STORAGE NAME: h0765.ju
DATE: March 4, 2004

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SPECIAL MASTER'S FINAL REPORT

The Honorable Johnnie Byrd
Speaker, The Florida House of Representatives
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: HB 765 by Representative Murzin
Relief of Bronwen Dodd

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

FINDING OF FACT:

The Traffic Accident: On March 24, 1997, Della Truitt, an Escambia County School Board employee acting in the scope of her employment, was driving a full size school bus with 13 middle school students westbound on Summit Boulevard at the intersection of Summit and Goya Drive. At this intersection, Summit is a divided highway with one lane in each direction with a posted speed limit of 35 mph. There are no marked lanes for turning in either direction at the Summit/Goya intersection.

Ms. Truitt came to a complete stop in the westbound lane of Summit to turn south on Goya. David Benson was traveling eastbound on Summit and was stopped to turn north on Goya. Because both vehicles could not fit in the small median between the divided lanes, Mr. Benson, after checking his mirrors and seeing no other traffic coming behind him in the eastbound lane, waived Ms. Truitt through the intersection.

Ms. Truitt had a clear view from the intersection down Summit for 500 to 600 feet in the direction from which the claimant was approaching. Ms. Truitt stopped and looked to make sure that

it was safe to proceed, and seeing nothing that presented a danger to her, began making her turn. Expert testimony indicates that, assuming maximum acceleration of the bus, it would have taken Ms. Truitt 8.5 seconds to go from the position she was stopped at prior to making her turn to the point of impact with the claimant.

As she was well into her turn, a white 1988 Honda Civic driven by eighteen-year-old Bronwen Dodd ("claimant") came around Mr. Benson's car, that was stopped in the claimant's lane of traffic to make a left turn, and hit the front of the bus. The record shows that the claimant had a clear view of the intersection from a distance of 500 to 600 feet away. The uncontroverted expert testimony indicated that the claimant, driving her car at 35 miles per hour (50 feet per second) could have stopped within 131 feet (one and one-half seconds of perception-reaction time or 75 feet and 56 feet to bring the car to a stop).

Mr. Lupton, who was traveling east on Summit 50 to 70 feet behind the claimant, testified that both he and the claimant were traveling 35 mph and when he first saw the bus at the intersection he was between 500 to 600 feet away and the bus was already moving to make its turn. Mr. Lupton further testified that he never saw any brake lights or other indication that the claimant attempted to slow down. The claimant's car did not leave any skid marks prior to the accident and there is no evidence indicating she applied her brakes.

Due to the head injury the claimant sustained in the accident, she is unable to remember any of the events surrounding the accident. Claimant was unavailable for the special master's hearing.

DAMAGES: Claimant suffered severe and extensive injuries as a result of this accident, including: a closed-head injury; basilar skull; temporal and sinus fractures; a fractured mandible; cranial nerve injury; significant dental injuries with multiple avulsions of her left incisor, her left medial incisory, maxillary teeth, and canines; bilateral pneumothoraces; a punctured lip; a lacerated tongue; multiple lacerations to her arm, face, and lower extremities; and optical and auditory damage.

The amount of damages sought is supported by the record through the extensive medical records and billing statements the claimant has presented to the special master documenting her damages.

Ms. Truitt and the 13 students on the bus did not receive any physical injuries from the accident.

LEGAL PROCEEDINGS: Ms. Truitt was charged with failure to yield right-of-way, a violation of § 316.122, F.S. She pled not guilty to the charge and her case was heard in traffic court on

August 12, 1997. The court found Ms. Truitt guilty of the offense, imposed a $250 fine, but withheld adjudication and points, stating, "if it were clear that the Honda didn't contribute to the accident I would be suspending her license. I just can't be totally sure that there wasn't some contribution by the Honda…."

Claimant filed a law suit against Escambia County School board on September 10, 1998. Since that filing date, the parties have had two unsuccessful attempts at mediation.

The Defendant offered to settle the case for $100,000 on August 19, 1999; plaintiff's offer to settle was for $300,000 on September 22, 1999.

