Tab 1	**SB 334** by **Steube**; (Similar to H 0469) Prejudgment Interest					
~~613288~~	D	S	WD	JU, Mayfield	Delete everything after	02/22 08:09 AM
841034	A	S	RCS	JU, Steube	Delete L.22 - 37:	02/22 08:09 AM
Tab 2	**SB 18** by **Flores**; (Similar to H 6523) Relief of "Survivor" and the Estate of "Victim" by the Department of Children and Families					
700702	A	S	RCS	JU, Flores	Delete L.169 - 170:	02/22 08:09 AM
Tab 3	**SB 28** by **Simmons**; (Identical to H 6501) Relief of J.D.S. by the Agency for Persons with Disabilities					
285348	A	S	RCS	JU, Simmons	Delete L.90 - 91:	02/22 08:09 AM
Tab 4	**SB 32** by **Gibson (CO-INTRODUCERS) Bracy**; Relief of the Estate of Danielle Maudsley by the Department of Highway Safety and Motor Vehicles					
304608	A	S	RCS	JU, Gibson	Delete L.74 - 75:	02/22 08:09 AM
Tab 5	**SB 50** by **Gibson (CO-INTRODUCERS) Bracy**; Relief of Eddie Weekley and Charlotte Williams by the Agency for Persons with Disabilities					
467848	A	S	RCS	JU, Gibson	Delete L.58:	02/22 08:09 AM
206056	A	S	RCS	JU, Gibson	Delete L.64 - 67:	02/22 08:09 AM
Tab 6	**SB 48** by **Braynon**; (Identical to H 6515) Relief of Wendy Smith and Dennis Darling, Sr., by the State of Florida					
652162	A	S	RCS	JU, Braynon	Delete L.37 - 52:	02/22 08:09 AM
Tab 7	**SB 38** by **Benacquisto**; (Identical to H 6511) Relief of L.T. by the State of Florida					
479976	A	S	RCS	JU, Benacquisto	Delete L.153 - 155:	02/22 08:09 AM
Tab 8	**SB 36** by **Montford**; Relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office					
766374	A	S	RCS	JU, Montford	Delete L.107:	02/22 08:09 AM
Tab 9	**SB 42** by **Montford**; (Identical to H 6507) Relief of Angela Sanford by Leon County					
629338	A	S	RCS	JU, Montford	Delete L.81 - 82:	02/22 03:04 PM
Tab 10	**SB 416** by **Montford (CO-INTRODUCERS) Book**; (Similar to CS/CS/H 0151) Use of Animals in Proceedings Involving Minors					
191518	D	S	RCS	JU, Montford	Delete everything after	02/22 08:09 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Steube, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Tuesday, February 21, 2017
TIME: 3:30—6:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Steube, Chair; Senator Benacquisto, Vice Chair; Senators Bracy, Flores, Garcia, Gibson, Mayfield, Powell, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 334** Steube (Similar H 469)	Prejudgment Interest; Requiring a court to include interest in a final judgment in an action from which a plaintiff recovers economic or noneconomic damages; requiring a court to include interest on attorney fees and costs in the final judgment, if recovered, etc. JU 02/21/2017 Fav/CS RC	Fav/CS Yeas 6 Nays 2
2	**SB 18** Flores (Similar H 6523)	Relief of "Survivor" and the Estate of "Victim" by the Department of Children and Families ; Providing for the relief of “Survivor” and the Estate of “Victim”; providing an appropriation to compensate Survivor and the Estate of Victim for injuries and damages sustained as result of the negligence of the Department of Children and Families, formerly known as the Department of Children and Family Services, etc. SM JU 02/21/2017 Fav/CS AHS AP	Fav/CS Yeas 8 Nays 0
3	**SB 28** Simmons (Identical H 6501)	Relief of J.D.S. by the Agency for Persons with Disabilities; Providing for the relief of J.D.S.; providing an appropriation from the General Revenue Fund to compensate J.D.S. for injuries and damages sustained as a result of the negligence of the Agency for Persons with Disabilities, as successor agency of the Department of Children and Family Services; providing that certain payments and the appropriation satisfy all present and future claims related to the negligent act, etc. SM JU 02/21/2017 Fav/CS AHS AP	Fav/CS Yeas 8 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 32** Gibson	Relief of the Estate of Danielle Maudsley by the Department of Highway Safety and Motor Vehicles; Providing for the relief of the Estate of Danielle Maudsley; providing an appropriation to compensate the Estate of Danielle Maudsley for Ms. Maudsley's death, sustained as a result of the alleged negligence of Trooper Daniel Cole and the Florida Highway Patrol, a division of the Department of Highway Safety and Motor Vehicles; providing that certain payments and the appropriation satisfy all present and future claims related to the alleged acts, etc. SM JU 02/21/2017 Fav/CS ATD AP	Fav/CS Yeas 8 Nays 0
5	**SB 50** Gibson	Relief of Eddie Weekley and Charlotte Williams by the Agency for Persons with Disabilities; Providing for the relief of Eddie Weekley and Charlotte Williams, individually and as co-personal representatives of the Estate of Franklin Weekley, their deceased son, for the disappearance and death of their son while he was in the care of the Marianna Sunland Center, currently operated by the Agency for Persons with Disabilities; providing an appropriation to compensate them for the disappearance and death of Franklin Weekley, which were due to the negligence of the Department of Children and Families, etc. SM JU 02/21/2017 Fav/CS AHS AP	Fav/CS Yeas 8 Nays 0
6	**SB 48** Braynon (Identical H 6515)	Relief of Wendy Smith and Dennis Darling, Sr., by the State of Florida; Providing for the relief of Wendy Smith and Dennis Darling, Sr., parents of Devaughn Darling, deceased; providing an appropriation from the General Revenue Fund 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 AP	Fav/CS Yeas 8 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 38** Benacquisto (Identical H 6511)	Relief of L.T. by the State of Florida; Providing for the relief of L.T.; providing an appropriation to compensate L.T. for injuries and damages sustained as a result of the negligence of employees of the Department of Children and Families, formerly known as the Department of Children and Family Services, etc. SM JU 02/21/2017 Fav/CS AHS AP	Fav/CS Yeas 8 Nays 0
8	**SB 36** Montford	Relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office; Providing for the relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office; providing for an appropriation to compensate her for injuries and damages sustained as a result of the negligence of an employee of the Pasco County Sheriff's Office, etc. SM JU 02/21/2017 Fav/CS CA RC	Fav/CS Yeas 8 Nays 0
9	**SB 42** Montford (Identical H 6507)	Relief of Angela Sanford by Leon County; Providing for the relief of Angela Sanford by Leon County; providing for an appropriation to compensate her for injuries and damages sustained as a result of the negligence of an employee of Leon County, etc. SM JU 02/21/2017 Fav/CS CA RC	Fav/CS Yeas 8 Nays 0
10	**SB 416** Montford (Similar CS/CS/H 151)	Use of Animals in Proceedings Involving Minors; Specifying that the court may allow the use of service animals, therapy animals, or facility dogs in certain proceedings; allowing certain animals to be used when taking the testimony of a person who has an intellectual disability; removing the requirement that certain service or therapy animals must be registered, etc. JU 02/21/2017 Fav/CS CJ RC	Fav/CS Yeas 8 Nays 0
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 334
INTRODUCER:	Judiciary Committee and Senator Steube
SUBJECT:	Prejudgment Interest
DATE:	February 21, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Fav/CS**
2.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 334 expands the causes of action for which a prevailing plaintiff may recover prejudgment interest. Under current law, a person generally may not recover prejudgment interest on damages in personal injury and wrongful death actions. Under the bill, a court must include prejudgment interest in a final judgment awarding damages in any civil action, including personal injury and wrongful death claims. As a result, the bill applies prejudgment interest to damage awards for items such as medical bills, loss of past wages, funeral expenses, physical pain and suffering, mental anguish, and the loss of enjoyment of life.

Interest accrues on economic damages from the date of the loss of the economic benefit. Similarly, if noneconomic damages are awarded, the court must include prejudgment interest on each component of damages from the date that a defendant receives notice of a claim from a plaintiff.

If a plaintiff recovers attorney fees or costs, the court must include prejudgment interest in the final judgment. The interest begins to accrue on the date the entitlement to attorney fees is fixed through an agreement, an arbitration award, or when the court makes that determination.

The rate of interest that applies to awards of prejudgment interest is the rate set by the Chief Financial Officer pursuant to statute. The rate is currently 4.97 percent per annum.

This bill does not affect or interfere with the accrual of prejudgment interest to the extent that it is currently authorized by statue or common law.

II. Present Situation:

Civil justice is guided by the principle that an injured person should be compensated and restored to the same position that he or she was in before the injury occurred. This compensation is awarded to a plaintiff in the form of damages. Over the centuries, several forms of damages have evolved with varying degrees of acceptance. Prejudgment interest is one form of damages that was once rejected in most American jurisdictions but has now gained acceptance in a growing number of states.[1,2]

Prejudgment Interest

Prejudgment interest is the interest on a judgment which is calculated from the date of the injury or loss until a final judgment is entered for the plaintiff. In contrast, post-judgment interest is interest on a judgment which is calculated from the date of the final judgment until the plaintiff collects the award from the defendant. Prejudgment interest is an additional award that compensates a plaintiff for the loss of the use of his or her money from the time the claim accrues until the final judgment.[3] Post-judgment interest is designed to encourage the prompt payment of damages and to compensate for the inability to use the award while an unsuccessful appeal is resolved.

Under English common law, prejudgment interest was permitted for claims that were "liquidated" but not for claims that were "unliquidated." A liquidated claim is a claim for an amount that can be determined or measured back to a fixed point in time. It is not speculative or intangible. An unliquidated claim, in contrast, is one that is based on intangible factors and is generally disputed until a jury determines the amount. In personal injury law, examples of unliquidated damages include damages for pain and suffering, mental anguish, loss of enjoyment of life, and permanent injury.

In assessing prejudgment interest, a claim becomes liquidated when a verdict has the effect of fixing damages as of a prior date.[4]

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[1] Historically, many religious groups believed that charging interest was immoral and a form of usury prohibited by religious law. Therefore, interest was awarded sparingly and in a limited number of cases, but only at the discretion of the jury. By the 1800s, this prohibition began to recede and American courts awarded interest on a small group of claims, but only when the amount of the claim was certain and when it was payable on a specific date. See Aric Jarrett, *Comment: Full Compensation, Not Overcompensation: Rethinking Prejudgment Interest Offsets in Washington*, 30 SEATTLE U. L. REV. 703, 707 (Spring, 2007).

[2] Email from Heather Morton, Program Principal, National Conference of State Legislatures (Feb. 9, 2017) (on file with the Senate Committee on Judiciary) and Florida Justice Association, *Prejudgment Interest in Tort Cases, A Question of Fairness and Efficacy*, 12 (Feb. 2017) (on file with the Senate Committee on Judiciary). The reports are not in complete agreement, perhaps because different research methodologies or search terms were employed. Both surveys agreed that Alabama, Arizona, Arkansas, Florida, and Kansas do not currently have statutes permitting prejudgment interest. The surveys agreed on some specific states that do allow prejudgment interest. Beyond that point, the surveys often disagreed as to which additional states do not permit prejudgment interest. Perhaps some states do not explicitly provide for pre-judgment interest by statute but may permit limited forms of pre-judgment interest awards through case law.

[3] 44B AM. JUR. 2D INTEREST AND USURY s. 39 (2016).

[4] *Argonaut Insurance Company, et al., v. May Plumbing Company, et al.,* 474 So. 2d 212 (Fla. 1985).

Florida law generally prohibits the award of prejudgment interest for plaintiffs in personal injury[5] and wrongful death claims, but does allow it in some tort areas.[6] The theory for denying prejudgment interest is that damages in personal injury cases are too speculative to liquidate before a final judgment is rendered. An exception to that rule occurs when a plaintiff can establish that he or she suffered the loss of a vested property right, such as a negligently destroyed building.[7] Prejudgment interest has historically been allowed in this state for actions based on contract and the interest accrues from the date the debt is due.[8]

Two theories of prejudgment interest have developed over time. Under the "loss theory," prejudgment interest is not awarded to penalize the losing party but to compensate the claimant for losing the use of the money between the date he or she was entitled to it and the date of the judgment.[9] The Florida Supreme Court follows this theory wherein the loss, itself, is the wrongful deprivation. The second theory, which is not followed in Florida, is the "penalty theory" where prejudgment interest is awarded to penalize the defendant.[10]

Proponents who seek prejudgment interest assert that it promotes fairness by allowing a plaintiff to be fully compensated for his or her injury, including the time span that litigation took place, particularly if the litigation is protracted. Opponents assert that prejudgment interest provides over-compensation and encourages premature settlements.

Economic Damages

Economic damages are damages that can be computed from records or documents. They generally include past and future medical bills, loss of past wages and future earning capacity, funeral expenses, and damage to someone's personal or real property.[11]

Noneconomic Damages

Non-economic damages are the subjective intangible items that cannot be measured with certainty. Those items generally include physical pain and suffering, mental anguish, and the loss of enjoyment of life. Unlike economic damages, which are defined in chapter 768, pertaining to negligence, noneconomic damages are not defined there.[12]

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[5] *Parker v. Brinson Construction Company and Florida Industrial Commission*, 78 So. 2d 873 (Fla. 1955).
[6] *Alvarado v. Rice*, 614 So. 2d 498, 500 (Fla. 1993). The Court held that a claimant in a personal injury action is entitled to prejudgment interest on past medical expenses when a trial court finds that the claimant had made actual, out-of-pocket payments on the medical bills at a date before the entry of judgment.
[7] *Amerace Corporation v. Stallings,* 823 So. 2d 110 (Fla. 2002).
[8] *Lumbermens Mut. Casualty Co. v. Percefull*, 653 So. 2d 389 (Fla. 1995).
[9] *Kearney v. Kearney*, 129 So. 3d 381, 391 (Fla. 1st DCA 2013) rehearing denied January 17, 2014.
[10] *Bosem v. Musa Holdings, Inc.* 46 So. 3d 42, 45 (Fla. 2010).
[11] See s. 768.81(1)(b), F.S., for a more detailed list of economic damages.
[12] Noneconomic damages are defined in ch. 766, Medical Malpractice and Related Matters, as "nonfinancial losses that would not have occurred but for the injury giving rise to the cause of action, including pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and other nonfinancial losses to the extent the claimant is entitled to recover such damages under general law, ..." Section 766.202, F.S.

Attorney Fees

The Florida Bar regulates fees that an attorney may charge and collect.[13] In addition to setting out factors that should be considered when determining what a reasonable fee is, the bar's Rules of Professional Conduct also establish the particulars that must be contained in a contingency fee agreement as well as the percentages that may be charged. Contingency fee agreements are generally used in personal injury cases. If the plaintiff prevails, the plaintiff's attorney receives a predetermined percentage of the fees plus litigation costs, but if the plaintiff loses, the attorney does not recover fees and costs.

Costs

If a plaintiff prevails in an action, he or she is entitled to recover some of the costs involved in the litigation. Pursuant to the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions, the burden of proof is on the moving party to show that all requested costs were reasonably necessary either to defend or prosecute the case when the action was taken. The guidelines are advisory only, and the taxation of costs decision is within the broad discretion of the court.[14]

III. Effect of Proposed Changes:

The bill significantly expands the causes of actions for which a prevailing plaintiff may recover prejudgment interest. Current law generally prohibits the award of prejudgment interest for damages in personal injury and wrongful death claims. This bill permits the recovery of prejudgment interest for damages in any civil action, including personal injury and wrongful death claims. This bill also permits a prevailing plaintiff to recover prejudgment interest for economic or noneconomic damages, attorney fees, or costs and a court is required to include the amount of interest in the final judgment.

Interest for Economic and Noneconomic Damages

The bill requires a court, in its final order in which a plaintiff recovers economic or noneconomic damages, to include prejudgment interest on each component of damages. When awarding interest for economic damages, the interest accrues from the date of the loss of the economic benefit. When awarding interest for noneconomic damages, the interest accrues from the date the defendant received notice of a claim from the plaintiff.

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[13] Rules Regulating the Florida Bar, Rules of Professional Conduct, Rule 4-1.5.

[14] Fla. R. Civ. P. Taxation of Costs. The costs that should be taxed generally include costs associated with certain depositions, documents and exhibits, expert witnesses, witnesses, court reporting costs other than for depositions, and reasonable charges incurred for requiring special magistrates, guardians ad litem, and attorneys ad litem. Litigation costs that may be taxed as costs include mediation fees and expenses, reasonable travel expenses, and electronic discovery expenses. Litigation costs that should not be taxed as costs include the cost of long distance telephone calls with witnesses, any expenses relating to consulting but non-testifying experts, cost incurred in connection with any matter which was not reasonably calculated to lead to the discovery of admissible evidence, the travel time of attorneys and experts, travel expenses of attorneys, and the cost of privilege review of documents, including electronically stored information. See the guidelines for more specific criteria, available at https://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/$FILE/Civil.pdf at 347-349.

Interest on Attorney Fees or Costs

When a plaintiff recovers attorney fees or costs, the court must also include the interest on the fees or costs in its final judgment. The interest begins to accrue on the date the entitlement to attorney fees is fixed through an agreement, an arbitration award, or when the court makes that determination.[15]

The applicable rate of interest is established by the Chief Financial Officer pursuant to s. 55.03, F.S. The Chief Financial Officer is required to establish the rate of interest payable on judgments or decrees each quarter using a formula prescribed in statute. The Chief Financial Officer is then responsible for communicating that interest rate to the clerk of courts and chief judge of each judicial circuit for the upcoming quarter. The current interest rate is 4.97 percent.[16]

The bill has no retroactive application and only applies to causes of action that accrue on or after July 1, 2017. However, the bill does not affect the accrual of prejudgment interest to the extent that it is currently authorized by statute or common law.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Plaintiffs who are successful in their claims and entitled to prejudgment interest will benefit financially from this bill by awards of receive prejudgment interest. Defendants may have an incentive to settle lawsuits to avoid the accrual of prejudgment interest.

[15] From a practical standpoint, if a plaintiff had numerous medical visits at various facilities that stretched over an extended period of time, the process for calculating those expenses and varying interest rates could become complicated and lengthy.
[16] Division of Accounting and Auditing, Office of the Chief Financial Officer, *Judgment on Interest Rates*, http://www.myfloridacfo.com/division/AA/Vendors/ (Last visited Feb. 6, 2017).

C. Government Sector Impact:

The Office of the State Courts Administrator has not yet provided a Judicial Impact Statement for SB 334. However, in an analysis of a similar bill from 2015, the Office of the State Courts Administrator noted that the fiscal impact of the legislation could not be accurately determined due to the unavailability of data needed to establish the effects on judicial time and workload resulting from the bill's provisions.[17] However, it appears unlikely that the bill will result in significant workload to the court system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 55.035, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on February 21, 2017:
The committee substitute differs from the underlying bill in the following ways:

- Prejudgment interest for noneconomic damages accrues from the date that the defendant receives notice of a claim by the plaintiff.
- Prejudgment interest on attorney fees or costs begins to accrue on the date of the entitlement of the award which is fixed through an agreement, arbitration award, or court determination.
- Language is deleted which states that interest may not accrue on prejudgment interest that was awarded in the final judgment.
- Language is added to clarify that the bill does not affect prejudgment interest to the extent that it is currently authorized by statute or common law.
- The bill has no retroactive application, and only applies to causes of action that accrue on or after July 1, 2017.

B. Amendments:

None.

[17] Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 794* (March 31, 2015) (on file with the Senate Committee on Judiciary).

613288

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/22/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Mayfield) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 55.035, Florida Statutes, is created to read:

55.035 Prejudgment interest.—

(1) In any action in which a plaintiff recovers economic damages, the court shall include interest on each component of economic damages in the final judgment.

(a) For economic damages, interest accrues from the date of

613288

the loss of an economic benefit to the plaintiff.

(b) Interest can only accrue on the actual amount of economic loss of the plaintiff.

(2) The rate of interest applicable to this section is the rate established pursuant to s. 55.03. Interest may not accrue on the prejudgment interest awarded in the final judgment.

(3) For any action to which prejudgment interest applies which is pending on July 1, 2017, or commenced thereafter, the court shall provide interest in accordance with this section, with such interest accruing from no earlier than July 1, 2017, regardless of the date when losses were incurred, the claim was made, or attorney fees or costs were paid.

Section 2. This act shall take effect July 1, 2017.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to prejudgment interest; creating s. 55.035, F.S.; requiring a court to include interest in a final judgment in any action in which a plaintiff recovers economic damages; specifying the date from which interest accrues; specifying the applicable interest rate; providing for applicability; providing an effective date.

841034

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Steube) recommended the following:

Senate Amendment

Delete lines 22 - 37
and insert:
(b) For noneconomic damages, interest accrues from the date the defendant received notice of a claim from the plaintiff.
(2) If the plaintiff recovers attorney fees or costs, the court shall include in the final judgment interest on such fees or costs beginning on the date the entitlement to attorney fees is fixed through agreement, arbitration award, or court determination.

(3) The rate of interest applicable to this section is the rate established pursuant to s. 55.03.

Section 2. This act does not affect the accrual of prejudgment interest before the effective date if otherwise authorized by statute or common law.

Section 3. This act shall take effect July 1, 2017 and shall apply to causes of action that accrue on or after that date.

By Senator Steube

23-00476B-17 2017334__

A bill to be entitled

An act relating to prejudgment interest; creating s. 55.035, F.S.; requiring a court to include interest in a final judgment in an action from which a plaintiff recovers economic or noneconomic damages; specifying the dates from which interest accrues; requiring a court to include interest on attorney fees and costs in the final judgment, if recovered; specifying the rate at which interest accrues; providing for applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 55.035, Florida Statutes, is created to read:

55.035 Prejudgment interest.—

(1) In any action in which a plaintiff recovers economic or noneconomic damages, the court shall include interest on each component of damages in the final judgment.

(a) For economic damages, interest accrues from the date of the loss of an economic benefit to the plaintiff.

(b) For noneconomic damages, interest accrues from the date of the claim made by the plaintiff.

(2) If the plaintiff recovers attorney fees or costs, the court shall include in the final judgment interest on such fees or costs beginning on the first day of the month immediately following the month in which fees or costs were paid.

(3) The rate of interest applicable to this section is the rate established pursuant to s. 55.03. Interest may not accrue on the prejudgment interest awarded in the final judgment.

(4) For any action to which prejudgment interest applies which is pending on July 1, 2017, or commenced thereafter, the

23-00476B-17 2017334__

court shall provide interest in accordance with this section, with such interest accruing from no earlier than July 1, 2017, regardless of the date when losses were incurred, the claim was made, or attorney fees or costs were paid.

Section 2. This act shall take effect July 1, 2017.

