

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR DALLAS COUNTY, STATE OF LONE STAR

CIVIL DIVISION

RONALD and RANDI McGEE,)
individually and as personal)
representatives of the Estate)
of REBECCA McGEE,)
)
Plaintiffs,)
)
v.)
)
SCHOOL BOARD OF DALLAS)
COUNTY,)
)
Defendant.)
_____)

Case No. 05-1511

Prepared by:

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Second District Court of Appeals
1700 N. Tampa Street
Tampa FL 33602

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-and-
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STATEMENT OF THE CASE

Ronald and Randi McGee, individually and as personal representatives of the Estate of Rebecca McGee, have filed a wrongful death complaint against the School Board of Dallas County. The complaint alleges that a school bus driver employed by the School Board was negligent by stopping the school bus ridden by Rebecca and Rachel McGee on the wrong side of the road at an undesignated stop, thus requiring Rebecca and Rachel to cross six lanes of traffic to get to their home. While attempting to cross the street, Rebecca was struck and killed by a vehicle driven by Dana Dalton. Ronald and Randi McGee, Rebecca's parents, seek damages for the Estate and for themselves individually.

The School Board has filed an answer denying the allegations of the complaint and raising the affirmative defense of negligence of others not parties to this action as well as the contributory negligence of Rebecca McGee.

STIPULATIONS REGARDING EVIDENTIARY MATTERS

Procedural Matters

1. Federal Rules of Civil Procedure and Federal Rules of Evidence apply.
2. This case shall be tried on liability only. Should the plaintiffs prevail on liability, the question of damages shall be heard by the jury with additional evidence and additional jury instructions at a later date.
3. All witnesses called to testify who have in depositions identified the parties, other individuals, or tangible evidence can, if asked, identify the same at trial.
4. Each witness who gave a deposition agreed under oath at the outset of his or her deposition to give a full and complete description of all material events and occurrences and to correct the deposition for inaccuracies and completeness before signing the deposition.
5. All depositions were signed under oath.
6. For this competition, no team is permitted to attempt to impeach a witness by arguing to the jury that a signature appearing on the deposition does not comport with signatures or initials located on an exhibit.
7. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.

8. This competition does not permit a listed witness, while testifying, to "invent" an individual not mentioned in this problem and have testimony or evidence offered to the court or jury from that "invented" individual.

9. "Beyond the record" shall not be entertained as an objection. Rather, teams shall use cross-examination as to inferences from material facts pursuant to National Rules VII(4)(C) and (D) and VIII(5). Any party wishing to file a complaint concerning a violation of this rule shall use the procedure found in rule VIII(4).

10. Each party must call the two witnesses listed as that party's witnesses on the witness list.

11. All exhibits in the file are authentic. In addition, each exhibit contained in the file is the original of that document unless otherwise noted on the exhibit or as established by the evidence.

12. It is stipulated that no one shall attempt to contact the problem drafter, Tracy Leduc, about this problem. Contact with the competition officials concerning this problem must be pursuant to the rules of the competition.

13. 2006 should be the current year in which this case comes to trial.

14. Presentation and argument on pretrial motions shall be limited to a total time of sixteen minutes divided equally between the parties as follows: (1) the plaintiffs shall have four minutes to present any pretrial motions; (2) the defendant shall have

four minutes to respond to the plaintiff's motion(s); (3) the defendant shall have four minutes to present any pretrial motions; and (4) the plaintiffs shall have four minutes to respond to the defendant's motion(s).

15. This competition permits teams to argue additional case law and other relevant authority to support the team's argument on motions and evidentiary issues. However, no additions or deletions are permitted to the provided jury instructions.

16. No team member is permitted to question any witness or argue to the jury the absence of the remainder of Corey Jackson's traffic homicide report or the remainder of Dana Dalton's cell phone bill.

17. The parties agree that there will be no cross-examination or argument concerning any discrepancies between the photos in Exhibits A and B and the diagram in Exhibit C.

Substantive Matters

1. In the State of Lone Star, actions at law in circuit court require that the controversy exceed the sum of \$15,000, exclusive of interest, costs, and attorney's fees. The School Board has stipulated for purposes of the liability portion of this trial that the Estate's damages exceed \$15,000.

2. Motions to dismiss the complaint and motions for summary judgment based on sovereign immunity have been denied by the trial court, and no further motions to dismiss or for summary judgment shall be argued or heard by the trial judge.

3. The State of Lone Star is a pure comparative negligence state. The jury shall apportion the percentage of negligence, if any, to the plaintiffs, the defendant, and

any nonparty alleged by the defendant in its affirmative defenses as being responsible for the injuries.

4. In the case of Wise v. Pascual, 606 Lone Star 727 (Lone Star 1996), the Lone Star Supreme Court held that a jury is permitted to consider the liability of a nonparty, in addition to the liability of the parties, if the defendant has specifically named a nonparty in its affirmative defenses, has alleged how the nonparty caused or contributed to the plaintiff's injuries, and has offered evidence to the jury from which a jury could find negligence on the part of the nonparty.

5. Pursuant to section 768.28, Lone Star Statutes (2004), the following applies:

(1) In accordance with s. 13, Art. X of the Lone Star State Constitution, the state, for itself and for its agencies and subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act.

.....

(7) Notwithstanding the limited waiver of sovereign immunity provided herein, the state or an agency or subdivision thereof may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it, but the state or agency or subdivision thereof shall not be deemed to have waived the defense of sovereign immunity or to have increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts.

.....

(9)(a) No officer, employee, or agent of the state or any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of an act, event, or omission or action in the scope of his or her employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

6. Section 316.172, Lone Star Statutes (2004), provides in pertinent part as follows:

(2) The driver of a vehicle upon a divided highway with an unpaved space of at least five feet, with a raised median, or a physical barrier is not required to stop when traveling in the opposite direction of a school bus which is stopped in accordance with the provisions of this section.

(3) Every school bus shall stop as far to the right of the street as possible and shall display warning lights and stop signals as required by the rules of the State Board of Education before loading and unloading passengers.

7. Sections 768.16-.26, Lone Star Statutes (2004), constitute the State of Lone Star's Wrongful Death Act. In pertinent part, the Act states:

When the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person or legal entity, and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person or legal entity that would have been liable for damage if the death had not ensued shall be liable for damages as specified in this act notwithstanding the death of the person injured.

....

The action shall be brought by the decedent's personal representative, who shall recover for the decedent's survivors and estate all damages caused by the injury resulting in the death.

....

A defense that would bar or reduce the decedent's recovery if he or she were the plaintiff may be asserted against the personal representative.

8. The parties agree and stipulate that the complete cell phone bill, a portion of which constitutes Exhibit F, was obtained through a valid subpoena issued pursuant to Federal Rule of Civil Procedure 45 and was served upon Lone Star Wireless for all records relating to cell number 555-881-1758. This stipulation may be read to the jury at the request of either the plaintiffs or the defendant.

9. The parties agree and stipulate that the School Board is responsible for the negligence of its employees if the negligence occurs while the employee is acting within the scope of his or her employment. The parties also agree and stipulate that Chris Allman was acting within the scope of his employment while driving the school bus on October 8, 2004. This stipulation may be read to the jury at the request of either the plaintiffs or the defendant.

WITNESS LIST

Witnesses for the Plaintiffs:

1. Corey Jackson - Witness**
2. Dana Dalton - Witness**

Witnesses for the Defendant:

1. Chris Allman - Witness*
2. Terry Escobar - Witness**

Each team must call witnesses number 1 and 2 listed on its respective witness list.

* This person must be a male.

** This person may be a male or a female.

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Plaintiffs,)

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v.)

SCHOOL BOARD OF DALLAS)
COUNTY,)

Defendant.)
_____)

COMPLAINT

Plaintiffs Ronald and Randi McGee, individually and as personal representatives of the Estate of Rebecca McGee, sue defendant the School Board of Dallas County and allege:

GENERAL ALLEGATIONS

1. This is an action for damages that exceed \$15,000.
2. Ronald McGee has been a resident of Dallas County, State of Lone Star,

since 1965.

3. Randi McGee has been a resident of Dallas County, State of Lone Star, since 1972.

4. Defendant the School Board of Dallas County is a governmental entity organized and having its headquarters in Dallas County, State of Lone Star.

5. Pursuant to sections 768.28(1) and (3), Lone Star Statutes (2004), the School Board of Dallas County has waived sovereign immunity and has consented to be sued in this jurisdiction.

6. The accident at issue in this case occurred in Dallas County, State of Lone Star.

7. On or about October 8, 2004, Chris Allman was an employee of the School Board of Dallas County.

8. Rebecca McGee was a student duly enrolled in the public schools of Dallas County, State of Lone Star.

9. As a student duly enrolled in the public schools of Dallas County, State of Lone Star, Rebecca McGee was entitled to transportation between her residence and her assigned school provided free of charge by the School Board of Dallas County.

