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January 23, 2018

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: CS/HB 6525 - Representative Byrd
Relief/Marcus Button/Pasco County School Board

THIS IS AN OPPOSED EXCESS JUDGMENT CLAIM FOR A TOTAL OF \$1,507,364, BASED ON A JURY VERDICT AWARDING DAMAGES TO MARK, ROBIN, AND MARCUS BUTTON FOR THE DAMAGES CAUSED BY THE NEGLIGENCE OF A PASCO COUNTY SCHOOL BUS DRIVER. THE SCHOOL BOARD HAS PAID THE STATUTORY LIMIT PURSUANT TO SECTION 768.28, F.S.

FINDINGS OF FACT:

This matter arises out of a motor vehicle accident that occurred on September 22, 2006, in Pasco County, Florida, at the intersection of Meadow Pointe Boulevard and State Road 54. Meadow Pointe Boulevard runs north/south and dead ends into State Road 54, a straight, flat road which runs east/west. As the single eastbound lane of State Road 54 nears the intersection with Meadow Pointe Boulevard, it splits into two lanes—one for turning right at the intersection and one for continuing on straight through the intersection. Crucially, at the time of the accident, drivers on State Road 54 had the right-of-way at the intersection. Meadow Pointe Boulevard was controlled by a stop sign, while State Road 54 had no traffic controls.¹

On the morning of September 22, 2006, Jessica Juettner, a student at Wesley Chapel High School, picked up 16-year-old

¹ At some point after the accident, a traffic light was installed at the intersection.

Marcus Button, her fellow schoolmate, at his home around 7:00 a.m. to drive them both to school. Jessica sat in the driver's seat, and Marcus sat in the front passenger seat. At some point, Marcus told Jessica that he had forgotten some of his things and Jessica turned the car around to go back to Marcus's house.

As Jessica drove her Dodge Neon east on State Road 54, John Kinne, a Pasco County School Board bus driver,² driving a Pasco County school bus northbound on Meadow Pointe Boulevard, pulled up to the intersection. He stopped the bus at the stop sign, prepared to make a left-hand turn, and drove the school bus into the intersection, straight into Jessica's path. Jessica tried to brake to avoid hitting the school bus, but to no avail. Jessica's eastbound Neon collided with the school bus and slid underneath the bus, ultimately coming to rest facing the opposite direction it had been traveling. The Neon's driver-side and passenger-side airbags both deployed. The windshield of the Neon splintered and collapsed inward towards Jessica and Marcus. The dashboard was crushed, contorting and pinning Marcus's body inside the car.

A witness, William Fox, was in a large SUV waiting in line behind the school bus and saw the accident. Mr. Fox was the first person on the scene. He got out of his SUV and ran to the Neon immediately to help Jessica and Marcus, where he observed Marcus in the passenger seat pinned in, covered in glass, and bleeding from the head.

Mr. Fox testified in his deposition that the Neon was going a normal speed for the highway and that it was "incredible that the bus pulled out because there was absolutely no place for the car to go." Mr. Fox said he believed the Neon could not have done anything to avoid the accident.

Mr. Kinne, the bus driver, testified in his deposition that even though he looked both ways and saw several vehicles coming from his left traveling eastbound, it appeared they were making a right-hand turn at the intersection, and so he believed the intersection was clear. Mr. Kinne said he did not see the Neon until it was very close to his bus—too late to avoid the accident. Mr. Kinne was cited as a result of his fault on the roadway.

Marcus sustained facial and skull fractures, brain damage, and vision loss. He was airlifted to St. Joseph's Children's Hospital, where he recovered in a medically-induced coma. Marcus was later transferred to Tampa General Hospital for rehabilitation.

Aftermath of Injury

Marcus's injuries from the accident have been life-altering,

² Mr. Kinne testified that he began driving buses for the Pasco County School Board in August of 2006—that is, about a month before the accident occurred.

causing him pain, discomfort, loss of sensory ability, and numerous visits to many different doctors and specialists.³ Marcus is legally blind in one eye and has no sense of smell. Marcus continues to suffer from memory loss, difficulty sleeping, pain in his neck, and what he characterizes as an "endless headache." He struggles to concentrate and stay on task.

Jessica Juettner (the driver of the car and friend of Marcus) testified at trial that Marcus changed after the accident. She stated that after the accident, Marcus had "a completely different personality," looked different, was a lot skinnier, and had problems with his eye. She further testified that although Marcus used to be shy, after the accident Marcus became loud, began saying "the first thing that comes to his mind," and made inappropriate jokes.

At the Special Master hearing, Mrs. Button testified that Marcus's overall problems are exponentially worse now than before the accident. According to Mrs. Button, Marcus sometimes hits his head against a wall or walks out in front of traffic. Mrs. Button believes that Marcus would not be able to live on his own.

Seatbelt Issue

There is conflicting evidence as to whether Marcus was wearing a seatbelt at the time of the accident. Claimants argue that Marcus was wearing a seatbelt, though at trial Claimants' own expert witness testified that he had no opinion as to whether Marcus was wearing a seatbelt. Respondent offered testimony indicating that Marcus was not wearing a seatbelt.

Respondent also argued at trial that the driver of the Neon, Jessica Juettner, was negligent. Respondent sought to elicit testimony regarding the lack of skid marks on the road to imply that Jessica was not paying attention to the road and thus did not have sufficient time to brake to avoid the collision.

