



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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January 29, 2007

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

Re: **CS/SB 48 (2007)** – Senator Dave Aronberg
HB 155 (2007) – Representative John P. “Jack” Seiler
Relief of The Estate of Diana Kautz

SPECIAL MASTER’S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR \$900,000 AGAINST THE PALM BEACH COUNTY SCHOOL DISTRICT ARISING OUT OF A SCHOOL BUS CRASH THAT KILLED DIANA KAUTZ.

FINDINGS OF FACT:

On November 11, 2004, Diana Kautz was killed when the school bus in which she was riding ran a stop sign, hit another vehicle, and overturned. Diana was 15 years old at the time of her death.

The school bus was owned and operated by the Palm Beach County School District (District). The bus driver, Marie Abrahantes, was an employee of the District.

Ms. Abrahantes had a record of poor job performance dating back to 1997. She routinely received unsatisfactory performance evaluations, mostly for excessive tardiness and absenteeism. She had minor crashes in her bus in 1997 and 2002, and she was cited for speeding while driving a bus through a school zone. She was required to undergo retraining on several occasions.

The crash that killed Diana occurred at the intersection of Hall Boulevard and Orange Boulevard in the City of Royal Palm Beach. There is a stop sign at the intersection and five sets of “rumble strips” approaching the intersection. The bus was traveling southbound on Hall Boulevard at or slightly above the posted speed limit of 40 MPH. The bus was supposed to stop at the intersection and turn onto Orange Boulevard.

The bus ran the stop sign and proceeded through the intersection without braking. The bus hit the vehicle driven by Jeff Schwartz that was proceeding through the intersection along Orange Boulevard. The impact caused the bus to overturn.

Ms. Abrahantes and Diana were ejected from the bus when it overturned. None of the other eight students on the bus were ejected, although they were thrown from their seats.

The bus was a 2003 model year and was equipped with seatbelts in all of the passenger seats, as required by law. No one on the bus was wearing a seatbelt. The video recorded by the camera on the bus shows the students (including Diana on one occasion) freely moving about the bus while it was moving.

Diana died at the scene as a result of her injuries. Ms. Abrahantes was transported by helicopter to a local hospital where she was treated for a fractured skull and broken bones. The other students were treated at the scene for minor injuries.

The crash occurred at approximately 3:15 p.m. The weather on the day of the crash was clear, and was not a factor in the crash.

On the day of the crash, Ms. Abrahantes had taken a group of students on a field trip between her normal morning route and her afternoon route. She volunteered for the field trip, even though she had recently complained to her supervisor that her normal routes were too much for her and made her tired.

Ms. Abrahantes testified in her deposition that she must have fainted or “blacked out” as the bus approached the

intersection since she did not recall the crash. Ms. Abrahantes' testimony on this point (and many others) was not credible.

Diana was survived by her parents, Claudia and Jeff Kautz, and two sisters. Diana's death had a profound negative effect on her family, as would be expected. Diana's mother still takes medication for depression at times.

Ms. Abrahantes received a traffic citation for running the stop sign and failing to yield at the intersection. She pled guilty to the violation in traffic court. Her driver's license was suspended for 3 years and she was prohibited from ever obtaining a commercial driver's license or driving a school bus.

In September 2005, Ms. Abrahantes was suspended for 15 days without pay and then terminated by the District for operating a school bus in an unsafe manner. Ms. Abrahantes is still receiving workers' compensation benefits from the District as a result of the crash.

District policy requires the bus driver to inform students that they are required to wear seatbelts while on the bus. The driver is authorized to issue "bus conduct reports" to students who do not comply with the policy and/or refer the students to a school administrator for discipline.

Ms. Abrahantes testified in her deposition that, as required by District policy, she made a general announcement to the students, telling them to wear their seatbelts before starting the route on the day of the crash. The video recorded by the camera on the bus contradicts this testimony, and shows that no announcement was made.

Shortly after the crash, the District donated the bus to the county fire and rescue department for training purposes. Some of the seats, including the seat in which Diana was riding, were removed from the bus by the fire and rescue department. No formal, scientific testing was ever done on the seatbelts to determine whether they were operational; however, the police report prepared after the incident stated that all of the passenger seatbelts on the bus "functioned properly during a post crash inspection."

The District is self-insured. It did not “ earmark” or otherwise set aside funds to pay this claim after entering into the settlement agreement with the claimants. If the bill is approved by the Legislature, the claim will be paid out of the District’s general operating fund, which currently has a significant deficit.

In addition to the funds received pursuant to the settlement of this claim with the District, the claimants received a total of \$65,000 from other sources. The other funds include a \$50,000 settlement from Mr. Schwartz, the driver of the vehicle broadsided by the bus; a \$10,000 uninsured motorist payment from the Kautz’s insurer, State Farm; and \$5,000 from the student activity insurance coverage maintained by the District.

LEGAL PROCEEDINGS:

In 2005, Diana’s mother, as personal representative of Diana’s estate, brought suit against the District. The suit alleged that the negligence of a District employee, Ms. Abrahantes, caused Diana’s death. The suit was filed in circuit court in Palm Beach County.

The suit was settled prior to trial for \$1.1 million. The District has already paid \$200,000 in partial satisfaction of the settlement. The claim bill is for the balance of the settlement.

Claims against the District were made by almost all of the other students on the bus. The District settled those claims for amounts ranging from \$14,000 to \$49,999. A claim against the District was also made by Mr. Schwartz, the driver of the vehicle that was broadsided by the bus. The District settled that claim.