Tab 1

THE FLORIDA SENATE

APPEARANCE RECORD

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

02.21.17
Meeting Date

334
Bill Number (if applicable)

841034
Amendment Barcode (if applicable)

Topic Prejudgment Interest

Name Tom Dukes

Job Title

Address 108 East Central Blvd
Street

Phone 407-423-8571

Orlando FL 32801
City *State* *Zip*

Email tdukes@mmdorl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Justice Reform Institute

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21/17
Meeting Date

334
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic PRE-JUDGMENT

Name GEORGE MERDS

Job Title ATTY

Address 301 S. BRONOUGH
Street

TALLA FL
City *State* *Zip*

Phone 577-4090

Email GEORGE.MERDS@GRAY-ROBINSON.COM

Speaking: ☐ For ☑ Against ☐ Information

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

Representing U.S. CHAMBER

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-21-17
Meeting Date

SB 334
Bill Number (if applicable)

Topic Pre-Judgement Interest

Amendment Barcode (if applicable)

Name Gary Guzzo

Job Title

Address 108 S. Monroe St
Street

Tallahassee
City *State* *Zip*

Phone

Email ggguzzo@flapertner.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Insurance Council, CNA, AIG, Liberty Mutual

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

On the bill

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

2/21/17
Meeting Date

334
Bill Number (if applicable)

Topic Prejudgment Interest

N/A
Amendment Barcode (if applicable)

Name MICHAEL W. CARLSON

Job Title President

Address 215 S. Monroe Ste. 835
Street

Phone 650 577 7425

Tallahassee FL 32301
City *State* *Zip*

Email Michael.Carlson@pifflaw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing PERSONAL INSURANCE FEDERATION OF FLA.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21/17
Meeting Date

SB 334
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

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

Representing American Insurance Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-21-17
Meeting Date

334
Bill Number (if applicable)

Topic Prejudgement interest

Amendment Barcode (if applicable)

Name James Harold Thompson

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Speaking: ☐ For ☒ Against ☐ Information

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

Representing CSX Transportation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

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2/21/17
Meeting Date

SB 334
Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

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

Representing National Association of Mutual Insurance Companies

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

02.21.17
Meeting Date

334
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Prejudgment Interest

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Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21/17
Meeting Date

334
Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

Name Samantha Padgett

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Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Feb 21 2019
Meeting Date

334
Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

Name Katie Webb

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Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Property + Casualty Assoc. of America

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/21/17
Meeting Date

334
Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

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Speaking: ☐ For ☒ Against ☐ Information

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

Representing National Federation of Independent Business

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21/2017
Meeting Date

SB 334
Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-21
Meeting Date

SB 334
Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

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

Representing Florida Justice Association

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] 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.

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S-001 (10/14/14)

Tab 1

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21
Meeting Date

SB 334
Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

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
1/2/17	SM	**Favorable**
2/22/17	JU	**Fav/CS**
	AHS	
	AP	

January 2, 2017

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

Re: **CS/SB 18** – Judiciary Committee and Senator Anitere Flores
Relief of "Survivor" and the Estate of "Victim"

SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLED CLAIM FOR $3.75 MILLION AGAINST THE DEPARTMENT OF CHILDREN AND FAMILIES, WHICH AROSE FROM TWO LAWSUITS AGAINST THE DEPARTMENT, ITS EMPLOYEES, AND OTHER DEFENDANTS. THESE LAWSUITS ALLEGED THAT THE NEGLIGENCE OF AND CIVIL RIGHTS VIOLATIONS BY THE DEPARTMENT, ITS EMPLOYEES, AND OTHER DEFENDANTS RESULTED IN THE SEVERE ABUSE AND NEGLECT OF SURVIVOR AND VICTIM AND THE DEATH OF VICTIM.

INTRODUCTION:

On February 14, 2011, Survivor and Victim were found in a pest control truck owned by their adoptive father, Jorge Barahona, along the side of I-95 in Palm Beach County. Victim was dead, and Survivor was severely injured and covered in chemicals. The adoptive parents, Jorge and Carmen Barahona, tortured the children in numerous ways, likely since gaining custody of them in 2004.

For their conduct, the Barahonas are facing charges for first degree murder and aggravated child abuse. The purpose of this special master report is to determine whether the Department of Children and Families is also a legal cause of the abuse and neglect of the children.

The evidence on which the recommendation in this report is based was controlled by the claimants and consisted primarily of large volume of documents or records created by the department and its contractors and subcontractors and provided by the claimants. However, in some respects, the evidence available for the special master proceeding was limited because the underlying lawsuits settled before trial and discovery.[1] Had a trial or discovery occurred, transcripts of testimony made under oath by parties and eyewitnesses would have been available during the special master proceeding.[2] Additionally, because of the settlement, the department did not present any mitigating evidence during the special master proceeding or object to evidence presented by the claimants.

As a result of the limited evidence, the extent to which or the specific point in time the actions or omissions of the department and its employees became a legal cause of the abuse and neglect of Survivor and Victim cannot be determined. Similarly, the claimants made no effort and felt no obligation to present evidence showing the relative fault of the department and other defendants. Nevertheless, there is sufficient evidence to show that a jury likely would have found that failures by the department to uncover abuse were a legal cause of prolonging the suffering of Survivor and Victim and of Victim's death.

FINDINGS OF FACT:

The Findings of Fact are organized into three main components. The first component provides a chronological description of the department's interaction with Survivor and Victim. The second component describes other specific types of evidence or descriptions of specific events which was made available during the special master proceeding. The last

[1] The lack of traditional evidence complicates a special master's responsibility to independently determine liability.

> Because governmental agencies occasionally settle cases against them for reasons not directly related to the merits of the claim, consent-based judgments are scrutinized carefully by the special master, by the legislative committees, and by both houses of the legislature, to ensure that independently developed facts exist to support the judgment and to justify the award.

D. Stephen Kahn, former General Counsel for the Florida Senate, *Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy,* FLA. B.J., Apr. 1988, at 27.

[2] Despite the settlement with the department, the claimants could have taken depositions of the relevant department employees under Senate Rule 4.81, which allows discovery consistent with the Florida Rules of Civil Procedure.

component is a summation of the evidence including reasonable inferences from the evidence.

I. Chronological Events

A. Initial Involvement with the Department, 2000

In May 2000, Survivor and Victim, a brother and sister who were twins, were born. From a few days after their birth until Victim was found dead in February 2000, the department was very involved in their lives. The department's first contact with the newborn children occurred because of their biological mother's substance abuse and Victim's medical condition.[3] In March 2002, before Survivor and Victim turned 2 years old, their biological mother was arrested for domestic violence.[4]

In August 2003, when the children were 3 years old, the biological mother's rights were terminated.[5] A few months later in March 2004, the children were removed from their father by the department after he was charged with sexual battery against a minor not related to him.[6]

B. Placement with the Barahonas, 2004

The department then placed Survivor and Victim in the foster home of Jorge and Carmen Barahona. Two other children that the Barahonas fostered and adopted also resided in the Barahona home at the time.[7] There was no evidence presented during the special master proceeding that the Barahonas had mistreated their other children or were not qualified to foster additional children.

Within days after Survivor and Victim were placed with the Barahonas, the children's uncle in Texas sent a letter to the judge assigned to the case and department staff which expressed his and his wife's desire to obtain custody of Survivor and Victim. The letter stated in part:

We are eager to get the legal custody of those kids, and will like to know what we need to do to be able to do so. We are planning to fly to Miami next Tuesday or Wednesday to follow the necessary legal steps to gain custody of those kids. The letter further expressed the willingness of the aunt and uncle

[3] Department of Children and Families, *The Barahona Case: Findings and Recommendations* 2 (Mar. 14, 2011).
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] These two other children have filed separate lawsuits against the department and its employees.

to take full responsibility for the financial needs of the children during the adoption process.

As a prerequisite to placing the children with their relatives in Texas, a home study for the suitability of the placement was necessary. Notes from the children's guardian ad litem show that the department expected the home study would take 3 months.[8] However, the home study was not completed for about 15 months.[9] No explanation for the lengthier time period for the Texas home study was provided during the special master proceeding.[10] Accordingly, what the department or others did or did not do with respect to the home study is unknown.

Evidence, however, showed that the lengthy time period for the completion of the Texas home study, at least in part, caused Survivor and Victim to remain with the Barahonas. After a year and a half with the Barahonas, for example, a psychological evaluation of the children by Dr. Vanessa Archer, concluded that Survivor and Victim had bonded with the Barahonas and that sending them to Texas would be "devastatingly detrimental."[11, 12] The evidence presented by the claimants during the special master proceeding did not disclose whether the department or someone else selected Dr. Archer for the multiple psychological evaluations assigned to her.

C. Medical Neglect, 2004

During the hearing, the claimants presented evidence that in December 2004, the department became aware of allegations that the Barahonas were neglecting Victim's medical needs. The evidence was in the form of notes recorded by the Center

[8] Notes of Paul Neumann, guardian ad litem (May 18, 2004) (Bates 4764).
[9] The Department of Children and Families, *The Barahona Case: Findings and Recommendations*, 2 (Mar. 14, 2011).
[10] The third amended complaint in the underlying federal lawsuit alleged that the delay in the completion of the home study was caused by inexcusable delays in processing the relevant paperwork by the department and other defendants including Our Kids and the Center for Family and Child Enrichment. See Third Amended Complaint, paragraphs 69-70, 140-142, 162-164, and 166, *Survivor and Estate of Victim v. Our Kids of Miami/Dade/Monroe, Inc. et al.*, Case No.: 1:11-cv-24611-PAS (S.D. Fla.).
[11] Psychological Evaluation by Dr. Archer, Archer Psychological Services, Inc., Sept. 13, 2005 (Bates 4564-4567).
[12] The third amended complaint in the underlying federal lawsuit named Dr. Archer and Archer Psychological Services, Inc., as a defendant. The general allegations forming the basis of Dr. Archer's liability were that she made her placement recommendation without full information which would have included medical records, school records, and abuse reports. See *Id.* at paragraphs 171-189. The complaint further alleged that the Center for Family and Child Enrichment and one of its employees failed in its duties to provide the relevant information to Dr. Archer. See *Id.*

for Family and Child Enrichment, Inc., (CFCE) a defendant in the underlying federal lawsuit.[13] Victim would have been 4 years old at the time.

The notes show that the nurse for Victim's endocrinologist did not believe that Victim was in a good placement for two reasons.[14] First, Victim had not been to an appointment in nearly a year when Victim needed to see the doctor three times a year. Second, Victim is sent to the doctor by herself, which shows that the foster mother does not care for Victim's well-being. Apparently, the department or one of its contractors transported Victim to medical appointments.

As part of the department's 2011 review of the circumstances leading to the claim bill, the department reviewed the response to the allegations of medical neglect. The department's review found that there was "no documentation of case management follow-up with the foster mother as to the nurse's concerns raised with [Victim's] medical care."[15]

D. Evidence of Sexual Abuse, 2005

During the hearing, the claimants presented evidence that the department became aware that Victim had been sexually molested though a phone call to the Central Abuse Hotline about 10 p.m., January 27, 2005. Victim was 4 years old at the time. A narrative of the call written by DCF staff describes the caller's concerns as follows: "In the past, the foster father (unknown) tickled [Victim's] private area (vagina) with his fingers. This happened more than once, and the incidents occurred in the presence of other adults in the home."[16]

Within 2 hours after the call, a department child protective investigator consulted a psychologist who had seen Victim the day before. The investigator's notes indicate that Victim had made allegations to the psychologist that were similar to those made to the Hotline. The notes further indicate that the

[13] The Center for Family and Child Enrichment (CFCE) is described in the underlying federal lawsuit as a contractor for Our Kids of Miami-Dade/Monroe, Inc. CFCE's contract with Our Kids, according to the lawsuit, required it to provide case management services to children in foster care and under protective supervision in Miami-Dade County. Our Kids, which was under a contract with the department, was described in the lawsuit as the lead agency for the coordination and delivery of community-based foster care and related services. See Third Amended Complaint, paragraphs 40-42, *Survivor and Estate of Victim v. Our Kids of Miami-Dade/Monroe, Inc. et al.*, Case No.: 1:11-cv-24611-PAS (S.D. Fla.).

[14] Notes recorded by the Center for Family and Child Enrichment, Dec. 15, 2004 (Bates 4856).

[15] The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 6 (Mar. 14, 2011).

[16] Intake Report to Central Abuse Hotline, 10:04 p.m., Jan. 27, 2005 (Bates 4500).

psychologist found victim's story questionable and unfounded because of how Victim disclosed the story and because of circumstances around the narration of the story.[17] Finally, the psychologist opined that it would be detrimental to wake the children up and confront them as it was then after midnight.[18]

The morning after the Hotline call, there was a face-to-face meeting by a department child protective investigator with all members of the Barahona household. The Barahonas denied any abuse and suggested that the perpetrator was the biological father. The investigator's notes from the meeting further state in part that Victim and Survivor:

> were interviewed initially separately then together. [Victim] denied fo[ster] father touched her. Both children did make statements as to their biological father. They appeared to call both Daddy when speaking in English but called Papa and Papi when addressing them in Spanish clearly differentiating them.[19]

Apparently, department staff concluded that Victim was confusing her foster father with her biological father.[20] On February 9, 2005, department records state that the court was made aware of the abuse concerns as to the biological father and that there were no further concerns about the Barahonas.[21]

As part of the department's 2011 review of the circumstances leading to the claim bill, the department reviewed the sexual assault allegations against Mr. Barahona. The department's review found that the "Documentation suggests that the interview with [Victim] was not adequate."[22] The review further found that Victim and Survivor should have been interviewed away from the Barahonas to get a more candid understanding of how they viewed their caretakers. This interviewing technique was a "fundamental responsibility" according to the

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[17] Notes by David Palachi (Jan. 28, 2005) (Bates 4509).
[18] *Id.*
[19] Notes by David Palachi (Jan. 28, 2005) (Bates 4505-4506).
[20] The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 7 (Mar. 14, 2011).
[21] Notes by David Palachi (Feb. 9, 2005) (Bates 4503).
[22] The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 7 (Mar. 14, 2011).

department, which might not have been well understood due to inadequate training and professional insight.[23]

E. Report of Abuse from School, 2006

During the special master hearing, the claimants presented evidence of several incidents, not described in the claim bill, through which the claimants allege the department and others might have become aware of the abuse perpetrated by the Barahonas. For the sake of brevity, only some of the incidents, not identified in the claim bill, will be described in this report. One of these incidents, however, was based on a call to the Central Abuse Hotline at 2:07 p.m. on February 23, 2006, which described Victim as having a "huge bruise on her chin and neck area."[24] According to the narrative of the call written by department staff, Victim made inconsistent statements about whether the bruises occurred at home or at school. The narrative also noted that Victim had missed several days of school.

The department's records show that by 3:30 p.m. a child protective investigator began investigating the call by obtaining Victim's and Survivor's attendance records and grades.[25] Among the first investigative notes, department staff recorded that between November and February 23, 2006, Victim had 17 absences from school.

Later that day, when the children were interviewed at school, Victim said she had slipped and fallen in class.[26] Both Survivor and Victim denied that anyone had hit Victim. However, the children's teacher said that Victim claimed the injury occurred at home and that Victim sometimes comes to school unclean.

The department's investigator had a face-to-face meeting with the Barahonas on the evening of the call to the Hotline. The Barahonas denied knowing about Victim's bruise. Mr. Barahona further explained that "the child usually gives him a hug before going to school and if the child had a mark, he would have seen it."[27]

---

[23] *Id.*
[24] Intake Report to Central Abuse Hotline, 2:07 p.m., Feb. 23, 2006 (Bates 4512-4514).
[25] Chronological Notes Reports, Feb. 23, 2006 (Bates 4527-4528).
[26] Chronological Notes Reports, Feb. 23, 2006 (Bates 4524-4526).
[27] Chronological Notes Reports, Feb. 23, 2006 (Bates 4521).

While department staff were speaking with Ms. Barahona, Victim "jumped in the middle and said she slipped and fell in class."[28] The department's notes further indicate that the Barahona home was clean at the time and well-stocked with food and that the other children in the house were free of bruises.

As part of the department's continued investigation of Victim's bruise, records indicate that a child protection team conducted a specialized interview of Victim about 2 weeks after the call to the Hotline. Child protection teams are a team of professionals who provide specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services.[29] The child protection team in this case concluded that the bruise was not the result of child abuse and that Victim needed testing for hyperactivity.[30]

During the department's 2011 review of the events leading to the claim bill, the department reviewed its response to the February 2006 call to the Hotline. The department's report expressed concerns that what department staff did to investigate the abuse allegation was not fully documented.[31]

F. Report of Abuse from School, 2007

On March 20, 2007, the principal of Survivor and Victim's elementary school reported potential abuse and neglect to Central Abuse Hotline.[32] The narrative recorded by department staff states:

> For the past five months, [Victim] has been smelling and appearing unkempt. At least 2 or 3 times a week, [Victim] smells. She smells rotten. Her uniform is not clean and her shoes are dirty. On one occasion, [Victim] got applesauce in her hair, the next day she had applesauce still in her hair. [Survivor] also appears unkempt. On 2/20/07, [Victim] had food in her backpack from breakfast and lunch. There is a concern that maybe she is not eating at home. [Victim]

[28] Chronological Notes Reports, Feb. 23, 2006 (Bates 4520-4521).
[29] Section 39.303(1), F.S., (2005).
[30] Chronological Notes Reports, Mar. 13, 2006 (Bates 4515-4516).
[31] The Department of Children and Families, *The Barahona Case: Findings and Recommendations*, 7-8 (Mar. 14, 2011).
[32] Intake Report to the Central Abuse Hotline, 3:46 p.m., Mar. 20, 2007 (Bates 4594-4596).

> is always hungry and she eats a lot at school. [Victim] is afraid to talk.[33]

The department's investigative summary, dated April 12, 2007, of its actions in response to the call to the Hotline concluded: "At this time the risk level is low. No evidence was found to support the allegation of environmental hazards toward the children."[34]

In contrast to the department's conclusion, the children's guardian ad litem felt differently. In an email dated the same date as the department's investigative summary, the guardian ad litem informed his supervisor and a department attorney of the concerns of school staff.[35] The email explained that the reports from school, including the children's approximately 20 absences and failing grades, were causing him to rethink his prior conclusion that the children's placement with the Barahonas was best. In closing his email, the guardian ad litem wrote, "I believe some investigation needs to be done, to determine the very best place for these deserving kids to grow up and lead a healthy, happy life."[36] Whether the guardian ad litem reported his concerns to the dependency court is unknown.[37]

In the department's 2011 review of the events leading to the claim bill, it reviewed its response to the March 2007 Hotline call. The department's review determined that there were "compelling facts" gathered by department staff that should have resulted in "'some indicators' or 'verified' findings for abuse."[38]

G. Survivor and Victim Adopted, May 2009

The Barahonas finalized the adoption of Survivor and Victim in May 2009.

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[33] *Id.*
[34] Investigative Summary (Apr. 12, 2007) (Bates 4616-4618).
[35] Email from Paul Neumann, guardian ad litem, to Cynthia Kline, guardian ad litem supervisor and a copy to Christine Lopez-Acevedo, a department attorney (Apr. 12, 2007) (Bates 4619-4620).
[36] *Id.*
[37] At all times relevant to the events described in the claim bill, s. 39.822(4), F.S., required the guardian ad litem for Survivor and Victim to submit written reports of recommendations to the court. These reports were not made available to the special masters.
[38] The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 8 (Mar. 14, 2011).

H. Final Call to Central Abuse Hotline, 2011

The final call to the Central Abuse Hotline when both Survivor and Victim may have been alive, occurred at 2:22 p.m. on February 10, 2011.[39] The call was made by a therapist for the Barahona's niece. According to excerpts of department records, which the claimants transcribed onto a PowerPoint slide for the special master hearing, the call and the department's response were as follows:

> 2/10/11 2:22 PM Survivor and Victim are tied by their hands and feet with tape and made to stay in bathtub all day and night as a form of punishment tape is taken off to ....RESPONSE TIME 24 HOURS BATES 4684-86--- Transcript of Hotline call:-grandmother cares for her and she has foster children who are being abused…. They are being taped up w/their arms and legs and kept in a bathtub-all day and all night and she undoes their arms to eat… and she has been threatened not to say anything….. ….BATES 4672-73
>
> 2/10/11 6:42 PM CPI to home NO CALL TO POLICE when kids not home. Accepts mother's story that kids are with Foster Dad as they have separated. Bates 4634

According to a recording of a hearing before the Barahona Investigative Team, department staff explained that the Hotline operator and her supervisor misclassified the call as one requiring a response within 24 hours. The call, according, to the department should have resulted in an immediate response.

Similarly, in the department's 2011 review of the events leading to the claim bill, it reviewed its response to the final Hotline call. The department's review concluded that the allegations in the call "suggested criminal child abuse incidents requiring immediate response and outreach to law enforcement."[40]

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[39] This information is based on excerpts of documents provided by the claimants on a PowerPoint presentation. Copies of complete records relating to the final call to the Hotline and the department's response to the call were not provided to the special master by the claimants.

[40] The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 10 (Mar. 14, 2011).

II. Specific Types of Evidence or Categories of Events

This component of the Findings of Fact focuses on the interaction of individuals, other than department staff, with Survivor and Victim and events occurring after Victim's death.

A. Judicial Review Proceedings

While Survivor and Victim were placed with the Barahonas, many individuals or entities were overseeing their care. One of these entities was the dependency court. Florida law required the dependency court to review the placement of Survivor and Victim on a regular basis. The information made available during the special master proceeding indicates that the dependency court knew information about the Barahonas' care of the children that, at least in hindsight, is troubling.

For example, during a hearing in December 2004, the guardian ad litem expressed concerns to the dependency court that "'play therapy' that had been originally suggested, and that the judge ordered several months ago had not begun."[41] The guardian ad litem, according to his notes, believed that therapy was needed because Victim "had begun to touch her sexual areas again" since she started visitation with her biological father.[42] In response to these concerns, "the judge told DCF to have another evaluation, and to begin therapy ASAP."[43]

Later in the dependency process, the department reported to the court that Mr. Barahona prevented the guardian ad litem from visiting Survivor and Victim at home from May to August 2007.[44]

Similarly, in October 2007, a Citizen Review Panel, appointed by the dependency court, issued a report of its findings and recommendations relating to Survivor and Victim.[45] Although the panel found that Survivor and Victim's placement with the Barahonas was "APPROPRIATE and SAFE," the report listed several recent legal events and several other concerns.[46]

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[41] Guardian Ad Litem Case Log, Dec. 14, 2004 (BATES 4914).
[42] *Id.*
[43] *Id.*
[44] Recording of hearing of the Barahona Investigative Team. On this issue, the claimants' PowerPoint presentation to the special masters cited to BATES 4635-36.
[45] Recommendations and Findings of the Citizen Review Panel, In and For the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida based on a hearing on Oct. 3, 2007 (BATES 4621—27).
[46] *Id.*

The first legal event described by the panel was that the guardian ad litem had not seen the children in 3 months. The second legal event was an abuse report that had been filed with the dependency court. The panel described the events surrounding the abuse report as follows:

> [The principal] reported that [Victim's] teacher called the foster mother with concerns that there has been an increase in absences and there has not been follow through. Both children doing poorly in school and falling asleep in class. They are scared to go home and is hording food. They are petrified of getting in trouble. The kindergarten teacher for [Survivor] and [Victim] was also present. She reported that she was their teacher for 2 1/2 months. The children were fearful of the mom and was petrified to have the mother called. The court ordered reevaluation of both children. Court order psycho-educational and psychological on the children.[47]

The concerns relevant to the claim bill, which were in the panel's October 2007 report, included a concern that the children's dental exams had not been submitted to the panel for review.[48] The panel also stated that it was concerned that the judicial review social study report was not pre-filed by the Center for Family and Child Enrichment, as required by statute. Finally, the panel expressed a concern that the guardian ad litem had not been able to visit the children at the foster home. Despite the concern, the panel noted the statement of an unidentified foster parent that the guardian ad litem did not show up for visits at the scheduled times and called them at an inconvenient time.

