

Tab 1	CS/SB 48 by JU, Braynon ; (Similar to CS/CS/H 06515) Relief of Wendy Smith and Dennis Darling, Sr./Florida State University
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
**APPROPRIATIONS SUBCOMMITTEE ON HIGHER
 EDUCATION**
Senator Galvano, Chair
Senator Simmons, Vice Chair

MEETING DATE: Tuesday, April 18, 2017
TIME: 4:00—6:00 p.m.
PLACE: *Pat Thomas Committee Room, 412 Knott Building*

MEMBERS: Senator Galvano, Chair; Senator Simmons, Vice Chair; Senators Bradley, Clemens, Farmer, and Lee

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 48 Judiciary / Braynon (Similar CS/CS/H 6515)	Relief of Wendy Smith and Dennis Darling, Sr./Florida State University; Providing for the relief of Wendy Smith and Dennis Darling, Sr., parents of Devaughn Darling, deceased; providing an appropriation to compensate the parents for the loss of their son, Devaughn Darling, whose death occurred while he was engaged in football preseason training on the Florida State University campus, etc. SM JU 02/21/2017 Fav/CS AHE 04/18/2017 Favorable AP	Favorable Yeas 4 Nays 0

Other Related Meeting Documents



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
2/1/17	SM	Favorable
2/20/17	JU	Fav/CS
04/18/17	AHE	Recommend:Favorable
	AP	

February 1, 2017

The Honorable Joe Negrón
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 48** – Judiciary Committee and Senator Oscar Braynon
HB 6515 – Representative Shevrin D. Jones
Relief of Wendy Smith and Dennis Darling

SPECIAL MASTER'S FINAL REPORT

THIS IS A UNOPPOSED CLAIM BILL BY DENNIS DARLING AND WENDY DARLING, AS REPRESENTATIVES OF THE ESTATE OF THEIR SON, DEVAUGHN DARLING, FOR \$1.8 MILLION, BASED ON A FINAL JUDGMENT SUPPORTED BY A SETTLEMENT AGREEMENT BETWEEN THE DARLINGS AND THE BOARD OF TRUSTEES OF FLORIDA STATE UNIVERSITY (FSU) AS COMPENSATION FOR THE DEATH OF DEVAUGHN WHICH OCCURRED DURING PRESEASON FOOTBALL DRILLS IN 2001.

CURRENT STATUS:

A claim bill for these Claimants was first filed in the 2007 Session, but was withdrawn at the request of Claimants before a hearing was held. A claim bill was filed again in the 2008 Session and a joint Senate/House claim bill hearing was held in 2007.

On February 16, 2009, an administrative law judge from the Division of Administrative Hearings, serving as a Senate Special Master, held a de novo hearing on a previous version of this bill, SB 32 (2008). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported FAVORABLY.

It should be noted that the attached report issued by original Senate Special Master has been corrected to reflect \$1.8 million as the amount of funds due Dennis Darling and Wendy Darling. Additionally, the report indicates that the original Special Master heard SB 26 (2008). However, that bill number is incorrect. The correct bill number is SB 32 (2008).

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Barbara M. Crosier. My responsibilities were to review the records relating to the claim bill, be available for questions from Senators, and determine whether any changes have occurred since the hearing before Judge Canter, which if known at the hearing, might have significantly altered the findings or recommendation in the report.

According to counsel for the parties, there have been no substantial changes in the facts and circumstances for the underlying claim. Accordingly, I find no cause to alter the findings and recommendations of the original report.

For the reasons set forth above the undersigned recommends that Senate Bill 48 (2017) be reported favorably.

Respectfully submitted,

Barbara M .Crosier
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute, in conformity with a recent opinion of the Florida Supreme Court, does not include the limits on costs, lobbying fees, and other similar expenses, which were included in the original bill.



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
02/16/09	SM	Favorable

February 16, 2009

The Honorable Jeff Atwater
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 26 (2008)** Senator Al Lawson
Relief of Dennis Darling and Wendy Darling

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM BY DENNIS DARLING AND WENDY DARLING, AS REPRESENTATIVES OF THE ESTATE OF THEIR SON, DEVAUGHN DARLING, FOR \$1.2 MILLION, BASED ON A FINAL JUDGMENT SUPPORTED BY A SETTLEMENT AGREEMENT BETWEEN THE DARLINGS AND THE BOARD OF TRUSTEES OF FLORIDA STATE UNIVERSITY (FSU) AS COMPENSATION FOR THE DEATH OF DEVAUGHN WHICH OCCURRED DURING PRESEASON FOOTBALL DRILLS IN 2001.

