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DATE: 2/5/2018

February 5, 2018

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: CS/HB 6523 - Representative Raburn
Relief/Ashraf Kamel & Marguerite Dimitri/Palm Beach County School Board

THIS IS A CLAIM FOR \$360,000 BASED ON A SETTLEMENT AGREEMENT BETWEEN ASHRAF KAMEL AND MARGUERITE DIMITRI, AS THE PARENTS OF JEAN PIERRE KAMEL, AND THE PALM BEACH COUNTY SCHOOL BOARD, RELATING TO THE WRONGFUL DEATH OF JEAN PIERRE KAMEL BECAUSE OF THE SCHOOL BOARD'S NEGLIGENCE. THE SCHOOL BOARD HAS PAID \$200,000 PURSUANT TO SECTION 768.28, F.S.

FINDINGS OF FACT:

This matter concerns the death of Jean Pierre Kamel, a middle school student. On Monday, January 27, 1997, Jean Pierre was standing on the sidewalk in front of Conniston Middle School in Palm Beach County, Florida, where he was a student. About 8:40 a.m., he was shot to death by Tronneal Mangum, a classmate.

The shooting allegedly occurred because of a dispute over Jean Pierre's expensive watch which had been obtained by Tronneal, and which Jean Pierre decided he wanted back. On the Thursday before the shooting, Tronneal kicked Jean Pierre in his prosthetic leg, and a teacher referred the matter to school administration. The assistant principal, in turn, met with both students. The matter was resolved when Tronneal agreed to

bring the watch to school on Monday and deliver it to a school administrator.

Earlier in the school year, Jean Pierre had asked his math teacher to move his seat away from Tronneal because they did not get along, and the math teacher had obliged. Jean Pierre told his math teacher on the Friday before the shooting that Tronneal was "after" Jean Pierre. The math teacher later testified that Jean Pierre had told her he had already spoken to an assistant principal about the matter and did not want to do so again, and that he did not seem scared or upset. The math teacher did not report the conversation to school administration.

When Jean Pierre was shot, he was standing in front of the school on a 9-foot-wide sidewalk. There was a dispute as to whether Jean Pierre was technically on school property when he was killed, with Respondent arguing that although it did own part of the sidewalk, the part closest to the street was owned by the city, not Respondent. However, evidence showed that students and school officials believed the entire sidewalk to be school property. The record indicates that Respondent exercised control over the entire sidewalk, with school officials patrolling the area during and before school hours, including the time of day when the shooting occurred.

As a result of the shooting, Tronneal Mangum was suspended from school, tried as an adult, and sentenced to life in prison.¹

LITIGATION HISTORY:

Jean Pierre's father, Ashraf Kamel, on his own behalf and as personal representative of the estate of Jean Pierre, filed a wrongful death suit against the Palm Beach County School Board in the Fifteenth Judicial Circuit.

In 2002, a jury returned a verdict for \$2,003,000 and found Respondent 80 percent responsible for Jean Pierre's death and Jean Pierre 20 percent responsible for his own death. The \$2,003,000 was broken down as \$3,000 for funeral expenses and \$1,000,000 for past and future pain and suffering for each parent. Tronneal Mangum, the shooter, was not included on the verdict form; thus, the jury had no opportunity to apportion any liability to him as the intentional tortfeasor.²

The court reduced the verdict to take into account Jean Pierre's portion of fault and entered a final judgment for \$1,602,400. Respondent appealed to the Fourth District Court of Appeal, arguing that the jury's award was inappropriate because the incident did not occur on school property and the shooting was unforeseeable. The appellate court affirmed the judgment in

¹ In 2016, Tronneal's life sentence was reduced to forty years' imprisonment as a result of *Miller v. Alabama*, 567 U.S. 460 (2012) (holding that the Eighth Amendment forbids a sentencing scheme for juvenile homicide offenders that requires life imprisonment without the possibility of parole), and s. 775.082(1)(b)1., F.S. (requiring at least a forty-year sentence).

² S. 768.81(4)(b), F.S. (1996); *Merrill Crossings Assocs. v. McDonald*, 705 So. 2d 560 (Fla. 1997).

favor of Claimants on February 12, 2003.³ Respondent has paid the sovereign immunity cap of \$200,000. In 2005, after the Special Master final hearing, Claimants and Respondent entered into a settlement agreement to resolve all outstanding claims for \$360,000.

CLAIMANTS' POSITION:

Claimants argue that Respondent bears blame for the death of their son and that the settlement agreement should be given full weight by the Legislature. Specifically, Claimants argue that Respondent owed a duty as the Palm Beach County School Board to protect its students and that Respondent breached that duty when its employees (including a math teacher, assistant principal, and school personnel) failed to take proper actions to prevent the shooting. As to the issue of the location where Jean Pierre was shot, Claimants argue that Respondent knew that the entire sidewalk was its responsibility and that Respondent had maintained dominion and control over the sidewalk. Claimants also argue that previous gun possession incidents at their son's middle school made the shooting foreseeable.

