



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
3/25/09	SM	Fav/1 amendment

March 25, 2009

The Honorable Jeff Atwater
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 522 (2009)** – Senator Christopher Smith
HB 957 (2009) – Representative John Legg
Relief of Vincent Merriweather

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR \$3.9 MILLION AGAINST THE PALM BEACH COUNTY SCHOOL DISTRICT TO COMPENSATE VINCENT MERRIWEATHER FOR INJURIES AND DAMAGES HE SUSTAINED WHEN A SCHOOL BUS CRASHED INTO HIS VAN IN 2005.

FINDINGS OF FACT:

On December 15, 2005, the claimant, Vincent Merriweather, was stopped at a red light in Palm Beach County when his van was rear-ended by a school bus owned and operated by the Palm Beach County School District. It was estimated that the bus was traveling in excess of 45 mph when it hit Mr. Merriweather's van, and there was no credible evidence that the driver applied his brakes at any point before the accident.

Mr. Merriweather testified that he was wearing his seatbelt at the time of the accident. His testimony is corroborated by the accident reports, and it is also consistent with the physical evidence at the scene.

Mr. Merriweather's seat failed as a result of the force of the impact, and he was thrown into the back of the van. Mr. Merriweather was knocked unconscious and suffered a

number of injuries in the crash, including fractured vertebrae and a spinal cord injury. He was temporarily paralyzed from the neck down.

Mr. Merriweather was air-lifted from the accident scene to Delray Medical Center where he spent four days in the intensive care unit (ICU). Mr. Merriweather was then transferred to St. Mary's Hospital where he spent another five days in ICU and more than three months in the hospital's in-patient rehabilitation unit. After his discharge from the hospital, Mr. Merriweather underwent approximately four months of out-patient rehabilitation.

Mr. Merriweather was 41 years old at the time of the accident. He worked as a firefighter for Palm Beach County, and he also volunteered as an assistant basketball coach and mentored student-athletes at a local high school.

Mr. Merriweather has not worked since the accident. He reached maximum medical improvement in July 2006 with a 62 percent overall impairment rating. His medical condition has remained essentially the same since that time.

Mr. Merriweather has a number of significant physical limitations and neurological deficits. His range of motion is extremely limited and he has stiffness in his muscles. He is able to walk short distances, but he is unsteady on his feet so he has to use a wheelchair. He has sensory deficiencies and his fine motor skills are impaired. He also suffers from depression.

Mr. Merriweather does not have any significant cognitive deficiencies. Even though he has physical limitations, he lives by himself and is able to perform all activities of daily living (e.g., feeding, bathing, dressing, cooking cleaning) without any significant assistance. He is also able to drive and manage his financial affairs.

Mr. Merriweather cannot work as a firefighter as a result of his physical impairments. He is also not able to do many of the other things that he used to enjoy doing, such as playing basketball and riding motorcycles.

Mr. Merriweather earned approximately \$80,000 per year in salary and benefits as a firefighter. After the accident, he

was placed on “extended leave” and he continued to receive his full salary for almost 18 months. This leave ended in April 2007, after which Mr. Merriweather “retired” due to his post-accident medical condition.

Mr. Merriweather likely would have worked another 10 to 15 years as a firefighter had he not been injured in the accident. He would have been able to retire with full benefits after an additional 8 years as a firefighter.

Mr. Merriweather receives almost \$2,500 per month in pension benefits from Palm Beach County based upon his service as a firefighter. He also receives approximately \$1,900 per month in Social Security disability payments. He has been receiving these payments since approximately October 2008.

Mr. Merriweather’s medical bills were covered by insurance that he had through his work as a firefighter. The insurer and the hospitals have asserted liens of in excess of \$500,000. The liens will be paid from the proceeds of the claim bill.

