



## **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 6521](#) - Representative Blanco  
Relief/Jose Correa/Miami-Dade County

### SUMMARY

This is a settled claim for \$4,100,000 by Jose Correa ("Mr. Correa") against Miami-Dade County ("the County") for injuries and damages Mr. Correa suffered when a Miami-Dade County passenger bus, driven by a Miami-Dade County employee, made a left-hand turn at an intersection and struck Mr. Correa with its left-side mirror while he was in a crosswalk; the force knocked Mr. Correa to the ground and, though the bus operator applied the brakes, the bus's back left tires ran over and dragged Mr. Correa's left leg before coming to a stop. Mr. Correa ultimately suffered a below-the-knee amputation and other related damages.

Mr. Correa and the County settled the claim for \$4,300,000, and the County has since paid Mr. Correa the \$200,000 maximum authorized under Florida's sovereign immunity law; further, as part of the settlement agreement, the County agreed to support the passage of this claim bill. However, the record reveals that the traffic homicide detective in charge of the crash investigation cited no one for the crash, as he found both the County's employee and Mr. Correa to be at fault; as for the County employee, the detective found that she failed to look ahead in her direction of travel while she turned the bus, while, as for Mr. Correa, the detective found that he entered the crosswalk in violation of the pedestrian signal device's directive not to walk, thereby stepping in front of a bus with the right of way, and that Mr. Correa was intoxicated at the time of the accident. Thus, as set out in more detail below, the undersigned recommends that HB 6521 be reported UNFAVORABLY.

### FINDINGS OF FACT

#### *Incident Overview*

Shortly before noon on December 16, 2021, 60-year-old Jose Correa ("Mr. Correa") set out to walk from his home in Coral Gables, Florida to a nearby 7-Eleven convenience store, located on Bird Road,<sup>1</sup> as he did nearly every day.<sup>2</sup> Upon leaving the 7-Eleven, Mr. Correa attempted to

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<sup>1</sup> Bird Road is an east/west divided seven-lane roadway in Coral Gables, Florida. It is straight, level, asphalt-paved, and in traveled condition, with a posted speed limit of 40 miles per hour. On the date in question, the roadway was dry and there were no obvious defects or obstructions. Claimant's Exhibit 3, Traffic Homicide Report (Jan. 25, 2023).

return to his home along a route that took him to the intersection of Bird Road and Lejeune Road<sup>3</sup>; this intersection is controlled by a series of traffic signal lights and has a marked crosswalk controlled by a pedestrian signal device.<sup>4</sup>

On that same date, Miami-Dade County (“the County”) bus operator Traci Constant (“Ms. Constant”) drove a County passenger bus south along Lejeune Road, proceeding into the left turn lane at the intersection of Lejeune Road and Bird Road in anticipation of turning eastbound onto Bird Road.<sup>5</sup> While the controlling traffic light was green, Ms. Constant pulled the bus forward past the stop bar on Lejeune Road, so that it was partially in the intersection, but was unable to immediately complete the turn due to oncoming traffic; however, as the traffic light changed to yellow, Ms. Constant started turning the bus onto Bird Road.<sup>6</sup>

At the same time, Mr. Correa stepped into the crosswalk to cross Bird Road.<sup>7</sup> The record reveals that, as Mr. Correa entered the crosswalk, the pedestrian signal device controlling the crosswalk displayed a red hand, directing pedestrians not to cross at that time.<sup>8</sup> However, Mr. Correa continued through the crosswalk; unfortunately, the bus driven by Ms. Constant also continued forward along its route until the bus’s left side mirror struck Mr. Correa at approximately 12:02 p.m., causing him to fall to the ground.<sup>9</sup> Ms. Constant testified that she did not see Mr. Correa before the impact, but that she immediately tried to stop the bus upon realizing that the bus had hit someone; unfortunately, the bus’s left rear tires rolled over Mr. Correa’s left leg, dragging and pinching it until the bus came to a controlled stop in the inside lane of Bird Road.<sup>10</sup>

Coral Gables Fire Rescue responded to the scene and administered first aid to Mr. Correa, ultimately transporting him to the emergency department at Jackson Memorial Hospital, where the treating physicians discovered that Mr. Correa had a “near total left leg degloving” injury from his “mid foot to upper thigh” and a left forearm laceration.<sup>11</sup> Ultimately, Mr. Correa underwent multiple skin graft procedures before finally consenting to a below-the-knee amputation of his left leg, after which he was discharged to Fountain Manor Rehabilitation Center on April 15, 2022.<sup>12</sup> Mr. Correa remained at Fountain Manor for more than one year, until his discharge to an assisted living facility, where he resides to this day.<sup>13</sup>

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<sup>2</sup> Mr. Correa testified that he walked to the 7-Eleven nearly every day to purchase something for lunch, as he resided in a one-room, studio-type dwelling without a kitchen. Claimant’s Exhibit 4, Deposition of Jose Correa (Apr. 20, 2023).

