



## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

**Location**  
409 The Capitol

**Mailing Address**  
404 South Monroe Street  
Tallahassee, Florida 32399-1100  
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DATE	COMM	ACTION
3/14/25	SM	Favorable
3/19/25	JU	Fav/CS
4/9/25	AEG	Favorable
	AP	

March 14, 2025

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

Re: **CS/SB 26** – Committee on Judiciary and Senator Gruters  
**HB 6513** – Representative Busatta  
Relief of Kristen and Lia McIntosh by the Department of Agriculture and  
Consumer Services

### SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM BILL FOR \$2.252 MILLION IN ACCORDANCE WITH A CONSENT JUDGMENT RENDERED BY THE CIRCUIT COURT. KRISTEN AND LIA MCINTOSH SEEK DAMAGES FROM GENERAL REVENUE FUNDS FOR PERSONAL INJURIES CAUSED BY THE NEGLIGENT OPERATION OF A VEHICLE DRIVEN BY AN EMPLOYEE OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.

#### FINDINGS OF FACT:

##### **Accident and Investigation**

On February 12, 2022, Ronald Thornton was driving his 2010 Ford F-150 on I-95 South in Nassau County.<sup>1</sup> Ronald Thornton's wife Elizabeth Thornton was seated in the front passenger seat, and their daughters, Kristen and Lia McIntosh (Claimants), who were 17 and 13 years old at the time, respectively, were in the rear seats.<sup>2</sup> Lia was sitting on

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<sup>1</sup> Claimants' Ex. Deposition of Ronald Thornton at 23-24 (Sept. 15, 2023).

<sup>2</sup> *Id.* at 24.

the left behind Ronald Thornton and Kristen was on the right behind Elizabeth Thornton.<sup>3</sup> Both were wearing seatbelts.<sup>4</sup>

At approximately 8:33 p.m., James Michael McWhorter, a law enforcement officer with the Department of Agriculture and Consumer Services' (DACS) Office of Agricultural Law Enforcement (OALE), was driving his patrol vehicle from an OALE inspection station on the northbound side of I-95 to an inspection station on the southbound side.<sup>5</sup> The OALE officer drove over the paved median and crossed the southbound lanes directly in the path of Ronald Thornton's vehicle.<sup>6</sup> The front of Ronald Thornton's vehicle collided with the passenger side of the officer's vehicle.<sup>7</sup> The officer passed away at the scene.<sup>8</sup> All four occupants of Ronald Thornton's vehicle were transported by ambulance to Shands Hospital (UF Health) in Jacksonville.<sup>9</sup> Kristen and Lia's injuries are discussed in more detail below.

Following an investigation, the Florida Highway Patrol (FHP) determined that neither driver was under the influence of drugs or alcohol at the time of the accident.<sup>10</sup> FHP concluded that the OALE officer violated section 316.1925(1), of the Florida Statutes, (careless driving), and section 316.614(4)(b), of the Florida Statutes, (Florida Safety Belt Law) and was responsible for his own untimely death and the injuries to Kristen and Lia McIntosh.<sup>11</sup>

#### **Physical Injuries: Kristen McIntosh**

The responding ambulance transported Kristen to UF Health in Jacksonville,<sup>12</sup> where she was treated for injuries, including:

- Concussion;
- Cervical ligamentous sprain;
- Small intestine injury;
- Unstable compression and burst fractures in her lumbar spine; and

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<sup>3</sup> Claimants' Ex. 43, Deposition of Ronald Thornton (Sept. 15, 2023).

<sup>4</sup> Claimants' Ex. 1, Florida Highway Patrol (FHP) Traffic Homicide Report, 17 (Sept. 22, 2022).

<sup>5</sup> *Id.* at 4, 13.

<sup>6</sup> *Id.* at 13.

<sup>7</sup> *Id.* at 13, 31.

<sup>8</sup> *Id.* at 33.

<sup>9</sup> *Id.* at 11.

<sup>10</sup> *Id.* at 8.

