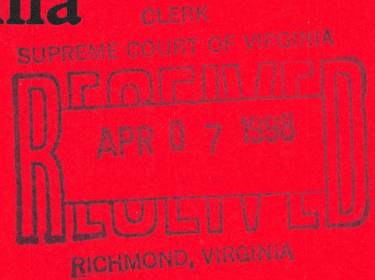

IN THE
Supreme Court of Virginia

AT RICHMOND

RECORD NO. 972621



**AMANDA LELIA WAGONER, a minor, by her
next friend, Stacy Wagoner, and STACY
WAGONER, individually and in her own right,**

Appellants,

v.

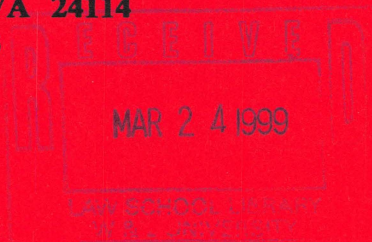
**THERESA SCOTT BENSON and THE
HENRY COUNTY SCHOOL BOARD,**

Appellees.

JOINT APPENDIX

**James W. Haskins
G. Carter Greer
YOUNG, HASKINS, MANN,
GREGORY & SMITH
Post Office Box 72
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Martinsville, VA 24114-0072
(540) 638-2367**

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Counsel for Appellants

Counsel for Appellee

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VIRGINIA:

IN THE CIRCUIT COURT OF HENRY COUNTY

AMANDA LELIA WAGONER, a minor,)
by her next friend, Stacy Wagoner,)

and)

STACY WAGONER, individually and)
in her own right,)

Plaintiffs,)

v.)

MILDRED VIOLA BROWN)
Route 1, Box 553)
Martinsville, Virginia)

Law No. CL96 172

TERESA SCOTT BENSON)
Prillaman's Trailer Court #9)
Norwood Drive)
Collinsville, Virginia)

MOTION FOR JUDGMENT

and)

THE HENRY COUNTY SCHOOL BOARD,)
a Body Corporate,)

SERVE: Dr. J. David Martin,)
Superintendent)
Henry County School Board)
Henry County Administration)
Building)
Kings Mountain Road)
Collinsville, Virginia)

Defendants.)

NOW COME the Plaintiffs, by counsel, and move for judgment
against the Defendants, and each of them, as follows:

1. Amanda Lelia Wagoner ("minor Plaintiff"), the 12 year
old daughter of Stacy Wagoner, resides with her mother on Cloud
View Drive in Henry County, Virginia.

2. At all times pertinent hereto, Defendant Benson was an
employee of the Defendant School Board, and she acted within the
scope of her employment.

3. On December 5, 1995 at approximately 6:50 a.m. Defendant Benson was operating a school bus belonging to the Defendant School Board in an easterly direction on U.S. Route 57 ("highway") in Henry County, Virginia.

4. At the same time and place, Defendant Brown was operating a 1990 Toyota automobile in a westerly direction on the highway in Henry County, Virginia.

5. When the bus was approaching Cloud View Drive, Defendant Benson turned on the flashing red lights and activated the stop sign, which swung out on a mechanical arm, so that oncoming traffic would stop in order to allow the minor Plaintiff to cross the westbound lane and board the bus.

6. Defendant Benson brought the school bus to a complete stop at Cloud View Drive, in order to pick up the minor Plaintiff, who was waiting with her mother in an automobile at the end of Cloud View Drive.

7. Defendant Brown had a duty 1) to use ordinary care to keep a proper lookout; 2) to use ordinary care to keep her vehicle under proper control; 3) to use ordinary care to operate her vehicle at a reasonable speed under the existing conditions; and 4) when approaching a school bus which is stopped on a highway for the purposes of taking on children, to stop and to remain stopped until all children are clear of the highway and the bus is put in motion.

8. Defendant Benson had a duty to direct children to cross a traffic lane only when it is safe to cross.


9. Notwithstanding the aforesaid duties, Defendant Brown acted with such recklessness, carelessness, and negligence that she failed to stop her vehicle and struck the minor Plaintiff, crossing the westbound lane of the highway.

10. Notwithstanding the aforesaid duties, Defendant Benson acted with such recklessness, carelessness, and negligence that she failed to direct the minor Plaintiff to cross the westbound lane of the highway only when it was safe to cross.

11. As a direct and proximate result of the concurrent negligence of the Defendants, the minor Plaintiff was caused serious and permanent injuries about her person, internally and externally, and was caused excruciating pain and mental anguish; Stacy Wagoner was required to incur great medical expenses and will be required to do so in the future; the minor Plaintiff was permanently maimed and disabled; was required to suffer loss of earning capacity; and was rendered less capable of performing her normal daily tasks, all to her damage.

WHEREFORE, the minor Plaintiff, by counsel, demands judgment against the Defendants, jointly and severally, in the amount of one million dollars (\$1,000,000.00) as compensatory damages, Stacy Wagoner demands judgment against the Defendants, jointly and severally, in the amount of twenty thousand nine hundred thirteen and .08 dollars (\$20,913.08) as reimbursement for the medical expenses incurred by the minor Plaintiff, and the Plaintiffs ask that the Court award them their costs expended in this behalf.

AMANDA LELIA WAGONER, a minor,
by her next friend, Stacy
Wagoner, and STACY WAGONER,
individually and in her own
right

By: 
Of Counsel

James W. Haskins
G. Carter Greer
Young, Haskins, Mann & Gregory
Post Office Box 72
400 Starling Avenue
Martinsville, Va 24114-0072

Filed in the Clerk's Office this the 30th day of May 1996

Clerk	\$ 150
V.	\$ 25
L.	\$ 2
C.	\$ 2
L.	\$ 2
Sheriff	\$ 181
Total Paid	\$ 362

James Martin, Clerk
D.C.

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VIRGINIA: IN THE CIRCUIT COURT OF HENRY COUNTY

AMANDA LELIA WAGONER,
a minor, by her next friend, STACY
WAGONER

and

STACY WAGONER, individually and
in her own right,

Plaintiffs,

vs.

MILDRED VIOLA BROWN,
TERESA SCOTT BENSON,
and
HENRY COUNTY SCHOOL BOARD,

Defendants.

CL96 172

GROUND OF DEFENSE

COME NOW, the defendants, Teresa Scott Benson and the Henry County School Board, by
counsel, and for their Grounds of Defense to the Motion for Judgment heretofore filed against them,
state and say as follows:

SPECIAL PLEA OF SOVEREIGN IMMUNITY

COME NOW, the defendants, Henry County School Board and Teresa Scott Benson, and
say as follows:

1. The School Board enjoys absolute sovereign immunity for any act other than the
operation of a school bus involved in an accident within the meaning of §22.1-194 of the Code of
Virginia.

2. Defendant, Benson, enjoys qualified sovereign immunity for discretionary acts other

than operation of a school bus involved in an accident within the meaning of §22.1-194 and is only liable for acts of gross negligence.

3. To the extent that the defendants, Henry County School Board and/or Benson, were engaged in the operation of a school bus involved in an accident within the meaning of §22.1-194 of the Code of Virginia, each enjoys sovereign immunity as set forth in Paragraphs #1 and #2 beyond the amount of any valid and collectible insurance which applies.

ANSWER

COME NOW, the defendants, Teresa Scott Benson and Henry County School Board, and for their Answer to the Motion for Judgment heretofore filed against them, say as follows:

1. That the allegations of plaintiff's Paragraph #1 are beyond the knowledge of these defendants and are neither admitted nor denied. Strict proof is required.

2. That the allegations contained in Paragraph #2 of plaintiff's Motion for Judgment are denied.

3. That the allegations contained in Paragraph #3 of plaintiff's Motion for Judgment are admitted.

4. That the allegations contained in Paragraph #4 of plaintiff's Motion for Judgment are admitted.

5. That the allegations contained in Paragraph #5 of plaintiff's Motion for Judgment are admitted.

6. That the allegations contained in Paragraph #6 of plaintiff's Motion for Judgment are admitted.

7. That the allegations contained in Paragraph #7 of plaintiff's Motion for Judgment are

admitted.

8. That the allegations contained in Paragraph #8 of plaintiff's Motion for Judgment are denied.

9. That the allegations contained in Paragraph #9 of plaintiff's Motion for Judgment are admitted.

10. That the allegations contained in Paragraph #10 of plaintiff's Motion for Judgment are denied.

11. That the allegations contained in Paragraph #11 of plaintiff's Motion for Judgment are denied.

12. That the plaintiff, Amanda Lelia Wagoner, was herself guilty of negligence which proximately contributed to the minor plaintiff's injuries and bars plaintiffs' right of recovery against these defendants in any event.

13. That the defendants, Teresa Scott Benson and Henry County School Board, allege that the plaintiff, Amanda Lelia Wagoner, assumed the risk of the injuries complained of in her Motion for Judgment and, therefore, is barred from recovery against these defendants.

14. That any allegations not specifically admitted herein are denied.

PRAYER

WHEREFORE, the defendants, Teresa Scott Benson and Henry County School Board, pray that this matter be dismissed with their costs in this behalf expended.

TERESA SCOTT BENSON
And
HENRY COUNTY SCHOOL BOARD

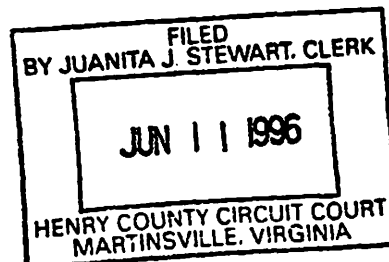
By Edwin A. Gendron, Jr.
Counsel

Edwin A. Gendron, Jr.
Attorney for Defendants, Teresa Scott Benson
and Henry County School Board
GENDRON & KIRBY
6 East Main Street
P. O. Box 351
Martinsville, VA 24114-0351
VA State Bar #01205

CERTIFICATE

This is to certify that a true and correct copy of the foregoing Grounds of Defense was mailed
this 11 day of June, 1996, to G. Carter Greer, Attorney for Plaintiffs, at his offices of Young,
Haskins, Mann & Gregory, P.C., 400 Starling Avenue, P. O. Box 72, Martinsville, Virginia 24114-
0072.

Edwin A. Gendron, Jr.
Edwin A. Gendron, Jr.



August 7, 1997

Mr. James W. Haskins, Esquire
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Mr. Anthony H. Monioudis, Esquire
WOODS, ROGERS & HAZLEGROVE
P. O. Box 560
Danville, VA 24543-0560

RE: Wagoner, et al v. Brown, et al, CL96-172

Dear Counsel:

This matter has come to be heard on two separate issues: one, a motion to compel production of any statements made by defendant Brown to his insurance company; and two, a plea in bar filed on behalf of the defendant, School Board.

