



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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DATE	COMM	ACTION
12/01/03	SM	Favorable
02/04/04	ED	Fav/1 amendment
	FT	

December 1, 2003

The Honorable James E. "Jim" King, Jr.
President, The Florida Senate
408 Senate Office Building
Tallahassee, Florida 32399-1100

Re: **SB 18 (2004)** – Senator Bill Posey
Relief of Amanda Johnson

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM BASED ON A SETTLEMENT FOR \$287,500, TO COMPENSATE AMANDA JOHNSON AND HER PARENTS, VIRGINIA AND CHARLES JOHNSON FOR INJURIES ARISING FROM A COLLISION BETWEEN A TRACTOR-TRAILER AND A SCHOOL BUS.

FINDINGS OF FACT:

About 3:38 p.m., on Monday, January 25, 1999, the claimant, 7-year-old Amanda Johnson, was a passenger on a school bus, driven by Deborah A. Colletti, an employee of the School Board of Indian River County. Ms. Colletti was transporting children from school to their respective bus stops when the bus collided at the intersection of 45th Street (CR-611) and 66th Street (CR-615) with a 1996 tractor-trailer driven by 63-year-old Sammy Lee Hughes.

Both vehicles were traveling at 40 mph. The bus was traveling westbound on 45th Street and the tractor-trailer was traveling southbound on 66th Avenue. Unrebutted evidence demonstrates that Ms. Colletti proceeded into the intersection, after failing to come to a halt at the stop sign. 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, struck and partially slid up a wood utility pole, and came to rest on its left side. Ms. Colletti was ejected through the windshield. The tractor-trailer struck the south bank of a drainage canal before it came to rest. Mr. Hughes was partially ejected through the windshield and died. Additionally, Amanda Johnson and 15 other school children were injured one of whom died.

Forty-fifth Street (CR-611) is an east and west, two-lane, undivided roadway. Sixty-sixth Avenue (CR-615) is a north and south, two-lane, undivided roadway. Both roadways are constructed of asphalt, straight and level in the area of the crash, and have no grade. Forty-fifth Street is approximately 17 feet, 4 inches wide and 66th Avenue is 22 feet wide. Both roadways are marked on their outer lane by a solid white line, and their lanes are separated by two solid yellow lines. Traffic control for westbound 45th Street, at its intersection with 66th Avenue (CR-615), is governed by a stop sign. The speed limit for 45th Street is posted one mile east of the intersection and for 66th Avenue is posted 1/10 of a mile north of the intersection. The posted speed limits for both roadways are 45 mph.

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 the children. Neither the school bus driver nor the tractor-trailer driver used their available and operational safety restraints. There was no evidence of intoxication or physical impairment contributing to the incident.

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 which would have otherwise suggested braking prior to or at the time of impact.

The bus driver was charged with failing to stop and yield the right of way under §316.123(2)(a), F.S. Both drivers were found to have violated federal regulations governing the use of seat belts. See s. 49 CFR 329.16. Mr. Hughes was found

not to be negligent in the operation of his vehicle. Ms. Colletti, the bus driver 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, including the moments immediate to the accident.

LEGISLATIVE/PROCEDURAL HISTORY:

Virginia and Charles Johnson, filed suit in May 2000 on behalf of their daughter and themselves. They sought recovery for injuries sustained by their daughter including bodily injuries, pain and suffering, disability, disfigurement, mental anguish, loss of capacity, and past, permanent and continuing medical expenses associated with the injuries. They also sought recovery for damages suffered by the parents on behalf of their daughter. The School Board of Indian River County conceded liability. Subsequent to a court-ordered mediation but prior to trial, the parties entered into a settlement agreement for \$287,500. The settlement agreement provides that, subject to the successful passage of the claim bill, the settlement amount would be paid in four annual installments of equal amounts (\$71,875). On June 6, 2002, the court appointed a guardian ad litem who subsequently filed a report, in accordance with state law, that indicated that the settlement agreement was in the child's best interest. On June 20, 2002, the school board approved the settlement agreement. On July 1, 2002, the court appointed the parents as plenary guardians. On August 29, 2002, the court approved the settlement agreement and directed that any settlement proceeds received be deposited into a restricted guardianship account as established at Wachovia Bank.