<sup>11</sup> *Id.* at 33.

<sup>12</sup> See Claimants' Ex. 27, Nassau County Fire Rescue Medical Records for Kristen McIntosh at 1.

- Dislocation of facet joints in her thoracic-lumbar spine.<sup>13</sup>

Kristen underwent emergency lumbar spinal fusion surgery and had hardware inserted into her spine.<sup>14</sup> She remained in the hospital until February 16, 2022.<sup>15</sup> Thereafter she received follow-up care at First Coast Medical Center from September 2022 through November 2022 where she was treated for her ongoing pain and received trigger point injections.<sup>16</sup>

#### **Medical Expenses: Kristen McIntosh**

Kristen has been billed \$376,495 for medical expenses related to the accident,<sup>17</sup> with her insurance providing benefits of \$143,724.<sup>18</sup> Kristen was insured under their family automobile policy through State Farm, which provided uninsured motorist coverage with limits of \$50,000 per person or \$100,000 per accident. State Farm tendered the \$100,000 per accident limit to the family. This was distributed evenly between the four injured family members. Of the total amount sought and agreed to by Kristen and DACS, only \$1,000 has been paid to Kristen.<sup>19</sup> DACS paid the statutory cap of \$300,000 to Ronald and Elizabeth Thornton, who each received \$150,000.<sup>20</sup>

In November 2023, Craig Lichtblau, M.D., conducted a comprehensive rehabilitation evaluation of Kristen McIntosh.<sup>21</sup> Based on this evaluation, he determined that Kristen's injuries, including lumbar myofascial pain syndrome and an acute chance fracture, would result in chronic pain; when she experiences a flare up of that pain, she will require short courses in an outpatient physical medication program, trigger point injections, and medications.<sup>22</sup> He explained she will likely need to see a neurosurgeon once a year for five years, an orthopedic surgeon once a year for five years, and

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<sup>13</sup> Claimants' Ex. 28, UF Health Jacksonville Medical Records for Kristen McIntosh.

<sup>14</sup> *Id.*

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

<sup>16</sup> Claimants' Ex. 30, First Coast Medical Care medical records for Kristen McIntosh, 9, 18, 37.

<sup>17</sup> Claimants' Exs. 33-38, Kristen's Medical Bills; Claimants' Ex. 39, BlueCross BlueShield of Illinois Lien at 4.

<sup>18</sup> Claimants' Ex. 39, BlueCross BlueShield of Illinois Lien.

<sup>19</sup> Claimants' Attorney's Affidavit, Attachment A.

<sup>20</sup> Claimants' Ex. 48, Mediation Settlement Agreement at 1-2.

<sup>21</sup> Claimants' Ex. 41, Preliminary Comprehensive Rehabilitation Evaluation of Kristen McIntosh (Craig H. Lichtblau, MD) (Nov. 18, 2023).

<sup>22</sup> Claimants' Ex. 45, Deposition Transcript of Craig H. Lichtblau, MD, 17, 18, 20 (Dec. 17, 2024).

a physical therapist at least twice a year.<sup>23</sup> She will also require an MRI scan every five to ten years and will need treatment from a physical medicine and rehabilitation physician or chronic pain specialist.<sup>24</sup> Dr. Lichtblau opined that Kristen will eventually develop adjacent segment disease that will require future surgical intervention and post-operative therapy.<sup>25</sup> Due to her injuries, Dr. Lichtblau determined that Kristen had an eight percent partial impairment of her whole person (one percent impairment for a cervical soft tissue injury and seven percent for posterior fusion, secondary to a chance fracture).<sup>26</sup>

Based on a life expectancy of 61.6 more years, Dr. Lichtblau estimated Kristen's future medical expense will be between \$278,122 (best-case scenario) and \$492,627 (worst-case scenario).<sup>27</sup> Below is a breakdown of the estimated medical expenses under the worst-case scenario:

