



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/1/03	SM	Fav/1 amendment
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December 1, 2003

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

Re: **SB 16 (2004)** – Senator Bill Posey
Relief of Debra Smith, Pamela Hughes, Michael Truitt, and Charles Hughes

SPECIAL MASTER'S FINAL REPORT

THIS CLAIM BILL SEEKS \$300,000 AS PART OF A SETTLEMENT FOLLOWING A VERDICT-BASED JUDGMENT IN FAVOR OF THE FOUR ADULT CHILDREN OF A MAN KILLED WHEN THE TRACTOR-TRAILER HE WAS DRIVING WAS STRUCK BY A SCHOOL BUS OPERATED BY AN EMPLOYEE OF THE INDIAN RIVER COUNTY SCHOOL BOARD, WITH THE CLAIM TO BE PAID FROM GENERAL FUNDS OF THE SCHOOL BOARD.

FINDINGS OF FACT:

The Accident

About 3:38 p.m., on Monday, January 25, 1999, a School Board of Indian River County school bus, driven by Deborah A. Colletti, an employee of the school board, was traveling westbound on County Road 611 (45th Street), approaching the intersection with County Road 615 (66th Avenue) in Indian River County. Ms. Colletti was transporting children from school to their 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 Sammie Lee Hughes was traveling southbound on CR-615, approaching the intersection with CR-611. Mr. Hughes was driving a 1996 tractor-trailer. According to the evidence, Mr. Hughes was traveling 40 mph.

The 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 right side. Ms. Colletti was ejected through the windshield. 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. Mr. Hughes and one student, Victor Dixon, Jr., were killed in the accident, and 15 other students were injured.

County Road 611 is an east-and-west, two-lane, undivided roadway. The roadway is constructed of asphalt, and it is straight and level in the area of the crash. The roadway is approximately 17 feet, 4 inches wide. The lanes are marked on their outer edges 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 1/10th 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 site.

County Road 615 is a north-and-south, two-lane, undivided roadway. The roadway is constructed of asphalt, and it is straight and level in the area of the crash. The roadway is approximately 22 feet wide. A solid white line marks the outer edges, and the lanes are separated by one solid yellow line. The speed limit for southbound traffic is 45 mph, posted approximately 1/10th of a mile north of the intersection with CR-611.

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 that contributed to this crash.

Deborah Colletti and Sammie 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 Sammie Lee Hughes. Nor were Victor Dixon, Jr., an 8-year-old passenger, and 15 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 found to have violated §316.123(2)(a), F.S. (1997), failure to stop and yield the right of way. Ms. Colletti and Mr. Hughes were found to have violated Title 49 Code of Federal Regulations § 392.16, 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 the 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 and that the school bus did not slow down as it approached the intersection.

Rebecca Uma Jeanne Clark: Ms. Clark provided a sworn statement to the Florida Highway Patrol indicating she was a driver two cars behind the tractor-trailer. She testified that the school bus did not stop at the stop sign and that the bus was going too fast to stop as it approached the intersection.

Frank J. Labriola: Mr. Labriola provided a sworn statement to the Florida Highway Patrol indicating he was a driver of a vehicle approximately three to four car lengths directly 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 (FHP) indicating that she did not remember any details of the accident. According to the FHP traffic homicide report, Ms. Colletti did state that she remembered stopping at the stop sign and looking to her left. However, she also told accident investigators that she has no memories between being at an elementary school in the afternoon and waking up in the ambulance after the

accident. Ms. Colletti's recollection that she stopped at the stop sign is contradicted by the testimony of other witnesses.

Surviving children passengers: Although not all of the surviving children passengers could remember details of the accident or could state the cause of the accident, at least two of these passengers stated to the Florida Highway Patrol that the bus did not stop at the stop sign and proceeded into the intersection.

