THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
03/27/2025	SM	Favorable
	JU	
	AHS	
	AP	

March 27, 2025

The Honorable Ben Albritton
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 12** – Senator Gruters
HB 6511 – Representative Busatta
Relief of L.P. by the Department of Children and Families

SPECIAL MASTER'S FINAL REPORT

THIS IS A CLAIM FOR $28 MILLION BASED ON A JURY VERDICT AGAINST THE DEPARTMENT OF CHILDREN AND FAMILIES ("DEPARTMENT") FOR INJURIES AND DAMAGES ARISING FROM THE DEPARTMENT'S NEGLIGENCE THAT RESULTED IN L.P.'S MOTHER STABBING HER 14 TIMES ON JUNE 26, 2015.

Background

L.P. is the biological daughter of Ashely Parker.[1] The two lived together in Sarasota in a home owned by Ms. Parker's mother, Valerie Carey (V.D.C), up until June 26, 2015. Records indicate that L.P. does not have a relationship with her biological father.[2] V.D.C. and Sidney Carey (S.C.), V.D.C.'s husband, adopted L.X.C. with a name change from L.X.P. to L.X.C. on March 30, 2017.[3]

L.P. is 15 years old and lives with her adoptive parents, her grandparents, where she enjoys living. She is in 9th grade and

[1] Claim Bill Hearing 2:28:30-2:28:57 (Jan. 31, 2025) (hereinafter referred to as "Hearing").
[2] Plaintiff's Trial Exhibit 110, Shahnasarian, M. *Vocational Rehabilitation Evaluation of L.X.C.*, 12 (Aug. 30, 2021) (hereinafter referred to as "Evaluation").
[3] Hearing at 4:52:47-4:52:50; Evaluation at 9.

attends high school.[4] After school, she practices gymnastics and attends therapy every Monday.[5] On the weekends, she hangs out with her friends. She wants to attend the University of South Florida (USF) and become a marine biologist. [6]

History of Interactions with Police Department

V.D.C. denied any knowledge of Ms. Parker having a juvenile record. However, she testified that Ms. Parker got into a fight with S.C. and V.D.C. called the police. She does not recall how old Ms. Parker was when the incident occurred. She also testified about a fight that happened at school.[7]

March 9, 2015: Ms. Parker contacted Sarasota Police Department (SPD) alleging that her ex-boyfriend, Mr. Mattson, wanted her dead and was trying to kill her. She reported not knowing why or how he was going to hurt her but suggested that Parker (sic) cuts her brakes on her truck every night. SPD saw no evidence of any signs that Ms. Parker's brakes had been cut and advised her to call 911 if Mattson came over. No action was taken.[8]

March 11, 2009: Ms. Parker was charged with making a false report to the law enforcement authorities which she pled guilty to on March 3, 2010.[9]

March 11, 2009: Ms. Parker was charged with neglect of a child-with great harm, a second-degree felony. On February 16, 2010, Ms. Parker entered into a plea agreement and was given five (5) years of probation.[10]

September 14, 2009: Ms. Parker was charged with four (4) counts of making false reports of commission of crime which she pled guilty to on March 3, 2010.[11]

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[4] Hearing at 1:58:00-2:06:24.
[5] *Id.* at 5:34:00-5:34:35.
[6] *Id.* at 1:58:00-2:06:24.
[7] *Id.* at 4:56:30-4:59:48.
[8] Department's Composite Exhibit, *Callouts to AP's home (unredacted)*, 5 (June 26, 2015) (hereinafter referred to as "Callouts").
[9] *State of Florida v. Ashley Yvonne Parker*, case no. 2009MM012141 (Mar. 3, 2010).
[10] Lopez T-IV 1065: 19-20; *State of Florida v. Ashley Yvonne Parker*, 2009CF003576 (Mar. 11, 2009). The Department reports that an investigation was conducted in connection with this case. The child victim was a foster child who was placed with Ms. Parker before L.P. was born. The case closed with "Some Indicators of Inadequate Supervision and Some Indicators of Threatened Harm."
[11] *State of Florida v. Ashley Yvonne Parker*, case no. 2009MM013313 (Sept. 14, 2009).

March 26, 2015: Ms. Parker contacted SPD alleging that someone was threatening to kidnap her and L.P. Ms. Parker reported hearing a "suspicious noise" near her home.[12]

April 17, 2015: Ms. Parker sent a suicide note to SPD. Officer Luciano spoke with Ms. Parker and V.D.C. at Ms. Parker's home and both denied that Ms. Parker was suicidal. Ms. Parker denied writing any such note. Ms. Parker was highly agitated and expressed that she was "scared of police." V.D.C. declined to give her name or any other information.[13]

May 13, 2015: SPD responded to Ms. Parker's home at 11:21 p.m. where she reported that she could not come outside due to a man holding a gun to her head which SPD noted that "clearly there was no one around her." Ms. Parker exited the home and began making statements, for instance, that people were going to kill her and that her cousin had sent her a video of her daughter, L.P., being molested. SPD took Ms. Parker into custody under a Baker Act and transported her to Sarasota Memorial Hospital for evaluation. SPD spoke to L.P. who appeared fine and not in any distress or danger. Based on this limited observation, the SDP determined that, "It did not appear the allegations of L.P. being molested to be true due to the deranged state Parker was in when she alleged such."[14] There was no corresponding abuse report made on this date.

Note: Ms. Parker was evaluated at Sarasota Memorial Hospital which resulted in clinical impressions/a problem list of psychosis and medical clearance. Ms. Parker's disposition was reported as stable, and her status was reported as transfer. She was transported to Coastal for psychiatric evaluation. The evaluation determined that there was no psychosis present, and she was discharged by 9:00 a.m. on May 14, 2015, less than ten hours after arrival.[15]

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[12] Claimant's Exhibit 13, *15-015709 Incident Report*, 2 (Mar. 26, 2015).
[13] Callouts at 9.
[14] Claimant's Exhibit 16, *15-024631 Incident Report*, 3 (May 13, 2015).
[15] Department's Exhibit 9, *Coastal Behavioral Healthcare* (May 14, 2015). Ms. Parker was Baker Acted once before this Baker Act in May 2015 because of her fight with S.C. She was in a facility for months. Ms. Parker was a teenager living with V.D.C. in Bradenton. V.D.C. testified that Ms. Parker was Baker Acted a total of two times. Hearing at 4:56:55-5:59:48.

May 15, 2015: SPD attempted to contact Ms. Parker at her home in Sarasota, in reference to a suspicious incident but no one was home.[16]

May 29, 2015: Ms. Parker walked into SPD to report multiple suspicious incidents over a span of several months. Officers asked her if the threats/harassment calls had been previously reported and Ms. Parker confirmed that she had. SPD asked Ms. Parker to write a statement. The officer noted that there were reports in March, April, and May and she was Baker Acted on May 13, 2015 (reference case number: 15-024631). SPD described her statement as "piece meal and some claims appeared to reveal her to be of special interest."

Ms. Parker prepared a lengthy five-and-a-half page written statement that, in part, made allegations against the police, neighbors, and relatives. Allegations against the police included suggestions that: (a) they were flooding Ms. Parker's home with gas and carbon monoxide, (b) they were planning to kidnap her, (c) they would kill her entire family because she is a snitch, and (d) the KKK within the police department ordered her dead.[17]

June 25, 2015: Ms. Parker's cousin, Jesse Ashford, received a video from Ms. Parker that he thought was suspicious and possibly pointing to Ms. Parker being suicidal. He requested a well check on Ms. Parker and L.P. The video received by Mr. Ashford was sent to SPD. The video was Ms. Parker giving a basic will advising what she wanted done with her house and with the care of her daughter if she died.

SPD made repeated attempts to get Ms. Parker to come to the door after which she stated that she had sent the video to numerous family members stating her wishes in case something happened to her. SPD reported that Ms. Parker and L.P. appeared fine.[18]

June 26, 2015: regarding the stabbing incident that gave rise to this claim bill and is described below, Ms. Parker was found guilty on September 23, 2016 of attempted murder and aggravated battery of L.P., and resisting an officer with violence. She is sentenced to 40 years in prison followed by

[16] Claimant's Exhibit 17, *15-024905 Incident Report*, 2 (May 15, 2015).
[17] Claimant's Exhibit 18, *15-027448 Incident Report*, 2 (May 29, 2015).
[18] Claimant's Exhibit 19, *15-032701 Incident Report*, 2 (June 25, 2015).

probation for life with respect to the attempted murder and resisting an officer with violence. She is sentenced to 125.7 months in prison for cruelty toward child-aggravated battery to run concurrent with the 40-year sentence. The court ordered Ms. Parker to have no contact with L.P.[19]

Ms. Parker calls and speaks with S.C. or V.D.C. to ask for money. When she asks about L.P., V.D.C. tells her that L.P. is fine. V.D.C. sends Ms. Parker $30 per month.[20]

History of Abuse Reports with the Department

2009-098932 (June 14, 2009): On June 14, 2009, Ms. Parker filed a police report alleging the paternal aunt intentionally pushed a stroller twice causing the stroller to topple over while L.P. was inside. Hospital records show that Ms. Parker went to the hospital on June 11, 2009, but left a couple of hours after arriving. The hospital reported that Ms. Parker brought L.P. to the hospital on June 9, 2009, with allegations that L.P. rolled off of a chest and hit her head on the concrete floor, causing no known injuries.[21]

2010-016983 (January 29, 2010): The allegations were that about a year ago, Ms. Parker had another child removed from her care and the child was not returned. She now has L.P. in her care and seems to be displaying behaviors that suggest she may be mentally unstable, and it may not be a safe environment for L.P. Ms. Parker reportedly displays erratic behavior. There is an injunction against L.P.'s father for unknown reasons and he is not allowed to have contact with her.