<sup>3</sup> Lejeune Road is a north/south, undivided, five-lane roadway in Coral Gables, Florida. It is straight, level, asphalt-paved, and in traveled condition, with a posted speed limit of 40 miles per hour. On the date in question, the roadway was dry and there were no obvious defects or obstructions. Claimant’s Exhibit 3, Traffic Homicide Report (Jan. 25, 2023).

<sup>4</sup> *Id.*

<sup>5</sup> At all times pertinent to the instant matter, Ms. Constant operated the bus at the direction of her employer, during her scheduled shift, and along the route assigned to her by her employer. *Id.*; Claimant’s Exhibit 4, Deposition of Traci Constant (Feb. 27, 2023); Claimant’s Exhibit 4, Deposition of Laticia Snipes (Feb. 28, 2023).

<sup>6</sup> Claimant’s Exhibit 3, Traffic Homicide Report (Jan. 25, 2023); Claimant’s Exhibit 4, Deposition of Traci Constant (Feb. 27, 2023).

<sup>7</sup> Claimant’s Exhibit 3, Traffic Homicide Report (Jan. 25, 2023).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*; Claimant’s Exhibit 4, Deposition of Traci Constant (Feb. 27, 2023).

<sup>11</sup> Claimant’s Exhibit 3, Traffic Homicide Report (Jan. 25, 2023); Claimant’s Exhibit 7, Coral Gables Fire Department Patient Care Record (Dec. 16, 2021); Claimant’s Exhibit 7, Emergency Department Records (Dec. 16, 2021).

<sup>12</sup> Claimant’s Exhibit 7, Jackson Health System Medical Records of Jose Correa (Aug. 8, 2022); Claimant’s Exhibit 7, JMH Bills (Sept. 29, 2022); Claimant’s Exhibit 7, Fountain Manor Resident Account Details (Sept. 16, 2022).

<sup>13</sup> At the Special Master hearing held in this matter, Mr. Correa testified that he continues to reside at the assisted living facility as he feels he is unable to reside on his own without the assistance of a home health aide, which he cannot presently afford; however, Mr. Correa also testified that he receives Medicaid benefits but has not explored the possibility of obtaining a home health aide through Medicaid. Recording of the Special Master Hearing (Jan. 30, 2025).

## *Damages*

At the time of the accident, Mr. Correa was unemployed and receiving Social Security Disability benefits; thus, he is not claiming lost wages or lost future earnings.<sup>14</sup> However, Mr. Correa testified that Medicaid has a lien for past accident-related medical expenses against any recovery he might receive, totaling approximately \$339,000, and he also presented a summary of his estimated future economic losses prepared by an economist; according to this summary, Mr. Correa can, over the course of his remaining life,<sup>15</sup> expect to spend approximately \$3,917,544<sup>16</sup> for future accident-related medical and living costs and \$133,717 for future services necessitated by the accident, for a total economic loss of \$4,051,261.

Mr. Correa also testified to non-economic damages, including persistent pain in his left leg for which he takes pain medication.<sup>17</sup> According to his testimony, Mr. Correa struggles with his balance and is always worried about falling, which has made simple tasks like getting out of bed or bathing a challenge; he also has PTSD and suffers nightmares.<sup>18</sup> Further, Mr. Correa testified that, although he was once a very active figure in the lives of his sister's children, he is no longer able to participate in many of the family activities that he used to enjoy due to his accident-related physical limitations; he is, according to his testimony, also unable to enjoy camping, biking, sports, and other activities with which he used to fill his days.<sup>19</sup> Indeed, Mr. Correa's sister testified that Mr. Correa, whom she described as very independent and active before the accident, is not the same person now that he was before.<sup>20</sup>

## *Traffic Investigation*

Following the accident, Coral Gables Police Department officers quickly responded to and cordoned off the scene; the Miami-Dade Police Department also sent Detective Michael Quinones ("Det. Quinones") to the scene to begin a traffic homicide investigation in case Mr. Correa succumbed to his injuries.<sup>21</sup> As part of this investigation, Det. Quinones observed the pedestrian signal controlling the crosswalk in which the bus struck Mr. Correa; according to his testimony, this pedestrian signal worked properly on December 16, 2021, cycling between a white humanoid figure (directing pedestrians to walk) and a red hand (directing pedestrians not to walk).<sup>22</sup> Det. Quinones also concluded, after a review of the evidence, that Mr. Correa had entered the marked crosswalk when the pedestrian signal displayed the red hand, violating the signal's directive not to walk.<sup>23</sup>