After the Citizen Review Panel issued its October 2007 report and after a hearing in the dependency court, the guardian ad litem supervisor sent an email to the guardian ad litem describing the hearing. The supervisor explained, "the judge was not 'buying' what the foster parents were saying" about the guardian ad litem's access to the Barahona home.[49] The

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[47] *Id.*

[48] *Id. "*On three different occasions, the Citizen's Review Panel held a hearing and found that there was no documentation of the current physical, dental or vision check-ups available for the children, nor were they receiving any required therapy." The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 8 (Mar. 14, 2011).

[49] Email from Cynthia Kline, guardian ad litem supervisor, to Paul Neumann, guardian ad litem, Oct. 23, 2007 (BATES 4658).

supervisor further explained, "it appears everyone (although the Judge did not say so) is under the impression that the foster parents are trying to hide something."[50] It was made very clear, wrote the supervisor, that the guardian ad litem was to be given access to the children in the home.

Nonetheless, the Barahona's complaints about the guardian ad litem were considered. Eventually, the guardian ad litem was "discharged from the case to smooth over relationships with the Barahonas."[51]

B. Psychological Evaluations

During the special master proceeding, the claimants provided the special master with a psychological evaluation written by Dr. Vanessa Archer in September 2005 along with portions of other evaluations written by her.[52] The report from September 2005 concluded that "it would be extremely traumatic, if not devastatingly detrimental to the emotional and psychological well-being of these children if they were removed from their current home to be placed with relatives with whom they have no prior relationship. The effects of such a removal, regardless of what transition phase occurs, would have life-long consequences for these children."[53]

The children were evaluated again by Dr. Archer in 2007 when they were 7 years old. Her report stated that both Survivor and Victim had symptoms of depression and that they had thought of killing themselves.[54] The report further stated that Victim "is sure that terrible things are going to happen to her."[55] Survivor expressed to Dr. Archer that he thought "the purpose of the evaluation was to talk about what his father did to him noting that his father 'tickled' him."[56] Similarly, "[Victim] expressed the belief that the purpose of the evaluation was to talk about what her father said to her and that 'people are lying.'"[57]

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[50] *Id.*
[51] The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 9 (Mar. 14, 2011).
[52] Dr. Archer was a defendant in the underlying lawsuits. She was released, according to one of the claimants' attorneys, because she had no insurance.
[53] Dr. Vanessa Archer, Archer Psychological Solutions, Inc., Psychological Evaluation (Sept. 7, 2005).
[54] Dr. Vanessa Archer, Archer Psychological Services, Inc., Psychological Evaluation (June 11, 2007) (BATES 4631, 4633).
[55] *Id.*
[56] *Id.*
[57] *Id.*

Despite the findings in her previous evaluations, in an excerpt of an evaluation from February 2008, Dr. Archer wrote, "it is astounding how these children have thrived. They clearly have a strong bond with their current care givers." As a result, Dr. Archer concluded that adoption was clearly in the children's best interest and "should be allowed to proceed without further delay."[58]

With respect to the February 2008 evaluation, the Barahona independent investigative panel appointed by the department concluded that Dr. Archer:

> failed to consider critical information presented by the children's principal and school professionals about potential signs of abuse and neglect by the Barahonas. That omission made Dr. Archer's report, at best, incomplete, and should have brought into serious question the reliability of her recommendation of adoption. Several professionals, including the Our Kid's case manager, the GAL, and the Children's Legal Services attorney as well as the judge, were, or should have been, aware of that significant omission, and yet apparently failed to take any steps to rectify that critical flaw in her report.[59]

No evidence was produced for the special master proceeding showing whether the department or someone else selected Dr. Archer to perform the psychological evaluations.

C. Abuse Suffered by Survivor and Victim

During the special master hearing, Dr. Eli Newberger testified about the specific types of abuse and neglect suffered by Survivor and Victim. Dr. Newberger is a pediatrician and an expert in matters relating to child abuse and neglect. His testimony was based on his physical examinations of and interviews with Survivor in February 2013 and September 2015. His testimony is also based on interviews of Survivor's aunt and uncle in Texas, who were finally able to adopt Survivor in May 2012.

Dr. Newberger testified that the Barahonas abused and neglected Survivor and Victim in numerous ways. As explained to Dr. Newberger by Survivor:

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[58] Excerpt of a psychological evaluation reproduced on the claimants' PowerPoint presentation, labeled Vanessa L. Archer PhD Report: 2/12/08 (BATES 4991-95).

[59] *The Nubia Report: The Investigative Panel's Findings and Recommendations*, 5

- Mr. Barahona put hot sauce in Survivor's and Victim's eyes, nose, ears, and private parts, both front and back.
- Mr. Barahona shoved a noisemaker in Survivor's ear.
- Mr. Barahona made Survivor and Victim sleep in the bathtub with ice nearly every day for almost 3 years.
- The Barahonas tied Survivor's and Victim's hands and feet together with tape.
- Mr. Barhahona would hit Survivor with a shoe and a mop, hard enough to cause bleeding.
- Mr. Barahona punched Survivor in the mouth, which resulted in Survivor having corrective surgery.
- Mr. Barahona would place a plastic bag at random times over Survivor and Victim's heads for as long as Mr. Barahona would like.
- Mr. Barahona would give electric shocks to Victim for a minute at a time.
- Mr. Barahona had doused Survivor with chemicals.
- Survivor had gone without eating in the Barahona home for as long as 3 days.
- Before Victim had been found, Mr. Barahona gave Survivor pills that caused Survivor to have seizures.

Dr. Newberger's physical examinations of Survivor found numerous scars across his body which were consistent with the abuse described by Survivor above. On Survivor's forearms and ankles, Survivor had linear healing lacerations from cuts through the lowest level of the skin. These scars, according to Survivor, were from having been bound in the bathtub. On his lower abdomen and back, Survivor had scars that are consistent with chemical burns. Survivor also had scarring on his penis, consistent with chemical burns.

Between Dr. Newberger's first examination of Survivor in 2013 and his examination of Survivor in 2015, some of Survivor's scars faded, but others expanded and became more prominent. How long the scars will last is unknown, but they constantly remind Survivor of the abuse he suffered.

When Dr. Newberger asked Survivor whether he was frightened all the time in the Barahona home, Survivor replied, "At night, in the bathtub, we were scared about what would happen in the morning." Additionally, Survivor told Dr. Newberger that at some point in time near Victim's death, she

told him that she wanted to die because she couldn't take the abuse anymore.

The abuse Survivor suffered in the Barahona home continues to affect him in many ways. Survivor's aunt and uncle explained to Dr. Newberger that soon after Survivor was placed with them, they would find Survivor gasping for air in the middle of the night. He was having nightmares about bags being placed over his head.

Unusual smells tend to trigger memories of abuse. Survivor might suddenly say: "I can't stay here," "It reminds me of the chemicals in the truck," or "it reminds me of what [Victim's] body smelled like after she died." Mr. Barahona operated a pest control business, and Mr. Barahona's truck was carrying pest control chemicals when Survivor and Victim were found.

In school, Dr. Newberger explained, Survivor cannot solve math problems or understand what he is reading without a full-time aide by his side. He cannot take any tests without the presence of an aide. Survivor's grades are poor or failing. According to Survivor, he cannot concentrate because he is constantly thinking about the abuse.

A recent example of how memories of abuse affect Survivor occurred after Survivor met with a prosecutor for one of the Barahonas. After he met with the prosecutor, Survivor was tremendously distressed. He insisted on being treated as an infant for a few days. He wanted to be cuddled and called by various pet names that one would call an infant. In psychological terms, this event was a serious regression and was very unusual for a 15 year old, according to Dr. Newberger.

Dr. Newberger has diagnosed Survivor as having chronic post-traumatic stress disorder, noting that Survivor's entire arc of development has been nothing but deprivation, assaults, witnessing assaults, including a murderous assault on his sister. Dr. Newberger further opined that within a reasonable degree of medical probability, Survivor has suffered a permanent injury because of the abuse in the Barahona home.

Dr. Newberger concludes that Survivor will need psychiatric and psychological care for the rest of his life as he comes into

contact with things that provoke memories and distress. Moreover, Dr. Newberger opined that if Survivor does not have the capacity to learn, his capacity to have a job and provide for himself, his ability to live independently, and his capacity to have a family and conduct himself as an adult are crippled.

D. The Barahona Case: Findings and Recommendations

On February 21, 2011, days after Victim's body was found, the Secretary of the Department of Children and Families established an independent investigative panel to examine issues relating to the Barahonas.[60] The department attached the findings and suggestions from the investigative panel in its report titled *The Barahona Case: Findings and Recommendations.* When available, the department's assessments of its actions are included in the chronological description of its interaction with the children.

During the special master hearing, a member of the investigative panel, David Lawrence, [61] described the panel's activities, information it reviewed, and the findings described in its report titled *The Nubia Report: The Investigative Panel's Findings and Recommendations*.[62] The investigative panel's findings include the following:

- Dr. Archer failed to consider critical information about potential signs of abuse, making her reports incomplete.[63]
- The case manager from Our Kids, the guardian ad litem, and the Children's Legal Services attorney, as well as the judge, were, or should have been, aware of significant omissions in Dr. Archer's reports but failed to take any serious steps to correct the critical flaws.[64]
- There was no centralized system to ensure the dissemination of critical information to all parties overseeing the care of Survivor and Victim.[65]

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[60] David Lawrence Jr., Roberto Martinez, and Dr. James Sewell, *Barahona Investigative Team Report* 4 (Mar. 10, 2011).
[61] Mr. Lawrence was the president of The Early Childhood Initiative Foundation and chair of the Children's Movement of Florida.
[62] *The Nubia Report: The Investigative Panel's Findings and Recommendations* is available at https://www.dcf.state.fl.us/initiatives/barahona/docs/meetings/Nubias%20Story.pdf.
[63] David Lawrence, Jr., et al., *supra* note 60.
[64] *Id.* at 5.
[65] *Id.*

- The guardian ad litem, school personnel, and a nurse practitioner raised serious concerns that should have required "intense and coordinated follow-up."[66]
- There was no person serving as the "system integrator" who ensured that relevant information, including allegations of abuse, was shared and made accessible to others.[67]
- There is evidence of multiple instances in which the Barahonas did not ensure the health of Survivor and Victim.[68]
- During the hearings before the panel, the actions and testimony of the Chief Executive Officers of Our Kids and the Center for Family and Child Enrichment "created suspicions as to what, if anything, they were trying to hide."[69]
- Post-adoption services should have been identified by Our Kids after a post-adoption call to the Hotline in June 2010.[70]
- Much of the necessary information raising red flags about the Barahonas was present within the system, but the individuals involved relied on inadequate technology instead of talking to each other.[71]

E. Letter of Support

The department has provided a letter of support for a claim bill in an amount not to exceed $3.75 million, consistent with the settlement agreement in this matter.

III. Inferential Findings of Fact

The evidence presented, including the guardian ad litem's access to the children, lack of documentation of necessary medical care, the nature of the complaints to the Hotline, and the children's statements to Dr. Archer, show that the department and other defendants to the underlying lawsuits would have had good reason to be suspicious of how the Barahonas were treating Survivor and Victim. Moreover, the shortcomings of the department in its responses to allegations of abuse and neglect, including admissions that its staff failed

[66] *Id.* at 6.
[67] *Id.*
[68] *Id.* at 7.
[69] *Id.* at 8.
[70] *Id.*
[71] *Id.* at 9.

to follow procedures, are credible along with the findings of the independent review panel.

Because the individuals overseeing the care of Survivor and Victim, which included department staff and others, had reason to be suspicious, it seems appropriate to ask, what possible explanation could there be for failing to discover the abuse and neglect? Because this matter settled before discovery and trial and because the individuals involved were not asked to testify for the special master proceeding, they were never asked this question on the record. However, the evidence available suggests that their conduct might be explained by:

- Evidence and allegations of abuse and neglect by the children's biological mother who was a drug addict and their biological father, a child molester.
- The lack of evidence that Barahonas had improperly cared for their other adoptive children.
- The convincing nature of the Barahona's lies and the Barahona's ability to coerce the children into denying the allegations of abuse.
- Wishful thinking, coupled with a belief that the signs of the type of unimaginable abuse perpetrated by the Barahonas would have been more obvious.

Although one might explain the conduct of the department and others as above, the explanations become less and less of an excuse as the signs and allegations of abuse and neglect increase.

CONCLUSIONS OF LAW:

The lawsuits leading to this claim bill were based on allegations of negligence and civils right violations.

I. Negligence

In a negligence action, "a plaintiff must establish the four elements of duty, breach, proximate causation, and damages."[72] Whether a duty of care exists is a question of law.[73] The Department of Children and Families has a duty to reasonably investigate complaints of child abuse and neglect, which is recognized by case law.[74] Once a duty is found to

[72] *Limones v. School Dist. of Lee County*, 161 So. 3d 384, 389 (Fla. 2015).
[73] *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 502 (Fla. 1992).
[74] *Dept. of Health and Rehabilitative Svcs. v. Yamuni*, 498 So. 2d 441, 442-43 (Fla. 3d DCA 1986) (stating that the Dept. of Health and Rehabilitative Services, a precursor to the Dept. of Children and Families, has a statutory

exist, whether a defendant was negligent in fulfilling that duty is a question for the finder of fact.[75] In making that determination, a fact finder must decide whether a defendant exercised the degree of care that an ordinarily prudent person, or caseworker in this instance, would have under the same or similar circumstances.[76]

I find that the claimants provided sufficient evidence in the proceeding to show that, had this case proceeded to trial, a jury would have found that the department and others breached their duties to Survivor and Victim. Juries have done so in somewhat similar lawsuits. However, due to the limited evidence, especially the lack of testimony of any of the various caseworkers, case managers, and child protective investigators, the specific point in time that the department breached its duty cannot be identified with precision.

I also find that the claimants presented sufficient evidence in this matter to show that a jury would have found that actions and inactions by the department proximately caused the suffering of Survivor and Victim to be prolonged and caused Survivor's death. "[T]he issue of proximate cause is generally a question of fact concerned with 'whether and to what extent the defendant's conduct foreseeably and substantially caused the specific injury that actually occurred.'"[77] In cases against the department having some similarities to this matter, the appellate court determined that "[t]he plaintiffs presented evidence that there is a natural, direct, and continuous sequence between DCF's negligence and [a child's] injuries such that it can be reasonably said that but for DCF's negligence, the abuse to [the child] would not have occurred."[78]

Finally, I find that the claimants presented sufficient evidence that a jury would have further found that Survivor and Victim suffered damages because of the department's negligence. No amount of money can compensate for the pain and

duty of care to prevent further harm to children when reports of child abuse are received); *Dept. of Children and Family Svcs. v. Amora*, 944 So. 2d 431 (Fla. 4th DCA 2006).

[75] *Yamuni, 529 So. 2d* at 262.

[76] *Russel v. Jacksonville Gas Corp.*, 117 So. 2d 29, 32 (Fla 1st DCA 1960) (defining negligence as, "the doing of something that a reasonable and prudent person would not ordinarily have done under the same or similar circumstances, or the failure to do that which a reasonable and prudent person would have done under the same or similar circumstances").

[77] *Amora*, 944 So. 2d at 431.

[78] *Id.*

suffering that Survivor and Victim endured. However, the $5 million settlement by the department in this matter is not excessive compared to jury verdicts in similar cases.

II. Federal Civil Rights Violations

The federal lawsuit underlying this claim bill alleged that the department, its employees, Our Kids and its employees, and the Center for Family and Child Enrichment and its employees violated the federal civil rights of Survivor and Victim.

The specific legal standard governing civil rights claims is set forth in 42 U.S.C. s. 1983, which states in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

In contrast to a negligence action, in a civil rights action, the defense of sovereign immunity or the limits on the collectability of a judgment or the payment of a claim under s. 768.28, F.S., do not apply.[79] For the time periods applicable to the claim bill, s. 768.28, F.S., limited the collectability of a judgment or claim to $100,000 per person and $200,000 for all claims arising out of the same incident.[80]

Case law clearly shows that under 42 U.S.C. s. 1983, state officials and contractors such as Our Kids can be held liable for violations of a foster child's civil rights.[81] The applicable rights protected by statute include the "constitutional right to

[79] *Howlett v. Rose*, 496 U.S. 356 (1990).
[80] Chapter 2010-26, Laws of Fla., increased the limits on the payment of a claim or judgment to $200,000 per person and $300,000 for all claims arising out of the same incident. The increased limits apply to claims arising on or after October 1, 2011.
[81] *Taylor v. Ledbetter*, 818 F.2d 791 (11th Cir. 1987); *Crispell v. Dept. of Children and Families*, 2012 WL 3599349 (M.D. Fla. 2012) (denying Children's Homes Society of Florida's motion to dismiss a civil rights action because the court found that the entity was not an arm of the state entitled to immunity under the 11th Amendment to the United States Constitution); *Woodburn v. Dept. of Children and Family Svcs.*, 854 F.Supp.2d 1184, 1201 (S.D. Fla. 2011) (finding that the plaintiff "alleged sufficient facts to support a facially plausible claim that her constitutional rights were violated by . . . Our Kids for the purpose of surviving a motion to dismiss").

be free from unnecessary pain and a fundamental right to physical safety."[82]

Proving a civil rights violation is different than proving negligence.[83] In a civil rights action, the plaintiff must show that the defendant was deliberately indifferent to the violation of a federal right. The defendant's knowledge of a risk of harm is key. A state official acts with deliberate indifference only when disregarding a risk of harm of which he or she is actually aware.

Following the guidance above, the Federal 11th Circuit Court of appeals has stated that "in order to establish deliberate indifference, plaintiffs must be able to allege (and prove at trial) that the defendant (1) was objectively aware of a risk of serious harm; (2) recklessly disregarded the risk of harm; and (3) this conduct was more than merely negligent."[84]

The evidence presented during the special master proceeding showed that the actions of the department were negligent, not civil rights violations.[85]

RELATED ISSUES:

A claim bill is an act of legislative grace, not an entitlement.[86] These bills are a "voluntary recognition of its moral obligation by the legislature . . . based on its view of justice and fair treatment of one who ha[s] suffered at the hands of the state."[87] Consistently, the legislative proceedings relating to claim[88] bills are "separate and apart from the constraints of an earlier lawsuit."[89]

For these reasons, special masters inquire into matters that might not be admissible in court but may be relevant to

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[82] *Ray v. Foltz*, 370 F.3d 1079, 1082 (11th Cir. 2004) (citing *Taylor v. Ledbetter*, 818 F.2d 791, 794-95 (11th Cir. 1987) (en banc)).
[83] *Ray v. Foltz*, 370 F.3d 1079, 1083 (11th Cir 2004).
[84] *Id.* (citing *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999)).
[85] Nonetheless, the department made a payment of $1.25 million, which was in excess of the amounts authorized for negligence actions under s. 768.28, F.S. Perhaps there are facts that are known by the parties that were not presented. When I asked the claimants' attorneys during the special master hearing what facts took the Barahona lawsuits from negligence to a civil rights action, they declined to directly answer the question.
[86] *Searcy Denny Scarola Barnhart & Shipley, P.A. v. State,* 2015 WL 4269031, *5 (Fla. 4th DCA), *review granted*, 2015 WL 6127021 (Fla. Oct. 14, 2015).
[87] *Noel v. Schlesinger*, 984 So. 2d 1265, 1267 Fla. 4th DCA) quoting *Gamble v. Wells*, 450 So. 2d 850, 853 (Fla. 1984).
[88] *Searcy, et al., supra* note 86.
[89] *Id.*

decisions by legislators. These inquires do not affect the recommendation of this report. However, common inquiries include: What is the claimant's criminal history? Is the claimant lawfully present in the United States? Is there any information about the claimant which would cause embarrassment to the Legislature should it enact the claim bill?

Because of the complexity of the department's system to oversee foster care and investigate allegations of abuse and neglect, different questions arise in this matter. These questions relate to the liability of other parties who were also defendants to the underlying lawsuits and were under contract to care for Survivor and Victim.

I. Fault and Damages Collected from Other Defendants

With respect to this claim bill, the most relevant inquiry asks: Who besides the Department of Children and Families was at fault for the abuse and neglect of Survivor and Victim? Of the others at fault, why were they at fault and what was their relative contribution to the damages suffered by Survivor and Victim? Finally, what amounts have been recovered from others?[90]

The claimants declined my request to explain the responsibility of others for the abuse of Survivor and Victim and Victim's death.[91] Nonetheless, there is information suggesting that others bear substantial responsibility, including Dr. Archer, Our Kids, and the Center for Family and Child Enrichment.

According to the settlement agreement in this matter, the department agreed to work cooperatively to reach a settlement with Dr. Archer "as part of which she will agree to take no more court or agency appointments relating to the

[90] If the lawsuit had proceeded to trial after the claimants reached a settlement with other defendants, a court may have found that the settlement agreement could not be used as a basis for offsetting damages owed by the department by damages paid by one of the defendants to the underlying lawsuits. *See Wal-Mart Stores v. Strachan*, 82 So. 3d 1052 (Fla. 4th DCA 2011). With the abolition of joint and several liability, an award against a defendant generally may not be offset by amounts recovered by a settlement with another defendant. *Id.*

[91] The State Constitution permits a legislator to consider any information he or she deems to determine whether a claim bill is in the interests of his or her constituents or the state as a whole. Moreover, because claim bills are a type of appropriation bill, a legislator should have access to information necessary to determine how to rank a claim bill among the state's funding priorities.

foster care or dependency system, or children in it."[92] Further, according to one of the attorneys for the claimants, Dr. Archer was dismissed from the federal court case; she had no insurance, and she made no payment.[93]

The claimants disclosed that they reached a settlement agreement with Our Kids and the Center for Family and Child Enrichment. I asked for the claimants' attorneys for details about the settlement agreement. They refused to make the settlement agreement available or disclose the settlement amount.[94]

Had the claimants fully disclosed information relative to the conduct of the other defendants to the underlying lawsuits and any settlements, the Legislature could independently evaluate whether the department's settlement agreement is in the best interests of the state. Similarly, the lack of disclosure restricts the Legislature from independently determining whether it has a moral obligation to provide compensation in excess of the settlement agreement with the department.