FINDINGS OF FACT:

On February 26, 2001, while participating in "mat drills" in the Moore Athletic Center at Florida State University (FSU), DeVaughn Darling collapsed and died. Two autopsies were performed, but found "no definite morphologic cause of death." The autopsies, however, did find evidence of distended blood vessels "engorged" with sickled blood cells in several organs of his body.

It was determined months before, during DeVaughn's initial physical examination upon entering FSU as a freshman, that he had sickle cell trait. Sickle cell trait is the inheritance of one gene of sickle hemoglobin and one for normal hemoglobin. In contrast, sickle cell anemia is caused by the inheritance of two sickle cell genes and is a much more serious condition with

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many adverse health consequences. In both the trait and the anemia, blood cells can distort (changing from a round shape to a crescent shape) and become less flexible. The cells are then less efficient at transporting oxygen to the muscles and organs of the body. The distortion and inflexibility of the blood cells impairs their ability to pass easily through the smaller blood vessels. The proportion of cells that distort and the degree of their distortion is greater in the case of sickle cell anemia.

Sickle cell trait occurs most commonly in persons of African descent and occurs in approximately 8% of African-Americans. It occurs in persons of other ancestry as well, but much less frequently.

Sickle cell trait is not treatable, but usually does not compromise the health of the individual with the trait. However, sickle cell trait has been linked to the deaths of 13 high school and college football players and a larger number of U.S. Army recruits. In all cases, the deaths occurred during extreme exertion while the individual was training. The sickling of blood cells during extreme exertion is brought on by four forces: (1) deficiency in the concentration of oxygen in arterial blood, (2) increase in body acids, (3) hyperthermia in muscles, and (4) red cell dehydration. It was established before 2001 that sickle cell trait is a factor that, when combined with other stress factors such as high temperature and dehydration, can result in "sickle cell collapse" and death during extreme exertion.

The medical issues related to athletes with sickle cell trait caused the National Collegiate Athletic Association (NCAA) to adopt guidelines regarding athletes with sickle cell trait. The 1998 guidelines contain a statement that, "There is controversy in the medical literature concerning whether sickle cell trait increases the risk of exercise-associated sudden death," but recommended that all athletes (1) avoid dehydration and acclimatize gradually to heat and humidity, (2) condition gradually for several weeks before engaging in exhaustive exercise regimens, and (3) refrain from extreme exertion during acute illness, especially one involving fever.

Mat drills are the name given to the pre-season conditioning drills for FSU football players conducted in February of each

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year. They consist of three different physical activities conducted at separate “stations” which the players rotate through. There is a station which mostly involves running sprints, an “agility station” which involves running through ropes and around cones, and a station which involves drills on a large wrestling mat. The stations are run simultaneously, beginning and ending at same time. The football players are divided into three groups according to their size. As soon as the players in a group finish the drills at one station, they move together to another station. The entire exercise takes about 90 minutes to complete.

FSU football coaches are assigned to a single station for the entire 90-minute period. Trainers are also divided between stations. The coaches and trainers watch the players closely at all times. The coaches grade the players’ performances in the drills, record the grades, and discuss the grades with the players at a meeting of all of the players after all the drills have been completed.

The mat drills had a reputation for being extremely challenging because of the physical exertion required. Devard Darling, Devaughn’s twin brother and also a FSU football player, said the older players teased the freshmen about what they had in store for them when February came around and the mat drills started. The players were awakened at 5:30 a.m. and started the mat drills soon after getting up. Trash cans were set out for the specific purpose of providing receptacles for the players to vomit into.

At the mat drill station, the players formed in groups of four abreast at one end of the mat. There would usually be three or four lines with four players in each line. The seniors and starters formed the first lines; freshmen formed the back lines. At the oral commands or hand signals of the coaches, the players would throw themselves onto the mat on their chests and stomachs, spin quickly to the left and right, jump onto their feet, move laterally, sprint forward to the middle of the mat, run in place, sprint to the end of the mat, run in place, and then sprint forward to a matted wall. The number of times the players performed any single maneuver on the mat and the sequence of maneuvers would vary. For example, the coaches might make the players dive forward onto the mat once or they might make them do it several times. After

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completing the drill, the four players would return to the end of the formation to await their turn to go again.