An economist’s report estimated that Mr. Merriweather’s total economic damages (e.g., lost earnings, reduced retirement benefits, medical bills) were approximately \$3.6 million. In my view, that amount is likely overstated by at least \$1 million because, among other things, the estimated future medical expenses in the “life care plan” (upon which the estimate was based) include experimental surgeries, full time aide and attendant care, and the cost of purchasing a wheel-chair accessible home, none of which appear reasonably necessary based upon Mr. Merriweather’s condition and prognosis. Also, the economist assumed that Mr. Merriweather had no income after the accident even though, in fact, he continued to receive his full salary for almost 18 months after the accident. The economist also assumed that Mr. Merriweather would continue to work as a firefighter until age 65 whereas Mr. Merriweather testified in his deposition that he expected to retire at or before age 60.

The damages estimated by the economist do not include non-economic or “human damages,” such as pain and suffering and Mr. Merriweather’s loss of the enjoyment of life. Mr. Merriweather’s attorney indicated that the non-

economic damages in this case would have been significant and that a jury verdict “would have easily been in the \$15 million to \$30 million range.” Likewise, the District estimated the “jury exposure” of the claim to be between \$10 million and \$13 million. The estimates are not unreasonable under the circumstances.

In September 2008, the School Board unanimously approved a \$4 million settlement of Mr. Merriweather’s lawsuit against the District. The District has already paid Mr. Merriweather \$100,000. The settlement agreement requires the District to pay the remaining \$3.9 million over a period of four years after the approval of a claim bill.

The School Board did not set aside money to pay the claim concurrent with the approval of the settlement. The District reported that the bill will be paid from its “general fund . . . , which would impact the School District’s ability to fund needed educational program[s].” The District also pointed out that it has lost more than \$90 million in state funding since the start of the 2007-08 school year; that additional reductions (possibly as much as an additional \$100 million) are expected for the 2009-10 school year; and that the District’s ad valorem tax revenues will likely be negatively impacted by recent declines in property values.

The District’s most recent audited financial statements reflect that as of June 30, 2008, the District had net assets of more than \$2 billion. That figure includes estimated claims of more than \$23 million, which according to the notes to the financial statements, are reflected on the District-wide financial statements but not the fund-specific statements until they become due each year.

The financial statements also reflect that the District’s General Fund had a balance of approximately \$120.7 million. Approximately \$48.5 million of that amount was “undesignated” and an additional \$39.4 million was “designated for board contingency.”

Additionally, Note 12 to the financial statements states that:

The District is involved in various lawsuits arising in the ordinary course of operations. In the opinion of management, the District’s

estimated aggregate liability with respect to probable losses has been provided for in the estimated liability for insurance risks and pending claims in the accompanying financial statements, after giving consideration to the District's related insurance coverage, as well as the Florida statutory limitations of governmental liability on uninsured risks. It is the opinion of management in consultation with legal counsel, the final settlements of these matters will not result in a material adverse effect on the financial position of the District.

The bus driver was given a ticket for careless driving for causing the crash. He also received a "written reprimand" from the School Board. The bus driver continued to work for the transportation department at the District until December 2007, when he resigned for personal reasons. He did not drive busses after the crash.

There were 33 students on the bus at the time of the accident. None of the students were seriously injured. The District paid a total of \$62,000 to settle claims made by four of the students on the bus.

The passenger in Mr. Merriweather's van -- a student that Mr. Merriweather was taking home from basketball practice - - was also injured in the accident. The passenger's negligence suit against the District is still pending, and is expected to go to trial in June 2009. The District's potential exposure for that case is unknown at this time.

LEGAL PROCEEDINGS:

In June 2007, Mr. Merriweather filed a negligence suit against the District in circuit court in Palm Beach County. The District admitted that its bus driver was negligent, but it initially denied proximate cause and damages.

The case was settled in August 2008. The settlement was unanimously approved by the School Board on September 17, 2008.

The terms of the settlement required the District to pay Mr. Merriweather a total of \$4 million. The first \$100,000 was paid under the sovereign immunity cap in s. 768.28, F.S. The remaining \$3.9 million is to be paid upon approval of a

claim bill, as follows: \$1 million over three consecutive school years and \$900,000 in the fourth school year. The District agreed as part of the settlement not to oppose the claim bill.

