



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
01/27/12	SM	Unfavorable

January 27, 2012

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 1076 (2012)** – Senator Audrey Gibson
Relief of Anais Cruz Peinado by the School Board of Miami-Dade
County

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM FOR \$1,175,000 IN LOCAL FUNDS FOR THE RELIEF OF ANAIS CRUZ PEINADO, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JUAN CARLOS RIVERA. THE CLAIM IS BASED ON A COURT-APPROVED SETTLEMENT. JUAN CARLOS RIVERA DIED AFTER HE WAS STABBED BY ANOTHER STUDENT WHILE ATTENDING SCHOOL.

FINDINGS OF FACT:

Juan Carlos Rivera was born in Cuba in 1992, and raised in Havana. When he was approaching the age of 16, which is the age for mandatory enlistment in the Cuban National Service, he left Cuba to live with his father in Spain. After a year in Spain, he moved to Miami, Florida.

Once he arrived in Miami, he was enrolled at Coral Gables High School, and began school in the Fall of 2009. On September 15, 2009, Juan Carlos was walking down a hallway, in the process of changing classes, when he encountered a fellow student named Andy Rodriguez, and a fist fight ensued. The fist fight started in the hallway (known as the "700 Hallway"), but within seconds, turned a corner and spilled out into a courtyard. Once in the courtyard, Andy Rodriguez pulled out a knife and stabbed Juan Carlos five

times. First Responders reported that Juan Carlos, just before dying, insisted that he was a victim in the incident, and that he had acted in self defense. He was 17 years old when he died.

The high school has security cameras throughout the premises, has hall monitors for almost all hallways and areas, and asks teachers to monitor change overs by standing in the doorway of their classrooms as students move from class to class. The school also has a School Police Officer present at the school every day. The 700 hallway, where the fight began, did not have a security camera. This particular hallway did not have any hall monitors or teachers monitoring the hallway while students changed classes because no classrooms were located in that hallway. In the courtyard, however, which is where Juan Carlos was stabbed, there were security cameras that did capture the incident. On the day of the stabbing, the School Police Officer assigned to the school was not present because he was on administrative leave.

Andy Rodriguez had been suspended from school seven times in three years, with a few of those suspensions resulting from fighting. He had never been found to carry a weapon to school. The school had no knowledge of arguments or tension between Juan Carlos and Andy Rodriguez, as Juan Carlos was a new student at Coral Gables High School. Andy Rodriguez was found guilty of second degree murder and was sentenced to 40 years in prison.

LITIGATION HISTORY:

A Complaint and Request for Jury Trial was filed in the 11th Judicial Circuit for Miami-Dade County on behalf of Juan Carlos's estate on April 25, 2010. The parties settled the case prior to going to trial, for \$1,875,000.

Following the approval of the settlement agreement by the circuit court, the Miami-Dade County School Board tendered \$200,000 to Claimant. The insurance carrier for the Miami-Dade County School Board tendered \$500,000 to Claimant. Twenty-five percent of the amount paid was deducted for attorney's fees and costs.

CLAIMANT'S POSITION:

The Miami-Dade County School Board has an absolute duty to keep its students safe based on the doctrine of *in loco parentis*. The School Board is liable for negligently securing Coral Gables High School, which caused Juan Carlos Rivera's death. It was foreseeable that Andy Rodriguez would act violently, and that a fight could break out which would include weapons. The School Board was negligent for (1) failing to have security monitors in the "700 Hallway"; (2) failing to monitor the security cameras; (3) failing to place hall monitors in the 700 hallway; and (4) failing to install metal detectors or conduct random wandering of students.

RESPONDENT'S POSITION:

The Miami-Dade County School Board does not admit liability in this case, and does not support or object to the passage of this claim bill.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether the Miami-Dade County School Board was liable in negligence for the death of Juan Carlos Rivera, and, if so, whether the amount of the claim is reasonable.

Proximate cause is a cause which, in natural and continuous sequence, is unbroken by any intervening cause, produces the injury, and without which the injury would not have occurred. A willful, malicious, or criminal act as a general rule breaks the chain of causation, because of a lack of foreseeability. See Lingefelt v. Hanner, 125 So. 2d 325 (Fla. 3d DCA 1960). The School Board had taken reasonable measures to secure the school grounds at Coral Gables High School. It was not foreseeable that Andy Rodriguez would bring a weapon to school, that he would get into a fist fight with Juan Carlos, or that he would pull out a knife and kill him.

The failure of the School Board to install metal detectors, or install more security cameras, cannot be a basis for a finding of negligence. The legislative decision of a governmental entity to not appropriate funds to build, expand or modernize a facility is immune from liability for negligence. Trianon Park Condominium Ass'n v. City of Hialeah, 468 So. 2d 912 (Fla. 1985). Furthermore, had there been a security camera in the 700 hallway, it merely would have recorded the fight, not prevented it.

The payment of a claim bill is an act of legislative grace. In deciding whether this claim should be paid, the Senate should consider the fact that the legal liability of the School Board was not proven. The criminal act committed by Andy Rodriguez was not foreseeable, and it was an independent intervening cause of Juan Carlos's death. In addition, the estate has already received \$700,000 in compensation for Juan Carlos's tragic death.

LEGISLATIVE HISTORY:

This is the first claim bill presented to the Senate in this matter.

ATTORNEYS FEES:

The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), Florida Statutes. No lobbyist fees will be paid.

SOURCE OF FUNDS:

If Senate Bill 1076 is approved, the Miami-Dade County School Board will pay the amount from its General Revenue Fund.

RECOMMENDATIONS:

For the reasons set forth above, Senate Bill 1076 (2012) should be reported UNFAVORABLY.

Respectfully submitted,

Jessica Enciso Varn
Senate Special Master

cc: Senator Audrey Gibson
Debbie Brown, Secretary of the Senate
Counsel of Record