



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
03/27/19	SM	Report Submitted
04/01/19	JU	Fav/CS
04/10/19	GO	Fav/CS
	RC	

March 27, 2019

The Honorable Bill Galvano
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/CS/SB 200** – Governmental Oversight and Accountability
Committee; Judiciary Committee and Senator Cruz
HB 6515 – Representative Fernandez-Barquin
Relief of Estate of Herminio Padilla, Jr., by the City of West Palm Beach
and Others

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED, SETTLED CLAIM FOR \$100,000 FROM THE CITY OF WEST PALM BEACH, PALM BEACH COUNTY, THE CITY OF LAKE WORTH, THE CITY OF RIVIERA BEACH, AND THE TOWN OF PALM BEACH TO THE ESTATE OF MR. HERMINIO PADILLA, JR., AS A RESULT OF HIS WRONGFUL DEATH.

FINDINGS OF FACT:

On January 17, 2015, shortly after midnight, Mr. Herminio Padilla, Jr., 48, was at work at the East Central Regional Water Reclamation Facility. As he was walking on a catwalk above a sewage basin, the grate on which Mr. Padilla was standing fell out of the catwalk causing Mr. Padilla to fall into the basin and drown.

The City of West Palm Beach conducted an internal audit of the facility in February 2014, which revealed shortcomings, including management issues.¹

¹ City of West Palm Beach Internal Auditor, Investigative Audit of East Central Regional Water Reclamation Facility Report (Feb. 21, 2014), 10 – 11.

In October 2014, the facility hired Brown and Caldwell to conduct a walk-through of the facility and provide a report. The report noted that many of the grates and guardrails were severely corroded and in need of immediate replacement or repair.²

An employee stated he had told management about a number of issues, including unfit grating that was in need of replacement. He said he had previously made a statement to others at the facility that “it was not if[,] but when[,] they pull a rotting corpse out that maybe things would change.”³

After Mr. Padilla’s death, the City hired WJE Engineers to investigate why the grate collapsed. The engineers and the West Palm Beach Police reported similar findings. Namely, that the grate only had two fasteners on the south side (none on the north, east, or west edges) and seemed to have slipped toward the south edge and off of the north edge.⁴ Mr. Padilla and the grate fell through and into the basin below. There was no net or safety mechanism in place to catch someone who may fall from the catwalks above the basins.

The City of West Palm Beach holds the title to, owns, and operates, the facility. West Palm Beach confirmed that Mr. Padilla. was an employee and the city owned, operated and maintained the facility.

All five respondents share usage of the facility pursuant to an interlocal agreement. The settlement divides payment of the claim bill award by each respondent’s usage percentage at the time they entered into the interlocal agreement in 1991. Payment would be divided as follows:

- West Palm Beach – \$54,091.00
- Palm Beach County – \$22,727.00⁵
- City of Lake Worth – \$11,363.50
- City of Riviera Beach – \$7,273.00
- Town of Palm Beach – \$4,545.50

² Brown and Caldwell Report, (Dec. 17, 2014).

³ Patrick Tranchese, (Jan. 18, 2015).

⁴ See WJE Engineers Report (Feb. 17, 2015), 4; West Palm Beach Police Department Report (Jan. 30, 2015).

⁵ Parties agree there was a scrivener’s error in the settlement where Palm Beach County’s percentage of the \$100,000 claim was listed as \$22,272.00 when it should be \$22,727.00. The bill should be amended to reflect the same.

Mr. Padilla was divorced and left three adult sons. His family received \$7,500 in funeral expenses from workers' compensation, \$80,000 from a \$40,000 double indemnity life insurance policy Mr. Padilla had through his employer, and another \$5,000 from an accidental death policy.

POSITIONS OF RESPONDENTS:

All five respondents support this claim bill and did not contest the claim at the special master hearing.

The City of West Palm Beach concedes that it owns, operates, and maintains the facility and confirmed that Mr. Padilla was an employee working within the scope of his employment when the accident occurred. The City has also commemorated a bench and named a road at the plant in memory of Mr. Padilla.

The other respondents did not contest the bill or give an argument at the hearing. However, had litigation continued, respondents had arguments denying the allegations and liability. They also would have argued that they did not own or operate the facility and therefore did not owe a duty of care. If found to be owners or operators, they were prepared to argue that they were entitled to workers' compensation immunity and did not have notice of dangerous conditions. The suit was settled in mediation.

These arguments, in accordance with the settlement agreement not to oppose the bill, were not presented at the claim bill hearing.

CONCLUSIONS OF LAW:

A *de novo* hearing was held as the Legislature is not bound by settlements or jury verdicts when considering a claim bill, passage of which is an act of legislative grace.

