



STORAGE NAME: h1167.SCCB

DATE: 4/9/2013

Florida House of Representatives Summary Claim Bill Report

Bill #: HB 1167; Relief/Abbott/Palm Beach County School Board

Sponsor: Representative Raburn

Companion Bill: SB 22 by Senator Negron

Special Master: Tom Thomas

Basic Information:

Claimants: David Abbott, guardian of Carl Abbott

Respondent: Palm Beach County School Board

Amount Requested: \$1,900,000; to be made in payments of \$211,111.11 each fiscal year beginning in 2013 through 2020, inclusive, and \$211,111.12 in the 2021 fiscal year.

Type of Claim: Local equitable claim; result of a settlement agreement.

Respondent's Position: The Palm Beach County School Board does not oppose the enactment of this claim bill.

Collateral Sources: None reported.

Attorney's/Lobbying Fees: The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.

Notwithstanding the attorney's affidavit, the bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.

Prior Legislative History: House Bill 1487 by Representative Workman and Senate Bill 70 by Senator Negron were filed during the 2011 Legislative Session. The House Bill passed its only committee of reference (Civil Justice), passed the full House, but died in Messages. The Senate Bill passed its only committee of reference (Rules) but died on the Calendar.

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House Bill 855 by Representative Workman and Senate Bill 54 by Senator Negron were filed during the 2012 Legislative Session. The House Bill passed its committees of reference (Civil Justice and Judiciary), passed the full House, passed the Senate as amended, and passed the House again, but died in Messages. The Senate Bill passed its only committee of reference (Rules), and was laid on the table in lieu of the House Bill.

Procedural Summary: David Abbott, the son and guardian of Carl Abbott, brought suit in 2008 claiming negligence against the School Board of Palm Beach County. The action was filed in the 15th Judicial Circuit Court, in and for Palm Beach County, Florida.

Prior to trial, the parties came to an agreement through mediation to settle the case for \$2 million, \$100,000 of which the School Board has already paid. Pursuant to the settlement agreement, the \$1.9 million balance will be paid in eight yearly installments of \$211,111.11, plus a ninth and final annual payment of \$211,111.12. These yearly payments will commence on the effective date of the claim bill, 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. Out of the \$100,000 settlement proceeds he has already received, Mr. Abbott paid \$25,000 in attorney's fees and, after paying some expenses, netted \$51,905.65.

Facts of Case: 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.

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 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. Abbott 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. Abbott has neurogenic bladder and bowels 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

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present value. The school Board is self-insured and will 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.

Recommendation: I respectfully recommend House Bill 1167 be reported **FAVORABLY**.

Tom Thomas, Special Master

Date: April 8, 2013

cc: Representative Raburn, House Sponsor
Senator Negron, Senate Sponsor