10. While in the course and scope of his employment with the School Board of Dallas County, on or about October 8, 2004, Chris Allman was driving a school bus

owned by the School Board of Dallas County on the public highways of Dallas County, State of Lone Star.

11. Rebecca McGee was a passenger on the school bus driven by Chris Allman on or about October 8, 2004.

12. While driving the school bus on which Rebecca McGee was a passenger, Chris Allman deviated from the established school bus route, thus resulting in Rebecca McGee being forced to exit the school bus on the opposite side of a six-lane road from her home.

13. While crossing the six-lane road, Rebecca McGee was struck and killed by a vehicle traveling in the opposite direction from the school bus.

14. Ronald McGee and Randi McGee are the natural parents of Rebecca McGee, whose date of birth is April 25, 1992.

15. On November 1, 2004, the probate division of the Dallas County Circuit Court appointed Ronald McGee and Randi McGee as personal representatives of the Estate of Rebecca McGee.

COUNT I - NEGLIGENCE

16. Plaintiffs Ronald and Randi McGee, individually, adopt and reaffirm the allegations of paragraphs 1 through 15 as if fully restated herein.

17. By virtue of having assumed the obligation to provide free transportation to its students, Defendant the School Board of Dallas County assumed a duty to ensure that the students enrolled in its schools are safely transported between their residences and their schools.

18. By virtue of having assumed the obligation to provide free transportation to its students, Defendant the School Board of Dallas County has a duty to ensure that its school bus drivers operate the buses safely and in compliance with all school board rules and policies.

19. By virtue of having assumed the obligation to provide free transportation to its student, Defendant the School Board of Dallas County has a duty to ensure that the persons it selects to operate its buses are properly licensed and will operate the school buses in compliance with all state traffic laws and in compliance with all board rules and policies.

20. Defendant the School Board of Dallas County breached one or more of its duties when it permitted Chris Allman to operate the school bus on October 8, 2004.

21. As a direct and proximate result of the School Board of Dallas County's negligence and/or the negligence of its employee, Plaintiffs Ronald and Randi McGee, individually, have suffered damages, including, but not limited to, medical and funeral expenses, lost support and services, and mental pain and suffering.

WHEREFORE Plaintiffs Ronald and Randi McGee, individually, demand judgment for damages against Defendant the School Board of Dallas County and demand a trial by jury.

COUNT II - NEGLIGENCE


22. Plaintiffs Ronald and Randi McGee, as co-personal representatives of the Estate of Rebecca McGee, adopt and reaffirm the allegations of paragraphs 1 through 15 and 17 through 20 as if fully restated herein.

23. As a direct and proximate result of the School Board of Dallas County's negligence, the Estate of Rebecca McGee has suffered damages, including, but not limited to, loss of earnings and loss of prospective net accumulations.

WHEREFORE Plaintiffs Ronald and Randi McGee, as co-personal representatives of the Estate of Rebecca McGee, demand judgment for damages,

against Defendant the School Board of Dallas County and demand a trial by jury.

Filed this 29th day of July, 2005.



Joye Walford, Esq.
1001 N. Austin Street.
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(555) 813-2290
Lone Star Bar No. 115358
Attorney for Plaintiffs

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COUNTY,)
Defendant.)

Case No. 05-1511

ANSWER AND DEFENSES TO COMPLAINT

Defendant the School Board of Dallas County, by and through its undersigned attorney, files this its Answer and Defenses to the Complaint filed by Plaintiffs and states as follows:

1. Admit for jurisdictional purposes only.
2. Without knowledge; therefore, deny.
3. Without knowledge; therefore, deny.
4. Admit.

5. Admit.
6. Admit for jurisdictional purposes only.
7. Admit.
8. Admit.
9. Admit.
10. Admit.
11. Admit.
12. Deny.
13. Admit.
14. Admit.
15. Admit.

COUNT I - NEGLIGENCE

16. Defendant the School Board of Dallas County realleges its answers to paragraphs 1 through 15 as if fully set forth herein.

17. Admit.
18. Admit.
19. Admit.
20. Deny.

21. Deny.

COUNT II - NEGLIGENCE

22. Defendant the School Board of Dallas County realleges its answers to paragraphs 1 through 15 and 17 through 20 as if fully set forth herein.

23. Deny.

AFFIRMATIVE DEFENSES

Defendant the School Board of Dallas County, by and through its undersigned counsel, asserts the following affirmative defense to Plaintiffs' Complaint.

First Affirmative Defense

On the date, time, and place set forth in the Complaint, Plaintiffs' decedent was negligent and said negligence was the sole cause of Plaintiffs' damages; therefore, Plaintiffs' claims are barred.

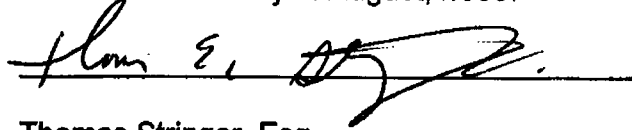
Second Affirmative Defense

On the date, time, and place set forth in the Complaint, the following person(s) contributed to the injury suffered by Plaintiffs:

1. Dana Dalton was negligent in the operation of his motor vehicle by speeding and/or failing to maintain a proper lookout, resulting in the motor vehicle being driven by Dana Dalton colliding with Plaintiffs' decedent, Rebecca McGee and resulting in her death.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Answer and Defenses to Complaint has been furnished by U.S. Mail to Joye Walford, Esq., 1001 N. Austin Street, Armadillo, State of Lone Star, 74010 on this 16th day of August, 2005.

A handwritten signature in black ink, appearing to read "Thomas E. Stringer", is written over a horizontal line.

Thomas Stringer, Esq.
1005 E. Memorial Blvd.
Armadillo, State of Lone Star 74010
(813) 555-0660
Lone Star Bar No. 102888
Attorney for Defendant School Board

DEPOSITION OF COREY JACKSON

Q. Please state your name.

A. My name is Detective Corey Jackson.

Q. What is your address?

A. My business address is 360 Central Avenue, Armadillo, Dallas County, State of Lone Star. Lone Star Statutes do not require me to divulge my home address.

Q. How are you employed?

A. I am a detective with the Dallas County Sheriff's Department.

Q. How long have you been so employed?

A. I have been with the Dallas County Sheriff's Department since 1988. I began as a patrol officer and worked my way up to detective. I have been a detective since October 1996.

Q. Do you work in any special capacity?

A. Yes. I am currently a traffic homicide investigator, and I have been since 2000.

Q. Does that position require any special or additional training?

A. Yes. In 2000, I attended a 40-hour class in traffic homicide investigation. I attended a 40-hour update class in 2003.

Q. What types of things did you learn in those classes?

A. A large part of the classes focused on accident reconstruction. We learned various methods of estimating the speed of vehicles. We also learned how physical evidence left at the scene can be used to determine what was happening just as the accident began to occur, through the accident itself, and how the vehicles moved after the accident.

Q. Are you certified in accident reconstruction?

A. Not yet. I will be taking another 40-hour course this year that will prepare me for the State of Lone Star certification exam. However, I am otherwise eligible to sit for the examination.

Q. What do those other qualifications include?

A. I have investigated over 200 auto accidents since joining the Dallas County Sheriff's Department. Of those, 53 have been traffic homicide investigations. My work in 22 of those cases has been reviewed by a certified accident reconstruction expert and determined to be correct. The State of Lone Star requires investigation of at least 150 auto accidents, 50 traffic homicide investigations, and 15 peer reviews before it will allow someone to sit for the certification exam. So I have exceeded all of those numbers.

Q. Were you assigned a role in the investigation of the accident that killed Rebecca McGee on October 8, 2004?

A. Yes, I was assigned to be the lead detective on that case.

Q. How did you first learn of the accident?

A. I was in my office at headquarters when the call came in that a child had been hit by a car as she was getting off a school bus. A patrol officer was at the scene and had reported that the injuries were likely fatal. At that point, I headed to the scene to begin my investigation.

Q. Do you recall what time that call came in?

A. I believe it was around 3:30 p.m.

Q. What were the first steps in your investigation?

A. I drove to the scene and spoke with the patrol officer who had been first on the scene. By the time I arrived, EMS was on the scene, and they had determined that the child was dead at the scene. The patrol officer had stopped all traffic through the area and had made sure that the witnesses were still there.

Q. What did you do first in your investigation?

A. My first step was to walk the scene. I noted that there was a school bus stopped in the right-hand lane on the far side of the road heading westbound. There was a black Chevrolet Blazer stopped partly in the center lane and partly in the right-hand lane heading eastbound. The grill and hood of the Blazer were dented and the windshield was broken. The victim was laying in the grass between the right-hand lane of the eastbound lanes of traffic and the sidewalk. There was also another child at the scene who was hysterical and who was being attended to by the paramedics.

Q. What did you do next?

A. Since the call had come in that the child was getting off the bus, I went to speak to the bus driver.

Q. What did you learn?

A. The bus driver identified himself as Chris Allman. He said that this was the last stop of this particular route. He had stopped the bus with its red lights flashing and its stop signs out. The two girls, who he thought were sisters, got off the bus and crossed in front of it to the median.

