



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
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| DATE | COMM | ACTION |
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| 12/1/01 | SM | Fav/3 amendments |
| 1/9/02 | ED | Fav/3 amendments |
| | FT | |

December 1, 2001

The Honorable John M. McKay
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 46 (2002)** – Senator Ken Pruitt
HB 225 – Representative Bob Allen
Relief of Sharon Dixon and Victor Dixon, Sr.

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED, SETTLEMENT OF A VERDICT-BASED EXCESS JUDGMENT CLAIM FOR \$1,224,393.90 ON FUNDS OF THE INDIAN RIVER COUNTY SCHOOL BOARD TO COMPENSATE SHARON DIXON AND VICTOR DIXON, SR., FOR THE WRONGFUL DEATH OF VICTOR DIXON, JR., AS A RESULT OF THE NEGLIGENCE OF THE SCHOOL BOARD OF INDIAN RIVER COUNTY IN OPERATING A SCHOOL BUS. THE SCHOOL BOARD OF INDIAN RIVER COUNTY HAS ALREADY PAID ITS SOVEREIGN IMMUNITY CAP PURSUANT TO §768.28, F.S., AND §234.03, F.S., THROUGH A SELF-INSURANCE CONSORTIA FUND.

FINDINGS OF FACT:

The Accident: On or about 3:38 p.m., on Monday, January 25, 1999, the claimants' son, Victor Dixon, Jr., was a passenger on a School Board of Indian River County school bus, driven by Deborah A. Colletti, an employee of the School Board of Indian River County, traveling westbound on CR-611, approaching the intersection of CR-615 in Indian River County. Ms. Colletti was transporting the children from school to the respective bus stops. According to the evidence, Ms. Colletti was traveling approximately 40 mph.

At the same time, a second vehicle operated by 63-year-old Sammy Lee Hughes was traveling southbound on CR-615, approaching the intersection of CR-611. Mr. Hughes was driving a 1996 Tractor-Trailer. According to the evidence, Mr. Hughes was traveling 40 mph.

Unrebutted evidence demonstrates that Ms. Colletti proceeded into the intersection with CR-615, failing to come to a halt at the stop sign. There is no evidence of any evasive action on the part of Ms. Colletti, to include braking or steering. The school bus struck the tractor-trailer on the left front and both vehicles side swiped as they drove off the southwest shoulder. The school bus rotated in a counterclockwise position and struck a wood utility pole. The school bus partially slid up the pole, then returned and came to a final halt on its left side. Ms. Colletti was ejected through the windshield. Victor Dixon, Jr., was partially ejected. The tractor-trailer struck the south bank of a drainage canal and came to a final rest. Mr. Hughes was partially ejected through the windshield. Victor Dixon, Jr., and Mr. Hughes were killed in the accident.

CR-611 is an east and west, two lane, undivided roadway. The roadway is constructed of asphalt, and is straight and level in the area of the crash. There is no grade to the roadway. The roadway is approximately 17 feet, 4 inches wide. The lanes are marked on their outer lane by a solid white line, and are separated by two solid yellow lines. Traffic control for westbound CR-611, at its intersection with CR-615, is governed by a stop sign. There is an advance warning sign for the stop sign, posted 1/10 of a mile east of the intersection. The posted speed limit for CR-611 is 45 mph, and it is posted approximately 1 mile east of the crash.

CR-615 is a north and south, two lane, undivided roadway. The roadway is constructed of asphalt, and is straight and level in the area of the crash. There is no grade to the roadway. The roadway is approximately 22 feet wide. A solid white line marks the outer lanes, and the lanes are separated by one solid yellow line. The speed limit for southbound traffic is 45 mph, posted approximately 1/10 of a mile north of the intersection.

It was sunny and dry at the time of the accident with no visibility problems. There were no roadway defects for either

roadway, or environmental factors which contributed to this crash.

There were no safety restraints available to Victor Dixon, Jr. Deborah Colletti and Sammy Lee Hughes were not using available and operational safety restraints. There was no evidence of intoxication or physical impairment on the part of Deborah Colletti or Sammy Lee Hughes. Nor were Victor Dixon, Jr., an 8-year-old passenger, and 16 other school children passengers operating under any intoxication or physical impairment.

A post crash examination of both vehicles involved in the collision showed no evidence of any type of mechanical failure. Both vehicles had proper markings and were in good repair. A post-accident inspection of the braking lights of the school bus indicated no hot-shock. Accordingly, the bus was not braking at the time of impact.

