



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
3/28/17	SM	Favorable
4/5/17	JU	Fav/CS
	CA	
	RC	

March 28, 2017

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

Re: **CS/SB 304** – Judiciary Committee and Senator Perry Thurston
HB 6531 – Representative Brad Drake
Relief of Dustin Reinhardt by the Palm Beach County School Board

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$4.7 MILLION, BASED ON A STIPULATED FINAL JUDGMENT BETWEEN DUSTIN REINHARDT, THE CLAIMANT, AND THE PALM BEACH COUNTY SCHOOL BOARD. THE BILL COMPENSATES THE CLAIMANT FOR INJURIES HE RECEIVED WHEN A TIRE EXPLODED IN HIS AUTO SHOP CLASS.

FINDINGS OF FACT:

This claim arises out of an accident that took place on September 4, 2013 in the auto shop of the Seminole Ridge Community High School in Loxahatchee, Florida. At the time of the accident, Dustin Reinhardt was 16 years old. He was taking the auto shop as a class for the third year in a row, taught by shop teacher, Raymond Craig.

On the day of the incident, a student in the auto shop class had rims to be worked on. That student and Dustin drilled holes in the truck rims, placed rubber inner tubes inside the tires, and assembled the rubber inner tube and tire on the modified rim. Mr. Craig, according to a statement he made to a law enforcement officer investigating the incident, knew that the two students had modified the rims in this way.

After Dustin and the other student finished modifying the tires, Dustin began to fill one with air. During that time, Mr. Craig stated that he walked by Dustin and told him to sit the tire upright and not stand directly in front of the tire while filling it. A few seconds later, the tire exploded, knocking Dustin unconscious and injuring his head and brain.

A tire cage is a piece of safety equipment. Inflating a tire that has first been placed inside a tire cage provides stability during the process. However, at the time of the incident, the auto shop did not have a tire cage large enough to accommodate the large truck tire.

After the accident, a medical evacuation team airlifted Dustin to St. Mary's Hospital in West Palm Beach where doctors placed him in a medically-induced coma for a month. Doctors initially told Dustin's father, Scott Reinhardt, that they did not know if Dustin would survive. When doctors brought Dustin out of the coma and sat him up, spinal fluid leaked through his nose, necessitating placement of a shunt in his brain. Dustin underwent multiple additional surgeries, including facial and skull reconstruction. Even after the surgeries, Dustin has been left with a permanent loss of vision in his right eye, considerable facial scarring, short-term memory loss, judgment deficiencies, and severe traumatic brain injury.

On October 9, 2013, the hospital transferred Dustin to a physical rehabilitation facility at the hospital.

On October 24, 2013, the hospital discharged Dustin and he returned home to live with his father, Scott Reinhardt, and Dustin's stepmother, Joann Reinhardt. Upon returning home, Dustin began to display emotional outbursts and significant aggressive behaviors. In addition to the acting out, Dustin needed near-constant supervision to remain safe.

Because of this, Scott Reinhardt and Dustin's doctors decided to place Dustin in a supervised, residential setting. Dustin's family agreed to the placement recommended by doctors, at the Florida Institute for Neurologic Rehabilitation (FINR). Dustin entered the FINR on a residential basis on March 14, 2014. In the area of vocational development, Dustin worked his way up from an hour a day of dusting at the facility, to going to an off-site landscape nursery and doing general

grounds maintenance under supervision for several hours a day.

While at FINR, another brain-injured patient set Dustin on fire. Dustin suffered third-degree burns, necessitating additional surgery.

Dustin stayed at FINR until December 2016, at which time his father had him transported to Neuro International, a facility providing assisted living services. At the facility, the staff check on Dustin every 30 minutes during the day and every 60 minutes at night. When Dustin goes out into the community, he is under constant visual supervision.

Dustin has worked hard to overcome his emotional outbursts. With the assistance of educators at the facility, he also has been able to get his high school diploma. Although Dustin has progressed in various areas while in the care of these institutions, his medical providers and his father agree that Dustin is unable to advance to living independently. For example, medical doctors estimate that Dustin functions developmentally at the equivalent of a 10 to 12 year old. Therefore, a continued stay in a supervised setting such as Neuro International is recommended.

Notably, Dustin was born a triplet and the other triplets are in careers in the armed services. At the time of the accident, Dustin was enrolled in Army Junior ROTC. Additionally, he intended to pursue a career as a long-distance truck driver or truck mechanic.

Dustin's stepmother, Joanna Reinhardt, and his father, Scott Reinhardt, are Dustin's legal guardians.

FUTURE SERVICES REPORT: Both plaintiff and defense experts prepared a Life Care Plan for Dustin. Dr. Craig Lichtblau, a psychiatrist, and Dr. David Williams, an economist for the plaintiff, estimate the cost of future care and loss of earnings at \$15 million.

