



Special Master's Final Report

The Honorable Paul Renner
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: CS/HB 6007 - Representative Yarkosky
Relief/Julia Perez/St. Johns County Sheriff's Office

SUMMARY

This is a settled claim for \$6,300,000¹ by Julia Perez ("Perez") against the St. Johns County Sheriff's Office ("SJSO") for injuries and damages she suffered when an SJSO deputy drove his patrol vehicle directly into the path of a motorcycle operated by Perez on April 7, 2019, causing Perez's motorcycle to collide with his vehicle.

FINDINGS OF FACT

Accident

Shortly after 5:00 p.m. on April 7, 2019, then-51-year-old mother of two Julia Perez ("Perez") was operating a motorcycle, traveling eastbound on State Road 16 in unincorporated St. Johns County, Florida.² Perez wore a motorcycle helmet and was, according to witnesses, operating her motorcycle within the posted speed limits.

At the same time, on-duty St. Johns County Sheriff's Office ("SJSO") Deputy Brandon Hetzler ("Hetzler") was operating a marked SJSO patrol vehicle, traveling westbound on State Road 16.³ In response to a call for service, Hetzler proceeded into the left turn lane at the intersection of State Road 16 and Harvest Lane; however, Hetzler failed to activate his vehicle's emergency lights or sirens in response to this call, and he later testified in a deposition that the sun was shining in his eyes so he could not see oncoming traffic, including Perez, who had a continuous green signal giving her the right-of-way. In spite of this, Hetzler proceeded to enter the intersection to attempt to make a left turn, driving his patrol vehicle directly into the path of Perez's oncoming motorcycle.

The front of Perez's motorcycle collided with the front right side of Hetzler's patrol vehicle, and

¹ The Claim Bill, as originally filed, requested \$15,000,000. The parties subsequently settled the matter for \$6,500,000, \$200,000 of which has been paid. Consequently, the Civil Justice Subcommittee amended the Claim Bill on January 25, 2024, by agreement of the parties, to request the excess settlement amount of \$6,300,000.

² Perez traveled with her partner, Tom Eiland, who operated his own motorcycle. Eiland was injured in the same accident at issue in this Claim Bill but his injuries and damages are not the subject of this Claim Bill. Thus, they are not discussed herein.

³ At all times relevant to this Claim Bill, Hetzler, employed by the SJSO as a deputy sheriff, was acting within the course and scope of his employment.

the force of the crash ejected Perez from her motorcycle. Perez then impacted the hood of Hetzler's patrol vehicle, and the force of the impact propelled her over the vehicle's roof, causing her to impact the vehicle's trunk before she finally came to rest on the pavement of State Road 16. Several witnesses to the accident called 911, and an off-duty SJSO deputy who happened to be among the witnesses attended to Perez before emergency responders arrived. In the course of rendering emergency aid, the off-duty deputy had to revive Perez with a defibrillator he happened to have been carrying in his personal vehicle.

Once at the scene, emergency responders found Perez unconscious and hemorrhaging, with a Glasgow Coma Score of 3, indicating a severe, traumatic brain injury. Indeed, her injuries were so severe that she was not expected to survive; consequently, traffic homicide investigators with the Florida Highway Patrol ("FHP investigators") responded to the scene.⁴ At the conclusion of their investigation, the FHP investigators found Hetzler solely at fault for the accident and issued him a traffic citation, citing him with failure to yield to oncoming traffic when making a left turn under s. 316.122, F.S.⁵ Hetzler went on to plead no contest to the citation and the court withheld adjudication, ultimately fining Hetzler. An investigation conducted by the SJSO's Traffic Crash Review Board also found Hetzler solely at fault for the accident, and the Crash Review Board ultimately suspended his driving privileges for three months and ordered him to complete a remedial driving course.

Injuries and Treatment

Emergency responders transported Perez by ambulance to the emergency department of Memorial Hospital Jacksonville; while in the ambulance, Perez was intubated, placed on mechanical ventilation, and sedated. Upon arrival to Memorial Hospital Jacksonville, Perez was unresponsive with a blood pressure reading of 59/31 and in hemorrhagic shock, which required "aggressive resuscitation with massive transfusion protocol" and "emergent exploration" to determine the extent of her "devastating" injuries. Treating physicians ultimately found that, due to the April 7, 2019, accident, Perez had:

- A severe traumatic brain injury.
- Kidney tubular necrosis, which led to kidney failure.
- Multiple displaced pelvic fractures.
- A right distal humerus fracture.
- Right tibia and fibula fractures.
- Multiple right femur fractures.
- A left distal radius fracture.
- Left-side rib fractures.
- A right medial malleolar fracture.
- Fractures to the sternum and manubrium.
- Cervical spine fractures.
- A pneumothorax.
- A right-sided labia majora laceration.
- Liver lacerations.
- A hiatal hernia in the abdomen.
- A large right-sided pelvic sidewall hematoma.
- A bladder hematoma.

