

The Legal Intelligencer

By Shannon P. Duffy

Of the Legal Staff

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Settling litigation that focused attention on the high rate of fatal traffic incidents among Philadelphia police officers, the City of Philadelphia has offered to pay a total of more than \$2.2 million to the estates of a man and his infant son who were killed on a sidewalk by an out-of-control, speeding police car. Attorney [Shanin Specter](#) of Kline & Specter said his clients - the estate of LeeMore Rich and his surviving 5-year-old daughter Irie Rich - agreed to a \$1.325 million settlement due to the potential difficulty in holding on to any verdict they might win and because of the significant improvements made by the department to prevent future police traffic accidents.

In a previous settlement brokered by attorney Richard P. Abraham of Abraham Bauer & Spalding, the city paid Gwenessa Moore, who watched as the squad car killed both her fiance and their 7-month-old son, Leemore, who was in a baby stroller.

Specter said that while he was confident that he could have convinced a jury that the city was deliberately indifferent in 1997, he also knew that it would be tough to defend that victory in post-trial motions or on appeal in the wake of last year's U.S. Supreme Court decisions on high-speed chases.

When Specter began the case, the most important ruling on the book was the 3rd U.S. Circuit Court of Appeals decision in *Fagan v. City of Vineland* in which a sharply divided en banc panel found that a plaintiff in a high-speed chase suit must show conduct on the part of the police that "shocks the conscience."

That was already a high hurdle, but the bar was raised significantly when a unanimous Supreme Court held in May 1998 in the case of *County of Sacramento v. Lewis* that such a plaintiff would need proof that a police officer intended to injure an innocent bystander in order to sue the individual officer.

Adopting the 3rd Circuit's shocks-the-conscience test, the justices went further to hold that in the context of a high-speed chase, "only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the shocks-the-conscience test."

Specter said that after the high court's ruling in *Lewis*, Senior U.S. District Judge Norma L. Shapiro dismissed all claims in his case against Officers Constantine Stylios and Terrence Fussell.

But Shapiro allowed the lawsuit to go forward against the city, saying there was evidence that the city maintained "an implicit policy sanctioning reckless driving" by police.

According to court papers, Stylios and Fussell were responding to what they believed was a fellow police officer's call for help the night of Aug. 19, 1997, when their cars collided at 22nd Street and Snyder Avenue. Fussell's car jumped a curb and hit LeeMore Rich, 39, who was pushing a baby stroller as he walked with his fiance.

The patrol car crushed the stroller, killing both Rich and his son.

Shapiro ruled that there was no evidence that the two officers acted with the intent to harm Rich or anyone. She also found that neither officer acted in a manner that "shocks the conscience."

But the city's conduct was another matter, Shapiro said, holding that a jury would have to decide whether the city's conduct in failing to train its police officers properly evidenced a deliberate indifference to the growing problem.

Specter found in discovery that accidents involving police vehicles had cost the city nearly \$29 million in legal settlements since 1992.

Specter said that between Jan. 1, 1993 and the date of the Rich accident, Philadelphia police vehicles were involved in more than 3,800 collisions. The department's Safety Review Board determined that 61 percent of those accidents could have been prevented.

In an interview yesterday, Specter said that he and his clients sat down with Police Commissioner John Timoney and had a two-hour "frank exchange" that paved the way for the settlement.

Timoney, he said, deserves credit for a series of reforms that promise to significantly reduce the number of fatal accidents in the future.

New officers won't be allowed to drive alone in squad cars until they have logged at least 60 hours behind the wheel with a veteran. A squad car on its way to an emergency must slow to 10 miles per hour when approaching a stop sign or red light.

Discipline has also been enhanced, Specter said, so that district commanders will now have the power to suspend a reckless driver for up to five days "on the spot."

Specter said that Deputy City Solicitors Carlton Johnson and Jeffrey Scott also deserve credit as "prime movers in encouraging reform in the police department."

Johnson and Scott were also "smart enough," Specter said, "to permit the commissioner to speak for himself."

After hearing directly from Timoney about the reforms he had instituted, Specter said, "my clients were less intent on going to trial."

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