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Trial begins on illegal San Bernardino bus stop

Jury will decide damage award in case where 15-year-old was killed at illegal bus stop

By America Hernandez

Having been labeled "liars" by a San Bernardino County Superior Court judge, Chaffey Joint Union High School District officials found themselves in a precarious position entering Friday's oral arguments in the long-awaited personal injury suit over the death of a student.

E-mails proving the existence of an illegal school bus stop, which required students to cross five highway lanes, were turned over to plaintiff's counsel last week on a flash drive, buried in a file marked, "Litigation," which contained mostly attorney-client privileged correspondence. The flash drive also showed that district officials were actively discussing the victim's medical condition while he was hospitalized following the 2010 crash. *Jung v Chaffey et al*, CIVDS1112258 (San. Bern. Super. Ct., filed Oct. 24, 2011)

"In my 36 years of practice and 25 years on the bench, at least 10 of which have been involved in long cause civil or direct calendar civil, I have not come as close to looking at somebody, a witness, and saying, 'You're an absolute liar and you have withheld [evidence],' San Bernardino County Superior Court Judge Brian S. McCarville told school district officials at the sanctions hearing. McCarville found that the school district had hidden damning evidence for four years and imposed sanctions on the school district, finding them liable on several key points as undisputed fact.

The only issues left for a jury to decide are the damage award, along with what percentage of fault, if any, is attributable to the victim or the driver who struck him.

15-year-old Jin Ouk Burnham was struck and killed in 2010 when legally crossing five lanes of highway using an unmarked crosswalk and without a crossing guard or traffic signals.

The school district had previously denied the bus stop's existence, and refused to acknowledge or authenticate documents referring to the stop obtained by plaintiff's counsel from an old version of the school website.

After witness depositions revealed that the district instructed officials to routinely destroy documents at the end of every school year, McCarville ordered a 402 hearing to consider the testimony of school district employees and subsequently found them incredible, court documents show.

The judge's order states as undisputed fact that the school district created an illegal bus stop without seeking the approval from the district superintendent and the California Highway Patrol, and that it created a dangerous condition of public property which was a substantial factor in causing Burnham's death.

McCarville also found that the district had been on actual notice of the dangerous condition for many months and failed to protect against it, which would not have cost any money, and that the school district hid all evidence in the hopes of avoiding responsibility and liability in the case.

"For 4½ years we've been ridiculed," said plaintiff's attorney Rahul Ravipudi, partner at Panish, Shea & Boyle LLP, at the sanctions hearing. "The brief filed in the Court of Appeal [by the school district] accused me of violating professional rules of conduct for putting false things in my pleadings [when in fact they] withheld everything and then called us all liars; called my client a liar."

Christopher M. Sheedy of Callendo Pucket Sheedy LLP in Glendale, representing defendant Imelda Hughes, who struck and killed the teenage boy as he crossed the highway, said he was particularly repulsed by the district employees' emails discussing the health of the boy after the crash.

"This one sentence email from Ms. [Sue] Churchill, who was in charge of the safety of these children and was certainly on notice, [wrote] 'Not sure if you heard, but the boy that was hit last week is not expected to make it,'" Sheedy said in court. "To me, that is such a cold and calculated statement to make to another employee who is charged with transportation, and to me it's indicative of what the mindset was of this organization."

The school district is represented by Stephen M. Harber of McCune & Harber, LLP.

Attorneys were unable to comment Monday, per the judge's orders.

Plaintiff's case-in-chief continues Tuesday.

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