All told, Perez spent approximately eight months receiving in-patient medical care, first at Memorial Hospital Jacksonville, then at a rehabilitation facility, and ultimately at a nursing home before she was able to return home for ongoing out-patient care. During this time, she suffered numerous complications, including bed sores, a pulmonary embolism, and infections for which she had to take numerous antibiotics.

⁴ See THI Case No. FHP 119-20-001.

⁵ S. 316.122, F.S., is a noncriminal traffic infraction, a violation of which is punishable, without aggravating factors, by a civil penalty of up to \$500 and/or a requirement to attend a driver improvement school.

Due to her injuries, Perez also spent three months on a ventilator and feeding tube and underwent multiple surgeries, including: several orthopedic surgeries for the placement of a temporary external fixation device and later the placement of permanent rods and screws to stabilize her various fractures; and a gynecological surgery to repair the laceration to her labia majora. She also began kidney dialysis for treatment of her kidney failure and was, for a significant time period, a candidate for a kidney transplant.⁶

Civil Action

On March 14, 2020, Perez filed a Complaint in the Circuit Court of the Seventh Judicial Circuit in and for St. Johns County, Florida.⁷ Therein, Perez alleged that the SJSO was negligent through the actions of Hetzler and requested damages for her injuries, including: catastrophic bodily injury and resulting pain and suffering; disability; disfigurement; mental anguish; loss of capacity for the enjoyment of life; expenses of hospitalization, medical and nursing care, and treatment; medical liens; debts for gratuitous services and attendant care; loss of earnings; loss of ability to earn money; and aggravation of a previously existing condition.

On April 29, 2020, the SJSO filed an Answer, wherein it raised several affirmative defenses, including sovereign immunity, a Fabre defense,⁸ collateral source payments, contributory negligence, and failure to mitigate. However, Perez and the SJSO ultimately agreed to settle the matter for \$6,500,000, and on November 27, 2023, Perez filed a Notice of Settlement wherein she asked that the matter be removed from the trial docket pending final disposition; the parties executed the Settlement Agreement on November 30, 2023, and the court dismissed the matter on January 15, 2024. The SJSO has since paid the \$200,000 authorized by Florida's sovereign immunity limits, leaving an excess settlement amount of \$6,300,000.

Economic Damages

Perez incurred over \$4,000,000 in medical bills for her initial medical care, the majority of which were paid by her health insurance provider at a negotiated rate; however, the health insurance provider has since imposed a lien in the amount of \$1,500,000 against any damages Perez may recover for the April 7, 2019, accident. Medicaid also covered a portion of Perez's medical bills, as she lost her health insurance coverage while still receiving accident-related medical care. According to the record, Medicaid intends to impose a lien against any damages Perez may recover for the April 7, 2019, accident, but has not yet provided the exact lien amount. Perez also owes approximately \$50,000 to several medical providers and facilities, and approximately \$71,962 to a litigation financier. Thus, she faces at least \$1,600,000 in liens for past medical care and related expenses, but this amount will likely increase when Medicaid provides its final lien amount.

In addition to her past medical expenses, Perez is expected to incur significant costs for future accident-related medical care. According to her Life Care Plan, such future costs will likely range from \$2,962,051.27 to \$3,575,770.73; however, should Perez's kidney function deteriorate, requiring her to resume dialysis or undergo a kidney transplant in the future, such costs will likely increase by approximately \$200,000, or more.⁹ Perez is also unable to maintain employment due to her injuries, and thus has suffered lost past and future wages of an estimated \$282,110 based on a minimum-wage earning capacity.¹⁰

⁶ As of the date of the Special Master Hearing held in this matter on January 12, 2024, Perez's kidney function had improved enough that she was not presently on dialysis or in immediate danger of needing a kidney transplant. According to the record, it is possible she may have to resume dialysis or undergo a kidney transplant at some future point, but no physician could say what her prognosis is with any degree of medical certainty.

⁷ See Case No. 2020-CA-387.

⁸ A Fabre defense allows a defendant in a civil lawsuit to reduce its liability by the degree of negligence attributed to a non-party to the lawsuit. *Fabre v. Martin*, 623 So. 2d 1182 (Fla. 1993).

⁹ Perez's Life Care Plan was prepared by rehabilitation counselor and life care planner Gil Spruance, MS, CRC, CVE, CCM, CLP, MSCC.

¹⁰ On April 7, 2019, Perez was working part-time as an Uber driver, making approximately \$1,200 per week. She previously held positions including a school bus driver, a patient transporter for a hospital, and the secretary and treasurer for several churches, for which she also volunteered.

Personal Impact

Before her accident, Perez was, according to her children, a vibrant, adventurous, fearless, and joyful woman. Perez's children described their mother as having once been full of life, committed to maintaining her health and to living in accordance with the tenets of her deep faith. Now, however, Perez's children testified that she is a completely different person, unable to live the full life she once had; although she is, according to her children, still a deeply faithful person and "the best mom ever." Perez, in turn, described her children as her "treasure," and the two halves of her heart.