Q. Did he tell you what happened next?

A. Yes. Traffic going eastbound did not have to stop because of the median in the road. When they got to the median, both girls initially stopped as if to wait for traffic. But then the older one ran out to cross the eastbound lanes. There was a black SUV that was in the center eastbound lane. The younger girl yelled something that sounded like, "No, Becca." But the older girl yelled, "He'll stop," and darted out into traffic. When she got to the center lane, she was hit by the SUV.

Q. Did Chris Allman tell you anything else about how the accident occurred?

A. Yes. According to Chris Allman, the driver of the SUV was speeding and talking on a cell phone when he hit the girl.

Q. What did you do next?

A. I went to speak with the driver of the SUV, who was identified as Dana Dalton.

Q. What did Dana Dalton tell you?

A. Dana Dalton was very upset about what had happened. Dalton told me that Dalton drives this way every day at the same time on the way to work as a pizza delivery driver and that children never have to cross the street.

Q. Did you ask Dalton what was meant by that?

A. Yes. Dalton said that Dalton sees the bus every day at this same time. It is usually stopped on Wilsky Road and then turns left onto Waters Avenue. It then makes an immediate stop to let two girls off on that eastbound side of the road in front of an apartment complex. This day, however, the bus turned right instead of left and let the girls out on the opposite side of the road just before the Sonic restaurant.

Q. What did Dalton tell you about the actual accident?

A. Dalton said that Dalton was watching the road and traffic and saw the bus let the girls out. Dalton saw them cross to the median and stop. Dalton thought that they were waiting for traffic to clear, but just as Dalton got to where they were, the older girl darted out in front of the SUV. Dalton tried to stop, but could not.

Q. Did Dalton mention anything about any other traffic around the SUV?

A. No.

Q. Did Dalton say whether Dalton tried to change lanes or swerve to avoid the girl?

A. Dalton just said that there was no way to avoid the accident.

Q. Did Dalton seem upset by these events?

A. Oh yes. Dalton seemed quite upset. Dalton's eyes were red as if Dalton had been crying. Dalton was shaking and pale. When Dalton learned that the girl was dead, Dalton just seemed to go into shock.

Q. Did you have any reason to suspect that Dalton had been drinking?

A. No. There was no smell of alcohol and nothing about Dalton's speech or behavior that made me think Dalton was impaired in any way.

Q. Did you speak with anyone else at the scene?

A. No. I understand that there were two witnesses, but they left the scene before I could interview them.

Q. Had anyone gotten their names so that you could contact them later?

A. No. The patrol officer was supposed to have done that, but as I discovered later, he had not.

Q. What did you do next?

A. I began the work that we do at the scene of any traffic homicide investigation, including taping off the area so that we could take various measurements and photographing the scene.

Q. Detective, I'm showing you what has been marked as Exhibit A for identification. Do you recognize this?

A. Yes, it is one of the photographs that I took during my investigation.

Q. Does this photograph accurately reflect the scene of the accident?

A. No.

Q. Why not?

A. Well, it accurately reflects the intersection itself, but it does not reflect the accident scene itself.

Q. Why is that?

A. I had taken all of my pictures when the vehicles were still at the scene. Before I could have them developed, there was an accident with my camera and the film was exposed. Therefore, I had to go back to the intersection the next day to take these photos. So this photograph accurately reflects the scene of the accident, but not the day of the accident.

Q. What does Exhibit A show?

A. Exhibit A is a photograph of the intersection of Wilsky Road and Waters Avenue looking eastbound. Wilsky Road is on the left side of the photo where the white car is waiting to pull out. The apartment complex where the victim lived is farther down and would be on the right side of the photo. And this is Waters Avenue running down the middle.

Q. Does this photograph depict where the school bus was stopped on the day of the accident?

A. Yes. It was stopped essentially in front of the white signs that are visible on the left side of the photograph.

Q. Detective, I am showing you what has been marked as Exhibit B for identification. Do you recognize this?

A. Yes, this is another of the photographs that I took.

Q. Does this fairly and accurately reflect the scene of accident itself?

A. As with Exhibit A, it fairly and accurately reflects the intersection as it looked in general on the date of the accident, but it was not taken on the date of the accident itself.

- Q. What does Exhibit B show?
- A. Exhibit B is a photograph of the intersection of Wilsky Road and Waters Avenue looking westbound. There is a driveway into a PetSmart on the right-hand side of the photograph. Just past that, where the white lines break along Waters Avenue, is where Wilsky Road intersects it. On the far left of the photograph, just behind the white car, is the wall that surrounds the apartment complex where the victim lived.
- Q. Detective, I am showing you what has been marked as Exhibit C for identification. Do you recognize this?
- A. Yes, this is a diagram that I prepared of the accident scene.
- Q. Does it fairly and accurately reflect the scene as it was on the date of the accident?
- A. Yes, it does; however, it is not to scale.
- Q. What is depicted as "V1" on this diagram?
- A. "V1" is the SUV driven by Dana Dalton.
- Q. What is depicted as "V2" on this diagram?
- A. "V2" is the school bus that Rebecca McGee had been riding on.
- Q. What is depicted by the "X" on the diagram?
- A. From what we could tell at the scene, that was the point of impact.
- Q. And what are "A," "B," and "C"?
- A. "A" is Rebecca's right shoe; "B" is Rebecca's left shoe; and "C" is her backpack. These are all noted where they came to rest.

- Q.** Detective, did you take any measurements when you were at the scene?
- A.** Yes, I did; however, not all of them are depicted on this diagram.
- Q.** What measurements are on the diagram?
- A.** Only the number "5" which represents the width of the median.
- Q.** What other measurements did you take?
- A.** We measured both the pre-impact skid marks and the post-impact skid marks left by the black SUV.
- Q.** Do you recall those measurements?
- A.** Yes. The pre-impact skid marks were 32 feet long, and the post-impact skid marks were 52 feet long.
- Q.** Were you able to perform any calculations based on those measurements related to the speed of the SUV?
- A.** I did not. Another officer actually did the calculations.
- Q.** Do you know what those calculations showed?
- A.** Yes, based on 84 feet of skid marks, we were able to determine that the SUV was traveling between 39 and 44 miles per hour before it began to brake.
- Q.** And how was that figure calculated?
- A.** While I did not do the calculations, I can tell you that it was calculated using standard formulas that are taught to us as part of our accident reconstruction training. These formulas take into effect the length of the skid marks, a drag factor for the nature of the road surface, and an estimate of braking efficiency.

- Q. What is the speed limit along this stretch of Waters Avenue?
- A. The speed limit is 40 miles per hour.
- Q. Detective, did there come a time that you spoke with anyone from the Dallas County School Board about the bus route?
- A. Yes, I spoke with Fred Leonard, who is the School District Superintendent late in the evening of October 8, 2004.
- Q. What prompted that conversation?
- A. When I interviewed Dana Dalton, Dalton mentioned that the bus usually turns the other way and lets Rebecca McGee and her sister off on the south side of Waters Avenue right in front of their apartment complex. Also, I was aware that the School Board had a policy of planning the bus routes so that students would not have to cross busy roadways. So I thought I should find out why the girls had to cross Waters Avenue that afternoon.
- Q. What did you discuss with Mr. Leonard?
- A. He was already aware of the accident itself. I asked him whether the School Board had any maps or similar documents that would show what the bus route was supposed to be.
- Q. Did he have any such item?
- A. Yes. Mr. Leonard gave me what he said was the published bus route for the bus that Rebecca McGee was on.
- Q. I am showing you what has been marked as Exhibit D for identification. Do you recognize this?
- A. Yes, this is a copy of the map Mr. Leonard gave me.

- Q.** Is this map in the same condition as when you received it from Mr. Leonard?
- A.** Yes.
- Q.** Does this map fairly and accurately reflect the bus route on the date of the accident?
- A.** I don't know. I only know that Mr. Leonard represented to me that it did.
- Q.** Did you do any other investigation into the bus route?
- A.** Yes. I checked the Dallas County School Board website to see if there were any maps of the bus routes on the website.
- Q.** Did you find anything?
- A.** I found a link on the website that said that it would show the bus routes, but when I clicked on the link, I got a message that the page was no longer available.
- Q.** What date did you check the website?
- A.** I believe it was either October 10 or 11. The accident happened on a Friday, and I believe I checked it over that weekend or on the following Monday.
- Q.** Was there any particular reason that you felt you should check the website?
- A.** Yes. When I was at the accident scene, Chris Allman gave me a hand-drawn map of the bus route. It seemed to be a little different from the one Mr. Leonard gave me. Therefore, I thought I would see if there was another source for the map.
- Q.** Detective, I'm showing you what has been marked as Exhibit E for identification. Do you recognize this?

