



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/16/07	SM	Fav/1 amendment
4/19/07	ED	Fav/CS

February 16, 2007

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

Re: **CS/SB 74 (2007)** – Senator Frederica Wilson
Relief of The Estate of Brooke Ingoldsby and
Michelle Allen, parent and natural guardian

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$1.3 MILLION BASED ON A SETTLEMENT AGREEMENT BETWEEN PINELLAS COUNTY SCHOOL BOARD AND CLAIMANT MICHELLE ALLEN WHOSE DAUGHTER WAS KILLED WHEN ATTEMPTING TO CROSS A BUSY STREET AFTER BEING DROPPED OFF AT THE WRONG LOCATION.

FINDINGS OF FACT:

On February 11, 2005, Brooke Ingoldsby, an 8-year-old third grader in James B. Sanderlin Elementary School in Clearwater, was being transported home on a school bus driven by a substitute driver. Brooke's grandmother was waiting for Brooke at the regular bus stop, but when the bus had not come an hour past the scheduled drop-off time, Brooke's grandmother drove back to Brooke's house. Soon after Brooke's grandmother left, the bus arrived with Brooke, who was the last student on the bus.

The bus had been delayed because an incomplete list of stops had been given to the substitute driver, William Ralston. When Mr. Ralston discovered the error, he called the bus dispatcher and was verbally provided a list of the additional stops on the route. He was told that Brooke's stop

was on the west side of 9th Street North, a very busy thoroughfare. However, Mr. Ralston dropped Brooke out on the east side of 9th Street North, at its intersection with 90th Avenue North. The intersection has no traffic light.

Because of the delay, it was near rush hour and there was heavy traffic on 9th Street North when Brooke was dropped off at the intersection. Brooke tried to cross the five lanes of 9th Street North; got as far as the left turn lane (for north bound traffic); waited a moment, and then attempted to cross the two southbound lanes. She did not make it. Brooke was struck by a sports utility vehicle, suffering multiple injuries, including head injuries. She was pronounced dead 3 hours later at Bayfront Medical Center.

Section 5.04 of the School Board's School Bus Driver Policy & Procedures Manual states that "School bus stops shall be placed at locations which will provide the maximum safety and convenience for the majority of the students in the area served by the stop." Section 5.04 also provides that stops should be at least 200 feet from an intersection and should be located where the students will not have to cross three or more lanes of traffic.

The School Board had received previous complaints from at least one parent that her child had been put out on the east side of 9th Street North instead of the west side. Complaints had also been made by parents about children being put out on the wrong side of busy streets on other school bus routes. However, the evidence presented was insufficient for me to conclude that the School Board was generally negligent in dealing with the issue of safe bus stops.

There was also insufficient evidence presented that Brooke was dropped off at the wrong stop on the day of her death because Mr. Ralston had not been properly trained or because the computer software program that generated bus routes was negligently designed or operated. Mr. Ralston was told that Brooke's stop was on the west side of 9th Street North. This tragedy occurred because he failed to follow the instructions he was given.

In addition to the \$200,000 sovereign immunity limit paid by the School Board and discussed below, Michelle Allen received \$1 million from the School Board's liability

insurance policy and \$5,178 as a late penalty under that policy. Claimant also received the following funds from collateral sources: \$100,000 from the auto insurance policy of the driver whose vehicle struck Brooke, \$30,000 from the Allens' auto insurance policy, \$2,550 from the Angel Fund, and \$7,712 from various community donations. The total received to date from all sources is \$1,345,440.

LITIGATION HISTORY:

In December 2005, Claimant sued the School Board in the circuit court for Pinellas County. Before discovery was undertaken by the parties, however, they successfully mediated the issue of damages and agreed to a stipulated judgment for \$2.5 million. The judgment was rendered by the court on March 30, 2006. Of the stipulated amount, \$200,000 was for the estate of Brooke Ingoldsby and \$2.3 million was for Michelle Allen.

