



## Special Master's Final Report

The Honorable Daniel Perez  
Speaker, The Florida House of Representatives  
Suite 420, The Capitol  
Tallahassee, Florida 32399-1300

Re: [HB 6513](#) - Representative Busatta  
Relief/Kristen and Lia McIntosh/Department of Agriculture and Consumer Services

### SUMMARY

This is an uncontested claim for \$2.25 million by Kristen and Lia McIntosh (hereinafter referred to as "Claimants") based on a settlement agreement with the Florida Department of Agriculture and Consumer Services ("DACs") for injuries sustained due to the negligent operation of a vehicle by an employee of DACs. The claim is fully supported by DACs.

### FINDINGS OF FACT

On the evening of February 12, 2022, Ronald Thornton, a 53-year old male, was driving his Ford F-150 southbound on I-95 heading home from dinner with his family. Also present in the car was his wife, Elizabeth Thornton, and their teenage daughters, Kristen and Lia McIntosh. Elizabeth Thornton was seated in the front passenger seat. Kristen McIntosh, a 17-year old female, was seated in the rear passenger-side seat and Lia McIntosh, a 13-year old female, was seated in the rear driver-side seat. All four occupants of the vehicle were wearing their seatbelts. Mr. Thornton was using the cruise control feature on his truck and was driving at a set speed of 65 miles per hour. Mr. Thornton was not intoxicated or otherwise under the influence of any substances that could have impaired his ability to drive safely.

On February 12, 2022, Officer James McWhorter, an officer with DACs, was working within his capacity as an officer of the department at the inspection station on Interstate 95 ("I-95") just south of the Florida-Georgia state line in Nassau county. I-95 in that area is a six-lane interstate with a posted speed limit of 70 miles per hour. The interstate is straight and flat for more than a mile in either direction from the inspection stations. DACs has two inspection stations at that location, one on the east side and one on the west side of I-95. There are no obstructions or line of sight issues in this specific stretch of I-95.

At approximately 8:33 p.m., Officer McWhorter inexplicably decided to drive his DACs patrol car directly across all six lanes of I-95, from the east inspection station to the west inspection

station. Evidence obtained from the patrol car indicated that Officer McWhorter drove across all six lanes without his patrol car's lights on, in the dark, just after 8:30 p.m. He traveled west across the northbound and southbound lanes of the interstate by way of the labeled "Official Use Only" turnaround area.

As Officer McWhorter crossed over the southbound lanes of I-95, he violated the right of way of oncoming traffic and drove directly into Mr. Thornton's Ford F-150, causing a severe T-bone style collision. Unfortunately, Officer McWhorter was killed on impact at the scene of the collision. All four occupants of Mr. Thornton's Ford F-150 were transported to UF Health for immediate medical treatment.

Evidence and testimony presented established that Mr. Thornton did not see the DACS patrol car until after he exited his truck following the collision. He had no opportunity to slow down or avoid the impact with the patrol car. Further, he testified that he did not see any flashing blue lights or hear any sirens from the patrol car and, thus, had no time to take any evasive action before the impact.

Florida Highway Patrol's ("FHP") traffic homicide investigation revealed that the DACS Officer was driving carelessly and was the sole cause of the tragic collision. The FHP further determined that neither driver was under the influence of any drugs or alcohol at the time of the crash. Pursuant to FHP's findings in its traffic homicide report, Officer McWhorter violated s. 316.1925(1), F.S. (careless driving), as well as s. 316.614(4)(b), F.S. (Florida Safety Belt Law); as such, the DACS officer was the sole party responsible for the tragic collision and his own death.

#### *Lia McIntosh*

Lia McIntosh did not see the crash happen and hit her head on the window, causing her to lose consciousness. Lia was unable to exit the truck on her own and had to be removed by Mr. Thornton. She spent 5 days inpatient at UF Health in Jacksonville where she underwent stomach surgery (laparoscopy and surgical repair of the tears in her serosal bowel and mesentery).

At UF Health, Lia was diagnosed with numerous injuries, including:

- Concussion;
- Nondisplaced fracture in her suprasternal notch;
- Compression fracture at her L1-L2 vertebrae with contusion and edema at L2;
- Collapsed lung;
- Serosal tear; and
- A partial thickness mesenteric tear.