I turn first to the motion to compel. The plaintiffs and defendant Brown agree that the accident in question took place on December 5, 1995; that a letter of representation of plaintiffs by plaintiff's law firm was prepared and mailed on December 8, 1995, and that Allstate took a recorded statement from Brown on December 7, 1995. The defendant asserts the privilege of the work product doctrine.

The court would very much like to invoke some bright line rule in issues such as this, but I unfortunately come to the conclusion that each situation must be looked at on a case by case basis.

Based upon the facts of this case, I am of the opinion that the defendant has established that the statement in question was taken by Allstate in anticipation of litigation and is therefore not discoverable,

James W. Haskins, Edwin A. Gendron, Jr.,
G. Carter Greer, Anthony Monioudis
August 7th, 1997
Page - 2 -

absent a showing of substantial need on the part of the plaintiffs. As plaintiffs have not met that burden, the statement is not discoverable and the plaintiff's motion to compel is denied.

I turn now to the defendants, Benson and School Board's plea in bar. The plaintiff's motion for judgment alleges that Teresa Benson, the driver of the school bus, was negligent in failing to direct the plaintiff to cross the road (para. #8 & #10). The School Board is alleged to be responsible to the plaintiffs under the doctrine of *respondeat superior*. As part of this grounds of defense, both Benson and School Board filed a plea in bar claiming sovereign immunity.

As a general rule, the doctrine of sovereign immunity is alive and well in Virginia. The Virginia Tort Claims Act does not remove or diminish the sovereign immunity of counties, cities or towns; and the courts of the Commonwealth have taken the view that any waiver of immunity must be construed narrowly. See, Messina v. Burden, 228 Va. 301 (1984) and Hinchey v. Ogden, 226 Va. 234 (1983).

Local School Boards have traditionally been accorded sovereign immunity in Virginia. See Kellam v. School Bd., 202 Va. 252 (1960). Employees of the School Board enjoy the same immunity for torts involving only simple negligence. Lentz v. Morris, 236 Va. 78 (1988). See also James v. Jane, 221 Va. 43 (1980). However, Virginia Code Sec. §22.1-194 does provide that, "In case the locality or the School Board is the owner, or operator though medium of a driver, of, or otherwise is the insured under the policy upon, a vehicle involved in an accident, the locality or School Board shall be subject to action up to, but not beyond,

James W. Haskins, Edwin A. Gendron, Jr.,
G. Carter Greer, Anthony H. Monioudis
August 7th, 1997
Page - 3 -

the limits of valid and collectible insurance in force to cover the injury complained of . . . and the defense of governmental immunity shall not be a bar to action or recovery."

The School Board's plea is based on three arguments: (1) hand signals do not constitute part of the operation of the bus; (2) the school bus, itself, was not involved in an accident; and (3) there is no valid and collectible insurance.

I begin with the third argument; that is, whether there is valid and collectible insurance in this case. The policy in question provides, "We will pay all sums anyone we protect legally must pay as damages caused by an accident covered by this policy. The accident must arise out of the ownership, maintenance, use, loading or unloading of an auto we insure."

After reviewing the cases of Erie v. Jones, 248 Va. 437 (1994), Stern v. Cincinnati Ins. Co., 252 Va. 307, State Farm Mutual Automobile Ins. Co. v. Powell, 227 Va. 492 (1984) and State Farm Mutual Automobile Ins. Co. v. Rice, 239 Va. 646 (1990), I am of the opinion that the accident in question did not arise out of the ownership, maintenance, use, loading or unloading of the school bus. Therefore, there is no coverage, and sovereign immunity is not waived.

Counsel for the School Board shall prepare the appropriate order and forward to the court for entry, after noting the objections of the plaintiffs.

Sincerely,

DVW/fcs

David V. Williams

972621

587D

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COMMONWEALTH OF VIRGINIA

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IN THE CIRCUIT COURT
FOR THE COUNTY OF HENRY

AMANDA LELIA WAGNER, a minor,)
by her next friend Stacy Wagner)
and)
STACY WAGNER, individually)
and in her own right,)
Plaintiffs,)
V) CL 96 172
MILDRED VIOLA BROWN, ET AL)
Defendants.)

TRANSCRIPT OF PROCEEDINGS
THE HONORABLE DAVID WILLIAMS, PRESIDING
September 2, 1997
Martinsville, Virginia

Mary Jac Meadows
Court Reporting & Video Services
2509 Fairview Road
Chatham, Virginia 24531
(804) 432-1674

ORIGINAL

BY JUANITA J
OCT 27 1997
Page 1 COURT

A P P E A R A N C E S

FOR THE PLAINTIFFS:

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G. CARTER GREER, ESQ.
Young, Haskins, Mann & Gregory
P. O. Box 72
Martinsville, VA 24114

FOR THE DEFENDANTS:

EDWIN A. GENDRON, JR., ESQ.
Gendron & Kirby
6 E. Main Street
Martinsville, VA 24112

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THE COURT: I will grant your motion to rehear based on a new case, so what have we got?

MR. HASKINS: If the Court please, we are here today on my motion to reconsider the Court's decision sustaining a plea of sovereign immunity as set forth in your letter of decision dated August 7, 1997.

And for the record, if Your Honor please, I am assuming, and you correct me now if I am wrong, but in arriving at the Court's decision that you considered the state department regulation that was cited to the Court regarding the loading--

THE COURT: I considered it, to be honest with you, but I didn't know exactly what consideration I should give to it, because all I got was this thing saying. . . . Whatever it says.

And I went back and I found some language in the statute that says the State Board of Education has the authority to promulgate regulations. But there wasn't anything that said what effect those regulations have.

They can promulgate them, but

1 there was another section that said something to the
2 effect that the local school boards have some option
3 on whether they adopt them or not.

4 It was kind of like pie in the
5 sky by and by, you know, like the state board could
6 do it, but then it was up to the local board whether
7 to specifically adopt the regulation. Am I incorrect
8 on that?

9 MR. GENDRON: I think that is
10 correct.

11 MR. HASKINS: I think the Court
12 is certainly correct on what you said, but at a prior
13 hearing that I was present in your office several
14 months ago, Mr. Gendron was there, Mr. Greer, Mr.
15 Monioudis, myself and the Court, this was discussed,
16 this particular regulation.

17 Of course, this regulation has
18 been used in Mr. Charles Aaron's case, who has got a
19 similar case pending before the Court regarding a
20 Henry County pupil involved in an accident with a
21 school bus, but that the local Henry County School
22 Board had adopted this regulation.

23 MR. GENDRON: I am not aware of
24 that. I am not saying they have or haven't, I am
25 just not aware of it if they have.

1 THE COURT: Well that was one of
2 the questions I had. I was kind of going under the
3 apprehension or misapprehension that it had not been
4 adopted from last time. Certainly that would have
5 some impact if they have adopted that, number 1, or
6 whether they have the authority either to adopt it or
7 not to adopt it.

8 That was where I was unclear was
9 because, again, it appeared to me, I may be totally
10 wrong, that there was a local option on whether to
11 adopt.

12 The state board promulgates
13 them, but I thought it was up to the local board
14 whether to adopt them or not.

15 MR. HASKINS: If I understand
16 Your Honor correctly, you are of the opinion in
17 reaching your decision that the record of this case
18 so far that you had before you to make your ruling
19 doesn't show you one way or the other whether the
20 Henry County School Board has adopted this
21 regulation?

22 THE COURT: Yeah.

23 MR. HASKINS: Is that a fair
24 statement?

25 THE COURT: Yeah, that is a fair

1 statement.

2 MR. HASKINS: That is why I am
3 asking you if I have misinterpreted what you said.

4 THE COURT: And frankly, I
5 thought from the last time that they had not, but
6 that has...

7 MR. HASKINS: So your impression
8 was directly opposite from my impression of our
9 discussion before.

10 THE COURT: Yeah.

11 MR. HASKINS: And if I further
12 understand what you have just said, if the Court
13 please, that if this regulation had been adopted,
14 that you know, you would consider that probably some
15 relevant piece of evidence.

16 THE COURT: If it had been
17 adopted, you sustain a motion and you go on and let
18 the jury decide whether it would be negligence or
19 not. I mean, if they had adopted it, it seems to me
20 that then you would have an issue for the jury to
21 decide if that regulation applied.

22 MR. GENDRON: I certainly
23 wouldn't agree with that. I think the question of
24 whether or not the pupil was using the school bus
25 still would be the seminal question or the threshold

Page 6

1 question on the issue of valid and collectible
2 insurance.

3 And I think the Court's ruling
4 is absolutely right that this student was not using
5 this school bus, therefore there is no valid and
6 collectible insurance.

7 If there is no valid and
8 collectible insurance, there is no waiver of
9 sovereign immunity under 22.1-194. The regulation is
10 only an ordinary care type regulation. And that
11 comes into play in the case after you make the
12 threshold determination of whether there is
13 insurance.

14 MR. HASKINS: Well, let's go off
15 the record.

16 (Off-the-record discussion had.)

17 THE COURT: Assuming for the
18 sake of argument that the regulation of the State
19 Board of Education is applicable to this case, does
20 County School Board versus Thomas, 201 Virginia 608,
21 1960 case change your position in any way, Ed?

22 MR. GENDRON: No, sir, it doesn't
23 change my position in any way because, as I said a
24 minute ago, this Court has already considered those
25 cases and other school board cases in ruling on

Page 7

1 sovereign immunity.

2 And the issue of sovereign
3 immunity was not even raised in either one of those
4 two cases. The issue of sovereign immunity does not
5 appear in the Orange County case, it does not appear
6 in the Bickley case.

7 The Orange County case was
8 decided before Callum versus School Board, which the
9 Court well knows is the benchmark case establishing
10 sovereign immunity for school boards.

11 It was also decided long before
12 Lynch versus Morris, which extends qualified
13 sovereign immunity to school board employees.

14 So it is fairly obvious why
15 sovereign immunity wasn't raised in the Orange County
16 case, that was not the law at that time.

17 Why it was not raised in the
18 Bickley case, I can't say, but it didn't come up, it
19 was not an issue at all. So those two cases don't
20 provide any instruction at all with regard to the
21 issue that is being decided in this case.

22 MR. HASKINS: If the court
23 please, as I understand the law after Judge Kiser's
24 case and the 4th Circuit certification of his
25 decision to the Virginia Supreme Court which resulted

1 in the Stern case, Stern versus Cincinnati Insurance
2 Company, 252 Virginia, Page 307, which the Court
3 relied on, which was a 4-3 decision, Justice
4 Stevenson, who wrote that decision, is no longer on
5 the court, I think Judges Pacell's dissent is by far
6 the best reasoned decision, even under the facts of
7 that case.