The case closed with "No Indicators of Threatened Harm," it was assessed as "Low to Moderate Risk." It was noted that Ms. Parker and L.P. lived with the maternal grandmother, V.D.C., and there were no safety concerns for the child in the care of Ms. Parker and V.D.C.[22]

2010-210977 (October 13, 2010): The allegations were against the daycare for leaving L.P. and 13 other children unsupervised allowing another child to bite L.P., causing a

[19] *State of Florida v. Ashley Yvonne Parker*, case no. 2015CF10327 (June 29, 2015).
[20] Hearing at 5:23:41-5:24:33.
[21] Department's Composite Exhibit 7, *Intake Report with Reporter Narrative*, (June 14, 2009).
[22] Department's Composite Exhibit 6, *Intake Report with Reporter Narrative*, 3, 7-8 (Jan. 29, 2010).

deep bite to her cheek. The case was closed with "No Indicators."[23]

2013-177775 (June 27, 2013): The allegations were that Ms. Parker refused to allow L.P. to attend a field trip with the daycare and was advised not to bring the child to school but brought her anyway. The mother pushes and screams at L.P. sometimes. The case was closed with "No Indicators of Inadequate Supervision." It was noted that Ms. Parker was uncooperative with the Department.[24]

2015-135492 (May 18, 2015): The allegations in this report are that a child at L.P.'s school had touched her inappropriately. L.P. had been crying and not wanting to go to school. She was examined and "nothing abnormal" had been identified. CPI Munoz was assigned to the case and it was closed with no services with the notation that Ms. Parker has a history with the Department of making false allegations and not cooperating with investigations. It should be noted that besides this report, there was no mention of any other "false allegations" made by Ms. Parker to the Department.[25]

Unreported Abuse

Therapy records indicate that, before the stabbing incident described below, L.P. reported to her therapist that Ms. Parker killed her seven bunnies, tried to drown her in a toilet and bathtub, and tried to poison her with pills. L.P. reported being put in the bathtub and Ms. Parker attempting to drown her two or three times.[26] On November 30, 2018, L.P. Reported to Dr. Forrest that she is afraid of swimming because her mother tried to drown her in the toilet.[27]

The Department Investigation at Issue

On June 25, 2015, at 4:31 p.m., the Department received report number 2015-172495-01 (the "June 2015 report"). A decision was made regarding the intake report on June 25,

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[23] Department's Composite Exhibit 5, *Intake Report with Reporter Narrative*, 2, 9 (Oct. 13, 2010).
[24] Department's Composite Exhibit 4, *Intake Report with Reporter Narrative*, 2, 8 (June 27, 2013).
[25] Department's Exhibit 2, *Confidential Assessment Summary Child-on-Child Assessment (without Reporter Information)*, 1-2 (May 18, 2015).
[26] Evaluation at pp. 42-43; Hearing at 2:55:00-2:55:25.
[27] Plaintiff's Trial Exhibit 1-6, *Psychotherapy Notes, Office of Dr. Sharon D. Forrest Ed. D, LMFT #2750*, 3 (Feb. 15, 2019); Hearing at 2:55:00-2:55:25.

2015, at 4:48 pm. The reporter was a deputy from SPD. The Hotline assigned the case as an immediate response time.[28]

Allegation Narrative:
On June 25, 2015, law enforcement responded to the home due to a suicide threat. The mother sent a video of her last will and testament stating:

> "…Ashley Yvonne Parker being of sound mind do hereby leave the trust of this house [] to my daughter [L.P.] and the executor of the estate to my mother [V.D.C.] to raise [L.P.] with [S.C.]. In case they can't do it, Kenneth Adams. I leave the house to [L.P.] if and when she does turn 30 years old. I also leave custody to Kenneth if anything was to happen to [V.D.C.] or [S.C.]. Next would be Jessie Ashford Junior, my uncle. And if they can't take care of [L.P.] next would be [Mr. Adams] of West Palm Beach, Florida."[29]

The June 2015 report explained efforts law enforcement had to make to have contact with Ms. Parker, raised concerns about her truthfulness, and raised issues about her mental health and past Baker Act. Law enforcement left L.P. in the care of Ms. Parker and reported they felt that it was a safe environment.

Pre-Commencement Supervisor Consultation
Child Protective Investigator (CPI) Supervisor Tucker and CPI Cheree Lopez completed the required pre-commencement consultation at 7:00 p.m. on June 25, 2015. Notes from the meeting highlight some of the following relevant points: [30]

- Ms. Parker has a history of mental health, and additional information is required on this issue.
- Prior Department reports were reviewed and prior charges for false reports and neglect were known.
- Concerns raised regarding Ms. Parker's willingness to cooperate with child protective services and other agencies.

[28] The Department's Exhibit, *Intake Report with Reporter Narrative*, 1-3 (June 25, 2015) (hereinafter referred to as "June report").
[29] Claimant's Trial Exhibit 74, *Suicide Video 6-25-2015* (June 25, 2025).
[30] Claimant's Trial Exhibit 53, *Pre-Commencement 6-25-2015* (June 25, 2015).

Home Visit on June 25, 2015

CPI Supervisor Tucker and CPI Lopez arrived for a home visit at 7:44 p.m. on June 25, 2015, at Ms. Parker's residence.[31] They were wearing badges and had on shirts that identified them as working for the Department.[32] They approached the residence, knocked on the door, and were greeted by Ms. Parker who stayed behind the door. The door was cracked but it was dark so she could not see inside. Ms. Parker misidentified herself as L.P.'s godmother named Valencia Dubois, so CPI Lopez was asking her questions about Ms. Parker and L.P. all of which were answered positively.[33] CPI Lopez asked Ms. Parker to go inside the house but Ms. Parker refused because she reported she was not dressed.[34] Ms. Parker was laughing and joking around so her tone was not concerning to CPI Lopez.[35]

V.D.C. walked up to the residence after CPI Supervisor Tucker and CPI Lopez arrived when they had been speaking with Ms. Parker.[36] CPI Supervisor Tucker and CPI Lopez were a few feet from the front door.[37] V.D.C. was agitated and reported being in a car accident that day.[38] CPI Supervisor Tucker informed Ms. Parker and V.D.C. who they were and that they were there for an investigation.[39] V.D.C. claimed the report was false.[40] V.D.C. was present when CPI Lopez was speaking with Ms. Parker,[41] but given her hearing deficits it is reasonable to infer that she did not hear the conversation.

V.D.C. indicated that she had power of attorney because Ms. Parker travels back and forth to Orlando, and she showed CPI Supervisor Tucker and CPI Lopez a copy of the power of attorney. CPI Tucker did not read the power of attorney in totality.[42]

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[31] June Report at 3-4.
[32] Hearing at 6:49:40-6:49
[33] *Id.* at 6:44:30-6:45:25; Tucker T-VII 1929: 2-5.
[34] *Id.* at 6:45:45-6:46:11.
[35] *Id.* at 7:32:15-7:33:00.
[36] Hearing at 6:46:11-6:46:32; Tucker T-VII 1983:20-25; 1984: 1-5.
[37] *Id.* at 5:05:07-5:05:21.
[38] *Id.* at 6:45:15-6:45:31.
[39] *Id.* at 6:49:50-6:50:08.
[40] Hearing at 7:35:25-7:35:58; 2015-172495 Chronological Notes Report, 4 (June 26, 2015) (hereinafter referred to as "Chronological Notes").
[41] Hearing at 6:46:32-6:46:59. 5:05:39-5:05:53.
[42] Tucker T-VII 1923: 22-25; 1925: 21-25; 1926: 1-7; Lopez T-IV 1035: 14-21; V.D.C. T-VI 1691: 11-13.

Conflicting testimony and evidence regarding where Ms. Parker reportedly was located when CPI Supervisor Tucker and CPI Lopez were at Ms. Parker's residence was offered in discovery and hearing testimony. CPI Supervisor Tucker and CPI Lopez suggested that V.D.C. informed them that Ms. Parker was in Orlando and V.D.C.'s testimony that she informed them Ms. Parker was in the house. [43] However, Chronological Notes entered the day after the home visit on June 26, 2015, at 3:17 p.m., which the undersigned finds more credible, suggests that "CPI [Lopez] was unable to get contact and whereabouts information regarding the mother from either the maternal grandmother [V.D.C.] or the Godmother [Ms. Parker]."[44]

CPI Supervisor Tucker and CPI Lopez asked to speak with L.P.[45] V.D.C. went inside to get L.P. and they went back outside together.[46] L.P. presented very well cared for and clean with her hair done and wearing matching clothes.[47] The CPI Supervisor asked about several topics: school, activities, her appearance, and living at home[48] for approximately 30 minutes.[49] L.P. did not express any concerns about Ms. Parker and did not appear scared.[50]

When CPI Supervisor Tucker and CPI Lopez were leaving, V.D.C. and L.P. went to the door to go inside but it was locked. V.D.C. knocked on the door three times and she said, "Ashley open the door, Ashley open the door, open the door Ashley."[51] They were in the yard but starting to go down the road[52] so they would not have heard her call Ms. Parker's name.

After CPI Supervisor Tucker and CPI Lopez left and V.D.C. went inside, she asked Ms. Parker what if anything she told them. Ms. Parker told V.D.C. that she used a different name and V.D.C. yelled at her for not using her correct name.[53] V.D.C. and S.C. testified that Ms. Parker was reportedly acting

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[43] Hearing at 5:06:07-5:06:34; 6:47:00-6:47:20; 6:49:05-6:49:24; Tucker T-VII 1920: 19-25.
[44] Chronological Notes at 4.
[45] Hearing at 5:03:00-5:03:16.
[46] *Id.* at 5:05:21-5:05:39.
[47] *Id.* 6:48:22-6:49:00.
[48] *Id.* at 5:05:39-5:05:53; 7:34:30-7:35:25.
[49] Hearing at 5:07:55-5:08:00.
[50] *Id.* at 5:07:20-5:07:36.
[51] *Id.* at 5:11:35-5:12:03.
[52] *Id.* at 5:12:07-5:12:24.
[53] Hearing at 5:17:00-5:18:00.

normal on this night,[54] and Ms. Parker gave them no indication that she was going to stab L.P. the next day.[55]

Stabbing Incident on June 26, 2015

On the morning of June 26, 2015, V.D.C., S.C., Ms. Parker, and L.P. ran errands.[56] Then, V.D.C. and S.C. dropped off Ms. Parker and L.P. at the house.[57] S.C. had no concerns for L.P.'s safety when leaving her with Ms. Parker.[58] Ms. Parker wouldn't let L.P. go to the store with V.D.C. and S.C.[59] S.C. did not see a knife and denies that L.P. asked him not to leave the house.[60]

