THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 The Capitol

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

DATE	COMM	ACTION
1/19/22	SM	Favorable
1/24/22	JU	Fav/CS
2/15/22	ATD	Recommend: Fav/CS
2/18/22	AP	Fav/CS

February 18, 2022

The Honorable Wilton Simpson
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 80** – Senate Judiciary Committee and Senator Dennis Baxley
HB 6515 – Representative Lawrence McClure
Relief of Christeia Jones/Department of Highway Safety and Motor Vehicles

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR $17,715,000, BASED ON A MEDIATION SETTLEMENT AGREEMENT BETWEEN THE CLAIMANT, CHRISTEIA JONES, AS PARENT AND NATURAL GUARDIAN OF LOGAN GRANT, DENARD MAYBIN,JR., AND LANARD MAYBIN AND THE FLORIDA HIGHWAY PATROL/FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES. THE MEDIATION SETTLEMENT AGREEMENT RESOLVED A CIVIL ACTION ARISING FROM THE NEGLIGENT OPERATION OF A FLORIDA HIGHWAY PATROL VEHICLE WHICH RESULTED IN A CRASH AND SEVERE INJURIES TO THE CHILDREN.

UPDATE TO PRIOR REPORT

On October 29, 2019, Ms. Christie M. Letarte, serving as Senate Special Master, held a hearing on a previous version of this bill SB 16 (2020). After the hearing, Ms. Letarte issued a report dated February 6, 2020 containing findings of fact and conclusions of law based on argument and information provided before, during, and at the hearing solely by counsel for the claimants, as a litigation settlement agreement

required the Florida Highway Patrol, a division of the Department of Highway Safety and Motor Vehicles, to remain silent on the claim bill and not support or oppose the bill.
Ms. Letarte found the amount sought is reasonable when compared to analyses provided by claimants' economist. A copy of that report is attached as an addendum to this report.

Since that time, the Senate President has reassigned the claim to the undersigned to review records and determine whether any changes have occurred since the hearing that, if known at the hearing, might have significantly altered the findings or recommendations in the previous report.

The undersigned has received no information to indicate that any such changes have occurred since the hearing. An updated statement dated August 31, 2021 from the Department of Highway Safety and Motor Vehicles (Department) through its General Counsel, identifying the source of payment for the claim bill if approved by the Legislature without an appropriation of additional funds, and describing the impact that the payment might have on the Department's operations, indicates:

> Senate Bill 80 appropriates $17.715M from the General Revenue Fund to the [Department] for the relief of Christeia Jones, Logan Grant, Denard Maybin, Jr., and Lanard Maybin. If this legislation is approved without an appropriation, the Department would have no existing budget authority to pay the claim. The only course of action if no appropriation is approved would be to request budget authority from the General Revenue Funds pursuant to Chapter 216.177, F.S. Should an appropriation be made from the Highway Safety Operating Trust Fund, it would severely and detrimentally limit Department operations, requiring vacant positions to be unfilled in order to have the cash to pay the claim and still meet other operational obligations. This would include all Divisions throughout the Department, including the Florida Highway Patrol and Motorist Services Field Offices providing driver license and motor vehicle services.[1]

[1] E-mail Correspondence from Ms. Christie S. Utt, General Counsel for the Department (Aug. 31, 2021).

RECOMMENDATIONS: The undersigned concurs in the following Recommendation in the previous report, which are applicable to SB 80:

> Although the settlement agreement resolved Christeia Jones' claims, as well as claims on behalf of her three boys, Ms. Jones is not seeking relief in an individual capacity through this claim bill.[2]
>
> Therefore, the undersigned recommends removing references in the bill identifying Ms. Jones as a claimant, or providing relief to her; or, replacing such portions with clarifying language providing the funds to the special needs trusts of Logan Grant, Denard Maybin, Jr., and Lanard Maybin, which are handled by Ms. Ashley Gonnelli of Guardian Trust Foundation, Inc.[3]

For the reasons set forth above, the undersigned Senate Special Master recommends that Senate Bill 80 (2022) be reported FAVORABLY.

Respectfully submitted,

Mary K. Kraemer
Senate Special Master

cc: Secretary of the Senate

CS/CS by Appropriations Committee:
The committee substitute revises the whereas clauses to reflect the settlement total of $7.785 million and changes the funding source for the claim from the General Revenue Fund to the Highway Safety Operating Trust Fund.

CS by Judiciary
The CS reduces the appropriation in the bill to $7.5 million.

[2] Affidavit of Attorney for Claimants, 1 (Oct. 16, 2019).
[3] E-mail Correspondence from Mr. Daniel Smith, Attorney for Claimants (Jan. 16, 2020).

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/6/20	SM	Report Submitted
	JU	
	ATD	
	AP	

February 6, 2020

The Honorable Bill Galvano
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 16** – Senator Simmons
HB 6517 – Representative Williamson
Relief of Christeia Jones, Logan Grant, Denard Maybin, Jr., and Lanard Maybin by the Department of Highway Safety and Motor Vehicles

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR GENERAL REVENUE FUNDS IN THE AMOUNT OF $17,715,000. THIS AMOUNT IS THE REMAINING BALANCE OF AN $18,000,000 SETTLEMENT AGREEMENT REGARDING ALLEGED NEGLIGENCE OF TROOPER RAUL UMANA AND THE FLORIDA HIGHWAY PATROL, A DIVISION OF THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.

