



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
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November 27, 2002

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

Re: **SB 44 (2003)** – Senator Bill Posey
Relief of Michelle O'Halloran

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$225,000 TO COMPENSATE CLAY AND TATIANA HAYWOOD, BOTH MINORS, AND THEIR MOTHER, MICHELLE O'HALLORAN FOR INJURIES AND DAMAGES 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 claimants, 11-year-old Clay Haywood and 9-year-old Tatiana Haywood, were passengers 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, Clay and Tatiana Haywood and 14 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 Clay and Tatiana Haywood or 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, the Haywood children and the 14 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, 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:

The first claimant, Tatiana Haywood, suffered numerous injuries including multiple severe lacerations including a 3-cm (1.18-inch) facial laceration and a 7-mm (.2-inch) laceration on the forearm. Ms. Haywood was first transported to Indian River Memorial Hospital where she was treated by a plastic surgeon. She subsequently underwent surgery for the facial laceration. She continued

with follow-up care over the last 3 years. In addition, she has suffered from psychological and emotional affects including but not limited to recurring nightmares, continuing fear of riding the school bus, and growing self-consciousness regarding her scars. Medical records indicate that there will most likely be a need for future scar revision surgery. Due to the age of the claimant, specific types of treatment are either contingent or must be delayed until she has completed the majority of her physical growth.

The second claimant, Clay Haywood, suffered initial unconsciousness on the bus (where his sister, Tatiana found him) and significant bodily injury including a fracture of the left femur, orbital injury and dental injuries. He was transported to St. Mary's Trauma Center and underwent surgery for the leg fracture. He was hospitalized for 6 days and subsequently discharged. His convalescence involved intense physical therapy, loss of school attendance for several months, numerous follow-up medical care visits, two more surgical procedures for complications resulting from the healing of the leg fracture, and treatment of dental injuries. Medical records and other documentation indicate that Clay Haywood has suffered a 20% physical impairment to his body as a result of the injuries he sustained which ultimately have curtailed his physical activities and increased his risk of suffering athletic injuries. The record also supports that he will necessitate permanent and long-term medical care to monitor his injuries. Additionally Clay Haywood will need future dental work which will either involve a tooth implant or a three unit bridge to address his dental injuries.

The parent, Michelle O'Halloran, testified as to the emotional trauma she suffered upon first learning of the school bus accident, in reuniting with her children after they had been transported to an emergency treatment facility, and in discovering the extent of their injuries. She 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 jobs and adjusting schedules initially and continually in order to attend to the children's medical and emotional needs.

Michelle O'Halloran as parent and natural guardian of Clay and Tatiana Haywood, filed suit on their behalf in March

2000 in the Circuit Court for Indian River County. The suit sought recovery for injuries sustained by Tatiana Haywood and Clay Haywood 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 their parent, Ms. O'Halloran, on behalf of her children. The School Board of Indian River County conceded liability. In 2001, Michelle O'Halloran was appointed plenary guardian for the property of her children. On October 24, 2001, the parties entered into a settlement agreement and release for \$225,000 (\$200,000 for Clay Haywood and \$25,000 for Tatiana Haywood). There was no trial. The father of the minor children, Robert Haywood, who shares custody of the children with Ms. O'Halloran, did not execute the agreement. In January 2002, the court appointed the same guardian ad litem for Clay and Tatiana Haywood who subsequently filed two reports indicating that the settlement agreement and release was in the children's best interest. The school board approved the settlement agreement and release on January 8, 2002. The settlement agreement and release provides that, subject to the successful passage of the claim bill, the settlement amount would be paid in 3 annual installments of \$75,000. In exchange, the school board has agreed to support the claim bill. On May 22, 2002, the court approved the settlement agreement and directed that the proceeds of the settlement to be deposited directly into a restricted guardianship account as established at a specified location of Harbour Federal Savings in Sebastian, Florida.

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 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 Tatiana Haywood and Clay Haywood's injuries was the force of the impact by the accident brought on by Ms. Colletti's breach.

Damages: Tatiana Haywood and Clay Haywood 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 parent, Michelle O'Halloran, also incurred damages in relation to the emotional impact and the medical and related expenses associated with her children's injuries and their continuing period of physical and emotional recovery from this childhood experience.

Collateral Sources: Medical expenses for Clay Haywood have exceeded \$88,347.07 to date. It is represented that Clay Haywood's outstanding medical bills exceed \$25,796.53 of which there is an outstanding lien from Blue Cross Blue Shield for \$23,575.77 and another lien for \$9,088.48. Clay Haywood received \$8,000 in benefits from an auto policy, and \$450.00 from a school board insurance policy. Medical expenses for Tatiana Haywood have exceeded \$3,908.75. There is an outstanding balance of \$328.72 not including the lien from Blue Cross/Blue Shield for \$2,254.10. Tatiana Haywood received \$979.00 from a school board insurance policy. Upon receipt of funds from a collateral source, the Legislature is usually entitled to an offset against a claim amount. However, due to the settlement, there is already a significant reduction. 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, 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 Tatiana Haywood and Clay Haywood and their parent, Michelle O'Halloran 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. Although no special needs trust fund has been established, a restricted guardianship account has been established, per court order, on behalf of Clay and Tatiana Haywood at a Harbour Federal Savings in Sebastian, Florida.

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 \$56,250 for both claims. No specific documentation was provided as to the hours actually expended or the hourly rate. Claimants' attorney claim costs totaling \$2,844.84 for Tatiana Haywood's claim and \$20,117.10 for Clay Haywood's claim. Of that total amount, \$13,500 is attributed solely to lobbyist fees for the claims bill process. Thus recovery of the attorney fees, costs and lobbyist fees would represent 35 percent of the net settlement amount recovered through a successful claim bill.

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 for the claimants would come from the district's General Operating Funds during the next 3 years.

RECOMMENDATIONS:

I recommend that Senate Bill 44 be amended to require the School Board of Indian River County to pay \$225,000 inclusive of costs and attorney's fees, payable in 3 annual installments of \$75,000. Additionally, I recommend that the claim bill be amended to reflect accurately that \$25,000 of the funds are to be appropriated for Tatiana Haywood and the remaining \$200,000 for Clay Haywood, all of which are to be directly deposited into the existing restricted guardianship account established per a court order on behalf of Tatiana Haywood and Clay Haywood in which no withdrawals of the settlement funds are to be made without court order.

For the foregoing reasons, I recommend that Senate Bill 44 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