



STORAGE NAME: h6515d.JDC

DATE: 2/21/2022

February 17, 2022

SPECIAL MASTER'S FINAL REPORT

The Honorable Chris Spowls
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: CS/CS/HB 6515 - Representative McClure
Relief/Christeia Jones/Department of Highway Safety and Motor Vehicles

THIS IS A SETTLED CLAIM FOR \$7,500,000 BASED ON AN AUTOMOBILE ACCIDENT AND INJURIES TO CHRISTEIA JONES AND HER THREE MINOR CHILDREN AS A RESULT. RESPONDENT HAS PAID CLAIMANTS \$285,000¹ PURSUANT TO THE STATUTORY CAP.

FINDINGS OF FACT:

This claim bill arises from a multi-vehicle accident on Interstate 75 occurring at 9:25 p.m. on May 18, 2014, south of Ocala, Florida. After the accident, Florida Highway Patrol Corporal Wallace Dill prepared a Crash Investigation with diagrams, laying out how and why the accident occurred.

At the location of the accident, Interstate 75 is a straight, three-lane interstate highway. The roadway is not illuminated, and the posted speed limit is 70 miles per hour. On the night of the accident, the roadway was dry and there were no known adverse weather conditions.

On the night of the accident, Christeia Jones² was travelling

¹ The Department of Highway Safety and Motor Vehicles (DHSMV) paid one of the other drivers involved in the accident \$15,000 to settle that driver's claims against DHSMV, leaving the remainder of the statutory cap at \$285,000.

² Christeia Jones lives in Orlando, Florida, with her three sons, Lanard Maybin, Denard Maybin, Jr., and Logan Grant, the Claimants in this claim bill. Ms. Jones testified at the special master hearing that the father of Lanard and Denard has been

southbound in her 2014 Nissan Altima, in the leftmost inside lane. That lane is bordered to the left by a paved shoulder with grooves, beyond which is a steel guardrail. At some point there is a narrow turnaround through which vehicles can make U-turns if they enter the area carefully, at which point there is no guardrail.

Ms. Jones's three sons³ were also occupants in the car. Logan Grant, a 2-year-old, Lanard Maybin, a 5-year-old, and Denard Maybin, Jr., a 7-year-old, were riding in the backseat.

Travelling in the opposite direction on the same interstate was twenty-year-old Florida Highway Patrol Trooper Raul Umana, who was on duty in his 2007 Ford Crown Victoria police car. He was travelling in the rightmost outside lane, having just assisted a stopped vehicle off the right shoulder. There is a paved 34.5-foot turnaround area in the median at the area where the accident occurred. Trooper Umana's dashcam was operating and captured the incident on camera.

As Trooper Umana neared the turnaround area, he cut left across two lanes of traffic, proceeded into the leftmost inner lane, and slowed down to attempt a U-turn.⁴ While looking at his rear view mirror, he did not realize how close the U-turn area was. When he looked back at the road, the U-turn area was rapidly approaching. He slammed on the brakes and entered the U-turn area, but his tires slipped on the gravel and he lost control of the police car. He overshot the U-turn area, crashing into the median barrier at an unsafe speed. The police car then hit part of the barrier but continued on into the oncoming southbound leftmost lane, where Ms. Jones's car was fast approaching.⁵

As Trooper Umana's police car burst onto her side of the interstate, Ms. Jones began to brake and steered to the right but was unable to avoid a collision. At a speed of 9 miles per hour, the police car struck Ms. Jones's car as she was travelling at 62 miles per hour. A third vehicle following closely behind Ms. Jones's car struck her car from behind, causing her car to drift into the center southbound lane. A fourth vehicle, a tractor trailer, careened into Ms. Jones's car from behind, crushing the trunk and rear seating area where her three sons were riding. The car

incarcerated for most of their lives and does not have contact with Lanard and Denard. Logan Grant's father helps "as much as he can." Ms. Jones completed her bachelor's degree in criminal justice in 2017 but is unable to pursue a career with the degree because of her childcare responsibilities, which include taking her children to their frequent medical and therapy appointments. At the time the special master hearing was held, she was employed as an Orange County substitute teacher but wanted to pursue more opportunities in the criminal justice field.

