



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

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DATE	COMM	ACTION
03/27/19	SM	Report Submitted
04/01/19	JU	Fav/CS
04/09/19	GO	Favorable
	RC	

March 27, 2019

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

Re: **CS/SB 38** – Judiciary Committee and Senator Thurston
HB 6523 – Representative Rodriguez
Relief of Jane Doe by the School Board of Miami-Dade County

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR THE REMAINING SETTLEMENT AMOUNT OF \$1.3 MILLION FROM THE MIAMI-DADE COUNTY SCHOOL BOARD FOR THE RAPE AND ATTEMPTED MURDER OF JANE DOE, A TEACHER, BY A STUDENT.

FINDINGS OF FACT:

On September 19, 2014, Ms. Jane Doe, a teacher at South Dade Senior High School, stayed late to finish some work at the request of her supervisor. While she was working, a student returned to her classroom around 4:30 p.m. As the student began to close the blinds, Ms. Doe attempted to gather her belongings and leave the room. The student then physically attacked Ms. Doe while she tried to fight him off. He slammed Ms. Doe's head to the ground, choked her with his hands until she was unconscious, and then raped her. The student then put Ms. Doe's phone in the trash can, placed the condom he used into her purse, stole her keys, left her unconscious on the floor of her classroom, and stole her car.

When Ms. Doe regained consciousness, her clothing was removed from the lower half of her body and there were

clumps of hair and smears of blood on the floor of her classroom. Ms. Doe was able to find another employee who called emergency personnel.

Approximately five hours after the attack, the student was apprehended while driving Ms. Doe's vehicle. He confessed and was charged with attempted felony murder, sexual battery of a physically incapacitated victim, robbery, and grand theft.

Due to the effects of the attack, Ms. Doe was not able to testify in a criminal trial so the student entered a plea deal. On April 20, 2019, he was sentenced to 25 years in state prison.

In addition to physical injuries, Ms. Doe suffered psychological injuries including depression, post-traumatic stress disorder, gastrointestinal issues, fear of being alone and leaving the house, nightmares, anxiety, mood swings, suicidal thoughts, and panic attacks.

Background Information

At the special master hearing, and in voluminous documentation provided during the claim bill process and hearing, information related to Ms. Doe's teaching background and that student's behavioral history was submitted to the undersigned. The most relevant portions of the information are summarized below.

Ms. Jane Doe

In 2012, Ms. Doe earned a bachelor's degree in Exceptional Student Education. During the 2012 – 2013 school year, Ms. Doe was hired by the School Board of Miami Dade County to teach students who were deaf and hard of hearing, which is the area within which she studied and specialized.

During the 2013 – 2014 school year, while studying for a master's degree in speech and language, Ms. Doe was assigned to a middle school where she taught a class of nine students who were deaf and hearing impaired.

Ms. Doe did not have a contract for the 2014 – 2015 school year but was considered "surplus" and reassigned to South Dade Senior High School. Her new assignment began in August 2014 and she taught history, economics, and

government to high school students with emotional and behavioral disorders. Ms. Doe had no prior experience in any of these content areas, nor was she a behavioral management teacher or trained to teach students with emotional or behavioral disorders.

The student was assigned to Ms. Doe's 2014 – 2015 class. She was unaware of his prior history and she had not received self-defense training or attended security or crisis management training.

Ms. Doe was in her third year of teaching, was 4'11", and weighed 105 pounds.

The Student

The student was an individual with known, escalating emotional and behavioral concerns related to aggression, and defiance of authority figures.

In addition to incidents where the school district had direct knowledge, on June 26, 2013, 15 months before the attack on Ms. Doe, the student was arrested and charged with a second-degree felony under section 836.10, Florida Statutes (2013), for written threats to kill or do bodily injury. He never went to trial because, on May 12, 2014, a juvenile court found him incompetent to stand trial and determined he would not attain competency.

The student was 6'1" and weighed 200 pounds.

LITIGATION HISTORY:

Ms. Doe filed suit in May 2016 and subsequently settled the matter in early 2018 for \$3 million. Ms. Doe received \$1.7 million from insurance proceeds through Gallagher Bassett and United Educators Insurance and pursues the remaining \$1.3 million in this claim bill. As part of the settlement, the school board agreed not to oppose or support the claim bill.

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 school district and received workers' compensation.¹ Workers' compensation is an exclusive remedy² unless one of the egregious statutory exceptions is demonstrated by an employee working in furtherance of the employer.³

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.⁴

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.⁵

Regarding the intentional tort exception to workers' compensation immunity, the Florida Supreme Court has applied the standard of "substantial certainty."⁶ The Court

¹ Although not argued at the claim bill hearing, claimant submitted information that litigation would have included federal claims alleging violations of 42 U.S.C. §1983 and 20 U.S.C. §§1681 et seq. (Title IX). The settlement agreement forecloses any claims by claimant against the respondent with regard to this matter.

² 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.

³ 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").

⁴ Section 440.11(1)(b), Florida Statutes.

⁵ *Id.*

⁶ See *Bakerman*, 961 So.2d at 262 (citing and quoting *Turner v. PCR, Inc.*, 754 So.2d 683 (Fla. 2000)).

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.”⁷ 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 demonstrated substantial certainty would be a question for a jury.⁸

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 Ms. Doe in the present matter.

Employer’s Prior Knowledge of a Known Danger

The record shows that the school district knew of the student’s significant behavioral issues, including his violent tendencies and proceeded to assign Ms. Doe (whose experience was with deaf and hearing-impaired students) to a classroom of students with emotional and behavioral disorders – including the student who subsequently attacked Ms. Doe. A jury could find that the student’s escalating behavior and violent prior actions provided explicit warning to the employer of the danger he posed to others.

Employee Unaware of Risk

Ms. Doe was unaware of the student’s history of defiance, violence, and recent threat to kill or do bodily harm to another. She had just started in her new role in August and she was attacked by the student in September. Ms. Doe provides that she did not receive any warning regarding the student or his history. Additionally, she was not provided the requisite self-defense, safety, and crisis management training which may have also alerted her to the risks associated with her new role.

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

A jury may also have found that failure to warn Ms. Doe was concealment or misrepresentation of the risks associated

⁷ *Id.*

⁸ *Id.* at 263 – 265.

with her new assignment – especially because she had not yet received any training pertaining to her new job working with students who had emotional and behavioral disorders.

Given the information presented by the claimant, it is possible that a jury could have found that the school district's conduct was substantially certain to result in injury to Ms. Doe.

IMPACT OF PAYMENT:

The School Board of Miami-Dade County stated that funds for this claim bill would be paid by the school district from the general revenue fund "which funds all aspects" of the school district.

ATTORNEY FEES:

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

Claimant seeks the remaining \$1.3 million of a \$3 million settlement agreement with the respondent.

Outstanding costs total \$3,084.56.

CONCLUSION:

Based upon the information provided by the claimant before, during, and after the special master hearing, the undersigned finds that evidence exists for a jury to have found in favor of Ms. Doe's claim under an exception to workers' compensation immunity.

While it is also possible that a jury may have been able to find for the school district, the details and perspective of that argument is less clear as the school district (pursuant to the settlement agreement not to oppose or support the claim bill) did not present a case at the claim bill hearing.

Respectfully submitted,

Christie M. Letarte
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

Instead of a limit on the percentage of the proceeds of the claim bill that may be paid as attorney fees, the committee specifies dollar amounts that may be paid for attorney fees, lobbying fees, and costs and similar expenses.