The total paid by the District to date to settle all of the claims arising out of the crash is \$402,999. That figure, which includes the initial \$200,000 paid to Diana’s parents, is slightly less than the sovereign immunity cap that applies to this incident pursuant to s. 1000.24(1), F.S. That statute provides that the sovereign immunity limit for claims involving school bus crashes is “\$5,000 multiplied by the rated seating capacity of the school bus,” which in this case is 84 students, rather than the amounts set forth in s. 768.28, F.S.

CLAIMANTS' POSITION:

- The negligence of the District's employee, Ms. Abrahantes, was the sole and proximate cause of Diana's death, and the parties' agreement to settle the claim should be given full effect.
- There is no evidence that Diana was not wearing her seatbelt at the time of the crash and, in any event, the "seatbelt defense" was not available to the District.

DISTRICT'S POSITION:

- The District concedes that its employee was negligent, and it does not oppose the claim bill.

CONCLUSIONS OF LAW:

The District has a duty to safely transport students on its busses. The District is responsible for the negligence of its employees while they are engaged in the course and scope of their official duties, as was Ms. Abrahantes when she was driving the bus at the time of the crash. Ms. Abrahantes was clearly negligent in her operation of the school bus in that she failed to slow for and ran the stop sign at the intersection where the crash occurred. Ms. Abrahantes' negligent operation of the school bus was the direct and proximate cause of Diana's death.

Diana was also negligent by failing to wear a seatbelt on the bus. Section 316.3145, F.S., and District policy specifically require students to wear seatbelts while the bus is in operation. The statute further provides that "[t]he state, the county, a school district, . . . is not liable in an action for personal injury by a school bus passenger solely because the injured party was not wearing a safety belt." s. 316.3145(2), F.S.

Diana's failure to wear a seatbelt likely contributed to her death. Indeed, it is less likely that she would have been thrown from the bus had she been wearing a seatbelt, and the other students on the bus (none of whom were thrown from the bus) did not suffer life-threatening injuries. It is no excuse that District policy does not give the bus driver authority to enforce the requirement that students wear their seatbelts or that Ms. Abrahantes did not tell the students to put on their seatbelts on the day of the crash. Section 316.3145(2), F.S., imposes a mandatory duty on the student to wear his or her seatbelt and, at 15 years of age, Diana was old enough to take personal responsibility for herself

and wear the seatbelt without being told to do so.

Although I find that Diana was comparatively negligent based upon her failure to wear her seatbelt, I am not recommending that the amount of the claim bill be reduced on that basis. The settlement amount of \$1.1 million is very reasonable for the real and substantial emotional damages suffered by Diana's parents as a result of her death. Moreover, it appears that Diana's comparative negligence has implicitly been included in the settlement amount because the District acknowledged at the Special Master hearing that had the case gone to trial the damage award could very well have been significantly higher than the \$1.1 million settlement amount.

Additionally, it far from certain that a "seatbelt defense" would have been successful in this case. First, it may have been difficult to prove that Diana was not wearing her seatbelt at the time of the crash because, even though the video showed her moving about the bus at one point and even though she was thrown from the bus (which strongly suggests she was not wearing her seatbelt), she could not be seen immediately prior to the crash. Second, it would have been difficult to prove that Diana's failure to wear her seatbelt was unreasonable under the circumstances because none of the other students on the bus were wearing their seatbelts, Ms. Abrahantes made no effort to comply with District policy regarding seatbelts, and it is unknown whether the policy is ever enforced. See, e.g., Insurance Company of North America v. Pasakarnis, 481 So.2d 447 (Fla. 1984) (seatbelt defense requires, among other things, proof that the non-use of the seatbelt was unreasonable under the circumstances). Third, the defense may not have even been available to the District because the evidence necessary to prove (and rebut) that defense was not preserved, but rather was destroyed when the seat in which Diana was sitting was removed from the bus shortly after the crash. See, e.g., Metropolitan Dade County v. Bermudez, 648 So.2d 197 (Fla. 1st DCA 1995) (excluding expert's opinion which was based upon examination of crash vehicle where the vehicle had been destroyed prior to the hearing).

That said, I do recommend that the claim bill be amended to reduce the amount paid to the claimants by \$65,000 to reflect the funds that the claimants have already received

from other sources related to this crash. It would be a windfall to the claimants if the claim bill were not reduced to reflect the receipt of those other funds, particularly the \$50,000 settlement with Mr. Schwartz who was also an innocent victim of the crash when his vehicle was broadsided by the bus as he lawfully proceeded through the intersection.

ATTORNEYS FEES AND LOBBYIST'S FEES:

The claimants' attorney provided an affidavit stating that that attorney's fees related to this claim will be capped at 25 percent in accordance with s. 768.28(8), F.S. There are no lobbyist's fees related to this claim.

LEGISLATIVE HISTORY:

This is the first year that this claim has been presented to the Legislature.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that SB 48 be reported FAVORABLY, as amended.

Respectfully submitted,

T. Kent Wetherell, II
Senate Special Master

cc: Senator Dave Aronberg
Representative John P. "Jack" Seiler
Faye Blanton, Secretary of the Senate
House Committee on Constitution and Civil Law
Counsel of Record

This committee substitute provides a limitation on attorney's fees, lobbying fees, costs, or other similar expenses, to no more than 25 percent of the award.