

November 25, 1997

SPECIAL MASTER'S FINAL REPORT

DATE

COMM.

ACTION

The Honorable Toni Jennings  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

12/03/97

ED  
WM

Fav/2 amendments

Re: SB 36 - Senator Horne  
HB 3209 - Representative Thrasher  
Relief of Carrie Wilson

THIS IS AN EXCESS JUDGMENT CLAIM FOR \$1,685,657 BASED UPON A JURY VERDICT AGAINST THE DUVAL COUNTY SCHOOL BOARD TO COMPENSATE CLAIMANT FOR PERMANENT INJURIES SHE SUSTAINED WHEN SHE INJURED HER LEFT LEG AND FOOT WHILE SHE WAS A STUDENT AT DUPONT MIDDLE SCHOOL IN JACKSONVILLE, FLORIDA.

FINDINGS OF FACT:

On January 6, 1992, Carrie Wilson, a 14 year old student at DuPont Junior High School in Jacksonville, Florida, entered a door from the Science Wing and stuck her foot out to hold the door open for a friend. Unknown to Carrie was the fact that during the Christmas Holidays, School Board employees had replaced a broken glass pane with regular window glass as opposed to the required 1/4-inch safety glass. Since 1986, Florida Administrative Code 6A-2.050(6) has required that safety glass be used in all school building doorways. As the door closed, Carrie's left foot and leg went through the glass severely injuring her main femoral artery, vein and nerve.

She was taken to University medical Center, a trauma center. She was diagnosed as having traumatic lacerations of the femoral artery and a laceration of the sciatic nerve. After initial surgery, she developed gangrene and had to undergo hyperbaric treatments. During her recovery, Carrie Wilson endured considerable pain and suffering. Her medical bills totaled \$120,000.

Physically, Carrie has a large permanent scar on her left leg. Her left calf and thigh are significantly smaller than the right. She has decreased sensation below the left knee, but an adequate blood supply. Her left ankle motion is restricted but she has the ability to walk recreationally, sometimes with a limp. These changes and limitations are permanent and doctors agree that she will not likely benefit from plastic surgery. Prior to the injury, Carrie Wilson had been very active, played soccer, and had been a cheerleader. These are activities in which she can no longer engage.

Psychologically, Ms. Wilson sustained permanent psychiatric injuries associated with the accident. Because she will not likely benefit from plastic surgery, the visual defect will not ameliorate. She appears to be extremely embarrassed by the perceived deformity and does not wear clothing which reveals her leg.

LITIGATION HISTORY:

On August 21, 1992, suit was filed in Duval County against the Duval County School Board (Case No. 92-12051-CA). The claimants alleged that the Duval County School Board was liable for Ms. Wilson's injuries because employees had negligently placed regular window glass instead of the code-required safety glass in a door at DuPont Middle School.

On August 21, 1995, a jury trial began. The defendant contested liability and damages.

On August 25, 1995, a jury verdict was rendered in favor of the claimant in the amount of \$2,500,000. The jury found the defendant 100 percent at fault with no comparative negligence on the part of the claimant.

The damages awarded Carrie Wilson by the jury following the 5-day trial in August 1995 were as follows:

Medical Expenses and Past Lost Earnings	\$ 120,000
Future Medicals and Future Lost Earnings	440,000
Past Pain and Suffering	440,000
Future Pain and Suffering	<u>1,000,000</u>

TOTAL **\$2,000,000**

The future medicals and lost earnings award was later reduced by \$218,699 by the trial judge to a total of \$221,301, making the total awarded to Ms. Wilson **\$1,759,157**.

Ms. Barbara Britt, Carrie Wilson's mother, was awarded **\$500,000** by the jury for loss of consortium (\$400,000 for past and \$100,000 for future). This award was reduced by the trial judge to a total of **\$126,500** (\$275,000 was deducted from the past loss of consortium award and \$98,500 was deducted from the future award). The taxable costs of litigation were approximately \$20,017.73.

