



## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

**Location**  
402 Senate Office Building

**Mailing Address**  
404 South Monroe Street  
Tallahassee, Florida 32399-1100  
(850) 487-5237

DATE	COMM	ACTION
4/22/09	SM	Fav/1 amendment
4/23/09	WPSC	Fav/CS

April 22, 2009

The Honorable Jeff Atwater  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **SB 58 (2009)** – Senator Ken Pruitt  
**HB 159 (2009)** – Representative Carl J. Domino  
Relief of Jorge and Debbie Garcia-Bengochea and  
their adoptive children, Brian, Matthew, and James

### SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$9.5 MILLION (IN PAYMENTS OF APPROXIMATELY \$950,000 A YEAR FOR TEN YEARS) FOR INJURIES AND DAMAGES SUSTAINED BY THREE BOYS AND THEIR ADOPTIVE PARENTS AS A RESULT OF THE NEGLIGENCE OF EMPLOYEES OF THE DEPARTMENT OF CHILDREN AND FAMILIES AND ITS PREDECESSOR AGENCY IN FAILING TO TREAT AND DISCLOSE HISTORIES OF ABUSE.

#### FINDINGS OF FACT:

#### **Claimants' Damages and Injuries**

Brian, Matthew, and James Garcia-Bengochea are ages 16, 15, and 14, respectively, and are a danger to themselves and others. They suffer from reactive attachment disorder, a severe mental illness characterized by the inability to develop normal human relationships and feelings, as described in the book High Risk: Children Without a Conscience, [K. Magid and C. McKelvey (Bantam ed. 1989)], which chronicles the making of Charles Manson, Ted Bundy and other psychopaths. They also suffer from post-traumatic stress syndrome and oppositional defiance disorder. Their primary diagnosis results from their failure as infants to bond with or trust any caregivers, most importantly their mother;

from multiple foster care placements that began when Brian was 2 years and 9 months, Matthew was 1 year and 9 months, and James was a month old; and from being subjected to extreme cruelty, physical and sexual abuse by their mother, her boyfriends/husband, perhaps a grandfather, and some of their many foster parents. According to the expert psychiatrist hired by DCF, they are also at significantly greater risk for substance abuse and predatory sexual behavior.

In 1998, when they were 6, 5, and 3 years old, respectively, Brian, Matthew, and James were adopted by Debbie and Jorge Garcia-Bengochea. Sexual abuse warnings were minimized by caseworkers, information that should have been provided to prospective parents was withheld from the files of the predecessor agency to the Department of Children and Families (DCF), and the Garcia-Bengocheas were assured that the boys had been safe since they came under state protection. Information that would reasonably cause one to suspect severe past trauma to the boys was withheld, as was appropriate assistance and treatment. The Garcia-Bengocheas kept the boys in their home trying to keep them from harming themselves and others, and to keep them from going back to the foster care or to the juvenile justice system for almost 10 years, until DCF accepted some responsibility and arranged for the Agency for Health Care Administration (AHCA) to negotiate Medicaid reimbursement contracts for appropriate psychiatric inpatient placements. By that time, the adoptive parents described their relationship as being that of captors with prisoners-of-war.

The boys first came to the attention of the predecessor to DCF on November 8, 1994, because their biological mother sought refuge at a domestic abuse shelter from a man who was the father of Matthew and James, but not Brian. After 5 weeks in the shelter, the mother returned to live with her boyfriend despite a restraining order. The three boys were kept in a children's shelter due to concerns that their mother could not and would not protect them. The oldest, Brian, was found to be recovering from a broken arm and the cause was explained inconsistently by the mother and her boyfriend. A medical examination showed that Brian had anal tissue tearing. Matthew and James had bruises and also some indications of sexual abuse. All of the boys had severe impetigo, scabies, ring worm and malnutrition due to

a diet of sweets and junk food that had badly damaged Brian's teeth. In retrospect, a DCF expert agreed that conditions justified the termination of parental rights and placing the boys for adoption at that time.

