



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

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DATE	COMM	ACTION
1/31/24	SM	Favorable
2/5/24	JU	Fav/CS
2/14/24	RC	Favorable

January 31, 2024

The Honorable Kathleen Passidomo
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 10** – Senator Bradley
HB 6007 – Representative Yarkosky
Relief of Julia Perez by the St. John's County Sheriff's Office

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$6,300,000. THIS AMOUNT IS THE REMAINING UNPAID BALANCE OF A \$6,500,000 SETTLEMENT AGREEMENT REGARDING THE NEGLIGENCE OF A ST. JOHNS COUNTY SHERIFF'S DEPUTY, WHICH RESULTED IN THE INJURY OF JULIA PEREZ.

FINDINGS OF FACT:

The Accident on April 7, 2019

At approximately 5:09 p.m., on the afternoon of April 7, 2019, Ms. Perez, a fifty-one year old woman, and her companion, Thomas Eiland, were driving their two motorcycles east on State Road 16 when they were struck by a vehicle operated by Deputy Brandon Hetzler, an on-duty St. Johns County Sheriff's Deputy.¹ Ms. Perez and Mr. Eiland were wearing helmets at the time of the collision, and witnesses indicated that visibility was good.² Although Mr. Eiland was also struck by Deputy Hetzler, the remainder of this report will pertain to the claimant, Ms. Perez.

¹ Florida Traffic Crash Report, Highway Safety & Motor Vehicles, Traffic Crash Records, HSMV Crash Report Number 87157708, 4 (Apr. 7, 2019).

² *Id.* See also Shaw Deposition, 15 (Apr. 11, 2023); Statement by Brittany Lee, 3 (November 8, 2019); Statement by Bailey Kinlaw, 3 (Nov. 8, 2019); and Interview of Thomas Eiland by Master Corporal W.G. Smith, from the Florida Highway Patrol (Apr. 9, 2019).

Prior to the accident, Deputy Hetzler was traveling west in the left turn lane of State Road 16 at the intersection of Harvest Lane.³ As Ms. Perez reached the intersection on State Road 16 and Harvest Lane, Deputy Hetzler entered the intersection and turned left colliding with Ms. Perez.⁴

Deputy Hetzler was enroute to a call for service, however neither his emergency lights nor siren were activated at the time of the collision.⁵ Witnesses indicated that State Road 16 eastbound traffic had a steady green signal when the collision occurred.⁶ The traffic infraction citation issued to Deputy Hetzler indicates that he failed to yield when making a left turn.⁷

According to the St. Johns County Fire Rescue EMS reports, Ms. Perez was found lying in the roadway after being ejected from her motorcycle. Additionally, she was unconscious and sustained multi-system trauma with enormous blood loss.⁸

Traffic Citation

Deputy Hetzler was cited with a violation of section 316.122, of the Florida Statutes, for failure to yield when making a left turn, a violation of which is a noncriminal infraction, punishable as a moving violation. The amended traffic infraction, dated December 12, 2019, indicates that Deputy Hetzler was issued a fine in the amount of \$166.⁹

³ See Shaw Deposition, 14-16 (Apr. 11, 2023); Statement by Brittany Lee, 4 (Nov. 8, 2019); Statement by Bailey Kinlaw, 3 (Nov. 8, 2019); Interview of Thomas Eiland by Master Corporal W.G. Smith, from the Florida Highway Patrol (Apr. 9, 2019); and Florida Traffic Crash Report, Highway Safety & Motor Vehicles, Traffic Crash Records, HSMV Crash Report Number 87157708, 4 (Apr. 7, 2019).

⁴ See Statement by Brittany Lee, 4 (November 8, 2019); Statement by Bailey Kinlaw, 3 (Nov. 8, 2019); and Florida Traffic Crash Report, Highway Safety & Motor Vehicles, Traffic Crash Records, HSMV Crash Report Number 87157708, 4 (Apr. 7, 2019).

⁵ See Hetzler Deposition, 49 (Apr. 14, 2021).

⁶ See Shaw Deposition, 15 (Apr. 11, 2023). See also Statement by Brittany Lee, 3 (Nov. 8, 2019); Statement by Bailey Kinlaw, 3 (Nov. 8, 2019); Interview of Thomas Eiland by Master Corporal W.G. Smith, from the Florida Highway Patrol (Apr. 9, 2019); Florida Traffic Crash Report, Highway Safety & Motor Vehicles, Traffic Crash Records, HSMV Crash Report Number 87157708, 4 (Apr. 7, 2019); and Traffic Crash Review Board Agency Vehicle Incident/Crash Review Form, St. Johns County Sheriff's Office, Control Number C18-33, Agency Employee Name: Brandon Hetzler (May 23, 2019).