8 But that case, if Your Honor
9 please, arose under the underinsured motorist
10 endorsement of the school board, and the word
11 occupying, as Justice Stevenson pointed out, was the
12 seminal phrase in whether or not the getting on or
13 getting off the school bus was occupying the bus
14 under the underinsured motorist endorsement as that
15 word occupying was defined in the graphic arts
16 policy.

17 Now that has got absolutely
18 nothing to do with the primary liability policy of
19 the school board in this case. In fact, the word
20 occupying as whether coverage applies or not is not
21 even used in the policy language that the court
22 quotes, that the accident must arise out of the
23 ownership, maintenance, use, loading or unloading of
24 an auto we insure.

25 Now the regulation deals

Page 9

1 specifically applicable to this case with the loading
2 of school children on the highways of this state.
3 This is what loading is.

4 Loading is not occupying,
5 loading is not being on the bus, loading is not
6 touching the bus. Loading children on the highways
7 of this state, which absolutely require a school bus
8 driver to give a hand signal for the child to cross
9 safely across a highway to load and get on a bus.

10 Now this is what this policy
11 covers, the loading of children in this state. And
12 absolutely the bus driver, Mrs. Benson, has testified
13 she gave no hand signals, she did not ever give any
14 hand signals, directions, acting as a flagman or
15 whatever we want to call it to children. The
16 children crossed the highway at their own peril.

17 Now that is what this policy
18 covers. The word occupy as was discussed back and
19 forth with the majority and the dissent in the Stern
20 case is never used at all.

21 The two additional cases, and as
22 I say, I appreciate the Court's consideration in
23 hearing us on a reconsideration, we don't mean to
24 rehash what went before, but the county school board
25 of Orange County case versus Thomas, 201 Virginia

1 608; Bickley, Administrator versus Farmer in 215
2 Virginia 484.

3 And I strongly again disagree
4 with Mr. Gendron in the Virginia Model Jury
5 Instructions dealing with motor vehicles, school
6 buses, these very two cases are alive and well in
7 standard instructions that are given every day in
8 this state, specifically instruction number 12.010,
9 that in addition to operating the flashing red
10 warning lights, etcetera, that a bus driver in
11 picking up children under the authority of these two
12 cases has the duty to use ordinary care considering
13 the circumstances, place of discharge, pick-up, pick-
14 up as far as the facts of our case, experience, age
15 and judgment of the child.

16 In addition to this regulation
17 which is conceded applies to this case, certainly for
18 the purpose of this argument, the Henry County School
19 Board as the Court knows, been furnished, is a matter
20 of record in this case with the deposition testimony,
21 sent out to the parents pamphlets almost stating
22 word-for-word tracking this regulation, that bus
23 drivers give hand signals for the children to cross
24 the road.

25 Now this is a tort case. Judge

Page 11

1 Kiser's case, the Cincinnati case that led to the
2 Stern decision by the Virginia Supreme Court of
3 course was a declaratory judgement case on the
4 particular policies, all of them again dealing with
5 underinsured endorsements and coverage interpreting
6 this word occupying as defined in the various
7 policies, and specifically the graphic arts policy
8 covering the school board in that case, which have no
9 part in this case at all.

10 Simply put, the policy in our
11 case covers the accident must arise out of in part
12 the loading of the bus.

13 I would respectfully submit to
14 the Court that the two cases we have cited show that
15 both bus drivers in both cases we have cited, the
16 County School Board of Orange County, plus the
17 Bickley, Administratrix case, both the bus driver and
18 the school board were liable of negligence in both
19 cases, they both dealt with situations where children
20 were injured either getting off the bus or loading
21 the bus, where the drivers were negligent.

22 And that involves loading the
23 bus as this regulation clearly defines for us, which
24 is applicable, which I think clearly is a jury issue
25 as to whether this bus driver operating a Henry

1 County school bus by authority of the school board is
2 liable in this tort action before the Court. And
3 these are two cases.

4 And I appreciate your Honor's
5 time. Again, they were not briefed in this case,
6 were not cited to the Court, and I thought the Court
7 ought to have the benefit of them and to clear up
8 this regulation. Thank you, sir.

9 MR. GENDRON: Judge, in response
10 with regard to the argument on the Cincinnati versus
11 Stern case, it was my understanding from a very brief
12 telephone conversation with Mr. Greer that we weren't
13 going to rehash the issues that had already been
14 argued before, we were going to address Orange County
15 and Bickley.

16 So I don't have those cases
17 before me right now, but my recollection is that what
18 the Court did in the Cincinnati and Stern case was
19 basically equate the policy language with occupying a
20 bus. And that is really about as far as I am
21 prepared to go in discussing that case this morning.

22 With regard to Bickley and
23 Orange County, again the important thing for the
24 Court to note here is that neither one of those cases
25 discuss sovereign immunity. And what we are here

Page 13

1 today to do is discuss sovereign immunity.

2 Now it is true that this
3 instruction is in the instruction book, but if you
4 look at the back of it, it clearly is founded upon
5 Bickley and Orange County. And what it does is it
6 assumes there is no issue of sovereign immunity, so
7 it has no application in this argument.

8 And since we are on the record,
9 I would like to say that I have no conceded that that
10 regulation applies in this case. We have only
11 assumed that for purposes of our discussion.

12 THE COURT: All right, when is
13 this case coming up, the 11th and 12th?

14 MR. GREER: Yes, sir, next week.

15 MR. GENDRON: Next week.

16 THE COURT: I am assuming that--
17 when did I rule on that, back in...

18 MR. HASKINS: August 7.

19 THE COURT: August 7, I assume
20 you haven't done squat on the case since August 8.

21 MR. GENDRON: Not only that, and
22 I have also dismissed a couple of witnesses that
23 might be hard to get back.

24 THE COURT: I have a jury trial
25 today that is hopefully not going to take too long.

Page 14

1 So I will try to wade through this and give it a
2 little rethink this afternoon.

3 And if I do change my opinion,
4 that would put you in an awkward situation and
5 obviously have to find another trial date. It is
6 going to be some other issues in the case obviously,
7 you have intervening negligence and incurred
8 negligence and all that good stuff.

9 I vaguely remember reading this
10 case, but apparently I lost it in the context of
11 something else. But at any rate, I will try to get
12 you something out this afternoon or at the latest,
13 first thing in the morning.

14 MR. HASKINS: Thank you, Judge.

15 MR. GENDRON: Thank you, Judge.

16 MR. GREER: Thank you, Judge.

17 END OF PROCEEDINGS
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C E R T I F I C A T E

COMMONWEALTH OF VIRGINIA

I, Mary Jac Meadows, a
Stenographic Shorthand Reporter and Notary Public in
and for the Commonwealth of Virginia, do hereby
certify that the foregoing testimony was taken by me,
transcribed by me, and is true and accurate to the
best of my knowledge, skill, and ability.

IN WITNESS WHEREOF, I have
hereunto set my hand this 16th day of September,
1997.



Mary Jac Meadows

My commission expires:
September 30, 2001

Page 16

Henry County • Patrick County • City of Martinsville

JUDGES

DAVID V. WILLIAMS
MARTINSVILLE, VIRGINIA 24114

MARTIN F. CLARK, JR.
STUART, VIRGINIA 24171

CHARLES M. STONE
MARTINSVILLE, VIRGINIA 24114

September 3, 1997

JUDGES

JOHN D. HOOKER, RETIRED
STUART, VIRGINIA 24171

KENNETH M. COVINGTON, RETIRED
MARTINSVILLE, VIRGINIA 24114

FRANK I. RICHARDSON, JR., RETIRED
MARTINSVILLE, VIRGINIA 24114

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Mr. Edwin A. Gendron, Jr., Esquire
GENDRON & KIRBY
6 E. Main Street
P. O. Box 351
Martinsville, VA 24114-0351

RE: Wagoner, et al v. Brown, et al, CL96-172

Dear Counsel:

I have reviewed the cases cited in support of the plaintiff's motion for reconsideration, in light of the court's earlier ruling on the defendant's plea of sovereign immunity.

I have also reviewed Mr. Gendron's letter of September 2, 1997. After doing so, I am of the opinion that the court's previous ruling stands and the plea of sovereign immunity is sustained. I will ask Mr. Gendron to prepare the appropriate order, noting the objections of the plaintiff, in case of an appeal.

Sincerely,

David V. Williams

DVW/fcs

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CLERK
SUPREME COURT OF VIRGINIA

RECEIVED
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RICHMOND, VIRGINIA

VIRGINIA:

IN THE CIRCUIT COURT OF HENRY COUNTY

AMANDA LELIA WAGONER, a minor by)
her next friend, STACY WAGONER, and)
STACY WAGONER, individually and in)
her own right)

VS

MILDRED VIOLA BROWN,)
TERESA SCOTT BENSON, and)
HENRY COUNTY SCHOOL BOARD)

CL 96-172

DEPOSITION

A continuation of the deposition of
defendant, TERESA SCOTT BENSON, taken before Earline
F. Gosney, a Notary Public for the State of Virginia
at large, pursuant to notice, at the Law Offices of
Gendron & Kirby, 6 East Main Street, Martinsville,
Virginia, on the 28th day of May, 1996, taken by the
plaintiffs, by counsel, pursuant to the Rules of the
Supreme Court of Virginia.

Earline F. Gosney
Registered Professional Reporter
4010 Keswick Drive
Danville, Virginia 24540
(804) 793-9377

FILED
BY JUANITA J. STEWART, CLERK
SEP 12 1997
HENRY COUNTY CIRCUIT COURT
MARTINSVILLE, VIRGINIA



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Q. And you are saying that when you are
extending your stop arm and looking straight ahead
Ms. Brown is half the distance from the curve to

1 Cloud View Drive?

2 A. Yes, sir.

3 Q. And when you were riding around with Ms.
4 Gammons you never measured the distance from Cloud
5 View Drive to the curve?

6 MR. GENDRON: Which curve?

7 MR. MONIOUDIS: This curve that's past Cloud
8 View in the direction Ms. Benson is going.

9 A. No, sir.

10 Q. Are there any landmarks there that you can
11 identify as to where Ms. Brown's vehicle was when
12 you saw her when you were extending the stop arm?

13 A. No, sir.

14 Q. The angle of the road for her, as she's
15 approaching the bus and Cloud View Drive, is that
16 uphill?

17 A. No, sir.

18 Q. Is it flat?

19 A. Yes, sir.

20 Q. Is it straight?

21 A. Yes, sir.

22 Q. What is the terrain on either side of the
23 road? Is it flat or are there any mounds of dirt or
24 hills or buildings or obstructions there?