A Stipulated Final Order of Dismissal was entered by the circuit court on October 23, 2008.

Mr. Merriweather received \$75,000 of the initial \$100,000 payment. The other \$25,000 went to attorney's fees. No portion of the initial payment went to costs.

There are outstanding costs of approximately \$120,420.17 that will be paid out of the proceeds of the claim bill. There are also medical liens in excess of \$500,000 that will be paid out of the proceeds of the claim bill.

CLAIMANT'S POSITION:

The negligence of the school bus driver was the sole and proximate cause of the significant injuries and damages sustained by Mr. Merriweather.

The amount of the settlement agreed to by the parties is reasonable under the circumstances and should be given full effect by the Legislature.

DISTRICT'S POSITION:

The District admits liability and does not oppose the bill, but it contends that payment of the claim will adversely impact its ability to fund needed educational programs.

CONCLUSIONS OF LAW:

The school bus driver was an employee of the District acting within the course and scope of his employment at the time of the accident. As a result, the driver's negligence is attributable to the District.

The bus driver had a duty to exercise reasonable care in the operation of the bus. See generally s. 316.183(1), F. S. He breached this duty by crashing into the back of Mr. Merriweather's stopped van. See Eppler v. Tarmac America, Inc., 752 So. 2d 592 (Fla. 2000) (rear driver is presumed to be negligent in rear-end collision case absent evidence of a sudden and unexpected stop by the front driver). The bus driver's negligence was the sole and proximate cause of the injuries and damages sustained by Mr. Merriweather.

The amount of the settlement agreed to by the parties is reasonable under the circumstances. Even though the economic damages estimated by the economist are likely overstated to some degree, those damages reflect only a portion of Mr. Merriweather's total damages. His non-economic or "human damages" (e.g., pain and suffering, reduced quality of life, etc.) are real and significant. And, as both parties acknowledged, a jury award likely would have been much higher than the amount of the settlement.

The District's argument that it does not have the funds to pay this claim without adversely affecting its operations was not persuasive based upon the information presented in the District's most recent audited financial statements.

LEGISLATIVE HISTORY:

This is the first year that this claim has been presented to the Legislature.

ATTORNEY'S FEES AND LOBBYIST'S FEES:

Mr. Merriweather's attorney filed an affidavit stating that attorney's fees will be capped at 25 percent in accordance with s. 768.28(8), F.S. Lobbyist's fees total 6 percent and are included within the 25 percent attorney's fee cap. The outstanding costs are not included in these percentages.

The Legislature is free to limit these amounts as it sees fit. See Gamble v. Wells, 450 So. 2d 850 (Fla. 1984); Noel v. Schlesinger, 984 So. 2d 1265 (Fla. 4th DCA 2008). The bill does so by limiting attorney's fees, lobbyist's fees, and costs, to 25 percent of the amount of the claim bill.

Mr. Merriweather's attorney stated in an affidavit that "[t]he attorneys and lobbyists will abide by the terms of the claims bill." Therefore, if the bill passes in its current form, Mr. Merriweather will receive \$2,925,000 and the remaining \$975,000 will go to attorney's fees, lobbying fees, and costs. If this language were not in the bill, Mr. Merriweather would receive only approximately \$2.8 million because the costs would not be included in the 25 percent attorney's fee cap.

OTHER ISSUES:

The bill, as filed, is inconsistent with the parties' settlement agreement, which requires payment to be made over the course of four consecutive school years. The parties agree, and I recommend that bill be amended to conform to the settlement agreement.

RECOMMENDATION:

For the reasons set forth above, I recommend that Senate Bill 522 be reported FAVORABLY, as amended.

Respectfully submitted,

T. Kent Wetherell, II
Senate Special Master

cc: Senator Christopher Smith
Philip Twogood, Secretary of the Senate
Counsel of Record