

IN THE COURT OF CLAIMS
OF THE
STATE OF ILLINOIS

FILED
COURT OF CLAIMS
JAN 18 2011

KIMBERLY DORSEY, AS EXECUTRIX
OF THE ESTATE OF JESSICA UHL, and
KIMBERLY DORSEY, AS EXECUTRIX
OF THE ESTATE OF KELLI UHL,

Claimants,

vs.

THE STATE OF ILLINOIS,

Respondent.

Secretary of State and
Ex-Officio Clerk Court of Claims

Case No. 08-CC-2945

OPINION

Judge Peter J. Birnbaum

On May 5, 2008 Claimants filed a Complaint for the wrongful deaths of Jessica Uhl and Kelli Uhl. The Complaint states that their mother Kimberly Dorsey,¹ is the duly appointed Executrix² of the estates of Jessica and Kelli and that she brings this action on behalf of herself, Brian Uhl (father of Jessica and Kelli), Madelyn Blair Dorsey (half sister of Jessica and Kelli and hereinafter referred to as "Mady") and Anthony Dale Uhl (half brother of Jessica and Kelli and hereinafter referred to as "Tony"). The Complaint alleges that on November 23, 2007 Illinois State Trooper Matthew Mitchell, a State employee driving a State owned vehicle, struck the vehicle occupied by Jessica Uhl and Kelli Uhl causing the deaths of Jessica Uhl and Kelli Uhl. A hearing was held before Commissioner Thomas Ysursa. On April 19, 2010 and April 20, 2010 Claimants presented their case. On May 3, 2010, Respondent presented its case and the parties gave closing arguments. Thomas J. Keefe, Jr., and Thomas J. Keefe, III represented Claimants.

¹ Kimberly Dorsey recently married Craig Schlau and is now Kimberly Schlau. For purposes of this opinion and order she will be referred to as Kimberly Dorsey.

² The letters of office dated February 5, 2008 are issued to Kimberly Dorsey as the administrator, not the executrix of these estates.

Assistant Attorneys General Amy Gerloff and Tom Klein represented Respondent. At the outset the Court wishes to acknowledge the excellent and thorough work of Commissioner Ysursa. We also express our appreciation for the advocacy and professionalism of the lawyers on both sides.

I. Facts

November 23, 2007 began, by all accounts, as a beautiful early winter's day in southern Illinois. It was the day after Thanksgiving, the busiest shopping day of the year. 18 year-old Jessica Uhl and her 13 year-old sister Kelli Uhl spent that morning at the home of their father Brian Uhl in Mascoutah, Illinois. They were there to take holiday pictures with their dad, step mom, half brother Tony and step grandparents. The Uhl girls' parents were divorced. The girls lived in nearby Collinsville with their mom, Kim, and half sister, Mady.

They left their dad's home a little before noon. Jessica was driving. Her plan was to drop her sister Kelli off at their mom's house and then proceed to her part time job. She began travelling westbound on Interstate Highway 64. Illinois State Trooper Matt Mitchell was on duty that morning. A little before noon, Mitchell was outside his vehicle addressing a minor accident when he heard a dispatch message directed to another trooper that described an auto accident at Illinois Route 4 and Stein Road near Lebanon, Illinois. The dispatch message stated that there was a two car accident with entrapment but that St. Clair County and Mascoutah police were on the scene, fire and rescue were on the scene with helicopter support on standby.

Trooper Mitchell told dispatch he would take the call. He got into his police car and proceeded to the accident scene at Route 4 and Stein Roads. To get there, he travelled east bound on Interstate 64. He drove at a very high rate of speed, at points in excess of 125 mph. While travelling at this high rate of speed, his girlfriend, the mother

of his daughter, called. Cell phone records show he took the call at 11:58 a.m. He began to talk to her on the phone about a bicycle she wanted to buy their daughter. While driving at these rates of speed and talking on his cell phone he also began using the computer in his vehicle, emailing the other trooper for directions.

He came upon traffic, and while the facts were contested at trial, it is uncontroverted that he swerved to avoid traffic, lost control of his vehicle and crossed the median on Interstate 64 near the Illinois Route 158 overpass. His vehicle collided head-on with the car driven by Jessica. The Illinois State Police Department of Internal Investigations Report ("DII Report") stated that Trooper Mitchell was travelling at approximately 126 mph when he lost control of the vehicle. Jessica and Kelli were killed instantly.

II. The Trial

Prior to the start of the trial Respondent stipulated that Trooper Mitchell was acting within the scope of employment at the time of the accident. Respondent further stipulated that the motor vehicle accident caused the death of the Uhl sisters.

Claimants called a total of 27 witnesses.

The first witness called by Claimants was Trooper Matthew Mitchell. Mitchell was called as an adverse witness. Mitchell testified that on the late morning of November 23, 2007 he was dealing with another matter outside his vehicle when he heard a dispatch message describing a motor vehicle accident on Illinois Route 4 and Stein Road near Lebanon, Illinois. Initially the crash was assigned to State Trooper John Schlepper, but Mitchell stated that he informed the dispatcher that he would "take the call". Mitchell testified that all he heard of the dispatch message was that there was a motor vehicle accident "with entrapment". Mitchell stated that he did not hear the portion of the dispatch message which stated that officers from the St. Clair County

Sheriff's Department and the Mascoutah, Illinois Police Department were already on the scene and emergency medical service personnel were on the scene with helicopter transport on standby.

Mitchell testified that he finished the matter he was dealing with and proceeded in his State Police vehicle towards Route 4 and Stein Road. Mitchell stated that during the drive he exceeded the posted speed limit on I-64 and that he sent an email to Trooper Schlepper seeking directions to the accident scene via his vehicle computer. During this time he also acknowledged that he answered a personal cell phone call from his girlfriend, the mother of his young daughter. They began discussing a bicycle that she had purchased for their daughter.

Mitchell stated that he did not know how fast he was going. He testified that just prior to losing control of his vehicle a white car travelling in the right lane of eastbound I-64 moved into his left lane. Mitchell said he swerved to avoid the white car, lost control of his vehicle, crossed the center median, proceeded into the westbound lane of I-64 in the wrong direction, struck the vehicle occupied by the Uhl sisters and killed the girls. Mitchell testified that immediately following the accident, another state trooper approached him and Mitchell asked that trooper to pull the video from his vehicle. He testified that he later learned that his police vehicle's video was not turned on at the time of the accident.

Mitchell testified that he pled guilty to two (2) counts Reckless Homicide (the killing of the Uhl girls) and two (2) counts of Aggravated Reckless Driving (injuries sustained by Kelly and Christine Marler, husband and wife who were in a separate vehicle) on April 16, 2010 before St. Clair County Circuit Judge Jan V. Fiss. Trooper Mitchell testified that he lied when he entered into that plea agreement. Mitchell asserted at the hearing before Commissioner Ysursa that he was not the cause of the

accident because immediately prior to losing control of his vehicle a white car had cut him off. Mitchell testified that he exercised a reasonable degree of care for the safety of the motorist public during the entire time he was operating his vehicle. He stated that this was true even though he was travelling at a very high rate of speed while talking on his cell phone and emailing his fellow State trooper. When challenged by Claimants' counsel on the reasonableness of such conduct Mitchell stated that State troopers are trained to "multi-task".