The Supreme Court's opinion in *Fabre v. Marin* shows that, had this matter been presented to a jury, the jury would have apportioned the damages among all the responsible persons.[95] Thus, the department would have been responsible only for that portion of damages equivalent to its percentage of fault.[96, 97]

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[92] Mem. of Settlement, paragraph 5 (Mar. 6, 2013), *Survivor and Estate of Victim v. Our Kids of Miami/Dade/Monroe, Inc. et al.*, Case No.: 1:11-cv-24611-PAS.
[93] Statement of Neal Roth during the special master hearing (Oct. 30, 2015).
[94] The settlement agreement between the claimants and Our Kids and the Center for Family and Child Enrichment should be readily available as a public record, just as the claim bill, investigative reports by the department, and the settlement agreement between the claimants and the department is a public record. *See* ss. 409.1671 (2011), 287.058(1)(c), 119.011(2), and 119.07(1), F.S.; *see also* s. 69.081(8), F.S. The information is also available to the Legislature under s. 11.143, F.S.
[95] *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993).
[96] *Id.* at 1185.
[97] Additionally, the lack of disclosure by the claimants' attorneys precludes an analysis of whether the department could be legally responsible for the contractors. According to *Del Pilar v. DHL Customer Solutions, Inc.,* 993 So. 2d 142, 145-46 (Fla. 1st DCA 2008):

> Generally, a principal is not vicariously liable for the negligence of its independent contractor, but the principal is liable for the negligence of its agent. *See generally Fla. Power & Light Co. v. Price*, 170 So.2d 293 (Fla.1964). Whether one laboring on behalf of another is a mere agent or an independent contractor "is a question of fact ... not controlled by descriptive labels employed by the parties themselves." *Parker v. Domino's Pizza, Inc.*, 629 So.2d 1026, 1027 (Fla. 4th DCA 1993) (internal citations omitted); see also *Font v. Stanley Steemer Int'l, Inc.*, 849 So.2d 1214, 1216 (Fla. 5th DCA 2003) (noting that question of status "is normally one for the trier of fact to decide").

II. Distribution of Settlement Proceeds

A second related issue is whether the settlement funds paid by the department have been distributed to Survivor and the Estate of Victim. Pursuant to its settlement agreement with the claimants, the department has made the required payment of $1.25 million. The Memorandum of Settlement, filed in the federal lawsuit, required the department to pay the settlement funds to the claimants' attorneys by the beginning of April 2013.

In October 2015, the claimants successfully terminated any rights the Barahonas may have had to inherit from Victim's estate. However, as of the date of this report, the claimants' attorneys have not provided any information showing that the settlement funds were distributed to their clients.

ATTORNEYS FEES:

Section 768.28(8), F.S., states "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." In compliance with the statute, Neal Roth, one of the claimants' attorneys, submitted an attorney fee affidavit that states in pertinent part:

> 1. My name is Neal A. Roth and I am a partner of the Law Firm of Grossman Roth . . .
> 2. Grossman Roth, P.A., is counsel for Claimants, Survivor and Richard Milstein, as Personal Representative of the Estate of Victim, deceased.
> 3. As counsel for the Claimants, we have fully complied with all provisions of Section 768.28 (8).
> 4. lnsofar as lobbying fees are concerned, the bill as filed provides that any lobbying fees related to the claim bill will be included as part of the statutory cap on attorneys' fees in Section 768.28.

Additionally, closing statements provided by the claimants' attorneys indicate that the contract with the claimants provides for an award of attorney fees in the amount of 25 percent of the $5 million settlement, which is $1.25 million, plus costs.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 18 be reported FAVORABLY.

Respectfully submitted,

Thomas C. Cibula
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 limit the amount of lobbying fees that may be paid from the proceeds of the bill.

700702

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete lines 169 - 170

and insert:

death of Victim. The total amount paid for attorney fees relating to this claim may not exceed 25 percent

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 8 - 9

and insert:

700702

providing that the amount already paid by the department and the appropriation satisfy all present and future claims related to the injuries of Survivor and the death of Victim; providing a limitation on the payment of attorney fees; providing an effective date.

The Florida Senate

Committee Agenda Request

To: Senator Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 13, 2017

I respectfully request that **Senate Bill #18**, relating to Relief of "Survivor" and the Estate of "Victim" by the Department of Children and Families, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Anitere Flores

Senator Anitere Flores
Florida Senate, District 39

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
1/30/17	SM	Favorable
2/22/17	JU	**Fav/CS**
	AHS	
	AP	

January 30, 2017

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

Re: **CS/SB 28** – Judiciary Committee and Senator David Simmons
HB 6501 – Representative Scott Plakon
Relief of J.D.S.

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR $950,000 PAYABLE TO THE AGED POOLED SPECIAL NEEDS TRUST ON BEHALF OF J.D.S., BASED ON A SETTLEMENT AGREEMENT BETWEEN PATTI R. JARRELL, AS PLENARY GUARDIAN OF J.D.S., AND THE STATE OF FLORIDA, AGENCY FOR PERSONS WITH DISABILITIES. THE CLAIM AROSE FROM THE NEGLIGENT SUPERVISION OF A GROUP HOME BY THE AGENCY.

FINDINGS OF FACT:

In 1980, J.D.S. was born with severe disabilities, including cerebral palsy, autism, and mental retardation. J.D.S. has a 31 IQ and has been nonverbal her entire life. J.D.S. was placed in the custody of the State of Florida, Department of Children and Families (DCF) and considered to be a "ward" of DCF. Due to her condition, J.D.S. was dependent upon DCF for the provision of her care, treatment, and daily needs.

At the age of 4, J.D.S., as a developmentally-disabled dependent ward of the State of Florida, was placed in the Strong Group Home. J.D.S. was totally dependent on the Strong Group Home to provide the care for her needs. She was incapable of performing even the most basic functions of life. The Strong Group Home was licensed by DCF to operate

the group home, and the home was monitored through face to face visits on a monthly basis with the exception of a short interval when, due to budget cuts, visits occurred either every other month or quarterly. The Strong Group Home was also visited monthly by the Medicaid Waiver Support Coordinator who had the responsibility of ensuring J.D.S. was receiving her care plan services. Hester Strong was the administrator/owner of the Strong Group Home and was assisted by her husband, Phillip Strong. In addition to caring for 4 - 6 developmentally disabled persons, Ms. Strong cared for her elderly parents who also resided in the home.

Beginning in late 2001 and into 2002, J.D.S.'s behavior became more aggressive. She began to resist getting into a car which had not been an exhibited behavior in the past. And, although she was previously toilet trained, she began exhibiting regular incontinence. Ms. Strong did not report these changes in J.D.S.'s behaviors, and the DCF monitoring reports of the Strong Group Home did not contain any reference to them.

In December 2002, J.D.S. became pregnant while a resident in the Strong Group Home. J.D.S. was 5 months pregnant when her doctor discovered her pregnancy.

Upon the discovery of J.D.S.'s pregnancy, DCF revoked the Strong Group Home's license and J.D.S. was moved to another group home. J.D.S. gave birth to a baby girl on August 30, 2003. The newborn was immediately removed from J.D.S. and placed for adoption. Following the birth, the Florida Department of Law Enforcement took DNA samples from Phillip Strong and the newborn. The results of the DNA testing confirmed that Phillip Strong was the biological father of the infant.

DCF was responsible for the oversight of the Strong Group Home and providing care to J.D.S. when the events related to the claim bill occurred. However, in 2004, the responsibility to oversee group homes for the disabled was transferred to the Agency for Persons with Disabilities along with DCF's related liabilities.

Based on the foregoing, the State of Florida, Agency for Persons with Disabilities, stipulated to the entry of a judgment in the amount of $1,150,000. The Agency for Persons' with

Disabilities paid $200,000 to the AGED Pooled Special Needs Trust on behalf of J.D.S., leaving $950,000, which is the amount sought through this claim bill.

CLAIMANT'S POSITION: The Agency for Persons with Disabilities is directly and vicariously liable for the rape and subsequent pregnancy of J.D.S. The claimant also alleges that the rape of J.D.S. was foreseeable by the agency. It should be noted that Mr. Strong was determined incompetent and never charged with the rape of J.D.S.

RESPONDENT'S POSITION: The Agency for Persons with Disabilities settled this claim before a jury trial and is neutral in this proceeding and will take no action adverse to the passage of a claim bill.

CONCLUSIONS OF LAW: As provided in s. 768.28, F.S. (2002), sovereign immunity shields the State of Florida and its agencies against tort liability in excess of $200,000 per occurrence. The parties settled the case for $1.15 million, and the Agency for Persons with Disabilities paid $200,000 to the AGED Pooled Special Needs Trust on behalf of J.D.S. The claimant alleged APD is liable for the sexual molestation of J.D.S. under two separate legal precepts: vicarious liability and direct liability. The claimant alleged APD had a "non-delegable" duty to protect J.D.S. from harm and sexual assault. At all times material to this matter J.D.S. was a resident of the Strong Group Home.

APD is a governmental agency that licenses, monitors, and places clients in residential living facilities. APD does not undertake to provide direct services to any particular client. Instead, the Florida Legislature, in s. 393.066, F.S. (2002), has mandated that the day-to-day operational level duties of care and maintenance of a client are to be delegated by APD.

Duty

Whether there is a jury verdict or a settlement agreement, as there is in this case, every claim bill must be based on facts sufficient to meet the preponderance of evidence standard. DCF had a duty to protect and care for J.D.S. while she was in the care of the Strong Group Home. This duty included ensuring the administrator and staff of the Strong Group Home were properly trained to detect and prevent sexual abuse of the developmentally-disabled individuals placed in their care; adequate staffing was in place at all times and the staff met training requirements; the number of placements in

the home did not exceed the limit established by DCF; and the home complied with the Bill of Rights of Persons with Developmental Disabilities as set forth under s. 393.13, F.S. (2002). Such Bill of Rights guarantees that developmentally disabled individuals have the right to be free from sexual abuse in a residential facility, the right to be free from harm, and the right to receive prompt and appropriate medical care and treatment.

The Strong Group Home administrator and staff did not meet the educational and training requirements set forth in Rule 65G-2.012, F.A.C., and s. 393.067, F.S. (2002). There was no evidence presented that the administrator met the educational requirements for licensing or that she or any staff member had received any training on how to detect, report, or prevent sexual abuse of the group home's residents and clients.

The Strong Group Home was licensed for and housed 4 - 6 developmentally disabled clients. Nevertheless, at one point while J.D.S. was in the home, DCF placed two foster children in the home. As a result of the placement of additional clients, not enough bedrooms were available and the dining room was converted into J.D.S.'s bedroom. The placement of her bed in the dining room area did not provide J.D.S. the privacy she was entitled to under the Bill of Rights of Persons with Developmental Disabilities set out in s. 393.13, F.S.

Additionally, the Strong Group Home had a duty to exercise reasonable care to protect J.D.S. from abuse and neglect, including sexual abuse; to exercise reasonable care to discover abuse and neglect, to provide J.D.S. with a reasonable, safe living environment that afforded her with privacy, and to exercise reasonable care to ensure she received prompt and appropriate medical care and treatment.

Breach

A preponderance of the evidence establishes that The Strong Group Home did not meet the educational and training requirements to be licensed as a group home initially by DCF and subsequently by APD. APD and the Strong Group Home as licensed by APD, breached their duty to properly care for and protect J.D.S. Further, APD and the Strong Group Home breached their duty to J.D.S. with respect to compliance with the rights and privileges afforded the developmentally

disabled pursuant to the Bill of Rights of the Developmentally Disabled.

Causation
The failure of the Department of Children and Families and subsequently the Agency for Persons with Disabilities to ensure the staff of the Strong Group Home was properly trained, possessed the required levels of education and credentials likely led to the rape of J.D.S.

Damages
The claim bill awards $950,000 for the benefit of J.D.S. No evidence was presented or available indicating that the damages authorized by the settlement are excessive or inappropriate.

ATTORNEYS FEES: Section 768.28(8), F.S., provides that "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." The claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded in compliance with the statutes. Lobbyists' fees are included with the attorneys' fees.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 28 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.

285348

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2017	.	
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	.	
	.	

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 90 - 91
and insert:
attorney fees relating to this claim may not exceed 25 percent of the amount

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 10 - 11
and insert:

285348

act; providing a limitation on the payment of attorney fees; providing an effective date.

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 11, 2017

I respectfully request that **Senate Bill 28**, relating to Relief of J.D.S. by the Agency for Persons with Disabilities, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 9

File signed original with committee office

S-020 (03/2004)

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
1/30/17	SM	**Favorable**
2/22/17	JU	**Fav/CS**
	ATD	
	AP	

January 30, 2017

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

Re: **CS/SB 32** – Judiciary Committee and Senator Audrey Gibson
Relief of Danielle Maudsley

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED EQUITABLE CLAIM FOR $1,750,000 PAYABLE FROM THE GENERAL REVENUE FUND OF THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, BASED ON A SETTLEMENT AGREEMENT BETWEEN THE ESTATE OF DANIELLE MAUDSLEY AND THE FLORIDA HIGHWAY PATROL AND TROOPER DANIEL COLE, WHICH RESOLVED A CIVIL ACTION THAT AROSE FROM THE ALLEGED NEGLIGENT USE OF AN ELECTRONIC CONTROL DEVICE THAT CAUSED THE DEATH OF DANIELLE MAUDSLEY.

FINDINGS OF FACT:

On September 19, 2011, Trooper Daniel Cole of the Florida Highway Patrol (FHP) arrested 20 year old Danielle Maudsley for two counts of leaving the scene of a crash with property damage and two counts of driving with no valid driver's license. The charges are all second degree misdemeanors.

The first hit-and-run crash occurred at approximately 8:47 a.m. on September 19, 2011. Trooper Cole was dispatched to the scene and while responding, a second hit-and-run crash, which occurred at approximately 9:41 a.m., was reported with tag numbers, vehicle descriptions, and driver descriptions consistent in both crashes. Trooper Cole requested a *Be on*

the Lookout (BOLO) for the suspect's vehicle. Both crashes occurred in Pinellas County.

A short time later, deputies from the Pinellas County Sheriff's Office (PCSO) located the suspect vehicle, which was damaged, at Ms. Maudsley's residence in Pinellas Park. Trooper Cole was notified and went to the Maudsley residence. Upon arrival Deputy Chad Earl (PCSO) informed Trooper Cole that Danielle Maudsley resisted his attempts to detain her, without violence, and he intended to charge her for that offense, and that she was already on probation for driving with no valid driver's license. After deputies informed Trooper Cole that Danielle Maudsley had made spontaneous statements to the deputies that she had been involved in the hit-and-run crashes, Trooper Cole arrested Ms. Maudsley.

Trooper Cole handcuffed Ms. Maudsley behind her back and transported her to the Pinellas Park FHP station at 7651 U.S.19 North to complete the investigative paperwork prior to taking her to the county jail.

Trooper Cole had activated the in-car video and audio system for the transport. The video shows that Danielle Maudsley is a slightly built woman and while fidgeting in the back of the patrol car removed one of her hands from the handcuffs. Upon arrival at the FHP station at approximately 11:04 a.m., and while exiting the patrol car, Ms. Maudsley passively informed Trooper Cole that her hand was free and she was unable to reinsert it into the handcuffs. Trooper Cole re-cuffed Ms. Maudsley behind her back and they entered the side door of the FHP station near the conference room.

Trooper Cole seated Ms. Maudsley in a chair in the conference room farthest from the door. Trooper Cole seated himself at the conference room table between Ms. Maudsley and the door to complete the investigative paperwork. At approximately 11:11 a.m. Ms. Maudsley advised Trooper Cole that she was thirsty. While escorting her to get a drink of water, she complained about the handcuffs and turned so that he could see that her wrist was caught in one of the handcuffs. Trooper Cole had her adjust her wrist so that it was not caught and he checked to be sure the handcuffs were still secure.

At approximately 11:41 a.m., Trooper Cole requested another FHP officer watch Ms. Maudsley so that he could use the

restroom. According to the investigative report, Trooper Cole returned about one and a half minutes later and assumed sole control of Ms. Maudsley while he resumed the paperwork.

Throughout the period from initially entering the conference room, there was no indication of aggressive or uncooperative behavior on the part of Danielle Maudsley while in custody.

At approximately 11:45 a.m., while Trooper Cole was still engaged in the paperwork, Danielle Maudsley ran past him, out of the conference room, down the short hallway, and exited the side door in which she had entered. At that time, Danielle Maudsley was no longer handcuffed behind her back. According to Trooper Cole, he was unable to discern whether she was handcuffed at all.

Trooper Cole indicated that he never heard Ms. Maudsley get up, the jingle of a handcuff, or anything. He felt a presence move behind him and when he looked up, she was even with the doorway to the conference room.

The in-car video and audio in Trooper Cole's transport vehicle were still activated and recorded the ensuing events. Off camera, Trooper Cole is heard asking, "Where are you going?" and he whistled at her. The next sound, which is almost immediately, is the squeak of the push bar on the station's exit door. Investigative reports and the video support the conclusion that the sound was from Danielle Maudsley pushing the bar to exit the building.

According to the investigative report, when Trooper Cole got to the exit door, it was swinging back in his direction. He pushed the door open with his left hand as he pulled his electronic control device (Taser) from the holster on his belt with his right hand. He weighed almost three times Danielle's weight, and according to Trooper Cole believed that [tackling] going to the ground with Danielle would certainly have resulted in her being injured.

The audio/video recording shows[1] Ms. Maudsley in full stride with her body posture leaning forward, within a distance of approximately one to two feet from Trooper Cole. Trooper Cole has the Taser in his right hand drawn and horizontal but

[1] At time stamp 11:45:49 a.m. on the in-car video recording.

his right elbow is still at his side. His posture is more erect. The left side of his body is not visible in the frame. Both are on the sidewalk under the eave of the building's roof.

According to the audio/video recording and still photographs from the recording, one second later, at 11:45:50 a.m., Trooper Cole's right hand with the Taser is outstretched approximately two feet from Ms. Maudsley's back. Both are still on the sidewalk beside the side door. The next still photograph with the same time stamp shows Ms. Maudsley stepping off the sidewalk in full stride, her back still to Trooper Cole, with her body posture indicating that she had received a Taser discharge into her back. She also released an audible squeal at this time. Trooper Cole had not warned the fleeing Maudsley that he was going to discharge the Taser. The distance between Trooper Cole and Ms. Maudsley had increased to approximately three to four feet by this point; however, the front of the Taser was approximately two feet away at the point of discharge.

At 11:45:51 a.m., Ms. Maudsley's body is twisting toward Trooper Cole in the parking lot. Still clearly handcuffed but in the front of her body, she falls backwards, striking the back of her head on the pavement of the parking lot.[2] She is whimpering and sits up. Trooper Cole instructs her to "lay down" several times, which she does. Other FHP troopers come out of the building to assist. Ms. Maudsley, while still whimpering and crying tries to sit up again and at 11:47:02 complains that she cannot not get up. This interchange continues until approximately 11:48 a.m., when she becomes quiet and still. Emergency Medical Services arrived at approximately 11:51 a.m., and transported Ms. Maudsley to Bayfront Medical Center.

At approximately 5:00 p.m., the physician attending to Ms. Maudsley advised that her condition was critical and her prognosis was not good due to the lack of activity in her brain. In addition Maudsley had tested positive for oxycodone, and cocaine in her system. Danielle Maudsley never regained consciousness, was diagnosed with a traumatic brain injury, remained in a constant vegetative state on life-support, and passed away on September 15, 2013.

[2] The FDLE Investigative Report of the incident reports a measurement between the approximate point on the concrete pad where Trooper Cole fired his Taser at Daniele Maudsley to the point on the pavement/asphalt where Ms. Maudsley fell and fractured her skull at 15.217 feet.

The FHP Supervisor's Use of Control Report, signed in October, 2011, by the district shift commander, district commander, and troop commander concluded that based on the totality of the circumstances, the force used exceeded the minimum amount of force needed to effectuate the apprehension of Danielle Maudsley. Within that report, the supervising investigator noted that Trooper Cole was in no apparent danger and because of his closeness to the suspect, the time necessary to warn Ms. Maudsley would not have prevented him from being able to use the ECD if she continued to flee. He further noted that the ECD cartridges issued by the agency have a maximum range of 25 feet.

On or about September 20, 2011, the FHP requested the Florida Department of Law Enforcement (FDLE) investigate this incident as a Use of Force incident. On November 7, 2011, the FDLE concluded that Trooper Cole was in the legal performance of his official law enforcement duties and acted within the scope of his assignment. The investigation determined that the use of force by Trooper Cole was within the allowable parameters outlined in Chapter 776, Florida Statutes.

The Department of Highway Safety and Motor Vehicles (DHSMV) Office of Inspector General's administrative investigation likewise determined that Trooper Cole acted in accordance with Florida law and FHP policy.

Florida Statutes, FHP policies and procedures, and officer/trooper training programs provide structure, parameters, and guidance for the use of force to prevent escape, including the use of electronic control devices (ECD). Although not a complete recitation of these documents, the following considerations demonstrate the complexity of the issues presented in the facts of this claim bill:

- A law enforcement officer or other person who has an arrested person in his or her custody is justified in the use of any force which he or she reasonably believes to be necessary to prevent the escape of the arrested person from custody. Section 776.07, F.S.
- Members of the FHP shall in every instance seek to employ the minimum amount of control required to successfully overcome physical resistance, prevent escapes, and effect arrests. Members' actions must be objectively reasonable in light of the facts and

circumstances confronting them, without regard to their underlying intent or motivation. FHP Procedures 10.01.07 and Policy 10.05.02 specific to ECD.

- In accordance with s. 943.1717(1), F.S., a member's decision to deploy the ECD shall involve an arrest or custodial situation during which the person who is the subject of the arrest or custody escalates resistance to the member from passive physical resistance to active physical resistance, and the person (a) has the apparent ability to physically threaten the member or others; or, (b) is preparing or attempting to flee or escape. (Note: Fleeing cannot be the sole reason for deployment of the ECD.) FHP Policy Manual 10.05.04 C.
- There may be incidents in which the use of an ECD conflicts with [a list of 6 situations a member shall not use the device unless exigent circumstances exist, including use on a handcuffed prisoner]. In those cases, the use of the ECD must be based on justifiable facts and are subject to "Use of Control" supervisory review. FHP Policy Manual specific to ECD – Deployment 10.05.04 C 1.
- As in all uses of control, certain individuals may be more susceptible to injury. Members should be aware of the greater potential for injury when using an ECD against … persons of small build regardless of age. FHP Policy Manual specific to ECD – Deployment 10.05.04 C 2.
- When reasonable, members preparing to fire the device should announce a verbal warning such as "Stop Resisting, Taser!, Taser!, Taser!" to warn the violator … FHP Policy Manual specific to ECD – Deployment 10.05.04 C 4.

On November 2, 2012, Danielle Maudsley was determined to be incapacitated, and Julie Goddard was appointed her Guardian by the Circuit Court of the Ninth District in and for Orange County. Ms. Maudsley was residing in a nursing facility in Orange County at the time. When Ms. Maudsley died, Ms. Goddard became the Personal Representative of the Estate of Danielle Maudsley.

Litigation originated on May 23, 2013, in state court against Trooper Cole and the FHP in the Sixth Circuit of Pinellas County while Ms. Maudsley was still alive. The complaint alleged that Trooper Cole acted in a manner exhibiting wanton and willful disregard of human rights and safety, by among other ways:

- Failing to use his Taser in a proper, safe and appropriate manner;
- Deploying his Taser on a handcuffed and running Danielle Maudsley when he knew or should have known that the use of the Taser under the circumstances would likely result in severe injuries to her;
- Failing to use other available, safer means to stop Danielle Maudsley, such as reaching out with his hands and grabbing her;
- Failing to provide a verbal warning in accordance with the policies and procedures set forth by the Florida Highway Patrol; and
- Failing to follow other accepted policies and procedures set forth by the FHP.