Det. Quinones also interviewed Coral Gables Police Department Traffic Homicide Detective Danny Smith (Det. Smith), who responded to the accident shortly after the bus struck Mr. Correa.<sup>24</sup> According to Det. Smith, he saw Mr. Correa at the 7-Eleven on December 16, 2021, just a few minutes before the accident; indeed, Det. Smith stated that he had seen Mr. Correa at

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<sup>14</sup> According to the testimony presented at the Special Master Hearing held in this matter, Mr. Correa received, and continues to receive, Social Security Disability benefits due to either a bipolar disorder or schizophrenia diagnosis. Mr. Correa testified to a bipolar disorder diagnosis, while a schizophrenia diagnosis is noted in Mr. Correa's medical records. Recording of the Special Master Hearing (Jan. 30, 2025).

<sup>15</sup> According to the record, Mr. Correa had an estimated life expectancy of 18.9 years as of May 30, 2023. Claimant's Exhibit 8, Report by Gary A. Anderson, Ph.D., Summary of the Past and Present Value of Future Economic Loss to Jose Correa (May 30, 2023).

<sup>16</sup> Note that approximately \$271,180 of this amount is for "incremental residence expenditures," while \$82,490 is for "home modifications." However, the record reveals that Mr. Correa does not presently own a home. Further, although the Life Care Plan which Mr. Correa presented at the hearing held in this matter calls for Mr. Correa's purchase of a three-bedroom, two-bathroom home, the record reveals that Mr. Correa did not own a home before the accident, and that he instead rented a studio-style room, as described above; the necessity for the lifestyle upgrade is unclear. *Id.*; Claimant's Exhibit 8, Continuum of Care for Jose Correa (Oct. 16, 2023).

<sup>17</sup> Recording of the Special Master Hearing (Jan. 30, 2025).

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

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Claimant's Exhibit 4, Deposition of Detective Michael Quinones (Aug. 10, 2023).

<sup>22</sup> *Id.*

<sup>23</sup> Claimant's Exhibit 3, Traffic Homicide Report (Jan. 25, 2023).

<sup>24</sup> Respondent's Exhibit 1, Statement of Detective Danny Smith (Dec. 16, 2021).

the 7-Eleven before, as they both frequented the store.<sup>25</sup> However, on this particular day, while Det. Smith was already inside the 7-Eleven, Mr. Correa entered the store and drew Det. Smith's attention; Det. Smith then watched as Mr. Correa proceeded to the coolers in the back and, apparently not finding what he was looking for, approached the store's owner, after which the owner handed Mr. Correa four cans of beer.<sup>26</sup> Det. Smith stated that, in watching Mr. Correa, he observed that Mr. Correa exhibited a "noticeable sway" and was having difficulties standing upright; Det. Smith also stated that he identified immediately that Mr. Correa was intoxicated.<sup>27</sup>

At that point, Det. Smith said, he told the store's owner that if Mr. Correa was driving, the owner was not to sell Mr. Correa beer.<sup>28</sup> However, the owner apparently told Det. Smith that Mr. Correa always walks to the store, after which Det. Smith informed him that if Mr. Correa were to try to get into a car, he would not allow him to drive away and reiterated that the owner should not sell him beer if he was driving.<sup>29</sup> When the store's owner again insisted that Mr. Correa always walks to the 7-Eleven, Det. Smith then relented on the issue of the sale but indicated that he was going to follow Mr. Correa out of the store to ensure that he did not attempt to drive.<sup>30</sup> At that point, according to Det. Smith, Mr. Correa paid for his beers and then exited the store; Det. Smith stated that he immediately thereafter walked to the store's exit and watched until Mr. Correa walked off of the store's property, ensuring that he did not at any point attempt to get into a vehicle.<sup>31</sup> Within minutes, Det. Smith stated, he was dispatched to the crash involving Mr. Correa and the bus, and he confirmed to Det. Quinones that an unopened beer can photographed at the scene of the accident was the same kind of beer that he had just seen Mr. Correa purchase at the 7-Eleven.<sup>32</sup> Thus, Det. Quinones concluded that Mr. Correa had been, in the minutes before the accident, "extremely intoxicated"; he also noted that Mr. Correa's sister, with whom he spoke that afternoon, acknowledged that Mr. Correa was an alcoholic who was known to walk to the 7-Eleven to purchase beer.<sup>33</sup>

After reviewing the remaining evidence and taking additional statements, Det. Quinones determined that the factors which contributed to the crash included Mr. Correa's violation of the pedestrian signal's directive and his intoxication; Det. Quinones also considered Ms. Constant's failure to notice Mr. Correa in the crosswalk to be a contributing factor but did not, apparently, take any issue with the turn itself.<sup>34</sup> Ultimately, Det. Quinones issued no charges or citations to either Ms. Constant or Mr. Correa, categorizing the crash as an accident and finding that both Ms. Constant and Mr. Correa had fault.<sup>35</sup>

### *Litigation*

On July 21, 2022, Mr. Correa filed a lawsuit against the County in connection to the crash, alleging that the County was negligent through the actions of its employee, Ms. Constant.<sup>36</sup> On September 8, 2022, the County filed an answer to Mr. Correa's lawsuit; therein, the County

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*; the photograph in question is part of Claimant's Exhibit 2 (Photo 2252).