⁷ See Florida Uniform Traffic Citation Number AB5WDLE, Case Number 19013944TR (December 12, 2019).

⁸ See Patient Care Report, St. Johns County Fire Rescue, Dispatch CR Number 19-0009430 (Dec. 30, 2019); see also Parker Deposition, 18-19.

⁹ See Florida Uniform Traffic Citation Number AB5WDLE, Case Number 19013944TR (Dec. 12, 2019).

Florida Highway Patrol Accident Investigation

Homicide investigator, Master Corporal W.G. Smith, from the Florida Highway Patrol conducted the accident investigation.¹⁰ Witness interviews confirmed that Ms. Perez had a solid green light.¹¹ Additionally, witnesses confirmed that Deputy Hetzler turned left in front of the motorcycle of Ms. Perez. The investigation concluded that Deputy Hetzler was exclusively at fault for causing the accident.¹²

Crash Review Board Investigation

The St. Johns County Sheriff's Office conducted a Crash Review Board investigation, and determined that Deputy Hetzler was "at fault," and caused the accident involving Ms. Perez.¹³

Medical Injuries

Ms. Perez suffered extensive injuries including a traumatic brain injury, pulmonary contusion, kidney tubular necrosis, numerous fractures, and hemorrhaging.¹⁴ The claimant's attorney provided financial data and projected Ms. Perez's total past medical charges and liens to be more than \$4,000,000.¹⁵

¹⁰ See Florida Traffic Crash Report, Highway Safety & Motor Vehicles, Traffic Crash Records, HSMV Crash Report Number 87157708, 4 (Apr. 7, 2019).

¹¹ *Id.* See also Shaw Deposition, 15 (Apr. 11, 2023); Statement by Brittany Lee, 3 (Nov. 8, 2019); and Statement by Bailey Kinlaw, 3 (Nov. 8, 2019); and Interview of Thomas Eiland by Master Corporal W.G. Smith, from the Florida Highway Patrol (Apr. 9, 2019).

¹² *Id.*

¹³ See Traffic Crash Review Board Agency Vehicle Incident/Crash Review Form, St. Johns County Sheriff's Office, Control Number C18-33, Agency Employee Name: Brandon Hetzler (May 23, 2019).

¹⁴ See Julia Perez Chronology, Osborne (June 8, 2023). More specifically, Ms. Perez's injuries included a severe traumatic brain injury, kidney tubular necrosis, multiple 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, liber lacerations, a hiatal hernia in the abdomen, a large right-sided pelvic sidewall hematoma, and a bladder hematoma.

¹⁵ See Summary of Claim (Economic Damages); see also Julia Perez Medical Bill Summary; Julia Perez Summary of Liens and Balances; and Perez Special Masters Claim Bill Hearing (Jan. 12, 2024) at 1:37:00-1:42:00. During the claim bill hearing, the claimant's attorney indicated that the majority of Ms. Perez's initial care was paid by her health insurance provider at a negotiated rate; however, the health insurance provider has imposed a lien in the amount of \$1,500,000 against any damages Ms. Perez may recover in regard to the April 7, 2019, accident. Additionally, Medicaid covered some of Ms. Perez's medical bills, and Ms. Perez's attorney indicated that Medicaid intends to impose a lien against any damages the claimant may recover for the April 7, 2019, accident, but the reimbursement amount is currently unknown. Ms. Perez also owes approximately \$50,000 to medical facilities and providers, approximately \$12,000 to a life care company, and approximately \$71,962 to a litigation financier.

Expert Testimony

The claimant provided testimony from her neurologist, Dr. Syed Ali Asad, who is board certified in brain injury medicine.¹⁶ Dr. Asad provided information on the severity of Ms. Perez's injuries post-accident, but specifically in regard to her traumatic brain injury. In his testimony, he classified Ms. Perez's brain injury as severe, and stated that in addition to the brain injury, Ms. Perez was also diagnosed with post traumatic headaches, impaired cognition, and adjustment disorder.¹⁷ When asked if the claimant's injuries are permanent, Dr. Asad responded in the affirmative.¹⁸

The claimant also provided testimony from Dr. Emily M. Keener, who was Ms. Perez's treating orthopedic surgeon.¹⁹ Dr. Keener stated that Ms. Perez had life-threatening injuries that required immediate surgery, and in particular, Dr. Keener conveyed that Ms. Perez's pelvic injury was an injury most patients do not survive.²⁰ Due to the severity of Ms. Perez's injuries, Dr. Keener believes mobility could be an issue as Ms. Perez ages.²¹