Counsel for Claimants also challenged Trooper Mitchell's veracity on his claim that he was not on his cell phone at the time he lost control of his vehicle. Mitchell testified that he completed his cell phone call and had both hands on the steering wheel when he lost control of his vehicle. The cell phone records indicate that Mitchell took his girlfriend's call at 11:58 a.m. and that the connection terminated at 12:02 p.m. and 5 seconds. The DII report indicated that Sycom (the public safety answering point technology used for 9-1-1 calls) shows the first 9-1-1 call regarding the crash between Mitchell's vehicle and the Uhl girls' car was initiated thirty-six (36) seconds later, at 12:02 p.m. and 41 seconds. Counsel for Claimants inquired as to the plausibility of Mitchell's claim that he could have hung up his phone, put his hands on the wheel, lost control of his vehicle, crossed the roadway, struck the Uhl sisters, and have a passing witness observe the accident and call 9-1-1, all within 36 seconds of the termination of Mitchell's own cell phone call. When asked for an explanation of the timing Mitchell simply responded that he was not on his cell phone at the time he lost control of his vehicle.

The second witness called by Claimants was Kris Gebke, Illinois State Trooper Accident Reconstructionist. Gebke was tasked to be the accident reconstructionist for the Illinois State Police on the scene. Gebke testified that Mitchell was not justified in

driving 126 mph under the circumstances of this case. Gebke stated that due to going 126 mph, Mitchell was not using reasonable care in his operation of his vehicle. Gebke stated that Mitchell's conduct, talking on his cell phone and sending an email, exacerbated the lack of reasonable care. Gebke concluded that the cause of the accident was Mitchell's inability to maintain control of his vehicle and that Mitchell's vehicle speed was a major contributing factor in his losing control. Gebke stated that, other than Mitchell's testimony he had no knowledge of any evidence from any source that a white car cut off Mitchell. On examination by counsel for Respondent, Gebke testified that the tire marks on I-64 were consistent with Mitchell swerving while travelling at a high rate of speed.

At this point Claimants' Exhibit #1 was admitted into evidence over the objection of Respondent. Claimants' Exhibit #1 was a certified copy of the four pleas of guilty to the two (2) counts Reckless Homicide for the deaths of Jessica and Kelli and two (2) counts of Aggravated Reckless Driving for injuries sustained by the Marlers. Those pleas were entered on April 16, 2010 in the St. Clair County Criminal Court.

Witnesses 3-17, witness 20 and witnesses 24-26 were comprised of friends of Kelli and Jessica, friends and co-workers of Brian and Kim and the extended families of Brian, Kim, Tony and Mady. Delineated below is a summary of their testimony.

Collectively these witnesses painted a portrait of Kelli and Jessica as kind, loving, bright and caring girls who were loved by their parents, siblings, extended family and the community. There was also testimony from a number of these witnesses about the significant grief and suffering incurred by the family following the loss of these girls, including Tony's uncontrollable crying in kindergarten class (his teacher, Debbie Hulliung), and his propensity to "withdraw" to another room where he would be found weeping (his grandfather Ken Zacharski).

Becky Loyet, Mady's day care teacher, testified about Mady's guilt over past fights with her sisters and her fear that she will lose her memory of them. She testified that Mady is now sad because she's an only child.

Brian's mother-in-law, Linda Zacharski, testified about his changed demeanor, saying that he is now "heavier and darker", while his wife, Wendy Uhl, spoke of his loss of "spontaneity and lack of inhibition". Cheryl Varner testified about Kim's redirection of sorrow into good works such as highway safety, memorials and scholarships in memory of the kids. Tawnya Lange, a co-worker of Kim testified that Kim was home alone when the coroner and police officers came to her door. She testified that Kim did not open the door at first knowing her worst fears lay on the other side of that door.

The eighteenth witness was Wendy Uhl, Brian Uhl's wife and the mother of Tony. Wendy testified to the void left by the loss of the girls. She described how every Mother's Day and Father's Day she and Brian expect the girls to walk through the door. She testified that every Thanksgiving an empty place setting is reserved for the girls and every Christmas a stocking is hung that will not be filled. Wendy described the loss felt by her son Tony who, at only five years old, lost his only siblings in the tragic accident. She testified that certain things such as songs will cause Tony to cry and that he calls his sisters "two angels in heaven". She said that the media attention has been very difficult on the family. She said that Brian is not the same since the death of his daughters, and testified that he has lost his joy, his spontaneity, and his lack of inhibition.

The nineteenth witness was Craig Schlau, the current husband of Kim Dorsey. Schlau and Kim were married in September 2009. Schlau met Kim in August 2006. The two started out as friends and progressed to dating. Schlau testified that he met the Uhl sisters a couple of times but did not know them very well. Kim called Schlau about a half an hour after finding out about the death of her daughters. Schlau then went over

to Kim's house with his sister. Schlau stated that prior to the accident Kim enjoyed being social in large groups and was the center of the attention. After the accident Kim no longer enjoys being the center of attention and now their social life is limited to smaller gatherings. Schlau testified that even to the present Kim breaks down into tears over the loss of her daughters, describing how she cries while curled up on a small chair or on his lap. He said Kim is now wary about others; she worries about the topic of the accident coming up and the reaction of others. He also described Mady and stated that Mady talks about her sisters frequently.

The twenty-first witness was Brian Uhl, the father of Jessica and Kelli. He testified that he and Kim were married in July 1988. They were married for about nine years and then divorced. He described how after he and Kim divorced they agreed to be civil to each other for the benefit of the girls. Brian described the birth of Kelli and Jessica. He described how he taught Jessica to drive and the joy he took from her graduation from high school and enrollment in college. Brian stated that no one on his side of the family had ever gone to college. Brian then testified to events of November 23, 2007, the day that his daughters were killed. He described taking family pictures with the girls that day. He stated that as the girls left, he told Jessica to "drive safe" and she said, "I will."

He said that after the girls left he was paged to come into work. He was en route on I-64 and got caught in traffic caused by the accident. He stated that he was diverted around the accident and when he returned back on I-64 he saw a horrific accident under the overpass. He did not remember seeing the police car of Trooper Mitchell but he did see other vehicles and believes that he saw a blue tarp over the vehicle that his daughters were driving. He remembered thinking that he did not recognize any of the vehicles and thought "good".

Brian proceeded to the Metro Link stop in East St. Louis and boarded the light rail system to go to his office in downtown St. Louis, Missouri. He said that he then received a voice message from Kim stating that the girls were not home and wanting to know what time they left that morning. He then received a second voicemail from Kim and she was frantic because the girls were still not home. At that point he called Kim. He stated that Kim answered but she could not speak and handed the phone to the coroner. The coroner informed him that he had some terrible news and at that point Brian knew what it was. Brian asked the coroner if it had to do with the accident on I-64. The coroner said yes, Brian proceeded to ask if his girls were involved and whether they were dead. The coroner said "yes".

Brian then left for Kim's house. He testified that he was screaming in anguish in his car the entire way to Kim's. He arrived at Kim's and told Kim over and over that he was "sorry". Kim asked what he was sorry about and he said "our daughters are gone." Brian eventually returned to his own home. He called his mother and father and told them that their two granddaughters were dead. He said there was a horrible cry from the other end of the phone.

Brian testified that the pain is still there—some two and half years later. He described how he drives by the accident scene twice daily and makes the sign of the cross each time he passes. He said he drives by the site daily to remind himself that life is short. He stated that he talks to his daughters everyday when he drives by the accident site. Brian described how he went through a period of "extreme rage" and was vengeful. He said his faith, family and friends helped him get over his feelings of vengeance. He stated that a "part of my soul is dead that day" and it will not be replenished until he sees the girls again. Brian then discussed some of his memories of Father's Day and other events. Brian then discussed his son Tony. He stated that Tony

has tough moments and still cries over the loss of his sisters. Brian spoke about how Tony is forced occasionally to revisit the deaths when they are covered on television. He said the girls were so close they were like twins. At the conclusion of direct examination Brian was asked if it ever stops hurting or if it ever gets better; he responded there is "not a single day that he does not think about his lost daughters".