FINDINGS OF FACT:

The Accident

On May 18, 2014, at approximately 9:25 p.m., Florida Highway Patrol (FHP) Trooper Raul Umana, traveling north on I-75 in a 2007 Crown Victoria patrol vehicle, attempted to turn around using a crossover gap in the median. Trooper Umana had been on the far right shoulder assisting with a disabled vehicle and then made two lane changes with a maximum speed of 45 miles per hour as he crossed to the far left northbound lane and approached the crossover gap.[4] He

[4] Florida Highway Patrol Vehicle/Personnel Crash Investigation Report (FHP Report), 25 (Aug. 29, 2014).

entered the median too quickly to properly negotiate the turn and hit the median barrier at a speed of 20 miles per hour before entering the southbound lane.[5]

Ms. Christeia Jones was traveling in the southbound lane with her three children in the backseat (Logan Grant, 2 years old; Lanard Maybin, 5 years old; and Denard Maybin, Jr., 7 years old).

Once entering the southbound lane at nine miles an hour, Trooper Umana's vehicle struck the 2014 Nissan Altima driven by Ms. Jones as well as a Mercedes traveling behind Ms. Jones. Ms. Jones had been traveling at 88 miles per hour, applied brakes and steered right (away from Trooper Umana's vehicle) and was traveling at 62 miles per hour at the time of impact with Trooper Umana's vehicle.[6]

After being struck by Trooper Umana's vehicle and applying brakes, Ms. Jones's Altima slowed to 16.94 miles an hour, and remained in the traveling lanes 179.5 feet from the initial collision.[7] A tractor-trailer truck then collided with the Mercedes immediately behind Ms. Jones's vehicle; and then the tractor-trailer truck hit Ms. Jones's vehicle while traveling at 69 miles per hour. The collision with the tractor-trailer truck accelerated the speed of Ms. Jones's car to 58.33 miles per hour as her vehicle was pushed toward the shoulder of the highway.[8] After both vehicles left the roadway and Ms. Jones's vehicle rotated 270 degrees, the tractor-trailer truck hit Ms. Jones's vehicle a second time and Ms. Jones's vehicle came to rest after hitting a tree. The engine compartment then caught fire.[9]

Ms. Jones was able to exit the vehicle but emergency personnel had to extract her three children who were trapped inside of the car after the rear seat was crushed by impact from the tractor-trailer truck. The FHP report describes damage to the vehicle in great detail[10] and notes the driver of

[5] *Id*. at 33.
[6] *Id*. at 25.
[7] *Id*. at 27.
[8] *Id*.
[9] *Id*. at 28.
[10] *Id*. at 15. The report includes a description of the extensive crushing and damage to the back of the vehicle. "The rear center and left headrest [were] crushed forward to the back of the driver's seat. The front right seat was twisted to the left by the back seat." *Id*. at 16.

the tractor trailer did not fully apply the brakes until after colliding with the Mercedes, which was inconsistent with a statement made by the driver during the investigation.[11]

FHP Report
The FHP report noted no known distractions, adverse weather conditions, or evasive actions that would have contributed to the causation of the crash.[12]

Restraints
The FHP report provides both Lanard (5) and Denard (7) were "unrestrained at the time of the crash and suffered critical injuries," and Logan (2) was restrained in a forward facing child seat and suffered critical injuries as a result of the incident.[13]

Ms. Jones confirmed Logan (2) was secured in a forward facing car seat; however, she testified both Lanard (5) and Denard (7) were wearing seatbelts when they began the ride.[14] Additionally, the FHP report includes information from Ms. Jones's grandmother, Marilyn Lilly, who told the investigating officer the two older boys were wearing seatbelts when Ms. Jones left her house.[15] Ms. Jones does not have knowledge of the boys unbuckling themselves during the course of the ride.[16]

Counsel for claimants indicated there was no expert testimony presented suggesting the seatbelts would have made a difference for Lanard and Denard. Counsel noted the one child who was restrained, Logan, was the most severely injured. Counsel suggested if seatbelts were not used by the two older boys–not wearing the belts may have saved their lives.[17]

Speed

[11] *Id*. at 28.
[12] *Id*. at 5.
[13] *Id*. at 6-7. "The rear left and center seatbelts were locked in the retracted position. The rear right seat belt appeared to have been cut in two places. The child restraint seat was cracked and the metal seatbelt clip was bent." *Id*. at 16.
[14] Deposition, Christeia Jones, 87 (Jan. 18, 2018); Deposition, Trooper Crocker 7:20–7:30.
[15] FHP Report at 22.
[16] Special Master Hearing at 3:28:43-3:29:45.
[17] *Id*. at 14:45-15:58.

The posted speed limit of the highway where the incident occurred was 70 miles per hour.[18] Information gathered during the FHP's investigation demonstrated Ms. Jones was driving at a speed exceeding the limits and made efforts to slow down just before impact with Trooper Umana's vehicle.