<sup>33</sup> The undersigned acknowledges that at no point in his investigation did Det. Quinones speak to Mr. Correa directly, as Coral Gables Fire Rescue had already removed Mr. Correa from the scene when Det. Quinones arrived. Claimant's Exhibit 3, Traffic Homicide Report (Jan. 25, 2023); Claimant's Exhibit 4, Deposition of Detective Michael Quinones (Aug. 10, 2023).

<sup>34</sup> The other factors which Det. Quinones considered were the time of occurrence (daytime); the weather (warm, clear, and dry); the roadway's condition (free of obvious defects or obstructions); the traffic control devices (functional); the bus's condition (good operating condition with no obvious defects); and Ms. Constant's condition (no obvious impairments). Claimant's Exhibit 3, Traffic Homicide Report (Jan. 25, 2023); Claimant's Exhibit 4, Deposition of Detective Michael Quinones (Aug. 10, 2023).

<sup>35</sup> Ms. Constant did receive a ten-day suspension as part of the County's own investigation into the crash due to her violation of Miami-Dade Transit Authority bus operator policies requiring bus operators to generally treat yellow lights as red lights, to not pull up past the stop bar, and to yield to pedestrians. *Id.*; Claimant's Exhibit 6, Central Division Disciplinary Action Report (Jan. 13, 2022); Claimant's Exhibit 4, Deposition of Laticia Snipes (Feb. 28, 2023).

<sup>36</sup> Claimants Exhibit 9, Complaint (July 21, 2022).

raised as affirmative defenses the arguments that:

- Section 768.36, F.S., barred Mr. Correa from recovering damages, as he was intoxicated at the time of the crash and that, because of such intoxication, Mr. Correa was more than 50 percent at fault for his own harm; and
- Mr. Correa's injuries and damages were primarily caused by his own negligence such that his recoverable damages should be reduced or barred entirely under the comparative negligence doctrine.<sup>37</sup>

However, the County ultimately agreed to settle the lawsuit with Mr. Correa for \$4,300,000, after which the County paid the \$200,000 it was statutorily authorized to pay under Florida's sovereign immunity law, codified in s. 768.28, F.S.; as part of this settlement, the County agreed to support a claim bill through which Mr. Correa could recover the excess settlement amount.<sup>38</sup> This leaves in question the remaining settlement balance of \$4,100,000.

### *Special Master Hearing*

On January 28, 2025, the undersigned conducted a joint Special Master Hearing with the Senate's appointed Special Master.<sup>39</sup> During this hearing, the undersigned questioned Mr. Correa about his reason for violating the pedestrian signal's directive not to walk. In response, Mr. Correa testified that he entered the crosswalk in violation of the pedestrian's signal's directive as the pedestrian signal was not working on the date of the accident and in fact had never worked in the years since he had lived in the area, as, according to Mr. Correa, it always displayed the red hand (directing pedestrians not to walk); however, as mentioned above, Det. Quinones's investigation revealed that the pedestrian signal functioned properly on the date of the accident, cycling with the traffic lights.<sup>40</sup>

Additionally, the testimony presented at the hearing suggested that Mr. Correa had walked to the 7-Eleven to buy a salad for his lunch; however, Det. Smith stated to Det. Quinones that he observed Mr. Correa buying not a salad but four cans of beer, one of which the investigating officers recovered and photographed at the scene and which Det. Smith later identified as being of the type he saw Mr. Correa purchase.<sup>41</sup> This discrepancy was never explained. Mr. Correa also testified that he had not consumed alcohol on the date of the accident, and denied being intoxicated when the crash occurred; however, this contradicts the observations of Det. Smith, who, in his own words, "immediately identified" that Mr. Correa was intoxicated while at the 7-Eleven.<sup>42</sup>

In an attempt to clear up this matter, the undersigned requested that Mr. Correa provide the Special Masters with documentation showing Mr. Correa's blood alcohol content at the time of his admission to Jackson Memorial Hospital's emergency department; however, Mr. Correa's counsel informed the undersigned that he requested such a document many times but did not receive it, and now believes that the hospital never tested Mr. Correa's blood alcohol content. Thus, Mr. Correa's medical records are of no use in determining whether Mr. Correa was intoxicated or not at the time of the crash.