The twenty-second witness was Kim Dorsey, (now Kim Schlau), mother of Jessica and Kelli. She recounted stories of Jessica and Kelli. Kim described her enjoyment of hearing Jessica's and Kelli's friends recount their memories and stories about her daughters. Kim testified as to awards the girls received as children and went through Jessica's journal. She described Jessica as a hard worker who had the goal of being a doctor or a photographer. She said Kelli was quite gifted as a student. She said Kelli was inducted as an honorary member of the National Junior Honor Society after her death. She recalled the funeral and the fact that she wanted their friends to write memories and send messages so that she could remember the impact that her girls had on others' lives. She described the hole that exists in her heart due to her loss. She stated that some days she feels that the wound will never heal and that is why she engages in efforts to keep her daughters' memories alive.

She testified how she has organized benefits in order to raise funds for scholarships in the names of her daughters. She recalled how during the first benefit she would comment to friends that the benefit was "kind of like Jessica's wedding reception that I'll never get to throw for her." She stated that she took her daughter Kelli's 8th Grade yearbook to her school so that her friends could sign it because she died before her 8th Grade graduation. She stated that she does these things to keep her daughters' memories alive. She stated that she will always bear a scar from her loss. She testified that her daughter, Mady, and her current husband comment that she is

not as outgoing as she once was. She stated that she still has days where she just wants to stay in bed all day but that her daughter Mady and the voices of her two deceased daughters telling her to keep going provide her the motivation to get up and keep living.

Kim recounted the Thanksgiving meal they shared the day before her daughters were killed. She described how Jessica invited her boyfriend Jordan Varner for dinner and how Jordan's parents came to Thanksgiving. She described how Jessica helped cook the dinner with her and how this was Jordan's first time meeting Jessica's grandfather. After dinner she testified that the family had a Thanksgiving tradition of going to a movie. She and her three daughters, Jessica, Kelli and Mady, went and saw the movie "Enchanted". She stated that the theater was packed but they found four seats together. She recalled thinking to herself that it was so enjoyable because there had been no arguing among the three sisters and everyone was getting along, laughing and enjoying themselves.

After the movies, Jessica went over to her boyfriend's house and intended to stay there on a basement couch. Jessica told Kim that she would return early in the morning the next day to pick up Kelli so they could go to their Dad's for family pictures. Kim recalled saying goodbye to Jessica and giving her the peace sign. Jessica gave the peace sign back. That was the last time she saw her oldest daughter. As for Kelli, she went upstairs and showered and did her hair. Kim and Mady lay in Kim's bed and watched the movie "Chicago". She stated that Mady and Kelli then began texting each other and were laughing as they sent silly messages back and forth. She stated that Kelli wanted to know when the "Cell Block Tango" part of the movie was coming on. When it did, Mady texted Kelli and Kelli came downstairs to watch that part. About 11:00 p.m. that evening, Kim told Kelli to go to bed and Kelli gave her mom a kiss,

rubbed her sister Mady's head and went upstairs. That was the last time Kim saw her second daughter. Jessica picked up Kelli early the next morning. Kim heard them but said the girls did not want to wake her up.

Kim testified that she regrets not being able to tell her daughters how much she loved them or to being able to hug them one last time. She described sitting between the two head stones at their grave sites so that she can touch both stones and talk to them. She stated that those head stones are the only tangible things that she has left of her children. She said she was not able to see her daughters' bodies after they were killed because the funeral director stated that they were "unviewable".

Kim described the effect that the deaths of Jessica and Kelli had on Mady. She stated that Mady is now in counseling and that she worries a lot. She stated that Mady can be quick to anger and gets frustrated at times. Kim concluded by stating that she is angry but she does not want anger to fill the hole in her heart and eat her from within.

The twenty-third witness was Larry Trent, the former Director of Illinois State Police. At the time of the accident Trent had been Director of the Illinois State Police for six years. He served a total of 22 years as an Illinois State Police Trooper. During his career with the State Police, Trent served in several capacities including Regional Commander for Southern Illinois.

Trent testified that at the time of the accident the State Police pursuit policy was that a trooper could drive "as fast as you saw fit provided you took due care for the public's safety." He stated that public safety was paramount even when responding to an emergency call because you cannot help someone unless you arrive there safely. Trent testified that Trooper Mitchell's driving 126 mph reflected poor judgment and that his conduct was irresponsible. He testified that talking on his cell phone and emailing only compounded it. Trent testified that when travelling at 126 mph the state police

vehicle "overdrives the siren" and other drivers on the road do not realize that an officer is on top of them and cannot react to the situation appropriately. He stated that in his opinion Trooper Mitchell did not exercise reasonable care. Trent concluded that Trooper Mitchell's conduct that day was "indefensible".

On cross-examination Trent testified that in 2007 a state trooper had the discretion to travel as fast as he/she deemed appropriate in an emergency. He agreed that an accident with entrapment is a serious situation. Trent also testified that he did not have a sound engineering degree and did not have knowledge of the speed of sound. On re-direct, Trent reemphasized that a state trooper owes a duty of reasonable care to the public even in an emergency situation. Mr. Trent also testified that he could not think of any circumstance that justified going 126 mph while emailing and talking on the phone.

The twenty-seventh witness was Kim Hasty from St. Louis, Missouri. She testified that she is a licensed clinical professional counselor. Hasty received her undergraduate degree in rehabilitation psychology from Central Missouri State University and her master's degree in rehabilitation from Southern Illinois University at Carbondale. After graduation she worked in Quincy at an inpatient and outpatient substance abuse facility, where she provided individual and family counseling. Two years later she began working at St. Elizabeth's in Granite City, Illinois, which is now Gateway Medical Center. There she provided counseling services for substance abuse and mental health issues on an outpatient basis. During her tenure at St. Elizabeth's in Granite City she dealt with depression, grief, marital and family issues.

In 1997 she became the coordinator for the employee assistance program out of St. Elizabeth's Medical Center. At that time her practice began to focus more on mental health issues and less on substance abuse. In 2001 Hasty went into private

practice when she co-founded Cornerstone Counseling. Hasty said she occasionally treated Kim Dorsey before her daughters' deaths. Hasty testified that in April 2008 Kim contacted her and asked to resume counseling and since April 2008 Kim has received continual therapy.

Hasty testified that Kim remains under her care and will continue treatment in the future. Kim treats with Hasty at least once a month, and when possible, more frequently. During Kim's first visit after the death of her daughters, Hasty found that Kim suffered from depression, sleep problems, feelings of guilt, loss of interest in things, change in appetite, change in weight, problems remembering things, death of loved ones and major loss. Hasty testified that Kim's depression was directly related to grief. Hasty defined grief as a reaction to a loss with cognitive, behavioral, physical, and mental health symptoms. She testified that the impact of grief depends upon various factors, including, in her words, the predictableness of loss, the preventability of the loss, the degree of personal suffering, and the intentionality of the loss.

After the initial consult, Kim was prescribed (by coordinating Medical Doctor Greeling) 10 milligrams daily of Lexapro, an antidepressant, due to depressive symptoms, insomnia, racing thoughts and moodiness. Hasty stated that Kim's grief is complicated by the unexpectedness of her daughters' deaths and the preventability. Furthermore, she suffers from traumatic imagery due to not being able to view her daughters after the crash. She stated that the mind tends to fill gaps and as Kim confronted images of the crash and the coroner's report, her mind imagined what happened to her daughters in the crash. Hasty testified that Kim has had to endure the fact that the death of her daughters is repeatedly in the media so she frequently and unexpectedly encounters the horror of her girls' deaths.