FHP investigators were able to obtain information from the event data recorder in Ms. Jones's vehicle. Prior to Trooper Umana's vehicle hitting Ms. Jones's vehicle, Ms. Jones was traveling at 88 miles per hour; which counsel for the claimants noted as going with the flow of traffic.[19] The FHP report indicates about 1.5-2 seconds prior to impact, speed was reduced to 86 miles per hour. By one second before impact, Ms. Jones was traveling at 79 miles per hour; .5 second before impact, she was traveling at 69 miles per hour; and, at impact, she was traveling at 62 miles per hour.[20]

Medical Injuries

Ms. Jones is not seeking relief for herself through the claim bill. She seeks relief only for her children. Information regarding injuries to the three children was provided at the special master hearing. The submitted information includes evaluations, for each child, by medical professionals, vocational rehabilitation, and life care planning professionals.

Logan Grant

Logan suffered from a severe traumatic brain injury, orbital fractures, lung contusions, and a left subdural hematoma in his brain. He was hospitalized at UF Health Shands Hospital for a month before going to a rehabilitation hospital for another two weeks.[21]

As of November 2017, Logan could walk on his own with fewer falls when wearing a brace on one foot; fatigued easily; was able to dress himself if clothing did not have fasteners; had limited strength and coordination with his left hand; and had cognitive-behavioral impairment. He was receiving

[18] FHP Report at 5.
[19] Special Master Hearing at 51:20-51:30. *See also* FHP Report at 13 (noting none of three witnesses, who were truck drivers, indicated Ms. Jones, the vehicle behind her, nor the tractor-trailer truck were speeding). Counsel for claimants highlighted this information in support of Ms. Jones, who, although speeding, was traveling with the flow of traffic. Special Master hearing at 52:20-:53:06.
[20] FHP Report at 18.
[21] Special Master Hearing at 16:00-16:30; *see* Kornberg, MD, Paul B., Rehabilitation & Electrodiagnostics: Comprehensive Medical Evaluation, 13 -15 (Nov. 22, 2017).

occupational, physical, speech, and behavioral therapy.[22] The doctor evaluating Logan found his "level of function and quality of life has markedly diminished in relation to the motor vehicle crash" and anticipated his deficits are permanent and will require continued multidisciplinary care.[23] The evaluating doctor believes, due to cognitive and communication impairments, Logan is not expected to be able to live alone as an adult, and will require guardianship and attendant care to assist with activities of daily living.[24]

A doctor examining Logan on behalf of the respondent came to similar conclusions with regard to Logan's abilities and future needs. The doctor found Logan had cognitive deficits with regard to executive functioning and his ability to control behaviors, regulate emotions, and stay on task.[25] This doctor also found Logan will likely need some assistance in making major life and financial decisions; and he is likely to be able to perform labor-oriented work.[26]

A doctor hired by the claimants conducted a vocational rehabilitation evaluation, which included the finding that he "will not be capable of securing and maintaining competitive employment."[27] The doctor found it reasonable to assume he would have previously been capable of graduating from high school and earning a college degree.[28] The same doctor, in coordination with others, evaluated Logan's needs and developed a life care plan.[29] An economist used underlying reports from doctors evaluating the claimant to estimate economic losses and the cost of future care needs which are identified later in this report.

Lanard Maybin

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[22]Kornberg, MD, Paul B., Rehabilitation & Electrodiagnostics: Comprehensive Medical Evaluation, 8-10 (Nov. 22, 2017).
[23] *Id*. at 14.
[24] *Id*. at 15.
[25] Kelderman, M.D., Jill (The Center for Pediatric Neuropsychology), Compulsory Medical Evaluation for Logan Grant, 9 (Aug. 23, 2018).
[26] *Id*. at 10.
[27] Shahnasarian, Ph.D., Michael, Vocational Rehabilitation Evaluation of Logan Eduardo Grant, 30 (June 25, 2018). This finding is based upon a reasonable degree of vocational rehabilitation probability. *Id*. *But see* Kelderman, Ph.D. ABPP, Jill, Pediatric Neuropsychological Evaluation, 10 (Aug. 23, 2018) (concluding Logan will likely need some level of supervision throughout adulthood with regard to major life and financial decisions but noting he is likely to be able to work labor-related jobs).
[28] *Id*. at 31.
[29] Shahnasarian, Ph.D., Michael, 1st Update–Life Care Plan Prepared for Logan Eduardo Grant (Aug. 2, 2018).

Lanard, who was found in the front of the car under the dashboard, suffered facial lacerations, a left shoulder fracture, a major neurocognitive disorder and behavioral disturbance related to a traumatic brain injury, attention deficit disorder related to traumatic brain injury, and possible post-traumatic stress disorder.[30]

In September 2019, a doctor providing an opinion about Lanard's functional status and needs noted his "level of function and quality of life has markedly diminished" as a result of his injuries. The doctor also noted ongoing neurocognitive and behavioral impairments that impact daily life at home and in school, which will require ongoing multidisciplinary care. The doctor believes these impairments will negatively impact Lanard's future vocational potential and his level of independence; however, the doctor is not certain if Lanard will be able to achieve gainful employment in the competitive job market or live alone as an adult.[31]

In 2019, a doctor conducted a vocational rehabilitation evaluation of Lanard. In reviewing medical records, the doctor noted neuropsychological diagnoses of 1) a major cognitive disorder likely from traumatic brain injury with behavior disturbance; 2) post-traumatic stress disorder; and 3) nocturnal enuresis. Additionally, Lanard indicated difficulty focusing and has ongoing nightmares and accident-related thoughts. His facial scarring is described as "prominent."[32] The same doctor, in coordination with others, evaluated Lanard's needs and developed a life care plan.[33] An economist used underlying reports from doctors evaluating the claimant to estimate economic losses and the cost of future care needs, which are identified later in this report.