Mr. Correa's counsel also made much of the Coral Gables Fire Department's Patient Care Record created in connection to Mr. Correa's emergency medical treatment at the scene of the crash and his transportation to Jackson Memorial Hospital; therein, in the field in which alcohol

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<sup>37</sup> Claimant's Exhibit 9, Miami-Dade County's Answer to Plaintiff's Complaint (Sept. 8, 2022).

<sup>38</sup> As evidence of the settlement, the parties provided only a release signed by the Claimant to memorialize their agreement; the undersigned, in conjunction with the Senate's Special Master, requested but never received a copy of a settlement agreement signed by both parties. However, there is sufficient evidence in the record for the undersigned to believe that the matter was settled; it is only the exact terms of the settlement that remain unclear. Claimant's Settlement Documents (Unnumbered Exhibit), Release (March 25, 2024).

<sup>39</sup> Recording of the Special Master Hearing (Jan. 30, 2025).

<sup>40</sup> Claimant's Exhibit 3, Traffic Homicide Report (Jan. 25, 2023); Claimant's Exhibit 4, Deposition of Detective Michael Quinones (Aug. 10, 2023).

<sup>41</sup> Respondent's Exhibit 1, Statement of Detective Danny Smith (Dec. 16, 2021).

<sup>42</sup> *Id.*

consumption is to be noted, the Patient Care Record states “alcohol reported: none.”<sup>43</sup> However, this notation indicates nothing more than what it states: that no one reported to Coral Gables Fire Department’s EMTs that Mr. Correa had consumed alcohol; this is not surprising, as the Patient Care Record also indicates that Mr. Correa was initially unconscious when the EMTs first arrived on the scene, and that as he started to regain consciousness in the ambulance on the way to the hospital he was in shock and confused.<sup>44</sup> Indeed, the Patient Care Record includes so little information, other than the nature of the accident and the treatment rendered, that it does not even include Mr. Correa’s name; where his name should be, the relevant fields say “unable to obtain.”<sup>45</sup> Thus, the Patient Care Record is also of no use in determining whether or not Mr. Correa was intoxicated at the time of the crash.

On the issue of Mr. Correa’s alleged intoxication, then, all that the undersigned is left with is the statement of Mr. Correa that he was not intoxicated at the time of the crash, and the statement of Det. Smith that he was.<sup>46</sup> However, certain other evidence in the record seemingly corroborates at least that portion of Det. Smith’s statement that he observed Mr. Correa purchasing beer – that is, the unopened beer can photographed at the scene, which Det. Smith identified as being of the type he observed Mr. Correa purchasing at the 7-Eleven minutes before the crash, and the statement of Mr. Correa’s sister to Det. Quinones that Mr. Correa was an alcoholic who often walked to the 7-Eleven to purchase beer.

Finally, during the hearing, the undersigned asked Mr. Correa about a certain note that appears frequently in his medical records – that is, a note indicating that Mr. Correa had a history of alcohol use disorder; indeed, as previously mentioned, Mr. Correa’s sister asserted as much in her statement to Det. Quinones after the crash.<sup>47</sup> Mr. Correa also testified at the Special Master hearing to a prior conviction for Driving Under the Influence, and the record reveals that he had his driver license permanently revoked.<sup>48</sup> However, Mr. Correa denied having a history of alcohol use disorder or knowing how a note indicating otherwise came to be in his medical records.

## CONCLUSIONS OF LAW

### **House Rule 5.6(b)**

Pursuant to House Rule 5.6(b), settlement agreements are not binding on the Special Master or the House or any of its committees of reference. Thus, each claim is heard *de novo*, and the claimant has the burden to prove each element of the claim by a preponderance of the evidence.

### **Negligence**

In the instant matter, Mr. Correa raises a negligence claim, the elements of which are duty, breach, causation, and damages. Mr. Correa further asserts that the County is negligent through the actions of its employee, Ms. Constant, under the *respondeat superior* doctrine.

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<sup>43</sup> Claimant’s Exhibit 7, Coral Gables Fire Department Patient Care Record (Dec. 16, 2021).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Curiously, Det. Smith’s statement was not included in the exhibits produced in response to the Special Masters’ request that the parties produce all materials relevant to the claim ahead of the Special Master hearing; indeed, it was only after the undersigned started asking questions about a reference to the statement in the Traffic Homicide Report that counsel for the County produced a recording of the statement. It then came to light that, for reasons unknown to the undersigned, counsel for Mr. Correa and for the County had agreed not to introduce this recording into evidence.

<sup>47</sup> Claimant’s Exhibit 3, Traffic Homicide Report (Jan. 25, 2023); Claimant’s Exhibit 7, Jackson Health System Medical Records of Jose Correa (Aug. 8, 2022).

