



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

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DATE	COMM	ACTION
12/1/03	SM	Fav/ 1 amendment
02/04/04	ED	Fav/ 1 amendment
02/19/04	FT	Fav/CS

December 1, 2003

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

Re: **CS/SB 20 (2004)** – Finance and Taxation Committee and Senator Bill Posey

Relief of Ryan Besancon, a minor, by and through his parents and natural guardians, Mark Besancon and Laurie Besancon

SPECIAL MASTER'S FINAL REPORT

THIS IS A \$70,000 SETTLEMENT TO COMPENSATE RYAN BESANCON, A MINOR, THROUGH HIS PARENTS, MARK BESANCON AND LAURIE BESANCON, FOR INJURIES SUSTAINED BY RYAN BESANCON AS A RESULT OF THE NEGLIGENCE OF A SCHOOL BUS DRIVER EMPLOYED BY THE SCHOOL BOARD OF INDIAN RIVER COUNTY. THE CLAIM WOULD BE PAID FROM FUNDS OF THE SCHOOL BOARD. THE SOVEREIGN IMMUNITY CAP UNDER §1006.24, F.S., HAS BEEN EXHAUSTED.

FINDINGS OF FACT:

The Accident

About 3:38 p.m., on Monday, January 25, 1999, the claimants' son, Ryan Besancon, was a passenger on a School Board of Indian River County school bus, driven by Deborah A. Colletti, an employee of the School Board of Indian River County.

Unrebutted evidence demonstrates that Ms. Colletti failed to stop at a stop sign before proceeding into the intersection. The school bus struck a tractor-trailer in the intersection and then struck a wood utility pole before coming to a final rest

on its side.

No environmental factors contributed to the crash. There were no safety restraints available to Ryan Besancon.

Ms. Colletti was charged with violating §316.123(2)(a), F.S., failure to stop and yield the right of way. No negligence was found on behalf of the tractor-trailer driver in the operation of his vehicle. Ms. Colletti was found to have caused the crash.

Witnesses

There were several witnesses to the accident: Jennifer Francis, Rebecca Uma Jean Clark, Frank John Labreola, and the children on the bus. Each provided sworn statements to the Florida Highway Patrol indicating that the school bus did not stop or slow down at the stop sign before proceeding into the intersection.

Ms. Colletti provided a sworn statement to the Florida Highway Patrol indicating that she did not remember any details of the accident. Accordingly, she could not remember whether she proceeded through the intersection without stopping at the stop sign.

Procedural History

The Besancons filed an amended complaint in the Circuit Court for Indian River County against the school board on August 17, 2000, seeking compensation for Ryan Besancon's injuries and a loss of consortium. The school board conceded liability. The parties entered into a settlement agreement for \$70,000. The school board approved the settlement agreement on January 31, 2003. The court appointed a guardian ad litem on July 15, 2003, who indicated that the settlement was in the best interests of Ryan Besancon notwithstanding the guardian ad litem's opinion that the settlement was inadequate. A claim bill was filed on August 1, 2003. The court approved the Besancons as guardians and authorized the settlement on September 23, 2003.

CONCLUSIONS OF LAW:

The claimants bear the burden of proof for each element of the claim of negligence based on a preponderance of the evidence. 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 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 Ryan Besancon's injuries was the force of the impact brought on by Ms. Colletti's breach.

Damages

Ryan Besancon suffered serious permanent injuries as a result of the motor vehicle trauma arising from the school bus collision.

Following the accident, Ryan Besancon was transported via ambulance to Indian River Memorial Hospital with complaints of a head injury with blood draining from his left ear canal, glass in his face, vomiting, nausea, and a questionable loss of consciousness. Radiographic evidence supported a diagnosis of a skull fracture of the base of the occipital bone.

