



STORAGE NAME: h6529.CJC

DATE: 3/6/2017

March 6, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6529 - Representative Byrd
Relief/Lillian Beauchamp/St. Lucie County School Board

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF \$8.7 MILLION AGAINST THE ST. LUCIE COUNTY SCHOOL DISTRICT FOR DAMAGES SUFFERED BY LILIAN BEAUCHAMP AS PERSONAL REPRESENTATIVE OF THE ESTATE OF AARON BEAUCHAMP BECAUSE AARON WAS KILLED WHEN HIS SCHOOL BUS WAS STRUCK BY A TRACTOR TRAILER ON MARCH 26, 2012.

FINDING OF FACT:

The Accident

On March 26, 2012, Aaron Beauchamp was a nine year old boy riding on a St. Lucie County school bus. The bus was heading west on Okeechobee Road in Port St. Lucie carrying thirty elementary age students. The driver of the bus, Albert Hazen, had picked up the students from Francis K. Sweet Elementary in Ft. Pierce and was nearing his first stop on the afternoon route. While Mr. Hazen did not normally drive this route for the school, he was familiar with the area. At around 3:45 p.m., he approached Midway Road and was traveling to the St. Lucie County Fairgrounds to make his first drop off of the day. Mr. Hazen steered the bus into the left turn lane and approached the intersection.

There is no traffic signal or stop sign at the intersection of

Okechobee Road and Midway Road. It was a clear day with no visual obstructions.

At the same time, heading east on Okechobee Road, Charles Cooper was driving a tractor trailer transporting pallets of sod. The truck's approximate weight that day was 78,600 pounds. The truck was driving approximately 60 miles per hour in a 55 mph speed limit. The tractor trailer driven by Mr. Cooper was visible to Mr. Hazen's bus, and vice versa.

As Mr. Hazen arrived at the intersection at Midway Road, he turned directly into the path of the tractor trailer driven by Mr. Cooper. Realizing his mistake, Mr. Hazen accelerated the bus through the intersection. However, the bus was unable to clear the intersection before the tractor trailer arrived. Mr. Cooper attempted to dodge the bus by steering his tractor trailer towards the right, even swerving off Okechobee Road. The front of the tractor trailer struck the right side of the school bus at the rear wheel and continued to travel forward and into the right side of the bus. The force of the impact caused the bus to partially rise off the ground and rotate clockwise slightly less than 180 degrees. The tractor trailer continued to travel forward and its trailer overturned, flipping the body of the truck until it landed in a ditch.

Injuries

Aaron Beauchamp was wearing his seatbelt and sitting in the second to last row on the driver side of the bus. The impact of the tractor trailer into the bus caused several of the bench seats on the bus to shift and break. The bus's sudden rotation caused some passengers to be ejected from their seats. Though he was wearing his seatbelt, Aaron's seat broke and he was violently thrown out of his seat. Aaron hit his head on the ceiling of the bus. Aaron Beauchamp's injuries proved to be fatal and he was pronounced dead at the scene.

Other drivers stopped and aided the children out of the bus. Of the 31 people on the bus, including the driver, 21 suffered injuries from the crash. Aaron was the only person to die from the crash. The medical examiner reported Aaron fractured his skull, broke his neck at the C7-T1 vertebrae (nearly severed the spinal cord), and suffered several internal injuries including a near rupture of his small intestine. The other children suffered injuries ranging from pelvic fractures to chest contusions.

Following a Florida Highway Patrol investigation, it was determined that neither the school bus driver nor the tractor trailer driver had alcohol or drugs in their system. No criminal charges were filed against Mr. Hazen, the school bus driver. He did receive a ticket for violating s. 316.122, F.S.,¹ for failing to

¹ Section 316.122, F.S., provides " The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the

yield the right-of-way to the tractor trailer approaching from the opposite direction. Mr. Hazen was fined \$1,166 and was fired by the St. Lucie County School District. Additionally, Mr. Cooper, the driver of the tractor trailer, was cited for violating s. 316.302, F.S., for not having adequate brakes. The investigation discovered the tractor trailer's automatic airbrake adjustment system did not compensate for wear as required by Federal Motor Vehicle Safety Standards.