Generally, the underlying tortious cause of action in a claim bill is a negligence claim for which sovereign immunity is waived up to caps identified in section 768.28(5), Florida Statutes. However, in this particular matter, the claimant was an employee of the City of West Palm Beach. Workers' compensation is an exclusive remedy⁶ unless one of the

⁶ See section 440.11(1), Florida Statutes, which provides that "[t]he liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability, including vicarious liability, of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death" except as provided in certain situations.

egregious statutory exceptions is demonstrated by an employee working in furtherance of the employer.⁷

A narrow exception to workers' compensation immunity is provided when the claimant can demonstrate that an intentional tort, as defined by the statute, was committed. The exception relevant to the analysis of this claim bill requires the claimant to demonstrate that an intentional tort causing injury or death was committed.⁸

The statute defines "intentional tort" for the purpose of identifying exceptions to workers' compensation immunity. The relevant definition of "intentional tort" in this matter, which under the statute must be demonstrated by clear and convincing evidence, requires that the:

- (1) employer engaged in conduct the employer knew, based on prior similar accidents or explicit warnings specifically identifying a known danger, was virtually certain to result in injury or death to the employee, and
- (2) employee was not aware of the risk because the danger was not apparent, and
- (3) employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising informed judgment about whether to perform the work.⁹

Regarding the intentional tort exception to workers' compensation immunity, the Florida Supreme Court has applied the standard of "substantial certainty."¹⁰ The Court provided that "[u]nder an objective test for the substantial certainty standard, an analysis of the circumstances in a case would be required to determine whether a reasonable person would understand that the employer's conduct was 'substantially certain' to result in injury or death to the employee."¹¹ Concealment of a danger is not necessarily required, but rather a factor, in determining substantial certainty as a matter of law, and whether a plaintiff has

⁷ See *Ramsey v. Dewitt Excavating, Inc.*, 248 So.3d 1270, 1272 (Fla. 2018); *Bakerman v. The Bombay Co., Inc.*, 961 So.2d 259, 261 – 261 (Fla. 2007) (stating, in reference to the comprehensive Florida Workers' Compensation scheme in Chapter 440, that "employers that comply with the provisions of the chapter are given immunity from civil suit by the employee, except in the most egregious circumstances").

⁸ Section 440.11(1)(b), Florida Statutes.

⁹ *Id.*

¹⁰ See *Bakerman*, 961 So.2d at 262 (citing and quoting *Turner v. PCR, Inc.*, 754 So.2d 683 (Fla. 2000)).

¹¹ *Id.*

demonstrated substantial certainty would be a question for a jury.¹²

Although the elements of the intentional tort exception may be difficult to demonstrate by clear and convincing evidence, it is possible that a jury would have found for the claimant in this matter.

Employer's Prior Knowledge of a Known Danger

The employer had prior knowledge of maintenance issues by way of employee complaints and at least two reports regarding the status of the facility. The reports identified grates that were not secure and noted the need for grates to be repaired or replaced immediately. The employer had to know that, especially without a safety net or safety mechanism below a catwalk over a basin, an employee could fall to their demise if grates were not secure.

Employee Unaware of the Risk

There is no indication in the record that Mr. Padilla had any prior knowledge of the maintenance concerns regarding the grating in the facility.

Concealment by Employer as to Prevent Informed Judgment of Employee about Whether to Perform the Work

The record does not indicate whether the employer made employees aware of the maintenance and safety concerns at the facility. There is no information suggesting that Mr. Padilla, himself, was ever aware of the risks of walking on the catwalk grating.

LITIGATION HISTORY:

Stephen P. Padilla filed suit against all five respondents for the wrongful death of his father while also asserting negligence claims with regard to the operation and maintenance of the facility.

On October of 2018, the case settled during mediation for \$300,000 and, as a condition of the settlement agreement, the respondents would not contest this \$100,000 claim bill.

IMPACT OF PAYMENT:

The respondents have all represented that they are able to pay their respective portions of the claim and encourage the passage of this claim bill. Respondents are self-insured and

¹² *Id.* at 263 – 265.

state that the amounts due fall within their self-insured retention.

ATTORNEY FEES:

The bill provides that attorney fees may not exceed 25 percent of the amount of the amount awarded.

RECOMMENDED
AMENDMENT:

Parties agree there was a scrivener's error in the settlement where Palm Beach County's percentage of the \$100,000 claim was listed as \$22,272.00 when it should be \$22,727.00. The bill should be amended to reflect the same.

The parties have also provided agreed upon language, which may also be considered as an amendment.

CONCLUSION:

Based upon the information provided by the claimant before and during the special master hearing, the undersigned finds that evidence exists for a jury to have found in favor of Mr. Stephen Padilla's claim, on behalf of the estate, against the City of West Palm Beach under an exception to workers' compensation immunity.

While there is a question as to liability of the other respondents, the undersigned did not have the benefit of hearing arguments from those parties due to the settlement agreement precluding them from opposing the bill.

All respondents have agreed to pay a percentage, as previously outlined, of the award in this claim bill and support its passage.

Respectfully submitted,

Christie M. Letarte
Senate Special Master

cc: Secretary of the Senate

CS/CS by Governmental Oversight and Accountability on April 10, 2019:

The committee substitute sets the maximum amounts paid from this claims bill for attorney fees at \$20,000; for lobbying fees at \$5,000; and for other costs at \$5,000.

CS by Judiciary:

The committee substitute changes Palm Beach County's payment to \$22,727 from \$22,272 in the underlying bill.