The boys' history prior to DCF intervention is as follows: Brian was born on February 14, 1992, in California, and reported by his mother to have been conceived as a result of rape. At the time, his mother had been married once, but was living with a boyfriend. With his mother and her boyfriend, both of whom had histories of substance abuse, Brian lived in their car, trailers, and motels in Alabama, then in Georgia, where almost a year later Matthew was born on February 1, 1993. While they were living in Georgia, a neighbor reported to the Georgia Department of Human Resources that the parents were abusing and neglecting the boys. The family avoided scrutiny by Georgia officials when they moved back to the mother's home state of Florida. They eventually settled in Palm Beach County, where James was born on October 13, 1994. They lived in motels or with the mother's father who reportedly had sexually molested her when she was a child, as did her stepfather, and a family friend.

After State intervention, in December 1994, the mother and her boyfriend were referred for psychological evaluations. The mother was diagnosed as extremely troubled, damaged, and conflicted, of low average intelligence with an IQ of 86, and likely to "act out in some aggressive/sexual manner." The boyfriend, the biological father of Matthew and James, was found to be an angry, blunt, crude, bombastic liar with an antisocial personality disorder.

From November 1994 until February 1997, the boys were placed in the foster homes of Alix Reyna-Holley, and then Jimmy and Kim Shelton. During a supervised visit with their biological mother, in February 1996, the mother took James to the bathroom to change his diaper and digitally penetrated his anus, which was pink and swollen when he was returned to his foster parent who took him to the emergency room. A staff person with the Community Intervention and Research Center, who was assigned to observe the mother interacting with the boys wrote, in an April 1996 memorandum, that the case ". . . should be monitored closely by your most experienced caseworker because it has the potential to be a

'newspaper' article that would be detrimental to HRS [the predecessor agency, the Department of Health and Rehabilitative Services] and others concerned." The Sheltons expressed an interest in adopting the boys and an expert psychiatrist opined that the boys appeared to have had the ability to be connected and to form good relationships with the Sheltons at that time, but counseling and family reunification were the stated goals.

In March 1997, the boys were returned to their biological mother and her new "husband" (although the mother later commented that she was not sure that she was ever divorced from her first husband). This second "husband/boyfriend" was known to abuse alcohol and cocaine, and soon left or was thrown out by the mother. The mother, now alone with the boys, was required to have regular family counseling from the Center for Children in Crisis. Some reports indicate that Matthew suffered a broken arm during this time. In June 1997, according to conflicting reports, either the staff at the center saw bite marks and bruises on 2-year-old James' ear, neck, arm and back, or James' injuries were discovered when his brother, Brian, then 5 years old, telephoned 911 to report the abuse. Their mother admitted that she "lost it" and bit James and hit him with her shoe. She was arrested and charged with aggravated child abuse and, in August 1997, her parental rights were terminated.

From June until August 1997, Brian, Matthew, and James were back in the children's shelter. In August 1997, Brian was returned to the Sheltons for foster care, while Matthew and James at ages 4 and almost 3, respectively, were placed in the foster home of Luis and Nancy Garcia. The Garcias made DCF aware of their preference for infants who were not toddlers and made no secret of especially not wanting Matthew in discussions with DCF staff, sometimes in front of the boys. After one of the boys told a daycare worker what was happening at the Garcia's, DCF caseworkers confirmed on an unannounced visit that the Garcias disciplined the boys by locking them in a chicken coop in the backyard. The two were returned to the shelter in October 1997.

From December 1997 until March 1998, all three boys were in the foster home of Hector and Yolanda Rosa.

Caseworkers interviewed the Rosas in advance. They knew that Hector was an abused foster child, that he had abused his first wife, that Yolanda was his second wife, and that one of Yolanda's children was standing in a corner like a statue during their entirety of an approximately 2-hour meeting. Knowing the placement was "not great" but was the only foster home available for all three boys, the staff decided to place Brian, Matthew, and James with the Rosas. When a caseworker was returning James to the Rosa's home after taking him to a doctor's appointment, he grabbed her around the leg and screamed pleading with her not to make him go back to Hector's. The caseworker and the Court that had terminated their biological mother's parental rights began to increase pressure on superiors to make other arrangements or to find a suitable home for the boys to be adopted, and the boys left the Rosas in March 1998. (In December 1998, Hector Rosa was arrested for the sexual abuse of the next foster child placed in the Rosa home. Later, he also pled guilty to sexually abusing the three brothers. The abuse was virtually a nightly occurrence, during which he would use Brian to help him catch and hold the younger boys. Hector Rosa is now serving multiple life sentences for child sexual battery.)