LITIGATION HISTORY:

In February of 2013, Lilian Beauchamp, Aaron's mother and personal representative of Aaron's estate ("Claimant"), brought a lawsuit for wrongful death against the St. Lucie County School District ("School District") in the Circuit Court of the 19th Judicial Circuit in St. Lucie County. The School District and the insurer of the tractor trailer held a global mediation to settle all the claims arising from the crash. The School District had a self-insured consortium for the \$300,000 statutory cap and maintained an insurance policy for the excess coverage of \$1,000,000. Additionally, the tractor trailer's insurance carried a policy of \$2,000,000. The Claimant settled with the trucking company's insurance in the amount of \$575,000. The School District offered Claimant \$374,300 in an effort to resolve Claimant's claim but Claimant rejected the offer. The School District exhausted their insurance limits when it resolved the other 16 claims brought at mediation.

In March of 2014, Claimant amended their complaint against the School District to include the IC Buses Corporation, the manufacturer of the school bus. Prior to trial, Claimant reached a settlement with the school bus manufacturer for an undisclosed amount.

The claim against the School District proceeded to trial on September 1, 2015. At trial, the School District admitted Mr. Hazen failed to see the approaching truck but argued it was an avoidable accident because of the comparative negligence of the tractor trailer and bus manufacturer. The jury awarded a verdict of \$10,000,000 and found the School District was 87% at fault and the tractor trailer was 13% at fault. On November 2, 2015, a final judgment was entered against the School District for \$8,700,000. Since the \$300,000 statutory caps were exhausted paying the other claims, Claimant has not received any payment from the School District.

CLAIMANT'S ARGUMENTS:

The School District is liable for the death of Aaron Beauchamp under the legal theory of respondent superior and the negligent driving of Albert Hazen causing the collision between the school bus and the tractor trailer.

RESPONDENT'S ARGUMENTS:

The School District's liability is out flanked by the comparative negligence of the driver of the tractor trailer and the school bus manufacturer for deficient seats. Additionally, the School District has exhausted insurance funds on other claims and any award granted will be paid from the general operating funds and have a devastating effect on the School District's operating ability.

CONCLUSION OF LAW:

Whether or not there is a jury verdict or a settlement agreement, every claim bill must be based on facts sufficient to meet the preponderance of evidence standard. In order to state a claim of negligence against a sovereign under Florida law, a claimant must allege a duty of care owed by the sovereign to the claimant, breach of that duty of care, and resulting damages.²

Duty

A threshold issue in negligence is whether there was a duty owed to claimant.³ "As a general rule, if a public school entity provides transportation for its pupils, it owes a duty of care with regard to that transportation."⁴ Here, the School District owed a duty of care to nine year old Aaron Beauchamp as he was a student of the School District and the School District undertook the responsibility of transporting its students.

Liability

Under the legal theory of respondent superior, an employer is liable for the negligence of their employees for wrongful acts committed within the course and scope of their employment.⁵ Here, Albert Hazen, as an employee of the School District, was negligent in driving the school bus. As a school bus driver for the School District, Hazen was within the scope of his employment when he was transporting the students. Hazen was negligent in not seeing the tractor trailer heading east on Okechobee Road. The conditions that day were clear and dry. There was nothing obstructing Hazen's vision from seeing the tractor trailer. Hazen's failure to yield till the tractor trailer passed and instead turn in front of the tractor trailer caused the crash.

Comparative Negligence

At trial, the School District presented evidence that while Hazen's turn was negligent, the accident was avoidable because of the comparative negligence by the driver of the tractor trailer and the manufacturer of the school bus seats. Dr. Rolin Barret, an accident reconstructionist and mechanical engineer, testified for the School District with the following five

² *Mosby v. Harrell*, 909 So. 2d 323, 327 (Fla. 1st DCA 2005).

³ *Dep't of Env'tl. Prot. v. Hardy*, 907 So. 2d 655, 660 (Fla. 5th DCA 2005).

⁴ *Harrison v. Escambia Cty. Sch. Bd.*, 434 So. 2d 316, 319 (Fla. 1983).

⁵ *Cintron v. St. Joseph's Hosp., Inc.*, 112 So. 3d 685, 686 (Fla 2d DCA 2013).

opinions:

1. If the school bus did not turn left, the accident would not have happened.
2. If the tractor trailer truck had not been speeding, the accident would not have happened.
3. If the brakes had been up to minimum standards, then the accident would not have happened.
4. If the tractor trailer driver had slowed down or applied brakes sooner, then the accident would not have happened.
5. The tractor trailer truck driver turned right to avoid the collision when he should have turned left and the accident would not have happened.

