



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
11/27/02	SM	Fav/1 amendment
2/20/03	ED	Favorable/CS
3/6/03	FT	Favorable

November 27, 2002

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

Re: **SB 38 (2003)** – Senator Howard E. Futch
Relief of Amanda Johnson

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$287,500 TO COMPENSATE AMANDA JOHNSON, A MINOR, AND HER PARENTS, VIRGINIA AND CHARLES JOHNSON FOR INJURIES AND DAMAGES SUSTAINED IN A COLLISION RESULTING FROM THE NEGLIGENCE OF A SCHOOL BUS OPERATOR FOR THE SCHOOL BOARD OF INDIAN RIVER COUNTY. THIS CLAIM BILL REPRESENTS ONE OF A SERIES OF CLAIM BILLS [BEGINNING WITH SENATE BILL 46 (2002)] ARISING FROM THE SAME INCIDENT INVOLVING A COLLISION BETWEEN A SCHOOL BUS FOR THE INDIAN RIVER COUNTY SCHOOL BOARD AND A TRACTOR-TRAILER.

FINDINGS OF FACT:

On or 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. The bus was traveling 40 mph westbound on 45th Street, approaching the intersection of 66th Avenue in Indian River County. Ms. Colletti was transporting the children from school to their respective bus stops.

At the same time, a 1996 tractor-trailer operated by 63-year-old Sammy Lee Hughes was traveling 40 mph southbound on 66th Avenue, approaching the intersection of 45th Street.

Unrebutted evidence demonstrates that Ms. Colletti proceeded into the intersection with 66th Avenue and 45th Street, after 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 left side. Ms. Colletti was ejected through the windshield. Additionally, Amanda Johnson and 16 other school children were injured of whom one died. The driver of the tractor-trailer, Mr. Hughes, was partially ejected through the windshield of his vehicle after it struck the south bank of a drainage canal where it came to a final rest. He died.

CR-611 (45th Street) is an east and west, two-lane, undivided roadway. The roadway is constructed of asphalt, and is straight and level in the area of the crash. There is no grade to the roadway. The roadway is approximately 17 feet, 4 inches wide. The lanes are marked on their outer lane 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 (66th Avenue), is governed by a stop sign. There is an advance warning sign for the stop sign, posted 1/10 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.

CR-615 (66th Avenue) is a north and south, two-lane, undivided roadway. The roadway is constructed of asphalt, and is straight and level in the area of the crash. There is no grade to the roadway. The roadway is approximately 22 feet wide. A solid white line marks the outer lanes, and the lanes are separated by one solid yellow line. The speed limit for southbound traffic is 45 mph, posted approximately 1/10 of a mile north of the intersection.

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 Amanda Johnson and the other children. Neither the school bus driver, Ms. Colletti, nor the tractor-trailer driver, Mr. Hughes, used their available and operational safety restraints. There was no evidence of intoxication or physical impairment on the part of Ms. Colletti, Mr. Hughes, Amanda Johnson, and the 16 other children on the school bus.

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 charged with failing to stop and yield the right of way under §316.123(2)(a), F.S. Ms. Colletti and Mr. Hughes were found to have violated Title 49 of the Code of Federal Regulations 329.16, 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.

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 and thus can not recall whether she proceeded through the intersection without stopping.

Damages:

As one of the children on the school bus, Amanda Johnson suffered extensive injuries including a serious fracture of the left femur for which she underwent surgery at St. Mary's Trauma Center. Ms. Johnson remained a patient for 4 days at St. Mary's Hospital due to her physical injuries. She was subsequently transferred to St. Mary's Rehabilitation Hospital where she remained for 7 days. Painful recovery continued and included a second surgery on May 28, 1999, for which she was hospitalized 8 days. In the next 6 months, subsequent medical examination indicated that there was an increasing leg length discrepancy. By February 2002, a CT

scanogram indicated that the discrepancy between the leg lengths had increased to 2.2 cm (or almost 1 inch). Ms. Johnson currently wears a shoe lift. This condition has limited Ms. Johnson's ability to participate in physical activities. In addition, she suffered from psychological and emotional trauma which has included recurring nightmares and continuing fear of riding the school bus.

Past medical expenses have totaled over \$88,000. Medical doctors have indicated that Ms. Johnson will need future long-term orthopedic care including diagnostic testing, physical therapy and surgery to address the leg length discrepancy. Due to the age of the claimant, specific types of treatment are either contingent or must be delayed until she has completed the majority of her physical growth. It is estimated that future medical expenses will exceed \$40,000.

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 the surgery.

