



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/28/17	SM	Fav/1 amendment
3/06/17	JU	Fav/CS
4/18/17	CA	Favorable
	RC	

February 28, 2017

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 14** – Judiciary Committee and Senator Frank Artiles
HB 6529 -- Representative Cord Byrd
Relief of Lillian Beauchamp, as the personal representative of the Estate of Aaron
Beauchamp

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF \$8.7 MILLION AGAINST THE ST. LUCIE COUNTY SCHOOL DISTRICT FOR THE WRONGFUL DEATH OF AARON BEAUCHAMP WHICH OCCURRED WHILE HE WAS A PASSENGER IN A DISTRICT SCHOOL BUS THAT WAS STRUCK BY A TRACTOR TRAILER.

FINDINGS OF FACT:

This matter arises out of a school bus accident that occurred on March 26, 2012, in St. Lucie County, at the intersection of Okeechobee Road and Midway Road. The intersection is located on a four-lane divided highway with a speed limit of 55 mph, and it is not controlled by an overhead traffic signal. The weather at the time of the accident was clear, and there were no visual obstructions.

The Accident

At approximately 3:45 pm, Albert Hazen, a St. Lucie County School District (district) employee, was driving a school bus

westbound on Okeechobee Road. The school bus had 30 student passengers from Frances K. Sweet Elementary School on board. The school bus was equipped with four video surveillance cameras that provided various viewpoints of the crash.

Also at approximately 3:45 pm, Charles Cooper was driving a tractor trailer, owned by Cypress Trucking, in the right eastbound lane of Okeechobee Road. The tractor trailer had a flatbed semi-trailer attached and was loaded with sod.

The bus entered the left turn lane to turn left across the eastbound lanes of Okeechobee Road to reach Midway Road. As the bus turned left at the intersection, it slowed without stopping and turned in front of the tractor trailer driven by Mr. Cooper. Mr. Hazen attempted to accelerate across Okeechobee Road to avoid a collision with the tractor trailer. Mr. Cooper also attempted an evasive action by turning his steering wheel to the right prior to impact.

The front of the tractor trailer collided with the passenger side of the school bus near its rear axle. The impact caused the school bus to spin clockwise approximately 180-degrees. The accident forced the tractor trailer off of the right eastbound lane of Okeechobee Road, rolled the truck portion of the tractor trailer on its left side, and flipped the flatbed trailer upside down. The tractor trailer came to rest in the grassy area on the side of Okeechobee Road. At the time of the crash, the school bus was traveling at approximately 15 mph; whereas, the tractor trailer was traveling at 63 mph approximately 3 seconds before impact.

Mr. Hazen had been assigned an additional bus route the day of the accident, and was driving that extra route when the accident occurred. Mr. Hazen had driven this bus route ten to twelve times before. The onboard cameras captured Mr. Hazen after the crash stating, "Oh my God what I have done."

At the time of the accident, neither Mr. Hazen nor Mr. Cooper were under the influence of alcoholic beverages or narcotics. Both had valid driver licenses for the vehicles they were driving.

The accident caused one fatality and numerous injuries to the student passengers on the bus. Specifically, eight students were seriously injured, eleven students had minor injuries,

and ten students were uninjured. Mr. Hazen received minor injuries and Mr. Cooper was uninjured.

Aaron Beauchamp

Aaron Beauchamp was a 9-year-old student at Frances K. Sweet Elementary School and was onboard the school bus at the time of the accident. Aaron was seated in row 10 on the driver's side of the school bus. It was determined after the accident that Aaron had been wearing his seatbelt at the time of the accident.

The accident caused Aaron to be ejected out of his seat and be thrown about the interior of the school bus. Aaron was found on the school bus floor behind the last seats of the school bus. The medical examiner determined Aaron's cause of death was multiple blunt trauma injuries, and the manner of death was an accident.

Bus Seat and Seatbelt

The National Transportation Safety Board (NTSB) investigated the crash for the limited purpose of understanding the survival factors of the student passengers in support of another ongoing NTSB investigation. The NTSB's investigation provided detailed information concerning the condition of the bus seats and seatbelts after the crash.

The bus seats were a tubular steel frame that had plywood for the seat and the seatback. The plywood was covered with foam and vinyl fabric. The bus seats were designed to flip up to allow for the cleaning of the floor under the seat. The front of the seat cushion was mounted to the seat frame by two steel C-shaped brackets that allowed the seat to flip up. The NTSB's investigation after the crash found that the seat cushion latch for the seat that Aaron Beauchamp was sitting in was not engaged. The two front brackets of Aaron's seat were deformed, nearly flat, and the right front bracket was missing a screw.