The findings of Dr. Barret are informative and provide context to the accident. The jury at trial found the tractor trailer driver to be 13% at fault. Weighing the actions of both drivers in this incident, I find the superseding cause of the accident was the school bus turning into oncoming traffic. As for the allegation that the tractor trailer's speeding (traveling at 60 mph in a 55 mph zone) caused the accident, the Florida Highway Patrol Investigative Report conducted on this crash found that speed was not a factor in the crash. Dr. Barret's conclusion that the driver of the tractor trailer should have steered in the direction of the turning school bus instead of instinctively steering away from the bus cannot be found to be a credible act for any experienced driver. Finally, certainly the tractor trailer's brakes not meeting federal standards played a role in the crash and the jury's apportionment of fault is an adequate apportionment of fault.

The School District also argues that the school bus manufacturer is comparatively negligent in both the manufacturing and design of the seat on the bus. Aaron Beauchamp's seat broke in the accident which rendered his seat belt useless, ejected him into the air, and caused his head to strike the ceiling of the bus. Dr. Kenneth Saczalski, a consulting engineer hired by the School District, testified at trial that the latch holding the seat down did not have enough strength to withstand such an accident and was defective. The base of the seat was fastened to a metal tubular frame by clamps. The clamps failed and broke, allowing the seat to separate from the frame. Dr. John Lenox, a mechanical engineer and a medical doctor hired by the School District, testified at trial that had Aaron Beauchamp's seat not failed, Aaron would probably have survived the crash. Aaron was the only one of the nearly thirty children to die from the crash. His seat was on the opposite side of the impact. However, at trial, Dr. Lenox admitted that it is possible Aaron would still have died from the collision even if his seat had not broken. The medical examiner reported that Aaron suffered a fatal skull fracture but he also nearly severed his spinal cord and ruptured his small intestine. Many of the other children suffered severe

injuries but survived the crash and from the video from inside the school bus, several of the other seats broke and were dislocated from the crash. Ultimately, if Aaron's seat had not broken, he may have survived.

Claimant appears to agree that there was comparative negligence by the tractor trailer and by the bus manufacturer as shown by the fact that Claimant brought lawsuits against both entities. Claimant settled with the tractor trailer trucking company for \$575,000 and entered into a confidential settlement with the bus seat manufacturer. However, the jury was not informed of these settlements or these claims at trial. Given the testimony and evidence presented, the jury found the School District 87% at fault, the tractor trailer trucking company 13% at fault, and found no liability against the school bus manufacturer. The challenge is, being presented with the fault of all parties and corresponding settlement agreements, what proportion of fault for all three entities? I find the 13% fault attributed to the trucking company by the jury is just and supported by the evidence. However, the jury's refusal to attribute liability to the school bus manufacturer is confounding. I find there was negligence on behalf of the school bus manufacturer for the defective seats. Unfortunately, there is no evidence presented that would establish what amount of damages for Aaron's injuries had his seat not broken. He would still have suffered injuries that would require medical care. I find the school bus manufacturer to be 10% at fault for the injuries in this instant claim. Going off the jury's award of \$10 million, the amount awarded in the claim bill should be reduced by \$1,000,000.

Damages

There is no question that the damages in this claim are tragic. Lilian and Simon Beauchamp, in losing their youngest son, have suffered an immense amount of pain. From the testimony presented at the special master hearing, Simon lives in a constant state of grief over the loss of his son and refers to Aaron in the present tense. Lilian, a principal of a middle school in the School District, is reminded daily of the tragic accident every time she sees a school bus. The jury's finding of \$10,000,000 for their pain and suffering is appropriate. The Beauchamp's have focused their grief by honoring Aaron by creating the Aaron Project that provides collegiate scholarships for local students from St. Lucie County.

ATTORNEY'S/ LOBBYING FEES:

Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total \$4,246.02.

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COLLATERAL SOURCES:

Claimant received \$575,000 from Cypress Trucking Company. Additionally, Claimant also entered into a confidential settlement with the school bus manufacturer.

Despite Claimant's requests, the school bus manufacturer would not waive confidentiality.

PRIOR LEGISLATIVE HISTORY:

This is the first session this instant claim has been presented to the Legislature.

RECOMMENDATIONS:

Given the comparative negligence of the school bus manufacturer, the \$8,700,000 amount in the bill should be amended and reduced by \$1,000,000.

Accordingly, I respectfully recommend that House Bill 6529 bill be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ.

House Special Master

cc: Representative Byrd, House Sponsor
Senator Artilles, Senate Sponsor
Lauren Jones, Senate Special Master