Following a 4-day admission into the hospital, Ryan Besancon followed-up with numerous physicians including Drs. Asoka Wijetilleke, M.D., pediatrician; Romas Sakalas, M.D., neurosurgeon; Donald C. Proctor, Jr., M.D., otolaryngologist; Thomas C. Teather, M.D., ophthalmologist; Louis W. Solomon, M.D., neurosurgeon; Gary M. Weiss,

M.D., Neurologist; Scott M. Kaplan, PSY.D.; Madeline LaPlante, M.A.; Joseph A. Cimino, M.D.; and James Shafer, M.D., Neurologist.

The medical records indicate that Ryan Besancon has treated with the above physicians for headaches, extruding glass in his face, and trouble with his hearing and vision. The vision and hearing problems have since resolved. Ryan Besancon continues to experience headaches on an almost daily basis and complains of short-term memory loss.

An electroencephalogram ordered by Dr. Cimino confirmed a finding of partial seizure disorder. The partial seizure disorder manifests as staring episodes according to the medical records and the testimony of the claimants. Ryan Besancon was prescribed Depakote for his seizures. Dr. Shafer noted that Ryan Besancon experiences bad mood swings since starting the medication. Dr. Shafer opined that Ryan Besancon will continue to need life long anticonvulsants because of his seizure disorder and closed head injury, supporting a finding that Ryan Besancon's injuries are permanent in nature and that the school bus accident is a major contributing cause of his permanent injuries.

Ryan Besancon has incurred over \$22,000 in medical expenses attributable to the accident to date. Approximately \$3,100 in medical expenses remains outstanding.

The Besancons are divorced with Laurie Besancon having primary parental responsibility for Ryan Besancon with significant visitation rights exercised by Mark Besancon. Their original complaint included a cause for loss of consortium; however, for purposes of the settlement, the Besancons have agreed to waive the loss of consortium claim so that all settlement funds would be the property of Ryan Besancon.

COLLATERAL SOURCES:

The claimants received \$45,000 in funds from collateral sources: \$20,000 for medical bills from the claimants' Personal Injury Protection/Medical Payments carrier and \$25,000 from the claimants' under-insured motorist policy.

Upon receipt of funds from a collateral source, the Legislature is usually entitled to an offset. However, due to the amount of settlement, I recommend that no offset be taken.

Additional medical bills have been paid by the claimants' health insurance carrier, Blue Cross, Blue Shield; however, the carrier has indicated that it is waiving its subrogation rights. Finally, Laurie Besancon filed some of Ryan Besancon's medical bills with Medicaid but was denied payment according to her testimony.

ATTORNEYS FEES:

Attorney's fees are limited to 25 percent of recovery pursuant to §768.28, F.S. However, the claimants' attorney has waived attorney's fees.

FISCAL IMPACT:

The School Board of Indian River County has already paid multiple claimants up to its sovereign immunity cap pursuant to §1006.24, F.S. Therefore, according to the school board's counsel and superintendent, the funds for payment of this claim would come from the district's General Operating Funds. To date, the district has paid or agreed to pay approximately \$2.2 million in compensation for multiple claimants involved in this accident.

RECOMMENDATIONS:

I recommend approval of the settlement agreement, which provides for payment from the School Board of Indian River County in the amount of \$70,000 inclusive of costs. The claimants' attorney has waived attorney's fees.

I recommend that the claim bill be amended to provide that the settlement funds should be deposited in a restricted guardianship account for Ryan Besancon and that any expenses on behalf of Ryan Besancon in excess of \$5,000 per calendar year require court approval prior to disbursement. As it stands, the claimant would receive approximately \$57,939.95 following the payment of outstanding medical bills, costs, and lobbying fees. The claimant is 10 years old. This amendment, if adopted, would

ensure that a greater percentage of the corpus would be available to the claimant upon his reaching the age of majority. In addition, the amendment would prevent the additional expense of returning to court every time a medical bill needs to be paid.

In all other respects, I recommend that Senate Bill 20 (2004) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Lowell D. Matthews, Jr.
Senate Special Master

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

The CS made the following changes:

Establishes a guardianship account by which expenses in excess of \$5,000 per calendar year on behalf of the minor would require court approval and makes technical corrections to the date of disbursement and the proper party as respondent.