



## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
3/14/25	SM	Favorable
3/19/25	JU	Favorable
3/24/25	CA	Favorable
4/1/25	RC	Favorable

March 14, 2025

The Honorable Ben Albritton  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **SB 14** – Senator Jones  
**HB 6519** – Representative Porras  
Relief of Estate of Peniel Janvier by the City of Miami Beach

### SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM BILL FOR \$1,700,000 IN ACCORDANCE WITH A CONSENT JUDGMENT RENDERED BY THE CIRCUIT COURT. THE ESTATE OF PENIEL JANVIER SEEKS DAMAGES FROM THE CITY OF MIAMI BEACH FOR WRONGFUL DEATH CAUSED BY THE NEGLIGENT OPERATION AND SUPERVISION OF A CITY-OWNED SWIMMING POOL.

#### FINDINGS OF FACT:

##### **The Incident**

On August 16, 2022, Peniel Janvier, a 28-year-old youth camp counselor, was attending an end-of-summer celebration for the youth camp at the Scott Rakow Youth Center Pool, owned and operated by the City of Miami Beach.<sup>1</sup> Although off duty, he chose to attend out of his dedication to the children he mentored.

Surveillance footage shows that a child playfully pushed Janvier into the pool, continuing an earlier pattern of lighthearted pushing in the shallow end. However, this time, Janvier landed in water too deep for him to stand, causing him

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<sup>1</sup> Claimant's Ex. 1, Surveillance Video; Claimant's Ex. 2, Investigative Reports; Claimant's Ex. 5, Discovery; Claimant's Ex. 6, Pleadings.

to struggle for several minutes before becoming fully submerged. He remained underwater for approximately ten minutes.<sup>2</sup> Investigations by the City of Miami Beach and the police department determined that Janvier's death was not the result of foul play.<sup>3</sup>

An internal review by the City of Miami Beach found that Lifeguard Adrian Calderon violated the City's no-phone policy and failed to observe Janvier drowning.<sup>4</sup> For over ten minutes, Calderon remained distracted by his cell phone, failing to scan the pool as Janvier struggled and other children attempted to rescue him.<sup>5</sup>

No supervisor was present, and, contrary to industry standards, only two of the four designated lifeguard chairs were staffed, despite the presence of numerous weak swimmers.<sup>6</sup> Additionally, the City failed to implement proper zone surveillance assignments, which are standard safety practices for public pools.<sup>7</sup>

Janvier was eventually pulled from the water, but he was unresponsive by the time he was rescued.<sup>8</sup>

Emergency responders performed CPR before transporting Janvier to Mount Sinai Hospital, where he was placed on ventilator support.<sup>9</sup>

Janvier was declared brain dead on August 23, 2022, and removed from life support on August 26, 2022.<sup>10</sup>

### **Medical Findings**

The Medical Examiner ruled the cause of death as drowning.<sup>11</sup>

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<sup>2</sup> Claimant's Ex. 1, Surveillance Video; Claimant's Ex. 2, Investigative Reports.

<sup>3</sup> Claimant's Ex. 2, Investigative Reports.

<sup>4</sup> January 29, 2025, Special Master Hearing; Claimant's Ex. 5, Discovery: RFP Responsive Docs.

<sup>5</sup> Claimant's Ex. 1, Surveillance Video; Claimant's Ex. 5, Discovery: KG Incident Report Updated.

<sup>6</sup> Claimant's Ex. 1, Surveillance Video; Claimant's Ex. 5, Discovery.

<sup>7</sup> January 29, 2025, Special Master Hearing, Exhibits Slides 24 through 29, and Statement of Douglas McCarron, Esq.; American Red Cross, *Lifeguarding Manual*, available at [https://www.redcross.org/content/dam/redcross/atg/PDFs/Take\\_a\\_Class/Lifeguarding\\_PM\\_sample\\_chapter-2012.pdf](https://www.redcross.org/content/dam/redcross/atg/PDFs/Take_a_Class/Lifeguarding_PM_sample_chapter-2012.pdf) (last visited Mar. 13, 2025)

<sup>8</sup> Claimant's Ex. 5, Discovery: Case Report 2022-8851.

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

<sup>10</sup> *Id.*

<sup>11</sup> Claimant's Ex. 11, Medical Examiner's Report.