³ Throughout this report, "Claimants" refers to Ms. Jones and her three sons. At times, each of the sons is referred to by his given name in order to distinguish each Claimant's claims.

⁴ Trooper Umana stated under oath that the reason he decided to make a U-turn to get onto Interstate 75 southbound was that his shift was nearly over and he wanted to get closer to his exit for home.

⁵ The record indicates that Ms. Jones was travelling at 88 miles per hour before she began to brake. None of the interviewed witnesses reported that Ms. Jones or the other two drivers involved in the accident were speeding, and there was evidence suggesting that the other vehicles on the roadway were travelling at similar speeds. I find that even though Ms. Jones was travelling 88 miles per hour, it was a reasonable speed considering the flow of traffic on Interstate 75 at the time.

was propelled off the road where it struck a tree and caught fire, finally coming to rest off the right shoulder in the grass, 143 feet from where the tractor trailer collided with the car.

First responders arrived on the scene and extinguished the fire. Ms. Jones exited her vehicle and sustained only minor injuries, but her three sons were trapped inside the vehicle and required extraction by fire rescue personnel.⁶ All three sons sustained critical injuries and were flown by helicopter to the trauma center at Shands Hospital in Gainesville.

After a thorough investigation, FHP concluded that Trooper Umana's negligence caused the crash, and he was cited for careless driving.

Trooper Umana later acknowledged fault for the accident, admitting under oath that his speed was too high as he entered the U-turn area. Ms. Jones, through her attorney, refused to make a sworn statement after the accident.

Seat Belt Issue

Ms. Jones was wearing a seat belt when the accident occurred. Less clear is whether Denard and Lanard Maybin, and Logan Grant, were properly restrained.

At the special master hearing, Ms. Jones testified that she buckled all three of her children into their seats before driving her car onto the interstate, and that:

- Logan was restrained in a child car seat facing forward, in the back behind the passenger seat;
- Denard was on the left side behind the driver's seat; and
- Lanard was in the middle.⁷

FHP's Investigative Report indicates that after the accident, Ms. Jones made spontaneous statements that all her children were wearing their seat belts. In response to interrogatories, Ms. Jones stated that when she began the trip, all three boys were buckled; but that she did not know if Denard and Lanard still had their belts on when the crash occurred.

Trooper S. Crocker, an officer arriving at the scene of the crash, stated that after the crash he observed Lanard Maybin in the back seat, not wearing a seat belt, with his head pinned between the center console and the rear seat. He also observed Denard Maybin lying on the rear left floor of the vehicle, also not wearing a seat belt. The Shands Hospital intake form indicates hospital staff believed Logan Grant was "travelling unrestrained in the back seat" at the time of the accident.

⁶ Ms. Jones testified at the special master hearing that she was drifting in and out of consciousness after the accident. She remembers her car being on fire.

⁷ When questioned at the special master hearing, Ms. Jones stated she did not know whether her children might have unbuckled themselves, but as far as she knew, they were restrained during the time leading up to the accident.

Denard Maybin's Medical Treatments

Seven-year-old Denard lost consciousness during the accident and was intubated at the scene. He was flown to Shands Hospital immediately and diagnosed with traumatic brain injury. He was discharged to rehabilitation in stable condition sixteen days later, on June 3, 2014, with diagnoses of traumatic brain injury, subdural hematoma,⁸ and diffuse axonal injury.⁹

Lanard Maybin's Medical Treatments

Five-year-old Lanard was flown to Shands immediately, where he was admitted in critical condition with diagnoses of facial laceration, spleen laceration, lung contusion, and shoulder injury. He underwent plastic surgery for facial reconstruction. He was discharged to his home in good condition four days after admission, on May 22, 2014.