L.P. reported to her therapist that, while V.D.C. and S.C. were gone, she was placed fully clothed in a filled bathtub, inverted, and that she could not breathe and reported feeling "my heart stop."[61] She also reported having an unknown substance in her mouth.[62] According to police reports who later responded to the scene, there was a strong odor of chemicals and the bathtub was half full of water.[63]

After Ms. Parker attempted to drown L.P., Ms. Parker was pacing back and forth and speaking out loud. She laid L.P. on the bed, started scratching L.P.'s back with her nails and then began to stab her. L.P. described to Dr. Forrest the pain she felt when she was being stabbed and how she tried to stop Ms. Parker from stabbing her in the shoulder which resulted in her stabbing the bed. Then Ms. Parker turned L.P. over and cut open her stomach which resulted in her intestines coming out (the "stabbing incident"). L.P. reports "slithering" down the hallway to get away from Ms. Parker. [64]

V.D.C. and S.C. were gone for about an hour.[65] When V.D.C. and S.C. arrived back at the house, they could not get inside

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[54] *Id.* at 5:18:10-5:18:25.
[55] *Id.* at 2:22:00-2:22:20; 2:23:45-2:24:00; 2:26:55-2:27:15.
[56] *Id.* at 2:24:00-2:24:50; 2:22:35-2:22:45.
[57] Hearing at 2:24:50-2:25:13.
[58] *Id.* at 2:27:42-2:28:02.
[59] *Id.* at 2:49:17-2:49:28.
[60] *Id.* at 2:49:30-2:50:22.
[61] Evaluation at 30.
[62] *Id.*
[63] *Id.* at 14.
[64] *Id.* at 42.
[65] Hearing at 2:54:00-2:54:21.

because V.D.C.'s key would not open the door.[66] This was unusual because the key usually worked, and she had been able to use it recently.[67] V.D.C. knocked on the front and back doors yelling for Ms. Parker to open the door.[68] When Ms. Parker opened the door, she had a long butcher knife in her hand and told them that somebody broke in the house.[69] S.C. looked at the lock and saw that there was no damage. He said "If somebody broke in the house, where is the baby?"[70]

S.C. went looking for L.P. and found her cuddled up under a blanket.[71] S.C. said, "Baby, let's go" and L.P. said "Pop, pop."[72] S.C. looked down, said, "Oh my God." He called 911.[73] He asked L.P. who hurt her, and she replied, "Mommy."[74]

Sarasota County Fire Department arrived on scene, administered emergency care, and transported L.P. to Sarasota Memorial Hospital.[75] Dr. Ali Al-Rawi is a trauma and critical care surgeon and Dr. Russell Jaicks is a trauma surgeon at Sarasota Memorial Hospital.[76] Both surgeons treated L.P. on June 25, 2015.[77] L.P. was intubated, and a CT scan was performed.[78] L.P. was put under general anesthetic.[79] She had a total of 14 stab wounds,[80] including a laceration to the bowl and colon and contamination of the abdomen.[81] Dr. Al-Rawi and Dr. Jaicks performed procedures, such as stapling the lacerations, to stop the bleeding and leakage.[82] L.P. was transported to Johns Hopkins All Children's Hospital (JHACH) once she was stable on June 26, 2015, where she received care until July 6, 2015, when she was discharged.[83]

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[66] *Id.* at 2:25:20-2:25:48.
[67] *Id.* at 2:54:00-2:54:21.
[68] *Id.* at 2:25:50-2:26:06.
[69] Hearing at 2:26:07-2:26:28.
[70] *Id.* at 2:26:28-2:26:41.
[71] *Id.* at 2:56:00-2:56:32.
[72] *Id.* at 2:56:32-2:56:50.
[73] Hearing at 2:56:50-2:56:56.
[74] S.C. T-V 1404: 4-7.
[75] Claimant's Exhibit 1-8, *Sarasota County Fire Department-19993*, 4-5 (June 25, 2015).
[76] Al-Rawi T-III 693:2-3; Jaicks T-III 626: 11-12.
[77] Al-Rawi T-III 697: 13-18.
[78] *Id.* at 701: 15-16; 702: 3.
[79] *Id.* at 703:2-4.
[80] *Id.* at 703: 21.
[81] Al-Rawi T-III 705: 2-5.
[82] *Id.* at 704: 6-22; 706: 3-25; 707: 1-15.
[83] *Id.* at 697: 8-12; Claimant's Exhibit 1-7, *Johns Hopkins All Children's Hospital*, 1 (June 26, 2015).

Damages

V.D.C. testified that L.P.'s mind reverted to an infant after the stabbing incident, and she still does things that a three- or four-year-old does,[84] such as playing with toys in the bathtub.[85] L.P. sees a psychiatrist every three months.[86] L.P. has anxiety and she takes Adderall.[87] Dr. Forrest, L.P.'s treating licensed marriage and family counselor, reported L.P. has post-traumatic stress disorder from the stabbing incident.[88] In the past, S.C. has witnessed L.P. awake in the middle of the night appearing to "make believe talking to someone,"[89] and expressed concern because Ms. Parker, who is diagnosed with multiple personality disorder, started acting the same way on ADHD medication around the same age.[90] On April 12, 2019, V.D.C. and S.C. informed Dr. Forrest that L.P. has angry conversations out loud with Ms. Parker while Ms. Parker is not actually present.[91]

L.P. was practicing gymnastics for eight years, but she stopped this year because she reports that sometimes her stomach hurts.[92] L.P. cries often, has nightmares[93] and does not like her hair washed because Ms. Parker tried to drown her.[94] She is very frightened of the bathtub and afraid of drowning.[95] L.P. struggles to take responsibility for things, such as chores, but V.D.C. acknowledged that this may be L.P. being a normal teenager.[96] On January 14, 2021, Dr. Sheshani quoted, "She does something, and then blames it on 'Little [].'"[97]

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[84] Hearing at 4:46:05-4:46:20.
[85] *Id.* at 5:27:00-5:27:50.
[86] *Id.* at 2:19:15-2:19:29.
[87] *Id.* at 2:42:30-2:43:00.
[88] Evaluation at 14.
[89] *Id.* at 44.
[90] *Id.* at 50.
[91] *Id.* at 40.
[92] Hearing at 4:49:30-4:49:39; 2:13:30-2:14:10.
[93] *Id.* at 2:14:10-2:15:15.
[94] *Id.* at 2:15:30-2:15:48.
[95] Evaluation at 44.
[96] Hearing at 5:34:00-5:35:00.
[97] Evaluation at 54.

Evaluation

Dr. Michael Shahnasarian[98] prepared a Vocational Rehabilitation Evaluation of L.P. dated August 30, 2021 (the "evaluation"). The Careys reported L.P. experiences the following problems that Ms. Carey reported she did not experience before her attempted murder in June 2015:[99]

- Scarring on abdomen, lower extremities, and back secondary to stabbing injuries
- Complaints of abdominal pain
- Complaints of nightmares
- Apprehensive/fear reaction to being touched and to receiving medical care
- Attentional difficulties and hypervigilance
- Emotional lability
- Trouble with organization and initiation
- Impaired social relations
- Impaired scholastic performance
- Impaired self-care and independence skills
- Impaired memory

Dr. Shahnasarian conducted several tests with respect to the evaluation of L.P. which are summarized below:[100]

- Test of cognitive ability of her intellectual skills and abilities - scored in the 39th percentile for her age group.
- Test of basic skills:
    - Reading – Grade 4.4
    - Spelling – Grade 3.9
    - Arithmetic – Grade 5.1
- Test measuring levels of her self-esteem resulted in her general and global being low, and her social self-esteem being very low.
- Children's Depression Inventory – total score was 16 (Slightly above average range)

L.P. was in the sixth grade, after having repeated the third grade, at the time of the test.

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[98] *Id.* at 2-4 (Aug. 30, 2021) (Dr. Michael Shahnasarian, who founded and works for Career Consultants of America, Inc., is a licensed psychologist who has three degrees in psychology, including a Ph.D. in counseling psychology from Florida State University. He specializes in rehabilitation psychology and subspeciality in life care planning and vocational rehabilitation. Dr. Shahnasarian has a lengthy resume of credentials that support his expertise in these areas).
[99] *Id.* at 2.
[100] *Id.* at 57-58.

Dr. Shahnasarian's opinions are based on a reasonable degree of vocational assessment and rehabilitation certainty.[101] When he interviewed L.P., she was in a special school for children with special needs. She had an individualized education plan which extended several accommodations for her, such as three days to take a test.[102] She was having a lot of issues at that time including mental health issues, such as having anxiety and disability adjustment issues in many areas. She was delayed socially which was evident in his testing. [103] L.P. had difficulty making friends at school and she does not form social bonds.[104]

When questioned about how the life plan may be impacted given L.P.'s testimony that she hangs out with friends on the weekend signifying some ability to form bonds, Dr. Shahnasarian explained that he would expect there to be some changes/minor variances (e.g. change in medication or child forming friendships) but the life care plan in total provides a very good blueprint of what Dr. Shahnasarian expects to see with respect to L.P.'s needs.[105] Despite this opinion, the life care plan provides for several updated life care plans at various intervals of L.P.'s life.[106]

In summary, Dr. Shahnasarian's opinion regarding L.P.'s vocational capacity are that, without intensive intervention, she would not be able to pursue even unskilled employment that offers the minimum wage rate. She has a number of vocational handicaps that would likely further erode her earning capacity by 70 percent to 80 percent that she would have under a best case scenario, such as diminished access to work opportunities, need for accommodations, likelihood of absences from the workplace during periods of symptom exacerbation, employer bias, and vulnerabilities to reductions in force.[107] Dr. Shahnasarian noted that L.P. is receiving extraordinary accommodations in school that might not be extended to her in the workplace.[108] Dr. Shahnasarian opined that the social, emotional, and psychological problems she

[101] Hearing at 3:22:26-3:22:50.
[102] *Id.* at 2:34:30-2:35:00; 4:46:48-4:47:30.
[103] *Id.* at 3:11:42-3:14:51.
[104] *Id.* at 3:52:00-3:54:10.
[105] Hearing 3:52:00-3:54:10.
[106] Plaintiff's Trial Exhibit 78, Shahnasarian, M. *1st Update Life Care Plan Prepared for L.X.C.*, 6 (Feb. 14, 2022) (hereinafter referred to as "Life Care Plan")
[107] Hearing at 3:11:42-3:14:51.
[108] *Id.* at 3:19:30-3:19:51.

was experiencing at the time are likely to persist as they had been to date.[109]

Life Plan

Dr. Shahnasarian prepared a life care plan for L.P. dated February 14, 2022 (the "life care plan").[110] A life care plan identifies current and future rehabilitation interventions that are probable given the trauma that L.P. has acquired.[111] The life care plan consists of several costs that L.P. is expected to or may incur throughout her life as a result of the stabbing incident,[112] including: residential care options, evaluations, therapeutic needs, aids for independent living, drug and supply needs, home/facility care, educational needs, procedures, and potential complications.[113] Dr. Shahnasarian's opinions set forth in the life care plan are held within a reasonable degree of life care plan certainty.[114]

Life care plans are created based on fair market value. There are no discounts or negotiated collateral offsets to the life care costs, such as health insurance.[115] They do not take into account any potential outside sources for programs that may be available to L.P., such as state paid tuition.[116]

The life care plan sets out three residency options:[117]

1. Option A: Live in attendant from age 18 – 21 to life, 7 days per week, 365 days per year.
2. Option B: Attendant care/companion services from age 18-21 to life, the frequency is to be determined.
3. Option C: Independent living with case management from age 18-21 to life.