- A. Yes, this is map Chris Allman gave me at the scene of the accident.
- Q. Is it in the same or generally the same condition as it was on the date of the accident?
- A. Yes.
- Q. Does that map fairly and accurately reflect the bus route for the bus Rebecca McGee was riding on the date of the accident?
- A. I don't know. I only know what Mr. Allman told me about where he had gotten this map.
- Q. What did he tell you about this map?
- A. He told me that it was drawn for him by a Ms. Jones, who is a long-time bus driver with the School Board.
- Q. Were you ever able to speak with Ms. Jones?
- A. Yes, I spoke with her on Saturday, October 9, at her home.
- Q. What, if anything, did she tell you about the map?
- A. She admitted that she had drawn a map for Mr. Allman, but she denied that the map given to me at the scene by Mr. Allman was the one that she had drawn for him.
- Q. So she denied that she had drawn the map that we have as Exhibit E?
- A. That is correct.
- Q. Was anyone cited for the accident?
- A. I cited Mr. Allman for driving with an improper license because he did not have a chauffeur's license, which is required by Lone Star Statutes to drive a school bus. But I could not cite him for causing the accident itself.

Q. Why not?

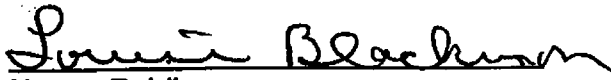
A. With no witnesses that I could interview and the stories given to me by both drivers, I had no way to prove - in a criminal case - who was at fault for causing the accident. Therefore, I did not issue any citations.

Q. Do you have any opinions, based on your investigation, as to the cause of the accident?

A. I believe the majority of the fault lies with Chris Allman. He should never have let those two children off the bus where they would have to cross six lanes of traffic to get to the apartment complex, regardless of what some map told him.


Corey Jackson

Sworn to and subscribed before me this
10th day of October, 2005.


Notary Public

DEPOSITION OF DANA DALTON

- Q. Please state your name.
- A. Dana Dalton.
- Q. What is your address?
- A. I live at 13503 Staghorn Road in Armadillo.
- Q. Are you employed?
- A. I work part-time as a pizza delivery driver for Pizza Express. I am also a part-time student at Lone Star State University here in Armadillo.
- Q. What year are you in at Lone Star State?
- A. I have completed enough credit hours that I am technically a junior.
- Q. And how long have you worked for Pizza Express?
- A. Well, I don't work there anymore. But I started there in June 2004.
- Q. Why did you leave Pizza Express?
- A. I would rather not say.
- Q. Well, unfortunately, you must answer the questions asked in this deposition. So, why did you leave Pizza Express?
- A. I was fired.
- Q. Why were you fired?
- A. My driving record.
- Q. What about your driving record?

A. I was arrested for driving under the influence, and so they no longer wanted me on the job.

Q. When did that happen?

A. I was arrested in December 2004. I am scheduled for trial in April 2006.

Q. Do you know what the possible punishment is for that offense?

A. I believe it is a felony since it is my second DUI arrest. The maximum sentence is five years in prison, but I don't think I will get that much time.

Q. Do you have any other felony convictions?

A. Yes.

Q. How many?

A. One.

Q. What is that for?

A. Also for driving under the influence.

Q. When was that conviction?

A. June 2003. I served one year and one day before my release.

Q. Do you have any other convictions?

A. No.

Q. Turning to October 8, 2004, do you recall that day?

- A. Yes.
- Q. Why do you recall that day?
- A. That is the day that the accident occurred with Rebecca McGee.
- Q. How did you come to be driving on Waters Avenue that day?
- A. I drove that way every day. I had class until 2:50 p.m., and then my shift at Pizza Express started at 3:30 p.m. Waters Avenue is the quickest way to get from school to work.
- Q. How long did the trip from school to work usually take?
- A. It is about 15 miles. With traffic, it usually takes 35 minutes.
- Q. As you were traveling on Waters Avenue that day, did you notice anything unusual?
- A. Yes. The bus was on the wrong side of the road.
- Q. What do you mean?
- A. Every day, as I get to the intersection of Wilsky Road and Waters Avenue, there is a school bus waiting on Wilsky Road to turn left onto Waters Avenue. The bus turns left and lets two girls out. I usually end up having to stop behind the bus while they get out. On this day, however, as I was approaching Wilsky, I saw the bus turn right and let the girls off on the wrong side of the road.
- Q. What did you see next?
- A. The bus had its red lights on and the stop sign out, but I did not have to stop because the road has a median. Both girls got to the median and stopped. I thought they were going to wait for the traffic to clear, but as I got closer, the older girl just ran out into the road. I tried to stop, but I couldn't and I hit her.

- Q. Why couldn't you stop?
- A. She just darted out in front of me. I know the speed limit is 45 miles per hour along there, and I was going around the speed limit - maybe a little less because I am used to having to stop for the bus. I tried to stop, but there was just no time.
- Q. Did you try to change lanes to avoid hitting her?
- A. I couldn't. There were cars on either side of me.
- Q. Did you tell Detective Jackson about the other cars?
- A. I don't remember.
- Q. If there were cars on either side of you, why were you the only one that hit Rebecca McGee?
- A. I don't know. I can't explain that.
- Q. What did you do after the accident?
- A. I was really shaken. I knew she was injured very badly. The other girl, who I think is her sister, was screaming and crying. I just got out of my car and sat on the side of the road.
- Q. Did you notice anything else about the bus?
- A. Well, the driver did not look like the regular driver.
- Q. What do you mean?
- A. Well, I had stopped behind this bus every day for two and a half months before the accident. I do not know who the regular driver is, but I know it was not the person who was driving that day.
- Q. Is there anything that you could have done to prevent the accident?


- A. No. She just ran out in front of me. I had no time to stop.
- Q. Is there anything anyone else could have done to prevent the accident?
- A. It would not have happened if the bus driver had followed the regular route. I don't know why the bus driver would have let the girls out on the wrong side of the road where they had to cross six lanes of traffic. That was just wrong.
- Q. Do you believe that the girl is at fault?
- A. Maybe, but I don't know. I am not sure how old she was, but she seemed old enough to know to look before crossing the street.
- Q. Were you using your cell phone at the time of the accident?
- A. No. I had hung up before the accident happened.
- Q. Who were you talking to before the accident?
- A. I had called my boss at Pizza Express to tell him that I was on my way.
- Q. Why did you do that?
- A. Because I was running a few minutes late and I wanted him to know that I would be there shortly.
- Q. Mr. Dalton, I'm showing you what has been marked for identification as Exhibit F. Do you recognize this?
- A. Yes. It appears to be page 5 of my cell phone bill for the month of October 2004.
- Q. How do you recognize this?
- A. Well, I have my cell phone service through Lone Star Wireless and this bill has my cell phone number at the top.

Q. Do you have any reason to believe that this is not a true and correct copy of your cell phone bill for that month?


A. No.

Q. Mr. Dalton, what is the telephone number for Pizza Express?

A. It is 555-520-1046.


Dana Dalton

Sworn to and subscribed before me this
11th day of October, 2005.


Notary Public

DEPOSITION OF CHRIS ALLMAN

- Q. Please state your name for the record.
- A. Chris Allman.
- Q. What is your current address?
- A. 425 North Oak Tree Loop in Armadillo, Dallas County, State of Lone Star.
- Q. Are you currently employed?
- A. Yes, with the Dallas County School Board.
- Q. What do you do for the Dallas County School Board.
- A. I am a physical education instructor.
- Q. How long have you held that position?
- A. Three years.
- Q. What did you do before that?
- A. I played football for NFL Europe for two years.
- Q. And prior to that?
- A. I was a student at Lone Star State University.
- Q. Did you graduate from Lone Star State before playing professional football?
- A. No, but I have since gone back and I am taking some classes to try to finish my degree.
- Q. How did you come to be driving a school bus on October 8, 2004?

- A. After my last class of the day, I was called to the principal's office. The principal, Mr. Burchill, told me that they had had several bus driver's call in sick that day. He wanted to know if I would be willing to drive a bus route that afternoon.
- Q. Did you agree to do that?
- A. Yes.
- Q. Was this something that had happened before?
- A. Not to me, but I had heard about it from other teachers.
- Q. What had you heard?
- A. I had heard that the School Board paid such low wages to the bus drivers that they were always having problems with keeping drivers on. I had heard that teachers - and particularly new teachers who did not have a regular class - were often asked to drive buses.
- Q. Were you surprised that you were asked to drive a bus?
- A. A little. You have to have a special driver's license - a chauffeur's license - to drive the bus legally and I did not have that. When I was hired, one of the questions they asked was whether I had this type of license, and I told them I did not. So I was a little surprised when they asked.
- Q. Why did you agree to do it if you did not have the right license?
- A. Mr. Burchill had made it clear to me earlier in the year that he thought that I was not pulling my weight at the school because I only taught PE and I did not have my degree. I thought this was a way that I could show him that I was a team player. I also figured that it was only one route on one afternoon, so I should be okay without the right license.
- Q. Did Mr. Burchill ask you to drive a particular route?