25 A. You mean off of the road?

1 Q. Yes, ma'am.

2 A. It's flat.

3 Q. It's flat on either side of the road?

4 A. Yes, sir.

5 Q. Do you have any idea how fast she was
6 going?

7 A. No, sir.

8 Q. Did she have her headlights on?

9 A. Yes, sir.

10 Q. Was there any other traffic in front of
11 her?

12 A. No, sir.

13 Q. Any other traffic behind her?

14 A. No, sir.

15 Q. Could you make out the person in her
16 vehicle?

17 A. No, sir.

18 Q. Did your headlights extend far enough to
19 pick her up?

20 A. Yes, sir.

21 Q. They did? Again, your headlights are still
22 on dim at this point, right?

23 A. Yes, sir.

24 Q. You never flicked them to bright?

25 A. No, sir.

1 Q. Now, you've extended the stop arm and you
2 go the other thirty feet. You bring your bus to a
3 stop?

4 A. Yes, sir.

5 Q. A complete stop?

6 A. Yes, sir.

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1 Q. Now, you've extended the stop arm and you
2 go the other thirty feet. You bring your bus to a
3 stop?

4 A. Yes, sir.

5 Q. A complete stop?

6 A. Yes, sir.

7 Q. Do you have any idea how much time went by
8 between the time you extended the stop arm and the
9 time you brought your bus to a complete stop?

10 A. No, sir.



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Q. Well, I've assumed something there. Let me back this up. Did you have to turn your head at all in order to see Amanda from where you were seated in your bus?

A. Yes, sir.

Q. And did that mean turning it to the left?

A. Yes, sir.

Q. And how far did you have to turn it to the left?

A. Like that. (demonstrating)

Q. It's like turning your chin to your left shoulder?

A. Yes, sir.

Q. Where she was on Cloud View Drive, would

1 she have been behind you in terms of where you were
2 seated in the bus, or was she even with you, or was
3 she in front of you?

4 A. She was in front of me.

5 Q. She was in front of you?
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1 Q. All I'm trying to find out is where does
2 the car meet the bus? Is it even with you? Is it
3 in front of the engine of the bus or is it behind
4 the bus some?

5 A. Like she's like that.

6 Q. So her car would be in front of. . .

7 A. The bus.

8 Q. . . . the bus, including not only in front
9 of you but in front of the engine of the bus?

10 A. Yes, sir.

11 Q. In front of the bumper of the bus.

12 A. Yes, sir.

13 Q. So no part of your bus is past Ms.
14 Wagoner's vehicle?

15 A. No, sir.

16 Q. When Amanda gets out on the passenger side,
17 is she still in front of the bus?

18 A. Yes, sir.

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A. Yes, sir.

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Q. Now, on December 5th did Amanda Wagoner

11

walk straight across to the school bus, did she walk

12

in a diagonal in front of the school bus, did she

13

walk down Cloud View Drive and then come across?

14

A. She was coming straight across.

15

Q. She was coming straight across?

16

A. Yes, sir.

17

Q. And when she was coming straight across,

18

was she even with the engine or the front bumper of

19

the bus?

20

A. Yes, sir.

21

Q. So she would have had to have come across

22

and then go around the stop arm?

23

A. Yes, sir.

24

Q. Was that the way she would usually cross

25

the street?

1 A. Yes, sir.

2 Q. You said you were looking at her when she
3 got out of the vehicle.

4 A. Yes, sir.

5 Q. Did you continue to look at her the entire
6 time until the accident occurred?

7 A. Yes, sir.

8 Q. You didn't move your head and look at
9 anything else?

10 A. No, sir.

11 Q. When you turned your head to the left and
12 you were looking at Ms. Wagoner, were you aware of
13 anything else that was going on in the street?

14 A. No, sir.

15 Q. Do you remember what Amanda was wearing?

16 A. Yes, sir.

17 Q. Okay.

18 A. Pink jeans, black and white tennis shoes
19 and I believe she had on a black and white sweater.
20 I'm not real certain.

21 Q. Okay. And do you remember how tall she was
22 back then?

23 A. No.

24 Q. You were transporting middle schoolers?

25 A. Yes, sir.

1 Q. Middle schoolers are what grade here in
2 Henry County?

3 A. Sixth, seventh and eighth.

4 Q. And she would have been which grade, sixth?

5 A. She was in the sixth grade.

6 Q. When she starts across the street, do you
7 remember if she stopped and looked to the left or to
8 the right?

9 A. No, sir. She didn't stop.

10 Q. She didn't stop, she just kept coming
11 across?

12 A. Yes, sir.

13 Q. Do you remember which way she was looking
14 as she was coming across? Was she looking straight
15 ahead or looking down or looking up?

16 A. She was looking straight ahead.

17 Q. Was she looking at you or just looking at
18 the path she was taking?

19 A. She was looking -- I assume that she was
20 looking straight ahead.

21 Q. I don't want you to assume anything, ma'am.
22 What I'm looking for is what your memory. . . .

23 A. She was looking straight.

24 Q. Did you and her ever make eye-to-eye
25 contact?

1 A. I was watching her but I wasn't -- as far
2 as. . . .

3 Q. Do you know what I'm asking now how you can
4 look at someone and then you can look at them and
5 you see each other's eyes?

6 A. Yes.

7 Q. So you guys never made eye-to-eye contact?

8 A. No, sir.

9 Q. While you are stopped in the bus, your foot
10 is on the brake. Are you doing anything else other
11 than looking at her?

12 A. No, sir.

13 Q. Are you swiveling your head to make sure
14 that all traffic has stopped?

15 A. No, sir.

16 Q. Do you give Amanda any signal or indication
17 that it's okay to come or not okay to come?

18 A. No, sir.

19 Q. Had you ever done that?

20 A. No, sir.





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Q. What happened in the actual -- Where was
Amanda when the actual impact occurred in terms of

1 the roadway?

2 A. She had stepped into the road.

3 Q. Was she closer to the Cloud View Drive side
4 or was she closer to the center line of Route 57,
5 was she in what would be your lane of travel on
6 Route 57?

7 A. She is middleways between her driveway and
8 the bus, the front left side of the bus.

9 Q. Route 57 does have some markings in the
10 center of the road?

11 A. Yes, sir.

12 Q. Do you know what those markings are at this
13 stretch of road? Is it a passing zone or a no
14 passing zone?

15 A. I'm not sure right through there, but I
16 know it is a passing zone through there.

17 Q. So somewhere nearby you have broken --
18 what, a broken yellow or a broken white line?

19 A. Broken yellow.

20 Q. Broken yellow? Okay. Using the markings
21 as the center of the road, when you say she was
22 halfway between Cloud View and the bus, are you
23 talking about she was at where the markings are in
24 the center of the road or halfway in what would be
25 the oncoming lane of travel?

1 A. Halfway in the oncoming lane.

2 Q. Okay. What happened then?

3 A. You mean . . .

4 Q. What did you see happen?

5 A. I saw Ms. Brown's car hit Amanda and I
6 heard the thump, saw Amanda go through the air to
7 the back of the bus.

8 Q. Let me stop you here. What part of Amanda
9 and what part of Ms. Brown's vehicle came into
10 contact?

11 A. The front of Ms. Brown's car.

12 Q. Do you know what part of the front, whether
13 the passenger's side, the center, the driver's side?

14 A. I don't know.

15 Q. Could you make out what type of vehicle Ms.
16 Brown was driving?

17 A. I know it was a grayish color car.

18 Q. You say you saw Amanda sort of go through
19 the air?

20 A. Yes, sir.

21 Q. Can you describe that for me?

22 A. At first I thought I was watching TV, like
23 you see it on TV. It just looked like somebody had
24 thrown a doll through the air.

25 Q. Was she going end over end or just in one

1 sort of position?

2 A. Yes.

3 Q. You say she went to the back of the bus?

4 A. Yes, sir.

5 Q. How long is your bus?

6 A. I'm not sure. I think it's thirty feet.

7 Q. Thirty feet? Okay. And did you see Amanda
8 land on the ground?

9 A. Yes, sir.

10 Q. Do you know where she landed?

11 A. Behind my bus.

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Q. What you're saying is when Amanda came to land she was not even with any portion of your bus but all the way past the rear end of your bus?

A. Yes, sir.

Q. Okay. You say you heard a thump. Did you hear any other noises?

A. No, sir.

Q. Like brake sounds or the like?

A. No, sir.



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Q. Ms. Benson, with regard to the statement that you wrote, let me refer you to near the bottom of the page beginning with the sentence "My bus was

1 stopped and I thought the car was going to stop."

2 Do you see that sentence?

3 A. Yes, sir.

4 Q. Which car are you referring to?

5 A. Ms. Brown's.

6 Q. What led you to believe that she was going
7 to stop?

8 A. I was sure she was going to stop because I
9 had my stop arm out, I was stopped, and my red
10 flashing lights were on.

11 Q. Did you ever see Ms. Brown decrease her
12 speed?

13 A. No, sir.

14 Q. Do you know how fast she was going at the
15 time when she struck Amanda?

16 A. No, sir. I learned later but I don't know.

17 Q. Do you know whether she had slowed down at
18 all?

19 A. No, sir.

20 Q. You say you didn't hear any brakes?

21 A. No, sir.

22 Q. There's another sentence in your statement
23 a little further down. Let me see if I can find it.
24 It was actually the next sentence. "She had plenty
25 of warning that I was going to stop." Do you see

1 that sentence?

2 A. Yes, sir.

3 Q. Do you know of any reason why Ms. Brown
4 would not have been able to see the flashing lights
5 on your bus?

6 A. No, sir.

7 Q. Do you know of any reason why she would not
8 have been able to see the mechanical stop arm?

9 A. No, sir.

10 Q. Why do you say that she had plenty of
11 warning?

12 A. I had activated my traffic lights, my red
13 flashing traffic lights in plenty of warning. From
14 Absolute Machinery to where she was coming around
15 the curve is four-tenths of a mile, a little over
16 four-tenths of a mile. She had plenty of time.

17 Q. How much time passed from the time that you
18 brought your bus to a complete stop until when
19 Amanda was struck?

20 A. Seconds.

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2 Q. Now, when Mr. Gendron asked you some
3 questions about when was the last time you saw Ms.
4 Brown's vehicle you said it was in this area between
5 the kennel and the driveway.

6 A. Yes, sir.

7 Q. I thought I understood you to say in
8 response to my questions that the last time you saw
9 Ms. Brown's vehicle was when you brought your bus to
10 a complete stop. Which is it?

