THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
02/04/02	SM	Unfavorable
	ED	
	FT	

February 4, 2002

The Honorable John M. McKay
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 54 (2002)** – Senator Alex Diaz de la Portilla
HB 671 – Representative Matthew Meadows
Relief of Bronwen Jane Dodd

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM IN THE AMOUNT OF $240,999.75 BY BRONWEN JANE DODD AGAINST THE ESCAMBIA COUNTY SCHOOL BOARD FOR INJURIES SUSTAINED IN A MOTOR VEHICLE COLLISION INVOLVING THE CLAIMANT'S VEHICLE AND A SCHOOL BUS OPERATED BY THE ESCAMBIA COUNTY SCHOOL BOARD. THE FINAL JUDGMENT IN THE UNDERLYING COURT LITIGATION IS BASED ON AN AWARD MADE BY BINDING ARBITRATION, NOT A JURY VERDICT.

FINDINGS OF FACT:

The claimant, Bronwen Jane Dodd, who was 18 years old at the time, was involved in a collision at approximately 4 p.m. on March 24, 1997, at the intersection of Summit Boulevard and Goya Drive in Pensacola, Florida. The intersection is in a residential neighborhood, the speed limit was 35 mph, and the weather was clear and dry. The claimant was driving east on Summit Boulevard in a 1988 Honda Civic when she collided with a 66-passenger school bus owned and operated by the Escambia County School Board and driven by Della Truitt, a school board employee with 21 years experience.

The school bus was proceeding west on Summit and stopped at the intersection of Summit and Goya, waiting to turn left (south) onto Goya. Another vehicle, driven by David Benson, was traveling east on Summit and stopped facing the bus at the same intersection, waiting to turn left (north) onto Goya. There was insufficient room for both vehicles to proceed through the intersection at the same time. Benson motioned to the bus driver to proceed first. Ms. Truitt started through the intersection and as she was completing her turn through the intersection, Ms. Dodd's Honda collided with the bus. The left front portion of the Honda hit the right front part of the bus.

The accident investigator cited the bus driver for a violation of §316.122, F.S., that statute reads, *"The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. A violation of this section is a non-criminal traffic infraction."*

A court hearing was conducted on August 12, 1997, on the school bus driver's traffic violation. The court found her guilty. The judge withheld adjudication and the assessment of points against her license, fined her $250 and costs, and did not require her to attend defensive driving school. He said, "I just think that the Honda contributed to this problem somewhat. The Honda should have seen what the bus was doing and maybe not passed by it."

The claimants provided extensive medical records and billing statements, and I believe the amount of damages sought is reasonable and supported by the record, if the Senate finds for Ms. Dodd.

CONCLUSIONS OF LAW:

To recommend a claim bill favorably, a Special Master must be satisfied that four elements are present—duty, breach, proximate causation, and damages. In this case there first must be a duty on the part of the school board. I find that there was a duty for the school bus driver to drive reasonably under the circumstances. Second, there must be a finding that there was a breach of that duty. After an extensive review of the record, carefully considering the

testimony presented at a five-hour hearing, and personally viewing the collision scene, I do not believe the claimant presented evidence sufficient to show that the bus driver breached that duty. There were and still are many unanswered questions regarding how this collision occurred and I believe they will remain unanswered. However, my conclusions are based on the following:

Summit Boulevard, at the area where the collision occurred, is a two-lane divided highway with a planted median. At the collision site, Summit has one lane in each direction, with a parking lane that ends just prior to the intersection. It was at this point that the claimant passed the stopped Benson vehicle on the right and the collision occurred.

Witness testimony estimated that the claimant was traveling at or slightly in excess of the 35 mph speed limit prior to the collision. All eyewitness and physical evidence shows, however, that the claimant did not slow down or attempt to stop before colliding with the bus. The Honda did not leave any skid marks or other evidence that the claimant applied her brakes or tried to stop prior to hitting the bus. She has no recollections regarding the accident, as a result of a head injury sustained in the impact.

A witness, David Brown, who was driving behind the bus, testified that the bus had been stopped for a minute or more before proceeding through the intersection and that the bus had its left turn signals flashing.

Another witness, Christopher Lupton, was driving a vehicle that was following Ms. Dodd's Honda. His deposition testimony differed slightly from his testimony at the hearing. On page 11 in his deposition taken January 13, 2000, he stated that he saw the bus and it was moving when the intersection first came into his view. At the hearing on January 25, 2002, he was not certain whether he saw it when the intersection first came into view or moments later. He was consistent, however, in that the bus was moving when he first saw it.