The complaint also alleged that the FHP was negligent in its training and instruction of Trooper Cole in the proper, safe, and appropriate use of his Taser.

On July 7, 2014, after Danielle Maudsley's death, an amended complaint was filed that also alleged excessive force and Fourth Amendment constitutional violation claims. The case was removed to the United States District Court, Middle District of Florida.

On August 10, 2015, the parties settled all claims for $1,950,000 to avoid the cost of protracted and expensive litigation. The settlement agreement refers to the allegations of negligence against the FHP and Trooper Cole that are contained in the Complaint. While maintaining no admission of liability or responsibility, the FHP and Trooper Cole acknowledge that if this case went to trail, a federal jury could reasonably award damages to the Plaintiff in the amount of $1,950,000 based on the facts of the case.

The limit of the State's sovereign immunity in the amount of $200,000 has been paid by the Division of Risk Management pursuant to s. 768.28, F.S. The remaining $1,750,000 is the subject of the claim bill and will be paid from General Revenue appropriated to the DHSMV if the claim bill becomes law. The FHP and Trooper Cole have agreed not to oppose a claim bill in this amount.

In the settlement agreement, the Plaintiff agrees to voluntarily dismiss the lawsuit, with prejudice, upon court approval. The Final Judgment has not been issued by the United States

District Court for the Middle District of Florida in this matter. However, Senate Rule 4.81(6) provides that the hearing and consideration of a claim that is still within the judicial or administrative systems may proceed where the parties have executed a written settlement agreement.

A Medicaid lien of approximately $400,521 and $119 Pinellas County EMS outstanding medical bills exist.[3] The net proceeds to the estate from this claim bill for $1,750,000, after medical liens and attorney fees is expected to be approximately $911,860. The probate court may award estate and personal representative fees, estimated at approximately $114,030, in accordance with Florida law from all net proceeds[4] to the estate.

Counsel for the Plaintiff represents it is his understanding from discussion with the attorney for the personal representative of the estate, that the proposed distribution of any claim bill will be made in accordance with Florida Statute, in that both parents will receive damages equally, [after liens, costs, and expenses have been paid]. However, Cheryl Maudsley, mother and primary caregiver of Danielle, both during her life and while she was hospitalized, will be petitioning the probate court for a greater apportionment of those damages. Danielle Maudsley's father is currently incarcerated. According to Counsel, Cheryl Maudsley also intends to establish a trust for her 8 year old daughter, Danielle's sister, with a majority of her portion of the funds.

CONCLUSIONS OF LAW:

A common law duty of care is owed to a person in custody. Kaiser v. Kolb, 543 So. 2d 732 (Fla 1989) Accordingly, Trooper Cole had a duty to reasonably carry out his operational responsibilities of maintaining custody of Danielle Maudsley and apprehending her when she attempted to flee. Under the doctrine of respondeat superior, the FHP, a Division of the DHSMV, is vicariously liable for the negligent acts of its employees, when such acts are within the course and scope of employment. *See* Mallory v. O'Neil, 69 So.2d 313 (Fla.1954), and s. 768.28, F.S.

[3] If this claim bill is not enacted, a negotiated amount of $87,000 will be paid from the $200,000 recovery under the waiver of sovereign immunity to satisfy the Medicaid lien. According to counsel, the $200,000 has not been disbursed yet to the estate.

[4] Estimated net proceeds is $1,950,000 - $487,500 (25% attorney and lobbying fees) - $400,640 (Medicaid and medical bills) - $14,636 (legal office expenses) = $1,047,224.

Whether Trooper Cole implemented his responsibilities negligently or in accordance with statutory and departmental policy was an appropriate question for the jury. This hearing officer concludes that Trooper Cole negligently performed his duties in the firing of his Taser at the point in time that he discharged it, without first issuing a warning to allow her the opportunity to stop, without ascertaining to the best of his ability whether Ms. Maudsley was still handcuffed and to reassess the situation in that light, and without at least attempting to stop or overtake her in a manner that did not include a full body tackle. He had a 25 foot discharge range within which these actions could have been employed prior to a Taser discharge. Discharging the Taser was the proximate cause of Danielle Maudsley injuries and subsequent demise. The parties agreed to execute the settlement agreement to resolve this question as well as all allegations in the Amended Complaint. The settlement agreement is reasonable given the unfortunate outcome of this incident.

ATTORNEYS FEES: Section 768.28(8), F.S., states that no attorney may charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of any judgment or settlement. Claimant's counsel, Ralph M. Guito, III, Esq., has submitted an affidavit that the attorney fees, including lobbying fees, will not exceed 25 percent of the total amount awarded under the claim bill.

RECOMMENDATIONS: Based upon the foregoing, I recommend that SB 32 be reported FAVORABLY.

Respectfully submitted,

Sandra R. Stovall
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.

304608

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Gibson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 74 - 75

and insert:

amount paid for attorney fees relating to this claim may not exceed 25 percent of the

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 11

and insert:

304608

the payment of attorney fees;

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
6th District

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Judiciary
Regulated Industries
Joint Legislative Auditing Committee

January 27, 2017

Senator Greg Steube, Chair
Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Steube:

I respectfully request that SB 32, a claims bill on behalf of Danielle Maudsley, relating to alleged negligence by the Florida Highway Patrol, be placed on the next committee agenda.

SB 32, requires $1,750,000.00 to be paid upon approval of the claims bill minus payments required to satisfy outstanding Medicaid liens.

Thank you for your time and consideration.

Sincerely,

Audrey Gibson
State Senator
District 6

REPLY TO:
☐ 101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904)359-2553 FAX: (904) 359-2532
☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

Tab 4

THE FLORIDA SENATE

APPEARANCE RECORD

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

SB 32

Meeting Date — *Bill Number (if applicable)*

Topic SB 32 - Danielle Mandsley

Amendment Barcode (if applicable)

Name Jennifer Burns

Job Title Attorney

Address 250 Bilbar Rd N #102 (*Street*)

Phone 727-424-7287

Clearwater FL 33765 (*City* / *State* / *Zip*)

Email jburns@cmfirm.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Estate of Danielle Mandsley

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.

S-001 (10/14/14)

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
2/2/17	SM	**Favorable**
2/22/17	JU	**Fav/CS**
	AHS	
	AP	

February 2, 2017

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

Re: **CS/SB 50** – Judiciary Committee and Senator Audrey Gibson
Relief of Eddie Weekley and Charlotte Williams

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM BILL BY EDDIE WEEKLEY AND CHARLOTTE WILLIAMS OF THE ESTATE OF FRANKLIN WEEKLEY, FOR $1 MILLION, BASED ON A FINAL JUDGMENT SUPPORTED BY A SETTLEMENT AGREEMENT BETWEEN MR. WEEKLEY AND MS. WILLIAMS AND THE AGENCY FOR PERSONS WITH DISABILITIES AS COMPENSATION FOR THE DEATH OF FRANKLIN WEEKLEY AT THE SUNLAND CENTER IN MARIANNA IN 2002.

CURRENT STATUS:

A claim bill for these Claimants was first filed in the 2008 Session.

An administrative law judge from the Division of Administrative Hearings, serving as a Senate Special Master, held a de novo hearing on the 2008 version of this bill, SB 30 (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.

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 T. Kent Wetherell, which if known at the hearing, might have significantly altered the findings or recommendations 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 50 (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
02/05/08	SM	Fav/1 amendment

February 5, 2008

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 30 (2008)** – Senator Al Lawson
HB 451 (2008) – Representative Matthew Meadows
Relief of Eddie Weekly and Charlotte Williams

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR $1 MILLION AGAINST THE AGENCY FOR PERSONS WITH DISABILITIES ARISING OUT OF THE DEATH OF FRANKLIN WEEKLY AT THE SUNLAND CENTER IN MARIANNA IN 2002.

FINDINGS OF FACT:

Franklin Weekly was committed to the care of the Department of Children and Family Services (DCF) in 1999 after he was determined to be incompetent to stand trial for the alleged arson of his home. Franklin was 15 years old at the time, but he had the mental capacity of a first grader and Franklin was mildly retarded with an IQ between 52 and 65.

Franklin was initially placed in group homes in Orlando and Ft. Walton Beach. However, those facilities proved to be inadequate for Franklin because of his behavioral problems and because he ran away on several occasions.

In November 2001, Franklin was transferred by court order to the Sunland Center (Sunland) in Marianna. DCF recommended to the court that Franklin be placed at Sunland because it was a more secure facility and could provide the constant supervision that Franklin required. DCF and Sunland

staffs were aware that Franklin did not have "survival skills" and that he would be at risk of serious injury or death if he ran away from the facility.

DCF was, at the time, responsible for operating Sunland. When the Agency for Persons with Disabilities (APD) was created in 2004, it became responsible for operating Sunland.

At Sunland, Franklin lived in the Hayes House with 22 other developmentally disabled individuals. The house had three exits, only two of which had locked doors. The door right across from Franklin's room did not lock.

On December 5, 2002, Franklin was involved in several altercations with other residents and staff members that required him to be physically restrained. He also attempted to run away that day.

Two staff members, Gertrude Sims and James Duncan, were on duty at the Hayes House the night of December 5. Their shift started at 10:15 p.m. and went to 6:15 a.m. the following day.

The primary job duties of Ms. Sims and Mr. Duncan were custodial in nature, e.g., doing laundry, mopping floors, etc. They were also responsible for making sure that all of the residents were accounted for throughout the night, and to that end, Ms. Sims was responsible for making "rounds" on the residents every 30 minutes to be sure they were asleep in their beds.

Ms. Sims testified in her deposition that she made her rounds every 30 minutes from 10:30 p.m. to 5:30 a.m. and that she observed Franklin sleeping in his bed each time she checked his room. She and Mr. Duncan also testified that at least one of them was stationed at all times at a desk near the unlocked door across from Franklin's room.

Notwithstanding this testimony, the more persuasive evidence establishes that the door was not being watched for at least a short period after Ms. Sims made her 5:30 a.m. rounds because Ms. Sims and Mr. Duncan were tending to a resident who had soiled himself. Mr. Duncan testified in his deposition that the soiled resident was in Room D, which was Franklin's room and that he recalled seeing Franklin sleeping, but

Ms. Sims testified that the soiled resident was in Room B. Ms. Sims' testimony is more credible because she had been working at the Hayes House for a number of years, whereas Mr. Duncan was "pulled" to the Hayes House just for that night because of a staffing issue.

While Ms. Sims and Mr. Duncan were tending to the resident in Room B and the unlocked doors were unsupervised, Franklin left the Hayes House through those doors. Mr. Duncan discovered that Franklin was missing after he finished helping Ms. Sims with the soiled resident and he made his way into Franklin's room to mop the connected bathroom.

Ms. Sims and Mr. Duncan notified Sunland's main office that Franklin was missing, and a search for Franklin on the Sunland campus was immediately commenced. Local law enforcement was also notified. They assisted in the search.

Franklin's parents were notified of his disappearance at approximately 8:30 a.m., and they immediately came to the Sunland to help in the search. It not entirely clear whether or to what extent they were allowed to help in the search, but Franklin's father testified that at some point the family was told that they could no longer assist in the search on the Sunland property.

One of the buildings on the Sunland campus searched in the days following Franklin's disappearance was a dilapidated building known as the "boiler building." The building was several hundred yards from the Hayes House and was being used for storage. The doors on the building were chained and padlocked, but there was enough space for a person to fit between the doors and get into the building.

Butch Edwards, the maintenance and construction supervisor at Sunland, testified that he went into the building during the search for Franklin but that he saw no sign of him. He testified that he could not get all the way to the back of the building because it was full of junk.

Sunland suspended the search for Franklin after approximately 2 weeks. His family continued to search for him, and from time to time there were unconfirmed sightings of Franklin reported around Northwest Florida. At some point,

Franklin's parents were accused of harboring Franklin by Sunland staff and/or local law enforcement of harboring Franklin. In January 2003, Franklin was found in contempt of the Order committing him to Sunland due to his apparent elopement from the facility.

In October 2004, contractors hired to demolish the dilapidated boiler building found what turned out to be Franklin's remains in a basement of the building. The only clothing found with the remains was decomposed underwear and an undershirt with Franklin's name written on them.

There is no credible evidence that Franklin ever left the Sunland campus after he ran away from the Hayes House. The weather on the day of his disappearance was very cold, and it is more likely than not that Franklin died of exposure to the elements in the building where he was ultimately found.

In January 2005, the Bay County Medical Examiner determined that the remains were those of Franklin. A death certificate was issued and the remains were released to Franklin's parents for burial. However, it was not until 2007 that DCF and APD formally acknowledged that the remains were those of Franklin. DNA tests performed by the Florida Department of Law Enforcement (FDLE) confirmed that the remains are Franklin's.

FDLE commenced an investigation into Franklin's disappearance in 2007. The FDLE investigation was still open as of the date of the Special Master hearing, but the claimants' attorney represented that it was his understanding that the FDLE investigation would soon be closed based upon a lack of evidence of a crime having been committed in relation to Franklin's disappearance and death.

Franklin was survived by his parents, Eddie Weekly and Charlotte Wheeler, and a younger brother. Franklin's parents are not married, but they have been together for 23 years.

Franklin's parents are developmentally disabled and are unable to work. His father receives assisted living services from the local Association for Retarded Citizens. To be eligible for such services, a person has to have an IQ below 70.

By all accounts, Franklin and his parents had a very close relationship. Franklin wanted to go home to his parents and Franklin's parents wanted him to come home. Franklin's parents were "devastated" by Franklin's disappearance and death.

Special needs trusts have been established for Franklin's parents because of their developmental disabilities. The trusts are subject to federal law (e.g., 42 U.S.C. § 1396p), which requires that any assets remaining in the trust upon the beneficiary's death first be used to repay state Medicaid benefits.

APD provided an affidavit stating that it does not have funds available to pay this claim. The affidavit represents that APD might lose federal funding and that its ability to provide necessary services to disabled individuals would be "seriously impaired" if APD was required to pay this claim from its budget without an additional appropriation of General Revenue.

In July 2004, in response to Franklin's disappearance, DCF adopted a detailed protocol to be followed when a Sunland resident goes missing. The protocol requires, among other things, that the perimeter of the facility be immediately secured and that "an intense immediate area search, expanding outward of the last contact site" be conducted.

LEGAL PROCEEDINGS:

In 2004, before Franklin's remains were found, Franklin's parents filed a lawsuit against DCF that sought to require DCF to resume searching for Franklin. After Franklin's remains were discovered, the suit was amended to allege a wrongful death claim. The suit also included a civil rights claim under 42 U.S.C. § 1983 against Ms. Sims and Mr. Duncan.

The case was settled through mediation in June 2007, after DCF and APD acknowledged that the remains found at Sunland were Franklin's. The settlement agreement required APD to pay Franklin's parents a total of $1.3 million.

The settlement was approved by the circuit court in August 2007. The Order approving the settlement requires the proceeds to be paid into "a Medicaid-compliant special needs trust account."

APD has paid Franklin's parents $300,000, with $200,000 attributed to the tort claims and $100,000 attributed to the civil rights claim. APD agreed as part of the settlement to support a claim bill for the remaining $1 million.

Franklin's parents received $184,464.38 from the initial $300,000 payment. Those funds were split equally, with each parent receiving $92,231.19.

The remainder of the initial payment went to attorney's fees and costs. The claimants' attorney agreed to take only $37,500 in fees from the initial payment, which is half of the 25% attorney's fee for the initial payment. The remainder of the fee was "deferred" until the claim bill is paid.

CLAIMANT'S POSITION:

- DCF, the predecessor agency to APD, had a duty to safeguard Franklin's well-being while he was at Sunland, and DCF's failure to adequately supervise Franklin on the night he disappeared was the direct and proximate cause of his death.

- The $1.3 million in damages agreed to by the parties are reasonable under the circumstances.

AGENCY'S POSITION:

- APD admits liability and supports the claim bill.

- APD does not have the funds available to pay the claim without an additional appropriation of General Revenue.

CONCLUSIONS OF LAW:

APD is the successor agency to DCF with respect to the operation of Sunland. Therefore, APD is the agency responsible for paying this claim even though the incident giving rise to the claim occurred while DCF operated Sunland. See Ch. 2004-267, § 87(3), Laws of Fla.

DCF had a duty to safeguard Franklin's well-being while he was confined at Sunland. That duty was breached when Sunland staff left the unlocked doors across from Franklin's room at the Hayes House unsupervised. Franklin's elopement and death were foreseeable consequences of the staff's failure to adequately supervise him because Sunland staff knew that he was an elopement risk and that he lacked the skills to survive if he did elope. The failure of the Sunland staff to supervise Franklin was a direct and proximate cause of his death.

There is no evidence that Franklin had any earning capacity as a result of his mental retardation. The $1.3 million in damages agreed to by the parties are attributable to the non-economic damages (e.g., mental anguish) suffered by Franklin's parents as a result of his disappearance and death.

There is no way to place a value on the mental anguish suffered by a parent who loses a child, and a jury may have awarded far more than $1.3 million in damages to Franklin's parents if this case had gone to trial. The amount agreed to by the parties in the mediated settlement is within the range of reasonableness for such an award. Indeed, in the recent Martin Anderson case, the Legislature approved a claim bill for $5 million for the parents of a child who died while in the custody of the State.

LEGISLATIVE HISTORY:

This is the first year that this claim has been presented to the Legislature.

ATTORNEY'S FEES AND LOBBYIST'S FEES:

The Order approving the parties' settlement states that the circuit court will determine the amount of attorney's fees to be paid from the proceeds of the claim bill. However, that is an issue for the Legislature, not the circuit court. See Gamble v. Wells, 450 So.2d 850 (Fla. 1984).

The claimants' attorney provided an affidavit stating that attorney's fees are limited to 25%, as required by Section 768.28(8), F.S. There are no outstanding costs.

In order to maximize the proceeds that were paid to Franklin's parents, the claimants' attorney took only $37,500 in attorney's fees out of the initial payment, rather than the $75,000 (i.e., 25% of the $300,000 payment) that he could have taken. The other $37,500 of attorney's fees related to the initial payment was "deferred" until payment of the claim bill.

The lobbyist's fees are not included as part of the 25 percent attorney's fee. The lobbyist's fees are an additional 5 percent, which is $50,000 of the $1 million claim.

The Legislature is free to limit the fees and costs paid in connection with a claim bill as it sees fit. Gamble v. Wells, supra. The bill does so by stating that "[t]he total amount paid for attorney's fees, lobbying fees, costs and other similar

expenses relating to this claim may not exceed 25 percent of the amount awarded [by the bill]."

If this language remains in the bill, Franklin's parents will receive a total of $750,000. The remaining $250,000 will go to attorney's fees and lobbyist's fees.

If this language were not in the bill, Franklin's parents would receive $662,500. The claimants' attorney would receive $287,500 (i.e., $37,500 in fees "deferred" from the initial payment plus $250,000 in fees related to the claim bill) and the lobbyist would receive $50,000.

OTHER ISSUES: The bill should be amended to clarify that the payment to Franklin's parents will go to their special needs trust, as required by the court order approving the settlement agreement.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 30 be reported FAVORABLY, as amended.

Respectfully submitted,

T. Kent Wetherell
Senate Special Master

cc: Senator Al Lawson
Representative Matthew Meadows
Faye Blanton, Secretary of the Senate
House Committee on Constitution and Civil Law
Counsel of Record

467848

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Gibson) recommended the following:

Senate Amendment

Delete line 58
and insert:
Treasury. Pursuant to the settlement agreement approved by the court in August 2007, the funds are to be paid into a Medicaid-compliant special needs trust account established on behalf of Eddie Weekley and Charlotte Williams.

206056

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Gibson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 64 - 67

and insert:

disappearance and death of Franklin Weekley. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 12

206056

and insert:

limitation on the payment of attorney fees; providing

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
6th District

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Judiciary
Regulated Industries
Joint Legislative Auditing Committee

January 27, 2017

Senator Greg Steube, Chair
Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Steube:

I respectfully request that SB 50, relating to the mysterious disappearance of Franklin Weekley, and subsequent discovery of his death while in the State's care and custody, be placed on the next committee agenda.

SB 50, requires $1,000,000.00 to be paid upon approval of a claims bill.

Thank you for your time and consideration.

Sincerely,

Audrey Gibson
State Senator
District 6

REPLY TO:
☐ 101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904)359-2553 FAX: (904) 359-2532
☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

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**
	AHE	
	AP	

February 1, 2017

The Honorable Joe Negron
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 DEVAUGHNWHICH 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

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

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

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

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)

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

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.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Al Lawson
Counsel of Record

652162

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Braynon) recommended the following:

Senate Amendment (with title amendment)

Delete lines 37 - 52

and insert:

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

Section 3. The amount paid by the Division of Risk

652162

Management of the Department of Financial Services pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in the preamble to this act which resulted in the death of Devaughn Darling. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 4 - 29

and insert:

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; providing a limitation on the payment of attorney fees; providing an effective date.

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

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

652162

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

WHEREAS, as provided by the settlement agreement, Florida State University has agreed to support the passage of a claim

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations
Appropriations Subcommittee on the Environment and Natural Resources
Banking and Insurance
Ethics and Elections
Regulated Industries
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR OSCAR BRAYNON II
Democratic Leader
35th District

February 9, 2017

Senator Greg Steube, Chair
Judiciary Committee,
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Steube:

This letter is to request that **Senate Bill SB 48**, relating to ***Relief of Wendy Smith and Dennis Darling, Sr., by the State of Florida*** be placed on the agenda of the next scheduled meeting of the committee.

SB 48 refers to, Relief of Wendy Smith and Dennis Darling, Sr., by the State of Florida; Providing for the relief of Wendy Smith and Dennis Darling, Sr., parents of Devaughn Darling, deceased; providing an appropriation from the General Revenue Fund 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. CLAIM WITH APPROPRIATION: $1,800,000.00

Thank you for consideration of this request.

Sincerely,

Senator Braynon
District 35

CC: *Tom Cibula, Staff Director*
Joyce Butler, Committee Administrative Assistant- ***Room 515K***

REPLY TO:
☐ 606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7152
☐ 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5035

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

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
1/9/17	SM	**Favorable**
2/22/17	JU	**Fav/CS**
	AHS	
	AP	

January 9, 2017

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

Re: **CS/SB 38** – Judiciary Committee and Senator Lizabeth Benacquisto
HB 6511 – Representative Mike Miller
Relief of L.T. by the State of Florida

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED EQUITABLE CLAIM FOR $800,000 FROM GENERAL REVENUE BASED ON A SETTLEMENT AGREEMENT BETWEEN THE LEGAL GUARDIAN OF L.T. AND THE DEPARTMENT OF CHILDREN AND FAMILIES FOR THE SEXUAL ABUSE SUFFERED BY L.T. WHEN SHE WAS LEFT BY THE DEPARTMENT IN THE FOSTER CARE OF A REGISTERED SEX OFFENDER

CURRENT STATUS:

On December 14, 2010, 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 18 (2012). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably with an amendment to correct an erroneous claim amount. (The 2012 bill failed to account for the $200,000 that DCF had already paid; therefore, the proper claim amount was $800,000 rather than $1,000,000.) The 2012 Special Master's Final Report is attached as an addendum to this report. The amount claimed in SB 38 (2017) on the date of this report is $800,000.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Mary K. Kraemer. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

The provisions of SB 38 (2017) address and update the circumstances (with additional detail) upon which the claim for relief is based. It should be noted that the prior claim bill, SB 18 (2012), evaluated by the then-Senate special master, sought relief of the claimant as a minor. The record reflects that the claimant is now over the age of eighteen.