When Debbie and Jorge Garcia-Bengochea considered adopting the boys, they were assured that Brian had been in therapy and had no memory of any incidents related to the 1994 medical test showing anal tearing when he was 2 years and 9 months old. A case summary signed by the Garcia-Bengocheas and dated February 25, 1998, and a Pre-Disposition Report that was listed as one of the documents provided to them indicated that there was "substantial evidence of neglect, physical abuse, and sexual abuse of the children." That statement, the Adoptive Child Registration forms for Matthew and James, and the psychological evaluations that also described them as victims of sexual abuse were explained to mean that, because their older brother had experienced sexual abuse, the other two had also received counseling. Most importantly, the Garcia-Bengocheas were assured that the boys had been safe in DCF custody since they were very young. The pre-adoption evaluations indicated that Brian and Matthew had moderate emotional needs, while James had mild emotional needs. During pre-adoption meetings, a caseworker commented that they were pleased that the Garcia-Bengocheas were

willing to take blond Caucasian boys, like Matthew and James (although Brian has dark hair), rather than preferring only children with darker hair like Mr. Garcia-Bengochea and the older son the couple had already adopted. The Garcia-Bengocheas were not given medical and psychological records for the birth parents, nor any reports that would contradict the assertion that the boys had been completely safe since they came into DCF custody.

The 11-year-old son who was already living in the home was adopted when he was 5, after his biological mother, a member of the church the Garcia-Bengocheas attended, died of cancer. Debbie Garcia-Bengochea was a teacher, who had also served as the principal, in a school for children who required personalized educational programs due to social or educational deficits. Jorge Garcia-Bengochea, who, as a young child emigrated from Cuba with his family to Central Florida, had an MBA and became the Director of Church Education for a large religious denomination. He was responsible for programs at approximately 25 churches in South Florida and Latin America. Because of her experience with children, the need to protect their first son, and because both parents worked around children, Mrs. Garcia-Bengochea explicitly ruled out adopting children with extreme problems, and insisted that their son would be the oldest of the siblings. She testified that she explicitly ruled out taking any children who were "sexualized," meaning those likely to act out as a result of sexual abuse.

After receiving the caseworker's assurances, the Garcia-Bengocheas and the boys first met in a public park, and then the boys came for a trial overnight visit. The three boys ate food ravenously with their hands, as if starving, and the couple noticed bruising and signs of malnourishment when they bathed them. The next day the boys cried and begged again, as James had done with the caseworker previously, not to be returned to Hector's, and they were allowed to remain in the Garcia-Bengocheas home pending adoption. DCF arranged for a lawyer to represent the Garcia-Bengocheas and to make the adoption permanent immediately after the expiration of the required 90-day waiting period.

After an apparent "honeymoon" period with their adoptive family that is typical and that roughly coincided with the 90

days, the boys began acting out sexually. They had an obsession with smearing their feces. They urinated inappropriately including in Mrs. Garcia-Bengochea's face while she was sleeping in a tent during a family camping trip. Mrs. Garcia-Bengochea caught the three boys having oral sex with each other, and consulted DCF about the behavior. A caseworker told the Garcia-Bengocheas that the situation was no longer DCF's problem and suggested that they take measures to separate the boys. The family bought a five-bedroom house, so that each boy could have a separate bedroom, and moved from their three-bedroom house that had been approved as a part of the pre-adoption home study. They installed an audible alarm system to alert them and identify which door or window was being opened.