Judicial/Procedural History

Sammie Hughes, who was 63 and who was working on a part-time basis for a trucking company, was survived by four adult children: Debra Truitt Smith, Michael Truitt, Charles Hughes, and Pamela Hughes. As co-personal representatives of the estate of Sammie Hughes, Ms. Smith and Ms. Hughes filed a lawsuit against the School Board of Indian River County in November 1999 under the Florida Wrongful Death Act. Under the act, adult children of a decedent – if there is no surviving spouse – may recover for lost parental companionship, instruction, and guidance and for their mental pain and suffering from the date of injury. The school board had conceded liability in different litigation stemming from this accident; consequently, only issues related to damages were litigated in the Hughes trial. The jury awarded \$75,000 (23 percent) for Debra Smith, \$75,000 (23 percent) for Michael Truitt, \$75,000 (23 percent) for Pamela Hughes, and \$100,000 (31 percent) for Charles Hughes. In February 2002, the court entered a final judgment for \$325,000, plus costs of \$530.72.

Shortly before the Special Master's hearing on this matter,¹ the parties reached a settlement that provides for a total of \$300,000 to be paid over a 3-year period – with 50 percent to be paid in July 2003, 25 percent in July 2004, and 25 percent in July 2005.² The amounts would be budgeted into the school district's general operating fund on an annual basis. On October 22, 2002, the school board unanimously approved the settlement.

Related Claim Bills

This accident resulted in multiple lawsuits. During the 2003 Regular Session, the Legislature approved three claim bills stemming from this accident, each of which related to injured school bus passengers. See HBs 305, 377, and 1249 (chs. 2003-317, 2003-323, and 2003-366, L.O.F.). During the

2002 Regular Session, the Legislature passed Senate Bill 46 (ch. 2002-320, L.O.F.), which compensated the parents of the child killed in the accident. In addition to the bill that is the subject of this report (SB 16), there are two other claim bills under consideration for the 2004 Regular Session related to this accident (SBs 18 and 20).

CONCLUSIONS OF LAW:

Liability and Damages

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 conceded liability in connection with related litigation, as well as during the Special Master hearing on this claim bill. The finding of breach does not rest on the school board's concession. Rather, overwhelming evidence establishes that Ms. Colletti, and accordingly the school board, failed to stop and heed a lawful traffic control device. Evidence indicates that Ms. Colletti was not applying the break in an effort to stop or slow the bus as she traveled through the stop sign and struck the tractor-trailer.

Proximate Cause: The sole precipitating, direct cause of the death of Sammie Hughes was the force of the impact brought on by Ms. Colletti's breach. There is no evidence in the record of the Special Master to support a conclusion that Mr. Hughes' death would have been avoided had he been using the available and operational safety restraint in the tractor-trailer. The attorney for the school board reported that a biomechanical expert consulted in connection with the trial-court litigation concluded that a safety restraint would not have altered the outcome of the accident.

Damages: Sammie Hughes is deceased as a result of this accident. Under the Florida Wrongful Death Act, his adult children may recover for lost parental companionship,

instruction, and guidance and for their mental pain and suffering – if there is no surviving spouse. These non-economic damages are the sole damages being pursued through this claim bill. During the Special Master's hearing, the claimants testified that Mr. Hughes had been legally married to, and never divorced from, a woman other than the children's biological mother. The two apparently had separated many years prior to the accident and lived in different states. The claimants further testified that Mr. Hughes spouse died before him. Mr. Hughes' death certificate describes him as widowed. (Note: Subsequent to the hearing and upon request of the Special Master, the attorney for claimants provided a death certificate for a woman thought to be Mr. Hughes' spouse; however, information contained in the death certificate led the Special Master to question if the death certificate might in fact be for a different individual with a similar name and therefore might have been submitted in error. As of the writing of this report, the claimants had not provided additional evidence on whether the death certificate is for the correct individual or additional evidence relating to the death of Mr. Hughes' spouse. The testimony of the claimants and the characterization of Mr. Hughes as widowed on his death certificate provide the Special Master with evidence to support a finding that there is no surviving spouse.)

