the parties agreed to settle for \$800,000 from the Board of Police Commissioners and police officers and \$200,000 from Kansas City, for a net settlement of \$1 million.