Denard Maybin

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[30] Kornberg, M.D., Paul, Comprehensive Medical Evaluation of Lanard Maybin, 11 (Sept. 11, 2019); Shands at the University of Florida, Department of Pediatric Surgery Discharge Note Re: Lanard Maybin (May 23, 2014).
[31] Kornberg at 11.
[32] Shahnasarian, Ph.D., Michael, Vocational Rehabilitation Evaluation of Lanard Maybin, 26 (Aug. 14, 2019).
[33] Shahnasarian, Ph.D., Michael, 1st Update–Life Care Plan Prepared for Lanard Maybin (Nov. 4, 2019). During his testimony at the special master hearing, Dr. Shanasarian indicated one needed change to page 19 of his original report. He noted it should read, "to be determined" as to whether Lanard would require a live-in personal care attendant after the age of 22. *See* Shanasarian, Life Care Plan Prepared for Lanard Maybin (Oct. 18, 2019). The correction was at the request of Dr. Gorman, a neuropsychologist, who could not state, with probability, the ongoing need beyond age 21. Special Master Hearing at 1:29:40-1:30:06. Counsel for claimants submitted a revised life care plan and a revised economic loss analysis report regarding Lanard in November of 2019, as cited above.

Denard suffered from a traumatic brain injury, right subdural hematoma, and diffuse axonal injury. [34] A 2015 follow-up MRI showed scarring and shrinking of the brain in some areas; and an old hemorrhage in the bilateral front lobes (which are responsible for executive functioning and emotional regulation).[35]

In 2017, a doctor evaluated Denard for the purpose of providing an opinion about his functional status and future needs. The doctor found his "level of function and quality of life has markedly diminished in relation to the motor vehicle crash."[36] The evaluation noted mild right lower extremity weakness with motor perceptual, communication, and cognitive impairments, which are anticipated to be permanent.[37] As a result of cognitive and functional impairments, the evaluating doctor believes Denard will require ongoing multidisciplinary care and is not expected to attain gainful employment in the competitive job market.[38]

A doctor examining Denard on behalf of the respondent found Denard has "significant weaknesses" with regard to executive functioning, "remarkable deficits" with regard to organization, "significant difficulties with fine motor skills," as well as visual-spatial deficits.[39] With regard to Denard's abilities and future needs, the doctor found Denard is unlikely to attain a standard high school diploma and notes he will likely require some level of assistance and supervision with major life and financial decisions.[40] However, he is "unlikely to require a personal care attendant as he will be able to care for his personal needs."[41] This doctor also believes Denard will be able to perform labor-oriented work.[42]

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[34] Special Master Hearing at 16:32-16:58; *see* Kornberg, M.D., Paul B, Rehabilitation & Electrodiagnostics: Comprehensive Medical Evaluation–Denard Maybin, 2-3 (Nov. 22, 2017).
[35] Kornberg at 6; *see* Special Master Hearing at 2:19:00-2:20:45.
[36] Kornberg at 12.
[37] *Id*. at 12.
[38] *Id*. at 12; *see also* Shahnasarian, Michael, Vocational Rehabilitation Evaluation for Denard Maybin, 33 (June 22, 2018).
[39] Kelderman, M.D., Jill (The Center for Pediatric Neuropsychology), Compulsory Medical Evaluation for Denard Maybin, Jr., 9 (Aug. 22, 2018).
[40] *Id*. at 10.
[41] *Id*. at 10. This is notable as the life care plan and costs of future life care needs includes the cost of a live-in personal care attend with a present value cost of $4,195,226; as well as an item listed as "additional cost for live-in care," which has a present value of $208,692. Raffa, Frederick (Raffa Consulting Economists, Inc.), Economic Loss Analysis in the Matter of Maybin, Jr., Denard vs. Florida Highway Patrol, Table 2 (Oct. 31, 2018).
[42] Kelderman at 10.

In 2018, a doctor provided a vocational rehabilitation evaluation for Denard as requested by the claimants.[43] The doctor's findings included academic and medical difficulties since the accident, and multifaceted neuropsychological difficulties. These difficulties include reasoning ability, memory, processing speed, motor skills, emotional disturbance, and anxiety among other findings.[44] The doctor concluded Denard is not likely to be capable of attaining competitive employment.[45]

The same doctor, in coordination with others, evaluated Denard's needs and developed a life care plan.[46] An economist used underlying reports from doctors evaluating the claimant to estimate economic losses and the cost of future care needs, which are identified later in this report.