Additionally, the claimant provided testimony from Dr. Mark Frisk, who is a board certified radiologist.²² Dr. Frisk reviewed Ms. Perez's diagnostic records, and labeled Ms. Perez's injuries as severe, especially her pelvis injury.²³ When asked if he believed that Ms. Perez's injuries would be permanent and continue to get worse as she ages, Dr. Frisk responded in the affirmative.²⁴

Current and Future Needs

Currently, Ms. Perez is considered permanently disabled, and according to a comprehensive rehabilitation evaluation provided by the claimant, she will have future medical needs over the course of her 30-year life expectancy.²⁵ During the

¹⁶ See Asad Deposition, 4 (December 15, 2023).

¹⁷ *Id.* at 13.

¹⁸ *Id.* at 14. Dr. Asad provides that in medicine the term used to convey "permanency" is "chronic."

¹⁹ See Keener Deposition, 4 (December 14, 2024).

²⁰ *Id.* at 5.

²¹ *Id.* at 13.

²² See Frisk Deposition, 6 (December 17, 2023).

²³ *Id.* at 11.

²⁴ *Id.* at 15.

²⁵ See Comprehensive Rehabilitation Evaluation, Lichtblau (March 28, 2023). Dr. Craig H. Lichtblau MD PA, board certified in Physical Medicine & Rehabilitation and board certified in Brain Injury Medicine, provides the medical opinion Ms. Perez has reached "Maximum Medical Improvement," and she has "43-48% permanent

claim bill hearing held on January 12, 2024, Ms. Perez's attorney presented evidence to indicate that her total future medical expenses will be approximately \$2,900,000 to \$3,500,000,²⁶ and her loss of earning capacity is estimated to be \$282,110 based on her full Social Security retirement age of 67 and a minimum wage-earning capacity.²⁷ Additionally, the claimant's two children testified that their mother's quality of life has dramatically decreased since the accident in April of 2019.²⁸

LITIGATION HISTORY:

A lawsuit was filed in March of 2020 with a claim of vicarious liability negligence on behalf of Ms. Perez against the Sheriff.²⁹ The complaint further alleged that the Sheriff's employee, Deputy Hetzler, carelessly and negligently failed to yield to oncoming traffic, violating section 316.122, of the Florida Statutes, causing the collision between his vehicle and the two motorcycles of Ms. Perez and her companion, Mr. Eiland.³⁰ The complaint provides that due to the collision, Ms. Perez was violently ejected from her motorcycle which caused her to sustain multiple, massive, and life threatening injuries.³¹

Settlement Agreement

Ms. Perez and Robert A. Hardwick, in his official capacity as the Sheriff of St. Johns County, Florida, entered a settlement agreement for \$6,500,000. The claimant received \$200,000

partial impairment of the whole person according to AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition.

²⁶ See Perez Special Masters Claim Bill Hearing (Jan. 12, 2024) at 1:42:00-1:43:43; See also Julia Perez Life Care Plan, Spruance (Jan. 24, 2022). See Summary of Claim (Economic Damages), where claimant's attorney indicated that Ms. Perez's future medical needs would range from \$3,318,811.56 to \$4,077,923.57. During the claim bill hearing, the claimant's attorney indicated that these numbers factor in the potential for dialysis treatment or a kidney transplant; however, Ms. Perez is not currently receiving kidney treatment due to her numbers being in the "borderline" range. Thus, the undersigned used the Life Care Plan by Gil Spruance, dated January 24, 2022, to calculate an approximate range of Ms. Perez's future medical needs. In the event that Ms. Perez's kidney function deteriorates again, her estimated costs could increase.

²⁷ See Perez Special Masters Claim Bill Hearing (Jan. 12, 2024) at 1:42:00-1:43:43; See also Comprehensive Rehabilitation Evaluation, Lichtblau (Mar. 28, 2023) (providing that Ms. Perez participated in a "Medical Functional Capacity Assessment" on Mar. 28, 2023, and Dr. Lichtblau's conclusion from that assessment is that Ms. Perez does not have the functional capacity to work four hours per day on an uninterrupted basis at this time). See also Summary of Claim (Economic Damages). Prior to the accident on April 7, 2019, Ms. Perez was working part-time as an Uber driver, making around \$1,200 per week. Additionally, Ms. Perez previously worked as a school bus driver, a patient transporter for a hospital, and the secretary and treasurer for several churches.

²⁸ See Perez Special Masters Claim Bill Hearing (Jan. 12, 2024) at 2:22:30-2:32:27.