<b>Kristen's Estimated Future Medical Expenses<sup>28</sup></b>	<b>Best-Case Scenario</b>	<b>Worst-Case Scenario</b>
Neurosurgeon	\$1,000	\$3,000
Orthopedic Surgeon	\$1,000	\$2,500
Physiatrist	\$34,466	\$66,498
MRI Scan Lumbar	\$3,080	\$6,160
Physical Therapy Evaluation	\$14,784	\$14,784
Physical Therapy Treatments	\$118,272	\$118,272
Trigger Point Injections	\$13,860	\$138,600
Epidural Steroid Injections	\$18,000	\$27,000
Microdiscectomy and Fusion	\$67,140	\$107,692
Post-op Physical Therapy Eval.	\$120	\$120
Post-op Protocol	\$6,400	\$8,000
<b>TOTAL</b>	<b>\$278,122</b>	<b>\$492,627</b>

<sup>23</sup> *Id.* at 17-18; Claimants' Ex. 41, Preliminary Comprehensive Rehabilitation Evaluation of Kristen McIntosh (Craig H. Lichtblau, MD).

<sup>24</sup> Claimants' Ex. 45, Deposition Transcript of Craig H. Lichtblau, MD, 17 (Dec. 17, 2024).

<sup>25</sup> *Id.* at 19.

<sup>26</sup> Claimants' Ex. 41, Preliminary Comprehensive Rehabilitation Evaluation of Kristen McIntosh (Craig H. Lichtblau, MD) at 15-17. This does not include any impairment for depression (as a component of chronic pain), which the doctor opined exists.

<sup>27</sup> Claimants' Ex. 41, Preliminary Comprehensive Rehabilitation Evaluation of Kristen McIntosh (Craig H. Lichtblau, MD) at 24-25; Claimants' Ex. 42, Amended Comprehensive Rehabilitation Evaluation of Kristen McIntosh, 8-11 (Dec. 6, 2024); Claimants' Ex. 45, Deposition Transcript of Craig H. Lichtblau, MD, at 17-19; Claimants' Ex. 58, Opening Statement Presentation, 51-52.

<sup>28</sup> Claimants' Ex. 58, Opening Statement Presentation at 50-51; Claimants' Ex. 42, Amended Comprehensive Evaluation of Kristen McIntosh (Craig H. Lichtblau, MD) at 8-9.

**Non-Economic Damages: Kristen McIntosh**

During a hearing held before the Senate and House Special Masters, Ronald and Elizabeth Thornton testified about how the accident impacted their daughters' lives. They testified that Kristen and Lia were bedridden for a period of time following the accident and needed assistance with everyday tasks such as bathing, eating, and getting around the house. They also needed help putting on and removing the back braces they were required to wear for four months after the accident. Elizabeth Thornton, who was herself injured from the accident, took six months off work to care for her daughters.

Ronald Thornton testified about the mental impact of the accident as well. He explained that Kristen used to be outgoing and happy before the accident, but her limited ability to do physical activity has left her depressed.

During the hearing, Kristen testified that before the accident she wanted to become a combat nurse in the military after graduating high school. However, she learned from an army recruiter that the hardware in her back and physical limitations would prevent her from being recruited. Kristen testified that she then decided to pursue a nursing career outside the military, but she soon discovered that she would be unable to meet the physical demands of such a position, which would require standing for long periods of time and physically moving patients and medical supplies.

Kristen testified that future injuries or falls could cause further damage to her back or paralyze her. She avoids strenuous activity and lifting heavy objects, and she can no longer enjoy her hobbies for fear of paralysis. Prior to sustaining the injuries in the car accident, Kristen enjoyed driving her dirt bike, riding rollercoasters, and playing volleyball and flag football. She is no longer able to participate in these activities due to her ongoing pain and fear of exacerbating her injuries. She testified that this fear and the knowledge that she may require more surgery in the future has caused her to suffer from anxiety.