<sup>48</sup> According to Mr. Correa’s testimony, this conviction occurred in the late 1980s. It is unclear from the record whether the revocation of his driver license occurred in connection with this conviction (Mr. Correa testified in his deposition that it may have had to do with a bad traffic crash, which may or may not have been related). However, the record does show that the last driver license issued to Mr. Correa had a 1990 expiration date. Claimant’s Exhibit 4, Deposition of Jose Correa (Apr. 20, 2023); Claimant’s Exhibit 3, Traffic Homicide Report (Jan. 25, 2023).

## *Duty*

For a defendant to be liable for negligence, there must be either an underlying statutory or common law duty of care with respect to the conduct at issue; this is true whether the defendant is an individual, a private business, or a government entity.<sup>49</sup> For purposes of a negligence claim, a legal duty exists if a defendant's conduct creates a foreseeable zone of risk that poses a general threat of harm to others; more specifically, in the case of a motor vehicle's operation, a motorist has a duty to use reasonable care on the roadways to avoid accidents, including by entering intersections only after determining that it is safe to do so under prevailing conditions.<sup>50</sup>

In the instant matter, the record shows that Ms. Constant undertook to operate a passenger bus on the roadways of Coral Gables, Florida. In doing so, Ms. Constant owed a duty of care to persons on or in the roadways, including Mr. Correa, to operate the bus in such a way as to avoid accidents. Thus, the undersigned finds that the first element of negligence is proven.

## *Breach*

The existence of a duty of care is alone insufficient to sustain a negligence claim.<sup>51</sup> Once the existence of a duty has been established, it merely “opens the courthouse doors”; a plaintiff must still prove the remaining elements of negligence, the next of which is a breach of the duty of care.<sup>52</sup>

In the instant matter, Ms. Constant testified that she pulled forward past the stop bar in anticipation of turning, and that, as the light turned yellow, she had to complete the turn so as to clear the intersection; according to Det. Quinones's testimony, she did indeed have to complete the turn, and he did not cite her for this decision.<sup>53</sup> However, Ms. Constant further testified that, as she made the turn, she was looking towards oncoming traffic rather than ahead of her in her direction of travel; because of this, Ms. Constant did not see Mr. Correa in the crosswalk before the bus struck him, and the undersigned finds that Ms. Constant failed to use reasonable care in operating the bus in such a way as to avoid accidents. Thus, the undersigned finds that Ms. Constant breached the duty of care she owed to Mr. Correa.

## *Causation*

Once a duty and a breach thereof are established, causation must be determined. In making this determination, Florida courts follow the “more likely than not” standard, requiring proof that the negligence proximately caused the plaintiff's injuries, which in turn requires the factfinder to analyze whether the injury was a reasonably foreseeable consequence of the danger created by the defendant's negligent conduct.<sup>54</sup>

In the instant matter, Mr. Correa suffered a degloving injury when the bus's left rear tires ran over his leg, dragging and pinching it until the bus came to a stop; Mr. Correa ultimately had his leg amputated below the knee, and underwent many related skin grafts and other treatments. The undersigned find that such an injury was a reasonably foreseeable consequence of the danger created by Ms. Constant's negligent conduct – that is, the danger of injury to a pedestrian struck by a passenger bus – and thus, the undersigned finds that Ms. Constant's negligence was a proximate cause of the plaintiff's injuries.

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<sup>49</sup> *Trianon Park v. Condo Assoc. v. City of Hialeah*, 468 So. 2d 912 (Fla. 1985).

<sup>50</sup> *Williams v. Davis*, 974 So. 2d 1052 (Fla. 2007), citing *Bellere v. Madsen*, 114 So. 2d 619, 621 (Fla. 1959) and *Nelson v. Ziegler*, 89 So. 2d 780, 783 (Fla. 1956).

<sup>51</sup> *Whitt v. Silverman*, 788 So. 2d 210 (Fla. 2001).

<sup>52</sup> *Id.* at 221.

<sup>53</sup> The undersigned acknowledges that this conduct may have violated Miami-Dade County's internal policies and procedures; however, the courts have found that internal policies and procedures do not, by themselves, establish a negligence standard, the violation of which necessarily constitutes a breach of a legal duty of care. *Metropolitan Dade County v. Zapata*, 601 So. 2d 239 (Fla. 3d DCA 1992).

<sup>54</sup> *Gooding v University Hosp. Bldg., Inc.*, 445 So. 2d 1015 (Fla. 1984); *Ruiz v. Tenet Hialeah Healthsystem, Inc.*, 260 So. 3d 977 (Fla. 2018).