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[109] *Id.* at 3:20:00-3:20:46.
[110] *Id.* at 3:45:45-3:47:17 (Dr. Shahnasarian noting that the last time he saw L.P. face-to-face was in August 2021. He has not received any updated recommendations and reports on L.P.'s progress since that time except for consultations with contributors to the life care plan noted on page 3 of the report in September 2021. Dr. Shahnasarian would not be surprised if there are any changes either for the better or the worse but, materially in terms of her overall level of damages and vocational ability, he would be very surprised if there are any changes).
[111] Hearing at 3:22:00-3:22:26; 3:22:50- 3:23:11.
[112] *Id.* at 3:43:08-3:43:29.
[113] Life Care Plan at 5-14. The life care plan notes that, "Year 1 in the duration section of this life care plan begins on the date this life care plan is published." *Id.* at 3.
[114] Hearing at 3:43:29-3:43:39.
[115] *Id.* at 3:47:48-3:48:03.
[116] *Id.* at 3:48:03-3:48:13.
[117] Life Care Plan at 5.

Dr. Shahnasarian's report notes that "Per Dr. Forrest, it is unlikely L.X.C. will be capable of independent living." Dr. Shahnasarian testified that L.P. is most likely to require option A with a live in attendant.[118] He reached this opinion based upon standards required of certified life care plan specialists.[119] When questioned about the kind of activities Dr. Shahnasarian thinks L.P. is unable to do to take care of herself, he relied on her activities of daily living in his report, such as concerns she needs prompting to tie her shoes or comb her hair requiring supervision,[120] and an gave example about L.P. experiencing a lot of anxiety so things like her going out in public and being able to shop for her anticipated grocery needs on her own.[121] Dr. Shahnasarian testified that option C is the least likely scenario.[122] He does not consider option C is likely at all but he included it for consideration.[123]

Three types of evaluations are recommended as follows:[124]

- A cosmetic surgeon evaluation to determine whether the remaining scars on her legs and abdomen can be revised and what would be the nature of the procedure.[125]
- A neuropsychological evaluation to address her cognitive status.[126]
- Updated life care plans with a cost of $7,000 for each update. Updated life care plans are recommended including one between the ages of 17 and 22 as she nears or enters adulthood, and three between the age of 30 and the remainder of her life at 10 year intervals.[127]

Several therapeutic needs are anticipated, including:[128]

- Psychiatrist follow up for one session per month for the first year, followed by one session every three months for the remainder of her life.[129]
- Psychological counseling required to supplement psychiatric treatment on a graduated schedule.

[118] Hearing 3:26:15-3:28:05.
[119] *Id.*
[120] Evaluation at 11-12.
[121] Hearing at 4:02:30-
[122] *Id.* at 3:28:05-3:28:35.
[123] *Id.* at 3:54:10-3:56:00.
[124] Life Care Plan at 6.
[125] Hearing at 3:30:00-3:30:32.
[126] *Id.* at 3:30:32-3:30:50.
[127] Life Care Plan at 6.
[128] *Id.* at 3.
[129] Hearing at 3:33:00-3:33:54.

- Group counseling: to be determined.[130]
- Family counseling from year one to age 21 for six to 12 sessions per year.[131] L.P. is not currently engaged in any family counseling.[132]
- Hairdresser from years one to five once every two weeks at a cost of $55-$130 each visit.[133] Dr. Shahnasarian testified that the cost for a hairdresser included in the life plan is not a luxury item. Ms. Carey described the extreme difficulty Ms. Carey has had getting L.P. to wash her own hair or even worse when Ms. Carey attempts to wash L.P.'s hair. L.P. was responding to a hairdresser washing and fixing her hair.

<u>Aids for independent living</u> included in the life care plan are:[134]

- Emotional support animal, which is of no charge.[135]
- Miscellaneous adaptive aids/patient education from year one for life at a cost of $1,200 per year for items such as security system/devices and topical creams for scars.

With respect to <u>drug and supply needs</u>, Dr. Sheshani recommended Folcalin XR (Dexmethylphenidate ER) 10 mg, which has been replaced with an Adderall prescription.[136] The life care plan anticipates L.P. taking one tablet per day at a cost of $408.59-$567.99 per 30 tablets.[137] L.P. currently has medical insurance through the Department. [138] The life care plan includes SSRI medications to address anxiety that is to be determined.[139]

Three <u>home/facility care</u> services are recommended in the life care plan, including:[140]

- Housekeeper with a cost of $125-$150 per visit but the duration and frequency is to be determined.
- Option A and B: Case manager beginning year one for life for two to three hours per month at a cost of $110 per hour.

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[130] *Id.*
[131] Life Care Plan at 7.
[132] Hearing at 3:48:13-3:49:21.
[133] Life Care Plan at 7.
[134] Life Care Plan at 9.
[135] Hearing at 3:36:50-3:37:21.
[136] Evaluation at 10.
[137] Life Care Plan at 10.
[138] Hearing at 3:48:17-3:48:40.
[139] Life Care Plan at 10.
[140] *Id.* at 11.

- Guardian beginning age 18-21 for life for one to two hours per month at a cost of $95 per hour.

Several recommendations were made with respect to L.P.'s educational needs, including: [141]

- Private school placement from year one to grade eight at $15,750 per year and grade nine to grade 12 at $14,000 per year. The life care plan does not take into consideration sources for children who have been in out of home placement such as scholarships that might be available for use at private schools.[142]
- Tutorial assistance at a cost of $60 per hour from year one to year eight at five-eight hours per week and year nine to 12 at 10-12 hours per week. V.D.C. testified that L.P. received tutoring when she was younger, but she is not receiving it now.[143]
- Vocational guide services one time between age 17 to 22 at a cost of $5,000 to $7,000.
- Life skills coach for four to six hours per week at a cost of $60 per hour from year one to age 21. Dr. Shahnasarian testified that a life skills coach would facilitate her ability to perform self-care activities and develop more adaptive activities of daily living skills but not to the point where she would be able to completely live independently.[144] L.P. has not begun receiving these services.[145]

Dr. Shahnasarian opined it is not within a reasonable degree of vocational rehabilitation certainty that L.P. could attend a mainstream college like the University of South Florida (USF) without any accommodations. He thinks L.P. is lacking insight into her deficits if her testimony is that she wants to attend USF. [146]

Dr. Patti, a plastic surgeon, recommends procedures that include laser regimens, scar revisions between age 18 to 21 as needed at a minimum cost of $25,000.[147]

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[141] *Id.* at 12.
[142] Hearing at 3:47:17-3:48:16.
[143] *Id.* at 4:45:40-4:46:05.
[144] *Id.* at 4:02:50-4:04:50.
[145] Hearing at 4:08:10-4:09:01.
[146] *Id.* at 3:58:05-3:59:28.
[147] Life Care Plan at 12.

Dr. Shahnasarian and Dr. Forrest opine that L.P. is at a greater risk of multiple inpatient psychiatric hospitalizations given, for instance, her trauma, impaired growth, and issues establishing bonds.[148]

Economic Damages
Brenda Mulder and Kristi Kirby prepared an Analysis of Economic Damages re: L.X.C. (Minor) dated February 15, 2022 (the "economic damages report").[149] Their conclusions are summarized below:

- Total economic damages June 26, 2015, to February 28, 2022: $30,248.33

Time Period of Future Economic Damages	
Ms. L.X.C.'s Work Life to Age 67:	49 years (from 6/1/27: Age 18)
Ms. L.X.C.'s Work Life to Age 67	45 years (from 5/21/34: Age 25)
Ms. L.X.C. Life Expectancy	66.9 years (2018 Data – B. Female)

- Present value of lifetime earning capacity: high school graduate: $30,325 annual basis; present value to age 67: $1,170,184 to $1,905,466.
- Present value of lifetime earning capacity: associate degree: $36,950 annual basis; present value to age 67: $1,262,142 to $1,916,929.
- Potential offset for residual earning capacity: minimum wage: present value to age 67: ($300,987) to ($490,112).
- Present value of future medical expenses: $7,932,170 to $14,002,766. A significant portion of the future medical expenses is the live-in attendant for life beginning at age 18 to 21 which totals $6,579,413 to $11,976,608 with an average annual cost of $146,000.

[148] Hearing at 4:18:11-4:22:59.
[149] Plaintiff's Trial Exhibit 79, Mulder & Kirby Economists, Inc., *Analysis of Economic Damages Re: L.X.C. (Minor)* (February 15, 2022) (hereinafter referred to as "Economic Damages Report").