Kristen testified that she still lives with constant neck and back pain, rating her pain as 10 out of 10, and numbness in her right hip. She testified that she has not had a pain-free day since the accident. In his report on his evaluation of Kristen,

Dr. Lichtblau opined that Kristen is going to suffer from acute, intermittent exacerbations of chronic pain; he concluded that she will have good days, bad days, and missed days of work.<sup>29</sup>

**Physical Injuries: Lia McIntosh**

Like Kristen, the responding ambulance transported Lia to Shands Hospital in Jacksonville,<sup>30</sup> where she was treated for injuries, including:

- A broken sternum;
- Compressed vertebrae in her lower (lumbar) spine;
- An intestinal tear (i.e., a serosal and partial thickness mesenteric tear);
- A collapsed right lung.<sup>31</sup>

Lia was taken to the operating room for a diagnostic laparoscopy and to repair the tear in her intestine.<sup>32</sup> She was discharged from the hospital on February 16, 2022.<sup>33</sup> Thereafter she received follow-up care for ongoing knee pain and headaches at Baptist Health.<sup>34</sup> An x-ray in May 2022 revealed she had a small effusion (excess fluid) in her right knee, and she later received a cortisone injection.<sup>35</sup> She also received treatment at Jacksonville Orthopedic Institute for her knee pain.<sup>36</sup>

In November 2023, Craig Lichtblau, M.D., conducted a comprehensive rehabilitation evaluation of Lia. Dr. Lichtblau reported that Lia was suffering from intermittent low back and right knee pain and constant abdominal pain where the surgical incision was made.<sup>37</sup> Dr. Lichtblau opined that, like Kristen, Lia would have to live with chronic pain that will require short courses in an outpatient physical medicine program, trigger point injections, and medications for flareups

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<sup>29</sup> Claimants' Ex. 41, Preliminary Comprehensive Rehabilitation Evaluation of Kristen McIntosh (Craig H. Lichtblau, MD) (Nov. 18, 2023).

<sup>30</sup> See Claimants' Ex. 13, Medical Records: Lia McIntosh (Nassau County Fire Rescue) at 1.

<sup>31</sup> Claimants' Ex. 14, Medical Records: Lia McIntosh (UF Health) at 5.

<sup>32</sup> *Id.* at 58-59.

<sup>33</sup> See generally *id.*

<sup>34</sup> Claimants' Ex. 16, Baptist Health Medical Records for Lia McIntosh at 5.

<sup>35</sup> *Id.* at 5, 37.

<sup>36</sup> Claimants' Ex. 17, Jacksonville Orthopedic Institute Medical Records for Lia McIntosh; Claimants' Ex. 18, Jacksonville Orthopedic Institute Rehabilitation.

<sup>37</sup> Claimants' Ex. 40, Comprehensive Rehabilitation Evaluation of Lia McIntosh (Craig H. Lichtblau, MD), 1 (Nov. 18, 2023).

of her pain.<sup>38</sup> He determined that Lia's future treatment would include the need to see a physical therapist twice a year and a chronic pain specialist, whether it is a physiatrist, a neurologist, or an internist, at least one to two times a year.<sup>39</sup> She will also need an MRI of her lumbar spine every five to ten years.<sup>40</sup> Dr. Lichtblau opined that Lia has an eight percent permanent partial impairment of her whole person.<sup>41</sup>

**Medical Expenses: Lia McIntosh**

Lia has been billed \$140,659 for medical expenses related to the accident,<sup>42</sup> with her insurance providing benefits of \$70,555.<sup>43</sup>

Lia was insured under Mr. Thornton's automobile policy through State Farm, which provided uninsured motorist coverage with limits of \$50,000 per person or \$100,000 per accident. As noted above, State Farm tendered the \$100,000 per accident limit to the family, which was distributed evenly between the four injured family members. Of the total amount sought and agreed to by Lia McIntosh and DACS, DACS has paid a total of \$1,000 to Lia for this claim (\$2,000 total, including the payment to Kristen).<sup>44</sup> DACS paid the statutory cap of \$300,000 to Ronald and Elizabeth Thornton, who each received \$150,000.<sup>45</sup>