The School Board appealed the verdict on several grounds, including:

- 1) Claimant's counsel allegedly made improper comments arguing that the school district refused to accept responsibility for its conduct.
- 2) The court wrongfully admitted speculative and improper testimony concerning future amputation of claimant's leg.
- 3) The "loss of consortium" award directed to the mother was contrary to law, pursuant to *U.S. v. Dempsey*, 635 So.2d 961 (Fla. 1994).

On February 6, 1997, the First District Court of Appeal affirmed the award without opinion.

Pursuant to s. 768.28, F.S., the Duval County School Board paid \$200,000 to the claimants.

SPECIAL-FACT-  
CIRCUMSTANCES:

While recognizing that all school districts in Florida are facing some budgetary shortfalls, the Duval County School District is experiencing a uniquely difficult budget year which will likely affect future years.

First, the District receives less funds per student from the Legislature than any other large district and is the poorest of the large districts.

Secondly, enrollment in school year 1997-98 is significantly less than state enrollment projections; this will result in a loss

of funds for 1997-98 in the amount of \$6,024,531 which would otherwise have been received from the state. In addition, Exceptional Student Education (ESE) funds under the new state matrix and enrollment ceiling (cap) have decreased \$9,509,199, at a time when Duval County has 932 more ESE students than it did in the last school year. At the same time, federal impact aid for ESE students declined in Duval County from \$2,199,433 to \$479,246 in 1996-97, a net decrease of \$1,720,187, which is occurring again during the current school year.

In addition, it is important to note that although the jury heard testimony concerning future medical costs associated with psychological counseling and a potential leg amputation, neither have occurred. At the Special Master's hearing on October 10, 1997, testimony was presented that Carrie Wilson had not seen any physician or psychologist since the trial in the case held in August 1995. She indicated that she does not need psychiatric or psychological assistance and she has not needed the assistance of a physician for her leg during this period.

CONCLUSIONS OF LAW:

- 1) A trial was held in August 1995, on the issues of liability and damages. A jury concluded that the School Board was negligent and rendered a verdict in favor of the claimants in the amount of \$2.5 million.
- 2) After specific reductions by the trial court, a final judgment was entered for \$1,885,657.
- 3) Duval County School Board paid the capitated statutory maximum amount of \$200,000, consistent with s. 768.28, F.S., to the claimants.
- 4) The Duval County School Board is protected by sovereign immunity, pursuant to s. 768.28, F.S., and is subject to the limited waiver of sovereign immunity enacted by the Legislature of the State of Florida.
- 5) There is an outstanding amount of \$1,705,674.73 which has not been paid by the School Board and remains unpaid after the jury verdict rendered in August 1995. Unless a claim bill is passed by the Florida Legislature, the School

Board is not required to pay the balance or a portion thereof.

COLLATERAL SOURCES:

Due to a lapsed insurance policy, there is no collateral coverage. The District, however, prior to the verdict, paid \$22,144 of Carrie Wilson's medical bills. Unpaid medical bills total \$97,856.

ATTORNEYS FEES:

Limited to 25 percent of recovery under the provisions of s. 768.28, F.S.

RECOMMENDATIONS:

It is clear that the Duval County School Board was 100 percent responsible for the injury. It is also clear that Carrie Wilson has sustained permanent physical and psychological injuries due to the negligence. However, in consideration of the totality of the circumstances surrounding the claim, (i.e., special budgetary crisis experienced by the school district, unlikelihood of significant future medical expenses, potentially irregular consortium award, etc.), I recommend that Senate Bill 36 be amended to provide a total award of \$1,000,000 to be paid to the claimant, Carrie Wilson. Whereas \$200,000 has already been paid by the school district, there is a balance of \$800,000 which should be paid in three equal annual installments commencing 30 days after enactment.

Based upon the foregoing, the undersigned recommends that SB 36, AS AMENDED, be reported FAVORABLY.

Respectfully submitted,

William R. Pfeiffer  
Senate Special Master

cc: Senator Horne  
Representative Thrasher  
Faye Blanton, Secretary of the Senate  
Richard Hixson, House Special Master