Caretaking
Ms. Jones is the primary caretaker for Logan, Lanard, and Denard and takes them to all of their appointments. She testified she takes them to speech, physical, and occupational therapy appointments two days a week (2-3 hours each of those days). In addition, she takes them to appointments with specialists and their primary care physician. Ms. Jones works as a substitute teacher 1-3 days a week (depending upon appointments), which allows her to have a schedule flexible enough to get her children to their doctors and therapists. She would like to work fulltime using her bachelor's in criminal justice and seek a master's and a law degree.[47]

Estimated Economic Losses
Claimants submitted economic loss analyses[48] with regard to the children based upon medical assessments and expected needs and limitations.

[43] Shahnasarian, Ph.D., Michael, Vocational Rehabilitation Evaluation for Denard Maybin, 33 (June 22, 2018).
[44] *Id*.
[45] *Id*.
[46] Shahnasarian, Ph.D., Michael, Life Care Plan Prepared for Denard Maybin (July 5, 2018).
[47] Special Master Hearing at 3:15:09-3:18:10. Ms. Jones testified about her worries for her children as well as her desire to make sure they are healthy and prepare them as much as possible to live without her. *Id*. at 3:31:30-3:32:00 and 3:38:50-3:39:00.
[48] *See* Raffa, Frederick (Raffa Consulting Economists, Inc.), Economic Loss Analysis in the Matter of Mr. Lanard Maybin 2nd Revised Report (Nov. 7, 2019); Raffa, Frederick (Raffa Consulting Economists, Inc.), Economic Loss Analysis in the Matter of Grant, Logan vs. Florida Highway Patrol Report (Nov. 2, 2018); Raffa, Economic Loss Analysis Re: Denard.

The estimated economic losses with regard to future earning capacities in different scenarios were as follows:

Earning Capacity: Assuming Pre-Incident Employment with No Further Degree Beyond High School	
	Present Value
Logan	$1,543,014
Lanard	$1,690,822
Denard	$1,592,738

Earning Capacity: Assuming Pre-Incident Employment and Additional Schooling	
	Present Value
Logan (with a bachelor's degree)	$2,810,754
Lanard (with technical school training)	$1,834,473
Denard (with a bachelor's degree)	$2,906,356

The estimated cost of future life care needs for each child is as follows:

Cost of Future Life Care Needs	
	Present Value
Logan[49]	$6,702,555 or $6,738,094
Lanard[50]	$2,126,572
Denard[51]	$5,818,550

In summary, the estimated economic loss and cost of future care at present value[52] for each child is as follows:

- Logan $8,245,569–$9,548,848
- Lanard $3,817,394–$3,961,045
- Denard[53] $7,411,288–$8,724,906

[49] Two options were listed for Logan's Life Care Plan depending upon what is used to assist him with ambulating (Option I: Walkaide and Options 2: Bioness L300).
[50] The values for Lanard include adjusting for the correction to the life care plan evaluation (indicating the need for a live-in attendant after the age of 21 is yet to be determined by professionals).
[51] If the medical opinion of the respondent's evaluating doctor is applied (that Denard will not require live-in care), the values for Denard's future life care needs would likely be reduced by the values listed for a live-in care attendant ($4,195,226) and "additional cost for live-in care" ($208,692). If he no longer required housekeeping, that would further reduce his future life care needs by $70,761. *See* Raffa Economic Loss Analysis Re: Denard at Table 2.
[52] Raffa Economic Loss Analysis Re: Logan at Tables 3A and 3B; Raffa 2nd Revised Economic Loss Analysis Re: Lanard at Tables 3A and 3B; and Raffa Economic Loss Analysis Re: Denard at Tables 3A and 3B.
[53] *See supra* n. 48.

Combined, the estimated economic loss ranges for all three children is $19,474,251–$22,234,799.[54]

Trooper Raul Umana

During a deposition related to this matter, Trooper Umana stated he was going to pull into the median and wait until it was safe to turn around; however, he admitted he approached too quickly. He said his "lack of experience there really kicked in."[55] He said "there was too close of [a] range for me to get across and turn around."[56] Trooper Umana agreed it was part of his training to turn around in the safest area.[57] Although he did not know the speed at which he entered the median, his opinion was it "was too fast."[58]

The FHP report indicates Trooper Umana received a traffic citation for careless driving pursuant to section 316.1935, of the Florida Statutes,[59] which he states he paid.[60] He did not receive any discipline from FHP.[61]

Other Vehicles Involved in Incident

In addition to Trooper Umana's and Ms. Jones's vehicles, there were two other vehicles involved in this incident. There was a vehicle directly behind Ms. Jones's vehicle involved, as well as a tractor-trailer truck.

The Vehicle Behind Ms. Jones's Vehicle

The vehicle behind Ms. Jones, according to the FHP report, was following too closely behind her.[62] Although this vehicle did not come into contact with Ms. Jones's vehicle, the insurer of this vehicle opted to provide $20,000 in a settlement agreement.