Dr. Lichtblau estimated that Lia's future medical requirements will cost between approximately \$191,427 (best case scenario) and \$283,427 (worst case scenario) based on a life expectancy of 65.5 more years.<sup>46</sup> This does not include the cost of surgery to remove abdominal adhesions that Lia likely suffered from her laparotomy surgery to repair her intestinal injuries.<sup>47</sup> After laparotomy, almost 95 percent of patients

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<sup>38</sup> *Id.* at 21-24; Claimants' Ex. 45, Deposition Transcript of Craig H. Lichtblau, MD, at 28.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Claimants' Ex. 40, Comprehensive Rehabilitation Evaluation of Lia McIntosh (Craig H. Lichtblau, MD) at 13-14; Claimants' Ex. 45, Deposition Transcript of Craig H. Lichtblau, MD, at 28.

<sup>42</sup> Claimants' Exs. 19-25, Lia's Medical Bills; Claimants' Ex. 26, BlueCross BlueShield of Illinois Lien at 4. The lien indicates that Lia was billed \$265,147.22; however, Claimants' attorney advised the correct figure is \$140,659. See Claimants' Ex. 58, Opening Statement Presentation at 28.

<sup>43</sup> Claimants' Attorney's Affidavit, Attachment A.

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

<sup>45</sup> Claimants' Ex. 48, Mediation Settlement Agreement at 1-2.

<sup>46</sup> Claimants' Ex. 40, Comprehensive Rehabilitation Evaluation of Lia McIntosh (Craig H. Lichtblau, MD) at 21-24; Claimants' Ex. 58, Opening Statement Presentation at 30-31.

<sup>47</sup> *Id.*

develop abdominal adhesions.<sup>48</sup> Adhesions are internal “scars” that form after trauma through complex processes, involving injured tissues and the peritoneum.<sup>49</sup> Dr. Lichtblau opined that Lia was at a much greater risk than the general population to develop such adhesions and bowel obstruction that will require treatment and surgery.<sup>50</sup>

Below is a breakdown of the estimated medical expenses under the worst-case scenario:

<b>Lia's Estimated Future Medical Expenses<sup>51</sup></b>	<b>Best-Case Scenario</b>	<b>Worst-Case Scenario</b>
Orthopedic Surgeon	\$200	\$500
Physiatrist	\$36,647	\$36,647
MRI Scan Lumbar	\$3,275	\$6,550
Physical Therapy Evaluation	\$15,720	\$15,720
Physical Therapy Treatments	\$125,760	\$125,760
Trigger Point Injections	\$9,825	\$98,250
Surgery for removal of abdominal adhesions	Undetermined	Undetermined
<b>TOTAL</b>	<b>\$191,427</b>	<b>\$283,427</b>

Dr. Lichtblau opined that Lia is too young to determine whether she will experience any physical deficits in her ability to participate in gainful employment in the competitive open labor market.<sup>52</sup>

### **Non-Economic Damages: Lia McIntosh**

During a hearing held before the Senate and House Special Masters, Ronald and Elizabeth Thornton testified about how the accident impacted their daughters' lives. As discussed above, they testified that Kristen and Lia were bedridden for a period of time following the accident and needed assistance with everyday tasks such as bathing, eating, and getting around the house. They also needed help putting on and removing the back braces they were required to wear for four months after the accident.

<sup>48</sup> Claimants' Ex. 40, Comprehensive Rehabilitation Evaluation of Lia McIntosh (Craig H. Lichtblau, MD) at 5.

<sup>49</sup> *Id.*

<sup>50</sup> Claimants' Ex. 45, Deposition Transcript of Craig H. Lichtblau, MD, at 31.

<sup>51</sup> Claimants' Ex. 40, Comprehensive Rehabilitation Evaluation of Lia McIntosh (Craig H. Lichtblau, MD) at 21-24; Claimants' Ex. 58, Opening Statement Presentation at 30-31.