Civil Jury Verdict

On March 11, 2022, the jury rendered the following verdict on damages:[150]

> What is the total amount of Plaintiff, L.X.C.'s damages incurred in the past as a result of the June 26, 2015, incident for medical expenses? *$30,248.33*
>
> What is the total amount of Plaintiff, L.X.C.'s future medical expenses to be incurred over future years as a result of the June 26, 2015, incident reduced to present value? *$14,002,766*
>
> What is the total amount of Plaintiff, L.X.C.'s future loss of earnings capacity to be incurred over future years as a result of the June 26, 2015, incident reduced to present value? *$1,500,000*
>
> Please state the amount of damages incurred by Plaintiff, L.X.C. as a result of the June 26, 2015 incident for pain, suffering, disability, disfigurement, mental anguish, inconvenience and/or loss of capacity for the enjoyment of life:
> In the past? $*4,155,661.60*
> In the future? *$8,311,323.87*
>
> What are the total damages of Plaintiff, L.X.C.? *$28,000,000*

LITIGATION HISTORY:

On May 15, 2017, V.D.C. and S.C. filed a complaint against the Department in the Circuit Court of the Twelfth Judicial Circuit on behalf of the minor L.X.C. (referred to in the claim bill as L.P.). The complaint alleged negligence on the part of the Department through its CPIs when they conducted a Pre-Commencement Meeting at the Department's Sarasota Offices and subsequent home visit/investigation into L.P.'s mother on June 25, 2015, and failed to implement a safety plan thereby causing L.P.'s mother to stab her 14 times the following morning. A jury verdict was rendered on March 11,

[150] *V.D.C. and S.C., on behalf of L.X.C., a minor v. Department of Children and Families*, 2017 CA 2405 NC (Mar. 11, 2022).

2022, which was 100% in favor of the claimant in the amount of $28,000,000.00.

A final judgment was entered in favor of Claimants on April 7, 2022. The Department then appealed to the Second District Court of Appeal. The decision for the claimant was affirmed by the appellate court *per curiam* on September 15, 2023. Thus, all administrative and/or other remedies have been exhausted. The Department has since paid the statutory cap of $200,000 all of which has gone to Claimant's counsel.

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 the Department is liable in negligence for the injuries suffered by L.P.

The claimant must prove four elements for a negligence claim under Florida law, namely: (1) duty of care, (2) breach of care, (3) proximate causation, and (4) damages.[151]

Duty of Care

Whether a duty of care exists is a matter of law.[152] Where the "express intention of the legislature is to protect a class of individuals from a particularized harm, the governmental entity entrusted with the protection owes a duty to individuals within the class."[153] Section 39.001(1)(a), of the Florida Statutes, provides that one purpose of the chapter is "[t]o prevent the occurrence of child abuse, neglect and abandonment." Thus, chapter 39, of the Florida Statutes, designates children as a protected class of individuals from abuse, neglect and abandonment, and the Department as the entity entrusted with the protection of such children owes them a duty of care. The Florida Legislature reinforced the Department's duty in the provisions that: (a) require reporting child abuse to protect children,[154] and (b) in part III, chapter

[151] *Limones v. School Dist. of Lee County*, 161 So. 3d 384, 389 (Fla. 2015).
[152] *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 502 (Fla. 1992).
[153] *Dept. of Health and Rehabilitative Svcs. v. Yamuni*, 498 So. 2d 441, 442-43 (Fla. 3d DCA 1986) (noting that the child was a member of the class protected under a specific statute and the [Department of Health and Rehabilitative Services] owed a statutory duty to protect him from abuse and neglect) (affirmed by *Department of Health and Rehabilitative Svcs v. Yamuni*, 529 So.2d 258 (Fla. 1988)).
[154] Section 39.201, F.S.

39, of the Florida Statutes, that set out the Department's requirements for protective investigations.[155]

"HRS [the Department of Health and Rehabilitative Services, a precursor to the Department] is not merely a police agency and its relationship with an abused child is far more than that of a police agency to the victim of a crime…[T]he primary duty of HRS is to immediately prevent any further harm to the child and that the relationship established between HRS and the abused child is a very special one."[156] The Department has a duty to adequately and reasonably investigate complaints of child abuse, abandonment or neglect.[157]

The Florida Supreme Court opined that "as the risk grows greater, so does the duty, because the risk to be perceived defines the duty that must be undertaken…each defendant who creates a risk is required to exercise prudent foresight whenever others may be injured as a result. This requirement of reasonable, general foresight is the core of the duty element."[158] The Court held that the defendant had "a duty to take reasonable actions to prevent the general type of injury that occurred" in the case.[159]

Therefore, the Department had a duty to protect L.P. from abuse, abandonment, neglect, including any future harm, and a duty to adequately and reasonably investigate the allegations of inadequate supervision.

Breach of Duty

The U.S. Supreme Court held "[w]hat usually is done may be evidence of what ought to be done, but what ought to be done is fixed by a standard of reasonable prudence, whether it usually is complied with or not."[160] A fact finder must decide whether a defendant exercised the degree of care that an ordinarily prudent person, or CPI in this instance, would have under the same or similar circumstances.[161] While any

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[155] *See* s. 39.301(8), F.S.
[156] *Dept. of Health and Rehabilitative Svcs. v. Yamuni,* 529 So. 2d 258, 261 (Fla. 1988).
[157] *Dept. of Children and Family Svcs. v. Amora*, 944 So. 2d 431 (Fla. 4th DCA 2006).
[158] *McCain*, 593 So. 2d at 503.
[159] *Id.* at 502.
[160] *Texas & Pacific Railway Co. v. Behymer*, 189 U.S. 468, 470 (1903).
[161] *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

applicable laws set baseline requirements, the reasonably prudent CPI standard can impose a higher duty so a party who complies with a regulation, if any, does not automatically absolve a party from liability if additional precautions would have been reasonable.[162]

The Claimant submits that the Department has breached its duties in this case, such as duties to:

- Check for local law enforcement call outs before the home visit,
- Speak to the mandatory reporter before the home visit,
- Respond to Ms. Parker's home within two hours for the initial home visit,
- Properly assess present and impending danger, and
- Implement a safety plan, including supervised visitation with the mother.

The Department responds by arguing that it was either not required by law (e.g. to obtain local police reports or contact the reporter before the home visit)[163] or not authorized by law to perform the duties (e.g. implement a safety plan without present or impending danger) for which the Claimant alleges it has breached. However, case law establishes a reasonably prudent CPI standard, not solely whether the law has been complied with, that determines whether a defendant has breached its duty.

Pre-commencement Phase

For the reasons summarized below, a reasonably prudent CPI would have taken additional reasonable efforts to obtain the call outs and contact the reporter. The Department faxed a request for prior police reports to the SPD after L.P. was stabbed.[164] Although CPI Lopez testified and evidence suggests that she contacted Officer Tschetter, Officer Kennedy, and Mr. Ashford at 6:21 pm, 6:22 p.m., and 6:24 p.m., respectively,[165] Officer Tschetter testified at the trial,[166]

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circumstances, or the failure to do that which a reasonable and prudent person would have done under the same or similar circumstances").

[162] *McCain*, 593 So. 2d at 503 (noting that foreseeability of harm determines the scope of the duty); *The T.J. Hooper*, 60 F.2d 737, 740 (2d Cir. 1932) (Judge Learned Hand held a tugboat owner negligent for failing to equip a vessel with radios, even though there were no legal requirements to do so, because a reasonable operator would have taken that precaution.).

[163] Sections 39.301(6), and (9)(a)1., F.S.; Rule 65C-29.009(1), F.A.C.

[164] Tucker T-VII 1884: 18-20.

[165] Chronological Notes at 1-3.

[166] Tschetter T-II 363: 20-22.

and he and Officer Kennedy testified at the claim bill hearing,[167] that they did not receive calls or voicemails from CPI Lopez. Officer Kennedy testified that there were several ways that CPI Lopez could have contacted him on June 25, 2015, such as calling dispatch or the front desk.[168]

If CPI Lopez had spoken with Officer Tschetter, he could have provided her with a copy of the video and concerns that Ms. Parker's cousin, Mr. Ashford, had presented to him. With respect to the Baker Act that occurred in May 2015, Officer Tschetter could have informed CPI Lopez about the fact that Ms. Parker had been Baker Acted. Also, he could have pulled up the report to explain why Ms. Parker had been contacted and why she had been Baker Acted but he did not have access to the Baker Act form. He would not have been able to inform CPI Lopez of the Baker Act's disposition but simply that she had been Baker Acted and what facility she was taken to if that information was in the report.[169] He also could have retrieved the prior police reports that had been uploaded to the reporting system and informed CPI Lopez of their content.[170]

The Department failed to gather adequate collateral information and instead relied on: (a) Ms. Parker's lies when CPI Supervisor Tucker and CPI Lopez received information from Ms. Parker as L.P.'s purported godmother and (b) representations made by V.D.C., who had a history of denying Ms. Parker's suicidal ideations.[171] Had CPI Supervisor Tucker or CPI Lopez requested the police reports or made contact with the reporter, they would have relevant and important information regarding Ms. Parker's mental health issues, such as the information contained in the letter attached to the police report dated May 29, 2015, and Officer Tschetter's explanation of his previous encounter with Ms. Parker. In these circumstances, a reasonably prudent person would have obtained additional collateral information before conducting the home visit.

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[167] Hearing at 23:30-24:50; 36:00-36:50.
[168] *Id.* at 43:30-43:43.
[169] *Id.* 52:00-53:34.
[170] *Id.* at 53.34-53:57; 1:03:40-1:04:03.
[171] Callouts at 9 (V.D.C. averring Ms. Parker was not suicidal).

Home Visit

For the reasons summarized below, a reasonable prudent CPI would have taken the following steps:

- Responded to the home within two (2) hours,
- Confirmed Ms. Parker's identity,
- Requested law enforcement assistance,
- Conducted adequate interviews, and
- Implemented a safety plan with supervised visitation.

Response Time

On the date of the June 2015 report, the Florida Administrative Code defined "immediate" or "immediately" to mean as soon as possible, but no later than two (2) hour timeframe.[172] However, the Department relies on its Safety Methodology Practice Guidelines, Investigations (the "Guidelines"), which was in effect on June 25, 2015, that provides a report requiring an immediate response time "requires the investigator to attempt to make the initial face-to-face contact with the alleged child victim as soon as possible but no later than four (4) hours following assignment by the Hotline.[173] The Florida Administrative Code contains rules which are binding whereas the Department's Guidelines are not.