Procedural History:

Virginia and Charles Johnson, filed suit on behalf of their daughter, Amanda, and themselves in May 2000 in the Circuit Court for Indian River County. The suit sought recovery for injuries sustained by Amanda Johnson including bodily injuries, pain and suffering, disability, disfigurement, mental anguish, loss of capacity, and past, permanent and continuing medical expenses associated with the injuries. The suit 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, the parties entered into a settlement agreement for \$287,500, before trial. The court

appointed a guardian ad litem on June 6, 2002, who subsequently filed a report indicating that the settlement agreement was in the child's best interest. The school board approved the settlement agreement on June 20, 2002. The parents were appointed plenary guardians on July 1, 2002. The settlement agreement provides that, subject to the successful passage of the claim bill, the settlement amount would be paid in 4 annual installments of equal amounts. In exchange, the school board has agreed to support the claim bill. On August 29, 2002, the court approved the settlement agreement and directed that the proceeds of the settlement to be deposited into a restricted account as established at Wachovia Bank.

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 serious long-term injuries as a result of the motor vehicle trauma arising from the school bus collision. Proof of damages is supported by the medical records including reports by various physicians

and other health care practitioners such as Drs. Andrew Schneider, Theresa Rattey, and Bret Baynham, by other documentation and testimony at the final claim bill hearing. The parents, Virginia and Charles Johnson, have incurred damages in relation to the emotional impact and the medical and related expenses associated with their daughter's injuries and continuing period of physical and emotional recovery from this childhood experience.

Collateral Sources: Ms. Johnson's medical expenses have totaled \$88,023.03 to date. It is represented that Ms. Johnson's outstanding medical bills total \$25,868.76 of which \$19,789.02 represents a 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. Upon receipt of funds from a collateral source, the Legislature is usually entitled to an offset. However, due to the settlement, there is already a significant reduction. Accordingly, no offset is recommended.

Amanda Johnson's damages have been evaluated within the context of the settlement agreement. Sometimes parties may enter into stipulation and settlement for reasons other than the merits of the claim or the validity of a defense. Therefore, the Legislature is not necessarily bound by them. However, in this case, I believe that the parties, each 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 Amanda Johnson and her parents and to limit the Indian River County School Board's exposure to further litigation and liability arising from this claim. The settlement agreement should be given effect as requested in the claim bill. Although no special needs trust fund has been established, a restricted guardianship account has been established, per court order, on behalf of Amanda Johnson at a specifically named Wachovia Bank.

**ATTORNEY'S FEES/COSTS/
LOBBYING EXPENSES:**

Attorney's fees are limited to 25 percent of recovery pursuant to §768.28, F.S. Therefore, the claimants' attorney's fees can not exceed \$71,875. No specific documentation was provided as to the hours actually expended or the hourly rate. Claimants' attorney claim costs

totaling \$22,070.78 of which \$17,250 is attributed solely to lobbyist fees associated with the claim bill process. Thus recovery of the attorney fees, costs and lobbyist fees would represent almost 33 percent of the net settlement amount recovered through a successful claim bill.

FISCAL IMPACT:

The School Board of Indian River County has already paid multiple claimants up to its sovereign immunity cap pursuant to §768.28, F.S., and §234.03, F.S., through a self-insurance consortia fund. Therefore, according to the school board counsel and superintendent, the funds for payment of this uncontested claim would come from the district's General Operating Funds during the next 4 school years.

RECOMMENDATIONS:

I recommend that Senate Bill 38 be amended to require payment by the School Board of Indian River County in the amount of \$287,500 inclusive of costs and attorney's fees, payable in 4 annual installments of \$71,875. Additionally, I recommend that the claim bill be amended to reflect accurately that the funds are to be directly deposited into the existing restricted guardianship account established on behalf of Amanda Johnson with Wachovia Bank in which no withdrawals are to be made without prior court approval as provided in the August 29, 2002 court order approving the settlement agreement.

For the foregoing reasons, I recommend that Senate Bill 38 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Maria Isabel Matthews
Senate Special Master

cc: Senator Howard E. Futch
Faye Blanton, Secretary of the Senate
House Subcommittee on Claims

Statement of Substantial Changes to SB 38

The CS made the following changes to SB 38:

The Indian River County School Board is directed to appropriate from funds not otherwise appropriated the claim bill amount, payable after July 1, 2003, to Virginia Johnson and Charles Johnson, parents and natural guardians of Amanda Johnson, a minor.

The funds are to be deposited in a restrictive guardianship account established for the exclusive use and benefit of Amanda Johnson and are inclusive of attorney's fees and costs pursuant to s. 768.28, F.S.

Unspent funds in the account would not revert to Indian River County School Board.

The Indian River County School Board agrees not to oppose the claim bill.

The title is amended to reflect the above provisions.