Following the accident, Lia McIntosh stopped attending school in person and continues to attend high school through Florida's Virtual School program from home. She experiences significant back and stomach pain on a regular basis due to the injuries she sustained during the accident. Lia will likely need another back surgery at some point in the future. Lia was required to wear a thoracic brace for four months following her surgery.

#### *Kristen McIntosh*

Kristen McIntosh was reaching down to the floor of the truck to grab her phone (while still buckled into her seatbelt) at the time of the crash and did not see the DACS patrol car coming or its impact with the truck. Kristen was unable to exit the truck independently and had to be assisted out of the truck by a bystander and placed in the grass median. She was transported via ambulance to UF Health in Jacksonville. Kristen also spent five days in the hospital recovering from injuries sustained during the crash and had to receive a spinal fusion surgery

with hardware inserted into her spine.<sup>1</sup>

As a result of the accident, Kristen was diagnosed with a number of injuries, including:

- Concussion;
- Cervical ligamentous sprain;
- Duodenum (small intestine) injury with IVC collapse;
- Unstable compression and burst fractures at her L1 and L2 vertebrae; and
- Dislocation of the left T12-L1 facet joint in her thoracic-lumbar spine.

Following the accident, Kristen McIntosh completed her 11<sup>th</sup> grade school year from home via a hospital home-bound program. She returned to in-person classes for her senior year, but experienced significant changes in her daily life due to her injuries. Kristen experiences significant neck pain, numbness in her hip, and testified that she has not had a pain-free day since the accident. She also suffers extreme anxiety and mental health reactions to experiencing the tragic collision.

Both Mr. and Mrs. Thornton also sustained injuries and incurred damages from the accident. However, those injuries are not the subject of this claim and will not be discussed further.

### *Settlement*

After arm's length negotiations, the parties entered into a settlement agreement at mediation on January 29, 2024, for \$2.25 million. The settlement agreement was memorialized in a final judgment entered in the case on May 7, 2024.

## POSITIONS OF CLAIMANT AND RESPONDENT

### **Position of Claimants**

Claimants seek the satisfaction of the negotiated settlement amount due to the DACS' Officer's negligent acts which caused the tragic collision and the injuries sustained by Kristen and Lia McIntosh.

### **Position of Respondents**

Respondents, DACS, does not dispute the Claimants' descriptions of the injuries sustained by Kristen and Lia McIntosh. DACS fully supports the passage of the claim bill and requests the Legislature fully satisfy the agreed upon claim amounts from the General Revenue Fund.

## CONCLUSIONS OF LAW

### **Negligence**

#### *Negligence in General*

"Negligence" is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances.<sup>2</sup> Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a

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<sup>1</sup> Spinal fusion is a surgery to connect two or more bones in any part of the spine. The procedure prevents movement between the connected bones which helps prevent pain. Mayo Clinic, *Spinal Fusion*, <https://www.mayoclinic.org/tests-procedures/spinal-fusion/about/pac-20384523#:~:text=Spinal%20fusion%20is%20surgery%20to,space%20between%20two%20spinal%20bones>. (last visited March 24, 2025).

<sup>2</sup> 38 Fla. Jur 2d Negligence s. 1.

reasonably careful person would do under like circumstances.<sup>3</sup>

Regardless of whether there is a jury verdict or settlement agreement, each claim bill is reviewed *de novo* in light of the elements of negligence. The fundamental elements of an action for negligence, which a claimant must establish, are:

- **Duty:** The existence of a duty recognized by law requiring the respondent to conform to a certain standard of conduct for the protection of others including the claimant.
- **Breach:** A failure on the part of the respondent to perform that duty.
- **Causation:** An injury or damage to the claimant proximately caused by the respondent.
- **Damages.**

The standard evidentiary burden in a negligence case is proof by “the greater weight of the evidence.” Florida law set forth in [Standard Jury Instruction 401.3](#) defines “greater weight of the evidence” as the more persuasive and convincing force and effect of the entire evidence in the case. Further, in a claim for negligence, the Claimant is not required to prove the violation of any particular statute, policy, training material, or code; but rather, must prove the four elements of common law negligence. While violations of specific codes or statutes are evidence of negligence, such violations are not, themselves, conclusive evidence of negligence.<sup>4</sup>

### *Respondeat Superior*

Under the common law *respondeat superior* doctrine, an employer is liable for the negligence of its employee when the:

- Individual was an employee when the negligence occurred;
- Employee was acting within the course and scope of his or her employment; and
- Employee’s activities were of a benefit to the employer.<sup>5</sup>

For conduct to be considered within the course and scope of the employee’s employment, such conduct must have:

- Been of the kind for which the employee was employed to perform;
- Occurred within the time and space limits of his employment; and
- Been due at least in part to a purpose serving the employment.<sup>6</sup>

With respect to the instant claim, if Officer McWhorter was negligent in his operation of the motor vehicle, his negligence is imputed to DACS through respondeat superior.

