



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
3/25/08	SM	Favorable
4/03/08	CA	Favorable

March 25, 2008

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 56 (2008)** – Senator Dave Aronberg
HB 1539 (2008) – Representative Carlos Lopez-Cantera
Relief of Schneidine Theogene

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM BASED ON A COURT-APPROVED MEDIATED SETTLEMENT FOR \$2.4 MILLION IN FUNDS OF MIAMI-DADE TRANSIT AUTHORITY TO COMPENSATE SCHNEIDINE THEOGENE, AGE 10, FOR QUADRIPLEGIA CAUSED BY A TRAUMATIC BRAIN INJURY SUFFERED WHEN A MIAMI-DADE COUNTY BUS RAN A RED LIGHT AND COLLIDED WITH A MINIVAN DRIVEN BY HER MOTHER.

FINDINGS OF FACT:

On November 24, 2004, 7 year old Schneidine Theogene and her siblings, Shaydie Theogene, Wendy Theogene, and Schneida Theogene, were passengers in a minivan owned and operated by their mother, Jeanne Coicou. The minivan was struck on the passenger side by a Miami-Dade County Transit Authority bus that ran a red traffic light, as shown by the video surveillance cameras on the bus. The most seriously injured occupant of the minivan, Schneidine, was seated on the second row on the passenger side, and was partially ejected from the vehicle.

Ms. Coicou was driving her 1994 Nissan Quest minivan westbound on Northwest 191st Street. The minivan was the second vehicle in a line that stopped at a red traffic signal on Northwest 191st Street at the intersection with Northwest 7th

Avenue. After the light turned green, Ms. Coicou followed the first vehicle and proceeded through the intersection, when a Miami-Dade bus traveling southbound on Northwest 7th Avenue collided with the minivan.

A Florida-licensed professional engineer, who is an accredited traffic accident reconstruction expert with 34 years of professional experience, Miles E. Moss, determined that the bus was moving at a speed of 25 to 30 mph at the time of impact, and that the traffic signal timing gave the bus driver a yellow signal when the bus was 369 to 501 feet, or 10.1 to 11.4 seconds away from impact; that the bus driver received a red traffic signal at 223 to 325 feet, or 6.1 to 7.4 seconds before impact; and that the bus driver's failure to stop at the red signal was the sole cause of the collision. Finally, Mr. Moss determined that Schneidine was strapped in a seatbelt, but due to her size, the force of the impact, and the crash dynamics, she came out of the seatbelt and was partially ejected from the minivan. Had she not been using a seatbelt, Mr. Moss opined that Schneidine would have been fully ejected as the vehicle rolled over and would have come to rest at an entirely different location away from the bus and the minivan. In the absence of any evidence to the contrary, Mr. Moss' report is accepted as an accurate reconstruction of the accident.

Schneidine was hospitalized at Jackson Memorial Hospital from November 24, 2004, through February 10, 2005, for traumatic brain injury from a frontal skull fracture and hemorrhagic contusion that caused her to be comatose for approximately one and a half months; for bilateral lung contusions; bilateral mandible (jaw bone) fractures; a seventh rib fracture; and a fracture of her right forearm. When first airlifted to the trauma center, she underwent aggressive resuscitation, including an emergency tracheotomy with mechanical ventilation, her jaw bone was wired, and her arm was placed in a splint and traction. Schneidine subsequently had surgery for a feeding tube to be inserted in her abdomen.

From February 10, 2005, through February 25, 2005, Schneidine was an inpatient at the Jackson Memorial Rehabilitation Center, primarily for her mother to receive training for feeding, skin care, medication administration, transfers, mobility and spasticity (contracted muscles) management. Schneidine was transferred back to Jackson Memorial Hospital from February 25, 2005 through March 4, 2005, for a laryngoscopy and bronchoscopy to evaluate and ultimately remove the tracheotomy tube, and to be

discharged home. The Public Health Trust of Miami-Dade County that operates Jackson Memorial Hospital incurred charges in excess of \$482,454.06 for the care of Schneidine.

Schneidine requires 24-hour care. Sharon Griffin, a Vocational and Rehabilitation Counselor, evaluated Schneidine's injuries and prepared a life care plan for estimated future health and medical care costs in a range, depending on treatment options, from \$27,555,901 to \$36,672,892. Economist Thomas Gamboa, Ph.D., evaluated the life care plan and offset the expected long-term rise in medical care costs by the expectation that any funds will be held in conservative investments, for example, in 91-day Treasury bills, and reduced the life care plan to a range between \$22,428,719 and \$29,643,361.

LITIGATION HISTORY:

In December 2005, a suit for damages was filed on behalf of Schneidine in the Circuit Court for Dade County. Under the terms of a court-approved settlement agreement, the Claimant will receive \$4 million dollars from insurance companies, \$100,000 from Miami-Dade County, and, if the claim bill is approved, an additional \$2.4 million dollars that has been set aside in Miami-Dade Transit Authority reserves, for a total settlement of \$6.5 million. The court-appointed guardian ad litem also agreed that the settlement agreement was reasonable, including attorneys' fees of 25 percent plus costs, and lobbyists' fees of 6 percent.

CLAIMANT'S POSITION:

The claim bill should be approved based on the court-approved settlement. Clear liability was established by the bus videotape and the analysis by the accident reconstruction expert. The settlement is well below the funds needed for Schneidine's care in light of her catastrophic injuries.

COUNTY'S POSITION:

The county supports the claim bill, and does not dispute the video surveillance and other evidence that the bus driver ran a red light. Had it prepared for trial, the county would have examined more closely the following issues: (1) whether Schneidine was fastened in a seatbelt, and (2) whether her estimated life expectancy should be lower.

CONCLUSIONS OF LAW:

There is competent substantial evidence to support a conclusion that Miami-Dade County owed a duty of care that was breached when its bus driver ran a red traffic signal, directly and proximately causing the Claimant's permanent and severe injuries.

ATTORNEY'S FEES AND
LOBBYIST'S FEES:

In compliance with Section 768.28(8), Florida Statutes, but not with Section 3 of this claim bill, Claimant's attorney has submitted a closing statement affirming that the attorney's fees are 25 percent of the amount of the award, and that the lobbyists' fees are an additional 6 percent. The Claimants have entered into an agreement to pay costs that was approved by the guardian and the court. Costs are expected to range between \$25,783.29, the amount as of January 15, 2007, to \$75,783.29 by the end of the claim bill process.

LEGISLATIVE HISTORY:

This is the first time that a claim bill has been filed to compensate Schneidine Theogene.

RECOMMENDATIONS:

For the reasons set forth in this report, I recommend that Senate Bill 56 (2008) be reported FAVORABLY.

Respectfully submitted,

Eleanor M. Hunter
Senate Special Master

cc: Senator Dave Aronberg
Representative Carlos Lopez-Cantera
Faye Blanton, Secretary of the Senate
House Committee on Constitution and Civil Law
Mark Kruse, House Special Master
Counsel of Record