## Damages

To sustain a negligence claim, the plaintiff must prove actual loss or damages resulting from the injury, and the amount awarded must be precisely commensurate with the injury suffered.<sup>55</sup> Actual damages may be “economic damages” (that is, financial losses that would not have occurred but for the injury giving rise to the cause of action, such as lost wages and costs of medical care) or “non-economic damages” (that is, nonfinancial losses that would not have occurred but for the injury giving rise to the cause of action, such as pain and suffering, physical impairment, and other nonfinancial losses authorized under general law).<sup>56</sup>

In the instant matter, Mr. Correa presented evidence that he suffered a total economic loss of \$4,051,261. While the undersigned is uncertain whether such a dollar value is precisely commensurate with his injury,<sup>57</sup> the undersigned finds that Mr. Correa did prove some economic loss connected to the accident, which includes the cost of future accident-related medical care and living expenses and future services necessitated by his accident-related injuries. Mr. Correa also presented evidence that he suffered non-economic damages, including pain and suffering, PTSD, nightmares, and a reduced quality of life. Thus, the undersigned finds that Mr. Correa suffered actual damages as a result of Ms. Constant’s negligence.

## 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;
- The employee was acting within the course and scope of his or her employment; and
- The employee’s activities were of a benefit to the employer.<sup>58</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>59</sup>

In the instant matter, the record reveals that the County employed Ms. Constant as a bus operator on December 16, 2021. The record further reveals that Ms. Constant’s operation of the passenger bus which struck Mr. Correa was conduct which she was employed to perform, that she drove the bus within the time and space limits of her employment, and that the bus’s operation was due at least in part to a purpose serving her employment; in other words, the record reveals that Ms. Constant was acting within the course and scope of her employment with the County when the accident occurred. Finally, the record reveals that Ms. Constant’s operation of the bus benefitted her employer. Thus, the undersigned finds that the County is liable for any negligence attributable to Ms. Constant through the *respondeat superior* doctrine.

## Affirmative Defenses

The question of the County’s liability does not stop with an analysis of Ms. Constant’s negligence; instead, the undersigned must also consider the affirmative defenses the County would have raised had the matter gone to trial – namely, that:

- Section 768.36, F.S., barred Mr. Correa’s damages claim, as he was intoxicated at the time of the crash and that, because of such intoxication, Mr. Correa was more than 50 percent at fault for his own harm; and

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<sup>55</sup> *McKinley v. Gualtieri*, 338 So. 3d 429 (Fla. 2d DCA 2022); *Birdsall v. Coolidge*, 93 U.S. 64 (1876).

<sup>56</sup> FLJUR MEDMALP § 107.

<sup>57</sup> This uncertainty stems in part from the increased standard of living which the economic analysis and Life Care Plan apparently call for, the necessity of which is unclear, and Mr. Correa’s receipt of uninterrupted Social Security Disability and Medicaid benefits that cover his living and medical expenses.

<sup>58</sup> *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353 (Fla. 3d DCA 2001).

<sup>59</sup> *Spencer v. Assurance Co. of Am.*, 39 F.3d 1146 (11th Cir. 1994) (applying Florida law).



- Mr. Correa's injuries and damages were primarily caused by his own negligence such that his recoverable damages should be reduced or barred entirely under the comparative negligence doctrine.

### *Intoxication Defense*

Section 768.36, F.S., provides that, in any civil action, a plaintiff may not recover any damages for loss or injury to his or her person or property if the trier of fact finds that, at the time the plaintiff was injured:

- The plaintiff was under the influence of any alcoholic beverage or drug to the extent that the plaintiff's normal faculties were impaired or the plaintiff had a blood or breath alcohol level of 0.08 percent or higher; and
- As a result of the influence of such alcoholic beverage or drug the plaintiff was more than 50 percent at fault for his or her own harm.

In the instant matter, the record is clear that, due to the parties' decision to settle this matter rather than proceed to trial, neither a court nor a jury ever considered whether the County had a valid intoxication defense under s. 768.36, F.S., such that would bar Mr. Correa's claim for damages. However, the undersigned notes that the record contains evidence of Mr. Correa's intoxication in the form of Det. Smith's observations that Mr. Correa was so intoxicated before the accident that he had a "noticeable sway" and would not have been permitted to drive had he attempted to do so. Further, the undersigned also notes that Det. Quinones determined that both Ms. Constant and Mr. Correa were at fault in the accident, and that Mr. Correa's fault came, in part, from his intoxication. Thus, the undersigned finds that a court or jury could reasonably have concluded that Mr. Correa was under the influence of alcohol such that his normal faculties were impaired and that, as a result of this impairment, Mr. Correa was at least 50 percent at fault for his own harm; upon reaching such a conclusion, the court or jury could then have barred Mr. Correa from recovering any damages from the County.