In February 1999, upset by the squeaky sound of a bed being moved, James told Mrs. Garcia-Bengochea what Hector Rosa had done to them. Matthew responded with fear that Hector would come after them. Without knowing what James had said, Brian denied certain kinds of sexual acts with knowing specificity for a 7-year-old. The boys also reported evidence that Hector snorted cocaine. Although aware of the Garcia-Bengocheas' inquiries and requests for assistance because of the boys' behaviors, DCF employees failed to inform the parents about Hector Rosa's arrest or to investigate his past with the boys until after the parents reported what the boys had said to the DCF abuse hotline. In an effort to alleviate their fears, the boys were taken to witness Hector being sentenced to life and taken away in shackles. The youngest boy, James, later sought additional reassurance and asked his parents who would watch Hector while the guards were asleep.

As the boys grew, their behavior deteriorated and the threats and violence towards others, particularly towards Mrs. Garcia-Bengochea increased. Although they had been molested and abused by men and women, the boys, like others who suffer from reactive attachment disorder, continued to blame the mother who failed to protect and nurture them, and to transfer the hatred to any new mother-figure and to women, in general. They were expelled from day care, schools, a police academy, and a military school. Mrs. Garcia-Bengochea quit her job to stay home. Mr. Garcia-Bengochea was forced to leave his job after he had to report that Brian molested another child in Sunday

school, and after it became impossible for him to travel and leave his wife alone with the boys. Matches, knives, scissors, and poisons were not kept in the house, but the boys would run away and steal those items to bring home. The boys set fires including near the family's kittens; they destroyed furniture and made holes in the wall to create places to hoard and hide weapons that they stole, including knives and screwdrivers; they destroyed Mrs. Garcia-Bengochea's clothes by spraying each item in her closet with bleach on one occasion and by taking scissors to cut each item on another; they threw away her jewelry, cell phones, and laptops only to admit what they had done after the garbage had been hauled away; they wet the bathroom floors to cause falls; they tried to stab their parents; while she tried to restrain him when he was in a rage as part of the "holding" therapy, Matthew broke Mrs. Garcia-Bengochea's jaw; Matthew also poisoned his adoptive mother with salmonella by putting blood from uncooked chicken meat in her drinks. Brian became obsessed with violent anti-women pornography, ran away, and was once found in a motel with a man he met on the Internet. The family stopped going out or having any house guests. As the boys grew stronger and more dangerous, the parents hired aides to help watch them, including a male aide to protect Mrs. Garcia-Bengochea at home and when she tried to drive with the boys in her car.

Brian once took every thumb tack out of posters on his wall and lined the floor in the doorway to his room with thumb tacks turned up, then called to his older brother who ran barefoot into the room. At age 11, Brian was hospitalized under the Baker Act at a South Florida children's psychiatric facility after he placed a knife to his throat threatening suicide. Another time, he apparently found a cleaning liquid to drink. He sometimes spoke to his brothers in a deep voice that sounded like Hector's. Unfamiliar with severe attachment disorders, the South Florida facility misdiagnosed and heavily drugged Brian for bipolar disorder, and the medications, that affect the part of the brain that causes Parkinson's disease, caused Brian to have now significantly noticeable tics, movements akin to those from Tourette's syndrome.

In January 2001, a retiring DCF administrator arranged for the family, at State expense, to receive 2 weeks of intensive therapy at the Evergreen Psychotherapy Center Attachment



Treatment and Training Institute in Colorado (Evergreen), and for their two caseworkers to accompany them, as required by Evergreen. At the request of Evergreen, complete records of the multiple placements, abuse histories, and psychological profiles of their biological mother and the biological father of Matthew and James were provided to the staff. The same caseworker who had assured the family that the boys were not "extreme" cases, called the facility saying that the complete records were sent by mistake and were not to be shown to the parents. On the advice of various experts, the parents tried holding therapy to force bonding, power sitting or yoga for relaxation and body control, and equine therapy, eventually moving to a farm in Loxahatchee, then to a miniature horse farm in Central Florida.