Logan Grant's Medical Treatments

Two-year-old Logan was intubated at the accident site and immediately flown to Shands, where he was diagnosed with subdural hematoma. He was discharged thirty days later, on June 17, 2014, in good condition with instructions to enter a rehabilitation facility the same day. Discharge diagnoses included:

- Severe traumatic brain injury.
- Left hemiparesis.¹⁰
- Nerve palsy.
- Diffuse axonal brain injury.
- Head trauma.
- Respiratory failure following trauma and surgery.
- Extensive facial fractures.

Current Status

The three minor child Claimants are currently enrolled in a Medicaid plan, which covers some costs but does not cover all of the services recommended in their life care plans.

LITIGATION HISTORY:

On January 25, 2017, Christeia Jones filed a complaint against the Florida Highway Patrol (FHP), a division of the Florida

⁸ A subdural hematoma occurs when a blood vessel near the surface of the brain bursts, causing blood to collect between the brain and the brain's outer lining. A subdural hematoma can be life-threatening. See Harvard Health Publishing, Subdural Hematoma, https://www.health.harvard.edu/a_to_z/subdural-hematoma-a-to-z.

⁹ Diffuse axonal injury is the tearing of the brain's long connecting nerve fibers. It occurs when the brain is injured as it shifts and rotates inside the skull. See Johns Hopkins Medicine, Traumatic Brain Injury, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/traumatic-brain-injury>.

¹⁰ Hemiparesis refers to weakness or inability to move on one side of the body. See American Stroke Association, Hemiparesis, <https://www.stroke.org/en/about-stroke/effects-of-stroke/physical-effects-of-stroke/physical-impact/hemiparesis>.

Department of Highway Safety and Motor Vehicles (DHSMV) ("Respondent"), for the injuries sustained by her sons, Logan Grant, Denard Maybin, Jr., and Lanard Maybin. The complaint alleged that Trooper Raul Umana was negligent in the operation of his patrol car, causing the crash.

The parties attended court-ordered mediation on November 30, 2018. Claimants estimated the reasonable settlement value of the combined claims at \$42.5 million, but the parties ultimately settled for a total of \$18 million. The agreement required Respondent to pay its remaining sovereign immunity limits upon court approval of the settlement, with the remaining \$17,715,000 to be pursued through a claim bill. The agreement also required Respondent to remain silent and not oppose a claim bill. On June 24, 2019, the circuit judge entered a sealed order approving the settlements of the minors' claims.

After the special master hearing but before the claim bill was placed on agenda for the 2020 Legislative Session, the parties agreed to reduce the amount of the claim to \$9,000,000. The claim bill was refiled for the 2021 and 2022 Legislative Sessions in the original amount of \$17,715,000.

On January 27, 2022, the claim bill was amended in the Civil Justice and Property Rights Subcommittee to reflect a newly-settled amount of \$7,500,000, minus payments required to satisfy certain outstanding Medicaid liens. On February 17, 2022, the bill was amended in the Appropriations Committee to specify that the Highway Safety Operating Trust Fund is the funding source for the bill.

CLAIMANTS' POSITION:

Claimants argue that Respondent is responsible for the accident caused by Trooper Umana based on the doctrine of respondeat superior, because Trooper Umana was acting in the scope of his employment with Respondent when the accident occurred. Claimant argues that Respondent is 100 percent at fault for the accident because it was impossible for Ms. Jones to avoid the collision.

Claimants argue that while there is a question of whether Denard and Lanard were wearing their seat belts at the time of the crash, there is no evidence that their injuries were more severe because they may have come out of their seat belts. Claimants argue that the most severe injuries were suffered by Logan Grant, who was secured in a forward-facing infant seat.