The Tractor-Trailer Truck

Two possible issues arose with regard to the tractor-trailer truck. The first potential issue was with regard to speed. Although the tractor-trailer truck did not have a recording of

[54] Although respondent's doctor does not believe Denard will require live-in care after the age of 21, these amounts include such live-in care.
[55] Trooper Raul Umana, Deposition, 22 lines 19–12 (July 17, 2017).
[56] *Id*. at 22 line 25–23 line 5.
[57] *Id*. at 26 lines 1–4.
[58] *Id*. at 32 lines 6–11.
[59] FHP Report at 59.
[60] Trooper Raul Umana, Deposition, 53 lines 17–20.
[61] *Id*. at 53 line 14–54 line 10 (July 17, 2017).
[62] FHP Report at 26.

data like Ms. Jones's Altima had, a responding trooper originally noted the driver of the tractor-trailer truck was following too closely because the driver had stated he did not have time to react after vehicles in front of him were involved in the initial crash.[63] The significant damage to the back of Ms. Jones's vehicle, which crushed the back seat where her children were located, was from impact of the tractor-trailer truck. The second potential issue was with regard to the driver's time on duty and whether he exceeded the limit regarding driving hours.[64] Evidence was not submitted to confirm whether the driver of the tractor-trailer truck had been following too closely or driving for too many hours at the time of the crash.

Litigation History and Settlement

Two cases were filed by Ms. Jones in Orange County seeking relief as a result of this incident. One case was filed by Ms. Jones on behalf of her three children[65]; and the other was filed regarding Ms. Jones's personal injury claims.[66] Prior to trial, the parties arrived at a mediated settlement agreement[67] and both cases were subsequently closed.

Settlement

Counsel for claimants believed the potential jury verdict value of this matter would be $40-50 million.[68] The mediated settlement agreement notes claimants and respondent (FHP) acknowledged "a jury could reasonably award damages to the minor Plaintiffs in the amount of [$18 million]."[69] Counsel for the claimants stated the settlement amount was less than the amount claimants believe is the full value because of issues relating to speed and whether the use of seatbelts would have been of concern for a jury. Counsel noted there was no information suggesting Ms. Jones could have avoided the incident, but conceded the issue of the seatbelts could have affected a jury's verdict.[70]

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[63] Sworn Audio Statement, Trooper Shawn Crocker, 13:30-13:59 (June 9, 2014).
[64] Special Master Hearing at 1:06:20-1:07:06.
[65] Jones on behalf of Grant, et al. v. Fla Highway Patrol, Case No. 2017-CA-000732-O (Fla. 9th Circ. Ct.).
[66] Jones v. Fla. Highway Patrol, Case No. 2018-CA-004258-O (Fla. 9th Circ. Ct.).
[67] Special Master Hearing at 16:59-17:25.
[68] *Id*. at 20:22-20:37.
[69] Mediation Settlement Agreement, Jones on behalf of Grant, et al. v. Fla. Highway Patrol, Case No. 2017-CA-000732-O (Fla. 9th Circ. Ct.), 2 (Nov. 30, 2018); Special Master Hearing at 4:02:30-4:03:56.
[70] Special Master hearing at 21:00-21:54.

The respondent did not admit liability or responsibility for the incident but did reach a mediated settlement agreement of $18,000,000.[71] As part of the agreement, the respondent agreed to be silent on the claim bill, not support or oppose the bill, and did not present a case or argument at the special master hearing.[72]

Funds Received by Claimants

Pursuant to settlement agreements, claimants have received funds from FHP, the insurer of the tractor-trailer truck, and the insurer of the Mercedes.

Respondent's Payment Pursuant to the Statutory Cap

The claimants received the remaining amount ($285,000)[73] of the respondent's statutory limit ($300,000 per incident) from the Division of Risk Management and seek the remaining balance of the settlement ($17,715,000) through this claim bill. From payment of the limit, claimants' net proceeds were $142,999.14, and the following disbursements were made[74]:

- Christeia Jones $49,999.14
- Logan Grant Special Needs Trust (SNT) $25,000.00
- Denard Maybin, Jr. SNT $25,000.00
- Lanard Maybin SNT $50,000.00

Settlement Funds from other Insurance Policies

In addition to the respondent's payment, the children received funds from settlements with insurers of two other vehicles involved in the accident.[75]

Each of the children recovered funds from the tractor-trailer truck's insurance company, and Ms. Jones recovered a portion of each of those amounts, as well. The total recovery from the tractor-trailer truck's insurance company was $965,984.33. After payment of attorney fees and costs and liens, the distributions were as follows:

- Christeia Jones $15,000
- Logan Grant SNT $185,031.80

[71] Order on Petition for Approval of Personal Injury Settlement of Minors Logan Grant, Denard Maybin, Jr., and Lanard Maybin, Case No. 2017-CA-000732-O (Fla. 9th Circ. Ct.) (June 24, 2019).
[72] Mediation Settlement Agreement at 2.
[73] The first $15,000 of respondent's limit went to the driver of the tractor-trailer truck. Correspondence from Kenneth McKenna, Attorney for Claimants (Nov. 12, 2019).
[74] Closing Statement, Recovery from FHP (June 27, 2018); *see* Affidavit of Attorney for Claimants Attorney (Oct. 16, 2019).
[75] Affidavit of Attorney for Claimants at 2.