Ms. Colletti was charged with violating §316.123(2)(a), F.S., failure to stop and yield the right of way. Ms. Colletti and Mr. Hughes were found to have violated Title 49 of the Code of Federal Regulations 329.16, use of seat belts. Mr. Hughes was not found to be negligent in the operation of his vehicle. Ms. Colletti was found to have caused the crash.

Witnesses:

Jennifer Francis: Ms. Francis provided a sworn statement to Florida Highway Patrol indicating she was a driver of a vehicle behind the school bus. She testified that the school bus did not stop at the stop sign. The school bus driver did not apply brakes and the bus did not slow down.

Rebecca Uma Jean Clark: Ms. Clark provided a sworn statement to Florida Highway Patrol indicating she was a driver behind the tractor-trailer. She testified that the school bus did not stop at the stop sign. The school bus did not slow down upon entering the intersection.

Frank John Labreola: Mr. Labreola provided a sworn statement to Florida Highway Patrol indicating he was a driver of a vehicle approximately 3-4 car lengths behind the tractor-trailer. He testified that the school bus did not stop at the stop sign.

Deborah A. Colletti: Ms. Colletti provided a sworn statement to the Florida Highway Patrol indicating that she did not remember any details of the accident. Accordingly, she could not remember whether she proceeded through the intersection without stopping at the stop sign.

Surviving children passengers: All children passengers provided sworn statements to Florida Highway Patrol that the bus did not stop at the stop sign and proceeded into the intersection.

Judicial History:

As they were the natural parents of the decedent, the claimants were appointed personal representatives of the estate of Victor Dixon, Jr., in the Circuit Court for Indian River on April 7, 1999. The claimants filed suit on October 19, 1999. The School Board of Indian River County conceded liability before the trial. At the conclusion of a 4-day jury trial on damages only, the jury found that Sharon Dixon suffered damages of \$1,500,000, \$400,000 of which was past pain and suffering, and \$1,100,000 for future pain and suffering. The jury found that Victor Dixon, Jr., suffered damages of \$1,000,000, \$400,000 for past pain and suffering, and \$600,000 in future pain and suffering. Total damages were found in the amount of \$2,500,000 for the wrongful death of Victor Dixon, Jr. The School Board for Indian River County filed a motion for a new trial, Remittitur, and judgment notwithstanding the verdict. All were denied on September 14, 2000. Time for appeal has now passed. Following entry of the judgment and payment of the statutory cap, the parties entered into a settlement agreement in the amount of \$1,224,393.90, which is one million dollars less than the jury verdict. The settlement amount would be paid over a 3-year period with 40 percent paid in the first year and 30 percent in the remaining 2 years. In exchange, the school board agreed to support the claim bill.

CONCLUSIONS OF LAW:

Negligence has four elements:

Duty: Ms. Colletti had a legal duty to stop at the stop sign before entering the intersection and to enter only when the way was clear. The School Board of Indian River County shared that legal duty as Ms. Colletti's employer

because Ms. Colletti was acting in the course and scope of her employment at the time of the crash.

Breach: Ms. Colletti breached her duty by failing to stop at the stop sign and yield the right of way. As Ms. Colletti was operating the school bus in the course and scope of her employment, the School Board of Indian River County has breached its duty as well. The school board has conceded liability at trial and during the Special Master hearing. The finding of breach does not rest on the school board's concession. Rather, overwhelming and un rebutted evidence establishes unequivocally that Ms. Colletti, and accordingly the school board, failed to stop and heed a lawful traffic control device.

Proximate Cause: The sole precipitating, direct cause of Victor Dixon, Jr., was the force of the impact brought on by Ms. Colletti's breach.

Damages: Victor Dixon, Jr., is deceased as a result of this accident. The medical examiner's report, prepared by Dr. Fredrick P. Hobin, M.D., on the autopsy of Victor Dixon Jr., revealed the cause of death to be motor vehicle trauma, the manner of which was a traffic accident. Specific findings as to the mechanism of death were as follows: multiple injuries due to blunt trauma including subarachnoid hemorrhage, subdural hemorrhage, cerebral contusion, basal skull fracture, and fracture dislocation of the proximal cervical spine.

