

# Stop or I'll shoot

By Luis Fragoso

A few years ago, one of our members hired a retired police officer to provide security for its Municipal Courthouse. About four months later, during a court hearing, the security officer was ordered by the presiding Judge to take a suspect (our claimant) into custody due to an outstanding warrant for failure to appear in another jurisdiction. As the officer attempted to handcuff the claimant, the claimant ran out of the courthouse and across the street. The officer gave chase yelling at the claimant to stop but the claimant managed to enter his vehicle and lock the doors. The officer reached the vehicle and unsuccessfully tried to open the driver's side door; he then drew his weapon and ordered the claimant to get out. Ignoring the officer's commands, the claimant started the vehicle and began to back up. Fearing he was going to be run over or struck, the officer stepped back, raised his weapon and fired a single shot into the driver's side window. Glass fragments covered the left side of the claimant's face but, miraculously, the bullet missed the claimant's head. The claimant managed to drive away but was eventually located, arrested and charged.

Eye witnesses told investigators that they believed the officer tried to break the window with his gun which might have accidentally gone off. The officer, on the other hand, stated that he believed his life was in danger and tried to stop the claimant. The officer and witnesses also disagreed as to whether the claimant's vehicle was moving forward or backward when the shot was fired and while an internal investigation ultimately determined that the officer's discharge of his weapon was lawful, the use of force was deemed not appropriate under the circumstances. Almost three years after the incident, the City received a Claim for Damages form from the claimant's attorney demanding a six-figure settlement.

Since *Graham v. Connor*, 490 U.S. 386 (1989), was first decided, courts have fine-tuned the three-factor test used to measure the lawfulness of a particular use of force, i.e. Is the use of force proportionate to the severity of the crime? Does the suspect pose an immediate threat to the safety of the officers or others? Is the suspect actively resisting arrest or attempting to escape?

In this particular case, there is no doubt the suspect was attempting to escape. However, the Use of Force Review Board determined that there were "reasonable alternatives" that could have been used; thus, it would be very difficult to argue that the application of force was proportionate to the severity of the crime. Moreover, due to the inconsistent testimony provided by the officer and witnesses, it isn't totally clear whether the suspect presented an immediate threat to the safety of the officer or the public.

Based on our review of the facts, our analysis of the three-factor test and the results of the internal investigation, WCIA engaged in early settlement negotiations with the claimant's attorney. The claim was successfully, and reasonably, resolved in a timely manner and the city did not have to divert much-needed resources to defend a needless lawsuit.