



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
11/27/02	SM	Fav/1 amendment
2/6/03	ED	Favorable/CS
	FT	

November 27, 2002

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

Re: **SB 42 (2003)** – Senator Bill Posey
Relief of Taylor Rosemond and Alvin and Shirley Rosemond

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$60,000 TO COMPENSATE TAYLOR ROSEMOND, A MINOR, AND HER PARENTS, ALVIN AND SHIRLEY ROSEMOND FOR INJURIES AND DAMAGES SUSTAINED IN A COLLISION RESULTING FROM THE NEGLIGENCE OF A SCHOOL BUS OPERATOR FOR THE SCHOOL BOARD OF INDIAN RIVER COUNTY. THIS CLAIM BILL REPRESENTS ONE OF A SERIES OF CLAIM BILLS [BEGINNING WITH SENATE BILL 46 (2002)] ARISING FROM THE SAME INCIDENT INVOLVING A COLLISION BETWEEN A SCHOOL BUS FOR THE INDIAN RIVER COUNTY SCHOOL BOARD AND A TRACTOR-TRAILER.

FINDINGS OF FACT:

On or about 3:38 p.m. on Monday, January 25, 1999, the claimant, 7-year old Taylor Rosemond, was a passenger on a school bus, driven by Deborah A. Colletti, an employee of the School Board of Indian River County. The bus was traveling 40 mph westbound on 45th Street, approaching the intersection of 66th Avenue 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 demonstrates that Ms. Colletti proceeded into the intersection of 66th Avenue and 45th Street in Vero Beach, after failing to come to a halt at a 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. Additionally, Taylor Rosemond and 16 other school children were injured of whom one died. The driver of the tractor-trailer, Mr. Hughes, was partially ejected through the windshield of his vehicle after it struck the south bank of a drainage canal where it came to a final rest. He died.

CR-611 (45th Street) 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 (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 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 or environmental factors which contributed to this crash.

As is typical with school buses, no safety restraints were available for Taylor Rosemond and the other school children. Neither the school bus driver, Ms. Colletti, nor the tractor-trailer driver, Mr. Hughes, used their available and operational safety restraints. There was no evidence of intoxication or physical impairment on the part of Ms. Colletti, Mr. Hughes, Taylor Rosemond and the 16 other children on the school bus.

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 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 Title 49 of the Code of Federal Regulations 329.16, governing 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.

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 has provided sworn statements that she does not recall any details of the accident and thus can not recall whether she proceeded through the intersection without stopping.

Damages:

As one of the children on the school bus, Taylor Rosemond suffered injuries including blunt trauma to the chest and abdominal area. Ms. Rosemond was first taken to Sebastian Indian River Center. Upon the discovery of internal bleeding and other potential internal injuries, she was subsequently airlifted without her parents to Arnold Palmer Childrens Hospital in Orlando where she remained a patient for 5 days. In addition, she suffered from psychological and emotional trauma which has included recurring nightmares, continuing fear of riding the school bus and going to hospitals and

doctors, and an exceedingly cautious approach to physical activity for fear of re-injury.

Past medical expenses have totaled over \$25,000 of which has resulted in at least the entry of a judgment lien against the Rosemonds. Medical records indicated that Ms. Rosemond may potentially develop high blood pressure and other latent conditions attendant with the development of the scar tissue from the lacerated kidney and the bruised liver.

The parents, Alvin and Shirley Ann Rosemond testified poignantly as to the emotional trauma they suffered upon first learning of the school bus accident, in the delay in finding their daughter's physical location immediately after the accident once she was transported to a facility, and in finding out the extent of her injuries. They also testified as to the lingering negative emotional effects, the economic strain the event has placed on the family finances, and the difficulties engendered in maintaining their jobs and adjusting their schedules initially and continually in order to attend to their daughter's medical and emotional needs. Mrs. Rosemond in particular is very protective of her daughter's whereabouts at any one time. The Rosemonds expressed uncertainty as to any potential health or medical problems that their daughter may latently manifest.

Alvin and Shirley Rosemond, filed suit on behalf of their daughter, Taylor, and themselves in April 2000 in the Circuit Court for Indian River County. The suit sought recovery for injuries sustained by Taylor Rosemond including bodily injuries, pain and suffering, disability, disfigurement, mental anguish, loss of capacity, and past, permanent and continuing medical expenses associated with the injuries. The suit also sought recovery for damages suffered by the parents on behalf of their daughter. The School Board of Indian River County conceded liability. The parties entered into a settlement agreement for \$60,000, before trial. The court appointed a guardian ad litem on June 6, 2002, who subsequently filed a report indicating that the settlement agreement was in the child's best interest. The school board approved the settlement agreement on June 20, 2002. The parents were appointed plenary guardians on July 1, 2002. The settlement agreement provides that, subject to the successful passage of the claim bill, the settlement amount would be paid in 4 annual installments of equal amounts. In

exchange, the school board has agreed to support the claim bill. On August 29, 2002, the court approved the settlement agreement and directed that the proceeds of the settlement to be deposited into a restricted account as established at Wachovia 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 the claim.

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 Taylor Rosemond's injuries was the force of the impact by the accident brought on by Ms. Colletti's breach.

Damages: Taylor Rosemond suffered injuries including potentially long-term emotional trauma as a result of the school bus collision. Proof of damages is supported by the medical records including reports by the various physicians and other health care practitioners, by other documentation and testimony at the final claim bill hearing. The parents, Alvin and Shirley Ann Rosemond, have incurred damages in relation to the emotional impact and the medical and related expenses associated with their daughter's injuries and continuing period of physical and emotional recovery from this childhood experience.

Collateral Sources: Medical expenses have exceeded \$25,000 to date. There is an existing hospital lien from the Orlando Regional Health Care System of \$15,636 against the Rosemonds for medical payments.

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, 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 Taylor Rosemond and her parents 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. The establishment of a special needs trust is not warranted in this claim.

**ATTORNEY'S FEES/COSTS/
LOBBYING EXPENSES:**

Attorney's fees are limited to 25 percent of recovery pursuant to §768.28, F.S. Therefore, the claimants' attorney's fees can not exceed \$15,000. No specific documentation was provided as to the hours actually expended or the hourly rate.

FISCAL IMPACT:

The School Board of Indian River County 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 would come from the district's General Operating Funds.

RECOMMENDATIONS:

I recommend that Senate Bill 42 be amended to require payment by the School Board of Indian River County in the amount of \$60,000 inclusive of costs and attorney's fees. Additionally, I recommend that the claim bill be amended to reflect accurately that the funds are to be made payable to the claimants for deposit into a guardianship account established on behalf of Taylor Rosemond.

For the foregoing reasons, I recommend that Senate Bill 42 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Maria Isabel Matthews
Senate Special Master

cc: Senator Bill Posey
Faye Blanton, Secretary of the Senate
House Subcommittee on Claims

Statement of Substantial Changes to SB 42

The CS made the following changes to SB 42:

The Indian River School Board is directed to appropriate from funds not otherwise appropriated and to draw a warrant in the amount of \$60,000, payable after July 1, 2003, to Alvin and Shirley Rosemond, as parents and natural guardians of Taylor Rosemond, a minor, for injuries and damages sustained by Taylor Rosemond due to the negligence of Indian River County.

The funds are to be deposited into a guardianship account for the exclusive use and benefit of Taylor Rosemond.

The amount payable under the claim bill is inclusive of attorney's fees and costs as limited by section 768.28, Florida Statutes.

A reversion of funds to Indian River County is eliminated.

The title is amended to reflect that Indian River County does not oppose the claim bill.