SB 38 requires that after "payment of attorney fees and costs, lobbying fees, and other similar expenses relating to this claim; outstanding medical liens other than Medicaid liens and other immediate needs," the remaining funds are to be placed in a trust for the exclusive use and benefit of the claimant. (see Section 2). SB 38 requires that all Medicaid liens from the treatment and care of claimant due to the injuries and damages to her shall be waived or paid by the State (see Section 4).

Administration of the trust will be handled by an institutional trustee selected by the claimant, until the trust is terminated upon the claimant's 25th birthday when the remaining principal and interest will revert to the claimant. In case of the claimant's death prior to termination of the trust, any remaining trust funds will revert to her heirs, beneficiaries, or estate.

The position of the Department of Children and Families (DCF) on the settlement of the case by payment as described in the bill is unchanged. Counsel for DCF stated in a letter dated November 30, 2016 that "DCF needs to continue to have claim bills funded from General Revenue. DCF is operating at minimal trust fund reserves that are essential to meeting cash flow and Department program needs. Any appropriation from a trust fund could have an effect on DCF operations and its ability to meet future related obligations."

In update letters dated December 12, 2016 and December 13, 2016, claimant's counsel states that DCF "specifically agreed to support a claim bill for $800,000 as the unpaid balance of the mediated settlement amount of $1,000,000 pursuant to a Mediation Settlement Agreement) between DCF and claimant's then-guardian dated June 21, 2010. The Agreement defines DCF's support "to include all those actions . . . set forth in the Archille v. DCF case. Claimant's counsel cites to the Act for the Relief of [Archille] enacted in 2010-235, *Laws of Florida*. Claimant's counsel provided a copy of the Settlement Agreement in that matter from 2007, which states support of a claims bill "shall include personal support by the Secretary [of DCF], including reasonable and good faith efforts to personally appear and testify before the legislature at hearings", although not "requiring the Secretary's personal appearance or attendance at any particular meeting, hearing or session."

The position of Claimant's counsel's position is the Legislature should be assisted by DCF to fund the Mediation Settlement Agreement that resolve the lawsuit filed on L.T.'s behalf.

Claimant's counsel also provided a summary of claimant's report of her current status, which indicates:

1. Claimant's name is now "L.A." She is married and lives with her husband and two daughters in Jacksonville, where her husband, Petty Officer D.A. is an active duty hospital Corpsman, stationed at the naval base there;

2. Claimant is working toward her bachelor's degree in general psychology at Florida State College at Jacksonville. She plans to pursue a master's degree next fall and a doctoral program thereafter. Claimant's career goal is to become a pediatric mental health specialist, for the treatment of children who have suffered trauma; and

3. Claimant continues to undergo therapy and takes daily medication to address the continuing effects of her trauma.

CONCLUSIONS OF LAW:

See the Conclusions of Law on page 3 of the attached Special Master's Final Report dated December 1, 2011, which were made in the de novo proceeding on a previous version of the bill.

ATTORNEYS FEES: SB 38 requires that the total amount paid for attorney fees, lobbying fees, costs, and other similar expenses related to the claim may not exceed 25 percent of the award (i.e., not exceeding $200,000 of the proposed $800,000 payment to the trust created for the benefit of the claimant).

RECOMMENDATIONS: That SB 38 be reported FAVORABLY, based on the conclusions in the attached Special Master's Final Report dated December 1, 2011 (page 3) as reached by the administrative law judge from the Division of Administrative Hearings, that:

DCF has a duty to exercise reasonable care when it places foster children and to protect them from known dangers, and DCF knew or should have known of the serious risk of harm to L.T. These breaches of duty were the proximate cause of the injuries that L.T. suffered.

Respectfully submitted,

Mary K. Kraemer
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

	COMM	ACTION
12/1/11	SM	Fav/1 amendment

December 1, 2011

The Honorable Mike Haridopolos
President, The Florida Senate Suite
409, The Capitol Tallahassee, Florida
32399-110

Re: **SB 18 (2012)** Senator Jeremy Ring
Relief of L.T., a Minor

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED EQUITABLE CLAIM FOR $800,000 FROM GENERAL REVENUE BASED ON A SETTLEMENT AGREEMENT BETWEEN THE LEGAL GUARDIAN OF L.T. AND THE DEPARTMENT OF CHILDREN AND FAMILIES FOR THE SEXUAL ABUSE SUFFERED BY L.T. WHEN SHE WAS LEFT BY THE DEPARTMENT IN THE FOSTER CARE OF A REGISTERED SEX OFFENDER.

FINDINGS OF FACT:

In August 1995, when LT. was less than two years old, the Department of Children and Families (DCF) removed LT. and her brother from their mother and placed them in the foster care of their great uncle, Eddie Thomas, and his wife, who lived in Gadsden County. Less than a year after the placement, Thomas was charged with sexually molesting a 13-year-old girl. He plead no contest to lewd, lascivious,' or indecent assault upon a child and was sentenced to five years' probation and required to receive sex abuse counseling. He was also registered as a sex offender.

Despite the fact that DCF was aware of Thomas' conviction and his registration as a sex offender, it decided

that the risk of harm to L.T. was low and did not remove L.T. from Thomas' care and custody. DCF also terminated protective supervision of L.T., meaning that a social worker no longer visited the Thomas home from time to time to see how L.T. was doing. Protective supervision is often terminated by DCF when a child is placed with a relative and DCF is satisfied that supervision is unnecessary.

In 2004, when L.T. was 10 years old, DCF placed an adolescent girl in the foster care of the Thomases. A few months after the placement, this minor girl ran away from the house in the middle of the night, claiming that Thomas had attempted to sexually molest her. DCF removed this girl from the Thomas home, but DCF did not re-evaluate the placement of LT. with Thomas.

In March 2005, when L.T. was 11 years old (and Thomas was 44), she ran away from home and told authorities that she had been repeatedly sexually abused by Thomas. She also said that Thomas and his wife used drugs. DCF then removed L.T. from the Thomas home.

It was later revealed by L.T. that she was roughly disciplined by the Thomases and that they were verbally abusive to her, frequently calling her derogatory names and telling her that she was worthless.

L.T. is now 17 years old and in a good foster home. However, as a result of the sexual abuse she endured while living with Thomas, L.T. suffers from post traumatic stress disorder, depression, and low self esteem. She has occasionally attempted suicide and for 10 months was a resident of Tampa Bay Academy, a mental health facility. She is receiving psychological counseling and will likely need counseling for many years. A trial consultant projected her future lost earnings as $540,000. Her projected future medical expenses are $760,000 to $11,580,000, depending on the degree of psychological therapy and supervision she might need, the higher figure reflecting the costs of institutionalization. A conservative estimate of her total future economic losses is around $2 million.

LITIGATION HISTORY:

In 2009, a lawsuit against DCF was filed in the Second Judicial Circuit by L.T.'s aunt and legal guardian. The case was successfully mediated and the parties entered into a

settlement agreement pursuant to which L.T. would receive $1,000,000. The sovereign immunity limit of $200,000 was paid and the balance of $800,000 is sought through this claim bill. The court order approving the settlement agreement requires that the net proceeds to L.T. be placed in a special needs trust. After deducting legal fees and costs from the $200,000, and accounting for a Medicaid lien, $11,084 remained to be placed in a special needs trust for L.T.

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 DCF is liable in negligence for the injuries suffered by L.T., and, if so, whether the amount of the claim is reasonable.

DCF has a duty to exercise reasonable care when it places foster children and to protect them from known dangers. DCF breached that duty when it learned that Thomas had been convicted of a sexual offense on a child, but did not remove L.T. from the Thomas home. DCF acted negligently again when it did not remove L.T. following the charge of sexual abuse against Thomas made by another foster child in 2004. DCF knew or should have known that Thomas posed a serious risk of harm to L.T. These breaches of duty were the proximate cause of the injuries that L.T. suffered.

The amount of the claim is fair and reasonable.

ATTORNEY'S FEES:

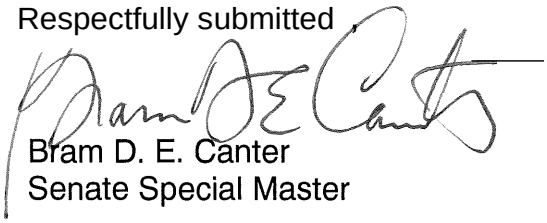
In compliance with s. 768.28(8), Florida Statutes, LT.'s attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature.

OTHER ISSUES:

The bill erroneously states that the claim is for $1 million, failing to account for the $200,000 that DCF has already paid. The bill should be amended to state that the claim is for $800,000.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 18 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,



Bram D. E. Canter
Senate Special Master

cc: Senator Ring
Debbie Brown, Secretary of the Senate
Counsel of Record


479976

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2017	.	
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	.	
	.	

The Committee on Judiciary (Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 153 - 155

and insert:

amount paid for attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 9

479976

and insert:

limitation on the payment of attorney fees; providing

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Rules, *Chair*
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Regulated Industries

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR LIZBETH BENACQUISTO
27th District

February 13, 2017

The Honorable Greg Stuebe
Senate Judiciary, Chair
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 38- Relief of LT by State of Florida

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 38, Relating to Relief of LT by the State of Florida, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

Lizbeth Benacquisto
Senate District 27

Cc: Tom Cibula

REPLY TO:
☐ 2310 First Street, Unit 305, Fort Myers, Florida 33901 (239) 338-2570
☐ 400 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

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
1/31/17	SM	**Favorable**
2/22/17	JU	**Fav/CS**
	CA	
	RC	

January 31, 2017

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

Re: **CS/SB 36** – Judiciary Committee and Senator Bill Montford
Relief of Jennifer Wohlgemuth

SPECIAL MASTER'S FINAL REPORT

THIS IS A MEDIATED SETTLED EXCESS JUDGMENT CLAIM FOR $2.6 MILLION AGAINST THE PASCO COUNTY SHERIFF'S OFFICE TO COMPENSATE JENNIFER WOHLGEMUTH FOR INJURIES SUSTAINED IN A MOTOR VEHICLE CRASH RESULTING FROM THE NEGLIGENT OPERATION OF A POLICE VEHICLE.

CURRENT STATUS: On December 2, 2011, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, issued a report after holding a de novo hearing on a previous version of this bill, SB 22 (2012). The judge's report contained findings of fact and conclusions of law and recommended that the bill be reported favorably with one amendment. That report is attached as an addendum to this report.

PRIOR LEGISLATIVE HISTORY: Senate Bill 50 by Senator Smith and House Bill 1347 were filed during the 2011 Legislative Session. The Senate Bill was indefinitely postponed and withdrawn from consideration. The House Bill died in its only committee of reference. Senate Bill 22 by Senator Smith and House Bill 1353 were filed during the 2012 Legislative Session. The Senate Bill passed with one amendment in all its committees

of reference but died in Messages. The House Bill died in its only committee of reference.

Senate Bill 30 filed by Senator Montford and House Bill 3535 by Representative Rouson were filed during the 2015 Legislative Session. The Senate Bill passed favorably with one amendment in the Judiciary Committee but died in the Community Affairs Committee. The House Bill died in the first committee of reference.

Senate Bill 62 was filed by Senator Montford during the 2016 Legislative Session. The bill passed the Judiciary Committee but died in the Community Affairs Committee. The bill did not have a House Companion.

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

RECOMMENDATIONS: For the reasons set forth above the undersigned recommends that Senate Bill 36 be reported favorably.

Respectfully submitted,

Tracy Jeanne Sumner
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
12/2/11	SM	Fav/1 amendment

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 22 (2012)** – Senator Christopher L. Smith
Relief of Jennifer Wohlgemuth

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR $8,624,754.40 BASED ON A BENCH TRIAL AWARD FOR JENNIFER WOHLGEMUTH AGAINST THE PASCO COUNTY SHERIFF'S OFFICE TO COMPENSATE CLAIMANT FOR INJURIES SUSTAINED IN A MOTOR VEHICLE CRASH RESULTING FROM THE NEGLIGENT OPERATION OF A POLICE VEHICLE.

FINDINGS OF FACT:

On January 3, 2005, at approximately 1:35 a.m., the Claimant, Jennifer Wohlgemuth, was operating her Honda Accord southbound on Regency Park Boulevard in New Port Richey, Florida. The Claimant, who was not wearing her seatbelt, was in the process of dropping off several passengers with whom she had been socializing earlier that evening.

As the Claimant headed southbound on Regency Park Boulevard, she approached the intersection of Ridge Road, which is controlled by a traffic light in all four directions. Unbeknownst to the Claimant, a fleeing motorist, Scott Eddins, had proceeded through the intersection a short time earlier headed eastbound on Ridge Road. Closely pursuing Mr. Eddins were three police vehicles with the Port Richey and New Port Richey Police Departments. A fourth law enforcement vehicle, operated by Pasco County Sheriff's

Deputy Kenneth Petrillo, was well behind the pursuit and trailed the other patrol cars by 10 to 30 seconds.

Although the traffic signal at the intersection was red for vehicles traveling eastbound on Ridge Road, Deputy Petrillo entered the intersection against the light, without slowing, at a rate of travel that substantially exceeded the 45 MPH speed limit. Although Deputy Petrillo's patrol vehicle was equipped with a siren, he neglected to activate it. Almost immediately upon entering the intersection, Deputy Petrillo struck the front right portion of the Claimant's Honda Accord, which had lawfully proceeded into the intersection several seconds earlier.

As a result of the impact, which was devastating, the Claimant's vehicle traveled approximately 15 feet across a grass shoulder and sidewalk, at which point it struck a metal railing and came to rest. The front right of the Claimant's vehicle was demolished, and the entire right side was dented with inward intrusion. In addition, the front windshield, rear windshield, and right side windows were shattered and broken away.

The Claimant exited her vehicle following the collision, but collapsed in the roadway moments later due to the serious nature of her injuries. The Claimant was subsequently transported to Bayfront Medical Center for treatment.

Shortly after the accident, Florida Highway Patrol Corporal Erik W. Bromiley initiated an investigation to determine the cause of the collision. During his investigation, Corporal Bromiley learned that three Alprazolam (an anti-depressant) tablets, totaling 1.8 grams, had been discovered in the Claimant's wallet. In addition, several witnesses advised Corporal Bromiley that the Claimant had consumed alcoholic beverages at a bar earlier in the evening. Ultimately, however, Corporal Bromiley could not conclude that the Claimant was impaired by drugs or alcohol at the time of the accident.

While Corporal Bromiley remained at the scene to question witnesses and inspect the crash site, a second trooper responded to Bayfront Medical Center and obtained blood samples from the Claimant. Testing of the blood, which was drawn approximately two and one-half hours after the

accident, revealed that the Claimant's blood alcohol level was .021 and .022, which is below the legal limit of .08. In addition, cocaine metabolites and Alprazolam were detected.

Jeffrey Hayes, a toxicologist employed with the Pinellas County Forensic Laboratory, estimated that at the time of the accident, the Claimant's blood alcohol level could have ranged from .047 (a level in which the driver is presumed not to be impaired pursuant to Florida law) to .097, which would exceed the legal limit. Significantly, Mr. Hayes conceded that any conclusion that the Claimant was impaired when the collision occurred would be purely speculative.

Accident reconstruction established that Deputy Petrillo was travelling between 64 MPH (with a margin of error of plus or minus 5 MPH) in a 45 MPH zone. It was further estimated that the Claimant was travelling 34 MPH, in excess of the posted 30 MPH limit for Regency Park Boulevard. However, with the margin of error of plus or minus 5 MPH, the accident reconstruction findings do not preclude a determination that the Claimant was observing the speed limit.

Although it is clear that Deputy Petrillo's siren was not activated prior to the collision, the evidence is inconclusive regarding the use of the patrol vehicle's emergency lights.

An additional investigation of the accident was conducted by Inspector Art Fremer with the Pasco County Sheriff's Office Professional Standards Unit. The purpose of Inspector Fremer's investigation was to ascertain if Deputy Petrillo had committed any statutory violations or failed to observe the policies of the Pasco County Sheriff's Office. At the conclusion of his investigation, Investigator Fremer determined that Deputy Petrillo violated General Order 41.3 of the Pasco County Sheriff's Office in the following respects: (1) failing to activate and continuously use a siren while engaged in emergency operations; (2) entering the intersection against a red light without slowing or stopping, which was necessary for safe operation; (3) entering the intersection at a speed greater than reasonable; and (4) failing to ensure that cross-traffic flow had yielded. In addition, Investigator Fremer concluded that Deputy Petrillo had violated s. 316.072(5), Florida Statutes, which provides that the operator of an emergency vehicle may exceed the maximum speed limit "as long as the driver does not endanger

life or property." As a result of his misconduct, Deputy Petrillo was suspended for 30 days without pay.

With respect to the Claimant's driving, the undersigned credits the testimony of Amanda Dunn, an eyewitness driving three to four car lengths behind the Claimant, who noticed no unusual driving and testified that the "coast was clear" when the Claimant entered the intersection. Accordingly, the undersigned finds that she operated her vehicle in accordance with the law and did not contribute to the accident.

As a result of the collision, the Claimant suffered severe closed head trauma, which included a subdural hematoma of the right frontal lobe and a subarachnoid hemorrhage. As a result of significant swelling to her brain, a portion of the Claimant's skull was removed. The Claimant remained in a coma for approximately three weeks following the accident, and did not return home until August of 2005.

At the time of the final hearing in this matter, the Claimant continues to suffer from severe impairment to her memory, a partial loss of vision, poor balance, urinary problems, anxiety, dysarthric speech, and weight fluctuations. Further, the damage to the Claimant's frontal lobe has left her with the behavior, judgment, and impulses similar to those of a seven-year-old child. As a consequence, the Claimant requires constant supervision and is unable to hold a job, drive, or live independently.

LITIGATION HISTORY:

On March 17, 2007, the Claimant filed an Amended Complaint for Negligence and Demand for Jury Trial in the Sixth Judicial Circuit, in and for Pasco County. In her Amended Complaint, the Claimant sued Robert White, as Sheriff of Pasco County, for injuries she sustained as a result of Deputy Petrillo's negligence. On March 9-11, Circuit Judge Stanley R. Mills conducted a bench trial of the Claimant's negligence claim.

On March 12, 2009, Judge Mills rendered a verdict in favor of the Claimant and awarded:

- $299,284.32 for past medical expenses.
- $5,786,983.00 for future medical expenses.
- $1,055,000.00 for future lost earnings.

- $500,000.00 for past pain and suffering.

- $1,500,000 for future pain and suffering.

The trial judge further determined that Deputy Petrillo was 95 percent responsible for the Claimant's injuries, and that the Claimant was 5 percent responsible due to her failure to wear a seatbelt. With the allocation of 5 percent responsibility to the Claimant, the final judgment for the Claimant totaled $8,724,754.50.

The Respondent appealed the final judgment to the Second District Court of Appeal. In its initial brief, the Respondent argued that the trial court erred by: (1) failing to allocate any responsibility to the Claimant based upon her blood alcohol level; (2) awarding lost wages that were not supported by competent substantial evidence; (3) failing to allocate any responsibility to the Claimant based upon her driving in excess of the speed limit; and (4) failing to allocate any responsibility to the Scott Eddins, the fleeing motorist. Oral argument was granted, and on March 10, 2010, the Second District Court of Appeal affirmed the trial court without a written opinion.

CLAIMANT'S ARGUMENTS:

- Deputy Petrillo's negligent operation of his patrol vehicle was the proximate cause of the Claimant's injuries.

- The trial court's findings as to damages and the apportionment of liability were appropriate.

RESPONDENT'S ARGUMENTS:

- The Pasco County Sheriff's Office objects to any payment to the Claimant through a claim bill.

- At the time of the collision, the Claimant was not wearing her seat belt and was impaired by alcohol, drugs, or a combination of the two, and as such, more than 5 percent of the fault should be allocated to her.

- Some responsibility should be apportioned to Scott Eddins, who was being pursued by multiple law enforcement vehicles at the time Deputy Petrillo collided with the Claimant's vehicle.

CONCLUSIONS OF LAW:

Deputy Petrillo had a duty to operate his vehicle at all times with consideration for the safety of other drivers. See City of Pinellas Park v. Brown, 604 So. 2d 1222, 1226 (Fla. 1992) (holding officers conducting a high-speed chase of a man who ran a red light had a duty to reasonably safeguard surrounding motorists); Brown v. Miami-Dade Cnty., 837 So. 2d 414, 417 (Fla. 3d DCA 2001) ("Florida courts have found that police officers do owe a duty to exercise reasonable care to protect innocent bystanders . . . when their law enforcement activities create a foreseeable zone of risk"); Creamer v. Sampson, 700 So. 2d 711 (Fla. 2d DCA 1997) (holding police owed duty to innocent motorist during high speed pursuit of traffic offender). It was entirely foreseeable that injuries to motorists such as the Claimant could occur where Deputy Petrillo entered an intersection at a high rate of speed, without slowing, against a red light, and without his siren activated. Further, Deputy Petrillo failed to comply with s. 316.072(5), Florida Statutes, which provides that the operator of an emergency vehicle may exceed the maximum speed limit "as long as the driver does not endanger life or property." Deputy Petrillo breached his duty of care and the breach was the proximate cause of the Claimant's injuries.

The Pasco County Sheriff's Office, as Deputy Petrillo's employer, is liable for his negligent act. Mercury Motors Express v. Smith, 393 So. 2d 545, 549 (Fla. 1981) (holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment).

The circuit judge's allocation of 95 percent liability to the Pasco County Sheriff's Office is reasonable and should not be disturbed. The evidence failed to establish that the Claimant was impaired or that her operation of the vehicle contributed to the accident. Further, as Deputy Petrillo was well behind the pursuit, the zone of risk created by Scott Eddins (the fleeing motorist) had moved beyond the intersection of Regency Park Boulevard and Ridge Road at the time of the collision. Accordingly, the trial court correctly determined that no fault should be apportioned to Mr. Eddins.

The undersigned further concludes that the damages awarded to the Claimant were appropriate. This includes the $1,055,000.00 for future lost earnings, which was based on the reasonable and conservative assumption that the

Claimant did not possess a high school diploma, when in fact she had graduated from high school and planned to attend community college.

LEGISLATIVE HISTORY: This is the second year that a bill has been filed on the Claimant's behalf. During the 2011 session, the bill (SB 50) was indefinitely postponed and withdrawn from consideration on May 7, 2011.

ATTORNEYS FEES: The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), Florida Statutes.

FISCAL IMPACT: The Respondent has already paid the statutory maximum of $100,000.00, leaving $8,624,754.40 unpaid. Pursuant to the Sheriff's Automobile Risk Program (a self-insurance pool), an additional $332,000 is at the Respondent's disposal. The remaining balance would be paid by Pasco County funds. Respondent's General Counsel, Jeremiah Hawkes, advises that the Pasco County Sheriff's Office is in the midst of a significant budget crisis that would be exacerbated by the passage of the instant claim bill.