At trial the jury, apparently believing Marcus was not wearing a seatbelt, allocated 15% of the fault to Marcus himself as a passenger and 20% of the fault to the driver, Jessica Juettner. After considering the arguments at the Special Master hearing, I see no reason to disturb the jury's finding that Marcus was not wearing a seatbelt; and I find that the jury's allocation of 15% of the fault to Marcus and 20% of the fault to Jessica Juettner is reasonable and supported by the evidence.

LITIGATION HISTORY:

On July 9, 2009, Claimants filed an amended complaint against Respondent in the Sixth Judicial Circuit. The case went to a jury, which found damages of \$455,225.92 for Mark and Robin

³ A Medicaid lien was imposed for care that Marcus received after the accident.

Button⁴ and \$2,142,565.21 for Marcus Button. The jury apportioned fault as follows: 65% to Respondent Pasco County; 20% to Jessica Juettner, as the driver of the car in which Marcus was riding; and 15% to Marcus.

After reducing the total awards to account for the fault of other parties, the court entered a final judgment against Respondent in the amount of \$289,396.85 for Mark and Robin Button and \$1,380,967.39 for Marcus Button. Because Respondent had already paid \$37,000 for property damages and to settle with Jessica Juettner, Respondent paid Claimants \$163,000, the maximum amount remaining under the sovereign immunity cap of \$200,000.

CLAIMANTS' POSITION:

Claimants argue Marcus has suffered a "multi-million dollar injury" and that Respondent caused the injury by negligently drawing its bus routes, by negligently allowing a poorly-trained bus driver to drive its bus, and by making a negligent left-hand turn without the right-of-way. Claimants object to the jury's allocation of fault to the driver of the car and also argue that Marcus was wearing his seatbelt.

RESPONDENT'S POSITION:

Respondent strongly objects to the passage of this claim bill, arguing a lack of causation between the accident and the problems Marcus currently experiences. Respondent asserts that Marcus has always had poor grades and behavioral problems. Respondent also argues that the driver of the car in which Marcus was riding, Jessica Juettner, contributed to the accident by paying insufficient attention to the road.

Respondent requests that if the claim bill passes, payments should be structured and payable in equal amounts over a five-year period; and that reverter and discontinuation clauses should be added to provide for the possibilities of the death or criminal conviction of the Claimants.

CONCLUSIONS OF LAW:

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

Duty & Breach

It is clear that Respondent breached a duty to Claimants. Under Florida law, a driver approaching an intersection with a stop sign must stop, and after stopping, must "yield the right of way to any vehicle" in the intersection or which is approaching so closely as to constitute a hazard.⁵ Mr. Kinne, the driver of the county bus, owed a duty to the car in which Marcus was riding, as that car had no stop sign and enjoyed the right-of-way. Mr. Kinne breached his duty to Marcus Button when he

⁴ Of the amount of damages awarded to Marcus's parents, \$105,225.92 was for medical expenses and \$350,000 was for loss of consortium.

⁵ S. 316.123(2)(a), F.S.

proceeded through the intersection even though Mr. Kinne had a stop sign and did not have the right-of-way.

When Mr. Kinne breached this duty, he was driving a Pasco County school bus as a Pasco County employee on his bus route. Thus, Respondent is liable for Mr. Kinne's actions under the doctrine of respondeat superior.

Causation

The most closely contested issue between the parties is whether the accident caused Marcus's health issues. Claimants argue that the accident caused or at least contributed to Marcus's problems; while Respondent counters that Marcus has always had those problems.

I find that Claimants have carried their burden to prove causation, and I conclude that there is no reason to disturb the jury's similar finding. While it is apparent that Marcus has always had certain problems such as poor grades, the record reflects that Marcus sustained life-altering injuries as a result of the accident. Testimony received at the Special Master hearing indicates that the accident has had a severe impact on Marcus, leaving him worse off physically, mentally, and emotionally than he was before the accident.

Damages

A life care plan prepared for Marcus indicates future costs of care between \$6,000,000 and \$11,000,000 and that lost wages over the course of his life will be between \$365,000 and \$570,000.⁶ Based on this life plan and other evidence in the record, I find that the total amount of \$1,507,364 sought by Claimants is reasonable.

ATTORNEY'S/ LOBBYING FEES:

Claimants' attorneys will limit their fees to 25 percent of any legislative award. Out of these fees, a lobbyist fee for 5% of the total award will be paid. Outstanding costs are \$4,498.91.

COLLATERAL SOURCES:

Jessica Juettner's liability insurance company paid \$10,000 to Claimants after the accident, and Claimants' uninsured motorist insurance paid \$100,000.

RESPONDENT'S ABILITY TO PAY:

Respondent states that it is self-insured. There is a general liability fund set aside, but workers' compensation claims take up the vast majority of that fund. Respondent asserts that as of June 30, 2017, the balance of the fund was \$560,111.42.

LEGISLATIVE HISTORY:

This claim bill was first introduced in 2012 as HB 647. Most recently, 2016 HB 3505 was not heard in the Civil Justice and Claims Subcommittee; 2017 SB 54, which did not have a

⁶ Additionally, on May 7, 2010, a federal Social Security Disability hearing officer found Marcus to be disabled according to Social Security regulations.

House companion, was not heard in any Senate committee.

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SUGGESTED AMENDMENT:

The bill should be corrected to reflect that the jury found Marcus to be 15%, rather than 10%, at fault for his injuries.

RECOMMENDATION:

I recommend that House Bill 6525 be reported **FAVORABLY**.

Respectfully submitted,

JORDAN JONES

House Special Master

cc: Representative Byrd, House Sponsor
Senator Gibson, Senate Sponsor
Miguel Oyamendi, Senate Special Master