After the two unsuccessful attempts at mediation and with the lawsuit still pending, both parties agreed to binding arbitration. The arbitration hearing was held on December 18, 2000. The three member arbitration board issued its award on December 20, 2000; finding both parties negligent in the operation of their vehicles. Ms. Truitt was assigned 80% negligent and Ms. Dodd was found 20% negligent. Total damages were found to be $275,000. This amount did not reflect the 20% reduction for the claimant's comparative negligence, nor did it, pursuant to the parties stipulation at the beginning of the hearing, include any award for past medical bills. There was one member of the arbitration panel who dissented in the amount of comparative negligence assigned to the two drivers and the amount of damages.

The final judgment entered by the Escambia County Circuit Court on May 21, 2001, incorporated the arbitrators findings as to comparative negligence and $275,000 for past and future pain and suffering and future medical bills. The judgment also included, in accord with the parties stipulation, that claimant incurred $129,678.32 in past medical bills, of which $15,000 was paid by claimant's personal injury protection benefits under her automobile insurance, $2,012.89 was paid by the claimant, $1,028.22 remained due, and $111,637.10 had been paid by the claimant's health insurance carrier which has a right of subrogation. The total of claimant's damages were $389,678.32; after a 20% reduction for claimant's comparative negligence, damages were found to be $311,742.09 plus $29,257.09 of taxable costs. The court entered its final judgment for $340,999.75.

CONCLUSION OF LAW: Rather than the subjective, time-worn "shock the conscience" standard used by courts, for purposes of a claim bill, a respondent that assails a judgment based on an arbitration award as being excessive should have the burden of showing the Legislature that there was a miscalculation of figures; or that the arbitrators awarded upon a matter not submitted to them; or that the award is imperfect as a matter of form; or that the award was procured by corruption or fraud; or that there

was evidence of partiality by an arbitrator; or that the arbitrators exceeded their powers; or that the arbitrators refused to hear material evidence; or that there was no agreement for arbitration.

No evidence was presented to the Special Master sufficient to overturn the final judgment based on the arbitration award in this case.

DUTY:

Ms. Truitt: I find that Ms. Truitt had a duty to exercise reasonable care to determine that traffic was clear and that no impending danger existed when she proceeded into the intersection to make her left turn. "A driver cannot pull out in to the path of an on-coming car when he or she could have avoided the accident by not making the turn." *Weeks v. Ranson*, 419 So.2d 722, 724 (Fla. 5th DCA 1982). Additionally, § 316.122, F.S., requires:

> The driver of a vehicle intending to turn to the left within an intersection . . . 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.

Claimant: The claimant also had a duty to exercise reasonable care in passing a car on the right in a one lane road at the beginning of an intersection. The Fourth District Court of Appeal stated:

> A motorist about to enter an intersection with the traffic signal in his favor has the right of way. He also has a right to assume others will obey the law and exercise due care to avoid an accident. However, even though he has a favorable light *he must exercise reasonable care to determine that there is no impending traffic which would impede safe passage through the intersection.* He has not exercised reasonable care once he knows *or should have known* that another motorist is going to run a red light and has a clear opportunity to avoid the collision.

Salman v. Cooper, 633 So.2d 570, 572 (Fla. 4th DCA 1994) *citing U.S. Fire Insurance Co. v. Progressive Casualty Insurance Co.*, 362 So.2d 414, 415 (Fla. 2d DCA 1978) [Emphasis in the original. Citations omitted.]

As for passing Mr. Benson on the right on a one lane road, § 316.084, F.S., requires in part, "[t]he driver of a vehicle may overtake and pass another vehicle on the right only under conditions permitting such movement in safety."

BREACH OF DUTY: I find that both drivers breached their

duties discussed above.

Ms. Truitt: Ms. Truitt testified at the hearing that she came to a complete stop in the westbound lane of Summit Boulevard before beginning her turn onto Goya. She testified that after getting waived through the intersection by Mr. Benson, she looked for the last time down the east bound lane of Summit before beginning her turn into the median and across the east bound lane of traffic. This last look revealed no traffic was coming behind Mr. Benson. Ms. Truitt testified from that point on she never looked again down the east bound lane of traffic on Summit to see if anyone was coming. This would have included a few seconds of the slow acceleration of the bus through the median before even entering the eastbound portion of Summit. A one time look down the east bound lane of Summit when attempting to turn in what Ms. Truitt admitted was a very dangerous intersection is not reasonable. I, therefore, find that Ms. Truitt was negligent for not looking for oncoming traffic while beginning her movement through the median and into the eastbound lane.