(from total recovery of $482,992.17)
- Denard Maybin, Jr. SNT $154,191.15
(from total recovery of $386,393.73)
- Lanard Maybin SNT $41,535.42
(from total recovery of $96,598.43)

Claimants recovered $20,000 from an insurer of the Mercedes traveling behind Ms. Jones that was involved in the incident. From this settlement, proceeds to claimants totaled $5,644.22, which was distributed as follows:
- Logan Grant SNT $1,881.41
- Denard Maybin, Jr. SNT $1,881.41
- Lanard Maybin SNT $1,881.40

Balance of Each Child's Special Needs Trust
As of fall 2019, the balance of each child's special needs trust is as follows[76]:
- Logan Grant SNT $205,368.83
- Denard Maybin, Jr. SNT $170,415.51
- Lanard Maybin SNT $80,817.50

Liens
Florida Medicaid had asserted liens on each claimant though HMS/Conduent, which have been paid in full.[77]

WellCare has asserted a lien of $49,767.42 regarding Logan Grant; $22,869.40 on Denard Maybin, Jr.; and $8,485.71 on Lanard Maybin.[78] Counsel for claimants indicated funds are being held in trust for payment of these liens; however, there is disagreement with regard to how much is to be paid.[79]

CONCLUSIONS OF LAW:

A *de novo* hearing was held as the Legislature is not bound by settlements or jury verdicts when considering a claim bill, passage of which is an act of legislative grace.

Section 768.28, Florida Statutes, waives sovereign immunity for tort liability up to $200,000 per person and $300,000 for all

[76] Information is as of September 12, 2019 for all accounts.
[77] First Updated Affidavit of Attorney for Claimants, 2 (Nov. 12, 2019).
[78] Affidavit of Attorney for Claimants at 3. Special Master Hearing at 2:50:30-2:54:30.
[79] First Updated Affidavit of Attorney for Claimants, 3 (Nov. 12, 2019).

claims or judgments arising out of the same incident. Sums exceeding this amount are payable by the State and its agencies or subdivisions by further act of the Legislature.

In this matter, the claimants allege negligence on behalf of Trooper Umana. The State is liable for a negligent act committed by an employee acting within the scope of employment. Trooper Umana was operating his patrol vehicle while on duty and was within the scope of his employment with Florida Highway Patrol (a division of the Department of Highway Safety and Motor Vehicles). Therefore, his employer, ultimately the State, is liable for negligent acts committed by him pursuant to the statutory sovereign immunity waiver.

Negligence

There are four elements to a negligence claim: (1) duty–where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach–which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation–where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages–actual harm.[80]

Duty

Statute and case law describe the duty of care placed upon motorists. Florida's statute regarding careless driving provides:

> Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section.[81]

Case law provides motorists have a duty to use reasonable care to avoid accidents and injury to themselves and others.[82] The driver of an automobile, a "dangerous instrumentality," is responsible for maintaining control of the vehicle, commensurate with the setting, and being "prepared to meet

[80] Williams v. Davis, 974 So.2d 1052, at 1056–1057 (Fla. 2007).
[81] Section 316.1925(1), Fla. Stat.
[82] Nelson v. Ziegler, 89 So.2d 780, 783 (Fla. 1956).

the exigencies of an emergency within reason and consistent with reasonable care and caution."[83]

Breach
The undersigned finds Trooper Umana breached the duties described above when he approached the median too quickly, as he admitted himself, and attempted to turn around in the center median.

Causation
Trooper Umana's breach of duty in approaching the median too quickly caused him to hit the guardrail and travel into oncoming traffic where he made impact with other vehicles, including the Jones's Altima. The collision with Trooper Umana's vehicle pushed the Jones's vehicle into the path of the tractor-trailer truck traveling in the middle lane. Impact with the tractor-trailer truck caused significant damage to the back of the vehicle and injured the children in the backseat.

Case law provides, when injury results "directly and in ordinary natural sequence from a negligent act without the intervention of any independent efficient cause," where the sequence "should be regarded as a probable, not a mere possible, result of the negligent act, [the injured person] is entitled to recover damages as compensation."[84] The undersigned finds it probable, not merely possible, the Jones's vehicle would be hit by another vehicle after being hit by Trooper Umana's vehicle on a three-lane highway. The damages sustained by the Joneses are the natural result of the sequence of events set in motion by Trooper Umana.

Damages
As a result of the collision, doctors indicated all three children suffered traumatic brain injuries as well as the medical injuries previously described in this report. The total amount of damages provided by claimant's economic analyst is $19,474,251–$22,234,799.

As noted previously, the doctor examining the children for the respondent does not believe Denard will require live-in assistance. If Denard does not require live-in care after the age of 21, the economic loss for him may be significantly

[83] Nelson, 89 So.2d at 783.
[84] Loftin et al. v. McCrainie, 47 So.2d 298, 301 (Fla. 1950).

reduced. However, claimants' experts provide Denard will need such care and have calculated live-in care into the economic loss analysis. Given the claimants' submissions from various experts collaborating to create the life care plan, the undersigned finds the preponderance of evidence demonstrates Denard's estimated future need of live-in care should remain in the calculation.