This bill represents the second year that this claim has been filed [see SB 38 (2003)]. No rehearing has been held. Responses to requests for supplemental information indicate that there is no material change in facts or circumstances or law to hold another hearing or to change the recommendation. The school board continues to agree not to contest the claim bill.

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.

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

Damages

Amanda Johnson suffered extensive long-term injuries including a serious fracture of the left femur. She also suffered from psychological and emotional trauma which has included recurring nightmares and fear of riding school buses. Proof of damages is supported by the medical records and bills including reports by various physicians and other health care practitioners, by other documentation and testimony at the final claim bill hearing held in October 2002, and through responses and documentation received September 2003.

To date, Ms. Johnson has undergone three surgeries to attempt to correct a leg length discrepancy which has increased to 2.2 cm (or almost 1 inch). The most recent surgery occurred on July 9, 2003, and involved a procedure

called epiphysiodesis to stunt the growth of a long bone in order to address the bone length discrepancy. Ms. Johnson currently wears a shoe lift and receives physical therapy from a sister who is a licensed physical therapist. Ms. Johnson's condition has limited her participation in physical activities. Although a certain amount of uncertainty surrounds the nature and timing of treatment due to Ms. Johnson's age and physical growth, it is expected she will need future long-term orthopedic care including diagnostic testing, physical therapy, and possibly more surgery and rehabilitation.

At the claim bill hearing held in October 2002, the parents, Virginia and Charles Johnson 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 an emergency medical treatment facility, and in discovering 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 in order to attend to their daughter's needs. The Johnsons expressed concern and trepidation about their daughter's future medical condition and treatment, particularly any surgery.

ATTORNEYS FEES:

Attorney's fees for services rendered are limited to 25 percent of recovery pursuant to §768.28(8), F.S. Therefore, the claimants' attorney's fees could not exceed \$71,875 under this claim bill. To date, the claimants' attorney claim attorney's fees and costs totaling \$24,411.75 of which \$17,250 is attributed to costs associated with lobbyist fees in representing the claimant in the claim bill process.

FISCAL IMPACT:

Since this incident involved multiple claimants, the School Board of Indian River County has already exhausted pay-outs under the \$200,000 cap for limited sovereign immunity under §768.28, F.S., and monies available under a self-insurance consortia fund under §234.03, F.S. Therefore, according to the school board counsel and superintendent, the funds for payment of this uncontested claim will come from the district's General Operating Funds during the next 4 school years as budgeted.

COLLATERAL SOURCES:

To date, Ms. Johnson's medical expenses have totaled in excess of \$105,000. There is a minimum \$2,497 outstanding balance for Palm Beach Orthopaedic Institute and \$13,232 for St. Mary's Medical Center for the latest surgery. Not all bills have yet been submitted for this surgery. There is still outstanding a \$19,789.02 health insurance policy lien. The claimants received \$30,365.25 from a school board insurance policy, and \$12,000 from Personal Injury Protection Benefits from the Johnson's PIP carrier. Additionally, the Johnsons recently learned that their underinsured motorist carrier, Nationwide Mutual Fire Insurance Company has offered a \$50,000 underinsured motorist policy limit. The Legislature is usually entitled to an offset for funds from collateral sources. However, since the settlement amount already represents a reduction in compensation, no offset is recommended.

Since parties sometimes may enter into stipulation and settlement for reasons other than the merits of the claim or the validity of a defense, the Legislature is not bound by a settlement. However, Amanda Johnson's damages have been evaluated within the context of the settlement agreement. In this case, the parties, each of whom were 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 the claimants and to limit the Indian River County School Board's exposure to further litigation and liability arising from this claim.

RECOMMENDATIONS:

Based on the foregoing, I recommend that Senate Bill 18 (2004) be reported FAVORABLY.

Respectfully submitted,

Maria I. Matthews
Senate Special Master

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

#1 by Education:

Technical amendment to correct date of disbursement.