²⁹ See Complaint filed in the Circuit Court of the 7th Judicial Circuit In and for St. Johns County, Florida, Case No. 2020-CA-387 (Mar. 14, 2020).

³⁰ *Id.*

³¹ *Id.*

from the Sheriff's self-insuring risk pool, and seeks the remaining \$6,300,000.³²

Section 768.28, of the Florida Statutes, limits the amount of damages that a claimant can collect from a local government as a result of its negligence or the negligence of its employees to \$200,000 for one individual and \$300,000 for all claims or judgments arising out of the same incident. Funds in excess of this limit may only be paid upon approval of a claim bill by the Legislature.

The Sheriff supports the relief of Ms. Perez, and the settlement agreement states that during litigation, the Sheriff admitted negligence by his employee and liability for the accident-related injuries leading to certain damages to Ms. Perez.³³ Additionally, on November 21, 2023, a motion was unanimously adopted by the St. Johns County Board of County Commission to authorize up to \$6,300,000 to support the St. Johns County Sheriff's Office in the settlement of Circuit Court Case 2020-CA-387.

On December 6, 2023, Ms. Perez signed a "release" to release and discharge Robert A. Hardwick, in his official capacity as the Sheriff of St. Johns County from liability related to the facts in Circuit Court Case 2020-CA-387.³⁴

On January 17, 2024, a final order of dismissal was entered in Circuit Court Case 2020-CA-387.³⁵

CONCLUSIONS OF LAW:

The claim bill hearing held on January 12, 2024, was a *de novo* proceeding to determine whether St. Johns County Sheriff, Robert A. Hardwick, is liable in negligence for damages caused by his employee, Deputy Hetzler, acting within the scope of his employment, to the claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the special master prior to, during, and after the hearing. The Legislature is not bound by settlements or jury verdicts when considering a claim bill, the passage of which is an act of legislative grace.

³² See Settlement Agreement between the claimant and Robert A. Hardwick, in his official capacity as the Sheriff of St. Johns County, Florida (Nov. 30, 2023).

³³ *Id.*

³⁴ See General Release and Medical Liens and Debt Responsibility (Dec. 6, 2023).

³⁵ See Order of Dismissal filed in the Circuit Court of the 7th Judicial Circuit In and for St. Johns County, Florida, Case No. 2020-CA-387 (Jan. 17, 2024).

Under the legal doctrine of *respondeat superior*, the Sheriff of St. Johns County is responsible for the wrongful acts of his employees when the acts are committed within the scope of their employment. Being that Deputy Hetzler was operating a deputy vehicle in the course and scope of his employment at the time of the accident, and because the vehicle was owned by the St. Johns County Sheriff's Office, the Sheriff is responsible for negligence committed by Deputy Hetzler.

Negligence

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages – actual harm.³⁶

The plaintiff bears the burden of proving, by the greater weight of the evidence, that the defendant's action was a breach of the duty that the defendant owed to the plaintiff. The "greater weight of the evidence" burden of proof means the more persuasive and convincing force and effect of the entire evidence in the case.³⁷

In this case, the Sheriff's liability depends on whether Deputy Hetzler negligently operated his deputy vehicle and whether that negligent operation caused Ms. Perez's resulting injuries.

Duty

A legal duty may arise from statutes or regulations; common law interpretations of statutes or regulations; other common law precedent; and the general facts of the case.³⁸

In this case, Deputy Hetzler was responsible for exercising the duty of reasonable care to others while driving his deputy vehicle. Although Deputy Hetzler was driving an authorized emergency vehicle³⁹ en route to a call for service, neither his emergency lights nor siren were activated at the time of the

³⁶ Williams v. Davis, 974 So.2d 1052, at 1056-1057 (Fla. 2007). See also Fla. Std. Jury Instr. (Civ.) 401.4, *Negligence*.

³⁷ Fla. Std. Jury Instr. (Civ.) 401.3, *Greater Weight of the Evidence*.

³⁸ McClain v. Florida Power Corp., 593 So.2d 500, 503 n. 2 (Fla. 1992).

³⁹ See s. 316.003(1), F.S.

collision. Therefore, section 316.126(1)(a), of the Florida Statutes,⁴⁰ did not apply, and Deputy Hetzler had a reasonable duty to yield the right of way to Ms. Perez, pursuant to s. 316.122, of the Florida Statutes.