The Department received the June 2015 report at 4:31 pm and the decision time was 4:48 pm. CPI Lopez testified that the response time is calculated from the time the decision has been made.[174] which means that the CPI would have to be at the home visit no later than 6:48 pm under the two (2) hour maximum time limit in Rule 65c-30.001(65), of the Florida Administrative Code. According to Chronological Notes, the home visit began at 7:44 pm, which is almost three (3) hours after the June 2015 decision time and approximately one (1) hour after the maximum time for which the home visit was required to begin.

If CPI Supervisor Tucker and CPI Lopez had arrived at Ms. Parker's residence within two (2) hour, V.D.C. would not have been present and they would not have been able to rely on her representations as a collateral source in the first instance.

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[172] Rule 65C-30.001(65), F.A.C. (2015); This Rule was amended effective February 25, 2016, after the date of the June 2015 report, to change the maximum response time from two (2) hours to four (4) hours.
[173] Plaintiff's Trial Exhibit 92, *Safety Methodology Practice Guidelines, Investigations*, p. 9 (Aug. 8, 2014).
[174] Lopez T-IV 830: 1-3.

Evidence suggests that V.D.C. had to go inside of the house to get L.P. to meet CPI Supervisor Tucker and CPI Lopez outside. If V.D.C. was not there at the time of the home visit and Ms. Parker refused to open the door, as she had done on June 25, 2015, a reasonably prudent CPI would have called law enforcement to be able to observe and speak with L.P. and, if Officer Tschetter and Kennedy responded as they testified they would, then law enforcement would have been able to identify Ms. Parker.

Identifying Ms. Parker

Regardless of whether CPI Supervisor Tucker and CPI Lopez had responded within two (2) hours, a reasonably prudent CPI would have taken additional steps to confirm Ms. Parker's identity. Indeed, on a prior occasion, CPI Munoz relied upon a Driver and Vehicle Identification Database (DAVID) image of Ms. Parker when she reported to her residence for an earlier abuse report.[175] A reasonably prudent CPI would take this or a similar step, such as asking L.P. where her mother is located, given Ms. Parker's history of false reports.[176]

Request Law Enforcement Assistance

A reasonably prudent CPI would have called law enforcement for assistance, especially if V.D.C. had not been present if the CPI Supervisor Tucker and CPI Lopez had arrived within two (2) hours. Given Ms. Parker's history of lies and uncooperativeness and that the police were there hours earlier and met with her, there should have been a suspicion the person behind the door was Ms. Parker. Officer Tschetter testified that law enforcement is available to assist the Department if a person in the home would not identify herself and would have done so in this case if he had received a call.[177] All the Department had to do was make the call to request the assistance and it should have done so in these circumstances.

Adequate Interviews

A reasonably prudent CPI would have interviewed V.D.C. and L.P. separately and asked additional relevant questions to gain a greater understanding of the totality of the

[175] Munoz T-II 452:18-25; 453: 1-15.

[176] Callouts at 9 (V.D.C. averring Ms. Parker was not suicidal). Similarly, on Jun. 25, 2015, V.D.C. reported to the Department that the report made earlier that day was false. Hearing at 7:35:25-7:35:58; 2015-172495; Chronological Notes at 4.

[177] *Id.* at 24:50-25:35.

circumstances. The Department's policy is "[W]ith few exceptions, household members should be interviewed separately in the home when possible, in the following order, using information gathered from one interview to assist in the development of questions for the next interview:

(1) Identified child victim.
(2) Siblings or other children in the household.
(3) Non-maltreating parents and caregivers, including all adult household members.
(4) Other parent (as a collateral contact when parent no longer lives in the same household).
(5) Maltreating parent/caregiver.[178]

The facts of this claim bill are not one of the exceptions that would warrant interviewing witnesses in front of each other. V.D.C. was claiming the report was false, which may have influenced L.P.'s willingness to report any harm caused by Ms. Parker. For these reasons, CPI Supervisor Tucker and CPI Lopez should have interviewed L.P. separately.

Further, the evidence presented suggests that the Department should have asked additional questions on the following topics:

- Question all witnesses as to where Ms. Parker was on June 25, 2015.[179] To the extent V.D.C. may have suggested Ms. Parker was in Orlando, details regarding her trip should have been sought since law enforcement was at the home and met with Ms. Parker several hours earlier (e.g. questions like: when did she leave to go to Orlando, how long she would be there, and when she would be home?).[180]
- V.D.C. and Valencia Dubois (i.e. Ms. Parker) regarding Ms. Parker's mental health history (e.g. prior Baker Acts and suicide threats).[181]
- L.P. regarding whether Ms. Parker ever tried to hurt her.[182]

<u>Safety Plan</u>

A reasonably prudent CPI would have implemented a safety plan with L.P. cared for by V.D.C. and S.C. with supervised visitation between Ms. Parker and L.P. Safety plan is defined

[178] The Department, *CFOP 170-5 Child Protective Investigations,* 14-1 (Apr. 8, 2024).
[179] Hearing at 7:18:55-7:19:10; Tucker T-VII 1922: 16-21.
[180] Hearing at 7:24:15-7:24:55.
[181] *Id.* at 7:36:00-7:36:11.
[182] Chronological Notes at 4 (With respect to the face-to-face with L.P, indicating "no disclosures of harm or being scared.").

as "a plan created to control present or impending danger using the least intrusive means appropriate to protect a child when a parent, caregiver, or legal custodian is unavailable, unwilling, or unable to do so."[183]

A safety plan is required if "present or impending danger is identified."[184] Impending danger is defined as a "state of danger in which family behaviors, attitudes, motives, emotions or situations pose a threat that may not be currently active but can be anticipated to have severe effect on a child at any time."[185] Impending danger requires five criteria to be present: (1) imminence; (2) severity; (3) observability; (4) out-of-control of the family; and (5) vulnerability.[186] Parental consent is required to implement a safety plan.[187]

Ms. Parker's mental health issues, prior Baker Acts, previous suicidal notes, and suicide video are sufficient evidence that Ms. Parker was suicidal when she sent the video on June 25, 2015. The video was of Ms. Parker putting her affairs in order, suggesting further actions compounding her previous suicide threats, and establishing that a suicide attempt may have been imminent. Her erratic behavior and misleading statements did not dispel this evidence. The Department did not know Ms. Parker's whereabouts or when she would be home, which, it turns out, she was there when CPI Supervisor Tucker and CPI Lopez were conducting the home visit. If Ms. Parker had committed suicide with only L.P. present, L.P. may have experienced harm by witnessing it and she would have been at risk of harm for being unsupervised at such a young age – the reason for which the June 2015 report was received. For these reasons, the five criteria for impending danger are met in these specific circumstances.[188]

V.D.C.'s power of attorney for L.P. did not eliminate the need for a safety plan. "Power of attorney" is defined as "[a]n instrument granting someone authority to act as agent or

[183] Section 39.01(78), F.S.
[184] *See* s. 39.301(9)(a)6., F.S.
[185] Claimant's Exhibit 56. at 1.
[186] *Id.* at 1-2.
[187] Rule 65C-30.002(3)(a), F.A.C.; Section 39.401, F.S. (providing that a child may only be taken into custody in specified circumstances). Section 39.01(88), F.S. defines "taken into custody" as the status of a child immediately when temporary physical control over the child is attained by a person authorized by law, pending the child's release or placement.
[188] Section 39.301(9)(a)6., F.S., requires the CPI to implement a safety plan as soon as necessary to protect the child or take the child into custody if impending danger is identified.

attorney-in-fact for the grantor."[189] V.D.C.'s power of attorney for L.P. gave her legal authority to take certain actions or make decisions but did not provide her with custody of L.P. Without a clear understanding of the Department's expectations, V.D.C. could have, and indeed did, leave L.P. with Ms. Parker unsupervised. In other words, the power of attorney authorizing V.D.C. to make decisions, for instance, about L.P.'s medical issues did not mean, standing alone, that V.D.C. was not going to leave Ms. Parker alone with L.P. or that she would ensure Ms. Parker would not harm her. If the Department expected V.D.C. to undertake this role, the Department ought to have memorialized this understanding in a written safety plan with supervised visitation in these specific circumstances.

Accordingly, the Department failed to take steps that an ordinary prudent CPI would have taken in this instance. For these reasons, the undersigned finds that the Department breached the foregoing duties when conducting its investigation of L.P.'s potential inadequate supervision.

Proximate Cause

In order to prove negligence, the claimant must show that the breach of duty caused the specific injury or damage to the plaintiff.[190] Proximate cause is generally concerned with "whether and to what extent the defendant's conduct foreseeably and substantially caused the specific injury that actually occurred."[191] To prove proximate cause, the plaintiff generally must submit evidence that "there is a natural, direct, and continuous sequence between the [Department's] negligence and [the children's] injuries such that it can reasonably be said that but for the [Department's] negligence, the abuse [or neglect] to [L.P.] would not have occurred."[192]

In the proximate cause context, "foreseeability is concerned with the specific, narrow factual details of the case, not with the broader zone of risk the defendant created."[193] Harm is proximate "if prudent human foresight would lead one to

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[189] Garner, B., *Definition of Power of Attorney*, Black's Law Dictionary (12th ed. 2024), available at POWER OF ATTORNEY | Secondary Sources | FE | Westlaw Edge (last visited Feb. 27, 2025).
[190] *Stahl v. Metro Dade Cnty.*, 438 So. 2d 14 (Fla. 3rd DCA 1983).
[191] *Amora*, 944 So. 2d at 435 (quoting *Goldberg v. Fla. Power & Light Co.,* 899 So.2d 1105, 116 (Fla. 2005) (quoting *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 502 (Fla. 1992).
[192] *Id.* at 436.
[193] *McCain*, 593 So. 2d at 504.

expect that similar harm is likely to be substantially caused by the specific act or omission in question. In other words, human experience teaches that the same harm can be expected to recur if the same act or omission is repeated in a similar context."[194] The Florida Supreme Court held "…it is immaterial that the defendant could not foresee the **precise** manner in which the injury occurred or its **exact** extent[195]…an injury caused by a freakish and improbable chain of events would not be 'proximate' precisely because it is unquestionably unforeseeable, even where the injury may have arisen from a zone of risk."[196] (emphasis added). The Florida Supreme Court held:

> "On the issue of the fact of causation, as on other issues essential to his cause of action for negligence, the plaintiff, in general, has the burden of proof. He must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a substantial factor in bringing about the result. A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant."[197]

Florida Standard Jury Instruction 401.12 on legal cause (causation), which is the standard applicable to claimant's negligence claim provides in *Part A* of the Instruction:

> Negligence is a legal cause of injury if it directly and *in natural and continuous sequence produces or contributes substantially to producing such injury so that it can reasonably be said that, but for the negligence, the injury would not have occurred.* (Emphasis added).

