



STORAGE NAME: h6513d.JDC

DATE: 3/8/2022

March 8, 2022

SPECIAL MASTER'S FINAL REPORT

The Honorable Chris Sprowls
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: CS/HB 6513 - Representative Plasencia
Relief/Kareem Hawari/Osceola County School Board

THIS IS A SETTLED CLAIM FOR \$3.5 MILLION BASED ON INJURIES SUSTAINED BY KAREEM HAWARI AS A RESULT OF ALLEGED NEGLIGENCE BY THE OSCEOLA COUNTY SCHOOL BOARD. RESPONDENT HAS PAID \$100,000 PURSUANT TO THE STATUTORY CAP IN EXISTENCE AT THE TIME OF THE INJURY.

FINDINGS OF FACT:

On the night of March 5, 2010, Kareem Hawari ("Claimant"), a seventh-grader, began to exhibit signs of head trauma after having competed in a school-sponsored wrestling match. Both Claimant and his competitor during the wrestling match, Joel Morejon, attended schools governed by the Osceola County School Board ("Respondent").

During the wrestling match, Joel Morejon executed a legal, typical "takedown" maneuver against Claimant, quickly winning the match. Later that night, Claimant began complaining of headaches and ultimately collapsed onto the floor. He was rushed to Osceola Regional Hospital, where he required intubation and respiratory support. The hospital, not having sufficient resources for Claimant's injury, airlifted him to Arnold Palmer Hospital, where he was diagnosed with a brain stem hemorrhage with obstructive hydrocephalus. This condition has

resulted in severe brain damage to Claimant.

LITIGATION HISTORY:

Claimant's father, Wissam Hawari, filed an amended complaint on Claimant's behalf and against Respondent on March 13, 2014, in Osceola County Circuit Court. The case settled on December 18, 2017,¹ for a total of \$3.6 million. Respondent paid \$100,000 pursuant to the sovereign immunity cap in place at the time of the injury and agreed not to oppose or lobby against the claim bill.

CLAIMANT'S POSITION:

Claimant argues that Respondent acted negligently with respect to the wrestling match held on March 5, 2010. Specifically, Claimant argues that:

- Coach Rothchild did not provide adequate wrestling instruction to Claimant.
- Coach Rothchild and Coach Marciniak were negligent in pairing Claimant against Joel Morejon, a better athlete.
- Respondent did not obtain a proper consent form from Claimant's parents before allowing him to join the wrestling team and participate in matches.

RESPONDENT'S POSITION:

Respondent does not oppose the claim bill pursuant to its settlement agreement. At the special master hearing, Respondent was willing to answer questions about the case in a helpful manner. Respondent concedes that its employees had a duty to create a safe environment for its students.

However, Respondent does not concede that it did anything wrong that contributed to Claimant's injuries. Respondent stated at the special master hearing that it believed factual issues existed with respect to the elements of both breach and causation. Respondent stated that it settled this case to manage its risk.

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 and at school-related events held at school after normal school hours.² This duty is based on the premise that the school, in its supervisory duties, stands partially in place of the students' parents.³ Respondent concedes that the school and its wrestling coaches

¹ The case was delayed because the presiding circuit judge and Respondent's attorney each died during the pendency of the action.

² 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").

³ See *Rupp*, 417 So. 2d at 666 ("Mandatory schooling has forced parents into relying on teachers to protect children during school activity").

owed a duty of care to Claimant.

Breach & Causation

The most difficult and controversial aspect of this case is whether Respondent actually breached its duty to Claimant, causing Claimant's injuries.

Claimant's wrestling opponent on the night of the injury, Joel Morejon, was in seventh grade, the same grade as Claimant. It was Joel's second year of wrestling. Joel's coach, Louis Marciniak, testified in his deposition that nothing out of the ordinary stood out to him about the wrestling match. Coach Marciniak stated that Joel "wasn't very good" in his sixth grade year, and that he was "kind of pudgy" and not "much of an athlete" at the time of the wrestling match where he was paired against Claimant. Upon being questioned in his deposition about whether certain wrestling moves were more prone to cause head injuries, Coach Marciniak responded that he had "never heard of a wrestling head injury."

Claimant's older brother, Nabil, was present during Claimant's wrestling match. Nabil was also in middle school and on the wrestling team at the time. He testified at the special master hearing that the move performed by Joel Morejon against Claimant was a "double leg takedown," followed by a pin of Claimant's shoulders, and that there was nothing abnormal or illegal about the takedown move. Nabil also testified that Joel was "stocky" and about the same height as Claimant. Nabil stated that Claimant napped on the ride home after the meet, which was unusual.