Section 316.122, of the Florida Statutes, provides that the driver of a vehicle intending to turn left within an intersection or into an alley, private road, or driveway must yield the right-of-way to any vehicle approaching from the opposite direction, or vehicles lawfully passing on the left of the turning vehicle, which is within the intersection or so close to the intersection as to constitute an immediate hazard. A violation of section 316.122, of the Florida Statutes, is a noncriminal traffic infraction, punishable as a moving violation.⁴¹

Breach

The undersigned finds that Deputy Hetzler breached the duty of care owed to Ms. Perez.

As stated above, Deputy Hetzler was traveling west in the left turn lane of State Road 16 at the intersection of Harvest Lane. He did not have his emergency lights or siren activated. As Ms. Perez reached the intersection on State Road 16 and Harvest Lane traveling east, Deputy Hetzler negligently entered the intersection and turned left colliding with Ms. Perez. Witnesses indicated that State Road 16 eastbound traffic had a steady green signal when the collision occurred.

Causation

Ms. Perez's injuries were the natural and direct consequence of Deputy Hetzler's breach of his duty. Deputy Hetzler was acting within the scope of his employment at the time of the collision. The St. Johns County Sheriff, as the employer, is liable for damages caused by its employee's negligent act.

Damages

A plaintiff's damages are computed by adding these elements together:

⁴⁰ Section 316.126(1)(a), F.S., provides that upon the immediate approach of an authorized emergency vehicle, while en route to meet an existing emergency, the driver of every other vehicle must, when such emergency vehicle is giving audible signals by siren, exhaust whistle, or other adequate device, or visible signals by the use of displayed blue or red lights, yield the right-of-way to the emergency vehicle.

⁴¹ See ch. 318, F.S.; *see also* s. 318.14(1), F.S. (providing that any person cited for a violation of ch. 316, F.S., is charged with a noncriminal infraction and must be cited for such an infraction and cited to appear before an official).

Economic Damages

- Past medical expenses
- Future medical expenses

Non-Economic Damages

- Past pain and suffering and loss of enjoyment of life
- Future pain and suffering and loss of enjoyment of life

The claimant's attorney provided financial data that projected Ms. Perez's total past medical charges and liens to be more than \$4,000,000,⁴² and presented evidence that her total future medical expenses will be approximately \$2,900,000 to \$3,500,000.⁴³

No evidence was presented or available indicating the damages authorized by the settlement agreement are excessive or inappropriate.

ATTORNEY FEES:

Attorney fees may not exceed 25 percent of the amount awarded.⁴⁴ The claimant's attorney has agreed to limit fees to 25 percent of any amount awarded by the Legislature. Additionally, lobbying fees will be limited to 7 percent of any amount awarded by the Legislature.

RECOMMENDATIONS:

Although the settlement agreement indicates the agreed upon amount of \$6,500,000, which includes the \$200,000, paid by the Sheriff's self-insuring risk pool, SB 10 currently authorizes and directs the St. Johns County Sheriff's Office to appropriate from funds of the county not otherwise encumbered and to pay Ms. Perez \$15,000,000, or an alternative amount not to exceed \$15,000,000 in the event the parties reach an agreement. Therefore, the undersigned recommends amending the language in the bill to reflect the agreement that was reached by the parties.

⁴² See Summary of Claim (Economic Damages); see *a/so* Julia Perez Medical Bill Summary; Julia Perez Summary of Liens and Balances; and Perez Special Masters Claim Bill Hearing (Jan. 12, 2024) at 1:37:00-1:42:00.

⁴³ See Perez Special Masters Claim Bill Hearing (Jan. 12, 2024) at 1:42:00-1:43:43; And see *a/so* Julia Perez Life Care Plan, Spruance (Jan. 24, 2022). See Summary of Claim (Economic Damages), where claimant's attorney indicated that Ms. Perez's future medical needs would range from \$3,318,811.56 to \$4,077,923.57. During the claim bill hearing, the claimant's attorney indicated that these numbers factor in the potential for dialysis treatment or a kidney transplant, however, Ms. Perez is not currently receiving kidney treatment due to her numbers being in the "borderline" range. Thus, the undersigned used the Life Care Plan by Gil Spruance, dated January 24, 2022, to calculate an approximate range of Ms. Perez's future medical needs. In the event that Ms. Perez's kidney function deteriorates again, her estimated costs could increase.

⁴⁴ See s. 768.28(8), F.S.

Based on the foregoing, the undersigned recommends that Senate Bill 10 be reported FAVORABLY.

Respectfully submitted,

/s/Carter McMillan
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary

The committee substitute reduces the \$15,000,000 under the bill to \$6,300,000. The committee substitute also limits the “whereas clauses” to providing basic information about the accident resulting in the injuries to the claimant.