Hasty testified that the loss of a child is different from other losses in that it denies the normal progression of life; she stated that when a child dies, the parent's hopes, dreams and future die as well. She said the loss of a child is the worst type of loss. Hasty explained that the loss of a child results in the parent viewing life in a bifurcated manner i.e. life before the child's death and life after the child's death. Hasty testified that Kim's grief is complicated by the fact that she has a surviving child and, as her surviving daughter experiences her own milestones, Kim will be reminded of those lost experiences with her two oldest daughters. Hasty stated that parental grief does not end it just changes in intensity and expression. She opined that as future milestones such as birthdays and graduations pass, waves of grief will fall upon Kim.

Hasty stated that Kim's grief is exponentially worse due to the fact that she lost two children simultaneously. Hasty noted that Kim states that she misses her daughters everyday and will everyday into the future. In summation Hasty described the grief a parent suffers due to the loss of child as a sea of grief. In the beginning the waves are very high and very close together and one feels like they are drowning. Over time the waves get smaller and more spread out but on occasion the sea gets rough and the waves increase. Hasty said that while the intensity of the waves changes over time one never gets out of the water. She said that more grief is to come for Kim. She said Kim will never be the same. On cross-examination Hasty stated that parental grief does not end but changes in intensity and expression over time. Respondent also inquired about the June 4, 2009 Mood Survey filled out by Kim. Counsel for Respondent noted Kim self reported fairly low symptoms of anxiety, depression and anger. The Mood Survey was admitted into evidence as Respondent's Exhibit 1.

Hasty concluded the Claimants' case in chief. At its conclusion Claimants offered Exhibits 1 through 6 into evidence. Exhibit 1 was the previously admitted guilty

plea of Trooper Mitchell. Exhibit 2 was the Kassly Mortuary statement for Kelli's funeral services and was admitted without objection. Exhibit 3 was the Kassly Mortuary statement for Jessica's funeral services and was admitted without objection. Exhibit 4 was the internment fees for both girls and was admitted without objection. Exhibit 5 was Hasty's Clinical Summary and was admitted without objection. Exhibit 6 was the relevant United States Life tables and judicial notice was taken of those tables.

The trial resumed on May 3, 2010, at which time Respondent presented its case. The first witness called by Respondent was Trooper John Schlepper. Trooper Schlepper has been a State Trooper for about ten years and has a total of 17 years in police work. Trooper Schlepper was the State Trooper initially assigned to the accident at Route 4 and Stein Road. After Mitchell assumed the call to Route 4 and Stein Road, Schlepper inquired of dispatch whether Mitchell needed assistance. The response was "yes". Schlepper proceeded toward Route 4 and Stein Road when he received a call that there was a serious accident on I-64 near Illinois Route 158 involving a state trooper with a possible fatality. Schlepper testified that he assumed that the accident involved Mitchell because he was the only other trooper in the area.

He stated that he proceeded to the scene and probably travelled about 110 mph to 115 mph while he was in the three-lane portion of I-64 but slowed when I-64 reduced to two lanes. Schlepper testified that he travelled that fast because there was a possible fatality and perhaps other serious injuries. Schlepper arrived at the scene about 5 to 10 minutes after the accident call and pulled into the westbound lane. He saw the vehicle of the Uhl sisters and could tell they were dead. He proceeded to Mitchell's vehicle. A woman (who later turned out to be an off-duty paramedic) was attending to Mitchell. He was bleeding. His legs appeared to be trapped. Schlepper testified that Mitchell asked for him to pull the videotape from Mitchell's vehicle

because someone had cut him off. His supervisors arrived on scene and Schlepper told them about the tape.

On cross-examination, Schlepper conceded that the original dispatch message for the Route 4 and Stein Road accident stated that the accident was secure and that other police departments along with EMS personnel were on the scene. Schlepper stated that in responding to the Route 4 and Stein Road accident, he considered his role an "emergency" even though he was there to help with towing because other vehicles could hit the vehicles already involved. He also stated that when he was proceeding to Route 4 and Stein Road on the two lane portion of Interstate 64 he was travelling with his warning lights on at about 75 mph to 85 mph but not with his sirens activated. He also testified that driving 126 mph while emailing and talking on his cell phone was not reasonable care. After repeated questioning, he also conceded that Mitchell's conduct in travelling 126 mph in this case was not reasonable care. On re-direct examination, Schlepper stated that he did not know what Mitchell heard of the dispatch message regarding the accident on Route 4 at Stein Road and that it was possible for a trooper to miss part of a dispatch message.

The final witness was Dr. Thomas Langford. Dr. Langford received a Bachelor of Science in Economics and a MBA in Operations Research from the Wharton School of Finance and Commerce. Dr. Langford received a Ph.D. in Regional Science from the University of Pennsylvania. Regional Science is an interdisciplinary study focused primarily on economics but also examining demography and geography. Dr. Langford worked under Illinois State Governor Ogilvie in 1970 as the assistant director for the Bureau of Budget for State Economic Developing Planning. In 1976 he formed his own research and consulting firm.

Dr. Langford was retained by Respondent to offer an opinion as to the value of the economic loss of the parents of the Uhl sisters due to their deaths. Dr. Langford testified that there are two methodologies for valuing the economic loss of parents due to the death of child. The first looks at the expected return, i.e. how much future support the child will provide the parent. The second method is based upon the costs to raise a child. This second method reaches a conclusion that the value of the child is worth somewhere in excess of the costs to rear the child. Dr. Langford opined that based upon studies and figures from the United States Department of Agriculture the economic value of Jessica to her parents would be in excess of \$189,420 and Kelli in excess of \$144,344. At this point Dr. Langford's report was admitted into evidence without objection as Respondent's Exhibit 2.

On cross-examination Dr. Langford stated that although he had been retained by Respondent to offer opinions as to the economic loss of the parents due to the death of their two children he conceded that he did not know the definition of "pecuniary loss" under Illinois Pattern Jury Instructions. Dr. Langford also conceded that he could not recall any specifics about the educational training of Jessica or Kelli but claimed that he recalled reviewing deposition transcripts containing that information. Upon further questioning Dr. Langford acknowledged that he mistakenly recalled reviewing multiple deposition transcripts in the case, specifically Brian Uhl's, because only one deposition had been taken in this case, that of Kim Dorsey. Dr. Langford was then asked about the Uhl sister's surviving siblings, Tony and Mady, and he stated that he was not retained to offer opinions as to the economic losses to the surviving siblings. When pressed Dr. Langford conceded that he did not have numerous pieces of information such as the goals and aspirations of the Uhl sisters, their individual work histories, and their contributions around the household. Dr. Langford stated that his

valuations of \$189,420 for Jessica and \$144,344 for Kelli were "minimum values" and that he had no opinion as to what the maximum values would be. Dr. Langford conceded that he could not calculate the value of the loss of love, affection, care, attention, companionship, comfort, guidance and protection the family suffered due to the loss of Jessica and Kelli.

At this point the evidence was closed. Claimants and Respondent were permitted to present both oral and written closing arguments.

On the issue of liability Claimants' counsel cited the testimony of Kris Gebke the Illinois State Police accident reconstruction expert who testified that Mitchell did not exercise reasonable care in travelling at 126 mph and that talking on his cell phone and using his computer only compounded the unreasonableness of the behavior. Counsel also cited the testimony of erstwhile Illinois State Police Director, Larry Trent who called Mitchell's conduct indefensible. Claimants' counsel also pointed out that the Respondent's own witness Trooper Schlepper conceded that Mitchell did not exercise reasonable care by driving in excess of 125 mph.