Dr. Alan Raphael, for the defense, estimates future care and loss of earnings at \$4,348,675. Dr. Raphael based this total on a review of Dr. Lichtblau's report and consultations with Dr. Ronald Tolchin, an examining psychiatrist.

Plaintiff Estimate: The first table provides a summary of economic damages, as estimated by Dr. Williams. As of the date of the report, June 24, 2015, Dr. Williams estimated Dustin’s life expectancy at an additional 58.2 years. Medical expenses that Dustin is expected to incur include medical care; diagnostic tests; surgical procedures related to the artificial eye; therapeutic evaluations, consisting of physical therapy, occupational therapy, speech therapy, and neuropsychometric testing; outpatient therapy for physical therapy, occupational therapy, and speech therapy; medication; support care; and transportation, including costs of a cell phone. Dr. Williams identifies other possible medical complications, but does not calculate them for purposes of the anticipated costs. These complications could present as pulmonary, urological, renal seizure, hydrocephalus, and other possible issues.

Future Medical Expenses	\$12,348,654
Loss of Future Earning Capacity	\$ 1,800,000
Gross Past Medical Expenses	\$ 1,377,129
Total Economic Damages	\$15,525,783

Defense Estimate: The second table assumes a life expectancy of an additional 59.4 years, as of April 24, 2015. The anticipated medical expenses include medical care, therapy, medication, diagnostic tests, future surgery and hospitalization for a shunt revision in the brain and an artificial eye replacement, medical equipment, and costs of living at an assisted living facility. Dr. Raphael recognizes, but does not include estimates for possible expenses relating to the services of a professional guardian and plastic surgery for scar revisions. Additionally, the defense estimate deducts from future earnings typical pay as a landscape technician.

Future Medical Expenses and Care	\$3,194,425
Loss of Future Earning Capacity	\$891,000
Driver (If necessary to provide transport to a part-time job)	\$263, 250
Total Economic Damages	\$4,348,675

LITIGATION HISTORY:

On February 25, 2015, Dustin Reinhardt and Scott Reinhardt filed a Complaint for Damages against the School District of Palm Beach County and USAA General Indemnity Company in the Palm Beach County Circuit Court. The complaint alleged that the School District of Palm Beach County negligently failed to supervise and/or adequately protect Dustin Reinhardt. Due to the negligence of the School District of Palm Beach County, the complaint alleges that Dustin suffered significant physical, mental, and emotional injuries. Additionally, the complaint alleged that Scott Reinhardt incurred medical expenses needed to treat his son's injuries and the loss of his son's services.

After the plaintiffs filed the complaint, the parties engaged in discovery, exchanging interrogatories and taking depositions. Eventually, the Reinhardts and the School District of Palm Beach County entered into a Release and Settlement Agreement. Under its terms, the School District agreed to pay \$300,000 up front, \$100,000 of which the School District paid to Scott Reinhardt individually and \$200,000 of which the School District paid to Scott Reinhardt in his capacity as guardian for Dustin. The School District disbursed the \$300,000 within 20 days after the court approved the settlement agreement.

The court issued its order approving the settlement agreement on February 1, 2017.

The agreement acknowledges that the plaintiff has already received, and will continue to receive the benefit of payment for Dustin's full expenses, including medical, room and board, supervision and therapy at the FINR. These payments, which amount to approximately \$350 a day, or \$124,600 per year, have already been made through the School Board's Omaha Custodial Care Insurance Policy. The payouts will continue until September 2023, based on a ten-year total allowable payout.

In addition to the initial amount payment of \$300,000, the agreement provided for the plaintiffs to receive a total of \$4.7 million through the claim bill process. Of this total, \$1,700,000 will be payable as a lump sum within 30 days after the claim bill is enacted, and \$3,000,000 payable as a \$1 million annual annuity, starting September 2023 or at the time of cessation of the payouts from the Custodial Care Insurance Policy.

CLAIMANT'S POSITION:

To prove a claim of negligence, a plaintiff must show that a defendant owed a duty to the plaintiff, the defendant breached that duty, the defendant's action or inaction caused the plaintiff's injury, and the plaintiff incurred damages. The claimant asserts each of these elements as follows.

Mr. Craig owed a duty to Dustin to provide a safe work environment in the auto shop class and to properly supervise the students. Mr. Craig breached that duty by allowing Dustin to put air in a large tire that had been modified, an extremely dangerous activity, without the benefit of a tire cage. In instructing Dustin to sit the tire upright, Mr. Craig knew or should have known that the tire had a propensity to explode. The explosion of the tire caused irreparable and considerable injury to Dustin.