The actions of the two older boys, Brian and Matthew, ultimately led to their involvement in the juvenile justice system after the parents took their counselor's advice and began to report the behavior to law enforcement authorities. With DCF's help and the AHCA Medicaid arrangements, Brian and Matthew were sent to reactive attachment disorder residential treatment programs in Illinois and Utah. Realizing that he too was also about to be sent away to a mental health facility in New Mexico, the youngest boy, James, ran away and stole rat poison from a neighboring horse farm and mixed it in with horse and cat food. Sometime after James left, Mrs. Garcia-Bengochea fed the animals the tainted feed and returned home to find her pasture littered with the bodies of dead horses and the dead cats inside the house.

### **Claimant's Current Living Situation**

Last year, the three boys were placed in residential treatment programs in Utah, Illinois, and New Mexico at Medicaid expense. The three programs require parental participation in therapy sessions, including approximately five to ten hours a week by telephone, two trips to Utah for sessions with Brian, four trips to Illinois for therapy with Matthew, and four trips to New Mexico for therapy with James, to locate and move James to a different facility after Medicaid refused to continue to pay for the first institution. The Garcia-Bengocheas summarized, in part, what has happened with each child during the past year as follows:

**Brian** - At Oxbow Academy in Utah, Brian eventually started receiving treatment from the Clinical Director because his issues were so severe. Brian spoke to his Florida probation officer about doing some work around Oxbow Academy in order to pay his \$1,500 restitution resulting from his breaking and entering arrest in West Palm Beach. Brian is currently playing league football, horseback riding, earning A's and B's in school, actively participating in group and individual therapy, and is engaged during our weekly family phone therapy. According to Heather Green, Brian's therapist, these initial signs of progress are promising but Brian still has a long way to go.

**Matthew** - Progress has been slow and steady for Matthew. He is learning to express himself using his words. Matthew still becomes easily agitated with his peers and tries to negotiate the rules. He often instigates others to cause problems and get them in trouble claiming he had nothing to do with it. Matthew appears to be working hard in therapy and is starting to recognize his issues and articulate his struggles. Matthew's grades in school have improved dramatically, receiving all A's and B's. Matthew is pleasant during phone calls and enjoyable to be around for parent visits, although he still tends to be superficial and nervous during these times. Matthew enjoys football, basketball, fishing, reading, chess, and shop. He has enjoyed learning about Mark Twain and the Mississippi River. Peers have nominated Matthew to be a Student Representative in the Student Council. He was surprised and pleased with his nomination. Matthew volunteers in the library and helps select books for the school to purchase. Fall and winter appear to be Matthew's favorite time of year as the leaves change and the snow falls. Upon Matthew's arrival, he put on approximately twenty pounds, but still remains tall and slender. He says, "The food here is

great, almost as good as home.” Matthew is glad to be at Chaddock working on the issues that are preventing him from having normal relationships and a better life. Like Brian, he talks about going to college one day.

**James** - Of the three boys, James has progressed the least over the past several months. This is mainly due to the lack of continuity of James' treatment. After only four months of residential treatment at Villa Santa Maria in New Mexico, Florida Medicaid stated that it could no longer fund this program and would require James to be transferred as soon as possible. James was transported from Cedar Crest, New Mexico to Enterprise, Utah. James is about to successfully complete Redcliff Ascent in Utah, and began treatment at Discovery Academy, also in Utah. James is having a difficult time taking responsibility for his actions. The Clinical Director at the Discovery Academy will personally provide therapy because of the severity of James' issues. James is highly intelligent and should thrive at Discovery Academy, since there is a strong emphasis on academics and individual therapy. James has started to write letters home expressing some appreciation for his family. The staff and Clinical Director at Discovery Academy are confident of James' success at their program.

### **Compensation Estimates**

The total estimated economic damages for Brian are \$11,828,217.00; for Matthew, \$10,889,488.00; for James, \$14,800,990.00; or a total ranging from \$34 to \$46 million for the three boys. Mrs. Garcia-Bengochea's damages are estimated at \$899,237.00 (not including her past medical expenses) and Mr. Garcia-Bengochea's are \$562,237.00 (not including his past medical expenses), or a total of over \$1.4 million.