On the issue of damages Claimants cited other verdicts and settlements involving police chases. Claimants' counsel also noted the 2007 change in the law that allows compensation for grief and suffering in wrongful death cases.

Claimants asked for \$23 million for the beneficiaries of the estate of Jessica and \$23 million for the beneficiaries of the estate of Kelli for a total of \$46 million.

Respondent offered oral argument and a written brief in support of its defense.

Respondent argued that Mitchell and by extension the State was not negligent in this case. Respondent argued that Mitchell did not hear the entire dispatch message. As a result he proceeded to the Route 4 accident on the assumption that it was a serious emergency. Respondent argued that the cell phone call terminated prior

to Mitchell being cut off by another car and that he had both hands on the wheel when he took evasive action.

Respondent argues in its written brief that Mitchell was not the proximate cause of the deaths of Jessica and Kelli because it was not foreseeable that he would be cut off by another car. Respondent also argues in its closing brief that Mitchell, if found to be negligent, is entitled to Public Official Immunity and that, under the doctrine *respondeat superior* the State has that same claim of immunity.

As to damages Respondent cites other Court of Claims cases, the testimony of its expert and cites as guidance the Illinois Auto Liability Fund (20 ILCS 405/405-105 (16)) which has a liability limitation of \$2 million per occurrence involving a state employee.

III. Analysis

Claimants have made a wrongful death claim for the deaths of Jessica Uhl and Kelli Uhl due to the negligence of Trooper Mitchell. In order to prevail, Claimants must establish a duty owed to them, a breach of that duty, and damages proximately resulting from that breach. See *Koepp v. State of Illinois*, 46 Ill.Ct.Cl. 344 (1993). Respondent stipulated that Trooper Mitchell was acting within the scope of employment so the sole remaining liability issue is whether Trooper Mitchell breached a duty owed to Jessica and Kelli. An Illinois State Trooper driving in an emergency situation owes a duty to operate his vehicle with due regard for the safety of the motorist public. 625 ILCS 5/11-205(e); see also *Koepp, supra*. For example, a trooper may exceed the posted speed limits so long as he does not endanger life and/or property of the public. However, a state trooper has a duty to drive his police car with due regard for the safety of all persons. This duty of care arises independently of the trooper's status as an employee of the State of Illinois, and affords him no public or state immunity from his negligent actions. *Currie v. Lao*, 198 Ill. App. 3d 625, 556 N.E.2d 318

(3d Dist., 1990), *aff'd*, 148 Ill. 2d 151, 592 N.E.2d 977 (Ill. 1992). See 625 ILCS 5/11-205(c)(3) and 5/11-205(e)(1); see also *Koepp, supra*.

During the course of the trial, evidence was presented by Claimants that Trooper Mitchell did not exercise due care for the safety of the motorist public in that he (1) drove at excessive speed for conditions; (2) drove at excessive speed while emailing on his vehicle's computer; (3) drove at excessive speed while on his personal cell phone; and (4) drove at excessive speed while emailing on his computer and talking on his personal cell phone.

Respondent presented evidence, the testimony of Trooper Mitchell, that at the time he lost control of the vehicle he was not emailing on his computer nor was he on his personal cell phone. Respondent also presented evidence, the testimony of Trooper Mitchell, that the cause of him losing control of his vehicle was a white car that had cut him off. In its trial brief, Respondent raises the issue of proximate cause. Respondent asserts that it was not foreseeable that Mitchell would be cut off by another car and as such the causation element of a negligence claim was not met.

Trooper Mitchell is not a credible witness. He said he lied in the criminal proceedings just three days prior to his testimony in these proceedings. Beyond that, his testimony was inconsistent and wholly self serving. One example of this is his assertion in his testimony that he exercised reasonable care, despite the fact that on the busiest shopping day of the year he was going 126 mph, while talking on the phone to his girlfriend and emailing a fellow trooper to respond to an accident scene that was already secure. Respondent offered no corroboration for Trooper Mitchell's testimony that he was cut off by a white car that day. Even if the events were as claimed, it would still not exonerate Respondent from liability since the testimony of all of the witnesses implicated Trooper Mitchell's speed alone as reflecting the absence of due

care. While Illinois law does give police vehicles special privileges on the highways, the courts have held that despite the special privileges conferred, the operator of a police vehicle must exercise reasonable care under the circumstances.

Thus, for example, in *Bouhl v. Smith*, 130 Ill. App. 3d 1067, 475 N.E.2d 244 (3d Dist., 1985), a county sheriff's officer and county were liable for injuries sustained by the driver of a truck as result of a rear-end collision. The accident occurred when the officer, en route to the scene of another accident in his squad car with lights and siren activated, approached an intersection at about 35 mph, though it was starting to sleet or snow and the pavement was wet and slippery. When the officer attempted to pass a line of cars waiting at the stop sign by travelling in the left-hand lane of a two-lane highway a third vehicle unexpectedly turned off the intersecting highway into left-hand lane. When the officer swerved back into the right-hand lane and attempted to brake, he skidded into the rear-end of plaintiff's truck, which was stopped in line with the other cars. The Court held that despite the special privileges conferred to an operator of an authorized emergency vehicle the officer must exercise reasonable care under the circumstances. As to the claim in *Bouhl* that the true cause of the accident was that Officer Smith had been cut off by an "unknown vehicle" not involved in the accident the Court commented:

Neither the presence of the unknown motorist, nor the existing weather and road conditions, nor the emergency to which Smith was responding provides an adequate explanation or excuse for the defendant's failure to maintain control of his squad car so as to avoid colliding with the plaintiff's truck. Where, as here, it is clearly established that the plaintiff performed no act or omission which could in any way be considered negligent, and the perilous situation which led to the accident was a creation of the defendant emergency vehicle operator's own negligence, then the defendant must be found negligent. The act or omission of the driver of the unknown vehicle could not have been a superseding cause of plaintiff's injuries, since it was not established that his appearance at the "T" intersection was in any respect an

unforeseeable circumstance. 130 Ill. App. 3d 1067, 475 N.E.2d 244, (3d Dist., 1985).

Similarly, even assuming *arguendo* that Trooper Mitchell was "cut off" by a white vehicle, he was negligent given the circumstances, i.e., driving 126 mph on the busiest shopping day of the year while talking on a cell phone and sending an email.

Larry Trent, the former director of the Illinois State Police, testified that Trooper Mitchell's actions were irresponsible on that day based solely upon the fact that he was driving 126 mph. Trent testified that when travelling at 126 mph the state police vehicle overdrives the siren and other drivers do not have adequate notice that an officer is operating a vehicle in an emergency situation and cannot react appropriately. Trent concluded that Trooper Mitchell's conduct that day was "indefensible". The fact that he was talking on his phone and using his computer only compounded the lack of care.

Respondent's own witness, Trooper Schlepper, corroborated the opinion of former Illinois State Police Director Trent. Schlepper opined that Mitchell's conduct in travelling 126 mph in this case was not the exercise of reasonable care. In addition, Trent's opinion is further supported by the testimony of Kris Gebke, Illinois State Trooper Accident Reconstructionist. Gebke testified that Trooper Mitchell was not justified in driving 126 mph under the circumstances of this case. Gebke stated that Mitchell's operation of the vehicle at 126 mph, by itself, was sufficient to establish the absence of due care. Gebke concluded that the cause of the accident was Trooper Mitchell's inability to maintain control of his vehicle and that Trooper Mitchell's vehicle speed was a major contributing factor in his losing control of his vehicle.