Claimants submitted Mr. Henry Branche, a building security consultant and former chief of security for the New York City School System, as an expert. He opined that Respondent's employees were negligent by not preparing an incident report when Jean Pierre asked to be moved away from Tronneal in math class; for the assistant principal's use of conflict resolution rather than the school's discipline policy for what he described as an assault when Tronneal kicked Jean Pierre in his prosthetic leg; and for the math teacher's failure to write a referral when Jean Pierre told her that Tronneal was after him. Mr. Branche also testified that the shooting was foreseeable since there had been two previous incidents of gun possession at Conniston Middle School, and that the school's security plan was lacking in that only one teacher was near the area where the shooting occurred.

RESPONDENT'S POSITION:

Respondent vigorously contested this claim bill when it was first filed in the Legislature in 2004, arguing that it did not owe a duty to Jean Pierre because he was on a portion of the sidewalk not technically on school grounds when he was murdered, and that the shooting was unforeseeable. Now that there is a settlement agreement, Respondent no longer vigorously contests the bill. However, Respondent does assert that it would adversely affect its operations to pay the settlement amount of \$360,000.

Respondent submitted Mr. Gregg McCrary, a security consultant and former FBI agent, as an expert. He opined that Conniston Middle School had sufficient security and had a program that emphasized early intervention, looked for troubled

³ *Palm Beach Cnty. Sch. Bd. v. Kamel*, 840 So. 2d 253 (Fla. 4th DCA 2003) (unpublished table decision).

students, and monitored the campus. Conniston Middle School had a uniformed police officer on campus. Mr. McCrary further opined that there were no warning signs that would have made a homicide foreseeable, that the school could not have deterred the murder, and that even having an armed officer at the precise spot where the shooting occurred would probably not have ultimately prevented the murder.

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

Florida law imposes on school officials a duty to supervise students' activities while students are at school.⁴ Here, the shooting occurred during hours when the school was entrusted with the care of students on property that school officials and students reasonably believed was school property, and which Respondent had supervised and patrolled as such.⁵ Therefore, I find Respondent owed a duty to Jean Pierre Kamel.

Breach & Causation

This case was vigorously contested at trial, with the parties disagreeing as to whether Respondent breached a duty of care and whether Respondent's breach caused Jean Pierre's death. Each side presented an expert to support its position. Ultimately, a jury weighed the evidence and concluded that Respondent was negligent and that such negligence contributed in part to Jean Pierre's death. Having considered the circumstances of this case, I decline to disturb the jury's finding that Respondent bears some fault for Jean Pierre's death.

Damages

The jury found damages totaling \$2,003,000. The court reduced those damages in accordance with the jury's finding of 20 percent comparative negligence by Jean Pierre and entered a final judgment for \$1,602,400. Claimants have received \$200,000 and now seek an additional \$360,000 in fulfillment of their settlement agreement with Respondent. Given the pain and suffering experienced by Claimants because of the death of their son, I find that damages in the amount of \$360,000—which is about 18 percent of the original jury verdict—is reasonable. I further find that this amount is reasonable even if some (or most) of the fault should be allocated to the shooter himself.⁶

⁴ See, e.g., *Rupp v. Bryant*, 417 So. 2d 658, 666 (Fla. 1982) (finding a duty of care where a school-related club was "operated under the auspices of the school" and where the school had "assumed control and supervision of all club activities"); *Broward Cnty. Sch. Bd. v. Ruiz*, 493 So. 2d 474, 477 (Fla. 4th DCA 1986) ("The school's duty to provide supervision does not end when the bell rings").

⁵ See *Rupp*, 417 So. 2d at 666.

⁶ The Senate Special Master reallocated fault as follows: 50 percent to the shooter; 30 percent to Respondent as the school board; and 20 percent to the victim. Since the amount Claimants seek—\$360,000—is only about 18 percent of the

ATTORNEY'S/
LOBBYING FEES:

Claimants' attorneys will limit their fees to 25 percent of any amount awarded by the Legislature. Out of these fees, a lobbyist fee for 6 percent of the total award and an appellate fee for 5 percent of the total award will be paid. Outstanding costs are \$1,935.66.

RESPONDENT'S ABILITY
TO PAY:

Respondent is self-insured and has no liability insurance to cover tort claims. Respondent states that if this claim bill were awarded, it would be paid from Respondent's general operating budget, affecting Respondent's "ability to fund needed educational programs, teachers' salaries and schools."

LEGISLATIVE HISTORY:

This claim bill, first introduced in the House in 2004 as HB 1353, has not been filed in the House since 2010. It was filed most recently in the Senate in 2012 as SB 66, but was withdrawn prior to introduction.

RECOMMENDATION:

I recommend that Committee Substitute for House Bill 6523 be reported **FAVORABLY**.

Respectfully submitted,

JORDAN JONES

House Special Master

cc: Representative Raburn, House Sponsor
Senator Gibson, Senate Sponsor
Tom Cibula, Senate Special Master