Claimants assert that as a direct and proximate result of Trooper Umana's negligence, Claimants suffered significant and permanent injuries. They have also experienced pain and suffering, loss of enjoyment of life, future losses of earning capacity, and future medical and attendant care expenses.

RESPONDENT'S POSITION:

Respondent neither supports nor opposes the claim bill and cites to the settlement agreement, which requires Respondent to "remain silent" and "not support or oppose" the claim bill. During the special master hearing in 2019, Respondent provided almost no answers to any of the questions asked by the special masters.¹¹

CONCLUSIONS OF LAW:

Regardless of whether there is a jury verdict or settlement, each claim bill is reviewed *de novo* in light of the elements of negligence.

Duty, Breach, & Causation

It is clear that Respondent breached a duty to Claimants. Trooper Umana, the driver of the police car, owed a duty to Ms. Jones and the young children within her vehicle, and he breached that duty when he made an ill-advised U-turn in the middle of Interstate 75. When Trooper Umana breached this duty, he was within the scope of his employment with Respondent, making Respondent liable for Trooper Umana's actions under the doctrine of respondeat superior.

Seat Belt Issue

At the time of the accident, Florida law required each operator of a motor vehicle to ensure that each:

- Passenger under 18 was properly restrained.¹²
- Child 5 years of age or younger was restrained by an approved child restraint device.
 - For a child up to 3 years old, the restraint device could be a separate carrier or integrated child seat.
 - For a 4-year-old or 5-year old, a seat belt could be used.¹³

Damages

The most difficult issue in this case is the appropriate amount of damages. As noted above, it is clear that Respondent's employee was at fault in this accident. It is also clear that the automobile accident—which involved Ms. Jones's car catching fire while her three sons were trapped inside—was objectively traumatic. What is less clear is to what extent the accident caused quantifiable damages to each of the Claimants.

Claimants retained several experts to testify on their behalf,

¹¹ Respondent's lack of participation during the hearing, pursuant to its interpretation of the settlement agreement, significantly impeded the factfinding process.

¹² S. 316.614(4), F.S. (2013). A violation of this provision was a nonmoving violation but could not be considered to mitigate damages. It could, however, be introduced at trial as evidence of comparative negligence. Ss. 316.614(8) and (10), F.S. (2013).

¹³ S. 316.613, F.S. (2013). A violation of this provision was a moving violation but was inadmissible at trial for purposes of comparative negligence. Ss. 316.613(3) and (5), F.S. (2013).

including:

- Dr. Raffa of Raffa Consulting Economics, Inc., to estimate the economic losses¹⁴ to each Claimant, including the loss or reduction of future earning capacity and the cost of future life care needs.
- Dr. Paul B. Kornberg, M.D., a pediatrician.
- Dr. Michael Shahnasarian Ph.D., a certified life care planner, licensed psychologist, and certified vocational evaluator.

Denard Maybin's Damages

Denard is now in eighth grade. He was 7 when the accident occurred and 13 at the time of the special master hearing. At the special master hearing, according to Ms. Jones, Denard read at a fourth grade level and was unable to respond normally in conversation. Denard has some motor skill and balance problems. Ms. Jones stated in her deposition that Denard had a traumatic brain injury in the crash but that he is not taking any medications for such. She testified at the special master hearing that before the accident, Denard had no developmental issues and was the top reader in his class. In her deposition, she stated that Denard was on an individualized education plan for some learning issues.

Dr. Kornberg stated that Denard "is not expected to be able to achieve gainful employment in the competitive job market"; in turn, Dr. Raffa calculated Denard's life care plan assuming zero employment for the rest of his life. Dr. Raffa estimated the present value of Denard's economic damages at between \$7.4 million and \$8.7 million.