Based on the testimony and my later personal observation of traffic approaching the intersection from both directions, I believe that a reasonable person should have seen the bus moving through the intersection from several hundred feet

away. Expert testimony was that a vehicle traveling at the estimated speed of claimant's Honda should have been able to stop within approximately 160 feet after she first saw it, accounting for reaction time. Mr. Lupton estimated that Ms. Dodd's Honda was 50 to 70 feet ahead of him and that she was in his view the entire time and he could not recall her hitting her brakes or taking any evasive action prior to the collision. However, he stopped without any emergency braking or other evasive action.

Claimant Dodd had an unobstructed view of the Summit/Goya intersection for a distance of 500 to 600 feet. Ms. Truitt, likewise, had a similar unobstructed view in the direction from which claimant Dodd was approaching.

Both parties presented accident reconstruction expert witnesses. However, after a careful review of their depositions and their testimony at the Special Master's hearing, I did not give a great deal of weight to the conclusions of either. The only point they seemed to agree on was that their client was right and the other's client was responsible for the collision.

The issue, therefore, comes down to three questions that must be answered.

First, was claimant Dodd's Honda so close as to be an immediate hazard when Ms. Truitt began her turn into the intersection, and therefore, was Ms. Truitt negligent in turning in front of the approaching Dodd vehicle? Ms. Dodd's expert says "yes" and the school board's expert says "no." However, I found no eyewitness or expert testimony that meets any burden of proof that claimant Dodd's Honda was so close as to constitute an immediate hazard when Ms. Truitt began her turn. Ms. Truitt's uncontroverted testimony is that she was cautious at this intersection because she felt that it was a dangerous intersection. She also stated that she looked before turning and that the road was clear when she began her turn. Witness Benson also testified that he looked in his rearview mirror before motioning Ms. Truitt to turn left in front of him and that he saw no car approaching from behind (Benson deposition, page 9). Other eyewitnesses, likewise, did not see the Dodd vehicle until just before or at the time of impact.

Second, was claimant Dodd negligent? I believe she was. A reasonably prudent person does not approach an intersection on a street like Summit, and pass on the right of a stopped vehicle at an intersection through which an 8-foot wide, 36 foot long school bus, showing flashing turn signals and warning lights, is approaching, without attempting to stop or slow down. Although this involves negligence, not a statutory violation, I believe §316.084(2), F.S., is pertinent. That subsection provides that *"The driver of a vehicle may overtake and pass another vehicle on the right only under conditions permitting such movement in safety."* (underscore added). The sum of the evidence convinces me that claimant Dodd's attempt to pass Benson on the right under these circumstances was not a safe move.

Third, Ms. Dodd, by seeking extraordinary relief in a claim bill in excess of the sovereign immunity limits, has the burden of proving that the school board's bus driver was negligent. It is not enough to show that something untoward happened and as a result she was injured. In my view, Ms. Dodd did not meet that burden.

This was a situation in which two vehicles arrived at the same place at the same time, due to one or both drivers' negligence. It is clear that the claimant was negligent. I have been unable to ascertain why she maintained her speed, whether it was 35 mph or faster, up to the point of impact, without making an effort to stop. The evidence is clear, however, that she did just that. The judge in Ms. Truitt's traffic hearing stated that he felt Ms. Dodd contributed to the accident. Later the arbitration panel found Ms. Dodd 20 percent negligent in the collision. My extensive review of the record and live testimony of the circumstances surrounding this matter leads me to the conclusion that the claimant's own actions constitute negligence and that it far exceeded the amount determined by the arbitration panel. As Florida is a comparative negligence state, I too could find Ms. Dodd's actions to be negligent and still find in her favor by also finding the bus driver negligent and apportioning the percentage between them.

I, however, return to the requirement in this and any other claim bill; that the claimant has the burden to present evidence that shows that the school bus driver was

negligent. In my view, the claimant has failed to prove that the school bus driver acted in a negligent manner that resulted in or contributed to the collision.

ATTORNEYS FEES: Attorney's fees are limited to 25 percent of recovery, pursuant to the provisions of §768.28, F.S. Claimant's attorney has presented evidence that the attorney's fees are within the statutory limit.

RECOMMENDATIONS: Accordingly, I recommend that Senate Bill 54 (2002) be reported UNFAVORABLY.

Respectfully submitted,

M. James Griner
Senate Special Master

cc: Senator Alex Diaz de la Portilla
Representative Matthew Meadows
Faye Blanton, Secretary of the Senate
Randy Havlicak, House Special Master