<sup>52</sup> Claimants' Ex. 40, Comprehensive Rehabilitation Evaluation of Lia McIntosh (Craig H. Lichtblau, MD) at 11.

Ronald Thornton testified that Lia now suffers from nightmares and rarely leaves the house. He explained that, for a while, she refused to ride in cars, except to go to doctors' appointments, and even now she is always hyper vigilante for the presence of other vehicles on the road.

Lia testified that, prior to sustaining the injuries in the car accident, she attended school and enjoyed riding her dirt bike and swimming but is no longer able to enjoy these activities and has attended school virtually (rather than in-person) since the accident.

Since the accident, Lia occasionally has difficulty falling and staying asleep, often resulting in feeling tired in the afternoon.<sup>53</sup> Her back pain has caused her to feel depressed about her situation.<sup>54</sup> Lia also testified at a hearing before the Senate and House Special Masters that she still experiences back and stomach pain, rating her pain as six to seven out of ten.<sup>55</sup>

## LITIGATION HISTORY:

### **Litigation and Settlement**

On January 12, 2023, Claimants filed a complaint in the Fourth Judicial Circuit, in and for Nassau County, against the Florida Department of Agriculture and Consumer Services (DACS). The case went to mediation on January 29, 2024, and the parties reached a settlement agreement.<sup>56</sup> The parties agreed, among other things, that DACS would pay Ronald and Elizabeth Thornton \$150,000 each and support a claim bill filed by Kristen McIntosh and Elizabeth Thornton (as parent and natural guardian of Lia McIntosh).<sup>57</sup> On May 7, 2024, the court entered a consent judgment for the following amounts:

- Elizabeth Thornton (as parent and natural guardian of Lia McIntosh): \$1,251,000
- Kristen McIntosh: \$1,001,000.<sup>58</sup>

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<sup>53</sup> *Id.* at 1.

<sup>54</sup> *Id.*

<sup>55</sup> *See generally* Claimants' Ex. 18, Jacksonville Orthopedic Institute Rehabilitation; Claimants' Ex. 17, Jacksonville Orthopedic Institute; Claimants' Ex. 16, Baptist Health; and Lia's Final Hearing Testimony.

<sup>56</sup> Claimants' Ex. 48, Mediation Settlement Agreement at 1.

<sup>57</sup> *Id.* at 1-2.

<sup>58</sup> Claimants' Ex. 49, Consent Final Judgment at 1-2.

On January 8, 2025, a hearing was held before the House and Senate special masters. Kristen and Lia McIntosh submitted 57 exhibits for consideration, including, among other things, the FHP traffic report, Kristen and Lia's medical records, and video deposition testimony of Craig Lichtblau, MD. The exhibits were received without objection by DACS.

Both Kristen and Lia McIntosh, as well as Elizabeth and Ronald Thornton, testified at the hearing regarding the Claimants' injuries, their quality of life before the accident, and their decreased quality of life after the accident. Their testimony is discussed in detail above.

The attorney for DACS did not present any evidence at the hearing but stated DACS supported the relief sought through the claim bill for Kristen and Lia McIntosh.

#### 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, Kristen and Lia McIntosh allege that Officer James McWhorter, a DACS employee who drove the vehicle that injured Kristen and Lia, was negligent. DACS is liable for a negligent act committed by an employee acting within the scope of employment. Officer McWhorter was driving from one inspection station to another within the scope of his employment with DACS. Thus, if Officer McWhorter was negligent when driving into the path of Ronald Thornton's vehicle, Officer McWhorter's negligence is imputed to DACS.

After completing its investigation, the Florida Highway Patrol cited the DACS officer for careless driving pursuant to section 316.1925(1), of the Florida Statutes.<sup>59</sup> DACS agreed to a

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<sup>59</sup> Claimants' Ex. 1, FHP Homicide Traffic Report, 33 (Sept. 22, 2022).

judgment entered in favor of Kristen and Lia McIntosh and against DACS in the amount of \$2,252,000.<sup>60</sup>

No evidence suggests that Ronald Thornton or Claimants failed to exercise due care with regard to the accident.