The seatbelt Aaron was wearing at the time of the accident was a lap seatbelt. Upon inspection, Aaron's seatbelt had a load mark, meaning it was likely in use at the time of the accident. The seatbelt's attachment points to the seat were also rotated toward the impact point of the accident.

LEGAL PROCEEDINGS:

The claimant (Lillian Beauchamp, as the Personal Representative of the Estate of Aaron Beauchamp, a deceased child) filed suit against the district, Cypress Trucking, IC BUS, and IMMI (the seatbelt manufacturer).

The claimant settled with Cypress Trucking for \$575,000. The claimant also settled with IC BUS and IMMI; however, the terms of the settlement are confidential and not disclosed to the undersigned.

The district has settled all of the claims associated with this accident except for the claimant's claim.

The claimant and the district were unable to reach a settlement agreement and proceeded to trial on September 1, 2015. The trial was held in the Nineteenth Judicial Circuit Court in St. Lucie County. The jury returned a verdict on September 8, 2015, in the favor of the claimant. The jury found that the district was 87 percent negligent in the death of Aaron Beauchamp. The jury also apportioned 13 percent of negligence to Cypress Trucking and zero percent of negligence to IC BUS, though they were not parties to the lawsuit.

The jury awarded \$10 million to the claimant, the Estate of Aaron Beauchamp, and apportioned it in the following manner: \$1 million each for Lillian and Simon Beauchamp's past mental pain and suffering caused by the wrongful death of Aaron and \$4 million each for Lillian and Simon Beauchamp's future mental pain and suffering caused by the wrongful death of Aaron.

The proportion of the jury verdict attributed to the district is \$8.7 million.

CLAIMANT'S ARGUMENTS:

The claimant agrees with the jury's apportionment of 87 percent liability to the district and agrees with the award of \$8.7 million.

RESPONDENT'S ARGUMENTS:

The district admitted negligence but disputes the amount of negligence proportioned to it by the jury. The district argues that Cypress Trucking should have received a larger portion of the negligence percentage. The district also contends that there was clear evidence of negligence by IC BUS that

contributed to the death of Aaron Beauchamp and the jury should have proportioned some liability to IC BUS.

The district is opposed to the claim bill.

CONCLUSIONS OF LAW:

The district owned the school bus driven by its employee, Mr. Hazen and is covered by the provisions of s. 768.28, F.S. Section 768.28, F.S., generally allows injured parties to sue state or local governments for damages caused by their negligence or the negligence of their employees by waiving the government's sovereign immunity from tort actions. However, the statute limits the amount of damages that a plaintiff can collect from a judgment against or settlement with a government entity to \$200,000 per person and \$300,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the Legislature.

The district has settled all claims associated with this accident except for the claimant's claim. In settling with the other parties, the district has exhausted the statutory cap amount of \$300,000 and its excess insurance policy in the amount of \$1 million. The claimant has not received any money from the district and will not receive the full benefit of the jury verdict unless the Legislature approves a claim bill.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damages. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010) (quoting *Jefferies v. Amery Leasing, Inc.*, 698 So. 2d 368, 370-71 (Fla. 5th DCA 1997)).

Section 768.81, F.S., Florida's comparative fault statute, allows damages in negligence cases to be apportioned against each liable party. The Florida Supreme Court has found that "in determining noneconomic damages fault must be apportioned among all responsible entities who contribute to an accident even though not all of them have been joined as defendants." *Nash v. Wells Fargo Guard Servs.*, 678 So. 2d 1262, 1263 (Fla. 1996).

The driver of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injuring persons within the vehicle's path. *Gowdy v. Bell*, 993

So. 2d 585, 586 (Fla. 1st DCA 2008). Reasonable care is the degree of care a reasonably careful person would have used under like circumstances. *Foster v. State*, 603 So. 2d 1312, 1316 (Fla. 1st DCA 1992).

The long-standing doctrine of *respondeat superior* provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013). Florida's dangerous instrumentality doctrine imposes "vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another." *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000). Motor vehicles have been considered dangerous instrumentalities under Florida law for over a century. See *Anderson v. S. Cotton Oil Co.*, 74 So. 975, 978 (Fla. 1917).

Mr. Hazen was employed by the district and was acting within the scope of his employment at the time of the accident. Accordingly, the negligence of Mr. Hazen is attributable to the district.

Mr. Cooper was employed by Cypress Trucking and was acting within the scope of his employment at the time of the accident. Accordingly, the negligence of Mr. Cooper is attributable to Cypress Trucking.

Mr. Hazen's Negligence

Section 316.122, F.S., requires drivers who are intending to turn left to yield to the right-of-way of any vehicle approaching from the opposite direction. When Mr. Hazen turned left across Okeechobee Road and failed to yield to the tractor trailer driven by Mr. Cooper, Mr. Hazen violated s. 316.122, F.S., and breached his duty to operate the school bus with reasonable care. Mr. Hazen was issued a Uniform Traffic Citation for violating s. 316.122, F.S.