Lanard Maybin's Damages

Lanard is now in eighth grade. He was 5 when the accident occurred and 11 at the time of the special master hearing. At the special master hearing, Ms. Jones testified that he read at a fourth grade level (though he was in sixth grade). Ms. Jones also testified that he sometimes has nightmares, and some of his medical providers believe he has post-traumatic stress disorder. He has some minor scarring on his face from the accident but does not take medications for the head injuries suffered in the crash. He has also had behavioral issues. Ms. Jones testified at the special master hearing that before the accident, Lanard did not have any issues.¹⁵ In her deposition, Ms. Jones stated that Lanard was on an individualized education plan for learning issues, but that his math skills had improved since being placed on that plan. She also stated that behavioral therapy has helped Lanard.

¹⁴ Economic losses do not take into account pain and suffering and other damages that are not reducible to an objective amount.

¹⁵ At the special master hearing, Ms. Jones testified that she believed the accident negatively affected Logan and Denard more than Lanard.

Dr. Shahnasarian opined that Lanard "will not be capable of securing and maintaining competitive employment"; Dr. Raffa, in turn, calculated Lanard's life care plan assuming zero employment for the rest of his life. Dr. Raffa estimated the present value of Lanard's economic damages at between \$3.8 million and \$4 million.

Logan Grant's Damages

Logan is now in fourth grade. He was 2 when the accident occurred and 8 at the time of the special master hearing. After the accident, he had surgery to repair tear duct damage suffered in the crash. At the time of the hearing, he was in second grade but performed between a kindergarten and first grade level, and like his brothers, was on an individualized education plan. Logan wears a corrective brace on his left leg, without which he walks with a limp. He is able to ride a bicycle with training wheels without falling off. At a medical appointment shortly before the special master hearing, Logan underwent an MRI, which indicated that his head injury was healing properly.

Dr. Kornberg stated that Logan "is not expected to be able to achieve gainful employment in the competitive job market"; in turn, Dr. Raffa calculated Logan's life care plan assuming zero employment for the rest of his life. Dr. Raffa estimated the present value of Logan's economic damages at between \$8.2 million and \$9.5 million.

I find that Denard Maybin, Lanard Maybin, and Logan Grant have carried their burdens to demonstrate injuries resulting from the car accident; and that the reduced, settled total amount of \$7,500,000 is reasonable under the circumstances.¹⁶

Medicaid Lien

One lien, asserted by a Florida Medicaid Plan, had not yet been paid at the time of the special master hearing because of the plan's insistence on full repayment. At the time of the special master hearing, funds to pay that lien were being held in trust.

ATTORNEY/ LOBBYING FEES:

If the claim bill passes, the attorney fee will not exceed \$1,500,000; the lobbying fee will not exceed \$375,000; and the costs will not exceed \$34,849.92.

COLLATERAL SOURCES:

The automobile accident involved several other vehicles. After the accident, each of the three children received settlement money from other drivers involved, which were deposited into separate special needs trusts. Additionally, Lanard currently

¹⁶ In 2020, a similar claim bill (2020 CS/HB 6517) sought a total of \$9,000,000, which the special master report found to be reasonable under the circumstances.

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receives monthly Social Security Administration disability benefits.

RESPONDENT'S ABILITY TO PAY:

Respondent does not have the funds to pay this claim bill and relies upon the Legislature to fund the claim bill from general revenue.

LEGISLATIVE HISTORY:

This is the third session this claim bill has been presented to the Legislature. Last session, 2021 CS/HB 6515 was reported favorably out of the Civil Justice Subcommittee, but was not placed on the agenda for the Appropriations Committee. Two sessions ago, 2020 CS/HB 6517, which sought \$9,000,000, was reported favorably out of the Civil Justice Subcommittee, but was not placed on the agenda for the Appropriations Committee.

RECOMMENDATION:

I recommend that CS/CS/HB 6515 be reported **FAVORABLY**.

Respectfully submitted,

W. Jordan Jones

JORDAN JONES

House Special Master

cc: Representative McClure, House Sponsor
Senator Baxley, Senate Sponsor
Mary K. Kraemer, Senate Special Master