Importantly, *Part B* of the instruction reads:

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[194] *Id.* (citing *Cone v. Inter County Tel. & Tel. Co.*, 40 So.2d 148, 149 (Fla. 1949)).
[195] *Id.* (citing *Restatement (Second) of Torts* s. 435 (1965)).
[196] *McCain*, 593 So.2d, at 504
[197] *Gooding v. Univ. Hosp. Supply*, 445 So.2d 1015, 1018 (Fla. 2013).

> In order to be regarded as a legal cause of an injury or damage, negligence need not be the only cause. Negligence may be a legal cause of injury or damages even though it operates in combination *with the act of another*, (such as A.P.) some natural cause, or some other cause if the negligence contributes substantially to producing such loss, injury, or damage. (Emphasis added).

In *Amora*, the Fourth District Court of Appeal held that "Although not specifically addressed in *Yamuni*, implicit in the supreme court's opinion affirming the verdict is that [the Department's] negligent failure to place the infant in protective supervision was the proximate cause of his injuries."[198]

The Department's failure to implement the safety plan with supervised visitation left L.P. at a foreseeable risk of harm. Like *Amora*, but for the Department's failure to implement a safety plan with supervised visits, Ms. Parker would not have attempted to murder L.P. Based on the totality of the circumstances set out above, the Department's breaches are the proximate cause of L.P.'s injuries. This finding is supported by the jury verdict in the underlying civil case.

For these reasons, the undersigned finds that there is sufficient evidence to hold that the Department's breach of duty was the proximate cause of L.P.'s injuries.

Damages

Florida law allows recovery for both economic (e.g. medical expenses) and non-economic (e.g. pain and suffering) damages.[199] Future economic damages may be awarded "when such damages are established with reasonable certainty."[200] "In tort cases damages are to be measured by the jury's discretion."[201] However, Florida courts have considered whether awards are excessive.[202]

The claimant presented evidence of economic damages and non-economic damages. The damages explained above in

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[198] *Amora*, 944 So. 2d at 437.
[199] *Florida Patient's Compensation Fund v. Scherer*, 558 So. 2d 411 (Fla. 1990).
[200] *Auto-Owners Ins. Co. v. Tompkins*, 651 So. 2d 89, 91 (Fla. 1995).
[201] *Bould v. Touchette*, 349 So. 2d 1181, 1184 (Fla. 1977).
[202] *ACandS, Inc. v. Redd*, 703 So.2d 492, 495 (Fla. 3rd DCA 1997) (finding a jury award for $7.2 million for five and a half years of loss of consortium to be excessive).

the factual findings detail the jury verdict in the underlying civil case for which the amount of damages is sought, and which is supported by the expert reports in this claim bill. The undersigned did not have the benefit of hearing evidence from experts from both parties but relied upon the totality of the evidence to make the findings set out below.

Economic damages (present value) based on the economic damages report are summarized as follows:[203]

Past medical expenses:	$30,248.33
Lifetime earning capacity:	$1,170,184 to $1,916,929
Potential offset for earning capacity:	($300,987) to ($490,112)
Future Medical Expenses:	$7,932,170 to $14,002,766
Subtotal	$8,831,615.33 to 15,459,831.33
Total economic damages:	$8,304,351.33 to $14,651,891.33

Future Medical Costs

There is little to no evidence to support awarding the high-end ($14,002,766) versus the low-end ($7,932,170) future medical costs. The difference between the two totals is a significant amount totaling $6,070,596, most of which is attributable to the live in attendant residential option discussed below. The economic damages report suggests the remaining differences are based on, for instance, a range of costs, number of hours, or number of sessions per service. The range of frequency and costs were presented but choosing the higher range, rather than the lower range, was not substantiated. The burden of proof is on the claimant and the claimant has presented insufficient evidence to support the high-end costs.

Residential Option

Dr. Shahnasarian's recommendation of a live-in attendant beginning at age 18 to 21 for life is supported by his competent testimony. During the claim bill hearing issues were raised about whether the following may impact the life care plan and, in particular, the live-in attendant recommendation, such as (a) Dr. Shahnasarian's last interview or updates he has received about L.P. was in August and September 2021, respectively, over three (3) years ago, (b) L.P. has made progress since he interviewed her, such as forming social bonds with friends, and (c) L.P. has not been engaging in all of the recommended services in the life care plan that are supposed to serve as interventions

[203] Economic Damages Report at 2-9.

to improve her prospects of requiring such an intensive intervention as a live-in attendant. However, Dr. Shahnasarian addressed these issues and confirmed that his life care plan conclusions have not changed.

In light of the issues raised, the undersigned considered the other residential options B and C set out in the life care plan. These other options recommend less frequent attendant services, but the economists did not include a present value or calculate an average annual base cost for these possible options.[204] Although the life care plan sets out a duration, frequency and estimated cost for Option C so a cost for this intervention could be estimated, given Dr. Shahnasarian's testimony that Option C is unlikely, there is insufficient evidence to award damages under options B or C as presented for consideration.

Offsets and Services Not Received for Other Future Medical Recommended Services

The life care plan does not account for L.P.'s current Medicaid coverage, future insurance coverages, scholarships that may be available to assist with the private school tuition and the potential and actual cessation of services as indicated at the claim bill hearing where it was discovered that her only services currently are the weekly sessions with Dr. Cortman, psychiatric services, private school tuition, and medications that are likely covered by Medicaid. Further, V.D.C. and S.C. receive an adoption subsidy from the Department[205] and could apply for an enhanced subsidy based on L.P.'s special needs.[206] The claim bill also fails to take into account existing medical liens by Simply Health and Optum totaling $30,248.33 which will need to be satisfied should the bill pass.

Based on this, the undersigned recommends reducing the low-end economic damages sought by the following adjustments:

Family counseling:	($12,873)
Tutoring Year 1 to Grade 8:	($44,899)
Life skills (Year 1 to 3) cost of $15,600 per year:	($46,800)
Prescription drugs:	($288,777)

[204] *Id.*
[205] Hearing at 4:53:44-4:53:50.
[206] *Id.* at 4:53:55-4:54:15.

Totals:	($393,349)

Based on the foregoing, the recommended economic damages are summarized as follows:

Economic damages (present value) based on the economic damages report are summarized as follows:[207]

Past medical expenses (medical liens):	$30,248.33
Lifetime earning capacity:[208]	$1,500,000
Future Medical Expenses:	$7,538,821
Total economic damages:	$9,069,069.33

Non-economic Damages

The jury in the underlying civil claim awarded $12,466,985.47 in non-economic damages. The Second District Court of Appeal affirmed *per curiam* the final judgment in the underlying civil claim. However, the amount of non-economic damages awarded by the jury of $12,466,985.47 exceed the amount of economic damages supported by the record and recommended by the undersigned of $9,069,069.33. Precedence for claim bills regarding child welfare is limited and the undersigned did not identify any that are sufficiently analogous to the nature of this claim to be able to recommend a comparable amount of non-economic damages. The Legislature may wish to determine, as a matter of grace, an amount of non-economic damages, if any, that should be awarded in this claim bill.

COMPARATIVE FAULT:

Although the Department denies being negligent in its June 2015 report investigation, the Department submits that should SB 12 be reported favorably that V.D.C. is liable for a percentage of fault under the doctrine of comparative fault.

Claimant's Position

The Claimant submits that under the *Knight*[209] case V.D.C. had no duty to protect L.P. and therefore she is not comparatively negligent. The *Knight* case sets out the general rule that "there is no duty to control the conduct of a third

[207] Economic Damages Report at 2-9.

[208] The lifetime earning capacity is based on the jury verdict which the undersigned has determined to be reasonable.

[209] *Knight v. Merhige*, 133 So. 3d 1140 (2014).

person to prevent [that person] from causing physical harm to another."[210] However, a legal duty may be imposed when:

- There is a special relationship between the plaintiff and the defendant,[211]
- The defendant controls the premises, instrumentality or person causing the injury,[212] or
- The defendant's "affirmative acts or omissions create a foreseeable high risk of harm."[213]

In the *Knight* case parents failed to prevent their adult child from killing other family members at a Thanksgiving dinner. The court declined to impose a duty on a parent for their adult child's criminal actions. The Department stipulates that V.D.C. did not have a legal duty to speak with the Department. The undersigned finds that the facts of this claim bill are analogous to the *Knight* case to the extent that none of the three tests for imposing a legal duty in the *Knight* case apply in this claim bill.

<u>The Department's Position</u>

The Department submits that V.D.C. is liable under comparable fault based on the Restatement (Second) of Torts ss. 324A and 311 (1965). The Claimant submits these provisions do not apply; the *Knight* case is controlling law that establishes a "lack of duty and the inapplicability of the undertaker doctrine." Although the Legislature is not bound by the findings of the courts in this matter, it should be noted the claimant represented that the trial court granted the claimant's Motion in Liminie "…precluding comparative negligence arguments against V.D.C."[214] and, although the Department represented that the issue was argued on appeal,[215] the Second District Court of Appeal affirmed the judgment of the civil case *per curiam*.[216]

The Department submits, however that, even if V.D.C. has no duty to provide information to the investigators, V.D.C. had an "undertaker duty"; once she decided to answer questions for

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[210] *Id.* at 1145 (citing *Carney v. Gambel*, 751 So. 2d 653, 654 (Fla. 4th DCA 1999; *see also Boynton v. Burglass*, 590 So. 2d 446, 448 (Fla. 3d DCA 1991)).
[211] *Id.* at 1144.
[212] *Id.*
[213] *Koenig v. London*, 968 N.W. 2d 646, 656 (2021).
[214] Email from Damian Mallard, Attorney at Mallard Perez for the claimant, to Jacqueline Moody, Florida Senate Special Master, *RE: SB 12 – LXC (LP) v. DCF*, (Feb. 15, 2025) (on file with Senate Special Master).
[215] Email from Cheryl Westmoreland, Attorney for the Department, to Jacqueline Moody, Florida Senate Special Master, *RE: SB 12 – LXC (LP) v. DCF*, (Feb. 17, 20215) (on file with Senate Special Master).
[216] Limited documents were provided to support these assertions.

the Department she was required to do that voluntary act in a non-negligent manner.