After consideration of all evidence the issue of liability is clear: when Trooper Mitchell drove his State of Illinois vehicle at a speed of 126 mph he operated his vehicle

in a manner that endangered life and/or property of the public; he breached his duty of reasonable care owed to Jessica and Kelli, and his acts caused their deaths. See e.g., *Kasper v. Curran*, 24 Ill. App. 2d 380, 164 N.E.2d 506 (2d Dist., 1960) reversing a *j.n.o.v.* entered by the trial court for the defendant deputy sheriff where the appellate court said that "reasonable persons might well conclude that the defendant, in driving his squad car at a speed between 65 and 90 miles per hour under conditions existing, was guilty of willful and wanton conduct".

With the issue of liability resolved the next question is whether, even though liable, Trooper Mitchell and by extension Respondent, are entitled to the protections afforded by the common law doctrine of Public Official Immunity. Respondent cites *Currie v. Lao*, 148 Ill. 2d 151, 592 N.E.2d 977 (Ill. 1992) and other cases in support of its assertion that a public official cannot be held liable for the decisions made in the course of performing his or her official duties. Respondent claims the State, therefore, is not liable for Mitchell's conduct. In support it also cites *Larson v. Darnell*, 113 Ill. App. 3d 975, 448 N.E.2d 249 (3d Dist., 1983) which held where a State employee is immune under the common law doctrine of Public Immunity, so is the State.

The controlling case on the issue of Public Official Immunity is *Koepp vs. State of Illinois, supra*. While Respondent attempts to distinguish the facts of *Koepp* from the instant case (there the issue was the trooper's failure to deploy his siren responding to call involving a fight at a night club) the conclusion in *Koepp* has equal application to this case. In *Koepp* we said,

The Respondent has also raised the issues of sovereign immunity and public officials immunity in bar of Claimant's claim. Ordinary negligence standards apply to operators of emergency vehicles. The duty owed to a motorist by a State trooper when dispatched to a disturbance is not a discretionary duty...The cause is properly before the Court of Claims and is not barred by the Public Immunity Doctrine. *Koepp* at page 351.

We note that there are circumstances where the State is immune from liability but only where the duty is discretionary. For example, in *Howard vs. State*, 39 Ill.Ct.Cl. 4 (1987), Claimant hit a deer on a state highway. He alleged the State should have posted deer crossing signs. We dismissed the complaint finding the placement of deer crossing signs a discretionary duty and that the State was immune from liability for accidents allegedly caused by the failure to erect such signs. But the conclusion in *Koepp* applies with equal force here. Mitchell's duty in operating his vehicle on his way to the scene of an accident was not discretionary, so the Public Immunity Doctrine does not apply.

The next issue is the amount of damages that resulted to the Estates of Jessica Uhl and Kelli Uhl. Prior to discussing the specific damages in this case the Court notes that normally tort claims made in the Court of Claims are subject to a \$100,000 cap on damages. There is an exception for cases when a claimant is injured due to the negligence of a state employee while operating a state owned vehicle. 705 ILCS 505/8(d). This case presents such a situation. It is undisputed and stipulated that when Mitchell struck Jessica and Kelli he was an Illinois State Police Trooper driving an Illinois State Police vehicle acting within the course of his employment. The \$100,000 cap on damages does not apply in this case. Respondent cites the Illinois Auto Liability Fund, 20 ILCS 405/405 - 105 (11) which sets forth a \$2,000,000 self insurance limit for accidents involving a state employee operating a motor vehicle. Respondent states that the limits established in this fund "...should, at a minimum, serve as a guide in making a damages award in this case, if one is necessary." (Respondent's closing brief at page 11).

However that Act is simply a codification of the state self insurance plan and does not operate as a limitation of recovery under Section 8 (d) of the Court of Claims Act.

The Illinois appellate courts have addressed jurisdictional issues where a plaintiff seeks recovery for injuries when a state employee is acting in the course of his employment and in so doing addressed the above provisions. For example, *Landon v. Jarvis*, 255 Ill.App.3d 439, 627 N.E.2d 371 (1st Dist., 1993), deals with a very narrow issue: "[t]he sole issue presented for review is whether the circuit court was the proper jurisdictional forum for deciding plaintiff's claim that State employee defendant acted negligently during the course of his employment."

In *Landon*, the plaintiff filed a complaint against defendant who was employed by Illinois Department of Transportation as a highway maintainer and had allegedly stopped the vehicle in the moving lanes of traffic without activating his emergency lights, without placing flares or other warning devices in the roadway when weather conditions and character of the road made it unsafe, and without giving sufficient notice to motorists. The trial court ultimately dismissed the case for lack of jurisdiction, stating that the Court of Claims was the proper forum.

The court noted that "[t]here is no damage limitation in the Court of Claims for tort actions arising from the operation of a State motor vehicle by a State employee," citing the Court of Claims Act Section 8(d) (Ill.Rev.Stat.1991, ch. 37, par. 439.8(d)).

Specific to this case, the Illinois Wrongful Death Act creates a cause of action in the name of the personal representatives on behalf of the next-of-kin. 740 ILCS 180/1 et seq. In a wrongful death case the claimant brings the action in the representative capacity by reason of being administrator of the estate of the deceased. She represents the next of kin of the deceased; they are the real parties in interest in the

lawsuit, and in that sense are the real plaintiffs whose damages are to be determined. 740 ILCS 180/1; also see Illinois Pattern Jury Instructions, Civil 31.09.

Central to this case when assessing damages, we note that Illinois law now allows compensation for grief, sorrow and mental suffering.

The Illinois Wrongful Death Act was first enacted in 1852 and almost from the outset Illinois courts prohibited recovery for bereavement. See *Chicago and A.R. Co v. Shannon*, 43 Ill. 338, 1867, WL 5039 (1867).

But on May 31, 2007, Public Act 95-3 was signed into effect expanding the Illinois Wrongful Death Act, 740 ILCS 180/2 for actions accruing on or after its effective date allowing the judge or jury to award emotional damages to the surviving kin:

In every such action the jury may give such damages as they shall deem a fair and just compensation with reference to the pecuniary injuries resulting from such death, **including damages for grief, sorrow, and mental suffering**, to the surviving spouse and next of kin of such deceased person. (Emphasis added)

Thus, in assessing damages, the Illinois Pattern Jury Instructions now include compensation to the next of kin for grief, sorrow and mental suffering. See Illinois Pattern Jury Instructions, Civil 31.0.

Beginning in the early 1980s the Illinois Supreme Court recognized certain non-economic damages that a claimant could recover under the Act, and included those damages in the pecuniary injury definition. For example, in the decision of *Elliott v. Willis*, 92 Ill. 2d 530, 442 N.E.2d 163 (Ill. 1982) the plaintiff asked the trial court to instruct the jury when assessing damages to consider "the reasonable value of the society, companionship and conjugal relationship that the plaintiff had with her husband and which she had been deprived of because of his death."

After *Elliott*, the Illinois Supreme Court continued to expand the scope of pecuniary injury involving non-economic losses. In *Bullard v. Barnes*, 102 Ill. 2d 505, 468

N.E.2d 1228 (Ill. 1984), the court held that parents are entitled to a presumption of pecuniary injury from the loss of a deceased child's society and companionship in a wrongful death action. Although damages recoverable under the Act were expanded in *Bullard* to include loss of consortium, juries were forced to make their decisions by disregarding any consideration of the impact the death had on survivors emotionally. But, as we note, recovery for grief, sorrow or mental anguish is now recoverable under the May 2007 amended Act.