Mr. Hazen's negligence and breach of duty of care caused the accident and contributed the wrongful death of Aaron Beauchamp.

Mr. Cooper's Negligence

Section 316.183(4)(a), F.S., prohibits any person from driving at a speed that is greater than reasonable and

prudent and requires the driver to appropriately reduce speed when approaching and crossing an intersection. Mr. Cooper was traveling at 63 mph at the time of the crash, 8 mph faster than the posted speed limit of 55 mph. Mr. Cooper violated s. 316.183, F.S., and breached his duty to drive with reasonable care by driving 8 mph over the 55 mph speed limit and is partially at fault for the accident.

Section 316.302(1)(a), F.S., provides that all commercial motor vehicles in Florida engaged in interstate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397.

The Florida Highway Patrol investigation of the accident found a violation of 49 C.F.R. 393.47(e), which sets the limits for clamp brakes. The investigation found that the tractor trailer's left #3 clamp-type brake was out of adjustment, with the pushrod travel measured at two and half inches. The federal regulation allows a maximum pushrod travel of two inches for clamp-type brakes.

The investigation also found a violation of 49 C.F.R. 571.121 S5.2.2(a), which requires automatic brake adjustment systems to compensate for the wear of brakes. The tractor trailer did not compensate for the wear of the brakes and thus violated 49 C.F.R. 571.121 s5.2.2(a).

Another federal regulation, 49 C.F.R. 395.8(f)(1), requires a driver to record his or her duty status. Mr. Cooper had not updated his duty status log book the day of the accident to indicate that he was on duty.

Mr. Cooper was issued three Uniform Traffic Citations after the accident. His negligence due to speeding and having faulty brakes contributed to the wrongful death of Aaron Beauchamp.

Conclusion

Florida's comparative fault statute, s. 768.81, F.S., applies to this case because Mr. Hazen and Mr. Cooper both violated Florida law in this accident.

Mr. Hazen caused the accident when he turned left across Okeechobee Road and failed to yield to the tractor trailer driven by Mr. Cooper, violating s. 316.122, F.S., and

breached his duty to operate the school bus with reasonable care.

Mr. Cooper contributed to the accident by driving 63 mph when the posted speed limit was 55 mph and by failing to keep the tractor trailer in compliance with federal rules and regulations.

IC BUS manufactured the seats of the bus. The damage to the seat brackets on Aaron's seat may have contributed to his death. However, the undersigned was presented with the same evidence as the jury at trial and finds that there is insufficient evidence to alter the jury's apportionment of no fault on IC BUS.

The jury sat through a multiple-day trial, listened to all of the evidence presented, and reached a verdict based on competent and substantial evidence. While Mr. Hazen and Mr. Cooper were partially at fault in this matter, Mr. Hazen's negligence far outweighs Mr. Cooper's negligence. Aaron Beauchamp died after suffering multiple blunt force trauma injuries. The undersigned finds there is no newly presented evidence to alter the jury verdict and finds that the damages of \$8.7 million sought by the claimant are reasonable and justly apportionable to the district as a result of Mr. Hazen's negligence.

LEGISLATIVE HISTORY:

This is the first claim bill presented to the Senate in this matter.

ATTORNEYS FEES:

The claimant's attorney has agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. The bill provides that the total amount paid for lobbying fees, costs, and other similar expenses relating to the claim are included in the 25 percent limit. However, the limits on lobbying fees, costs, and other similar expenses should be removed to conform to a recent opinion of the Florida Supreme Court. See *Searcy, Denney, Scarola, Barnhart & Shipley v. State*, 42 Fla. L. Weekly S92 (Fla. 2016).

FISCAL IMPACT:

The district is self-insured through a self-insured consortium for the statutory cap amount of \$300,000. The district also maintained an insurance policy for excess coverage in the amount of \$1 million. The statutory cap amount and the district's insurance funds have been consumed by other

claims arising out of the bus accident. If the bill is approved, the district will have to pay the claim from its general operating funds.

SPECIAL ISSUES

The bill refers to the school district as the *St. Lucie School Board*. The proper name for the school district is the St. Lucie School District. The undersigned recommends the bill is amended to correct this error.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 14 (2017) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Lauren Jones
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute conforms the bill to the terms of a settlement between the parties for \$1.5 million. The amount of the original claim was \$8.7 million. The amendment also specifies the amounts that may be paid for attorney fees, lobbying fees, and costs. However, these amounts are consistent with the contractual obligations of the parties. As such, specifying the amounts for fees and costs in the claim bill is not inconsistent with the recent Florida Supreme Court opinion limiting the authority of the Legislature insert limits on fees and costs in claim bills.