Sharon Dixon testified at length concerning the loss of Victor Dixon, Jr. At the time of accident, Ms. Dixon lived with Victor Dixon, Jr. The Dixons were divorced and living apart at the time of the accident. She lived with Victor Dixon, Jr. She testified that she endures crying spells, sleeping problems, and nightmares. She has been diagnosed with depression and hypertension. She is currently not working. She also testified that she has become legally blind due to this accident. She testified that she is under medications and she has trouble obtaining medical treatment because of the cost. At the Special Master's request, medical records for Ms. Dixon were submitted. The records document depression, hypertension and optic neuritis. At the hearing, the Special Master requested additional medical records of Ms. Dixon, which were the subject of her testimony upon

cross-examination by the Special Master. To date, those records have not been received. As the burden in this case rests with the claimant, I make the following findings of fact. Ms. Dixon is a generally credible witness. The record demonstrates that she has received treatment for depression and that the depression was caused by the loss of her son. The record demonstrates that she has had an aggravation of her hypertension caused by the loss of her son. Although there is one medical note indicating that Ms. Dixon is unable to work, the medical note is dated June 20, 2000. No additional records were submitted indicating that Ms. Dixon should remain out of work from June 20, 2000, to the present. As the burden of proof remains with the claimant, Ms. Dixon's current employment status is not related to the loss of her son. However, the loss of employment was not claimed at trial, and not heard by the jury. Ms. Dixon has failed her burden of proof to establish that her alleged legal blindness is the result of the accident. However, the jury did not hear any testimony regarding legal blindness. In all other respects, Ms. Dixon has met her burden of demonstrating pain and suffering both past and future as the result of the death of her son. The jury verdict was reasonable with respect to Ms. Dixon. Accordingly, I find the settlement with respect to Ms. Dixon to be reasonable in light of all the evidence.

Victor Dixon, Sr., testified at length concerning the loss of his son. He has remarried and lives with his spouse and two adult children of his new spouse. He testified that he has sleeping problems, aggravated hypertension, and crying spells. He has sought medical treatment in the past and is currently under treatment for his hypertension. The Special Master requested copies of his medical bills. His post-accident medical history is sparse. He testified that he exercised visitation with his child, but because of his position in the fire department and additional employment, such visitations were between his jobs. As the burden remains with the claimant, I make the following findings of fact. Mr. Dixon's testimony was generally credible. Mr. Dixon spent less time with his son than Ms. Dixon. Mr. Dixon has met his burden of establishing pain and suffering both of a past and future nature due to the loss of his son. The jury verdict with respect to Mr. Dixon was reasonable. I find the settlement amount to be reasonable in light of all the evidence.

COLLATERAL SOURCES:

The claimants received \$45,000 in funds from collateral sources, which were used to pay medical bills and funeral expenses. \$10,000 from a school board insurance policy for accidental death. An additional \$10,000 was paid from Personal Injury Protection Benefits from Ms. Dixon's PIP carrier. Finally, \$25,000 in funds was received from an under-insured motorist policy. Upon receipt of funds from a collateral source, the Legislature is usually entitled to an offset. However, due to the settlement, a reduction of \$1,000,000 has already been accomplished. Accordingly, I recommend that no offset be taken.

ATTORNEYS FEES:

Attorney's fees are limited to 25 percent of recovery pursuant to §768.28, F.S. Attorney's fees and costs are included in the settlement amount.

RECOMMENDATIONS:

Having conducted a de novo hearing, I recommend approval of the settlement agreement, which provides for payment from the School Board of Indian River County in the amount of \$1,224,393.90 inclusive of costs and attorney's fees. Senate Bill 46 should be amended to reflect the settlement amount. Additionally, Senate Bill 46 should be amended to reflect a 3-year payment scheme of 40 percent for the first year (\$489,757.56), 30 percent for the second (\$367,318.17), and 30 percent of the total for the final year (\$367,318.17). The settlement does not provide for interest payments. Finally, Senate Bill 46 should be amended to reflect a claim amount between the claimants in proportion to the jury verdict (60% to Ms. Dixon and 40% to Mr. Dixon). In all other respects, I recommend that Senate Bill 46 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Lowell D. Matthews, Jr.
Senate Special Master

cc: Senator Ken Pruitt
Representative Bob Allen
Faye Blanton, Secretary of the Senate
Michael Billmeier, House Special Master

Amendment #1 by Education: Title amendment to reflect settlement of the claim bill in the amount of \$1,224,393.90 to be paid over a 3-year period with no interest due, with 40 percent of the claim bill to be paid in 2002, 30 percent to be paid in 2003, and 30 percent to be paid in 2004.

Amendment #2 by Education: Amends claim bill amount to \$1,224,393.90, which shall be paid in three installments with no interest due, with \$489,757.56 to be paid in 2002, \$367,318.17 to be paid in 2003, and \$367,318.17 to be paid in 2004.

Amendment #3 by Education: Amends claim bill to provide that Sharon Dixon shall 60 percent of the claim bill, \$734,636.34, and Victor Dixon, Sr., shall receive 40 percent of the claim bill, \$489,757.56. Each year of the 3-year installment shall be paid on the basis on Sharon Dixon receiving 60 percent and Victor Dixon, Sr., receiving 40 percent.