



STORAGE NAME: h6549.CJC

DATE: 3/16/2017

March 16, 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 6549 - Representative Diaz
Relief/Altavious Carter/Palm Beach County School Board

THIS IS A CONTESTED CLAIM FOR \$944,034.40 BASED ON A JURY AWARD FOR ALTAVIOUS CARTER (CLAIMANT) AGAINST THE SCHOOL BOARD OF PALM BEACH COUNTY TO COMPENSATE CLAIMANT FOR DAMAGES HE SUSTAINED WHEN A SCHOOL BUS CRASHED INTO THE REAR END OF A VAN IN WHICH HE WAS A PASSENGER.

FINDING OF FACT:

On December 15, 2005, at approximately 4:12 p.m., Vincent H. Merriweather was driving Altavious Carter, 15 years old at the time, from basketball practice to Mr. Carter's home when Mr. Merriweather's van stopped at a red light at the intersection of Forest Hill Boulevard and Olympia Boulevard in West Palm Beach, Florida. A Palm Beach County School District bus rear-ended Mr. Merriweather's Chevrolet conversion van at an impact speed of almost 50 miles per hour. The van traveled 300 feet from impact to the point of rest. No evidence has been presented that the driver of the bus applied his brakes prior to striking the van. The bus driver, Dennis Grantham, was given a ticket for careless driving in connection with the accident. He also received a "written reprimand" from the Palm Beach County School Board ("School Board"), and was suspended from further driving School Board vehicles.

Both Mr. Carter and Mr. Merriweather were wearing their seat belts at the time of the accident. The force of the accident broke both Mr. Carter and Mr. Merriweather's seats. Mr. Carter was thrown into the back of the van. Mr. Carter was able to stagger out of the van, and upon suspicion of a spinal injury, was instructed to lie down and wait for the ambulance. Mr. Merriweather was airlifted to Delray Medical Center.

Mr. Carter was transported by ambulance to Wellington Regional Medical Center and subsequently to St. Mary's Medical Center, where he was treated for his injuries. Due to the accident, Mr. Carter's neck was broken at the C6 level, and he suffered a C6-7 interior subluxation and reversal of normal cervical lordosis, with spinal cord flattening. Mr. Carter received a discectomy and fusion at C6-7, along with placement of a bone graft and cage, plates, and screws to fuse the spine at C6-7. Mr. Carter remained in the hospital for four days following the accident.

Upon discharge, he was required to wear a neck brace for several months, undergo physical therapy, and was unable to play his freshman season of basketball. After rehabilitation, Mr. Carter was able to return to physical activity. He went on to a successful high school and collegiate basketball career. Mr. Carter continues to suffer some pain in his neck, including aching and stiffness. This pain makes sleeping difficult at times for Mr. Carter. Mr. Carter is at risk of developing adjacent segment disease as a result of his spinal fusion. If Mr. Carter develops this disease, he will require future surgery to remedy the disease.

LITIGATION HISTORY:

On July 25, 2007, Tonya McRae, as mother and natural guardian of Altavious Carter, filed suit against the Palm Beach County School Board, Case No. 502007 CA 009298, in the 15th Judicial Circuit, in and for Palm Beach County, Florida, alleging negligence. Mr. Carter received a jury verdict against the Palm Beach County School Board, and the court entered a judgment in the amount of \$1,094,034.30. The jury verdict is broken down as follows:

Past Medical Expenses	\$96,476.64
Future Medical Expenses	\$175,892.00
Past Pain and Suffering	\$478,333.33
Future Pain and Suffering	\$343,333.33
Total	\$1,094,034.30

Pursuant to the judgment, Palm Beach County School Board paid the sovereign immunity limit of \$100,000. The remainder of the judgment, \$994,034, is sought through this contested

claims bill.

The School Board settled Mr. Merriweather's claim arising from the same accident for \$4,000,000. The School Board paid the sovereign immunity limit of \$100,000 and the additional \$3,900,000 was approved through a claim bill in the 2009 Legislative Session.

CLAIMANT'S POSITION:

The jury verdict should be given full effect through passage of the instant claim bill.

RESPONDENT'S POSITION:

The School Board opposes the extent of the damages, specifically the future medical expenses and future pain and suffering awarded by the jury.

CONCLUSION OF LAW:

The bus driver had a duty to exercise reasonable care in the operation of the school bus. This duty was breached when the bus driver negligently crashed into the van.¹ Here, the bus driver was cited as the responsible party in the accident. This is not disputed by the Respondent. The bus driver's negligence was the proximate cause of the injuries that Mr. Carter sustained in the accident. The school bus driver was an employee of the School district and was acting within the course and scope of his employment at the time of the accident. As such, the driver's negligence is attributable to the School Board.

In disputing the extent of the future pain and suffering damages, the School Board provides that as of July 27, 2006, Mr. Carter was cleared by Dr. Baynum to resume all activities without restriction. However, the trial was conducted after Mr. Carter had returned to playing basketball. At trial, the School Board showed a highlight video of Mr. Carter's physical abilities on the basketball court. The jury was able to take into account Mr. Carter's recovery in returning the verdict. In disputing future medical expenses, the School Board provided that according to a physiatrist, Dr. Rubenstein, whom the School Board retained, the future care needed for Mr. Carter was approximately \$25,000, exclusive of the costs of surgery to repair adjacent segment disease. This evidence was available to the jury in rendering their decision. After an extensive trial, with evidence and testimony presented by both sides, the jury weighed the appropriate evidence and testimony and returned a judgment in favor of Mr. Carter. The jury award should not be disturbed in this matter. The damages the jury determined are not grossly disproportionate to the injury and harm caused by Mr. Grantham to Mr. Carter.

¹ See *Eppler v. Tarmac America, Inc.*, 752 So. 2d 592 (Fla. 2000) (the rear driver is presumed to be negligent in rear-end collision case absent evidence of a sudden and unexpected stop by the front driver).

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 \$4,734.26.

PRIOR LEGISLATIVE
HISTORY:

This is the seventh session this claim has been presented to the Legislature. In the 2016 Legislative Session, the claim was introduced as Senate Bill 50 by Senator Flores and House Bill 3537 by Representative Diaz, J. The Senate Bill was heard in two committees (Judiciary & Appropriations Subcommittee on Education) before dying in Senate Appropriations Committee. The House Bill died in Civil Justice Subcommittee.

In the 2015 Legislative Session, the claim was introduced as Senate Bill 72 by Senator Flores and House Bill 3553 by Representative La Rosa. The Senate Bill was heard in two committees (Judiciary & Appropriations Subcommittee on Education) before dying in Senate Appropriations Committee. The House Bill died in Civil Justice Subcommittee.

In the 2014 Legislative Session, the claim was introduced as Senate Bill 38 by Senator Flores. It was not heard in any committee of reference and a House Bill was not filed.

In the 2013 Legislative Session, the claim was introduced as Senate Bill 30 by Senator Flores and House Bill 1385 by Representative Diaz, J. Neither bill was heard in any committee of reference.

In the 2012 Legislative Session, the claim was introduced as Senate Bill 26 by Senator Bogdanoff and House Bill 911 by Representative Clemens. Neither bill was heard in any committee of reference.

In the 2011 Legislative Session, the claim was introduced as Senate Bill 340 by Senator Bogdanoff and House Bill 591 by Representative Clemens. Neither bill was heard in any committee of reference.

RECOMMENDATIONS:

I respectfully recommend that House Bill 6549 be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

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cc: Representative Diaz, J., House Sponsor
Senator Flores, Senate Sponsor
Jason Hand, Senate Special Master