



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/1/11	SM	Fav/1 amendment
3/29/11	RC	Fav/CS

February 1, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 70 (2011)** – Rules Committee and Senator Negron
Relief of Carl Abbott

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR \$1.9 MILLION, IN LOCAL FUNDS, AGAINST THE PALM BEACH COUNTY SCHOOL BOARD FOR THE NEGLIGENCE OF A BUS DRIVER WHO STRUCK AND SERIOUSLY INJURED CARL ABBOTT AS HE WAS ATTEMPTING TO WALK ACROSS A ROADWAY WITHIN A MARKED PEDESTRIAN CROSSWALK.

FINDINGS OF FACT:

On June 30, 2008, at about 2:00 p.m., Carl Abbott, then 68 years old, started to walk across U.S. Highway 1 at the intersection with South Anchorage Drive in North Palm Beach, Florida. Mr. Abbott was heading west from the northeast quadrant of the intersection, toward the intersection's northwest quadrant. To get to the other side of U. S. Highway 1, which runs north and south, Mr. Abbott needed to cross the highway's three northbound lanes, a median, the southbound left turn lane, and the three southbound travel lanes. Mr. Abbott remained within the marked pedestrian crosswalk. (See Diagram below.)

At the time Mr. Abbott began to cross U. S. Highway 1, a school bus was idling in the eastbound left-turn lane on South Anchorage Drive, waiting for the green light. The bus driver, Generia Bedford, intended to turn left and proceed

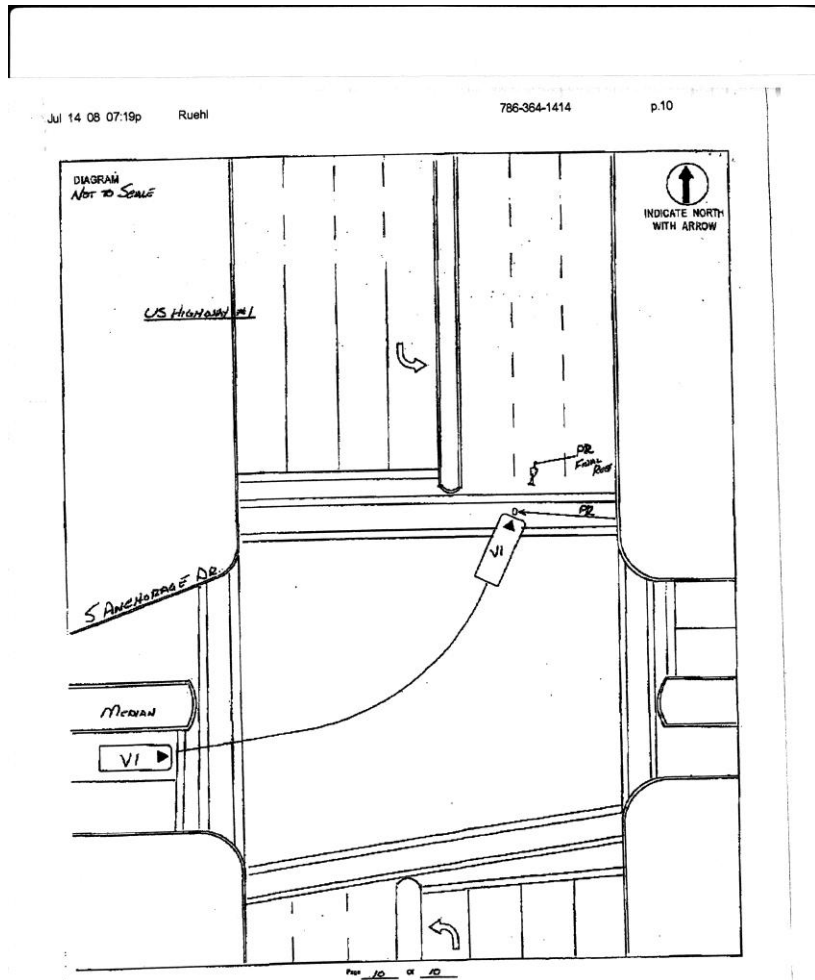
north on U. S. Highway 1. When the light changed, Ms. Bedford drove the bus eastward through the intersection and turned left, as planned, heading northward. She did not see Mr. Abbott, who was in the center northbound lane of U. S. Highway 1, until it was too late. The school bus struck Mr. Abbott and knocked him to the ground. He sustained a serious, traumatic brain injury in the accident.

Mr. Abbott received cardiopulmonary resuscitation (CPR) at the scene and was rushed to St. Mary's Medical Center, where he was placed on a ventilator. A cerebral shunt was placed to decrease intracranial pressure. After two months, Mr. Abbott was discharged with the following diagnoses: traumatic brain injury, pulmonary contusions, intracranial hemorrhage, subdural hematoma, and paralysis.

Mr. Abbot presently resides in a nursing home. As a result of the brain injury, he is unable to talk, walk, or take care of himself. He is alert but has significant cognitive impairments. Mr. Abbot has neurogenic bladder and bowel and hence is incontinent. He cannot perform any activities of daily living and needs constant, total care. His condition is not expected to improve.