Notwithstanding the Respondent's budgetary woes, the undersigned concludes that the Claimant is presently entitled to the full amount sought. In the alternative, it would not be inappropriate to amend Senate Bill 22 to direct Respondent to pay the balance of $8,624,754.40 over a period of years.

COLLATERAL SOURCES: The Claimant receives $221 per month in Social Security Disability Insurance.

SPECIAL ISSUES: Senate Bill 22, as it is presently drafted, provides that Deputy Petrillo failed to activate his patrol vehicle's emergency lights. In light of the undersigned's finding that the evidenced is inconclusive regarding the use of emergency lights, Senate Bill 22 should be amended accordingly.

The Respondent introduced evidence that that the Claimant began using marijuana at the age of 16, as well as cocaine several years later. Although the Claimant sought help for her addictions, she voluntarily terminated treatment roughly two weeks prior to the collision with Deputy Petrillo's vehicle. As there was no evidence that the Claimant was impaired at the time of the accident, the undersigned concludes that the

Claimant's history of drug addiction should not militate against the passage of the instant claim bill.

RECOMMENDATIONS: For the reasons set forth above, the undersigned recommends that Senate Bill 22 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,

Edward T. Bauer
Senate Special Master

cc: Senator Christopher L. Smith
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

766374

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete line 107
and insert:
attorney fees

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 7 - 8
and insert:
providing a limitation on the payment of attorney

766374

fees; providing an effective date.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Chair*
Communications, Energy, and Public Utilities, *Vice Chair*
Appropriations
Appropriations Subcommittee on Pre-K - 12 Education
Health Policy
Rules

SENATOR BILL MONTFORD
3rd District

February 13, 2017

Senator Greg Steube, Chair
Senate Committee on Judiciary
515 Knott Building
Tallahassee, Florida 32399-1100

Dear Chairman Steube:

I respectfully request that the following Claim Bills be placed on the agenda for a hearing before the next Judiciary Committee Meeting:

SB 36 – Relief for Jennifer Wohlgemuth
SB 42 – Relief for Angela Sanford

Your consideration is greatly appreciated.

Sincerely,

William "Bill" Montford
Senate District 3

MD/WM

Cc: Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant

REPLY TO:
☐ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

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**
2/22/17	JU	**Fav/CS**
	CA	
	RC	

February 1, 2017

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

Re: **CS/SB 42** – Judiciary Committee and Senator Bill Montford
HB 6507 – Representative Halsey Beshears
Relief of Angela Sanford

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF $1.15 MILLION AGAINST LEON COUNTY FOR INJURIES AND DAMAGES SUFFERED BY ANGELA SANFORD WHEN THE VEHICLE SHE WAS TRAVELING IN WAS STRUCK BY A LEON COUNTY AMBLUANCE ON SEPTEMBER 5, 2013.

FINDINGS OF FACT:

This matter arises out of a motor vehicle crash that occurred on September 5, 2013, in Tallahassee, Florida, at the intersection of North Martin Luther King Jr. Boulevard (MLK Blvd.) and West Tharpe Street. The intersection of North MLK Blvd. and West Tharpe Street is four-way intersection controlled by an overhead traffic signal. Both North MLK Blvd. and West Tharpe Street are four-lane highways. On the southeast corner of the intersection there are several trees that could obstruct the view of westbound traffic on West Tharpe Street from the northbound traffic on North MLK Blvd. At the time of the accident, there was also at least one advertisement sign hung on the fence leading up the intersection that could obstruct the view of northbound traffic on North MLK Blvd. of any westbound traffic on West Tharpe Street.

The Accident

At approximately 11:28 pm, Patrick Sanford was driving north on North MLK Blvd in a 2011 Buick Enclave. Mr. Sanford's wife, Angela Sanford, was in the front passenger seat and friend, Daniel McNair, was behind Mrs. Sanford, in the rear passenger seat. The posted speed limit on North MLK Blvd. was 30 mph. At the time of the crash, Mr. Sanford was traveling at 42 mph. The light at North MLK Blvd. was green for Mr. Sanford as he approached the intersection of North MLK Blvd. and West Tharpe Street when he entered the intersection and when the crash occurred.

Also at approximately 11:28 pm a Leon County Emergency Medical Services (LCEMS) Ambulance, owned by Leon County, was traveling westbound on West Tharpe Street. Benjamin Hunter was working for LCEMS that night and driving the ambulance. Christina Wagner was also working for LCEMS that night and was the front seat passenger. The posted speed limit on West Tharpe Street was 35 mph.

The camera on the ambulance recorded what occurred before, during, and after the crash. The ambulance was first traveling at approximately 29 mph down West Tharpe Street with only its emergency lights activated. Approximately 4 seconds before the crash, and 277 feet from entering the intersection, the ambulance's siren was activated. At this time, the ambulance was traveling at approximately 40 mph. When the crash occurred the ambulance was traveling at approximately 44 mph. The video footage shows that the ambulance had a red light as it approached the intersection, when the ambulance entered the intersection and when the crash occurred.

The computer system in Mr. Sanford's Buick noted that the brake was engaged two seconds before the crash. Mr. Sanford admits that he did not hear or see the ambulance's lights or sirens before the collision. However, he recalls seeing the ambulance once he had already entered the intersection.

The ambulance hit the front right passenger side of the Buick. As a result, the Buick spun and collided with a concrete pole at on the northwest corner of the intersection.

The crash was witnessed by a number of individuals. The first witness, Ms. Nix, was traveling south on MLK Blvd., the

opposite direction of Mr. Sanford. Ms. Nix heard the sirens from the ambulance and stopped at the intersection of MLK Blvd. and West Tharpe Street because she did not know where the sirens were coming from. Ms. Nix then saw the ambulance traveling west down West Tharpe Street and the Buick traveling north on North MLK Blvd. Ms. Nix said that neither the Buick nor the ambulance stopped before entering the intersection. Ms. Nix acknowledged that she had a green light at time she reached the intersection of MLK Blvd. and West Tharpe Street but stopped because she heard the sirens.

Another witness, Mr. Fernbach, was traveling behind Mr. Sanford's Buick on North MLK Blvd. Mr. Fernbach also confirmed that the light was green as he and the Buick approached the intersection of North MLK Blvd. and West Tharpe Street. Mr. Fernbach acknowledged hearing the sirens before reaching the intersection; however, he was unable to determine where the sirens were coming from.

Ms. Wagner, the passenger of the ambulance, stated that the ambulance was headed to an accident with injuries on West Tharpe Street with only its emergency lights on. Prior to reaching the intersection of North MLK Blvd. and West Tharpe Street, she and Mr. Hunter were advised to upgrade, meaning turn on both the lights and sirens, as they traveled to the accident. Mr. Hunter then turned on the sirens of the ambulance. As Ms. Wagner was attempting to look up the report of the call they were traveling to, the crash occurred.

Mrs. Sanford and Mr. McNair do not have any memory of the crash.

All occupants of both vehicles were restrained in safety belts.

Injuries

After the crash Mr. Hunter and Ms. Wagner were able to exit the ambulance and render aid to occupants of the Buick. Mr. Hunter and Ms. Wagner were not injured in the crash.

All of the occupants of the Buick, Mr. Sanford, Mrs. Sanford, and Mr. McNair were injured. Mr. Sanford sustained a bulging disc to disc # 4 in his back and disc #5 in his back was blown. Mr. Sanford underwent surgery to repair his back injuries.

Mr. McNair suffered a cut to his right hand, a broken bone to his left, and a bone chip in his left wrist.

Mrs. Sanford sustained the most severe injuries from the crash. When she arrived at Tallahassee Memorial Hospital, she was in a coma. The totality of her injuries include:

- A traumatic brain injury (subdural and intracranial bleeding);
- A collapsed lung;
- A ruptured bladder (requiring two surgical repairs);
- A lacerated liver;
- 13 fractured ribs;
- Four lumbar spine fractures;
- Two cervical spine fractures;
- A fractured clavicle;
- A fractured sternum;
- A fractured fibula;
- A fractured knee;
- A fractured scapula (requiring surgical hardware insertion);
- A fractured pelvis (requiring surgical hardware insertion);
- A fractured hip sockets (requiring surgical hardware insertions);
- A fractured sacroiliac joints (requiring surgical hardware insertions);
- A fracture femur (requiring surgical hardware insertion);
- Double vision from an injured cranial nerve;
- Drop foot from an injured peroneal nerve;
- Bursitis and pain from the injured hip; and
- Cognitive and problem-solving deficits due to the brain injury.

Mrs. Sanford spent 25 days in the intensive care unit, and during the first two weeks in the hospital she was kept in a medically induced coma. Afterwards, she was transferred to inpatient rehabilitation in Jacksonville, Florida where she spent 31 days. Mrs. Sanford then continued her rehabilitation back in Tallahassee.

Before the accident, Mrs. Sanford was an active stay-at-home mother of three. She was considering returning to work as a

teacher when her youngest child was old enough to attend school.

Since the accident, Mrs. Sanford has made a remarkable recovery and is now able to drive during the day. She can care for her kids and her house. However, Mrs. Sanford still has some ongoing effects from the accident. She is experiencing foot drop in her right foot and double vision when she looks down. Because of the injuries sustained in the collision, Mrs. Sanford will likely need a hip replacement in the future, have issues with posttraumatic arthritis, and possibly experience further cognitive issues as a result of her traumatic brain injury.

Before the Accident

In the 24-hour period before the crash Mr. and Mrs. Sanford and Mr. McNair, the occupants of the Buick, attended a concert at the Leon County Civic Center. The day before the crash, Mr. Sanford worked the evening of September 4, 2013, and returned home at an unknown hour on September 5, 2013. Mr. Sanford believes he had only 3 hours of sleep after coming home from work on September 5, 2013.

Before the concert, Mr. Sanford had one beer at the house with Mr. McNair. Mr. Sanford admits to bringing and finishing the beer in the car on the way to the restaurant. An empty Bud Light Lime Beer bottle was found in the Buick after the collision. Mr. Sanford also admits to having one beer at the restaurant where he also ate some appetizers while waiting for the food to arrive. The food never came and they all left the restaurant without eating dinner. Once arriving at the concert, Mr. Sanford had another beer and some food because he hadn't eaten dinner at the restaurant.

In the 24-hour period before the crash Mr. Hunter worked on the evening of September 4, 2013. Mr. Hunter got home from work in the morning of September 5, 2013, and went to sleep for approximately 8.5 hours. Mr. Hunter then ate at home before reporting to work at 5 pm on September 5, 2013.

After the Accident

After the crash Mr. Sanford went to Tallahassee Memorial Hospital to be with his injured wife. While at the hospital Deputy McCarthy from the Leon County Sheriff's Office spoke with Mr. Sanford in two different locations. He first spoke to

Mr. Sanford in the hospital garage where Deputy McCarthy smelled a slight odor of an alcoholic beverage but was unable to determine if it was coming from Mr. Sanford or some other person in the garage. Deputy McCarthy then spoke with Mr. Sanford again in a private emergency room and did not smell an odor of an alcoholic beverage. Mr. Sanford was asked to consent to a blood sample since he was driving the Buick and was involved in a collision involving serious bodily injury. Mr. Sanford refused to give a blood sample for testing.

Officer Mordica of the Tallahassee Police Department was one of the first officers on the scene of the crash and noticed that Mr. Sanford was wearing a green wrist band and she smelled the odor of an alcoholic beverage, but did not notice any other signs of impairment. Mr. Sanford stated that he was given the wrist band when he purchased the beer at the concert.

A blood sample was requested from Mr. Hunter because he was operating the ambulance that was involved in a crash involving serious bodily injury. Mr. Hunter agreed to the blood sample being taken and was transported Tallahassee Memorial Hospital for the blood draw. No drugs or alcohol were found in Mr. Hunter's blood.

The Leon County's Sheriff's Department found Mr. Hunter at fault for the crash; however, the State Attorney's Office recommended that no citations should be issued. Therefore, a citation was not issued against Mr. Hunter.

LCEMS disciplined Mr. Hunter, and he was suspended without pay for three 12-hour shifts.

CLAIMANT'S ARGUMENTS: Mrs. Sanford argues that Leon County is liable for the negligence of its employee, Mr. Hunter, when he failed to stop at the red light at the intersection of North MLK Blvd. and West Tharpe Street, violating s. 316.072(5)(b)2., F.S., and the LCEMS Standard Operating Guidelines.

RESPONDENT'S ARGUMENTS: Leon County argues that the claim bill should be denied and the statutory caps enforced. Leon County believes that the statutory limits set forth in s. 768.28, F.S., serve a valuable purpose and the County is entitled to the full protections of the statute. Leon County argues that if the statutory caps are to have meaning or effect, they should be enforced.

CONCLUSIONS OF LAW:

Leon County owned the ambulance driven by Mr. Hunter on September 5, 2013, and is covered by the provisions of s. 768.28, F.S. Section 768.28, F.S., generally allows injured parties to sue the state or local governments for damages caused by their negligence or the negligence of their employees by waiving the government's sovereign immunity from tort action. However, the statute limits the amount of damages that a plaintiff can collect from a judgment against or settlement with a government entity to $200,000 per person and $300,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the Legislature. Thus, Mrs. Sanford will not receive the full benefit of the settlement agreement with Leon County unless the Legislature approves a claim bill authorizing the additional payment.

In a negligence action a plaintiff, bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damage. *Charron v. Birge*, 37 So.3d 292, 296 (Fla. 5th DCA 2010).

Section 768.81, F.S., Florida's comparative fault statute, allows damages in negligence cases to be apportioned against each liable party. The Florida Supreme Court has found that "in determining noneconomic damages fault must be apportioned among all responsible entitles who contribute to an accident even though not all of them have been joined at defendants." *Nash v. Wells Fargo Guard Servs.*, 678 So.2d 1262, 1263 (Fla. 1996).

The driver of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injuring persons within the vehicle's path. *Gowdy v. Bell*, 993 So.2d 585, 586 (Fla. 1st DCA 2008). Reasonable care is the degree of care a reasonably careful person would have used under like circumstances. *Foster v. State*, 603 So.2d 1312, 1316 (Fla. 1st DCA 1992).

Mr. Hunter's Negligence

Section 316.072(5)(b)2., F.S., allows a driver of an ambulance, when responding to an emergency call, to proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation. Section 316.072(5)(c), F.S., reiterates that the driver of an

ambulance has a duty to drive with due regard for the safety of all persons and does not protect the driver from the consequences of his or her reckless disregard for the safety of others.

Mr. Hunter beached his duty to operate the ambulance with reasonable care and violated s. 316.072(5)(b)2., F.S., when he did not slow down at the red light at the intersection of North MLK Blvd. and West Tharpe Street on September 5, 2013. Mr. Hunter's negligence and breach of duty of care was a cause of the accident and the damages suffered by Mrs. Sanford.

Leon County, as the employer of Mr. Hunter, is liable for his negligent act. The long-standing doctrine of *respondeat* superior provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So.3d 606, 611 (Fla. 4th DCA 2013). Florida's dangerous instrumentality imposes "vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another." *Aurbach v. Gallina*, 753 So.2d 60, 62 (Fla. 2000). Motor vehicles have been considered dangerous instrumentalities under Florida law for over a century. *See Anderson v. S. Cotton Oil Co.*, 74 So. 975, 978 (Fla.1917).

Florida law also provides that an employer's safety rules and procedures governing the conduct of its employees is relevant evidence of the standard of care required. *Mayo v. Publix*, 686 So.2d. 801, 802 (Fla. 4th DCA 1997). LCEMS has Standard Operating Guidelines for the safe operation of its vehicles. Specifically, the guidelines require all ambulance drivers when driving to an emergency to come to a full and complete stop at all red lights and stop signs. Once the driver determines that all other traffic has yielded to the emergency vehicle, the ambulance may proceed through the intersection with due regard for the safety of others.

Mr. Hunter violated LCEMS Standard Operating Guidelines when he did not stop at the red light at the intersection of North MLK Blvd. and West Tharpe Street.

On September 5, 2013, Mr. Hunter, an employee of LCEMS, drove an ambulance owned by Leon County during the

course of his normal workday. Therefore, Leon County is liable for the negligence of Mr. Hunter and the damages caused to Mrs. Sanford.

Mr. Sanford's Negligence

As the driver of the Buick, Mr. Sanford also had a duty to use reasonable care. Section 316.126(1)(a), F.S. provides:

Upon the immediate approach of an authorized emergency vehicle, while en route to meet an existing emergency, the driver of every other vehicle shall, when such emergency vehicle is giving audible signals by siren … or visible signals by the use of displayed blue or red lights, yield the right-of way to the emergency vehicle and shall immediately proceed to a position of parallel to, and as close as reasonable to the closest edge of the curb of the roadway, clear of any intersection and shall stop and remain in position until the authorized emergency vehicle has passed, unless otherwise directed by a law enforcement officer.

On the day of the accident, the trees and signs could have obstructed Mr. Sanford's view of the ambulance, which was traveling westbound on West Tharpe Street. The ambulance's siren was activated 4 seconds before the collision which likely did not afford Mr. Sanford adequate time react and avoid the collision. Moreover, the evidence presented was insufficient to show that the three beers Mr. Sanford consumed in the hours before the accident or his lack of sleep contributed to the accident.

However, Mr. Sanford was traveling at 42 mph down at the time of the crash, 12 mph faster than the posted speed limit of 30 mph. Mr. Sanford breached his duty to drive with reasonable care by failing to stop for the ambulance because of his excessive speed. Despite the fact that he had a green light at the intersection, Mr. Sanford is partially at fault for the accident.

Section 316.126(5), F.S., specifies that s. 316.126, F.S., which Mr. Sanford violated, does not relieve the Mr. Hunter of the duty to drive with due regard for the safety of all persons using the highway, which he did failed to do.

Conclusion

Florida's comparative fault statute, s. 768.81, F.S., applies to this case because Mr. Hunter and Mr. Sanford were both at fault in the accident.

Mr. Hunter is at fault for:

- Failing to operate the ambulance with reasonable care;
- Violating s. 316.072(5)(b)2., F.S., when he did not slow down at the red light; and
- Violating LCEMS Standard Operating Guidelines when he did not stop at the red light at the intersection.

Mr. Sanford is at fault for:

- Violating s. 316.126(1)(a), F.S., by failing to stop for the ambulance because of his excessive speed.

While both Mr. Hunter and Mr. Sanford were partially at fault in this matter, Mr. Hunter's negligence far outweighs Mr. Sanford's negligence.

Mrs. Sanford suffered substantial injuries as a result of Mr. Hunter's negligence and has outstanding medical bills because of these injuries. Mrs. Sanford has made a remarkable recovery but still has some ongoing effects from the accident. Mrs. Sanford experiences foot drop in her right foot and double vision when she looks down. Because of the injuries sustained in the collision, Mrs. Sanford will likely need a hip replacement in the future, have issues with posttraumatic arthritis, and possibly experience further cognitive issues as a result of her traumatic brain injury. Mrs. Sanford may have a reduced future earning capacity because of her ongoing physical impairments. She will likely have future medical expenses as a direct result of the accident. Therefore, the undersigned finds that the damages of $1.15 million sought by Mrs. Sanford are reasonable and justly apportionable to Leon County as a result of Mr. Hunter's negligence.

The parties participated in mediation and reached a Mediation Settlement Agreement for $1.15 million, the same amount as the claim bill. A Final Judgment in favor of Mrs. Sanford for the $1.15 million was signed and entered into the circuit court's record on April 13, 2015. The Mediation

Settlement Agreement afforded Mrs. Sanford the right to pursue a claim bill from the legislature for $1.15 million and also allowed Leon County the right to contest any filed claim bill.

At the Special Master Hearing attorneys for both parties agreed that all evidence and arguments presented at the hearing were also taken into consideration at mediation. The attorneys also agreed that no new evidence was presented to the undersigned at the hearing.

The undersigned finds that at mediation the parties presented all of the facts and arguments described above. The parties also took into account the fault of Mr. Hunter and Mr. Sanford as well as Mrs. Sanford's recovery and her future medical needs. Therefore, the undersigned finds that the Mediation Settlement Agreement was both reasonable and responsible.

LEGISLATIVE HISTORY: A claim bill for the relief of Angela Sanford was first filed for the 2016 Legislative Session. The Senate Bill, SB 22 (2016) died on the Calendar, and the House companion HB 3511 (2016) was not heard by a committee.

FISCAL IMPACT: Leon County is insured and has received no indication from its insurer that the entire amount of the claim bill, if passed, will not be paid.

RECOMMENDATIONS: For the reasons set forth above, the undersigned recommends that Senate Bill 42 (2017) be reported FAVORABLY.

Respectfully submitted,

Lauren Jones
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.

629338

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete lines 81 - 82

and insert:

Sanford. The total amount paid for attorney fees relating to this claim may not

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 9

and insert:

629338

of attorney fees; providing an

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Chair*
Communications, Energy, and Public Utilities, *Vice Chair*
Appropriations
Appropriations Subcommittee on Pre-K - 12 Education
Health Policy
Rules

SENATOR BILL MONTFORD
3rd District

February 13, 2017

Senator Greg Steube, Chair
Senate Committee on Judiciary
515 Knott Building
Tallahassee, Florida 32399-1100

Dear Chairman Steube:

I respectfully request that the following Claim Bills be placed on the agenda for a hearing before the next Judiciary Committee Meeting:

SB 36 – Relief for Jennifer Wohlgemuth
SB 42 – Relief for Angela Sanford

Your consideration is greatly appreciated.

Sincerely,

William "Bill" Montford
Senate District 3

MD/WM

Cc: Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant

REPLY TO:
☐ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 416
INTRODUCER:	Judiciary Committee and Senators Montford and Book
SUBJECT:	Use of Animals in Proceedings Involving Minors
DATE:	February 22, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Farach	Cibula	JU	**Fav/CS**
2.			CJ	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 416 allows a court to permit a victim or witness to testify with the assistance of a facility dog in a proceeding involving a sexual offense or in a dependency proceeding. A victim or witness may be eligible to use a facility dog if he or she has an intellectual disability or if he or she was a minor when a victim of or witness to a sexual offense.

II. Present Situation:

Service animals are defined by the Americans with Disabilities Act as miniature horses or dogs that are "individually trained to do work or perform tasks for people with disabilities."[1] Service animals are different from therapy dogs and other emotional support animals in the sense that emotional support animals are not trained for specific tasks and help people through companionship.[2]

Studies of human-dog interactions demonstrate physiological effects in subjects like lower blood pressure when touching or petting a dog.[3] For children, having a dog present helps lower heart

[1] U.S. Department of Justice, *ADA 2010 Revised Requirements: Service Animals* (Jul. 11, 2012), https://www.ada.gov/service_animals_2010.pdf.
[2] U.S. Department of Justice, *Frequently Asked Questions about Service Animals and the ADA* (Jul. 20, 2015) https://www.ada.gov/regs2010/service_animal_qa.html (last visited Feb. 16, 2017).
[3] Julia K. Vormbrock and John M. Grossberg, JOURNAL OF BEHAVIORAL MEDICINE, *Cardiovascular effects of human-pet dog interactions* (Oct. 11, 1988).

rate in stressful situations, like testifying in a courtroom full of adults.[4] Several court systems around the country acknowledge the benefit of therapy dogs in courts and offer services to help connect susceptible victims with dogs.[5]

In this state, courts are authorized by s. 92.55, F.S., to allow certain victims or witnesses to testify with the assistance of a service or therapy animal during dependency proceedings or proceedings involving a sexual offense.[6] A victim or witness who may be eligible to use a service or therapy animal must have been a minor at the time he or she was a victim or witness or have an intellectual disability.

