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From the December 15, 2003 North Carolina Lawyers Weekly.

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Verdicts & Settlements

Student Hurt In School Bus Crash Recovers \$2.4 Million

Negligence/Auto - High School Soccer Player - Head Injuries In Bus Crash On School Trip - Driver Fell Asleep - Sued Tour Operator, Driver, Board - \$2.4 Million Settlement

Brief statement of claim: Plaintiffs in this case were a female high school student and her parents. The student was a runner and soccer player, and she enjoyed playing the flute. The defendants were the county school board; AMA Tours, a bus company; and Darryl Britt, the owner and operator of a bus hired to take the school band and accompanying vocalists on a three-day tour to compete in Orlando and to visit Disney World.

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Defendant school board was the employer of a teacher and band leader who organized the Orlando trip. The cost of the trip was borne by the

students and their families. The band leader hired Defendant AMA to provide two busses for the trip. Defendant AMA made the Defendant school board's approved list by maintaining the required liability insurance for interstate busing. Defendant AMA, however, had only one bus available for the trip to Orlando, and so it hired Defendant Britt and his bus to carry some of the students and teachers. Britt and AMA Tours signed a contract which termed Britt a "subcontractor", and Defendant AMA asserted that Britt was an independent contractor.

Before hiring Defendant Britt, Defendant AMA failed to determine if Britt was on the school board's list. He was not. Defendant AMA also failed to check Defendant Britt's logbook to determine whether he met the rest requirements for drivers. In fact, by the time the trip started, Defendant Britt was almost over his permitted hours, and early in the trip, Britt was no longer legally permitted to drive. Finally, AMA Tours never checked Britt's bus to see if it had a current safety inspection sticker or insurance. It had neither. Just three days before the trip, Defendant Britt had the brakes inspected and was told they needed major work. Much of the bus's braking capacity was gone due to mechanical problems and wear, making it illegal to operate the bus. When Britt told the owner of the brake repair shop that he would have to run a few more trips before he had the money to pay for the repairs, the owner told him, "I wouldn't drive it across the

street."

As many school trips do, this one left at midnight. At the first rest stop on the trip, both the band leader and the AMA Tours driver of the other bus (who was the lead driver for the trip and controlled where and when to stop) learned that Britt was so tired he had fallen asleep, slumped over the wheel of his bus. They also learned that worried students bought coffee for the driver and urged the school board employees to offer it to Britt. When he was offered the coffee, Britt declined. Though the employees of Defendants AMA and school board admitted they had the power to stop the trip if a driver was too tired to driver, neither did.

Not surprisingly, Defendant Britt ran his bus off the road to the left and into the median barrier on 1-95, and then he overcorrected back to the right and into the highway, rolling the bus onto its left side. The parties argued over the cause. Britt claimed that another vehicle's aggressive driving caused the crash, and he maintained that he lost control in an avoidance maneuver. The plaintiffs' evidence showed that the crash was proximately caused by Britt's fatigue, his defective brakes, or a combination of both.

Principal injuries (in order of severity): The minor plaintiff was asleep against a left-side window when the bus hit the guard rail and rolled onto its side. Her side of the bus slid against the road as other children from the opposite side of the bus landed on top of her. The windows broke out and the abrasion of the road against her body left her with an open degloving injury to her right head and face; an open depressed skull fracture of the right temporal bone; a secondary friction injury of the left elbow; a right traumatic arthrotomy secondary to grinding mechanism; a patellar fracture extending to the medial femoral condyle; open degloving/crush injury to the left forearm; segmental loss of the left ulnar nerve; segmental loss of the left volar compartment; grinding wounds to the heads of the fourth and fifth metacarpals, lacerations of the left arm and a grinding injury to the right dorsal hand. Luckily, her mental functioning, hearing and vision sustained no damage.

Plaintiff has had multiple operative procedures and will have a few more plastic surgery procedures in the future. The reconstruction of the side of her face has been remarkably successful and her facial injuries are only apparent when her hair is pulled back. Though she can walk well and ride a bicycle, she cannot and will not be able to run due to her knee injury. She also cannot play the flute well due to lack of function in the last two fingers of her right hand.

Special damages: n/a

Tried or settled: Settled

County where tried or settled: Cumberland

Case name and number: *Hernandez-Adams v. Darryl Britt, AMA Tours, and Cumberland County school board*

Date concluded: August 2003

Name of judge: Knox Jenkins

Amount: \$2.4 million

Insurance carrier: Westport Insurance; Graphic Arts; Utica

Expert witnesses and areas of expertise: n/a

Attorney for plaintiff: Don Beskind, Don Strickland and Jay Trehy of Twiggs, Beskind, Strickland & Rabenau, P.A., Raleigh

Other useful info: The school board contracted with Graphic Arts and Utica to provide a total of \$5 million in "per occurrence" liability coverage. AMA Tours contracted with Westport Insurance to provide the requisite \$5 million in "per occurrence" liability coverage required for interstate busing companies. Britt had no insurance. In a federal declaratory judgment action before the Hon. W. Earl Britt, Westport asked the court to determine the rights of the parties under the various insurance contracts. In addition to Graphic Arts and Utica, the many bus crash claimants were named in this suit.

Westport's policy itself does not provide coverage for Britt or his bus. Under federal law, the policy does, however, include an MCS-90B endorsement for the interstate bus transportation. Federal regulations require that Westport provide \$5 million in "public liability" insurance to persons who obtain judgments against AMA Tours arising out of interstate bus transportation. This federally mandated insurance is not provided to indemnify AMA Tours for liability arising out of the buses listed by the policy, but exists to protect the public. Federal regulations operate to exclude a student bus trip from public liability insurance upon a showing that the bus trip was organized, sponsored and paid for by the school board. Undeniably, the trip was paid for by the students and families and by their fund-raising efforts. Therefore, the plaintiffs argued, there would be public liability coverage under the MCS-90B busing endorsement for any judgment establishing the liability of AMA Tours by proving Britt's agency of negligent hiring.

The plaintiffs and Graphic Arts/Utica fought this declaratory judgment action on the grounds that it was premature and non-justiciable. The plaintiffs alternatively argued that the bus crash claimants were entitled to a declaratory judgment and that there existed coverages totaling \$10 million. The declaratory judgment action was made more complicated by additional issues related to primary and excess coverages for the Westport and Utica/Graphic Arts policies. Motions to dismiss and cross- summary judgment motions were submitted to Judge Britt.

In the underlying state court actions, mediation failed to achieve a global settlement of the numerous lawsuits stemming from the bus crash. Shortly before trial of the plaintiffs' case, and before Judge Britt ruled, the plaintiffs obtained a settlement with all defendants and their insurers totaling \$2.4 million.

Submitted by: Nicole Hohman, Twiggs, Beskind, Strickland & Rabenau, P.A.

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