



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
03/15/03	SM	Fav/1 amendment
04/09/03	ED	Fav/1 amendment
	FT	

March 15, 2003

The Honorable James E. "Jim" King, Jr.
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 180** – Senator Anthony C. "Tony" Hill
HB 305 – Representative Stan Mayfield
Relief of Tylor Griffeth

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM BASED ON A SETTLEMENT FOR \$40,000 BY THE GRIFFETHS ON BEHALF OF THEIR SON, TYLOR GRIFFETH WHO SUFFERED INJURIES ARISING FROM A COLLISION BETWEEN A BUS AND A TRACTOR-TRAILER DUE TO THE NEGLIGENCE OF A SCHOOL BUS OPERATOR FOR THE INDIAN RIVER COUNTY SCHOOL BOARD.

FINDINGS OF FACT:

The findings are based on the available record and testimony. Around 3:30 pm on Monday, January 25, 1999, the claimant, 6-year old Tylor Griffeth, was a passenger on a school bus, driven by Deborah A. Colletti, an employee of the Indian River County School Board. The bus was traveling 40 mph westbound on 45th Street, approaching the intersection of 66th Avenue in Vero Beach in Indian River County. Ms. Colletti was transporting the children from school to their respective bus stops. At the same time, a 1996 tractor-trailer operated by 63-year-old Sammy Lee Hughes was traveling 40 mph southbound on 66th Avenue, approaching the intersection of 45th Street.

Unrebutted evidence shows that Ms. Colletti failed to halt at a stop sign and proceeded into the intersection. There is no evidence that Ms. Colletti braked, altered her steering or

otherwise took evasive action. The school bus struck the left front of the tractor-trailer. Both vehicles side-swiped each other and drove off the southwest shoulder. The school bus rotated in a counterclockwise position, struck a wood utility pole and slid up partially before coming to rest on its left side. Ms. Colletti was ejected through the windshield. Tylor Griffeth and 16 other school children were injured of which one died. The driver of the tractor-trailer, Mr. Hughes, was also fatally injured after he was ejected through the windshield after his tractor-trailer struck the south bank of a drainage canal before coming to a rest.

CR-611 (45th Street) is an east and west, two lane, undivided 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 (66th Avenue), 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 (66th Avenue) is a north and south, two lane, undivided 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. Both 45th Street and 66th Avenue are constructed of asphalt, and are straight and level in the area of the crash. There is no grade to either roadway.

It was sunny and dry at the time of the accident with no visibility problems. There were no roadway defects or environmental factors which contributed to this crash.

As is typical with school buses, no safety restraints were available in the school bus for the children. Ms. Colletti, the school bus driver, and Mr. Hughes, the tractor –trailer driver, were not wearing their available and operational safety restraints. There was no evidence of intoxication or physical impairment on the part of any of the individuals involved.

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. That is to say, the bus was not braking at the time of impact.

Ms. Colletti was charged with failing to stop and yield the right of way under §316.123(2)(a), F.S. Ms. Colletti and Mr. Hughes were found to have violated federal governing mandatory use of seat belts. See 49 CFR §392.16. Mr. Hughes was not negligent in the operation of his vehicle. Ms. Colletti was found to have caused the crash.

A number of witnesses including the school children on the school bus provided sworn statements to the Florida Highway Patrol indicating that Ms. Colletti was the driver of the school bus and that she failed to stop at the stop sign before the collision. Ms. Colletti provided sworn statements that she did not recall any details of the accident. To this day, it is averred that she can not recall whether she proceeded through the intersection without stopping.

Tylor Griffeth suffered injuries including a concussion and blunt trauma to the back and abdominal area. Tylor was taken to Sebastian River Medical Center. He was diagnosed upon admission with a closed head injury including diplopia (double vision), back and forehead abrasions. Subsequent to his release and follow-up visits to Bascom Palmer Eye Institute and Shands Teaching Hospital in Gainesville, it was determined that Tylor had a sixth nerve palsy in his left eye. Tylor expresses continued reservations about riding the school bus. According to his mother, doctors have advised him to avoid participation in any sports especially contact sports or otherwise risk significant injury to head or neck.

Teresa Griffeth, Tylor's mother, testified poignantly as to the emotional ordeal she endured subsequent to the school bus incident and from the attendant delays in verifying Tylor's location after he had been transported from the scene, in rejoining him in the hospital and in determining the extent of his injuries. Tylor's mother also attested to related expenses and economic strains associated with her son's injuries including balancing family and work schedules, tutoring and otherwise accommodating Tylor's emotional and physical recovery. She also testified as to the lingering concerns about her son's future health.