Claimant: The claimant was traveling on a divided highway approaching a dangerous intersection with a car stopped in her only lane of travel waiting to turn left. The record and testimony at the hearing indicated that Mr. Lupton, who was 50 to 70 feet behind the claimant's car, first saw the bus when he was 500 to 600 feet away from the Summit/Goya intersection. When he first saw the bus, it had already begun moving into its turn. He was going 35 mph and indicated that the claimant was doing the same speed. Mr. Lupton was able to see the bus turning and easily come to a stop before reaching the intersection. He testified that he never did see brake lights from the claimant's car and that she did not slow down prior to the accident.

Expert testimony established that at 35 mph the claimant should have been able to react and stop her car in 131 feet; well within the 500 to 600 feet range had claimant been observant and seen the bus moving into its turn as Mr. Lupton, the driver behind her, had seen.

The claimant's driving under these circumstances was not reasonable, i.e., it was unsafe for the claimant to pass Mr. Benson's car on the right side at the intersection with a large yellow school bus that was well into its turn at that point in time. Therefore, I find the claimant negligent in this accident.

PROXIMATE CAUSE: I find that Ms. Truitt's breach of her duty to the claimant by failing to yield the right of way was the proximate cause of the claimant's injuries. However, I also find that the claimant was negligent in her driving and her own negligence contributed to her injuries as well.

DAMAGES: The parties have stipulated that the claimant incurred $129,678.32 in past medical bills. Moreover, I find that the medical records and billing statements submitted by the

claimant are for treatment of injuries sustained in this accident and the damages are reasonable and supported by the record. The arbitrators found that the claimant's damages for past and future pain and suffering and future medical bills were $275,000. This figure was subsequently adopted by the court in its final judgment.

ADDITIONAL INFORMATION: The claimant admitted to getting a DUI in 1998, after this accident occurred, and while she was attending FSU. While not legally relevant, this issue may have relevance to the Legislature in its equitable capacity.

LEGISLATIVE HISTORY: Session 2002: HB 671 by Rep. Meadows was filed for the 2002 legislative session and died in the Committee on Claims. SB 54 by Senator Diaz de la Portilla was recommended unfavorably by the Senate Special Master and died in the Senate Committee on Education. Regarding the 2003 claim bill, the parties were given the opportunity to update the record and to dispute the unfavorable report of the Senate Special Master rendered in 2002. Though given the opportunity, neither party requested an additional special master hearing.

Session 2003: HB 727 (2003) was filed by Representative Murzin and was referred to the Committee on Claims and the Judiciary Committee. The bill died in Claims on May 2, 2003. The companion bill SB 8 (2003) was filed by Senator Lawson and died in the Committee on Rules and Calendar.

Supplemental information: Both sides in this dispute have been given the opportunity to provide further supplemental information and argument supporting or opposing the 2004 version of this claim. Ms. Dodd has had no additional related medical treatment since November 1992 nor has she had any other traffic violations or citations. She does continue to suffer loss of hearing in her right ear, double vision, and scarring as a result of the accident. The glands that produce saliva and tears are also gone. Her doctors say there is no further treatment available for these conditions.

ATTORNEYS FEES: The claimant's attorney has submitted an affidavit indicating his fees will be, and have been, limited to the statutorily prescribed amount of 25 percent as provided in § 768.28, F.S., and that outstanding costs total $14,904.23. The award in this case is inclusive of fees and costs. The lobbyist reports that their contract with the claimant calls for a 6% contingency fee.

RECOMMENDATIONS: As the amount awarded in this claim bill already deducts 20% for the claimant's own negligence, as found by the arbitrators and confirmed by the court in the final judgment in this case, I recommend that HB 765 be reported FAVORABLY.

Respectfully submitted,

Stephanie Birtman
House Special Master

cc: Rep. Murzin, House Sponsor
Senator Lawson, Senate Sponsor
Scott Clodfelter, Senate Special Master