### *Comparative Negligence*

Negligence liability in Florida is governed by the "comparative negligence doctrine;" under this doctrine, as it stands today, a defendant sued for negligence can generally diminish or even eliminate his or her liability to the plaintiff based on the comparative fault of others, including the plaintiff.<sup>60</sup> Specifically, under current s. 768.81, F.S., in an ordinary negligence action, a jury determines each party's percentage of fault and, where a party's percentage of fault is 50 percent or less, he or she may recover damages commensurate with such percentage; meanwhile, any party found to be greater than 50 percent at fault for his or her own harm may not recover any damages.<sup>61</sup> In 2021, however, the comparative negligence doctrine instead allowed the court, after a jury determined each party's percentage of fault, to apportion damages according to each party's respective fault regardless of any party's specific degree of culpability.<sup>62</sup>

In the instant matter, the record is clear that no jury ever determined Mr. Correa's percentage of fault in the accident as the parties chose to settle the matter before it went to trial. However, the record is also clear that Det. Quinones determined that both Ms. Constant and Mr. Correa were at fault for the accident; in reaching this determination, Det. Quinones attributed one contributing factor to Ms. Constant (that is, that she was not looking ahead as she drove forward and thus

<sup>60</sup> *Birge v. Charron*, 107 So. 3d 350 (Fla. 2012).

<sup>61</sup> For example, under current law, if the plaintiff in a negligence suit is found to be 40 percent at fault for his or her own harm and the defendant is found to be 60 percent at fault for the plaintiff's harm, the plaintiff may recover 60 percent of his or her damages from the defendant. However, if those numbers are reversed, such that the plaintiff is found to be 60 percent at fault for his or her own harm and the defendant is found to be 40 percent at fault for the plaintiff's harm, the plaintiff recovers nothing. S. 768.81, F.S. (2025).

<sup>62</sup> For example, in 2021, if the plaintiff in a negligence suit was found to be 40 percent at fault for his or her own harm and the defendant was found to be 60 percent at fault, the plaintiff could recover 60 percent of his or her damages from the defendant. However, if those numbers were reversed, such that the plaintiff was found to be 60 percent at fault for his or her own harm and the defendant was found to be 40 percent at fault for the plaintiff's harm, the plaintiff could recover 40 percent of his or her damages from the defendant. S. 768.81, F.S. (2021).

did not see Mr. Correa before the bus struck him) and attributed two contributing factors to Mr. Correa (that is, that he violated the pedestrian signal's directive not to walk, thereby walking out in front of a bus with the right of way, and that he was intoxicated). Based on the foregoing, the undersigned finds that Mr. Correa was more than 50 percent at fault for his own harm, and that a jury could also reasonably have concluded that this was the case and reduced the damages award to which Mr. Correa was entitled accordingly.

### **Preponderance of the Evidence**

As stated above, Mr. Correa had the burden to prove his claim by a "preponderance of the evidence." This legal standard, which is, traditionally, the burden of proof applicable in most civil lawsuits, requires the plaintiff to prove that the allegations he or she raises are more likely than not to be true (in other words, that there is a greater than 50 percent chance of veracity).<sup>63</sup>

In the instant matter, the undersigned finds that Mr. Correa proved that the County was negligent through the actions of its employee, Ms. Constant. However, the undersigned also finds that questions remain as to whether or not Mr. Correa's damages should be reduced to reflect his own degree of comparative negligence, and as to whether or not his claim for damages should be entirely barred due a valid intoxication defense. Thus, the undersigned finds that Mr. Correa has not proved, by a preponderance of the evidence, that he is entitled to the \$4,100,000 settlement balance requested in the claim bill.

### **POSITIONS OF CLAIMANT AND RESPONDENT**

**Claimant's Position:** The Claimant asserts that the County was negligent through the actions of its employee, Ms. Constant, and that, thus, he is entitled to the \$4,100,000 remaining settlement balance.

**County's Position:** The County settled this matter for \$4,300,000 and has paid \$200,000 of this amount to Mr. Correa. As part of the settlement agreement, the County agreed to support the passage of a claim bill awarding the remaining \$4,100,000 settlement balance to Mr. Correa. However, counsel for the County indicated during the Special Master hearing held in this matter that, had the matter proceeded to trial, the County would have raised the two affirmative defenses discussed in detail above.

### **ATTORNEY AND LOBBYING FEES**

Pursuant to the terms of the claim bill, the amount paid for both attorney and lobbying fees may not exceed 25 percent of the amount awarded. Thus, attorney and lobbying fees may not jointly exceed \$1,025,000.

### **RECOMMENDATION**

Based on the foregoing, the undersigned recommends that HB 6521, as written, be reported UNFAVORABLY.

Respectfully submitted,



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<sup>63</sup> *South Florida Water Management Dist. v. RLI Live Oak, LLC*, 139 So.3d 869 (Fla. 2014).

**CAITLIN R. MAWN**  
House Special Master