11 A. As I was stopping it was right here, was
12 right along in there where I pulled my stop arm out.

13 Q. Well, is your bus stopped or is it moving
14 the last time you see Ms. Brown before impact?

15 A. I had stopped.

16 Q. So you're saying you stopped up here before
17 the driveway.

18 A. No. I had seen Ms. Brown here.

19 Q. The question that Mr. Gendron asked you, if
20 I understood it correctly, was when was the last
21 time you saw Ms. Brown before the impact and you
22 said, if I understood you correctly, it was between
23 the kennel and the driveway and that's where he's
24 marked on this rough diagram with the X, but in my
25 earlier questions when we went through in detail all

1 your actions as a bus driver, I thought you told me
2 that when you stopped your vehicle you took it from
3 second to neutral.

4 A. Yes, sir.

5 Q. You had your foot on the brake and were
6 pressing down, that's when you saw her. Now which
7 is it, when you're pulling out the stop arm and
8 bringing your vehicle to a stop or when you're
9 stopped?

10 A. Well, I had seen her when I had stopped.

11 Q. The question is when is the last time that
12 you saw her?

13 A. When I had stopped.

14 Q. When you stopped?

15 A. Yes, sir.

16 MR. MONIOUDIS: That's all.

17 REEXAMINATION BY MR. GREER:

18 Q. Was the bus at a complete stop when you saw
19 Ms. Brown?

20 A. Yes, sir.

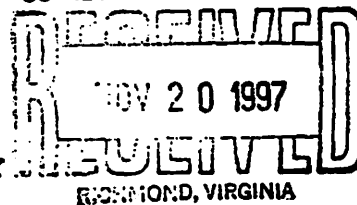
21 Q. How far was Ms. Brown from the bus at that
22 moment?

23 A. She was halfway from the Cloud View Drive
24 -- she was middleways between the curve and Cloud
25 View Drive.



972621

CLERK
SUPREME COURT OF VIRGINIA



1 VIRGINIA:
2 IN THE CIRCUIT COURT OF HENRY COUNTY

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6 AMANDA LELIA WAGONER, a minor by)
7 her next friend, STACY WAGONER, and)
8 STACY WAGONER, individually and in)
9 her own right)

10 VS

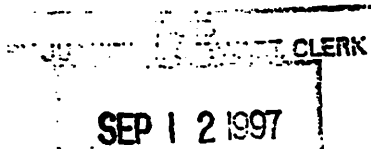
11 MILDRED VIOLA BROWN,)
12 TERESA SCOTT BENSON, and)
13 HENRY COUNTY SCHOOL BOARD)
14 - - - - -

CL 96-172

DEPOSITION

15 Transcript of the deposition of H. CREED
16 GUILLIAMS, taken before Earline F. Gosney, a Notary
17 Public for the State of Virginia at large, pursuant
18 to notice, at the Law Offices of Gendron & Kirby, 6
19 East Main Street, Martinsville, Virginia, on the
20 28th day of May, 1996, taken by the defendant,
21 Mildred Brown, by counsel, pursuant to the Rules of
22 the Supreme Court of Virginia.

23 Earline F. Gosney
24 Registered Professional Reporter
25 4010 Keswick Drive
Danville, Virginia 24540
(804) 793-9377



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Q. Sir, can you please state your name?

A. Howard Creed, that's C-r-e-e-d, Guilliams,
G-u-i-l-l-i-a-m-s.

Q. How old are you, sir.

A. Forty-three.

Q. What is your present occupation?

A. District manager with Wal-Mart Supercenters
in the State of New York.

Q. How long have you been there?

A. Thirty days.

Q. And was there a time before you joined Wal-
Mart when you were working as an officer for the
State Police of Virginia?

A. Yes, I was.

Q. When did you start and when did you stop
working as a trooper for the state police?

A. I started with Virginia State Police
October 1, 1975, and resigned from the Department of
Virginia State Police February 1, 1996.

Q. Was the purpose then to go to work for Wal-
Mart?

1 A. Yes, it was.

2 Q. And while you worked for the Virginia State
3 Police, what office or what location were you
4 stationed at?

5 A. The last few years I was stationed out of
6 Henry County here in the Martinsville area.

7 Q. Is that the post down at the southern end
8 of Martinsville?

9 A. Yes, it is, down 220 South at the
10 intersection of 220 and 641.

11 Q. What was your title?

12 A. Senior trooper.

13 Q. Mr. Guilliams, we've asked to take your
14 deposition today because of your investigation of an
15 automobile-pedestrian accident that occurred back in
16 December 5, 1995, involving Amanda Wagoner and
17 Mildred Brown, and there was also a Henry County
18 school bus in the area.



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A. This school bus was a 1982 Ford. It was yellow in color. The tag number was a permanent tag, Virginia permanent county official use 580-5-I as in Ida, L, as in Lincoln. It was registered to the Henry County School Board, Post Office Box 895-A, Collinsville, Virginia, I.D. number on the vehicle was I- F as in Frank, D as in David, N as in Nora, B as in boy, 7-0- H as in Henry-9-C as in Charles, V as in Victor, A as in Adam, 09989. The automobile driven by Ms. Brown -- and I later

1 located Ms. Brown in an emergency vehicle there at
2 the scene -- like I said was off the north shoulder,
3 and if my memory serves me, it was approximately
4 seventy-five to a hundred feet beyond the school
5 bus, which would have been west of where the school
6 bus was stopped, off the north shoulder.

7 Q. This was behind the rear portion of the
8 school bus?

9 A. That's beyond the rear portion of the
10 school bus, that's correct. The vehicle had damage
11 to the windshield and to the front favoring the left
12 side, left front of the vehicle. The windshield
13 damage would have been right at the driver's door
14 post and upper windshield and roof area of the Brown
15 vehicle. There was no visible damage to the school
16 bus.



24 Q. Okay. Before we get into that, let me ask
25 you, was there any indications you could see as to

1 where Ms. Wagoner had been in the road prior to her
2 being transported to the emergency room?

3 A. There was material, fabric smears on the
4 pavement of the road that was a pink-colored nature
5 and other fabrics that would have been similar to
6 the type of clothing that she was wearing when she
7 was struck.

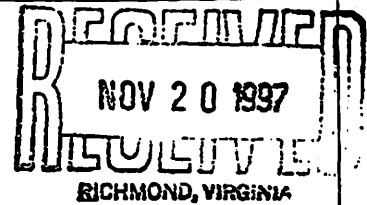
8 Q. And where in the roadway were those?

9 A. These would have been located north of the
10 school bus about centerways of the school bus west
11 of the intersection of Cloud View Drive and in the
12 westbound lane of travel that was being occupied by
13 Ms. Brown's vehicle.



972621

CLERK
SUPREME COURT OF VIRGINIA



VIRGINIA:

IN THE CIRCUIT COURT OF HENRY COUNTY

AMANDA LELIA WAGONER, a minor by)
her next friend, STACY WAGONER, and)
STACY WAGONER, individually and in)
her own right)

VS

MILDRED VIOLA BROWN,)
TERESA SCOTT BENSON, and)
HENRY COUNTY SCHOOL BOARD)

CL 96-172

DEPOSITION

The deposition of VELERA CLARK GAMMONS,
taken before Earline F. Gosney, a Notary Public for
the State of Virginia at large, pursuant to notice,
at the Law Offices of Gendron & Kirby, 6 East Main
Street, Martinsville, Virginia, on the 28th day of
May, 1996, taken by the plaintiffs, by counsel,
pursuant to the Rules of the Supreme Court of
Virginia.

Earline F. Gosney
Registered Professional Reporter
4010 Keswick Drive
Danville, Virginia 24540
(804) 793-9377

FILED
JUANITA J. STEWART, CLERK

SEP 12 1997

HENRY COUNTY CIRCUIT COURT
JAMES W. LEE, CLERK

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Q. You are employed by Henry County Public
Schools?

A. Yes, sir.

Q. And your position is Director of
Transportation?





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Q. What are your duties?

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A. As Director of Transportation I have to manage the budget. I supervisor a hundred and forty-five to a hundred and fifty drivers, also have under my supervision the personnel at the school bus garage. That's eleven people. I have to work with all the principals on twenty schools, anything to do with transportation, and the running of that operation.

1 Q. Does that include the hiring and firing of
2 school bus drivers?

3 A. Yes, in that I would recommend the hiring
4 or firing. That recommendation would be acted upon
5 through personnel.

6 Q. Are you in charge of the school bus driver
7 training program?

8 A. I am in charge of the school bus driver
9 trainers.

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Q. With regard to this regulation that we've been talking about, is it your understanding that this regulation is being taught by your trainers?

A. Yes.

Q. Are they presently teaching this regulation?

A. Yes, to my knowledge.

Q. When Teresa Benson went through the training program, were they teaching the regulation?

A. Yes, to my knowledge.



1 Q. Are you familiar with the regulations
2 governing pupil transportation?

3 A. Yes, sir.

4 Q. Do you have a copy of that in your office?

5 A. Yes, sir.

6 Q. Is the July, 1994 version of that the most
7 current?

8 A. Yes, sir.

9 Q. So that would have been the edition that
10 was in effect in December, 1995?

11 A. Yes, sir.

12 Q. Is it your understanding that these
13 regulations are binding upon the Henry County Public
14 Schools?

15 A. Yes, sir.

16 Q. Do the bus drivers have any discretion
17 whether to observe these regulations?

18 A. They don't have discretion -- they don't
19 have given discretion, if that's what you're asking,
20 permitted discretion.

21 Q. In other words, they're not free to disobey
22 a regulation?

23 A. No.

24 Q. And the regulations apply to all school bus
25 drivers, is that correct?

1 A. Yes, sir.

2 Q. Ms. Gammons, you have sat through every
3 single deposition that has been taken in this case,
4 have you not?

5 A. Yes, sir.

6 Q. And you especially heard the testimony of
7 Teresa Benson?

8 A. Yes, sir.

9 Q. And you heard her testify that not only did
10 she not signal Amanda Wagoner on that morning but
11 that she had never been taught to do so.

12 A. Yes, sir, I heard that.

13 Q. You've also heard Ms. Varner testify that
14 she taught Ms. Benson this particular regulation.

15 A. Yes, sir.

16 Q. So there's obviously a serious conflict
17 between what Ms. Benson says and what Ms. Varner is
18 saying, isn't there?

19 A. Yes, sir.

20 Q. Of your own knowledge, do you know which
21 one is correct?

22 A. You're asking for my opinion?

23 Q. I'm asking for your knowledge, if you have
24 any knowledge.

25 A. I'd say they are both speaking the truth as

1 they know it.