Autopsy reports confirm cerebral edema, hypoxia, and extensive lung congestion, consistent with prolonged oxygen deprivation.<sup>12</sup>

Janvier had no pre-existing medical conditions that contributed to his death.<sup>13</sup>

### **Impact on the Family**

The Janvier family has endured extreme emotional suffering following Janvier's tragic and preventable death.<sup>14</sup> The financial and psychological toll of this tragedy has resulted in counseling needs and long-term hardship for the surviving family members.

His parents, Nicole Mathurin and Lucmanne Janvier, have expressed profound grief, struggling with the permanent loss of their son.<sup>15</sup>

Janvier was known for his kindness, mentorship, and contributions to the community, making his absence even more devastating to those who knew him.<sup>16</sup>

The loss has caused significant psychological and emotional distress to his immediate family, leading to profound lifestyle changes and difficulties in coping with their grief. His mother has undergone extensive counseling, yet her condition has shown no improvement. His father credibly testified to experiencing permanent, daily anguish, underscoring the enduring emotional toll of Janvier's death.<sup>17</sup>

### **LITIGATION HISTORY:**

The Estate of Peniel Janvier sued the City of Miami Beach on March 22, 2023, in the Eleventh Circuit Court in and for Miami-Dade County, alleging wrongful death due to negligence.

On June 11, 2024, the parties settled for \$2,000,000, and the court rendered a consent judgment incorporating the terms of the agreement.

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<sup>12</sup> Claimant's Ex. 11, Medical Examiner's Report.

<sup>13</sup> Claimant's Ex. 11, Medical Examiner's Report.

<sup>14</sup> Testimonies of Nicole Mathurin and Daniel and Lucmanne Janvier, January 29, 2025, Special Master Hearing.

<sup>15</sup> *Id.*

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

<sup>17</sup> *Id.*

Consistent with section 768.28, of the Florida Statutes, \$300,000 has been paid, and the remaining \$1.7 million is contingent upon legislative approval. The City has reserved \$1.7 million to pay this claim.<sup>18</sup>

CONCLUSIONS OF LAW:

A *de novo* hearing was held as the Legislature is not bound by settlements or jury verdicts when considering a claim bill, passage of which is an act of legislative grace.

Section 768.28, of the Florida Statutes, waives sovereign immunity for tort liability up to \$200,000 per person and \$300,000 for all claims or judgments arising out of the same incident. Sums exceeding this amount are payable by the State and its agencies or subdivisions by further act of the Legislature.

In this matter, the Estate of Peniel Janvier alleges that the City of Miami Beach was negligent in the operation and supervision of the Scott Rakow Youth Center Pool, resulting in the wrongful death of Peniel Janvier. The City of Miami Beach, as the entity responsible for pool operations and staffing, is liable for the negligent actions of its employees who failed to monitor the pool and respond in a timely manner.

After completing its investigation, multiple reports confirmed that lifeguard Adrian Calderon was distracted by his phone and failed to intervene as Janvier struggled in the water. Surveillance footage and eyewitness testimony established that Janvier was visibly in distress for several minutes before assistance was provided. The City of Miami Beach admitted liability and agreed to a judgment in favor of the Estate of Peniel Janvier for the sum of \$2 million.

No evidence suggests that Janvier contributed to his drowning or failed to exercise due care.

**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

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<sup>18</sup> January 29, 2025, Special Master Hearing, Statement of Henry Hunnefeld, Esq.

foreseeably and substantially the cause of the resulting damages; and (4) damages – actual harm.<sup>19</sup>

### *Duty*

A municipality operating a public swimming pool has a duty to operate the facility safely.<sup>20</sup> “Whenever one undertakes to provide a service to others, whether one does so gratuitously or by contract, the individual who undertakes to provide the service—i.e., the “undertaker”—thereby assumes a duty to act carefully and to not put others at an undue risk of harm.”<sup>21</sup>

By operating and staffing the Scott Rakow Youth Center Pool, the City of Miami Beach assumed a duty of care to provide properly trained and attentive lifeguards to prevent foreseeable harm.

### *Breach*

The City of Miami Beach breached this duty in multiple ways:

- Lifeguard Adrian Calderon failed to maintain proper supervision, as confirmed by surveillance footage and the City’s internal investigation. Calderon was distracted by his cell phone, violating the City’s no-phone policy and standard safety protocols.<sup>22</sup>
- The City of Miami Beach failed to implement basic lifeguard surveillance protocols, leading to inadequate supervision of swimmers. The absence of properly assigned lifeguard zones contributed to the failure to prevent this drowning.<sup>23</sup>
- The City failed to enforce safety policies and adequately train its staff, further increasing the risk of harm.<sup>24</sup>

These failures directly compromised swimmer safety, allowing Janvier’s distress to go unnoticed for an extended period.