The School Board paid \$100,000 to the estate of Brooke Ingoldsby and \$100,000 to Michelle Allen, exhausting the sovereign immunity cap. In addition, the School Board, through its excess liability insurance policy, paid Michelle Allen another \$1 million. Based on the parties' stipulated judgment (and accounting for the payments from the School Board's liability policy of \$1 million), there remains \$1.3 million to be paid through the claim bill. Of this latter amount, \$100,000 would go to Brooke's estate and \$1.2 million to her mother.

CLAIMANT'S POSITION:

- There were numerous mistakes and acts of negligence by School Board employees that combined to proximately cause Brooke's death, including the School Board's failure to properly train bus drivers, the production of an inaccurate route schedule, and Mr. Ralston's negligence in dropping Brooke off at the wrong stop. As the employer, the School Board is liable for these negligent actions of its employees which proximately caused Brooke's death.
- The settlement amount is fair and reasonable.

SCHOOL BOARD'S POSITION:

- The School Board admits liability for negligence and has agreed to support the claim bill.
- The School Board does not agree with all of Claimant's factual allegations.

CONCLUSIONS OF LAW:

There are many reasons for entering into a settlement agreement other than the perceived merits of the claim and, therefore, I am not precluded from reviewing the terms of the parties' settlement agreement in this matter and determining whether they are reasonable under the totality of the circumstances.

Section 1006.22, Florida Statutes (2005), provides that "[m]aximum regard for safety" is a primary requirement of district school boards in routing buses. The School Board has a legal duty to the students that are transported by bus to protect the students from the reasonably foreseeable dangers associated with their transportation.

The evidence was not sufficient to show that the training of bus drivers was deficient. Nor was the evidence sufficient to show that the production of the inaccurate route information was the result of negligence, or that any of other action that occurred before Brooke was dropped off at the wrong bus stop was the result of negligence or a proximate cause of her death. The confusion and delay that occurred before Mr. Ralston got the correct list of bus stops did not cause her death. The proximate cause of Brooke's death was Mr. Ralston's negligence in dropping her off on the wrong side of 9th Street North.

The School Board's legal duty to provide safe transportation to its students extends to the selection of safe bus stops and is reflected in Section 5.04 of the School Board's School Bus Driver Policy & Procedures Manual. It was a breach of the School Board's duty and a violation of the School Board policy to drop Brooke off at a stop that forced her to cross the five lanes of 9th Street North. This breach of duty was the proximate cause of Brooke's death.

The parties agreed not to reduce the settlement amount by the amounts Claimant received from collateral sources. Although that is not an unreasonable agreement, I do not believe the Senate should accept that term for purposes of this claim bill. The payment of a claim bill is a matter of legislative grace. It is in derogation of the principle underlying the sovereign immunity doctrine that claims against public agencies must be limited so that the agencies can continue to operate and provide important public

services. This is not a case involving a surviving injured person who will require costly future care to provide them a reasonable quality of life. Therefore, I believe the claim should be reduced by the amount Claimant received from collateral sources (\$140,262), which would change the claim to \$1,159,738.

ATTORNEYS FEES AND LOBBYIST'S FEES:

In compliance with s. 768.28(8), F.S., Claimant's attorneys will limit their fees to 25 percent of any amount awarded by the Legislature. The lobbyist's fee will be an additional 5 percent of any award. If the claim is paid in the amount that is recommended, Claimant's attorneys will receive a fee of \$289,934.50 and her lobbyists will receive a fee of \$57,986.90.

LEGISLATIVE HISTORY:

This is the first claim bill filed for Claimant.

OTHER ISSUES:

The source of payment of the claim would be the contingency reserve in the School Board's general fund balance. The School Board has funds to pay the claim. Payment of the claim would not adversely affect the operations of the School Board.

The claim bill should be amended to reduce the claim amount to \$1,159,738, and to correct certain factual allegations that are contrary to the findings made in this Report.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 74 (2007) be reported FAVORABLY, as amended.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Frederica Wilson
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.