Consent Form Issue

There was also an issue about the consent form to participate in school wrestling. Normally, the school required a parent to sign a consent form before it would allow a student to wrestle. In this case, Claimant's brother Nabil, an eighth grader at the time, wanted to join the wrestling team with Claimant. Nabil stated that one week before the accident, he had brought home a consent form, and his mother, divorced from his father and having joint custody, signed it for him, but not for Claimant. Nabil stated that Coach Rothchild instructed Nabil to write Claimant's name on the top of Nabil's form, which he did and then gave to his coach. At the special master hearing, neither party was able to produce the consent form for inspection.

Claimant's father Wissam stated in his deposition that he was opposed to his sons being involved in wrestling, but that Nabil and Claimant "weren't talking to [him]" and "weren't involving [him] much" at the time. Wissam also acknowledged in his deposition that he knew about the wrestling before the night of March 5, 2010, and strongly objected to Claimant's and Nabil's mother. Their mother, however, apparently allowed her children to continue wrestling.

I find that the details of the consent form are largely irrelevant. Nabil stated he brought the consent form to school one week before the accident, and it appears from the record that both parents knew that both of their sons were on the wrestling team and did not take sufficient action to prevent their sons from wrestling. Claimant's father, Wissam, testified at the special master hearing that he knew that Claimant and Nabil were engaged in their first wrestling "game" but did not realize it was an "official" competition.⁴ In any event, it appears that Wissam's ex-wife—and mother of Nabil and Claimant—knew of the wrestling and drove them to the meet on March 5, 2010, the night of the injury.

Conclusion on Breach & Causation

Based on the evidence in the record, I find that Claimant has failed to carry his burden to demonstrate that his injuries were caused by Respondent.

Claimant has suffered a catastrophic and tragic injury, to be sure, and it appears that the injury may have resulted from Claimant's trauma on the night of the wrestling meet. But Respondent is not to blame. Rather, what happened in this case was a tragic accident.

Damages

It is clear that Claimant has suffered tragic, life-altering injuries. Claimant remains essentially wheelchair-bound and is unable to control his bodily movements. He cannot perform daily living tasks by himself. Claimant is intellectually aware but has significant physical disabilities. Joyce Eastridge, an economist retained by Claimant, estimated Claimant's economic damages at between \$10 million and \$20 million. Respondent conceded at the special master hearing that this range is correct.

Claimant has submitted a supplemental video that shows, as of January 13, 2021, several events in the day of the life of Claimant. The video shows that Claimant struggles to do basic tasks such as button his shirt, tie his shoes, prepare his food, write with a pen, and move around on his own. It is clear from this video that Claimant continues to be severely injured.

ATTORNEY/ LOBBYING FEES:

If the claim bill passes, the total amount paid for attorney fees and lobbying fees will not exceed \$875,000. Outstanding costs are \$9,961.51.

COLLATERAL SOURCES:

Claimant attests to the fact that he has not received monies from any collateral sources.

⁴ Wissam testified that after the first wrestling match, he told his sons that he "did not want that to happen again." However, Wissam "couldn't do anything because I was at work."

RESPONDENT'S ABILITY
TO PAY:

Respondent is self-insured for tort liability. On January 9, 2019, Respondent's Chief Business and Finance Officer submitted to the Legislature a letter outlining the financial impact this claim bill would have on Respondent's operations as a county school board, pointing out the following:

- At the time, Osceola County ranked 65th out of 67 counties in per student funding due to reduced property values.
- Passage of the claim bill would "create a significant impact on the services we provide to students in our community."
- Monies to pay the claim bill would be funded by "reducing employee compensation."

The letter asks the Legislature to "[p]lease consider the importance of these dollars to our community and the 67,500 students we strive to serve with excellence, every child, every chance, every day."

On August 31, 2021, Respondent submitted to the Legislature an updated letter as follows:

"The financial impact of the \$3.5 million claims bill would obviously impose a significant adverse impact on the School District of Osceola County, Florida. The School District did, however, agree to not oppose Mr. Hawari's claims bill, and intends to honor that agreement. If the Legislature does not appropriate additional funds to the School District, then the funding would come from funds currently allocated to educational programs and employee salaries."

LEGISLATIVE HISTORY:

This is the fourth consecutive session that this claim bill has been filed. This claim bill has never been heard in a House or Senate committee or subcommittee.

RECOMMENDATION:

Claimant has suffered tragic injuries, but he has failed to legally demonstrate that Respondent is responsible for those injuries. Accordingly, I am compelled to recommend that CS/HB 6513 be reported **UNFAVORABLY**.

However, the Legislature may decide to pay this claim bill as a discretionary matter within its spending power, as is the case with any claim bill.

Respectfully submitted,

W. Jordan Jones

JORDAN JONES

House Special Master

SPECIAL MASTER'S FINAL REPORT--

Page 6

cc: Representative Plasencia, House Sponsor
Senator Torres, Senate Sponsor
Alexander Brick, Senate Special Master