2 Q. There is no question about it, Ms. Benson
3 should have given a signal of some sort before the
4 child crossed the road.

5 MR. GENDRON: I object to the form of the
6 question.

7 Q. Can you answer the question?

8 A. I'm sorry, repeat the question.

9 Q. There's no question about it, Ms. Benson
10 should have given some type of signal to Amanda
11 Wagoner before she crossed the road, isn't that
12 correct?

13 A. That's what the regulation states.

14 Q. And there is no question that she did not
15 do that in this case, is there?

16 A. If her testimony is correct.

17 Q. And you have no reason to disbelieve her
18 testimony, do you?

19 A. No, I don't.

20 Q. You've always found her to be very truthful
21 and forthright, haven't you?

22 A. Yes, I have.

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23 Q. Ms. Gammons, we need to talk about this
24 regulation a little bit more. Is it your position
25 that a school bus driver must give a signal to a

1 child before that child crosses the road to board
2 the bus?

3 A. Are you asking for my position or are you
4 asking for my position as Director of
5 Transportation?

6 Q. Well, obviously what's important here is
7 your position as Director of Transportation, so I
8 want to hear your answer to that question, your
9 official answer to that question.

10 A. We have to follow regulations.

11 Q. Which means that the answer to my question
12 is yes, right?

13 A. Yes.

14 Q. So in your official capacity you are
15 required, as Director of Transportation, to enforce
16 this particular regulation, am I correct?

17 A. I'm required to see that the drivers are
18 trained properly and that they follow regulations.

19 Q. And if it came to your attention that a
20 driver were not observing this regulation, you would
21 take remedial action, would you not?

22 A. I would go to personnel.

23 Q. You would take some action to see that the
24 driver started signaling children?

25 A. I would discuss the issue with the

1 personnel department, yes.

2 Q. Because obviously you would be concerned
3 that if a driver were not signaling a child that
4 there could be a repeat of what happened in this
5 case, correct?

6 A. I would be concerned, yes.
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PENGAD CO., DAYTON, OH 45424 - FORM 2094

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CLERK
COURT OF VIRGINIA

NOV 20 1997

RICHMOND, VIRGINIA

VIRGINIA:

IN THE CIRCUIT COURT OF HENRY COUNTY

AMANDA LELIA WAGONER, a minor by)
her next friend, STACY WAGONER, and)
STACY WAGONER, individually and in)
her own right)

VS

MILDRED VIOLA BROWN,)
TERESA SCOTT BENSON, and)
HENRY COUNTY SCHOOL BOARD)

CL 96-172

DEPOSITION

Transcript of the deposition of DR. JOHN

DAVID MARTIN, taken before Earline F. Gosney, a
Notary Public for the State of Virginia at large,
pursuant to notice, at the Law Offices of Gendron &
Kirby, 6 East Main Street, Martinsville, Virginia,
on the 28th day of May, 1996, taken by the
plaintiffs, by counsel, pursuant to the Rules of the
Supreme Court of Virginia.

Earline F. Gosney
Registered Professional Reporter
4010 Keswick Drive
Danville, Virginia 24540
(804) 793-9377

FILED
JANITA J. STEWART, CLERK

SEP 12 1997



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Q. Please state your full name.

A. John David Martin.

Q. And what is your position?

A. Division superintendent, Henry County
Public Schools.

Q. When did you assume that position, Dr.
Martin?

A. Two years ago.



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Q. Dr. Martin, are you aware of a booklet, I guess is what they call it, for lack of a better term, a booklet entitled "Regulations Governing Pupil Transportation", put out by the Virginia Department of Education?

1 A. Yes.

2 Q. Do you have a copy of those regulations?

3 A. In my office?

4 Q. Yes.

5 A. Yes.

6 Q. What is the most recent version?

7 A. I would guess it would be somewhere in the
8 1990s but I could not give you an exact date, as I
9 couldn't with a lot of other regulations that govern
10 programs in our school division.

11 Q. Would you have any reason to suspect that
12 there would be a newer version since the one adopted
13 in July, 1994?

14 A. I would guess that that's the most recent
15 copy you have been given. That's '94. I am not
16 aware of any revisions recently, within the last two
17 years.

18 Q. Is the school division required to observe
19 regulations adopted by the State Board of Education?

20 A. Correct.

21 Q. Let me show you, Dr. Martin, regulation
22 section 2.7. I'd ask you to read that if you would.

23 A. "When loading or discharging pupils on a
24 highway, stops shall be made in the right-hand lane
25 and shall be made only at designated points where

1 the bus can be clearly seen for a safe distance from
2 both directions. While stopped the driver shall
3 keep the school bus warning devices in operation to
4 warn approaching traffic to stop and allows pupils
5 to cross the highway safely. Pupils who must cross
6 the road shall be required to cross in front of the
7 bus. They shall be required to walk to a point ten
8 feet or more in front of the bus, stop before
9 reaching a position in line with the left side of
10 the bus and wait for a signal from the bus driver
11 before starting across the highway. On dual
12 highways divided by a physical barrier, unpaved area
13 or five-lane highway"

14 Q. You don't need to read any further. That
15 was the main portion.

16 MR. MONIOUDIS: Can we agree that the
17 official Virginia Administrative Code citation is 8
18 VAC 20-70-80? It's from the Virginia Administrative
19 Code. That's the official regulation cite.

20 MR. GENDRON: That looks like a correct
21 cite to me.

22 MR. MONIOUDIS: I didn't bring the manual.

23 MR. GENDRON: If it's in the manual I don't
24 know that we need to agree on it.

25 MR. MONIOUDIS: Okay. But he was using a

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1 different number and just so that there's no
2 discrepancy later on, I simply wanted a cross
3 reference.

4 MR. GREER: Let the record show that the
5 regulation that Dr. Martin just read has been
6 codified as 8 VAC 20-70-80.

7 Q. Dr. Martin, what I would like to focus on
8 now is the very portion of that regulation that you
9 just read where it says that pupils are required to
10 "wait for a signal from the bus driver before
11 starting across the highway." Were you familiar
12 with this regulation prior to today?

13 A. Yes.

14 Q. Does the Henry County School Board observe
15 that regulation?

16 A. The Henry County School Board observes all
17 regulations. We are required to do so.

18 Q. Did the school division observe that
19 regulation as of December 5, 1995?

20 A. If it were a regulation from the Department
21 of Education, we are required to implement those
22 regulations.



972621

CLERK
SUPREME COURT OF VIRGINIA
RECORDED
NOV 20 1997
RICHMOND, VIRGINIA

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF HENRY COUNTY

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6 AMANDA LELIA WAGONER, a minor by)
7 her next friend, STACY WAGONER, and)
8 STACY WAGONER, individually and in)
9 her own right)

10 VS

11 MILDRED VIOLA BROWN,)
12 TERESA SCOTT BENSON, and)
13 HENRY COUNTY SCHOOL BOARD)
14 - - - - -

CL 96-172
DEPOSITION

15 The deposition of DONNA ANDERSON VARNER,
16 taken before Earline F. Gosney, a Notary Public for
17 the State of Virginia at large, pursuant to notice,
18 at the Law Offices of Gendron & Kirby, 6 East Main
19 Street, Martinsville, Virginia, on the 28th day of
20 May, 1996, taken by the plaintiffs, by counsel,
21 pursuant to the Rules of the Supreme Court of
22 Virginia.

23 Earline F. Gosney
24 Registered Professional Reporter
25 4010 Keswick Drive
Danville, Virginia 24540
(804) 793-9377

SEP 12 1997



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1 Q. You are employed by the Henry County Public
2 Schools?

3 A. Yes.

4 Q. What is your position?

5 A. I'm a school bus driver, para-professional
6 driving instructor.

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Q. Tell me a little bit about what is required in terms of training to become a bus driver.

A. What did you ask?

Q. What does your program consist of?

A. Twenty hours of classroom training, twenty hours on the road, range and road with an empty bus. Norma and I do that, and then they have to go on the road with a driver with children on board.

Q. With a trainer on board as well?

A. A bus driver on their regular route. They have to observe, and then they have to drive.

Q. Where is the classroom part undertaken?

A. At one of the high schools, usually wherever we can find room, usually Bassett High School. This last class was in Fieldale-Collinsville High School.





1 Q. Are you familiar with the regulation that
2 requires pupils to wait for a signal from a bus
3 driver before starting across the highway?

4 A. Uh huh.

5 Q. You are familiar with that regulation?

6 A. Yes.

7 Q. Is that regulation something that you have
8 taught to your prospective bus drivers?

9 A. Yes, it is brought out in the classroom in
10 the video that we show.

11 Q. Oh, it is brought out in the video?

12 A. Uh huh.

13 Q. What exactly have you taught your drivers
14 or do you teach your drivers concerning that
15 regulation?

16 A. Whatever is in the Curriculum Guide is what
17 we go over in the classroom, however it is stated in
18 there.

19 Q. What do you tell them with respect to this
20 regulation?

21 A. We just tell them that the students are to
22 wait for a signal or under the direction of the
23 driver to cross.



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Q. How old are you?

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A. Thirteen.

6

Q. When's your birthday?

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A. February 17th.

8

Q. What year were you born?

9

A. 1983.

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Q. What grade in school are you in?

22

A. Seventh.

23

Q. Where do you go to school?

24

A. Northwest Middle.

25

Q. I'm sorry?

1 A. Northwest Middle.
2 Q. Where is that located?
3 A. It's in Greensboro, North Carolina.
4 Q. Do you live in North Carolina now?
5 A. Um-hmm. Yes.
6 Q. Can you give me your address?
7 A. 5101 Steepleshire Place.
8 Q. Steeple?
9 A. Steepleshire.
10 Q. Shire?
11 A. Yes.
12 Q. Place. Where is that located? What town or the
13 area?
14 A. Greensboro.
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Q. What grade were you in?

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A. Sixth.

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Q. Sixth grade. What school were you attending at that time?

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A. Axton Middle.

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Q. The Axton Middle School, is that sixth, seventh and eighth grades?

12

A. Um-hmm.

13

Q. Is that a yes?

14

A. Yes.

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Q. And you had been going to Axton Middle School for how long?

17

A. That was my first year.

18

19

Q. And the school year started, was it September of that year?

20

A. It was September.

21

22

Q. September. Okay. And to get to Axton Middle School, did you ride the school bus?

23

A. Um-hmm.

24

Q. That's a yes?

25

A. Yes.



A. Cloud View Drive, Route 57.

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Q. The routine was that you would take Amanda down to the bus stop?

5

A. Um-hmm.

6

Q. Can you describe the routine for me?

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A. Well, we'd get up in the morning.