In wrongful death actions next of kin may recover damages for loss of society and companionship. *Elliott vs. Wills*, 92 Ill. 2d. 530, 442 N.E. 2d 163 (Ill. 1982). Loss of society damages may also be claimed by siblings but they do not enjoy the same presumption of pecuniary loss as parents. *In Re Estate of Finley*, 151 Ill. 2d 95, 601 N.E.2d 699 (Ill. 1992). See also *Bullard v. Barnes*, *supra*.

As it relates to Tony and Mady, there is no distinction between full and half-siblings based on 755 ILCS 5/2-1 as set forth in *Johnson v. Provena St. Therese Medical Ctr.*, 334 Ill. App.3d 581, 778 N.E.2d 298 (2d Dist., 2002):

For purposes of determining who is entitled to damages under the Wrongful Death Act, just compensation may be awarded to the "next of kin" of a decedent. "Next of kin" are those blood relatives of the decedent who are in existence at the time of the decedent's death who would take the decedent's property if the decedent had died intestate. *Miller v. Kramarczyk*, 306 Ill.App.3d 731, 714 N.E.2d 613 (2d Dist., 1999). Under the statutory rules of intestate descent of the Probate Act, if there is no surviving spouse or descendant but a parent, brother, sister, or descendant of a brother or sister of the decedent, the estate passes to the parents, brothers, sisters, and nephews and nieces of the decedent. 755 ILCS 5/2-1(d) (West 2000). No distinction is made between the "kindred of the whole and the half blood." 755 ILCS 5/2-1 (West 2000). Applying these principles and rules to the present case, the eligible beneficiaries to the wrongful death proceeds include (the) natural parents, siblings, and half-siblings that were in existence at the time of death.

Punitive damages are not recoverable in a wrongful death action. *Gardner v. Geraghty*, 98 Ill. App. 3d 10, 423 N.E.2d 1321 (1st Dist., 1981).

Parents automatically assume a position of financial responsibility. Thus, when computing damages we should consider a dollar value arising from the loss of the child's society but also deduct from this figure the likely expenditures the family would have incurred had the child lived. *Bullard supra* at 518.

"Society" has been defined as the mutual benefits each family member receives from each other's continued existence. This includes love, care, attention, affection, companionship and comfort. *Simmons vs. University of Chicago Hospitals*, 247 Ill. App. 3d 177, 617 N.E.2d 278 (1st Dist., 1993).

With the foregoing statutory guidance and case law as a backdrop this Court now must assess the value of the loss of Jessica and Kelli to the next of kin. Both Claimants and Respondent have cited recent verdicts and settlements in support of the damages issue. The Court takes judicial notice of these and other similar cases. But ultimately the task of determining damages is on a case by case basis. There exists no definitive mathematical formula rule by which to reach such a conclusion, the circumstances of each case are the only guide. We are simply directed to calculate the amount of pecuniary damages resulting from the death including damages for grief, sorrow and mental suffering to be awarded to each eligible beneficiary. 740 ILCS 180/2. Claimants went to great lengths to present evidence of the relationship of Jessica and Kelli with their family. Claimants called twenty-four witnesses to talk about Jessica's and Kelli's lives. These witnesses included family, friends, co-workers of the parents, and educators. The picture presented before the Court was that of a close and loving family. The testimony presented demonstrated that the divorce of the girls' parents did not diminish the love and affection the parents shared for Jessica and Kelli and that Jessica and Kelli remained a part of the lives of both parents and their two younger siblings. In the end Jessica and Kelli were an integral part of a modern

divorced family and from all accounts brought joy and pleasure to their parents and younger siblings.

There was testimony as to the circumstances of the deaths of Jessica and Kelli and those circumstances are relevant to assessing the grief, sorrow and mental suffering of their parents and younger siblings. As Kim Hasty, a licensed professional counselor and the only clinical witness on the issue of grief and mental suffering testified, the impact of grief depends upon various factors, including predictableness of loss, preventability of the loss, and the intentionality of the loss. The testimony is that on the day after Thanksgiving after having spent the previous day and the morning of their death immersed in family activities Jessica and Kelli were ripped from the lives of their family without notice in a horrific and preventable automobile accident. The testimony presented is that Kimberly Dorsey was frantic wondering where her missing daughters were and received first notification from uniformed police officers and the coroner who grimly approached her door. She could not bring herself to answer the door. She knew her worst fears were on the other side of that door.

Brian Uhl actually drove by the accident scene when called into work and was notified by phone from the coroner that the horrendous auto crash scene that was still vivid in his memory actually took the lives of his two oldest children. The parents and siblings then had to endure the reality that they could not say goodbye to their sisters and daughters, since the Uhl sisters were "unviewable" due to the condition of the bodies after this high-impact and high-velocity crash. In the minds of their parents, the recurrent vivid imagery of the crash and the condition of the girls at and after impact, per the testimony of Hasty further exacerbated the grief. Since then on days when least expected, the parents and siblings accidentally confront images of the gruesome deaths thrust before them by the recurring publicity. As stated by Hasty in her report

(Claimants' Exhibit 5), "The grief process is not one of weeks or months, but of a lifetime as Mrs. Schlau's life has been forever changed. Grief is a condition for which there is no cure."

By way of response, in its closing brief Respondent asks that in assessing damages the Court consider the mood survey filled out by Kim in June 2009. In that survey she reports low symptoms of grief, depression and anger. It is contended that her anguish has dissipated or resolved. Respondent's position does not take into account the real gravamen of Kim Hasty's testimony: grief is a lifelong process.

Respondent's position does not address the evidence regarding the grief and sorrow these parents experienced losing not just one child, but two in such a sudden, unanticipated and cruel manner. Kim Hasty testified that parental grief does not end, that it is just changes in intensity. There was the initial shock. The sudden loss. There were no goodbyes, no closure. The girls were not even viewable, the media relentless. Kim testified that while she was overwhelmed with grief, over time she redirected her sorrow into good works, such as advocacy for safety in police pursuits, legislation limiting or prohibiting texting or phoning while driving, organizing benefits for scholarships in her daughters' names and the development of a memorial website. She testified that although she wants to stay in bed all day, her surviving daughter Mady and the voices of Kelli and Jessica urge her to keep going. Claimants have sufficiently demonstrated that Kim's self-assessment report to her therapist is a reflection not of an absence of grief and sorrow, but that the human spirit is capable of great resiliency and that at some point Kim chose to turn her attention to the life she must live following the death of her daughters. The evidence presented for Brian is similar. He screamed in anguish as he drove to Kim's house following his learning of his daughters' deaths. His emotions at first were rage and the need to seek vengeance. His pain is quieter now. He seeks

comfort in his faith and from his loved ones. He is now "darker and heavier". He has lost his spontaneity and lack of inhibition.

In addition to grief, one of the factors to consider is loss of society. The testimony demonstrated that the parents of Jessica and Kelli Uhl will not be able to experience the pleasures associated with the significant milestones in the lives of their daughters. There will be no more graduations involving the girls, no more birthdays, no more holidays and no future grandchildren. Each time one of these milestones comes and passes the parents have lost the right to share these moments with their daughters and when those occur, they endure additional mental suffering. The law also allows survivors to be compensated for the deprivations associated with the loss of "mere" day to day observations of one's children as they grow and develop. As for the siblings each has gone from a member of a three-sibling family to an only child. The evidence shows that both Mady and Tony have lost not only the future milestones cited above but have also lost the love, affection, care, attention, companionship, and guidance of two older sisters. Mady who is now in counseling cries for attention. Tony's grandpa finds him weeping. His teachers say Tony is withdrawn when he thinks of his angels in heaven. There is no presumption of pecuniary injuries to siblings. See *Estate of Finley, supra*. But we find that Claimants' counsel has demonstrated that Tony and Mady suffered significant pecuniary loss.