Section 92.55, F.S., allows a person to seek the assistance of a therapy or service animal by filing a motion with the court. When deciding whether to allow the use of the animal the court, among other things, must consider the age of the child victim or witness and the rights of the parties to the case.[7]

In practice in the Second, Fifth, and Ninth Judicial Circuits, the use of an animal therapy team must be approved by the presiding judge, magistrate, or hearing officer. These circuits also require an introduction between the child and animal therapy team prior to entering the court chambers and the presence of a third party to oversee the child.[8] Dogs must be properly groomed, vaccinated, and wear a vest or some other article signifying that they are therapy animals. Therapy animals must be accompanied by handlers at all times.

Florida, Arizona, Arkansas, Hawaii, Illinois, and Oklahoma may be the only states to have statutes allowing therapy animals to accompany minors or vulnerable witnesses when testifying.[9]

In addition to allowing the use of service or therapy animals, the Florida Statutes provide other protections to victims and witnesses who either are or were underage at the time of the offense, or have an intellectual disability. For example, a court may order the videotaping of testimony of a victim or witness in lieu of testimony in open court.[10] Similarly, a court may order the

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[4] Erika Friedmann et al., JOURNAL OF NERVOUS AND MENTAL DISEASE, *Social Interaction and Blood Pressure: Influence of Animal Companions* (Aug. 1983).
[5] Second Judicial Circuit, *Courthouse Therapy Dogs*, http://2ndcircuit.leoncountyfl.gov/petTherapy.php (last visited Feb. 13, 2017).
[6] Section 92.55, F.S.
[7] *See supra* note 1.
[8] Second Judicial Circuit Court of Florida, *Procedures for Animal Therapy in the Case Specific Dependency Court Events*, 2ndcircuit.leoncounty.gov, http://2ndcircuit.leoncountyfl.gov/pet/documentation/Animal_Therapy_Procedures.pdf (last visited Feb. 13, 2017); Fifth Judicial Circuit Court of Florida, *Fifth Judicial Circuit Therapy Dog Program*, http://www.circuit5.org/c5/programs-services/therapy-dog-program/; Ninth Judicial Circuit Court of Florida, Administrative Order Establishing a Certified Therapy Dog Program (K-9th Circuit Program), Orange County, AO No. 2014-26 (Oct. 27, 2014) http://www.ninthcircuit.org/sites/default/files/2014-26%20-%20%20Order%20Governing%20Certified%20Therapy%20Dog%20Program%20K-9th%20Orange.pdf.
[9] John Emsinger, Michigan State University, Animal Center, *Cases and Statutes on the use of Dogs by Witnesses while Testifying in Criminal Proceedings*, https://www.animallaw.info/article/recent-cases-use-facility-dogs-witnesses-while-testifying (last visited Feb. 13, 2017).
[10] Section 92.53, F.S.

testimony of a victim or witness to be taken by means of closed-circuit television and shown inside the courtroom.[11,12]

III. Effect of Proposed Changes:

Under the bill, a court may authorize the use of a facility dog to assist a victim or witness who must testify in a proceeding involving a sexual offense or in a dependency proceeding. The bill also expands the class of victims and witnesses who may use the assistance of an animal in giving testimony to include those having an intellectual disability.

Under current law, only a service or therapy animal may assist witnesses or victims who are required to testify. The bill removes references to "service animals" from current statute, and includes "facility dogs" as animals that may assist in relevant proceedings. As used in a courtroom, therapy animals and facility dogs fulfill the same purpose. This purpose is protecting the victim or witness from severe emotional or mental harm, which might occur while testifying in the presence of the defendant.

The difference between a service or therapy animal and a facility dog appears to be in their qualifications. Under current law, a service or therapy animal must be evaluated and registered according to national standards. Under the bill, a therapy animal or facility dog must be trained and evaluated according to industry standards.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[11] Section 92.54, F.S.
[12] Section 92.55(1), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will not result in additional costs to the government, as the bill does not require the use of facility dogs in judicial proceedings. Additionally, the bill does not require courts to train or pay for the use of therapy animals or facility dogs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 92.55, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on February 21, 2017:
The committee substitute deletes references in current law to service animals. Also, the committee substitute provides definitions for the terms "facility dog" and "therapy animal."

B. Amendments:

None.

191518

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 92.55, Florida Statutes, is amended to read:

92.55 Judicial or other proceedings involving victim or witness under ~~the age of~~ 18 years of age, a person who has an intellectual disability, or a sexual offense victim or witness; special protections; use of ~~registered service or~~ therapy animals or facility dogs.—

191518

(1) For purposes of this section, the term:

(a) "Sexual offense victim or witness" means a person who was under the age of 18 when he or she was the victim of or a witness to a sexual offense.

(b) "Sexual offense" means any offense specified in s. 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I).

(2) Upon motion of any party, upon motion of a parent, guardian, attorney, guardian ad litem, or other advocate appointed by the court under s. 914.17 for a victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness, or upon its own motion, the court may enter any order necessary to protect the victim or witness in any judicial proceeding or other official proceeding from severe emotional or mental harm due to the presence of the defendant if the victim or witness is required to testify in open court. Such orders must relate to the taking of testimony and include, but are not limited to:

(a) Interviewing or the taking of depositions as part of a civil or criminal proceeding.

(b) Examination and cross-examination for the purpose of qualifying as a witness or testifying in any proceeding.

(c) The use of testimony taken outside of the courtroom, including proceedings under ss. 92.53 and 92.54.

(3) In ruling upon the motion, the court shall consider:

(a) The age of the child, the nature of the offense or act, the relationship of the child to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the child as a consequence of the defendant's presence, and any other fact that the court deems

relevant;

(b) The age of the person who has an intellectual disability, the functional capacity of such person, the nature of the offenses or act, the relationship of the person to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the person as a consequence of the defendant's presence, and any other fact that the court deems relevant; or

(c) The age of the sexual offense victim or witness when the sexual offense occurred, the relationship of the sexual offense victim or witness to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the sexual offense victim or witness as a consequence of the defendant's presence, and any other fact that the court deems relevant.

(4) In addition to such other relief provided by law, the court may enter orders limiting the number of times that a child, a person who has an intellectual disability, or a sexual offense victim or witness may be interviewed, prohibiting depositions of the victim or witness, requiring the submission of questions before the examination of the victim or witness, setting the place and conditions for interviewing the victim or witness or for conducting any other proceeding, or permitting or prohibiting the attendance of any person at any proceeding. The court shall enter any order necessary to protect the rights of all parties, including the defendant in any criminal action.

(5) The court may set any other conditions it finds just and appropriate when taking the testimony of a ~~child~~ victim or witness under 18 years of age, a person who has an intellectual

191518

disability, or a sexual offense victim or witness, including the use of a ~~service or~~ therapy animal or facility dog ~~that has been evaluated and registered according to national standards~~, in any proceeding involving a sexual offense or child abuse, abandonment, or neglect.

(a) When deciding whether to allow ~~permit~~ a ~~child~~ victim or witness under 18 years of age, a person who has an intellectual disability, or a sexual offense victim or witness to testify with the assistance of a ~~registered service or~~ therapy animal~~,~~ or facility dog, the court shall consider the age of the ~~child~~ victim or witness under 18 years of age, the age of the sexual offense victim or witness at the time the sexual offense occurred, the interests of the ~~child~~ victim or witness under 18 years of age or the sexual offense victim or witness, the rights of the parties to the litigation, and any other relevant factor that would facilitate the testimony by the ~~child~~ victim or witness under 18 years of age, a person who has an intellectual disability, or a sexual offense victim or witness.

(b) For purpose of this section, the term:

1. "Facility dog" means a dog that has been trained, evaluated, and certified as a facility dog pursuant to industry standards and provides unobtrusive emotional support to children and adults in facility settings.

2. "Therapy animal" means an animal that has been trained, evaluated, and certified as a therapy animal pursuant to industry standards by an organization that certifies animals as appropriate to provide animal therapy.

Section 2. This act shall take effect July 1, 2017.

191518

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to use of animals in proceedings involving minors; amending s. 92.55, F.S.; specifying that the court may allow the use of therapy animals or facility dogs in certain proceedings; allowing certain animals to be used when taking the testimony of a person who has an intellectual disability; removing the requirement that certain animals be registered; defining terms; providing an effective date.

By Senator Montford

3-00146A-17 2017416__

A bill to be entitled

An act relating to use of animals in proceedings involving minors; amending s. 92.55, F.S.; specifying that the court may allow the use of service animals, therapy animals, or facility dogs in certain proceedings; allowing certain animals to be used when taking the testimony of a person who has an intellectual disability; removing the requirement that certain service or therapy animals must be registered; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 92.55, Florida Statutes, is amended to read:

92.55 Judicial or other proceedings involving victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness; special protections; use of ~~registered~~ service animals, ~~or~~ therapy animals, or facility dogs.—

(1) For purposes of this section, the term:

(a) "Sexual offense victim or witness" means a person who was under the age of 18 when he or she was the victim of or a witness to a sexual offense.

(b) "Sexual offense" means any offense specified in s. 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I).

(2) Upon motion of any party, upon motion of a parent, guardian, attorney, guardian ad litem, or other advocate appointed by the court under s. 914.17 for a victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness, or upon its own motion, the court may enter any order necessary to protect

3-00146A-17 2017416__

the victim or witness in any judicial proceeding or other official proceeding from severe emotional or mental harm due to the presence of the defendant if the victim or witness is required to testify in open court. Such orders must relate to the taking of testimony and include, but are not limited to:

(a) Interviewing or the taking of depositions as part of a civil or criminal proceeding.

(b) Examination and cross-examination for the purpose of qualifying as a witness or testifying in any proceeding.

(c) The use of testimony taken outside of the courtroom, including proceedings under ss. 92.53 and 92.54.

(3) In ruling upon the motion, the court shall consider:

(a) The age of the child, the nature of the offense or act, the relationship of the child to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the child as a consequence of the defendant's presence, and any other fact that the court deems relevant;

(b) The age of the person who has an intellectual disability, the functional capacity of such person, the nature of the offenses or act, the relationship of the person to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the person as a consequence of the defendant's presence, and any other fact that the court deems relevant; or

(c) The age of the sexual offense victim or witness when the sexual offense occurred, the relationship of the sexual offense victim or witness to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma

that will result to the sexual offense victim or witness as a consequence of the defendant's presence, and any other fact that the court deems relevant.

(4) In addition to such other relief provided by law, the court may enter orders limiting the number of times that a child, a person who has an intellectual disability, or a sexual offense victim or witness may be interviewed, prohibiting depositions of the victim or witness, requiring the submission of questions before the examination of the victim or witness, setting the place and conditions for interviewing the victim or witness or for conducting any other proceeding, or permitting or prohibiting the attendance of any person at any proceeding. The court shall enter any order necessary to protect the rights of all parties, including the defendant in any criminal action.

(5) The court may set any other conditions it finds just and appropriate when taking the testimony of a child victim or witness, ~~or~~ a sexual offense victim or witness, or a person who has an intellectual disability, including the use of a service animal, ~~or~~ therapy animal, or facility dog that has been trained and evaluated ~~and registered~~ according to industry ~~national~~ standards, in any proceeding involving a sexual offense or child abuse, abandonment, or neglect. When deciding whether to permit a child victim or witness or sexual offense victim or witness to testify with the assistance of a ~~registered~~ service animal, ~~or~~ therapy animal, or facility dog, the court shall consider the age of the child victim or witness, the age of the sexual offense victim or witness at the time the sexual offense occurred, the interests of the child victim or witness or sexual offense victim or witness, the rights of the parties to the

litigation, and any other relevant factor that would facilitate the testimony by the child victim or witness or sexual offense victim or witness.

Section 2. This act shall take effect July 1, 2017.

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Senate Committee on Judiciary

Subject: Committee Agenda Request

Date: February 2, 2017

I respectfully request that **Senate Bill #416**, relating to Use of Animals in Proceedings Involving Minors, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Bill Montford

Senator Bill Montford
Florida Senate, District 3

File signed original with committee office

S-020 (03/2004)

Tab 10

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21/17
Meeting Date

SB 416
Bill Number (if applicable)

Topic COURTHOUSE THERAPY DOGS

Amendment Barcode (if applicable)

Name CHUCK MITCHELL

Job Title MANAGER, FLORIDA COURTHOUSE THERAPY DOGS

Address 3890 TAN MOSS RD
Street

Phone 850-566-6100

TALLAHASSEE FL 32309
City *State* *Zip*

Email CMITCHELL90@COMCAST.NET

Speaking: ☒ For ☐ Against ☐ Information

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

Representing TALLAHASSEE MEMORIAL ANIMAL THERAPY/FL. COURTHOUSE THERAPY DOGS

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/21/17
Meeting Date

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

SB 416
Bill Number (if applicable)

Topic Dogs in Court

Amendment Barcode (if applicable)

Name Thomas Cream, PhD

Job Title CEO/President

Address _____ Phone _____
Street

_____ Email tmcream@gofoster.org
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Go Foster

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

02-21-17
Meeting Date

416
Bill Number (if applicable)

Topic Use of Animals w/ proceeding w/ minors

Amendment Barcode (if applicable)

Name Colleen Maclin

Job Title Constituency

Address 491 S. Magnolia DR
Street

Tallahassee FL
City *State* *Zip*

Phone 850-425-2600

Email CMACKIN@iamforkids.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Children's Campaign

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.21.16
Meeting Date

SB 416
Bill Number (if applicable)

Topic SB416 Dogs in Court

Amendment Barcode (if applicable)

Name Alan Abramowitz

Job Title Executive Director

Address 600 S. Calhoun St.
Street

Phone 922-7213

Tallahassee FL 32399
City *State* *Zip*

Email alan.abramowitz@gal.fl.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Statewide Guardian ad Litem Office

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21/17
Meeting Date

SB 416
Bill Number (if applicable)

Topic Service & Court Therapy animals

Amendment Barcode (if applicable)

Name Ron Book

Job Title

Address 104 W. Jefferson
Street

TLH 32301
City *State* *Zip*

Phone 224-3427

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-21-17
Meeting Date

416
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Involving Minors

Name Richard Chapman, LMHC

Job Title Mental-health Counseling

Address 1925 E. 2nd Ave
Street

Tampa, FL 33605
City *State* *Zip*

Phone 813-666-4981

Email RichardChapman829@gmail.com

Speaking: [X] For [ ] Against [ ] Information

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

Representing

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] 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.

S-001 (10/14/14)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
6th District

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Judiciary
Regulated Industries
Joint Legislative Auditing Committee

February 20, 2017

Senator Greg Steube, Chair
Committee on Judiciary
515 Knott Building
404 South Monroe St.
Tallahassee, FL 32399

Chair Steube:

I respectfully request be excused from this week's committee meeting, because I am sick with the flu.

Thank you for your consideration.

Sincerely,

Audrey Gibson
State Senator
Senate District 6

REPLY TO:
☐ 101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904)359-2553 FAX: (904) 359-2532
☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5008

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: EL 110 **Case No.:** **Type:**
Caption: Senate Judiciary Committee **Judge:**

Started: **2/21/2017 3:32:36 PM**
Ends: **2/21/2017 4:53:18 PM** **Length: 01:20:43**

3:32:36 PM Meeting called to order
3:32:40 PM Administrative Assitant Joyce Butler calls roll
3:32:52 PM Quorom present
3:33:01 PM Chair Stuebe asked to silence all electronic devices and any one wishing to speak to complete an appearance form
3:33:17 PM Chair Stuebe stated we will start with SB 334 and turned the chair over to the Vice Chair
3:33:18 PM Vice Chair Benacquisto state we will now hear Tab 1 by Chair Stuebe SB 334 Prejudgment Interest
3:33:20 PM Chair Stuebe presents SB 334
3:33:38 PM Vice Chair Benacquisto stated Amendment Barcode 613288 has been withdrawn we will hear Amendment Barcode 841034 by Chair Stuebe
3:33:50 PM Chair Stuebe presents Amendment Barcode 841034
3:34:28 PM Vice Chair ask was there any questions on the Amendment
3:34:33 PM Vice Chair for speaker cards, one speaker card Mr. Tom Dukes
3:34:44 PM Speaking against the Amendment Mr. Tom Dukes
3:38:58 PM Vice Chair stated was there any debate on the amendment there was no debate on amendment
3:39:08 PM Amendment Barcode 841034 adopted
3:39:12 PM Vice Chair ask was there any questions on the bill as amended
3:39:15 PM Senator Powell ask the Chair questions on the bill as amended
3:39:19 PM Vice Chair ask the Chair would he explain SB 334 before the amendment was added.
3:39:23 PM Chair Stuebe explains SB 334
3:39:45 PM Vice Chair asked for questions on the bill as amended
3:39:51 PM Questions by Sen. Powell
3:40:46 PM Response by Chair Stuebe
3:40:55 PM Follow-up Question by Sen. Powell
3:43:00 PM Response by Chair Stuebe
3:43:08 PM Speaker Gary Guzzo, waives against
3:44:06 PM Michael Carlson, waives against
3:44:20 PM Gerald Wester, Waives against
3:44:35 PM Liz Reynolds Waives against
3:45:08 PM Speaker George Meros, U.S. Chamber (Against)
3:47:22 PM Tom Dukes, Against
3:51:08 PM Speaker Samantha Padgett, Florida Retail Federation, Against
3:52:32 PM Comments by Vice Chair Benacquisto
3:53:32 PM Speaker Brewster Bevis, Associate Industries of Florida, Against
3:53:45 PM Speaker Katie Webb, Property and Casualty Association of America, Against
3:54:37 PM Speaker Tim Nungessor, National Federation of Independent Business, Waives Against
3:55:15 PM Speaker Mark Delegal, Florida Chamber of Commerce, Against
3:55:26 PM Speaker Mark Delegal, Florida Chamber of Commerce, Against
3:58:00 PM Question by Chair Stuebe
3:59:01 PM Response by Mark Delegal

3:59:28 PM Speaker Jimmy Gustafson, Florida Justice Association, For
4:02:31 PM Vice Chair call for Debate on the bill as amended
4:03:33 PM Senator Flores debate for the bill
4:06:37 PM Senator Powell debate against the bill
4:08:06 PM Senator Mayfield debate against the bill
4:09:23 PM Chair Stuebe recognized to close on CS for SB 334
4:12:10 PM Vice Chair ask Administrative Assitant Joyce Butler to call the roll on CS for SB 334
4:12:17 PM CAA called roll on CS for SB 334
4:12:39 PM Vice Chair stated CS for SB 334 reported Favorably
4:12:43 PM Vices Chair stated she will turn the chair back over to the Chair
4:12:46 PM Chair Stuebe state we will now go into the order in which the Senators came in. Senator Simmons Tab 3 SB 28
4:12:59 PM Tab 3 SB 28 presented by Sen. Simmons
4:14:12 PM Chair ask are there any questions on the bill
4:14:16 PM Chair ask Senator Simmons to explain the Amendment Barcode 285348
4:14:21 PM Senator Simmons explains the amendment
4:14:50 PM Chair ask are there any questions on the amendment
4:14:52 PM Chair ask are there any objection on the amendment
4:14:54 PM Amendment adopted
4:15:01 PM Chair stated we are now back on the bill as amended, are there any questions, no appearance cards
4:15:11 PM Chair ask is there any debate on the bill as amended
4:15:13 PM Sen. Simmons waives closing
4:15:15 PM Chair ask Joyce to call roll on CS for SB 28
4:15:20 PM Roll call on CS for SB 28
4:15:34 PM Chair stated CS for SB 28 reported Favorably
4:15:44 PM Chair stated we will now go to Tab 8 SB 36
4:15:48 PM Senator Montford explains SB 36
4:17:17 PM Amendment Barcode 766374 presented
4:18:24 PM Amendment Adopted
4:18:37 PM Roll call on CS for SB 36
4:18:54 PM CS for SB 36 Reported Favorably
4:19:05 PM Sen. Montford presents SB 42
4:20:09 PM Amendment Barcode 629338 presented
4:21:14 PM Amendment Adopted
4:21:27 PM Roll Call on CS for SB 42
4:21:34 PM CS for SB 42 Reported Favorably
4:21:55 PM Sen. Montford presents SB 416
4:23:26 PM Amendment Barcode 191518 presented
4:23:39 PM Amendment Adopted
4:24:18 PM Speaker Chuck Mitchell, Tallahassee Memorial Animal Therapy, For
4:25:38 PM Question by Sen. Thurston
4:28:08 PM Response by Chuck Mitchell
4:28:36 PM Speaker Thomas Croan, For
4:29:18 PM Speaker Richard Chaplin
4:32:11 PM Speaker Coleen Macklin, waives in support
4:32:25 PM Speaker Alan Abramowitz waives in support
4:32:41 PM Speaker Ron Book, For
4:35:37 PM Debate by Sen. Mayfield
4:36:21 PM Roll call on CS for SB 416
4:36:35 PM CS for SB 416 Reported Favorably
4:37:01 PM Sen. Braynon presents SB 48

4:38:03 PM Amendment Barcode 652162 presented
4:38:20 PM Amendment Adopted
4:38:34 PM Roll call on CS for SB 48
4:38:40 PM CS for SB 48 Reported Favorably
4:39:10 PM Sen. Flores presents SB 18
4:40:57 PM Amendment Barcode 700702 presented
4:42:05 PM Amendment Adopted
4:42:11 PM Questions by Sen. Garcia
4:42:27 PM Response by Sen. Flores
4:42:58 PM Roll call on CS for SB 18
4:43:04 PM CS for SB 18 Reported Favorably
4:43:21 PM Vice Chair Benacquisto presents SB 38
4:44:54 PM Amendment Barcode 479976 presented
4:45:56 PM Amendment Adopted
4:46:14 PM Debate by Sen. Flores
4:46:43 PM Debate by Sen. Mayfield
4:47:35 PM Vice Chair Benacquisto closes on SB 38
4:47:48 PM Roll call on CS for SB 38
4:48:09 PM CS for SB Reported Favorably
4:48:25 PM Sen. Bracy presents SB 32
4:49:26 PM Amendment Barcode 304608 presented
4:49:38 PM Amendment Adopted
4:49:51 PM Speaker Jennifer Burns, For
4:50:28 PM Waived closed
4:50:37 PM Roll call on CS for SB 32
4:50:45 PM CS for SB 32 Reported Favorably
4:50:55 PM Sen. Bracy presents SB 50
4:51:10 PM Amendment Barcode 206056
4:51:55 PM Amendment adopted
4:52:10 PM Amendment Barcode 467848 presented
4:52:12 PM Amendment Adopted
4:52:32 PM Waive closed
4:52:42 PM Roll call on CS for SB 50
4:52:49 PM CS for SB 50 Reported Favorably
4:52:57 PM Vice Chair Benacquisto move we adjourned