8

Q. What time would you get up?

9

A. About 6 o'clock.

10

Q. Did you have any trouble getting up or Amanda up?

11

A. Some days I had trouble getting Amanda up.

12

Q. What time would the bus come?

13

A. I think it was around quarter to 7.

14

15

Q. So you guys would have 45 minutes to get up, get ready and get down to the bus stop?

16

A. Um-hmm.

17

Q. Those are yeses?

18

A. Yes. I'm sorry.

19

20

Q. What would you have to do to get Amanda ready to get her down to the bus stop?

21

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A. Just get her to get out of bed and get her clothes on.

23

Q. She could do that on her own?

24

A. Yes.

25

Q. Anything else that had to be done?

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1 Q. Where you were living, that was a mobile home
2 park?

3 A. Yes.

4 Q. About how many mobile homes are there? Do you
5 know?

6 A. Six.

7 Q. And are you the one closest to the roadway or are
8 you the furthest back?

9 A. The furthest away.

10 Q. Does the driveway go all the way up back to where
11 your mobile home is?

12 A. Yes. It makes a complete circle around the whole
13 mobile home itself and winds back around to the driveway.

14 Q. To get your daughter down to the edge of the
15 driveway - is that called Cloud View Drive?

16 A. Yes.

17 Q. To get to the edge of Cloud View Drive, did you
18 drive your daughter down or did you walk her down?

19 A. Drive her.

20 Q. You did that every day?

21 A. Yes.

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Q. When you came to a stop at the edge of the driveway, where on the driveway, I shouldn't call this a

1 driveway, it's Cloud View Drive, where on Cloud View Drive did
2 you come to stop?

3 A. To the right of the road.

4 Q. The right side of the road as you're going down?

5 A. Right. On the right-hand side of the driveway.

6 Q. And would you stopped your car right there where
7 the pavement of Cloud View Drive met the pavement of Route 57 or
8 back up some?

9 A. I was probably 3 foot away from the road.

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A. And Amanda was putting her flute inside of her bookbag and she had a band thing that night that we were talking about and the bus came while she was putting the flute in her

1 bookbag. It came to a stop by the time she got the door open to
2 the car.

3 Q. When the bus came to a stop, do you remember where
4 it stopped on Route 57?

5 A. Directly in front of where my car was parked.

6 Q. On the right side of the driveway?

7 A. Yes.

8 Q. Then what happened?

9 A. She went to get out of the car. I told her "I
10 love you." She went to slam the door and she opened the door
11 back and she said, "What, mom?" I said, "I love you, Amanda."
12 She said, "I love you too." She slammed the door, went to walk
13 across the street to get on the bus.

14 I looked down. Put my car in reverse. Backed up
15 maybe two feet. I heard something. I looked up. I saw Amanda.
16 She had on a red sweater and pink jeans. I saw the red and the
17 pink sort of in mid air pass the bus. I then put my car in park
18 and got out of the car.

19 Q. When you all stopped at the bottom of the driveway
20 that morning, was the bus in sight?

21 A. No.

22 Q. Were you rushing that morning to get down to the
23 bus stop?

24 A. No, we weren't.

25 Q. Do you know how long you were waiting for the bus?

Direct - S. Wagoner

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1 A. Approximately six minutes.

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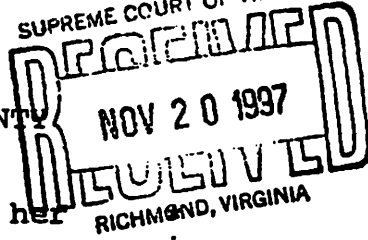
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ORIGINAL

CLERK
SUPREME COURT OF VIRGINIA



VIRGINIA

IN THE CIRCUIT COURT OF HENRY COUNTY

AMANDA LELIA WAGONER, a minor, by her
next friend, STACY WAGONER and
STACY WAGONER, individually and in her
own right,

Plaintiffs

VS.

MILDRED VIOLA BROWN, TERESA SCOTT BENSON
and THE HENRY COUNTY SCHOOL BOARD,

Defendants

DEPOSITIONS
CL96-172

The depositions of MILDRED VIOLA BROWN and TERESA SCOTT BENSON
taken before Ann K. Nichols, a Notary Public for the State of
Virginia at large, at the Law Offices of Young, Haskins, Mann &
Gregory, 400 Starling Avenue, Martinsville, Virginia on the 13th
day of March, 1997, commencing at 9:00 a.m., taken by the
Plaintiff, by counsel, taken pursuant to the Rules of Court.

APPEARANCES:

G. CARTER GREER,
Attorney for Plaintiff

ANTHONY H. MONIOUDIS,
Attorney for Mildred Brown

EDWIN A. GENDRON, JR.,
Attorney for Teresa Benson and
the Henry County School Board

Ann K. Nichols
Court Reporter
Martinsville, VA 24112

SEP 12 1997

Q. How far were you from the bus when you first saw

1 it?

2 A. I don't know because I don't - I can't really say
3 how far I was. When I come around the curve, I saw the bus
4 coming off the hill.

5 Q. Was the bus coming towards you?

6 A. Yeah.

7 Q. In the opposite direction?

8 A. Um-hmm.

9 Q. You were heading west on 57. Am I correct?

10 A. Yeah. Um-hmm.

11 Q. So the bus would have been heading east on 57?

12 A. Yeah.

13 Q. Did the bus have headlights on?

14 A. Yeah.

15 Q. Did you have your headlights on?

16 A. Yes.

17 Q. What were the lighting conditions at that moment?

18 A. What is the lighting conditions? You mean . . .

19 Q. How dark was it?

20 A. Oh, it was dark. It was cloudy. It was dark.

21 Q. Was there any light at all?

22 A. No.

23 Q. Was the sun starting to come up at all?

24 A. No.

25 Q. So you had to have your headlights on?

1 A. I had my headlights on.

2 Q. Did you have them on high beam or low beam?

3 A.. Low beam because when I'm meeting a car, I dim the
4 lights.

5 Q. You can't tell how far the bus was from you when
6 you first saw it?

7 A. No. I noticed it coming off the hill.

8 Q. Did you know it was a school bus?

9 A. Yeah. I felt it was a school bus.

10 Q. How could you tell it was a school bus?

11 A. It looked like a school bus, you know, to me.

12 Q. Could you see the color?

13 A. No.

14 Q. Did you notice anything else about it that
15 indicated to you that it was a school bus?

16 A. Uh-uh. I just thought it was a school bus.

17 Q. At some point did you see the red lights flashing
18 on the bus?

19 A. Uh-uh.

20 MR. GENDRON: Is that a yes or no?

21 A. No.

22 BY MR. GREER:

23 Q. You never saw any red lights flashing on the bus?

24 A. Til I got right up on it.

25 Q. How far were you from the bus when you saw the red

1 lights flashing?

2 A. I don't know because I can't - I was right up on
3 the bus. I don't know. I can't place the distance because I'm
4 not familiar with distance.

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Q. When you're driving towards a school bus, Ms. Brown, and the bus, the red lights come on on the top of the bus, does that mean anything to you?

A. Well, it means, I guess, well, I reckon, slow down or stop or whatever.

Q. It means slow down or stop?

A. I guess. I don't know.

Q. Do you really know what it means?

A. I know it means - what I mean, slow down or stop, you don't stop until the flashing lights come on.

Q. Well, at some point did you see flashing lights come on the bus?

A. No. I didn't see no flashing lights.

Q. You never saw a flashing light?

1 A. Uh-uh. Not until I was right up on the bus.

2 Q. You saw flashing lights when you came up on the
3 bus?

4 A. Um-hmm.

5 Q. How far were you from the flashing lights when you
6 first saw them?

7 A. I really don't know because I'm not good with
8 distance.

9 Q. Are you telling me then that before the red
10 flashing lights - tell me what the red flashing lights looked
11 like.

12 A. Just red flashing lights.

13 Q. Were they both flashing at the same time or were
14 they alternating?

15 A. They alternate.

16 Q. One flashes red on one side of the bus and then it
17 goes out and the other one flashes on the other side of the bus?

18 A. Yeah. When it means for you to stop, yeah.

19 Q. And that means for you to stop?

20 A. Yeah. When the flashing lights is on. But this
21 was just the lights on.

22 Q. So you're telling me before you saw the flashing
23 lights, just the lights just turned red. They weren't flashing.

24 A. Just the lights on.

25 Q. Did you see, observe anything else about the bus?

1 A. No.

2 Q. Did you see a mechanical stop sign swing out on an
3 arm?

4 A. No, I didn't.

5 Q. Could you tell as you were approaching the bus
6 that it was slowing down?

7 A. No. I couldn't tell.

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Q. Well, what happened, Ms. Brown, after the flashing lights - after you saw the flashing lights on the bus?

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A. Little girl come across like she was running right in front of the car and I slammed on my brakes and she went up on my side. She went right up and then just went off of the car.

6

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Q. What part of your car came in contact with the child?

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A. The left.

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Q. Was it the left front bumper?

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A. The left windshield.

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Q. How far was your vehicle from her when you first

1 saw her?

2 A. My vehicle was right here and she was a little bit
3 back there. I don't know how much distance - I don't know how
4 much distance because I was so upset. I was just - I was so
5 upset.

6 Q. So you can't tell me how far in terms of feet or
7 yards your car was from her when you first saw her?

8 A. No.

9 Q. How fast were you going?

10 A. I was going 45 or 50.

11 Q. Do you know what the speed limit is in that area?

12 A. Fifty-five.

13 Q. Is your car an automatic or straight?

14 A. Automatic.

15 Q. At any point prior to the impact did you ever see
16 the stop arm on the bus?

17 A. Uh-uh.

18 MR. MONIOUDIS: Is that a no?

19 A. No. No. Because I was so tore up.

20

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1 Q. Let me read that. You tell me if I've read it
2 correctly. Quote - If pupils must cross the roadway to get to
3 the bus after its arrival at the stopping point, they are
4 required to cross 10 feet in front of the bus and only under the
5 direction of the driver. Never should a pupil cross behind a
6 bus. Unquote. Have I read that correctly?

7 A. Yes, sir.

8 Q. Is that not a regulation of the Henry County
9 Public Schools?

10 A. Not that I'm aware of. We don't practice it that
11 I know of.

12 Q. You would agree that it's a regulation of the
13 Virginia Department of Education?

14 A. Yes, sir.

15 Q. And you didn't find that out until after the
16 accident?

17 A. Yes, sir.

18 Q. Are you telling me then that you never practiced
19 that prior to the accident?

20 A. I never motioned for children to come across the
21 road. No, sir.

22 Q. You never did that at all prior to the accident?

23 A. No, sir.

24 Q. And of course, by accident, I'm referring to the
25 accident involving Amanda Wagoner.

Q. So I take it that on that morning on December 5th,
did not motion . . .

Q. For Amanda Wagoner to cross the road.

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Q. What time did you arrive at the school bus garage that morning?