If a player did not perform a drill correctly, or “fell out” during a mat drill, all four players would be sent back to redo the drill. They redid the drill immediately while the other lines of players waited. Because of the inexperience of the freshmen, they would usually have to do more “go backs” than the other players.

The room where the mat drill took place was relatively small, about by 120 feet by 49 feet. Devard Darling said the room was always hot and muggy. In his statement to a police investigator, the head trainer said Devaughn was taken from the mat room to the training room after he collapsed because the mat room was “very hot.”

The parties disputed whether the players were given reasonable access to water. The head trainer said the players were told to drink water before the mat drills began and there were water fountains in the hallways not far from the mat area. The players, however, said it was impossible to get a drink of water during the drills and nearly impossible to get water in the short time when the players moved to a new station. No “water break” was provided during the 90-minute mat drills. Furthermore, a high-pressure, hurry-up atmosphere was created that discouraged and impeded the players from going for water. I am persuaded by the evidence presented to me that, because of the way in which the mat drills were run, it was difficult for the players to get water, many of the players did not get water, and the players that managed to get water got less than they wanted.

On February 26, 2001, the mat drill was the last station for DeVaughn. Four coaches and seven trainers (including the student trainers) were present. The written statements provided by FSU's coaches and non-student trainers were identical in stating that they saw nothing “out of the ordinary” in DeVaughn's level of fatigue or behavior leading up to his collapse at the conclusion of the mat drill. However, the statements of several players and a couple of the student trainers were quite different. Some players said DeVaughn told them he couldn't see, that they saw him clutching his chest, and that he was having trouble getting up off the mat

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and sometimes could not get up without help from other players. One student trainer said that, instead of diving forward onto the mat like the others, DeVaughn would just fall forward "like a board." Another student trainer said Devaughn would sometimes attempt to stand, but would fall back down.

DeVaughn's line of four players was made to go back more than once and was the last to finish the drill. Some players reported that Devaughn was not able to get into position fast enough to go back with his line and finished the drill by himself. He was the last player to finish the last station.

When DeVaughn finished the mat drill, he fell to his knees with his head resting against the wall. The head trainer and one of the players carried DeVaughn to the edge of the mat. His pulse was irregular and his breathing was shallow and erratic. DeVaughn was then carried downstairs to the training room where he was given oxygen and surrounded with ice packs to reduce his body temperature. Soon thereafter, however, DeVaughn stopped breathing. At that point, the training staff called 911. Policemen arrived first and brought a defibrillator which was used on Devaughn in an attempt to get his pulse going again. When the ambulance arrived, DeVaughn was taken to the hospital where he was pronounced dead.

Beginning in 2002, FSU changed the way it conducted the mat drills. Now, a water break and short rest are provided to the players when they are between stations and an emergency medical crew and ambulance are standing by to render medical assistance to a player if needed.

LITIGATION HISTORY:

Claimants sued FSU in the circuit court for Leon County in 2002. The case was successfully mediated and the parties entered into a Stipulated Settlement Agreement which called for payment to Dennis and Wendy Darling, as representatives of the estate of Devaughn Darling, the sovereign immunity limit of \$200,000 and for FSU to support the passage of a claim bill for an additional \$1.8 Million. The agreement does not contain a denial of liability by FSU. The circuit court entered a Final Judgment approving the settlement agreement on June 28, 2004.

CLAIMANTS' POSITION:

The Department is liable for the negligence of its coaches and trainers for 1) failing to provide DeVaughn access to water, 2)

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failing to provide sufficient rest periods, 3) failing to recognize DeVaughn's physical distress, 4) failing to provide adequate access to emergency medical personnel and a defibrillator, and 5) failing to maintain an adequate emergency plan.

FSU'S POSITION:

- FSU denies liability for negligence, but believes the settlement is fair and reasonable under the circumstances.
- FSU complied with all applicable standards of care.
- DeVaughn exhibited no unusual signs of exhaustion that put any coach or trainer on notice of his critical condition.
- No FSU employee was negligent in failing to provide assistance to DeVaughn.
- DeVaughn had a cold that could have contributed to his physical distress.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether FSU is liable in negligence for the death of DeVaughn Darling and, if so, whether the amount of the claim is reasonable.