Respondent and claimants agreed a jury could have awarded $18,000,000 to the children and settled for that amount–which is less than the calculations provided by the economic analyses.

Comparative Negligence

Comparative negligence "involves the apportionment of the loss among those whose fault contributed to the occurrence" and a claimant cannot recover damages for the percentage of fault for which she is liable. [85]

Ms. Jones

In this matter, Ms. Jones was exceeding the speed limit by traveling at 88 miles per hour on a highway with a 70 mile per hour speed limit; and two of the children were unbuckled when emergency responders found them.

With regard to Ms. Jones's speed, claimants' counsel did not provide argument of negligence on behalf of Ms. Jones for which damages apportioned to the respondent should be reduced, and respondent remained silent pursuant to the settlement agreement. The data recorder clearly provides evidence Ms. Jones had breached her duty to drive the speed limit. However, information was not provided demonstrating her speed specifically contributed to the causation of the damages suffered.

With regard to seatbelts, "a claim that a plaintiff failed to wear a seat belt and that such failure was a contributing cause of plaintiff's damages should be raised as an affirmative defense of comparative negligence."[86] Testimony and information (provided by Ms. Jones and her grandmother) was consistent that Ms. Jones had buckled her three children, as well as herself, before she started

[85] Hoffman v. Jones, 280 So.2d 431, 436 (Fla. 1973).
[86] Ridely v. Safety Kleen Corp., 693 So.2d 934, 935 (Fla. 1996).

driving. Ms. Jones also indicated she did not have knowledge of the children unbuckling themselves; however, Lenard and Denard were both found unbuckled by first responders. Regardless of how the children were unbuckled, a comparative negligence defense would also require demonstration that the breach of a duty contributed to the damages sustained. Here, counsel for claimants argued if Lenard and Denard were unbuckled–it may have saved their lives.

Given the information she had buckled the children before driving; did not have knowledge of the children unbuckling themselves if or when they did; the argument they would have sustained greater injuries if they remained restrained to the back seat which had extensive crush damage (thereby more than likely not contributing to damages); and no argument from respondent with regard to a comparative negligence defense–no contributory[87] negligence has been demonstrated.

Driver of the Tractor-Trailer Truck
Similarly, although counsel for claimants mentioned there may have been issues explored with regard to the driver of the tractor-trailer truck (potentially exceeding hours he was allowed to work and a trooper noting the driver may have been speeding) there was no demonstration of the elements required to find comparative negligence on behalf of the tractor-trailer truck driver. The only information provided regarding hours of driving was in the FHP report, which indicated five violations in eight days but stated "these violations alone are not likely to cause a fatigue factor."[88] General information regarding speed of the truck indicates the driver recalled traveling at 65 miles per hour at the time of the incident and that the truck was traveling between 60 and 80 miles per hour 69% of the time.

Ms. Jones's vehicle sustained the most significant damage from impact with the tractor-trailer truck. If more information were available regarding potential comparative negligence on behalf of the truck driver, it is possible the respondent's responsibility for damages would be reduced; however,

[87] *See* Section 768.81(2), Fla. Stat., describing contributory fault and its effect as "fault chargeable to the claimant [which] diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant's contributory fault, but does not bar recovery."
[88] FHP Report at 15.

further information to find comparative negligence on behalf of the tractor-trailer truck driver was not presented by claimants and the respondent remained silent but acknowledged such issues of comparative negligence had been explored.

ATTORNEY FEES:

Language in the bill states attorney fees may not exceed 25 percent of the amount awarded. Counsel for the claimants indicated attorney fees will be 20 percent, and lobbying fees will amount to 5 percent, of the total funds awarded through the claim bill.[89]

RECOMMENDATIONS:

Recommended Amendment(s)
Although the settlement agreement resolved Christeia Jones claims, as well as claims on behalf of her three boys, Ms. Jones is not seeking relief in an individual capacity through this claim bill.[90]

Therefore, the undersigned recommends removing references in the bill identifying Ms. Jones as a claimant, or providing relief to her; or, replacing such portions with clarifying language providing the funds to the special needs trusts of Logan Grant, Denard Maybin, Jr., and Lanard Maybin, which are handled by Ms. Ashley Gonnelli of Guardian Trust Foundation, Inc.[91]

Recommendation on the Merits
The undersigned did not have the benefit of hearing argument from both parties due to the settlement agreement requiring the respondent to remain silent on the claim bill and not support or oppose the bill.[92] Therefore, the above facts, conclusions of law, and recommendations are the result of argument and information provided by counsel for the claimants.

Based upon the information provided before, during, and after the special master hearing, the undersigned finds claimants have demonstrated negligence on behalf of the

[89] Affidavit of Attorney for Claimants at 2 (noting outstanding costs of $15,603.17 with regard to representation of the claimants).
[90] Affidavit of Attorney for Claimants, 1 (Oct. 16, 2019).
[91] E-mail Correspondence from Mr. Daniel Smith, Attorney for Claimants (Jan. 16, 2020).
[92] Special Master Hearing at 22:13-22:18.

respondent and the amount sought is reasonable when compared to analyses provided by claimants' economist.

Respectfully submitted,

Christie M. Letarte
Senate Special Master

cc: Secretary of the Senate