Based on the Life Care Plan prepared by Stuart B. Krost, M.D., Mr. Abbott's future medical needs, assuming a life expectancy of 78 years, are projected to cost about \$4 million, before a reduction to present value. Based on the evidence presented, the undersigned is unable to determine the approximate amount of Mr. Abbott's past medical expenses, but it appears to be a sum between, very roughly, \$200,000 and \$775,000.

DIAGRAM:



LEGAL PROCEEDINGS:

In 2008, Mr. Abbott's son David, as guardian, brought suit on Mr. Abbott's behalf against the School Board of Palm Beach County. The action was filed in the Circuit Court in and for Palm Beach County, Florida.

Before trial the parties attended a mediation conference and agreed to settle the case for \$2 million, \$100,000 of which the School Board paid immediately. Pursuant to the settlement agreement, the \$1.9 million balance will be paid, if this claim bill is enacted, in eight yearly installments of \$211,111.11, plus a ninth and final annual payment of \$211,111.12. These yearly payments will commence, if at all, on the effective date of the claim bill, should it become law, and continue for nine years, or until Mr. Abbott's death, whichever first occurs. The School Board has agreed, however, to make at least three years' worth of payments,

guaranteeing a minimum payout of \$633,333.33 (if this claim bill passes).

Out of the \$100,000 settlement proceeds he has already received, Mr. Abbot paid \$25,000 in attorney's fees and, after paying some expenses, netted \$51,905.65. This amount was paid to Mr. Abbott's guardian, David Abbott.

CLAIMANT'S ARGUMENTS:

The Palm Beach County School Board is vicariously liable for the negligence of its employee, who breached the duty of a motorist to use reasonable care toward a pedestrian by failing to yield the right-of-way to Mr. Abbott as he crossed U. S. Highway #1 on foot within a marked crosswalk.

RESPONDENT'S POSITION:

The Palm Beach County School Board does not oppose the enactment of this claim bill. It is self-insured, however, and would pay the balance of the agreed sum out of its General Fund, which was the source of revenue used to satisfy the initial commitment of \$100,000. The School Board notes that payment of the \$1.9 million sought in this bill would be difficult, given budgetary constraints, but it stops short of urging that the bill be rejected on this basis.

CONCLUSIONS OF LAW:

As provided in s. 768.28, Florida Statutes (2010), sovereign immunity shields the School Board against tort liability in excess of \$200,000 per occurrence.

A school board is liable for any negligent act committed by a public school bus driver whom it employs, provided the act is within the scope of the driver's employment. Hollis v. School Board of Leon Cnty., 384 So. 2d 661, 665 (Fla. 1st DCA 1980). Ms. Bedford was the School Board's employee and was clearly acting within the scope of her employment at the time of the accident in question. Accordingly, the negligence of Ms. Bedford is attributable to the School Board.

Like any motorist, a school bus driver has a duty to look out for pedestrians and to avoid creating hazardous situations. See Resnick v. National Car Rental Systems, Inc., 266 So. 2d 74, 75 (Fla. 3d DCA 1972). While "the rights of motorists and pedestrians on highways are reciprocal," the motorist "must exercise ordinary reasonable and due care toward a pedestrian." Edwards v. Donaldson, 103 So. 2d 256, 259 (Fla. 2d DCA 1958).

Here, the applicable traffic regulations required that Ms. Bedford yield to Mr. Abbott because he was crossing the road within a marked crosswalk. See § 316.130(7), Fla. Stat.; see also, § 316.075(1)(a)1., Fla. Stat. ("[V]ehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such [green] signal is exhibited.") Ms. Bedford breached the duty to use reasonable care for the safety of Mr. Abbott. Her negligence was the direct and proximate cause of Mr. Abbott's serious and irreversible brain injury.

The sum that the School District has agreed to pay Mr. Abbott (\$2 million) is both reasonable and responsible, given the nature and permanence of the injury and the Mr. Abbott's substantial and continuing medical needs.

ATTORNEYS FEES:

Section 768.28(8), Florida Statutes, provides that "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." Mr. Abbott's attorney, Joseph R. Johnson, Esquire, has submitted an affidavit attesting that all attorney's fees, lobbying fees, and costs will be paid in accordance with the limitations specified in the claim bill.

SPECIAL ISSUES:

The claim bill requires some relatively technical amendments to conform to the parties' settlement agreement. The anticipated revisions, which the claimant's counsel is expected to prepare, will not change the bill's substance in any meaningful way.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 70 (2011) be reported FAVORABLY, as amended.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Joe Negron
R. Philip Twogood, Secretary of the Senate
Counsel of Record

CS by Rules:

Removes language in the title that the Palm Beach County School Board admitted liability and states that the Palm Beach County School Board “unanimously passed a resolution in support of settling the lawsuit that was filed in this case.” The amendment also inserts language that the Palm Beach County School Board “does not oppose the passage of this claim.”