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A. 6:30.

11

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Q. What do you normally do prior to leaving the school bus garage?

13

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A. We have to do a pre-trip inspection. Always inspect my bus. Check my lights. Crank it up to make sure everything is in running order.

16

17

18

Q. Gassed up?

A. No, sir. I always make sure that is done the day before usually.

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Q. Did you do a pre-trip inspection that morning?

A. Yes, sir.

Q. Did you find anything wrong with the bus?

A. No, sir.

Q. Did you check the flashing lights on the top of the bus?

A. Yes, sir.

1 Q. What do you do? You turn the lights on and then
2 you walk around the bus to see if they're flashing?

3 A. Yes, sir.

4 Q. Were they all flashing?

5 A. Yes, sir.

6 Q. Did you check your stop arm?

7 A. Yes, sir.

8 Q. Was it working fine?

9 A. Yes, sir.

10 Q. Did you find anything malfunctioning on the bus?

11 A. No, sir.

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Q. What time did you leave with the bus?

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A. At 6:35.

11

Q. Was that your normal hour that you would leave?

12

A. Yes, sir.

13

Q. Were you running ahead or behind?

14

A. I was running right on schedule.

15

Q. Where did you go?

16

A. When I leave Collinsville, I come out from the bus garage and I take a right and go through Collinsville. Go to the stop lights where the Walmart Center is. Take a left. Go up Commonwealth. Come across til I get to Leatherwood Crossing and then I take a left there at the light.

21

Q. You turn left there at 57?

22

A. Yes, sir.

23

Q. What were the weather conditions like that morning?

24

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A. It was clear. It was very clear. I mean it was

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1 the day before.

2 Q. And was that a regular scheduled stop for you?

3 A. Yes, sir.

4 Q. All right. Tell me exactly what you did as you
5 approached the stop.

6 A. Well, at about Absolute Machinery, I seen Ms.
7 Brown's car lights come around the curve, so I went ahead and
8 pulled my lights, which is about 700 feet.

9 Q. When you say you pulled your lights, what lights?

10 A. My red traffic lights.

11 Q. Are they the flashing lights?

12 A. Yes, sir.

13 Q. Did you hear Ms. Brown give her deposition?

14 A. Yes, sir.

15 Q. She mentioned something about solid red lights
16 that don't flash.

17 A. My lights are four way lights. They flash.

18 Q. Do you have any lights on your bus that are just
19 solid that don't flash?

20 A. Red lights?

21 Q. Yes, ma'am.

22 A. No, sir.

23 Q. So you turned on your red flashing lights at about
24 Absolute Machinery?

25 A. Yes, sir.

1 Q. And you think that's about seven or eight hundred
2 feet before the stop?

3 A. 700 feet.

4 Q. How do you know it's 700 feet?

5 A. Ms. Gammons and I measured it.

6 Q. How did you measure it?

7 A. Using the mile . . .

8 Q. Using your odometer?

9 A. Yes, sir.

10 Q. And I take it it got up to point seven?

11 A. Yes, sir.

12 Q. Well, that wouldn't be correct, but you measured
13 it at 700 feet. Point seven would be more than 700 feet.

14 MR. MONIOUDIS: I was just going to ask you
15 about your math here.

16 MR. GREER: That would be quite a bit more than
17 700 feet.

18 BY MR. GREER:

19 Q. How far away was Ms. Brown's vehicle when you
20 turned on your flashing lights?

21 MR. GENDRON: From what?

22 BY MR. GREER:

23 Q. From your bus.

24 A. I don't know.

25 Q. Well, you heard her say that she was right up on

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1 A. I was about 30 feet from Amanda.

2 Q. What happened after you came to - did you come to
3 a complete stop?

4 A. Yes, sir. I come to a complete stop. My stop arm
5 was out. My lights were on. I watched Amanda get out of her
6 mother's car. I watched her put her bookbag on her shoulder and
7 proceed to the bus.

8 Q. When you came to a complete stop, did you see Ms.
9 Brown's vehicle?

10 A. Yes, sir.

11 Q. How far away was her vehicle?

12 A. She was a good distance away from the bus.

13 Q. Back toward the east?

14 A. Yes, sir.

15 Q. From the time that you stopped until the time that
16 Amanda actually got to the side of the road, how much time
17 elapsed?

18 A. I don't know. I mean I had stopped. I don't
19 know.

20 Q. You don't know how much time passed?

21 A. No.

22 Q. Did Amanda appear to be in a hurry?

23 A. No. She was - you could see the excitement on her
24 face. I don't know - about I don't know what about that day or
25 not. She was just jolly. You could see it.

1 Q. Now you've already testified you did not direct
2 her across the road?

3 A.. No, sir.

4 Q. Tell us what happened.

5 A. Amanda proceeded across the road. She wasn't
6 running. She was like bouncing across.

7 Q. Skipping?

8 A. No. I wouldn't say skipping. I would say she was
9 just jolly. She was bouncing right like . . .

10 Q. She wasn't running?

11 A. No. No.

12 Q. Was it a normal stride?

13 A. No. It wasn't a normal walk. It was - can I
14 demonstrate it?

15 MR. GENDRON: That wouldn't do too well on the
16 record.

17 A. She was just happy. You could tell it.

18 BY MR. GREER:

19 Q. We don't have a video camera here though. I'd
20 like to see your demonstration. I really would. Maybe some
21 other time.

22 All right. Amanda starts to cross the road. What
23 happens then?

24 A. I watch Amanda get middle ways. I wasn't watching
25 Ms. Brown because I assumed that she would stop. I heard a

1 thump. I looked and I saw Amanda go through the air to the back
2 of my bus. Then I realized what had happened. It hit me then
3 that she had been hit and I got my bus - oh, gosh. I can't
4 think. I left everything on. I put my bus in neutral. I
5 pulled my park brake. I secured my bus before I got out. I run
6 out of the bus to the end of the bus and saw Amanda laying
7 there.

8 Q. Where was her body lying when you saw it?

9 A. At the back of the bus.

10 Q. Was it in the westbound lane?

11 A. Yes, sir. It was laying . . .

12 Q. How many feet from the back of the bus?

13 A. Oh, gosh. I don't know. It was laying behind the
14 bus.

15 Q. When Amanda started to cross the road, did you see
16 whether she looked left or right?

17 A. She didn't look.

18 MR. MONIOUDIS: I'm sorry. What was the answer?

19 She did not look?

20 A. She didn't look.

21 BY MR. GREER:

22 Q. Did she cross straight across the road?

23 A. Yes, sir.

24 Q. Did you assume that Ms. Brown was going to stop or
25 did it appear to you that Ms. Brown was going to stop?

1 A. I don't understand.

2 Q. Did you think Ms. Brown was going to stop?

3 A. I was sure Ms. Brown would stop.

4 Q. Why?

5 A. I had my lights on. I had my stop arm out. I was

6 stopped.

7 Q. Did she have time to stop?

8 A. Yes, sir.

9 Q. How fast was she going?

10 A. I don't know how fast she was going.

11 Q. Did you ever see her slow down?

12 A. No. I wasn't watching her. I was watching

13 Amanda.

14 Q. At what point did you realize that Ms. Brown was

15 not going to stop?

16 A. I wasn't watching her. When she hit Amanda, I

17 knew she had to stop.

18 Q. Did you actually see the impact?

19 A. Yes, sir.

20 Q. Did you have time to try to keep Amanda . . .

21 A. If I could have jumped out of my seat and I know

22 that she, you know, I would have.

23 Q. When your bus came to a complete stop, did you

24 leave it up to Amanda to decide when to cross the road that

25 morning?

1 A. She came right on across.
2 Q. Did she ever stop at the intersection?
3 A. No, sir.
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VIRGINIA: IN THE CIRCUIT COURT OF HENRY COUNTY

AMANDA LELIA WAGONER, a minor
by her next friend, STACY WAGONER, and
STACY WAGONER, individually and
in her own right,

Plaintiffs,

vs.

MILDRED VIOLA BROWN,
TERESA SCOTT BENSON,
and
THE HENRY COUNTY SCHOOL BOARD,
a body corporate,

Defendants.

Case #CL96 172

ORDER

THIS CAUSE, came to be heard on plaintiffs' Motion for Judgment and defendants, Teresa Scott Benson and The Henry County School Board's, Plea in Bar thereto, the arguments by counsel upon said Plea, the Letter Opinion of the Court dated August 7, 1997, the plaintiffs' Motion for Reconsideration, and the arguments of counsel upon said Motion for Reconsideration.

UPON CONSIDERATION WHEREOF, and it appearing to the Court that defendants, Teresa Scott Benson and The Henry County School Board's, Special Plea of Sovereign Immunity is well founded and constitutes a bar to the cause of action of plaintiffs under the Motion for Judgment filed on behalf of the plaintiffs herein, it is accordingly,

ORDERED that defendants, Teresa Scott Benson and The Henry County School Board's, Special Plea be, and it is hereby, sustained; and it is further,

ORDERED that this action be, and it is hereby, dismissed with prejudice as to the defendants, Teresa Scott Benson and The Henry County School Board, to which action of the Court the

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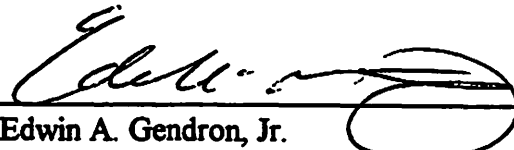
plaintiffs, by counsel, duly objected.

And the Clerk of this Court is ORDERED to forward an attested copy of this Order to all counsel of record.

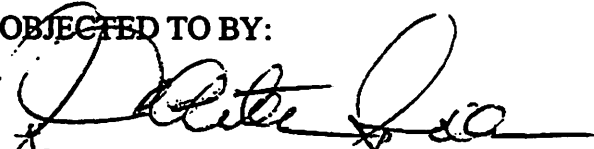
ENTER this 15th day of September, 1997.


JUDGE


ENTRY REQUESTED BY:


Edwin A. Gendron, Jr.
Attorney for Defendants, Teresa Scott Benson
and The Henry County School Board

OBJECTED TO BY:


G. Carter Greer
Attorney for Plaintiffs

SEEN BY:


Anthony H. Monioudis
Attorney for Defendant, Mildred Viola Brown

ASSIGNMENT OF ERROR

- 1. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GRANTING THE SPECIAL PLEA OF SOVEREIGN IMMUNITY.**