### *Causation*

The City’s failure to properly train and enforce lifeguard safety policies directly resulted in Janvier’s prolonged struggle and

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<sup>19</sup> *Williams v. Davis*, 974 So.2d 1052, at 1056–1057 (Fla. 2007).

<sup>20</sup> *Florida Dept. of Nat. Res. v. Garcia*, 753 So. 2d 72, 75 (Fla. 2000).

<sup>21</sup> *Clay Elec. Co-op., Inc. v. Johnson*, 873 So. 2d 1182, 1186 (Fla. 2003).

<sup>22</sup> Claimant’s Ex. 1, Surveillance Video; January 29, 2025, Special Master Hearing Exhibits Slides 5 and 21.

<sup>23</sup> January 29, 2025, Special Master Hearing, Exhibits Slides 24 through 29, and Statement of Douglas McCarron, Esq.

<sup>24</sup> *Id.*

eventual drowning. Florida courts recognize that liability arises when inaction causes preventable harm: “Tort law provides a remedy for a person who suffers an injury caused by the action or failure to act of another.”<sup>25</sup>

The City’s inaction was the foreseeable and direct cause of his death.<sup>26</sup>

#### *Damages*

As a direct result of the City’s negligence, Janvier suffered fatal drowning, leading to substantial financial and emotional loss for his surviving family and estate. The Standard Jury Instructions for wrongful death damages provide guidance for compensating non-economic losses, including pain and suffering and lost support and services.<sup>27</sup>

Each parent of an adult child in a wrongful death case is entitled to recover for mental pain and suffering if there are no other survivors.<sup>28</sup> Since Janvier was unmarried with no children, his parents are entitled to recover these damages.

The requested \$1.7 million settlement is justified based on the severity of the incident and comparable wrongful death verdicts.<sup>29</sup>

#### ATTORNEY FEES:

Under Florida Statutes, attorney fees for claim bills are capped at 25% of the total recovery amount.

In this case, attorney fees will be limited to \$425,000, which is 25% of the \$1,700,000 requested amount.

Counsel for the claimant has certified, through affidavit, compliance with this statutory limit.<sup>30</sup>

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<sup>25</sup> *McKinley v. Gualtieri*, 338 So. 3d 429, 433–434 (Fla. 2d DCA 2022).

<sup>26</sup> Claimant’s Ex. 5, Discovery: Case Report 2022-8851.

<sup>27</sup> Fla. Std. Jury Instr. (Civ.) 502.2(f) and (g).

<sup>28</sup> Section 768.21(4), F.S.

<sup>29</sup> *Nagib v. CTF Orlando Corp.*, *Verdict Form*, Case No. 2002-CA-7395 (Fla. 9th Jud. Cir. Ct. Mar. 9, 2004) (Jury verdict of \$5.52 million); *McPherson v. United States*, *Verdict Form*, Case No. 1:08-cv-23108 (S.D. Fla. Sept. 30, 2011) (Jury verdict of \$4.35 million); *Bogle v. Orange County*, *Verdict Form*, Case No. 2015-CA-002821-O (Fla. 9th Jud. Cir. Ct. Apr. 7, 2022) (Jury verdict of \$5.03 million); *Parker v. State of Florida Dep’t of Transp.*, *Verdict Form*, Case No. 2020-CA-002294 (Fla. 2d Jud. Cir. Ct. June 23, 2022) (Jury verdict of \$6.25 million); *Monk v. Burlington Cnty. Special Servs. Sch. Dist.*, *Verdict Form*, Case No. BUR-L-003869-02 (N.J. Super. Ct. Law Div. Jan. 2006) (Jury verdict of \$1.8 million).

<sup>30</sup> *Affidavit of Claimant’s Counsel to Senate and House Special Masters*, January 23, 2025.

RECOMMENDATIONS:

Considering the clear evidence of negligence, comparable jury awards, and the City's agreement to the settlement, I find that the City of Miami Beach was negligent, and the amount sought by claimants on behalf of the Estate of Peniel Janvier is reasonable.

I recommend SB 14 FAVORABLY.

Respectfully submitted,

Alexander Brick  
Senate Special Master

cc: Secretary of the Senate