FSU had a duty to conduct its football training activities in a manner that did not unreasonably endanger the health of the players beyond the dangers that are inherent in the game of football. FSU breached that duty when its employees, both coaches and trainers, created a situation with the mat drills that was unreasonably dangerous for all players, but especially for a player with sickle cell trait. The situation was unreasonably dangerous because it involved extreme physical exertion in high temperature without reasonable access to water and without adequate opportunity to rest. The situation was more dangerous for players with sickle cell trait because the trait reduces the ability of the blood to transport oxygen and, therefore, increases the risk of exercise-associated sudden death.

DeVaughn's death was foreseeable because FSU knew that DeVaughn had sickle cell trait, knew that sickle cell trait was linked the deaths of football players during preseason training, and was aware of the sports medicine literature and NCAA

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guidelines about extreme exertion, heat, dehydration, and lack of adequate pre-conditioning as factors that contribute to incidents of exercise-associated sudden death.

Furthermore, I am not persuaded by the statements of the coaches and trainers that DeVaughn's fatigue was "not out of the ordinary." No coach or trainer alleged that other players were grasping their chests, falling over "like boards," and unable to stand without help. The evidence shows that DeVaughn was showing signs of more intense physical exhaustion than other players and was probably suffering from sickle cell collapse during the course of the mat drill. However, only his final collapse at the end of the mat drill was considered by the training staff to be significant enough to warrant their intervention and assistance. It was negligent for the coaches and trainers not to intervene and render assistance to DeVaughn earlier than they did. Instead, the coaches worsened his physical distress by making him repeat the drill without a moment to rest or to get water.

The sickling of blood cells in a person with sickle cell trait begins quickly with extreme exertion, but is relieved quickly by rest. Providing water (or sports drinks) and short periods of rest during the mat drills, both of which are provided to players during a football game, is all that was needed to avoid the tragedy of DeVaughn Darling's death.

The amount of the claim is fair and reasonable.

ATTORNEY'S FEES AND LOBBYIST'S FEES:

Claimant's attorneys agree to limit their fees to 25 percent of any amount awarded by the Legislature as required by s. 768.28(8), F.S. They also agree to pay the lobbyist's fee out of the attorney's fees. They have not acknowledged their awareness of the provision of the bill that also requires costs to be included in the 25 percent figure.

LEGISLATIVE HISTORY:

A claim bill for these Claimants was first filed in the 2007 Session, but was withdrawn at the request of Claimants before a hearing was held. A claim bill was filed again in the 2008 Session and a joint Senate/House claim bill hearing was held in 2007.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 34 (2008) be reported FAVORABLY.

SPECIAL MASTER'S FINAL REPORT – SB 26 (2008) Senator Al Lawson

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Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Al Lawson
Counsel of Record

By the Committee on Judiciary; and Senator Braynon

590-01952-17

201748c1

1 A bill to be entitled
 2 An act for the relief of Wendy Smith and Dennis
 3 Darling, Sr., parents of Devaughn Darling, deceased;
 4 providing an appropriation to compensate the parents
 5 for the loss of their son, Devaughn Darling, whose
 6 death occurred while he was engaged in football
 7 preseason training on the Florida State University
 8 campus; providing a limitation on the payment of
 9 attorney fees; providing an effective date.

10

11 WHEREAS, on February 21, 2001, Devaughn Darling, the son of
 12 Wendy Smith and Dennis Darling, Sr., collapsed and died while
 13 participating in preseason training in preparation for the
 14 upcoming football season at Florida State University, and

15 WHEREAS, after litigation had ensued and during mediation,
 16 the parents of Devaughn Darling and Florida State University
 17 agreed to compromise and settle all of the disputed claims
 18 rather than continue with litigation and its attendant
 19 uncertainties, and

20 WHEREAS, the parties resolved, compromised, and settled all
 21 claims by a stipulated settlement agreement providing for the
 22 entry of a consent final judgment against Florida State
 23 University in the amount of \$2 million, of which the Division of
 24 Risk Management of the Department of Financial Services has paid
 25 the statutory limit of \$200,000 pursuant to s. 768.28, Florida
 26 Statutes, and

