



STORAGE NAME: h6515a.CJS

DATE: 3/26/2019

March 26, 2019

SPECIAL MASTER'S FINAL REPORT

The Honorable Jose R. Oliva
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: CS/HB 6515 - Representative Fernandez-Barquin
Relief/Estate of Herminio Padilla, Jr./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

THIS IS A \$100,000 SETTLED CLAIM, RELATING TO THE WRONGFUL DEATH OF HERMINIO PADILLA, JR., DUE TO THE NEGLIGENCE OF PALM BEACH COUNTY AND THE CITIES OF WEST PALM BEACH, PALM BEACH, RIVIERA BEACH, AND LAKE WORTH. THE COUNTY AND CITIES HAVE PAID A TOTAL OF \$300,000 PURSUANT TO S. 768.28, F.S.

FINDINGS OF FACT:

On January 17, 2015, Herminio Padilla, Jr., a 48-year-old city of West Palm Beach water reclamation facility employee, fell from an elevated catwalk while on the job. He sank into the sewage below and ultimately drowned.

Less than two months before the accident, on November 20, 2014, an engineering firm had inspected the water reclamation facility and noted several areas of concern, as follows:

- Corrosion of gratings and guardrails, requiring "immediate replacement or repair";
- Inadequate "fall protection," creating a safety issue needing "immediate attention";
- Poor access to compactors and drives, creating trip and head hazards;

- Uneven catwalk, creating a safety issue needing "immediate attention";
- Inadequate supports and guardrails, requiring "immediate attention"; and
- Other mechanical, structural, and safety issues.

Unfortunately, management at the water reclamation facility disregarded this engineering report. After the accident, several emails written by city of West Palm Beach employees documented the city's repeated failures to address safety issues posed by the dilapidated condition of the facility. One email documents an employee's efforts to bring the safety issues to the attention of management, to no avail. The email indicates the employee at one point alerted the city's risk manager as to safety issues, including the presence of unfit grating needing replacement. The employee states in the email that he had told the risk manager that perhaps the safety issues would be addressed "when they pull a rotting corpse out [at the facility]." There is also evidence indicating that when employees raised safety issues, they were met with hostility and verbal abuse.

The city of West Palm Beach conducted an investigation after the accident. A memorandum dated February 16, 2015, found that Mr. Padilla's fall was likely caused when a grating panel, under the weight of the grating and Mr. Padilla, slipped, causing Mr. Padilla and the panel to fall through an opening and into the sewage pool.

The record indicates that Mr. Padilla was a model employee, and there is no dispute that he died while in the scope of his employment. There is no evidence to suggest that he was doing anything improper when the accident occurred. Neither is there evidence to support suicide or foul play.

LITIGATION HISTORY:

On April 13, 2017, Stephen P. Padilla, as personal representative of the estate of Herminio Padilla, Jr. (Claimant), filed an action in circuit court under Florida's Wrongful Death Act.¹ The complaint named as defendants Palm Beach County, the Town of Palm Beach, and the cities of Lake Worth, Riviera Beach, and West Palm Beach (Respondents). On October 17, 2018, prior to trial, the case was successfully settled for a total of \$400,000. The Respondents divided the amount based on the amount of use by each of the water reclamation facility.

CLAIMANT'S POSITION:

Claimant argues that Respondents are responsible for Mr. Padilla's death, specifically for failing to repair a catwalk that the City of West Palm Beach knew was in disrepair.

RESPONDENT'S POSITION:

Respondents fully support the claim bill. Before the case was settled, the City of West Palm Beach argued that Claimant was

¹ Ss. 768.16, et. seq.

not entitled to any award outside the Workers' Compensation statute because there was no evidence the applicable standard for recovering outside the statute was met. Now that the case is settled, all five Respondents urge passage of the claim bill.

CONCLUSIONS OF LAW:

Regardless of whether there is a jury verdict or settlement, each claim bill is reviewed *de novo* in light of the elements of negligence.

Duty

Before the case settled, an issue arose as to whether all five of the Respondents bore responsibility for the death of Mr. Padilla. The city of West Palm Beach is the owner of the water reclamation facility and Mr. Padilla's employer. The other Respondents—one county and three other cities—ultimately were found liable because they send waste to the facility under agreement with the city of West Palm Beach.

Breach, Causation, and Damages

The facts of this case present an egregious breach of duty. The structure from which Mr. Padilla fell to his death was part of a facility known to be in poor condition, as evidenced by the engineering report, issued less than two months before the accident, which warned the city of West Palm Beach of structural failures.

The parties have divided the settlement amount based on the amount of use by each of the water reclamation facility. If the claim bill passes, the \$100,000 award will be divided as follows:

City of West Palm Beach	\$54,091.00
Palm Beach County	\$22,727.00
City of Lake Worth	\$11,363.50
City of Riviera Beach	\$7,273.00
Town of Palm Beach	\$4,545.50
TOTAL	\$100,000.00

Workers' Compensation Law Issue

The main legal issue in this case is not whether Respondent was negligent, but whether the claim would have been barred by chapter 440, F.S., relating to Workers' Compensation.

Chapter 440 provides the sole compensation for tort claims arising under Workers' Compensation. However, an employee can recover outside chapter 440 if he or she can prove, by clear and convincing evidence, that the employer "engaged in conduct that the employer knew, based on prior similar accidents or on explicit warnings specifically identifying a known danger, was virtually certain to result in injury or death to the employee, and the employee was not aware of the risk because the danger was not apparent and the employer deliberately concealed or misrepresented the danger so as to

prevent the employee from exercising informed judgment about whether to perform the work."²

In this case, Respondents breached a duty to Claimant, and that breach caused Claimant's death. What is not clear is whether, if the case had not settled, Claimant would have been able to show at trial, by clear and convincing evidence, the standard required by chapter 440.

I find that there is sufficient evidence in the record, had the case proceeded to trial, for a jury to find Respondent's conduct in failing to repair known hazards rose to the level of conduct required to recover outside the Workers' Compensation statute, as provided in s. 440.11(1)(b)2., F.S. Even if Claimant, in the absence of the settlement, were unable to prevail under s. 440.11(1)(b)2., the Legislature may decide to pass the claim bill as a matter of grace because of Respondents' failures that caused Mr. Padilla's death.

Alternatively, if the Legislature decides that Respondent's conduct did not rise to the standard required to recover outside the Workers' Compensation statute, the Legislature may decide not to pass this claim bill.

ATTORNEY'S/
LOBBYING FEES:

If the claim bill passes, the attorney fee will not exceed \$20,000, and the lobbying fee will not exceed \$5,000. Outstanding costs are \$5,000.

COLLATERAL SOURCES:

Claimant has received \$7,500 in death benefits from the Workers' Compensation carrier for the City of West Palm Beach. Claimant has also received \$5,000 from an accidental death insurance policy.

RESPONDENT'S ABILITY
TO PAY:

Each Respondent is self-insured, and none of the Respondents indicate that passage of the claim bill will significantly affect their operations.

LEGISLATIVE HISTORY:

This is the first session this claim has been presented to the Legislature.

RECOMMENDATION:

I recommend that Committee Substitute for House Bill 6515 be reported **FAVORABLY**.

² S. 440.11(1)(b)2., F.S.

Respectfully submitted,

JORDAN JONES

House Special Master

cc: Representative Fernandez-Barquin, House Sponsor
Senator Cruz, Senate Sponsor
Christie Letarte, Senate Special Master