Each of the claimants testified at the Special Master's hearing about their relationship with their father. The record of the Special Master contains competent and substantial evidence demonstrating that Debra Smith, Michael Truitt, Charles Hughes, and Pamela Hughes each enjoyed regular and positive interactions with their father; sought, relied upon, and respected the advice of their father; and have experienced mental pain and suffering due to the death of their father. Based upon this testimony, the Special Master concludes that the claimants have experienced significant non-economic damages.

Claim Overall

The evidence in this case was reviewed with recognition of the parties' settlement agreement. Settlements may be entered into for reasons unrelated to the actual merits of a claim or the validity of a defense. Consequently, settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature, its committees, or the Special Master. All such agreements, however, must be

evaluated and can be given effect, at least at the Special Master's level, if they are found to be reasonable and based on equity. Such is the case with respect to this claim bill settlement. The Special Master concludes that the claimants have established liability and damages of the school board by a preponderance of the evidence. The Special Master further finds that the settlement agreement is reasonable, is not inequitable to either side, was negotiated in good faith by the attorneys representing the parties, and should be given effect. It is estimated that, after reductions for attorney's fees and costs, the net settlement proceeds will be approximately \$201,104.79, to be proportionally shared by the claimants as follows: Debra Smith, \$46,254.10; Michael Truitt, \$46,254.10; Pamela Hughes, \$46,254.10; and Charles Hughes, \$62,342.48.

Michael Truitt testified that he has served time in prison or jail, on four separate occasions ranging from the mid-1980s to 2000, for offenses including drug possession, two parole violations, and driving with a suspended license. He further testified, however, that he now is striving to keep his life in order and avoid these types of legal problems. These offenses did not alter the Special Master's legal conclusion regarding Mr. Truitt's damages claim for mental pain and suffering and lost parental companionship, instruction, and guidance.

Charles Hughes is on full disability, stemming from a hip injury, and is unable to work. He does volunteer extensively in his church, including maintaining the financial records of the church choir. Although Mr. Hughes has a learning disability, the record of the Special Master contains evidence that he is able to manage his own finances, including any proceeds awarded under this claim bill.

COLLATERAL
SOURCES/LIENS:

The claimants received a total of \$5,000 from two insurance companies as required death benefits under the Florida Motor Vehicle No-Fault Law. [See §627.736(1)(c), F.S. (1998 Supp.).]

Michael Truitt testified during the Special Master's hearing that there is a child-support lien against him, for a child residing outside Florida, totaling approximately \$20,000. Mr. Truitt has voluntarily consented to the entry of a judgment against him in Indian River County circuit court for \$22,500, which includes interest, attorney's fees, and costs.

In the consent judgment, Mr. Truitt agrees to make the child-support payment from proceeds he may receive through the wrongful death action against the school board.

ATTORNEYS FEES:

Section 768.28(8), F.S., limits attorney fees to 25 percent of a claimant's total recovery by way of any judgment or settlement obtained pursuant to §768.28, F.S. The attorney for the claimant has submitted documentation attesting to compliance with this limitation.

SPECIAL ISSUE/
PAYMENT SCHEDULE:

The bill provides for payments to the claimants in three installments: July 2003, July 2004, and July 2005. Because July 2003 has passed, it is recommended that the Legislature amend these dates to be July 2004, July 2005, and July 2006, if it elects to support passage of the claim bill.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that the dates governing the payment schedule be amended and that Senate Bill 16 (2004) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Eric W. Maclure
Senate Special Master

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

¹ A Special Master's hearing was held on October 16, 2002, in connection with a claim bill filed on this matter for consideration during the 2003 Regular Session. (See SB 18, 2003 Regular Session.) The bill, however, died in messages of the House of Representatives. Because the parties reported no significant changes in material facts in this matter, a second Special Master's hearing was not conducted for SB 16 (2004 Regular Session).

² The copy of the settlement agreement in the record of the Special Master provides for these dates. The dates appear to have been based upon the consideration of a claim bill on this matter during the 2003 Regular Session. As of the writing of this report, it is not known if the parties have revised the agreement to have the school board make the first payment in July 2004, in light of the fact that a claim bill did not pass both chambers of the Legislature during the 2003 Regular Session.