### **LITIGATION HISTORY:**

In 2001, the Garcia-Bengocheas hired an attorney to demand release of the boys' entire DCF records. They filed suit, in 2002, for negligence and wrongful adoption based on

misrepresentations and concealment. The case was contested until mediation in July and September 2007, when the parties reached a settlement agreement that was approved by the Circuit Court of Palm Beach County on November 30, 2007. Under the terms of the \$10 million settlement, the parents have received \$100,000 each which they have used to get the boys into the residential programs and continue to use to travel to attend family therapy sessions. The state's expert witness agreed in deposition that he was unaware of any program in Florida that offers treatment for severe reactive attachment disorder.

The state has also paid a \$100,000 into each of the three boys' special needs trust managed by the Lilliquist Firm in Miami. Initially, Allen E. Rossin of West Palm Beach, the attorney ad litem, recommended that the remaining \$9.5 million be divided so that each boy would receive \$3.1 million and the parents would receive the balance of \$350,000 each, after the total compensation is reduced by the proportionate share of costs, and attorneys' and lobbyists' fees. Now, given the parents' sacrifices, loss of full-time employment due to the time commitments to participate in therapy with the three boys, and traveling expenses, the attorney ad litem revised his recommendation and proposes the following allocation: \$2,666,666 to each of the three boys, and \$1,000,000 to each parent. Each year for 10 years, through a continuing appropriation, each parent will receive \$90,000; and each child's special needs trust will receive \$256,666.

CLAIMANTS' AND DCF'S POSITION:

In 2008, the parents expressed their gratitude to the new administration, especially to DCF Secretary Butterworth who testified on their behalf at the special masters' hearing, and submitted a letter of support dated February 28, 2008. Current DCF Secretary Sheldon also supports this claim bill.

OTHER ISSUES:

The claim bill should be amended to provide for the allocation of funds among the claimants.

CONCLUSIONS OF LAW:

As the Department concedes, there is competent and substantial evidence to conclude that DCF and/or its predecessor failed to protect Brian, Matthew, and James Garcia-Bengochea 1) when it returned them to their biological mother rather than terminating her parental rights earlier; 2) when it placed them and left them in foster care

homes of the Garcias and the Rosas knowing the placements were inappropriate; 3) when it failed to advise the adoptive parents of the complete history of the boys' pre-adoption that continued post-adoption until they hired an attorney in 2001; and 4) when it failed to provide adequate assistance with therapies and/or placements in adequate mental health facilities for almost 10 years.

LEGISLATIVE HISTORY:

This is the second year that a claim bill has been filed on behalf of the claimants.

ATTORNEYS' FEES AND LOBBYISTS' FEES:

Attorneys' fees are limited to 25 percent as required by s. 768.28(8), Florida Statutes. Costs are \$234,772.67, after five years of preparation for trial with the assistance of the limited number of experts on reactive attachment disorder. The contract for lobbyists' fees are provided for an additional 6 percent of the final claim bill; however, the attorney's affidavit agrees to abide by the provisions of section 3 of the bill, requiring that lobbyists' fees are included in the 25 percent allocated to both attorneys and lobbyists.

RECOMMENDATIONS:

For the reasons set forth in this report, I recommend that Senate Bill 58 (2008) be reported FAVORABLY, as amended.

Respectfully submitted,

Eleanor M. Hunter  
Senate Special Master

cc: Senator Ken Pruitt  
Philip Twogood, Secretary of the Senate  
Counsel of Record

**CS by Policy and Steering Committee on Ways and Means on April 23, 2009:**

The CS:

- Appropriates \$950,000 each year for 10 years from the Federal Grants Trust Fund within the Department of Children and Family Services. Each annual appropriation is distributed \$90,000 to each parent and \$256,666 to each child.
- Limits the amount of each annual payment that may be used to pay attorneys' fees, lobbying fees, and other costs to no more than 25%.
- Provides that each child will be eligible for services by the Department as if the child were eligible to receive foster care-related services.