Mark and Theresa Griffeth filed suit on behalf of Tylor Griffeth in 2001 in the Circuit Court for Indian River County. The suit sought recovery for injuries sustained by their son including bodily injuries, pain and suffering, disability, disfigurement, mental anguish, loss of capacity for enjoyment of life, loss of ability to earn money, and past, permanent and continuing expenses associated with the injuries. The Indian River County School Board conceded liability. The parents originally made a demand for \$100,000 but the parties settled for \$40,000 prior to trial. The school board approved a settlement agreement and release on March 20, 2002. On March 10, 2003, the court approved the settlement agreement subsequent to an order appointing the parents as legal guardians, and to a guardian ad litem report in which the settlement is recommended. The court order directed that the net proceeds of the settlement be deposited into a restricted account established at Nation's Bank.

CONCLUSIONS OF LAW:

The claimant bears the burden of proof for each element of the claim of negligence based on a preponderance of the evidence. There was competent and substantial evidence to support their claims.

Duty: Ms. Colletti had a legal duty to stop at the stop sign. The Indian River County School Board 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 before proceeding into the intersection. Since Ms. Colletti was operating the school bus in the course and scope of her employment, the Indian River County School Board bears liability for breach of this 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 and direct cause of Tylor Griffeth's injuries was the force of the impact by the accident brought on by the bus collision when Ms. Colletti breached her legal duty to stop.

Damages: Tylor Griffeth suffered immediate and potentially long-term injuries including emotional trauma as a proximate cause of the collision. The medical records including reports by the various physicians and other health care practitioners, other documentation and testimony at the final claim hearing supported the claim of the damages as indicated earlier in the findings part of this report. Medical records indicate that there is a degree of uncertainty as any latent manifestations of injuries to Tylor's head or neck. Tylor no longer suffers from double vision although he still suffers from periodic neck pains and headaches. His mother attests that he occasionally angles his head to see well. Doctors have told Tylor that there are no rehabilitative exercises that can strength the weak muscles around his left eye.

Collateral Sources: Medical expenses for Tylor Griffeth have exceeded \$15,000.00 to date of which \$5,103.21 remains outstanding after a \$10,000 payout of PIP benefits. The mother stated that the family had no health insurance coverage at the time of the incident. Upon receipt of funds from a collateral source, the Legislature is usually entitled to an offset against a claim amount. However,. Accordingly, no offset is recommended.

The damages have been evaluated within the context of the settlement agreement. Sometimes parties may enter into stipulation and settlement for reasons other than the merits of the claim or the validity of a defense. Therefore, the Legislature is not necessarily bound by them. However, in this case, the guardian ad litem has recommended that this settlement is in the child's best interest. Additionally, I believe that the parties, each represented by counsel, acted in good faith and carefully assessed the merits and defenses of this claim before reaching the settlement agreement. The settlement amount represents a reasonable and equitable compromise to compensate Tylor Griffeth and to limit the Indian River County School Board's exposure to further litigation and liability arising from this claim. The settlement agreement should be given effect as requested in the claim bill. A court order has directed that the proceeds from this settlement minus payment of legal representation and costs, lobbying expenses, and outstanding medical expenses be deposited into a restricted guardian count on behalf of Tylor Griffeth at Nation's Trust in Indian River County.

ATTORNEYS FEES:

Attorney's fees are limited to 25 percent of recovery pursuant to §768.28, F.S., which in this case totals \$10,000 not including costs. No specific documentation was provided as to the hours actually expended or the hourly rate. An additional \$2,000.00 of the gross settlement amount is attributed to lobbyist fees for the claim bills process. Thus recovery of the attorney fees, costs and lobbyist fees would represent at minimum 30 percent of the gross settlement amount recovered through a successful claim bill.

FISCAL IMPACT:

For this school bus incident, the Indian River County School Board has already paid multiple claimants up to its sovereign immunity cap pursuant to §768.28, F.S., and §234.03, F.S., through a self-insurance consortia fund. Therefore, according to the School Board counsel and superintendent, the funds for payment of this uncontested claim for Tylor Griffeth would come from the district's General Operating Funds during the next year.

RECOMMENDATIONS:

I recommend that Senate Bill 180 be amended to require the Indian River County School Board to pay \$40,000 inclusive of costs and attorney's fees, payable in one lump sum after July 1, 2003. Additionally, I recommend that the claim bill be amended to reflect accurately that the \$40,000 are to be appropriated to Teresa and Mark Griffeth, as parents and plenary guardians for Tylor Griffeth to be deposited into the existing restricted guardianship account established on his behalf per a court order.

For the foregoing reasons, I recommend that Senate Bill 180 be reported FAVORABLY, AS AMENDED

Respectfully submitted,

Maria Isabel Matthews
Senate Special Master

cc: Senator Anthony C. "Tony" Hill
Representative Stan Mayfield
Faye Blanton, Secretary of the Senate
House Subcommittee on Claims

#1 by Education:

The amendment directs the Indian River County School Board to make payment after July 1, 2003, to Teresa and Mark Griffeth, as parents and natural guardians of Tylor Griffeth, a minor, for injuries sustained due to the negligence of the school board. The amendment requires the funds to be deposited into a guardianship account. The amount payable is inclusive of attorney's fees and costs pursuant to s. 768.28(8), F.S.