### **Duty**

A driver operating a motor vehicle has a duty to “drive 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.”<sup>7</sup> The failure to drive carefully and prudently as required constitutes careless driving under the law.

### **Breach**

Pursuant to the FHP accident report, Officer McWhorter breached his duty by driving carelessly across six lanes of I-95, at night, without his lights on.

### **Causation**

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<sup>3</sup> Fla. Standard Jury Instruction [401.4](#) at 57.

<sup>4</sup> [Fla. Standard Jury Instruction 401.9](#) at 63, *Violation of Statute, Ordinance or Regulation as Evidence of Negligence*.

<sup>5</sup> *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353 (Fla. 3d DCA 2001).

<sup>6</sup> *Spencer v. Assurance Co. of Am.*, 39 F.3d 1146 (11th Cir. 1994) (applying Florida law).

<sup>7</sup> S. [316.1925\(1\), F.S.](#)

Negligence is a legal cause of loss, injury, or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, injury, or damage, so that it can reasonably be said that, but for the negligence, the loss, injury, or damage would not have occurred.<sup>8</sup>

Officer McWhorter's breach of his duty to drive reasonably to avoid accidents or injury was the direct and actual cause of the injuries sustained by Claimants. It was a foreseeable consequence that driving carelessly across six lanes of the interstate and directly into the path of an oncoming vehicle would cause injuries and damages to Kristen and Lia McIntosh, as passengers in the Ford F-150.

## Damages

The evidence presented established that as a direct consequence of the accident:

- Kristen McIntosh suffered damages in the form of current and anticipated medical expenses of \$869,122, and will suffer from chronic pain for the rest of her life; and
- Lia McIntosh suffered damages in the form of current and anticipated medical expenses of \$424,086 and will suffer from chronic pain for the rest of her life.

DACS agreed to the consent judgment of \$2,252,000 against DACS.<sup>9</sup> This amount is conservative in comparison with other jury verdicts that have considered similar injuries as presented by the Claimants' counsel.

Claimants retained Dr. Craig Lichtblau, a doctor with Board Certifications in Physical Medicine and Rehabilitation as well as Brain Injury Medicine to conduct a comprehensive rehabilitation evaluation on both Kristen and Lia McIntosh, respectively.

### *Kristen McIntosh*

With respect to Kristen McIntosh, Dr. Lichtblau determined that Kristen's injuries would result in chronic pain and she will require short courses in an outpatient physical medication program, trigger point injections, and medications to help manage that chronic pain. Dr. Lichtblau further explained that Kristen will likely need to be seen by a neurosurgeon on a yearly basis for approximately five years; an orthopedic surgeon on an annual basis for five years; and a physical therapist at least twice per year. He further testified that Kristen will require various medical scans and treatments as well as medications to manage her conditions.

Due to her injuries, Dr. Lichtblau determined that Kristen had an eight percent partial impairment of her whole person (one percent impairment for a cervical soft tissue injury and seven percent for posterior fusion, secondary to a chance fracture).<sup>10</sup>

Based on a life expectancy of 61.6 more years, Dr. Lichtblau estimated Kristen's future medical expense will be between \$278,122 (best-case scenario) and \$492,627 (worst-case scenario).<sup>11</sup>

### *Lia McIntosh*

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<sup>8</sup> Restatement (Second) of Torts s. 431 (1965).

<sup>9</sup> Claimants' Ex. 49, *Consent Final Judgment* at 1.

<sup>10</sup> Claimants' Ex. 41, *Preliminary Comprehensive Rehabilitation Evaluation of Kristen McIntosh* (Craig H. Lichtblau, MD) at 15-17. This does not include any impairment for depression (as a component of chronic pain), which the doctor opined exists.

<sup>11</sup> Claimants' Ex. 41, *Preliminary Comprehensive Rehabilitation Evaluation of Kristen McIntosh* (Craig H. Lichtblau, MD) at 24-25; Claimants' Ex. 42, *Amended Comprehensive Rehabilitation Evaluation of Kristen McIntosh*, 8-11 (Dec. 6, 2024); Claimants' Ex. 45, *Deposition Transcript of Craig H. Lichtblau, MD*, at 17-19.