Dr. Emily Keener, Perez's treating orthopedic trauma surgeon, testified that, in her opinion, it is likely that Perez's overall health and active lifestyle before her accident saved her life, as a person with comorbidities likely would not have survived such traumatic injuries, which Dr. Keener described as among the worst injuries she has seen in her career. Perez herself testified that she was an "adventure person" who once enjoyed many activities, including golfing, motorcycle riding, fitness classes, taking cruises, and camping, and that she looked forward to saving money to enjoy an active retirement, during which she hoped to ski and skydive. However, Perez testified that because she now lives with chronic pain and significant mobility limitations, her once-active lifestyle is now lost to her. Indeed, Perez testified that seemingly-simple activities, such as rising from a chair unassisted, are now impossible for her, and she requires the assistance of her mother, with whom she resides, for the completion of certain physical tasks she cannot herself perform.

In addition to her physical limitations, Perez testified that she suffers cognitive impairments from her traumatic brain injury, including memory loss, struggling to remember things like whether she has finished washing while in the shower or whether she has recently used the restroom. Dr. Syed Asad, Perez's treating neurologist, testified that, though Perez's motorcycle helmet likely contributed to saving her life, her cognitive impairment is, at this point, considered "chronic"; in other words, it is unlikely to improve to any significant degree, and will likely worsen due to the natural mental decline that often comes with aging.

CONCLUSIONS OF LAW

In the instant matter, Perez raises a negligence claim, the elements of which are duty, breach, causation, and damages. The SJSO has, as part of the Settlement Agreement in the underlying civil action, admitted liability for the April 7, 2019, accident through the actions of Hetzler. However, pursuant to House Rule 5.6(b), stipulations entered into by the parties to a claim bill 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 Special Master must make findings of fact and conclusions of law which support the claim.

Duty

Section 316.122, F.S., requires a motor vehicle driver intending to turn left within an intersection to yield the right-of-way to any vehicle approaching from the oncoming direction which is within the intersection or so close thereto as to constitute an immediate hazard. Because a motor vehicle driver has a duty to take reasonable care and to follow all applicable laws to prevent harm to those within the vehicle's path, Hetzler owed a duty to Perez to abide by s. 316.122, F.S.

Breach

The evidence presented demonstrates that Hetzler breached the duty of care described above when he improperly entered the intersection at State Road 16 and Harvest Lane while attempting to make a left turn and, in doing so, failed to yield the right-of-way to Perez as she approached the intersection from the oncoming direction.

Causation

The April 7, 2019, accident and Perez's consequential injuries were the direct and proximate result of Hetzler's breach of the duty described above. But for Hetzler's failure to yield the right-of-way to Perez as he attempted to make a left turn, the April 7, 2019, accident would not have occurred.

Damages

The SJSO settled the instant matter with Perez for \$6,500,000, \$200,000 of which has already been paid; thus, this claim bill is for \$6,300,000 to compensate Perez for her physical injuries caused by the April 7, 2019, accident and the economic and noneconomic damages she suffered due to said injuries.

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 scope of his or her employment; and
- Employee's activities were of a benefit to the employer.¹¹

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.¹²

Because Hetzler was at all times relevant to the instant matter employed by the SJSO as a deputy sheriff and was acting within the scope of his employment at the time the April 7, 2019, accident occurred, which employment benefitted the SJSO, the SJSO is liable for Hetzler's negligence under the common law *respondeat superior* doctrine.

POSITIONS OF CLAIMANT AND RESPONDENT

Claimant's Position:

Perez asserts that she is entitled to the remaining \$6,300,000 authorized by the settlement agreement she entered into with the SJSO in her underlying civil action, which money will compensate her for the injuries and damages she suffered due to the SJSO's negligence through the actions of Hetzler.

¹¹ *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353 (Fla. 3d DCA 2001).

¹² *Spencer v. Assurance Co. of Am.*, 39 F.3d 1146 (11th Cir. 1994) (applying Florida law).

Respondent's Position:

The SJSO has admitted liability in the underlying civil action and supports the passage of the Claim Bill. The SJSO indicated, through counsel, that, should this Claim Bill pass, the St. Johns County Board of Commissioners has agreed that it will appropriate county funds to pay the amount awarded to Perez and, thus, passage of the Claim Bill will not impact the SJSO's operations.

LEGISLATIVE HISTORY

This Claim Bill is presented to the Legislature for the second time. It was first filed during the 2023 Legislative Session; however, the Claimant had not yet exhausted her remedies as the matter had not yet been settled and, thus, no Special Master Hearing occurred that Session.

ATTORNEY AND LOBBYING FEES

Under the terms of the settlement agreement, attorney fees may not exceed 25 percent of the total award, while lobbying fees may not exceed 7 percent of the total award. Thus, attorney fees may not exceed \$1,575,000, while lobbying fees may not exceed \$441,000.

RECOMMENDATION

Based on the foregoing, I recommend that CS/HB 6007 be reported FAVORABLY.

Respectfully submitted,



CAITLIN R. MAWN,
House Special Master