

Child injured at bus stop settles with school district for \$75K

By: Bill Cresenzo October 31, 2018

The Wake County Public School System has settled a lawsuit for \$75,000 after a boy was hit by a car while on his way to school in Apex, an accident the lawsuit blamed on a negligently designed stop and a bus driver who did not operate the bus's lights properly.

Attorney T. Shawn Howard of Maginnis Law in Raleigh reports that his client also received \$30,000 from the car driver's insurance company, for a total settlement of \$105,000.

Howard said that on Sept. 30, 2014, the 11-year-old boy was waiting for the bus on Johnson Pond Road to take him to school. The bus stopped across the street and as the boy crossed, a teenage driver hit him with her car.

The boy suffered an orbital and frontal bone fracture and two fractures to the ankle and stayed in the hospital for three days. Howard said that the bus had previously stopped in front of the mobile home park where the boy lived, but had recently changed procedure so that students had to cross Johnson Pond Road.

Howard said there was some evidence that the driver did not turn on the amber lights that would warn drivers that the bus would be coming to a stop.

The child filed a lawsuit in Wake County Superior Court and with the North Carolina Industrial Commission against the school board and its employees.

Superior Court Judge Andrew Heath dismissed the civil action on the grounds that the Industrial Commission had sole jurisdiction to hear the negligent route design claims. While that ruling was on appeal, the state's Court of Appeals decided in a different case that negligent route design claims are not properly brought before the Industrial Commission, Howard said.

The parties then decided to have a voluntary mediation, and the school system agreed to pay \$75,000 in addition to the \$30,000 previously recovered from the driver's insurance company, Howard said.

A claim involving the bus driver's negligence is pending before the Industrial Commission, Howard said.

The school system issued a public statement in response to the settlement.

"In this case, the minor plaintiff was hit by a teen driver in a private vehicle and not by the school bus," Jonathan Blumberg, the school system's attorney, said in the statement. "The district emphatically denies any negligence, and this denial is included in the settlement agreement. The school district settled the matter to avoid the cost of protracted litigation and in recognition of the fact the plaintiff did suffer serious injuries."

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SETTLEMENT REPORT — NEGLIGENT DESIGN

Amount: \$75,000 from school district, \$30,000 from at-fault driver

Injuries alleged: Orbital and frontal bone fracture and two fractures to the ankle

Case name: *Burgess v. Wake County Board of Education*

Court: Wake County Superior Court

Case No.: 17 CVS 4571



Howard

Mediator: Bob Beason of Beason & Ellis in Durham

Date of settlement: Sept. 4

Special damages: \$4,400

Most helpful experts: Sean Dennis of Accident Research Specialists in Cary (accident reconstruction)

Attorney for plaintiff: T. Shawn Howard of Maginnis Law in Raleigh and Marie Lang of Raleigh

Attorney for defendant: Jonathan Blumberg of Tharrington Smith in Raleigh

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