With respect to Lia McIntosh, Dr. Lichtblau reported that Lia was suffering from intermittent low back and right knee pain and constant abdominal pain at the location of the surgical incision. He testified that Lia will likely also have to live with chronic pain that will require short courses in an outpatient physical medicine program, trigger point injections, and medications for pain flareups. He determined that Lia's future treatment would include the need to see a physical therapist twice a year and a chronic pain specialist, whether it is a physiatrist, a neurologist, or an internist, at least one to two times a year.<sup>12</sup> She will also need an MRI of her lumbar spine every five to ten years.<sup>13</sup> Dr. Lichtblau opined that Lia has an eight percent permanent partial impairment of her whole person.<sup>14</sup>

Dr. Lichtblau estimated that Lia's future medical requirements will cost between approximately \$191,427 (best case scenario) and \$283,427 (worst case scenario) based on a life expectancy of 65.5 more years.<sup>15</sup> This does not include the cost of surgery to remove abdominal adhesions that Lia likely suffered from her laparotomy surgery to repair her intestinal injuries.<sup>16</sup> After laparotomy, almost 95 percent of patients develop abdominal adhesions.<sup>17</sup> Adhesions are internal "scars" that form after trauma through complex processes, involving injured tissues and the peritoneum.<sup>18</sup> Dr. Lichtblau opined that Lia was at a much greater risk than the general population to develop such adhesions and bowel obstruction that will require treatment and surgery.<sup>19</sup>

#### AMOUNT OF CLAIM BILL

The claim bill is based upon a 2024 consent judgment agreed to by all parties for a total of \$2.25 million. As provided in the settlement agreement and consent judgment, if the bill passes, \$1,000,000 of the amount awarded shall be paid to Kristen McIntosh and \$1,250,000 shall be paid to Elizabeth Thornton as parent and natural guardian of Lia McIntosh, a minor child. Respondent has already paid \$1,000 each for the benefit of Kristen and Lia, respectively.

#### COLLATERAL SOURCES

The family was insured under their family automobile policy through State Farm, which provided uninsured motorist coverage benefit limits of \$50,000 per person or \$100,000 per incident. As such, State Farm tendered the \$100,000 incident limit to the family which was divided equally between Mr. and Mrs. Thornton and Kristen and Lia.

Pursuant to the settlement agreement, DACS has paid the \$300,000 statutory limit to Mr. and Mrs. Thornton, for the injuries they sustained in the accident. To date, DACS has only paid \$1,000 each to Kristen and Lia McIntosh.

#### ATTORNEY AND LOBBYING FEES

If the bill passes, Claimants attest that attorney fees will not exceed 25% of the total amount awarded (\$562,500 total) and lobbying fees will not exceed 7.5% of the total amount awarded

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Claimants' Ex. 40, *Comprehensive Rehabilitation Evaluation of Lia McIntosh* (Craig H. Lichtblau, MD) at 13-14; Claimants' Ex. 45, *Deposition Transcript of Craig H. Lichtblau, MD*, at 28.

<sup>15</sup> Claimants' Ex. 40, *Comprehensive Rehabilitation Evaluation of Lia McIntosh* (Craig H. Lichtblau, MD) at 21-24; Claimants' Ex. 58.

<sup>16</sup> *Id.*

<sup>17</sup> Claimants' Ex. 40, *Comprehensive Rehabilitation Evaluation of Lia McIntosh* (Craig H. Lichtblau, MD) at 5.

<sup>18</sup> *Id.*

<sup>19</sup> Claimants' Ex. 45, *Deposition Transcript of Craig H. Lichtblau, MD*, at 31.

(\$168,750 total).<sup>20</sup>

Outstanding costs, as sworn to by Claimants totals \$42,637.46.

RECOMMENDATION

Based upon the evidence presented, I recommend that HB 6513 be reported FAVORABLY.

Respectfully submitted,

**SARAH R. MATHEWS**

House Special Master

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<sup>20</sup> When calculated per Claimant, total attorney fees will amount to \$250,000 from Kristen's portion of the award, and \$312,500 from Lia's portion. Further, lobbying fees amount to \$75,000 and \$93,750, for Kristen and Lia, respectively.