The law provides that the life expectancy of the decedents and their next of kin is to be considered as a backdrop to an evaluation of loss of society. According to the Mortality Tables, a person Jessica's age would have had a normal life expectancy of an additional 63.0 years, and a person Kelli's age would live on average an additional 67.9 years. As of the date of the Uhl sisters' deaths, a person Kim's age has a life expectancy of an additional 42.6 years, while Brian had an average expectancy of an

additional 36.8 years. A youth Mady's age could be expected to live 72.9 more years and one Tony's age 71.0 years more.

Respondent presented Dr. Langford to value the lives of the Uhl sisters. Dr. Langford's report does not purport to address all of the issues before this Court on the issue of damages. First, by his own admission he was not provided detailed information that he requested in preparation of his report and testified that he made assumptions that the girls were "normal", but could not recall what he relied upon in making his conclusions as to the normalcy of the lives of the Uhl sisters. Second, Dr. Langford testified that his valuations were minimum values and that he had no opinion as to what the maximum values would be and he could not calculate the other compensable elements of damages: the value of the loss of love, affection, care, attention, companionship, comfort, guidance and protection that the family suffered due to the loss of Jessica and Kelli.

Finally, Dr. Langford's report includes a disclaimer: "Prior to the request to value the lives of Jessica E. Uhl and Kelli C. Uhl, to the best of my knowledge, I have not met nor known of them or their parents, Kimberly Dorsey or Brian Uhl, or other members of their family." Dr. Langford's analysis does not address the fact that in Illinois parents are entitled to a presumption of pecuniary loss. *Smith vs. Mercy Hospital and Medical Center*, 203 Ill. App. 3d 465, 560 N.E.2d 1164 (1st Dist., 1990). In *Mercy*, the court noted "the presumption that parents derive significant financial benefits from their children bears little, if any resemblance to modern family life. The chief value of children to their parents is the intangible benefits they provide in the form of comfort, counsel and society, the court recognizes a rebuttable presumption of the loss of a minor child's society."

The established rule is that if the wrongful death action is brought for a surviving spouse or lineal next of kin, the law presumes substantial pecuniary damages arising from the relationship alone, and it is immaterial whether they received pecuniary assistance from the deceased in the past. Rather, it depends upon whether but for a defendant's negligence society would have been exchanged. That there may have been no society in the past is irrelevant; it is the loss into the future which is compensable. *Prendergast v. Cox*, 128 Ill. App. 3d 84, 89, 470 N.E.2d 34, 27 (1st Dist., 1984); *Schmall v. Village of Addison*, 171 Ill. App. 3d 344, 352, 525 N.E.2d 258, 284 (2d Dist., 1988). As such Dr. Langford's testimony and opinions offer little probative value to the true value of the claim in this matter.

It is the obligation of this Court to assess damages. In addition, Section 180/2 of the Wrongful Death Act (740 ILCS 180/2 (West 1992)) imposes on the Court in which the cause is heard the additional obligation to determine the distribution of the award. See also, *Barry v. Owens Corning*, 282 Ill. App. 3d 199, 668 N.E. 2d 8 (1st Dist., 1996).

Based upon a review of the testimony of all of the witnesses and consideration of the tremendous pain and suffering associated with the deaths of Jessica and Kelli as to the next of kin, our prohibition on awarding punitive damages, and without considering the pain and suffering of Jessica and Kelli themselves, this Court enters judgment for Claimants' and enters an award as follows:

IT IS HEREBY ORDERED that Claimants' claim is granted. Four million dollars (\$4,000,000.00) is to be paid to Claimant Kimberly Dorsey, as Administrator of the Estate of Jessica Uhl and four million dollars (\$4,000,000.00) to Kimberly Dorsey, as Administrator of the Estate of Kelli Uhl.

In accord with our obligation to determine distribution of the award and subject to the duties and obligations of the court conducting the probate proceeding that arises from this action we find specific distribution to the next of kin as follows:

The Estate of Jessica Uhl

To Kimberly Schlau (previously Kim Dorsey) for pecuniary loss including loss of society as well as for grief, sorrow and mental suffering, but deducting any expenses incurred had her children survived, for the loss of Jessica Uhl, one million seven hundred and fifty thousand dollars (\$1,750,000.00).

To Brian Uhl for pecuniary loss including loss of society as well as for grief, sorrow and mental suffering, but deducting any expenses incurred had his children survived, for the loss of Jessica Uhl, one million seven hundred and fifty thousand dollars (\$1,750,000.00).

To Anthony Uhl for pecuniary loss including loss of society as well as grief, sorrow and mental suffering, for the loss of Jessica Uhl, two hundred and fifty thousand dollars (\$250,000.00).

To Madelyn Dorsey for pecuniary loss including loss of society as well as grief, sorrow and mental suffering, for the loss of Jessica Uhl, two hundred and fifty thousand dollars (\$250,000.00).

Total award for Estate of Jessica Uhl, four million dollars (\$4,000,000.00).

The Estate of Kelli Uhl

To Kimberly Schlau (previously Kim Dorsey) for pecuniary loss including loss of society as well as for grief, sorrow and mental suffering, but deducting any expenses incurred had her children survived, for the loss of Kelli Uhl, one million seven hundred and fifty thousand dollars (\$1,750,000.00).

To Brian Uhl for pecuniary loss including loss of society as well as for grief, sorrow and mental suffering, but deducting any expenses incurred had his children survived, for the loss of Kelli Uhl, one million seven hundred and fifty thousand dollars (\$1,750,000.00).

To Anthony Uhl for pecuniary loss including loss of society as well as grief, sorrow and mental suffering, for the loss of Kelli Uhl, two hundred and fifty thousand dollars (\$250,000.00).

To Madelyn Dorsey for pecuniary loss including loss of society as well as grief, sorrow and mental suffering, for the loss of Kelli Uhl, two hundred and fifty thousand dollars (\$250,000.00).

Total award for Estate of Kelli Uhl, four million dollars (\$4,000,000.00).

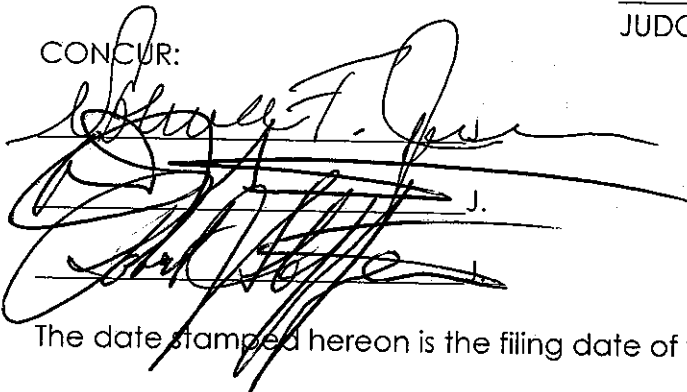
IT IS SO ORDERED.

ENTER:

A handwritten signature in black ink, appearing to be "Brian Uhl", written over a horizontal line.

JUDGE, COURT OF CLAIMS

CONCUR:

Two handwritten signatures in black ink, written over a horizontal line. The first signature is "Shirley F. Jones" and the second is "J. [unclear]".

The date stamped hereon is the filing date of this Order.