

Miami attorneys settle wrongful death claims

October 31, 2013



A.M. HOLT

David Nuñez and James Hannon helped settle a wrongful death case in which two day laborers were struck and killed by the drunken driver of a sports car that jumped a sidewalk and plowed through a hedge just before running them over.

Case: No lawsuit filed
Case no: Not applicable
Description: Wrongful deaths
Filing date: Not applicable
Settlement date: Aug. 30, 2013

Jurisdiction: Broward Circuit Court

Plaintiffs attorneys: David Nuñez, Law Office of Meyer & Nuñez, Miami; James Hannon, Hannon & Boyers, Miami
Defense attorney: Robert Zarco, Zarco Einhorn Salkowski & Brito, Miami

Settlement amount: \$2.22 million

Details: Mackendy Jules, 30, Samuel Artez Martindale, 35, and Randy Trammell walked through a parking lot at Broward Boulevard and Southwest Fifth Avenue at about 2:15 a.m. June 13.

Jules and Martindale were struck by a sports car that jumped the sidewalk and plowed through a hedge just before running them over. Both day laborers died at the scene. Trammell called 911.

Hannon said Russell and her two passengers were not seriously injured or killed. Her random turn narrowly missed a tree and a lamppost, he said.

The Fort Lauderdale police traffic investigation concluded Alyza Rachel Russell, 22, was driving her mother's 2012 Porsche Panamera. Passengers Stephanie Anne Kocell and Daniel Alexander Wong accompanied her on an evening of drinking that went on for nearly three hours before the crash.

Her blood-alcohol level of 0.17 was more than twice the legal limit. She was described as stumbling and wobbly.

Russell told an officer: "They yelled turn, and so I just turned. I know where I was, but I just wasn't sure."

She was charged with drunken-driving manslaughter and other DUI-related offenses. She was released from jail on \$450,000 bond on condition

she remain under house arrest pending her criminal trial.

Plaintiffs case: Nuñez represented Martindale and his mother. He relied on the traffic investigation report and footage from a red-light camera to establish liability.

"The camera showed the car headed west on Broward going at a high speed, and it just ripped a left turn out of nowhere," Nuñez said.

Martindale suffered the worst of the impact. His body was wedged so deep in the front passenger wheel well that the car would not move, Nuñez noted.

Hannon represented the Jules estate and his parents as legal survivors.

The United Services

Automobile Association insurance policyholder was the driver's mother, Charlotte Russell.

"Each of us made a demand," Nuñez said. "It was a combined single-limit policy. The insurance adjuster asked Mr. Hannon and I to get together and resolve the allocation of proceeds, and we did. Jules had two survivors and I had one."

The division of the \$2 million settlement from the USAA policy was confidential.

The mother's liability was capped at \$100,000 per person. Zarco negotiated a settlement of \$220,000.

"That's \$20,000 more than the cap," Hannon said. "On the daughter, there is no legal cap. But the practical cap is we'll never be able to collect a claim

because she doesn't have a penny. She's not employed. She owns no property."

Both attorneys agreed the settlement was more than they would have been able to secure had a lawsuit been filed and the case had gone to trial.

The settlement was reached in late August, but the plaintiffs agreed not to disclose the accord for 45 days due to Russell's criminal case. Nuñez said her criminal defense attorney was trying to reach a plea agreement. Court files show no resolution has been reached. A calendar call for trial is set Dec. 13.

Defense case: Zarco's objective was to comply with the Russell family's wish to bring the civil demands to a closure through a speedy settlement.

"Alyza Russell and her family are extremely sorry and feel very remorseful as to the occurrence of this very tragic accident, which arose due to very personal and difficult circumstances," Zarco said.

The Russell family is pleased to have been able to "do the right thing" and resolve the civil matter, he said.

Zarco was the Russell family attorney in the civil case only. Robert Reiff, a Miami criminal defense attorney, is handling the criminal case.

Outcome: The Russell family and USAA paid the settlements.

Comments: "It was not an intentional act," Nuñez said. "It was a negligent act with dire consequences for all involved. We thought it would be prudent for us to wait while she was trying to work this out with the state."

Post-settlement: The settlement did not require court approval. Estates have been established in probate court for both families. Neither attorney is involved in the probate matters.



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Nuñez described Martindale's mother as a humble, spiritual woman who focused on her son's last days as he had a troubled past.

"He was a day laborer, earning an honest living, helping his mom," Nuñez said. "She had some disabilities. He was also attending her church regularly. His mother got to see him going through change in the right direction.

Jules' father, a chef, expressed a desire that Russell dedicate herself to warning young people of the dangers of drinking and driving.

— Adolfo Pesquera