### **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.<sup>61</sup>

#### *Duty*

Motorists have a duty to use reasonable care on the roadways to avoid accidents and injury to themselves or others.<sup>62</sup>

#### *Breach*

The DACS officer carelessly operated his vehicle, in violation of section 316.1925(1), of the Florida Statutes, and drove directly into the path of Ronald Thornton's vehicle. The officer, and therefore DACS, breached its duty of care toward Kristen and Lia McIntosh.

#### *Causation*

The DACS officer's failure to exercise due care directly caused the collision with Ronald Thornton's vehicle, which did not have time to stop before striking the officer's vehicle. It is foreseeable that driving directly into the path of oncoming traffic would cause injury and subject a survivor to the medical expenses and pain and suffering experienced by Kristen and Lia McIntosh.

#### *Damages*

The standard jury instruction for personal injury guides the determination of damages for non-economic loss and includes "[a]ny bodily injury sustained by [name] and any resulting pain and suffering, disability or physical impairment,

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<sup>60</sup> Claimants' Ex. 49, Consent Final Judgment.

<sup>61</sup> *Williams v. Davis*, 974 So. 2d 1052, 1056–57 (Fla. 2007).

<sup>62</sup> *Id.* at 1063.

disfigurement, mental anguish, inconvenience or loss of capacity for the enjoyment of life experienced in the past, or to be experienced in the future. There is no exact standard for measuring such damage. The amount should be fair and just, in the light of the evidence.”<sup>63</sup>

The evidence presented at the hearing established that as a direct consequence of the accident: (1) Kristen McIntosh suffered damages in the form of current and anticipated medical expenses of \$869,122, and will suffer from chronic pain for the rest of her life; and (2) Lia McIntosh suffered damages in the form of current and anticipated medical expenses of \$424,086 and will suffer from chronic pain for the rest of her life. Claimants have also incurred \$42,637 in outstanding costs related to this litigation.<sup>64</sup>

DACS agreed to the consent judgment of \$2,252,000 (\$1,001,000 for Kristen and \$1,251,000 for Lia) against DACS.<sup>65</sup> This amount is conservative in comparison with other jury verdicts that have considered similar injuries. The amount is reasonable in light of the Claimants' past and present injuries, their persistent pain and fear of the need for future surgeries, and their continuing diminished physical abilities as reported through the testimony at the hearing and the deposition of and evidence prepared by Craig Lichtblau, MD.

#### ATTORNEY FEES:

Language in the bill states attorney fees may not exceed 25 percent of the amount awarded. Counsel for Claimants indicates attorney fees will be 25 percent of the total funds awarded through the claim bill, and lobbying fees will be 7.5 percent.<sup>66</sup> It appears from the affidavit of costs and fees submitted by counsel for Claimants that the lobbying fees are in addition to the attorney fees.

#### RECOMMENDATIONS:

Based upon the information provided before, during, and after the special master hearing, the undersigned finds that Kristen and Lia McIntosh have demonstrated negligence on behalf of the Department of Agriculture and Consumer Services, and that the amount sought is reasonable. Based upon the

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<sup>63</sup> Fla. Std. Jury Instr. (Civ.) 501.3d, *Injury, pain, disability, disfigurement, loss of capacity for enjoyment of life*.

<sup>64</sup> Claimants' Attorney's Affidavit, Attachments A and C.

<sup>65</sup> Claimants' Ex. 49, Consent Final Judgment at 1.

<sup>66</sup> Claimants' Attorney's Affidavit as to Costs and Fees.

foregoing, the undersigned recommends that SB 26 be reported FAVORABLY.

Respectfully submitted,

Janelle Barriero  
Senate Special Master

cc: Secretary of the Senate

**CS by Judiciary**

The committee substitute added a provision to the bill which provides for the funds awarded to Lia McIntosh, a minor, to be deposited into a trust for her benefit.