

\$5 Million Accord Reached in Boy's Drowning Death

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The estate of a 16-year-old boy, who drowned while in the custody of a school for adjudicated delinquents and dependents in Mercer County, has reached a \$5.12 million settlement with the school and with the school employee who took the boy off-campus for an unauthorized swimming trip.

The case settled Aug. 25, according to the settlement release. Plaintiff's attorneys from Kline & Specter filed a motion for approval of the settlement in Philadelphia Orphans' Court Sept. 30. The Orphans' Court has not yet ruled on the motion.

Decedent Nathaniel M. McCoy, of Philadelphia, was ordered to attend George Junior Republic school by Philadelphia Family Court May 21, 2004, according to court papers. Less than a month after McCoy was sent to the school, McCoy and other students were taken by former GJR employee Aaron Cujas June 9, 2004, for a swimming trip in Slippery Rock Creek in Lawrence County. McCoy, who could not swim, was swept away by a strong current; his body was found 50 feet from where he was last seen about 21 hours after McCoy went under water, according to the plaintiff's complaint.

The \$5.12 million is the remainder of

the school's available liability insurance through its primary insurer, Lexington Insurance Co., and its excess insurers, American Empire Surplus Lines Insurance Co. and Great American Insurance Group, the motion said.

Robert F. Englert and Jonathan M. Cohen of Kline & Specter were plaintiff's counsel.

GJR's attorneys included Arthur

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— Jonathan M. Cohen

W. Hankin, John Lucian and Mark R. Zolfaghari of Blank Rome. Cujas' attorney was Michael P. O'Connor of O'Connor Kimball.

GJR's carriers provided Cujas with counsel in the case, Cohen said.

The plaintiff's complaint argued that the school and Cujas were liable for negligence, gross negligence and recklessness.

Cujas "taunted" McCoy into entering Slippery Rock Creek despite knowing McCoy could not swim, the plaintiff's motion to add a claim for punitive damages said. The plaintiff's motion was pending before the case was transferred to federal court, plaintiff's attorneys said.

Kevin McNeely, one of the teenagers present when McCoy drowned, said in his May 2007 deposition that he told a state police investigator McCoy had just jumped into the water, according to the deposition transcript. But McNeely said in his deposition he had not told the investigator the truth because Cujas asked him to "basically lie for him." McNeely said in his deposition the truth was that Cujas and others were cheering and teasing McCoy to jump into the creek.

The school's vice president, Jeffrey T. Morris, said in his deposition that the stream McCoy drowned in was so dangerous Morris would not have let his own daughters swim there, the motion said.

The defendants knew or should have known that several other people have drowned at the swimming site, according to the complaint. Cujas did not have any lifeguard training, the complaint also said.

The plaintiff also argued the school was solely liable for negligent hiring and

Settlement continues on 9

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supervision.

The school's chief executive officer, Rick Losasso, said in a deposition that the school didn't have a system in place to make sure its employees were taking students off-campus only to authorized destinations, the motion said.

The school's defenses in its answer to the plaintiff's complaint included the defense that the school acted with due care and that Cujas was not acting within the scope of his employment. Cujas also denied the plaintiff's claims in his answer.

The school successfully removed the case from the Philadelphia Court of Common Pleas to the U.S. District Court for the Western District of Pennsylvania when Cujas filed for bankruptcy in the U.S. Bankruptcy Court for the Western District of Pennsylvania April 20, 2007, according to court papers. When the case settled, the plaintiff had a motion pending to transfer the case back to Philadelphia, Englert said.

McCoy's sole heir is his daughter, Jade Latimore, now 7, and Frances S. Williams, McCoy's grandmother and adoptive mother, is the administratrix of McCoy's estate, according to the motion for approval of the settlement. Jade has been adopted by her paternal great-aunt and great-uncle.

The plaintiff proposes dividing the settlement into \$4.096 million in Wrongful Death Act damages and \$1.024 million in Survival Act damages, the motion said. The motion requests that Jade Latimore receive \$2.2 million in net Wrongful Death Act damages. Williams has requested \$512,000 for an administrator's commission as well as a little over \$550,000 in net Survival Act damages. Plaintiff's attorneys have requested one-third of the settlement proceeds, or \$1.71 million in attorney fees, under their contingent fee arrangement with plaintiff. Plaintiff's attorneys also have requested a little under \$148,000 in litigation costs.

"We're very glad we were able to represent the family and achieve a favorable result for them and bring to light the unnecessary danger that this child was placed in," Cohen said.

"And we hope it does something to guard against this kind of tragedy occurring in the future and it's our hope the money will do a lot for Nate's daughter."

Hankin said that the defendants support the plaintiff's motion for the Orphans' Court to approve the settlement.

"We would like Orphans' Court to sign it and get the case over and marked final," Hankin said. •