> "Whenever one undertakes to provide a service to others, whether one does so gratuitously or by contract, the individual who undertakes to provide the service—i.e., the 'undertaker'—thereby assumes a duty to act carefully and not to put others at an undue risk of harm."[217]

The undertaker's doctrine, as set out in The Restatement (Second) of Torts s. 324A ("Section 324A") states:

> "One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if:
>
> (a) His failure to exercise reasonable care increases the risk of such harm, or
>
> (b) He has undertaken to perform a duty owed by the other to the third person, or
>
> (c) The harm is suffered because of reliance of the other or the third person upon the undertaking.

The Restatement (Second) of Torts is not binding. No Florida cases have been identified that directly apply section 324A to situations where a third party provides information to child protective services. There are limited cases in other states that have considered the doctrine – but found no duty owed - involving child welfare[218] and at least one Florida court applied the doctrine involving the protection of third parties by another.[219]

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[217] *Clay Elec. Co-op., Inc. v. Johnson*, 873 So.2d 1182, 1186 (Fla. 2003)
[218] *See Roe ex rel. Roe v. Department of Social & Rehabilitation Services*, 278 Kan. 584 (2004) (holding that the Department of Social & Rehabilitative Services did not owe a duty under the Restatement (Second) of Torts s. 324A given the facts of the case).
[219] *See Wallace v. Dean*, 3 So. 3d 1035 (Fla. 2009) (holding the Restatement (Second) of Torts s. 324A applied where a law enforcement officer who responded to a 911 call and undertook a safety check on an individual assumed a duty to exercise reasonable care).

However, in such instances, an entity provided the services, not an individual. Section 324A has been applied to other types of cases where individuals have rendered services.[220] But no Florida case has been identified directly applying Section 324A to situations where an individual, in a non-official capacity, provides information that is deemed a service.

The Department simply argues that V.D.C. undertook a duty to act carefully when she voluntarily went out to meet and provided information to the investigators. With respect to applying section 324A, this submission falls short of the requirement of (b) [V.D.C.] undertook to perform a duty owed by the other person [Ms. Parker or the Department] to a third person [L.P.]. Providing information was not a duty of the Department or Ms. Parker. Applying section 24 to the evidence in this claim bill:

(a) V.D.C.'s failure to exercise reasonable care increased the risk of harm to L.P. by leaving Ms. Parker alone with L.P.
(b) V.D.C. may have undertaken responsibility that another (the Department or Ms. Parker) originally had toward L.P. by presenting the power of attorney and suggesting that she was caring for her, but she did not give any undertaking for how long she planned to care for her, that she would keep custody of her, or that she would protect L.P. from Ms. Parker.
(c) The Department did rely on V.D.C.'s representation that she had power of attorney and was caring for L.P.

Based on the above analysis, Section 324A would fall short and not apply to the facts of this claim bill.

Additionally, <u>Restatement (Second) of Torts s. 311 (1965)</u> ("section 311) states: "one who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, where such harm results…to such third persons as the actor should expect to be put in peril by the action taken."

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[220] *See Union Park Memorial Chapel v. Hutt*, 670 So. 2d 64 (Fla. 1996) (holding the Restatement (Second) of Tort s. 324A applied where a funeral home that voluntarily organized and led a funeral procession owed a duty of reasonable care to the participants, noting that the funeral home's undertaking created a foreseeable zone of risk for those involved.)

No Florida state case has been identified directly applying section 311, but a few federal cases in Florida have considered the provision.[221] Other states' cases have considered section 311 in abuse cases when organizations (such as a private foster-placement organization or school board) and their employees have been alleged to provide false information.[222] No analogous cases were identified where an individual made false statements to child protection services that were relied upon and resulted in harm; section 311 comments provide that "the rule is not, however, limited to information given in a business or professional capacity, or to those engaged in a business or profession."[223]

Applying the provision to the facts in this case:

- Undertaking a duty: V.D.C. undertook to provide information to the Department, recognizing it was necessary for L.P.'s protection.
- Negligent misrepresentation: V.D.C. provided false information without exercising reasonable care. On June 25, 2015, V.D.C.:
    - Informed CPI Supervisor and CPI Supervisor Tucker that Ms. Parker was not there when in fact Ms. Parker was present and misidentifying herself as Valencia Dubois. Had Ms. Carey in fact informed them that Ms. Parker was inside the house, as she testified to during the claim bill hearing, the undersigned is confident that the Department would have taken additional steps to confront Ms. Parker about her lies and the allegations.
    - Misled the CPI Supervisor Tucker and CPI Lopez to believe that Ms. Parker gave her power of attorney because Ms. Parker reportedly did hair in Orlando. However, V.D.C.'s own statements to CPI Supervisor Tucker on June 26, 2015, the day after

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[221] *See In re: Zantac (Ranitidine) Products Liability Litigation*, 546 F.Supp. 3d 1192, 1199 (S.D. Fla. 2021) (acknowledging that the defendant, pharmaceutical manufacturer, could be held liable for claims that are on based on negligent representation articulated in Section 311); *Belik v. Carlson Travel Group, Inc.*, 26 F.Supp. 3d 1267, 1273 (denying the defendants' motion to dismiss on forum non conveniens a Section 311 claim, amongst others, brought by a cruise ship passenger who was injured at a restaurant in a cruise ship terminal in Mexico); *Klein v. Receivable Management Group, Inc.*, 595 F.Supp.3d 1183, 1191 (M.D. Fla. 2022) (holding a consumer's Section 311 claim against a debt collector alleged insufficient damages).

[222] *See M.B. v. Schuylkill County*, 375 F.Supp. 3d 574, 602-603 (E.D. Penn. 2019) (holding that Pennsylvania adopted Section 311 and a private foster-placement organization, caseworker, and employees could be held liable under Section 311 for failing to disclose a foster child's sexual history that resulted in another child in the home being sexually abused).

[223] Section 311.

the home visit, made clear that the purpose of the power of attorney was to prevent the Department from taking L.P. if an abuse report was made against Ms. Parker. The information Ms. Parker and V.D.C. told CPI Supervisor Tucker and CPI Lopez on June 25, 2015, did just that – kept L.P. in Ms. Parker's custody. On June 26, 2015, when CPI Supervisor Tucker interviewed V.D.C. after the stabbing incident, the following conversation took place:

"CPI Supervisor Tucker: So how – how did you end up with power of attorney?
Ms. Carry (sic): I can't answer about that because I don't remember right off hand.
CPI Supervisor Tucker: But it was back in 2009?
Ms. Carry (sic): Uh-huh
CPI Supervisor Tucker: Okay.
Ms. Carry (sic): I think what it was when someone had called DCF on her, and I said before I let anybody else take my baby from me,
CPI Supervisor Tucker: Okay.
Ms. Carry (sic): -- sign her over to me.
CPI Supervisor Tucker: Okay. Okay.
Ms. Carry (sic): Yeah. That's all I can remember to tell you.
CPI Supervisor Tucker: Okay. So who –
Ms. Carry (sic): People used to call (indiscernible) every week.
CPI Supervisor Tucker: And why was that?
Ms. Carry (sic): I have no idea.
CPI Supervisor Tucker: Okay.
Ms. Carry (sic): Okay. And so I told her to make sure she signs her over to me because I will take care of her."[224]

- Reasonable reliance: The Department reasonably relied[225] upon information provided by V.D.C. when deciding to leave L.P. in Ms. Parker's care based on the information corroborated by V.D.C. at the time.

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[224] Video Interview of V.D.C. 13:45:27-13:47:47 (June 26, 2015).
[225] Reliance is measured by an objective standard. *In re Marjory Stoneman Douglas High School Shooting FTCA Litigation*, 482 F.Supp. 3d 1273, 1297 (S.D. Fla. 2020).

- Foreseeable harm: It was foreseeable that such information could lead to L.P.'s physical harm. If the Department relied on V.D.C.'s false statements and decided not to take protective measures, it is foreseeable that L.P. would be at risk of harm if left unsupervised with Ms. Parker.[226]

Despite the lack of precedence, should the Legislature decide to apply section 311, there are sufficient facts to support a finding that V.D.C. undertook a duty to exercise reasonable care and is liable under the doctrine of comparative fault for providing false information to the Department in these circumstances.

ATTORNEY FEES:

In compliance with section 768.28(8), of the Florida Statutes, Claimant's attorneys acknowledged that attorney fees, lobbying fees, and other similar expenses relating to this claim may not exceed 25 percent of any amount awarded by the Legislature as is reflected in the language of the bill.

RECOMMENDATIONS:

Recommended Amendments
Lines 3-8 of the claim bill should be amended to remove the appropriation to Sidney and Valeria Carey and reflect the award going to L.P. directly paid to the Special Needs Trust created for her benefit. Lines 12 and 21 of the claim bill should be amended to reflect the date of the incident was June 25, 2015.

Recommendation on the Merits
The greater weight of the evidence in this matter demonstrates that the negligence of the Department is the legal proximate cause of the injuries and damage suffered by L.P.

Based on the evidence supported by the record, the undersigned recommends economic damages in the amount of $9,069,069.33. The Legislature may wish to exercise its discretion by awarding non-economic damages as a matter of grace.

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[226] *Garcia v. Superior Court*, 50 Cal. 3d 728, 734 (Cal. 1990) (apply a standard of reasonable care suggesting an objective standard should apply).

Accordingly, the undersigned recommends that SB 12 be reported FAVORABLY, with recommended amendments, the funds allocated for the benefit of L.P. being paid into a Special Needs trust established for L.P., and any reduction in amount deemed appropriate by the Legislature.

Respectfully submitted,

Jacqueline M. Moody
Senate Special Master

cc: Secretary of the Senate