As a result of the accident, Dustin incurred and continues to incur economic and non-economic damages. Dustin permanently lost the vision in his right eye and has had numerous surgeries. He suffers from short-term memory loss and has severe traumatic brain injury, interfering with his ability to exercise sound judgment and engage in other executive level functioning. Dustin requires lifetime medical care and treatment, including future surgery and various therapies, and room and board at an assisted living facility. Dustin is unable to pursue his dream of serving in the military or otherwise pursue his intended vocation as a long-haul trucker or as a truck mechanic. Additionally, Dustin has repeatedly expressed the desire to live on his own, support himself in the future, drive, marry, have children, and own his own home. Dustin may well not realize these desires.

RESPONDENT'S POSITION:

The School Board of Palm Beach County agrees not to contest the claim bill.

CONCLUSIONS OF LAW:

Section 768.28, F.S., governs this matter. This statute generally allows injured parties to sue the state or local governments for damages caused by their negligence or the negligence of their employees. However, the statute limits the amount of damages which 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. Therefore, Dustin will not receive the full benefit of the settlement agreement with the School Board of Palm Beach County unless the Legislature approves a claim bill authorizing the additional payment.

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 damage. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010).

Although school boards are not strictly liable for the safety of students, well-settled law provides that a school board has a duty to properly supervise students entrusted to the care of the school.¹ In a case in which a plaintiff alleges a lack of supervision, a teacher's duty of care is defined as reasonable, prudent, and ordinary care, or the care that a person of ordinary prudence responsible for those duties would exercise given the same circumstances.² Providing inadequate supervision is a breach of that duty.³

The tire that Dustin worked on the day of the incident was not typical for the tires brought to the auto shop class. Although the plaintiff and the defense describe the tire differently, the defense concedes that the tire was a large buggy tire, incapable of placement inside a tire cage for safety while being filled with air. Mr. Craig knew that Dustin was putting air in the tire as he asked him to sit the tire upright. However, Mr. Craig kept walking after issuing the instruction, thereby providing inadequate supervision.

Mr. Craig was employed by the School Board of Palm Beach County. 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).

Due to Mr. Craig's breach of his duty of care, he caused the accident and Dustin's damages. The claimant has demonstrated significant economic damages. Dustin's medical costs are considerable and ongoing. Due to his

¹ *Benton v. School Board*, 386 So. 2d 831, 834 (Fla. 4th DCA 1980); *Comuntzis v. Pinellas County School Board*, 508 So. 2d 750, 751 (Fla. 2nd DCA 1987).

² *La Petite Academy v. Nassef*, 674 So. 2d 181, 182 (Fla. 2d DCA 1996).

³ *Doe v. Escambia County School Board*, 599 So. 2d 226 (Fla. 1st DCA 1992).

inability to live on his own, he will likely require lifetime care in a supervised setting. Dustin will never be able to pursue his chosen avocation or sustain himself.

Should this case have proceeded to trial, Dustin appears by all accounts to have presented as a sympathetic plaintiff. Just 16 when the incident happened, he will never have the opportunity to live the life accessible to others. He has also demonstrated a strong commitment to making progress towards recovery.

For these reasons, the undersigned concludes that the settlement is both fair and reasonable.

COLLATERAL SOURCES:

The plaintiff has entered into a settlement agreement with various other defendant(s). The total settlement amount from sources unrelated to the claim bill, \$1,373,000, comes from:

Source	Amount
Homeowner’s insurance policy of the owner of the tire	\$303,000
USAA uninsured motorist policy for Scott Reinhardt	\$50,000
Teacher’s union insurance policy of Raymond Craig, auto shop teacher	\$1,000,000
Homeowner’s policy of Raymond Craig, auto shop teacher	\$20,000
Total	\$1,373,000

FISCAL IMPACT:

The School Board of Palm Beach County is self-insured for personal injury liability claims. If approved by the Legislature, the \$4.7 million will be paid from the School Board of Palm Beach County’s Workers’ Compensation and Liability Claims Internal Service Fund. The School Board represents that they have reserved the amount necessary to pay this claim.

ATTORNEYS FEES:

The total amount of money requested in the claim bill is \$4.7 million. Should the claim bill become law, and in the amount requested, the attorney’s fees, based on a 20 percent recovery, will be \$940,000. Lobbyist fees, based on a 5 percent recovery, will be \$235,000.

The plaintiff and defendant have already entered into a settlement agreement for the \$300,000 permitted by law. Of this, Scott Reinhardt received \$100,000 individually, and \$200,000 as the guardian of Dustin Reinhardt. Attorney's fees for this part of the agreement are \$25,000 and \$50,000, respectively. These attorney's fees represent 25 percent of the total recovery.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 304 (2017) be reported FAVORABLY.

Respectfully submitted,

Cindy M. Brown
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

This committee substitute includes minor corrections to the facts alleged in the whereas clauses of the claim bill. More significantly, the committee substitute provides for the payments required under the claim bill to be used to fund a special needs trust for the benefit of the claimant. The committee substitute also identifies specific amounts that may be paid from the claim bill for attorney fees and lobbying fees.