- A. Yes, he told me that he wanted me to drive route 7.
- Q. Did you know what that route was?
- A. No, but Mr. Burchill told me to find Ms. Jones and that she would give me the route.
- Q. Who is Ms. Jones?
- A. Ms. Jones is a bus driver who has been with the School Board forever. According to Mr. Burchill, she would be able to draw me a map of the route.
- Q. Did you find Ms. Jones after school?
- A. Yes, I did.
- Q. Mr. Allman, I'm showing you what has been marked as Exhibit E for identification. Do you recognize this?
- A. Yes, I do.
- Q. What is this?
- A. This is the map of route 7 that Ms. Jones drew for me when I found her after school that day.
- Q. Is this map in the same or substantially the same condition as it was on October 8, 2004?
- A. Yes.
- Q. Is this the route that you followed on October 8, 2004?
- A. Yes, it is.
- Q. Mr. Allman, I'm showing you what has been marked as Exhibit D for identification. Do you recall ever seeing this before?

A. No.

Q. Do you know what this is?

A. It looks like a map of bus route 7, but it is different from the route given to me by Ms. Jones.

Q. Do you know if the School Board prints up maps like this for its bus routes?

A. I don't know. I have only driven the bus that one day.

Q. Turning to the drive itself, how did you have a bus to drive if the other driver had not shown up?

A. Some of the buses are left at school during the day for use during field trips. Mr. Burchill had told me to use one of those buses and had given me the key.

Q. How did the drive go that day?

A. It was fine. The kids were rowdy and noisy, but they are like that during my classes too so that did not bother me.

Q. Did you have any trouble following the map?

A. No.

Q. What did you do when you got to the corner of Waters Avenue and Wilsky Road?

A. The map showed the stop being at that intersection. I could not tell where I was supposed to stop. The older girl on the bus told me that I could just let them out anywhere. I did not want to, but the map was not clear where to go, so I decided to turn right so that the traffic would have to stop behind me for three of the lanes. I thought that would be the safest since they could wait in the median for the traffic coming the other way to clear.

Q. Did you have any other reason for turning right rather than left?

- A. Well, I had missed lunch, so I thought after I dropped the girls off I would grab something at the Sonic restaurant that is right there on Waters Avenue. But I would not have done that if I thought that they could not safely cross the street.
- Q. So you turned right off of Wilsky Road onto Waters Avenue. Then what?
- A. I stopped the bus and put on the flashers and put out the stop signs. The girls got off the bus and crossed and went to the median. I thought they would wait there for the traffic to clear, but the older girl just started across. It was as if she thought that the traffic coming the other way would stop for her.
- Q. Then what happened?
- A. There was a black SUV that was driving in the center lane. It looked to me like it was speeding, and I thought the driver was on a cell phone. I had the side window open and I yelled to the girl to stop, but she walked out into the path of the SUV.
- Q. Could you tell if the SUV should have had time to stop?
- A. It looked to me that it should have had time to stop if the driver was paying attention. Also, there was no traffic in the other lanes, so the driver should have been able to swerve. But the driver did not do either and just hit the little girl.
- Q. What did you do at that point?
- A. I could not believe what I had just seen. I got out of the bus and went to see if I could help the little girl. I tried to make her comfortable, but she was unconscious. I just could not believe that this had happened.
- Q. Were you given a ticket for the accident?
- A. I was given a ticket for driving a school bus without a chauffeur's license. I was not given any other citations.
- Q. Did the School Board discipline you in any way?

- A. **Yes. After the accident, Mr. Burchill called me in and yelled at me for not following the published route. I told him that I had followed the route that I was given by Ms. Jones, but he would not listen to me.**
- Q. **What day did that happen?**
- A. **I'm not sure. It was a day or so after the accident.**
- Q. **Did you ever try to see whether you had followed the correct route?**
- A. **Yes, I wanted to clear my name. I knew that the School Board had the bus routes published on its website so that parents could check the routes. But when I went to the website and checked the link, it was no longer active.**
- Q. **What day did you check the website?**
- A. **I think it was two days after the accident - so maybe October 10.**
- Q. **Do you know if Mr. Burchill had spoken with Ms. Jones before he called you in?**
- A. **He told me that he had. He told me that Ms. Jones denied that she had drawn a map for me and that she told him that she had given me a copy of the published route.**
- Q. **Did you ever speak with Ms. Jones about the different route?**
- A. **No. She had a heart attack on October 11, 2004, and she died without regaining consciousness. So I never was able to speak with her about the map.**
- Q. **Have you ever spoken with the McGees?**
- A. **I called, but Mr. McGee hung up on me. Since then, I was told by the School Board not to try to talk to them about what happened.**
- Q. **Do you know whether anyone else from the School Board has tried to contact the McGees?**

A. I know that the School Board has insurance on its buses, and I know that the insurance company offered to pay the McGees the policy limit. But I don't know about anything else.

Q. How do you know that the insurance company offered to pay the McGees?

A. The adjuster from the insurance company interviewed me about what had happened. At the end of the interview, the adjuster said that they intended to make an offer of the policy limits. Later, I got a copy of a letter from the adjuster to the McGees making that offer.

Q. Mr. Allman, I'm showing you what has been marked for identification as Exhibit G. Do you recognize this?

A. Yes, this is a copy of the letter that I received from the insurance company.

Q. How do you recognize this?

A. Well, I have seen the letter before. Plus, you can see on the bottom where it was copied to me.

Q. Is this letter in the same or substantially the same condition as when you received it?

A. Yes, it is.

Q. Do you know whether that offer was accepted?

A. No, I have never heard anything else about it.

Q. Other than the ticket for the driver's license, have you ever had any other traffic tickets?

A. No.

Q. Have you ever been convicted of a felony?

A. Yes.

Q. How many times?

A. Once.

Q. What was that for?

A. Sale of cocaine.

Q. What sentence did you serve?

A. Because I had not had any other convictions, in lieu of a five year prison sentence I was given three years of community control and two years of probation.

Q. Have you completed that sentence?

A. Yes. I completed that sentence in 2002.

Q. In your opinion, was there anything that you could have done to avoid this accident?

A. Not really.


Q. Who do you think is at fault for the accident?

A. The driver of the SUV. The entire thing would never have happened if that driver had not been speeding and talking on a cell phone.



Chris Allman

Sworn to and subscribed before me this
12th day of October, 2005.


Louise Blackmer
Notary Public

DEPOSITION OF TERRY ESCOBAR

Q. Please state your name for the record.

A. My name is Terry Escobar.

Q. How are you employed?

A. I am a retired school teacher.

Q. How long were you a school teacher?

A. I was a teacher with the Dallas County public schools for 35 years.

Q. When did you retire?

A. I retired in May 2004.

Q. During the time that you were a teacher, were you actually employed by the Dallas County School Board?

A. Yes.

Q. Are you currently receiving retirement benefits from the Dallas County School Board?

A. Yes. I earned my pension during the 35 years that I worked for them.

Q. Turning to October 8, 2004, do you recall that day?

A. Yes, I do.

Q. Where were you at about 3:30 p.m. on that day?

A. I had picked my granddaughter up from school and we were going to run some errands. We were traveling eastbound on Waters Avenue from her school toward Target.

Q. Did you notice anything about the other traffic that day?

A. Yes, I had noticed that there was a black SUV that was driving very erratically.

Q. What do you mean by erratically?

A. Well, the driver had sped up at least twice to try to get through yellow lights. When the SUV had to stop for a red light, the driver was revving the engine and inching out before the light changed. I also noticed that the driver was weaving in and out of traffic.

Q. Did you notice anything else about what the driver was doing?

A. I noticed that the driver was on a cell phone for most of the drive.

Q. If this driver was driving this way, how did you keep up?

A. Well, the lights along Waters Avenue are timed so that you do not have to stop very often if you are driving the speed limit. If you are speeding, you will have to stop at all the lights because of how they are timed. This person was just racing between the lights and then having to stop at each one. Since I was going the speed limit, I would catch up at each light.

Q. Were you concerned about how the person was driving?

A. Yes.

Q. Did you see the accident itself?

A. Yes.

Q. What did you see happen?

A. I saw the school bus turn right onto Waters Avenue from Wilsky Road. Two girls got out and crossed the westbound lanes of the street to the median. The older one started to cross the eastbound lanes when she was hit by the black SUV.

Q. Did the black SUV try to avoid the accident?

A. I could see that the driver braked hard but hit the girl anyway.

Q. Was there anything else that the driver could have done?

A. Well, from what I could see, if the driver had not been speeding, the girl would have gotten across in front of the SUV. Also, there was no traffic on either side of the black SUV, so I don't know why the driver did not swerve to avoid the accident.

Q. Do you think the girl was at fault at all?

A. Oh no, the driver of the SUV was completely at fault. If the driver had not been speeding, the entire accident could have been avoided.

Q. Do you travel on Waters Avenue often at this time of day?

A. Not often, but sometimes.

Q. Do you know whether the bus was stopped where it was supposed to be?

A. I don't know. I thought it was unusual that the bus stop would be on the side of the road where the children would have to cross six lanes of traffic.

Q. Why did you think that was unusual?

A. Well, several years ago, a student was hit and killed after the bus let him off across the street from his house. The Dallas County School Board was sued, and I understood that, as part of the settlement of that case, the School Board had agreed to lay out its bus routes so that children would not have to cross major roads like Waters Avenue anymore. So I thought it was odd that these girls were having to cross six lanes of traffic.

Q. But you don't know whether the bus was stopped in the right place?

A. No, I don't.

Q. Did you stay and talk to the police after the accident?

A. No.

Q. Why not.

A. I had my granddaughter in the car, and I did not want her to see the injured child.

Q. Did you give your name to the police so they could contact you later?

A. No.

Q. Why not?

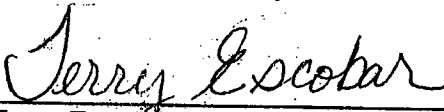
A. With the bus there, I really did not want to get involved. I thought the School Board would end up being involved, and I did not want to have to deal with that.

Q. Didn't you think it would be important to the School Board for the truth about the accident to come out?

A. I don't know. When the boy was killed several years ago, the School Board made things difficult for some of the witnesses. I did not want to be put in that position.


Q. Do you think the School Board has any responsibility for this accident.

A. No. The entire thing is the fault of the driver of the SUV. This never would have happened if he had been driving responsibly.



Terry Escobar

Sworn to and subscribed before me this
13th day of October, 2005.



Notary Public



Exhibit A

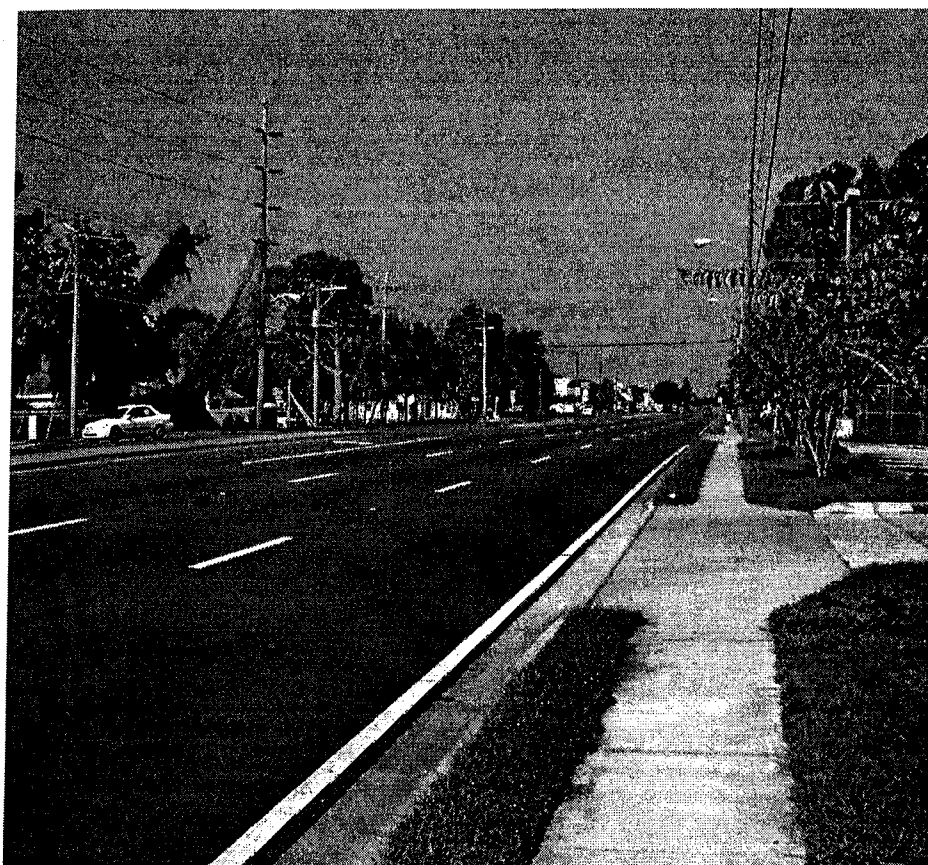
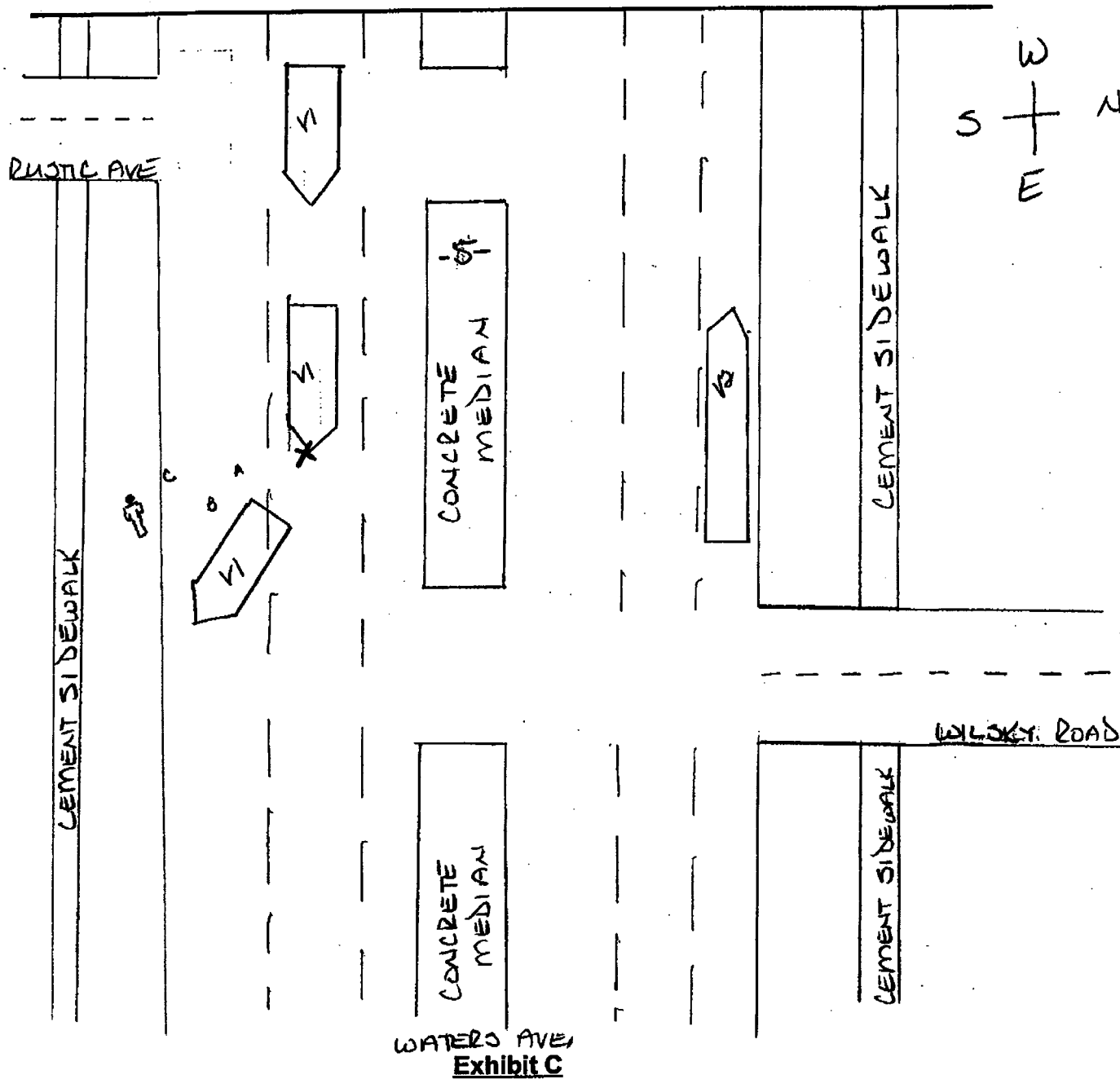
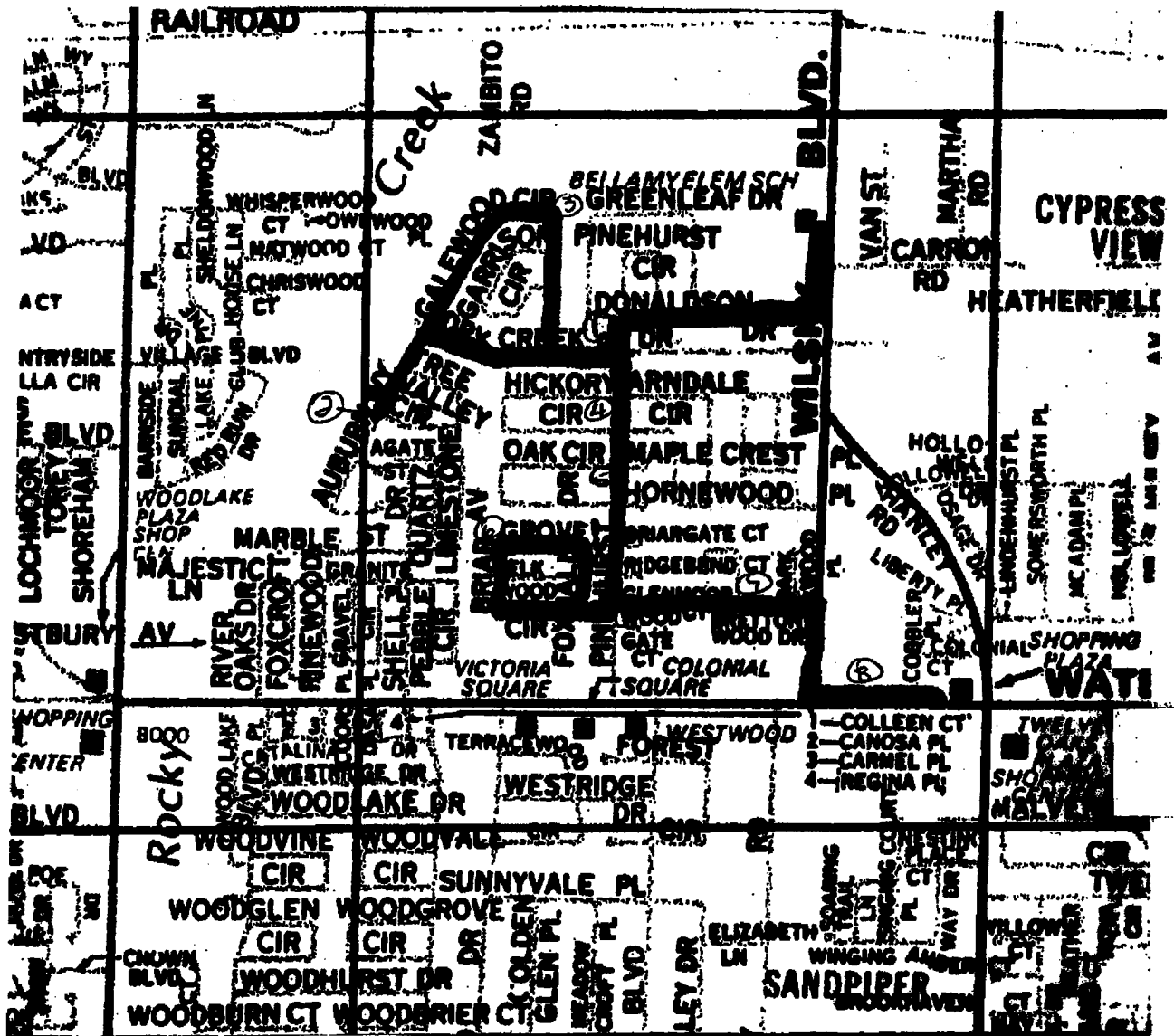


Exhibit B

RECONSTRUCTION DIAGRAM

TRAFFIC HOMICIDE INVESTIGATION
October 8, 2004 at approximately 3:35 p.m.
Waters Avenue approximately 45 feet west of
Hulsey Road, Armadillo, State of Lone Star
VICTIM: Rebecca McGee, WF - DOB 11/23/91
DIAGRAM BY: Detective Corsy Jackson #0425
CASE NO.: 04-10-33834





Bus Route 7

- Stop 1 corner of Donaldson Drive and Pinehurst Drive
- Stop 2 corner of Auburn Way and Tree Valley Circle
- Stop 3 90 degree curve on Galewood Circle before Garrison Circle
- Stop 4 corner of Hickory Circle and Pinehurst Drive
- Stop 5 corner of Oak Circle and Pinehurst Drive
- Stop 6 90 degree curve of Briar Grove Circle past Elkwood Drive
- Stop 7 corner of Glenwood Court and Ridgebend Court
- Stop 8 Waters Avenue east of Wilsky Road

Exhibit D

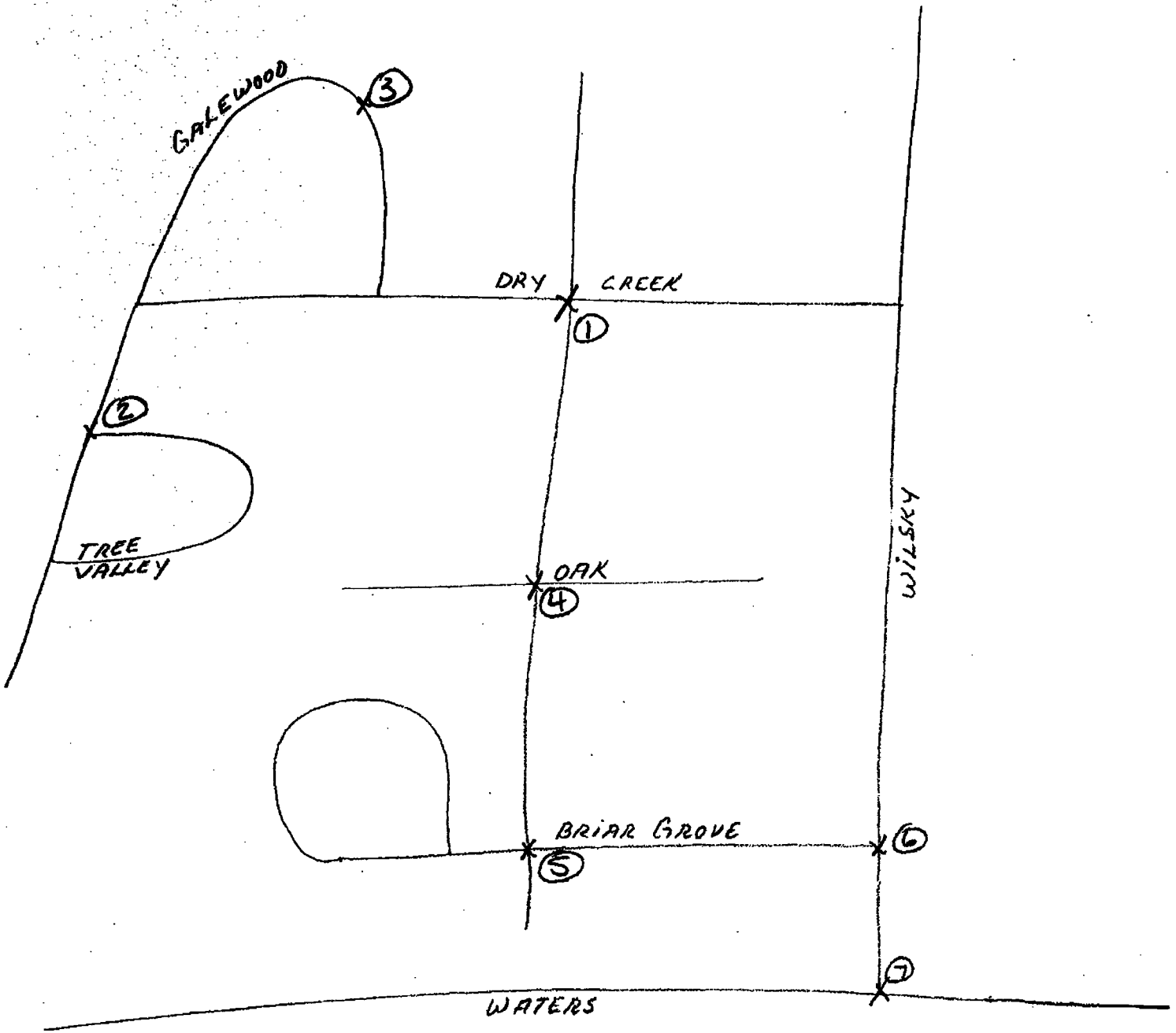


Exhibit E

Bill date November 1, 2004
 Account No: 919785178
 Cell No: 555-881-1758

Usage detail continued . . .
 In Your Home Area

Date	Time	Rate	Minutes	Orig	Phone Number	Dest	Usage Type	Airtime Charges	Other Charges	Total
10/05	08:55A	O	2	Armadillo	555-635-0308	Armadillo	A	Included	.00	.00
10/05	01:32P	P	1	Armadillo	555-623-1269	Armadillo	A	Included	.00	.00
10/05	11:48P	O	7	Armadillo	555-520-1046	Armadillo	A	Included	.00	.00
10/06	12:39P	P	3	Armadillo	555-410-7113	Armadillo	A	Included	.00	.00
10/07	04:04P	P	1	Armadillo	555-635-0308	Armadillo	C	Included	.00	.00
10/07	09:45P	O	33	Armadillo	999-772-7734	Dallas	A	Included	.75	.75
10/08	03:28P	P	5	Armadillo	555-520-1046	Armadillo	A	Included	.00	.00
10/08	03:54	P	3	Armadillo	555-520-1046	Armadillo	A	Included	.00	.00
10/08	08:12P	O	23	Armadillo	999-772-7734	Dallas	A	Included	.75	.75
10/09	05:21P	O	12	Armadillo	555-635-0308	Armadillo	A	Included	.00	.00

Exhibit F

LONE STAR STATE INSURANCE COMPANY
7911 Memorial Highway
Armadillo, Lone Star 74012

February 28, 2005

Ronald & Randi McGee
1435 W. Waters Avenue
Apt. 1602
Armadillo, Lone Star 74008

Re: McGee v. Dallas County School Board

Dear Mr. & Mrs. McGee:

Please let us again express our sympathy for the death of your daughter, Rebecca. We have completed our investigation into this matter and have determined that persons other than the School Board of Dallas County are responsible for your daughter's death. Therefore, we are unable to accept your demand for \$1,000,000.

However, in an effort to resolve this matter without litigation, we are willing to offer you the policy limits of the School Board's commercial automobile policy of \$300,000 in full and final settlement of all claims you and the Estate may have against the School Board. This offer is not an admission of liability, but rather is an effort to resolve this disputed matter short of litigation.

Once you have had a chance to review this offer, please feel free to contact me.

Sincerely,
Russ Brown
Russ Brown
Sr. Claims Representative

cc: Fred Leonard
Chris Allman

Exhibit G

PRELIMINARY JURY INSTRUCTIONS

You have now been sworn as the jury to try this case. This is a civil case involving a disputed claim or claims between the parties. Those claims and other matters will be explained to you later. By your verdict, you will decide the disputed issues of fact. I will decide the questions of law that arise during the trial, and before you retire to deliberate at the close of the trial, I will instruct you on the law that you are to follow and apply in reaching your verdict. It is your responsibility to determine the facts and to apply the law to those facts. Thus, the function of the jury and the function of the judge are well defined, and they do not overlap. This is one of the fundamental principles of our system of justice.

Before proceeding further, it will be helpful for you to understand how a trial is conducted. In a few moments, the attorneys for the parties will have an opportunity to make opening statements, in which they may explain to you the issues in the case and summarize the facts that they expect the evidence will show. Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. Documents and other exhibits also may be received as evidence.

After all the evidence has been received, the attorneys will again have the opportunity to address you and to make their final arguments. The statements that the attorneys now make and the arguments that they later make are not to be considered

by you either as evidence in the case or as your instruction on the law. Nevertheless, these statements and arguments are intended to help you properly understand the issues, the evidence, and the applicable law, so you should give them your close attention. Following the final arguments by the attorneys, I will instruct you on the law.

You should give careful attention to the testimony and other evidence as it is received and presented for your consideration, but you should not form or express any opinion about the case until you have received all the evidence, the arguments of the attorneys, and the instructions on the law from me. In other words, you should not form or express any opinion about the case until you retire to the jury room to consider your verdict.

The attorneys are trained in the rules of evidence and trial procedure, and it is their duty to make all objections they feel are proper. When a lawyer makes an objection, I will either overrule or sustain the objection. If I overrule an objection to a question, the witness will answer the question. If I sustain an objection, the witness will not answer, but you must not speculate on what might have happened or what the witness might have said had I permitted the witness to answer the question. You should not draw any inference from the question itself.

During the trial, it may be necessary for me to confer with the attorneys out of your hearing, talking about matters of law and other matters that require consideration

by me alone. It is impossible for me to predict when such a conference may be required or how long it will last. When such conferences occur, they will be conducted so as to consume as little of your time as necessary for a fair and orderly trial of the case.

At this time, the attorneys for the parties will have an opportunity to make their opening statements, in which they may explain to you the issues in this case and give you a summary of the facts they expect the evidence will show.

FINAL JURY INSTRUCTIONS

Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdict. It is your duty as jurors to decide the issues, and only those issues, that I submit for determination by your verdict. In reaching your verdict, you should consider and weigh the evidence, decide the disputed issues of fact, and apply the law on which I shall instruct you to the facts as you find them from the evidence.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received into evidence, and all facts that may be admitted or agreed to by the parties. In determining the facts, you may draw reasonable inferences from the evidence. You may make deductions and reach conclusions which reason and common sense lead you to draw from the facts shown by the evidence in this case, but you should not speculate on any matters outside the evidence.

In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in light of your own experience and common sense.

The issues for your determination on the negligence claim of the McGees against the School Board are whether the School Board was negligent by having Chris Allman operate a school bus on or about October 8, 2004, and, if so, whether such negligence was a legal cause of the loss, injury, or damage suffered by the McGees and/or the Estate of Rebecca McGee.

"Negligence" is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under like circumstances. Negligence may consist either of doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.

Negligence is a legal cause of loss, injury, or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, injury, or damage so that it can reasonably be said that but for the negligence the loss, injury, or damage would not have occurred.

If the greater weight of the evidence does not support the claim of the McGees and/or the Estate, then your verdict should be for the School Board. "Greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in this case. However, if the greater weight of the evidence supports either the McGees' individual claims or the Estate's claim, then you should consider the defenses raised by the School Board.

The School Board has raised a defense in this case which permits you, the jury, to determine whether persons who are not parties to this lawsuit may have also contributed to the injuries of the McGees and/or the Estate. If you find that Dana Dalton was negligent in his operation of his motor vehicle and that this negligence caused or contributed to the McGees' injury and/or the Estate's injury, you should determine what percentage of the total fault is chargeable to Dana Dalton.

If you find that Rebecca McGee was negligent in her decision to cross the street and that this negligence caused or contributed to the McGees' injury and/or the

Estate's injury, you should determine what percentage of the total fault is chargeable to Rebecca McGee. In determining whether Rebecca McGee was negligent, you must consider whether she exercised reasonable care for her own safety. Reasonable care on the part of a child is that degree of care which a reasonably careful child of the same age, mental capacity, intelligence, training and experience would use under like circumstances.

At this point in the trial, you, as jurors, are deciding only if the School Board was negligent, if Dana Dalton was negligent, and if Rebecca McGee was negligent. You will first return a verdict on that issue. If you find that the School Board was at fault to any degree, at that time, you will hear additional argument from the attorneys and you will hear additional witnesses testify concerning damages.

Your verdict must be based on the evidence that has been received and the law on which I have instructed you. In reaching your verdict, you are not to be swayed from the performance of your duty by prejudice, sympathy, or any other sentiment for or against any party.

When you retire to the jury room, you should select one of your members to act as foreperson, to preside over your deliberations, and to sign your verdict. Your verdict must be unanimous; that is, your verdict must be agreed to by each of you. You will be

given a verdict form, which I shall now read and explain to you.

(READ VERDICT FORM)

When you have agreed on your verdict, the foreperson, acting for the jury, should date and sign the verdict form and return it to the courtroom. You may now retire to consider your verdict.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR DALLAS COUNTY, STATE OF LONE STAR

CIVIL DIVISION

RONALD and RANDI McGEE,)
individually and as personal)
representatives of the Estate)
of REBECCA McGEE,)
)
Plaintiffs,)
)
v.)
)
SCHOOL BOARD OF DALLAS)
COUNTY,)
)
Defendant.)
_____)

Case No. 05-1511

VERDICT

We, the jury, return the following verdict:

1. Was there negligence on the part of the Dallas County School Board which was a legal cause of damage to Ronald McGee and Randi McGee individually?

YES _____

NO _____

2. Was there negligence on the part of the Dallas County School Board which was a legal cause of damage to the Estate of Rebecca McGee?

YES _____

NO _____

If your answers to questions 1 and 2 are NO, your verdict is for the Dallas County School Board, and you should not proceed further except to date and sign this verdict

form and return it to the courtroom. If your answer to either question 1 or 2 is YES, please answer questions 3, 4, 5 and 6.

3. Was there negligence on the part of Dana Dalton which was a legal cause of damage to Ronald McGee and Randi McGee?

YES _____

NO _____

4. Was there negligence on the part of Dana Dalton which was a legal cause of damage to the Estate of Rebecca McGee?

YES _____

NO _____

5. Was there negligence on the part of Rebecca McGee which was a legal cause of damage to Ronald McGee and Randi McGee?

YES _____

NO _____

6. Was there negligence on the part of Rebecca McGee which was a legal cause of damage to the Estate of Rebecca McGee?

YES _____

NO _____

If your answers to questions 3, 4, 5, and 6 are NO, you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to either question 3, 4, 5, or 6 is YES, please answer question 7.

7. Please state the percentage of fault, if any, which was the legal cause of Ronald and Randi McGee's injury and/or the Estate's injury that you charge to:

School Board of Dallas County _____ %

Dana Dalton _____ %

Rebecca McGee _____ %

The total of the three percentages must equal 100%.

SO SAY WE ALL this _____ day of _____, 2006.

Foreperson