

Tyler Morning Telegraph

SATURDAY, APRIL 5, 2003

Bus Company Settles Over Tragic Wreck

HOUSTON (AP) — The company that operated a Metropolitan Transit Authority bus involved in a 2001 wreck that caused a 9-year-old girl to burn to death in front of her family has agreed to a \$10 million settlement, her parents' attorney said Friday, adding that such a sum might not be possible if proposed tort reform measures are implemented.

In a settlement reached Thursday and scheduled to be ratified in state District Judge Sherolyn Wood's court next Tuesday, Cincinnati-based First Transit will pay the money to Roland Rodriguez and Manika Guerrero Vega, parents of Jennifer Marie Rodriguez.

Jennifer Rodriguez was riding in the high-occupancy lane of U.S. Highway 290 in her father's sport-utility vehicle with sister J'Net Ann and brother Roland on May 7, 2001, when a Metro bus slammed into them from behind after traffic slowed, said the family's attorney, Richard Mithoff.

The father and the two siblings escaped from the burning vehicle, but Jennifer was trapped. A witness said she heard the girl screaming as she burned to death, with her family watching helplessly.

"This has been a traumatic situation for the entire Rodriguez family," Mithoff said. "They are devastated."

Mithoff, who did not sue Metro, said First Transit was compelled to settle because extensive discovery revealed evidence of deficient training and screening procedures that allowed driver Clifford Wayne Kidd behind the wheel when he had been fired from another job for rolling a truck.

"There are excellent training manuals that call for drivers to check off each section and indicate that they have taken a test," Mithoff said. "There was no documentation he ever received that training. There needs to be some fail-safe mechanism in place to make sure drivers actually received the training."

Kidd, 32, was suspended from driving buses but retained as a First Transit employee, Mithoff said. Neither Metro nor First Transit immediately returned telephone messages left Thursday morning, and Kidd did not have a telephone listing.

"Mr. Kidd provided false answers on his employment application," Mithoff said. "The ... manager responsible for training Kidd at First Transit was deficient in her job and was later fired. By then it was too late."

Mithoff commended Metro for implementing improved safety measures and called upon First Transit to do the same as part of its five-year, \$169 million contract to manage one of Metro's six bus garages.

"We have not received any assurance that it's been done," said Mithoff, who added that he insisted terms of the settlement not be kept secret or sealed from the public.

Mithoff also noted that his investigation costs on the case alone exceeded \$300,000 and that if a proposed \$250,000 cap on "non-economic damages" is approved by the Legislature and by Texas voters in an amendment election, his probe — and the settlement it produced — might never have happened.

However, Citizens Against Lawsuit Abuse executive director Jon Opelt said "reckless or

malicious" behavior would continue to be eligible for uncapped punitive damages, and that Jennifer's funeral expenses and potential earnings up to \$1.7 million could be awarded in "economic damages."

"Generally, a punitive award is going to have some rational relationship to an economic award," said Opelt, head of the Houston-based organization. "Usually anything more than a four-to-one ratio requires some mean or stupid conduct on behalf of the perpetrator."

Under Opelt's reasoning, if current tort reform measures became law the Rodriguez family might have been eligible to something close to the settlement amount had a jury found First Transit reckless, determined Jennifer's future earnings around \$1.7 million, then quadrupled that to further punish the company.

Mithoff warned that over-restricting jury awards will allow companies not only get off lightly when they or their employees do wrong, it will provide no incentive to repair chronic internal problems that may cause future injuries or deaths.

"It encourages companies to resolve the matter without discussing what really happened," Mithoff said.