27 WHEREAS, as provided by the settlement agreement, Florida
 28 State University has agreed to support the passage of a claim
 29 bill for the remaining unpaid portion of the consent judgment,

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

590-01952-17

201748c1

30 \$1.8 million, NOW, THEREFORE,
 31
 32 Be It Enacted by the Legislature of the State of Florida:

33

34 Section 1. The facts stated in the preamble to this act are
 35 found and declared to be true.

36 Section 2. Florida State University is authorized and
 37 directed to appropriate from funds of the university not
 38 otherwise appropriated to draw a warrant in the amount of \$1.8
 39 million, to be paid to Wendy Smith and Dennis Darling, Sr.,
 40 parents of decedent Devaughn Darling, as relief for their
 41 losses.

42 Section 3. The amount paid by the Division of Risk
 43 Management of the Department of Financial Services pursuant to
 44 s. 768.28, Florida Statutes, and the amount awarded under this
 45 act are intended to provide the sole compensation for all
 46 present and future claims arising out of the factual situation
 47 described in the preamble to this act which resulted in the
 48 death of Devaughn Darling. The total amount paid for attorney
 49 fees relating to this claim may not exceed 25 percent of the
 50 amount awarded under this act.

51 Section 4. This act shall take effect upon becoming a law.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/18/17

Meeting Date

48

Bill Number (if applicable)

Topic Relief of Wendy Smith & Dennis Darling

Amendment Barcode (if applicable)

Name Karen Skyers

Job Title Attorney

Address 204 S. Monroe Ste 203

Street

Phone 813-304-9463

TUH

FL

32301

City

State

Zip

Email Kskyersab@legal.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Wendy Smith & Dennis Darling

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

CourtSmart Tag Report

Room: KN 412

Case No.:

Type:

Caption: Senate Appropriations Subcommittee on Higher Education

Judge:

Started: 4/18/2017 4:08:55 PM

Ends: 4/18/2017 4:12:08 PM

Length: 00:03:14

4:08:53 PM Call to Order Sen. Galvano
4:09:01 PM Roll Call
4:09:12 PM Quorum Present
4:09:17 PM TAB 1- CS/SB 48 Relief of Wendy Smith and Dennis Darling, Sr./Florida State University
4:10:23 PM Introduced by Sen. Braynon
4:10:51 PM Karen Skyers, Attorney- waives in support
4:11:02 PM Sen. Farmer
4:11:21 PM Sen. Braynon waives close
4:11:28 PM Roll Call on CS/SB 48
4:11:34 PM CS/SB 48 favorably
4:11:53 PM Sen. Bradley motion to adjourn
4:11:54 PM Meeting Adjourned



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Appropriations Subcommittee on Higher
Education
Appropriations Subcommittee on Pre-K - 12
Education
Education
Ethics and Elections
Rules

SENATOR TOM LEE
20th District

April 18th, 2017

The Honorable Bill Galvano, Chair
The Florida Senate
404 South Monroe Street
201 Capitol Tallahassee, FL 32399

Dear Senator Galvano:

I respectfully request to be excused from today's meeting of the Appropriations Subcommittee on Higher Education.

Sincerely,

A handwritten signature in blue ink that reads "Tom Lee".

Tom Lee
Florida State Senator
20th District

REPLY TO:

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Pre-K - 12
Education, *Chair*
Appropriations Subcommittee on Higher
Education, *Vice Chair*
Appropriations
Community Affairs
Education
Environmental Preservation and Conservation

SENATOR DAVID SIMMONS
9th District

MEMORANDUM

To: Chair Bill Galvano
From: Senator Simmons
Subject: Absence from Committee Meeting
Date: April 18, 2017

Chair Galvano,

I would like to be excused from the Appropriations Subcommittee on Higher Education committee meeting as I was presenting CS/SB 28: Relief of J.D.S. by the Agency for Persons with Disabilities and SB 1050: Memory Disorder Clinics in the Appropriations Subcommittee on Health and Human Services committee meeting.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "David Simmons", with a stylized flourish at the end.

David Simmons

REPLY TO:

- 220 Crown Oak Centre Drive, Longwood, FL 32750 (407) 262-7578
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore