



140 A.D.3d 1415, 34 N.Y.S.3d  
508, 2016 N.Y. Slip Op. 04752

**\*\*1** Delia Davila, Also Known as Delgia  
Davila, as Administrator of the Estate of  
Gloria Bonilla, Deceased, Respondent,  
v  
State of New York, Appellant.

Supreme Court, Appellate Division,  
Third Department, New York  
520891  
June 16, 2016

CITE TITLE AS: Davila v State of New York

#### HEADNOTE

State  
Claim against State  
Sufficiency of Pleading—Negligent Construction, Operation  
and Maintenance of Facility for Mentally Disabled

Eric T. Schneiderman, Attorney General, Albany (Kathleen  
M. Treasure of counsel), for appellant.  
Foulke Law Offices, Goshen (Robert N. Isseks of counsel),  
for respondent.

Garry, J. Appeals (1) from an order of the Court of Claims  
(Fitzpatrick, J.), entered July 7, 2014, which, among other  
things, granted claimant's motion for summary judgment on  
the issue of liability, and (2) from the judgment entered  
thereon.

On March 21, 2009, Gloria Bonilla (hereinafter decedent)  
suffered severe injuries in a fire, leading to her death,  
while residing at a home for mentally disabled individuals.  
The home was maintained and operated by the Office  
of Mental Retardation and Developmental Disabilities  
(hereinafter OMRDD),<sup>1</sup> under the name Riverview  
Individualized Residential Alternative (hereinafter Riverview  
IRA). Claimant was appointed administrator of decedent's  
estate in March 2011, and promptly thereafter filed a claim  
seeking damages for decedent's conscious pain and suffering.  
Claimant moved for summary judgment and defendant cross-

moved to dismiss the claim on the ground that claimant failed  
to sufficiently state the nature of the claim pursuant to Court of  
Claims Act § 11 (b). The Court of Claims denied defendant's  
cross motion to dismiss and granted claimant's motion for  
summary judgment. Defendant appeals, contending that the  
claim was jurisdictionally defective as the statutory \*\*2  
requirements were not met.

Court of Claims Act § 11 (b) "places five specific substantive  
conditions upon [defendant's] waiver of sovereign immunity  
by \*1416 requiring the claim to specify (1) the nature of  
the claim; (2) the time when it arose; (3) the place where it  
arose; (4) the items of damage or injuries claimed to have  
been sustained; and (5) the total sum claimed" (*Lepkowski v  
State of New York*, 1 NY3d 201, 207 [2003] [internal quotation  
marks and brackets omitted]). These statutory requirements  
are "strictly construed" (*Kolnacki v State of New York*, 8  
NY3d 277, 280 [2007] [internal quotation marks and citation  
omitted]). The guiding principle and "purpose of the notice  
of claim requirement [is] to allow [defendant] to investigate  
the claim and to estimate its potential liability" (*Matter of  
New York City Asbestos Litig.*, 24 NY3d 275, 282 [2014];  
*see Lepkowski v State of New York*, 1 NY3d at 207). " "[A]bsolute exactness' " is not required (*Morra v State of  
New York*, 107 AD3d 1115, 1115 [2013], quoting *Heisler  
v State of New York*, 78 AD2d 767, 767 [1980]), but the  
claim must enable prompt investigation and be "sufficiently  
specific to enable [a] defendant to reasonably infer the basis  
for its alleged liability" (*Deep v State of New York*, 56 AD3d  
1260, 1261 [2008] [internal quotation marks and citation  
omitted]; *see Heisler v State of New York*, 78 AD2d at 768).  
Moreover, defendant is not required "to ferret out or assemble  
information that section 11 (b) obligates the claimant to  
allege" (*Lepkowski v State of New York*, 1 NY3d at 208;  
*accord Rivera v State of New York*, 52 AD3d 1075, 1076  
[2008]).

Here, the claim alleges that defendant "negligently  
constructed, operated and maintained Riverview IRA" and  
that on March 21, 2009, "as a result of said negligence,"  
decedent "died[ ] while in the custody and care of  
[defendant]." The claim further alleges that, "[p]rior to her  
expiration, [decedent] suffered extreme pain and suffering."

As relevant to the subject claim, decedent, described in  
her individualized service plan as "profoundly retarded,"  
was a resident of Riverview IRA when, on March 21,  
2009, a fatal fire at the facility claimed the lives of  
four residents, including her life. OMRDD subsequently

conducted an extensive investigation and, in January 2010, issued a comprehensive report.<sup>2</sup> This report detailed a failure to follow the established fire drill protocol, which would have ensured decedent's evacuation through the nearest exit. She was instead guided from her room and left in another part of the building, where she suffered grave injury in the fire and, ultimately, died en route to the hospital. \*1417

Where an agency of defendant has performed the internal investigation of an incident and is therefore the primary or, perhaps, even the sole source of information upon which a claim is based, it cannot be readily found that a lack of specificity has interfered with defendant's ability to investigate a claim (*see Oliver v State of N.Y. [SUNY] Health Science Ctr. at Brooklyn*, 40 AD3d 719, 719 [2007]; *cf. Matter of O'Shea v State of New York*, 36 AD3d 706, 706-707 [2007]), nor that defendant has been improperly required to "assemble" information regarding a claim (*compare Lepkowski v State of New York*, 1 NY3d at 207-208; *Morra v State of New York*, 107 AD3d at 1116). The subject claim specifies the time and place of the fire, states that decedent was in defendant's "custody and care" and alleges

injuries, including death, sustained as a result of defendant's negligence. In view of the particular circumstances posed here, the \*\*3 specific facts alleged are sufficient to allow defendant to reasonably infer a cause of action consistent with the negligent "construct [ion], operat[ion] and maint[enance]" of the facility, as alleged (*see Demonstoy v State of New York*, 130 AD3d 1337, 1337-1338 [2015]; *Morris v State of New York*, 27 AD3d 282, 283 [2006]; *Santos v State of New York*, 291 AD2d 851, 851 [2002]; *Sinski v State of New York*, 265 AD2d 319, 319 [1999]; *compare Lepkowski v State of New York*, 1 NY3d at 208; *Robin BB. v State of New York*, 56 AD3d 932, 933 [2008]). Accordingly, we agree with the Court of Claims that the subject claim met the statutory requirements.

Peters, P.J., Lahtinen, Clark and Mulvey, JJ., concur. Ordered that the order and judgment are affirmed, without costs.

#### FOOTNOTES

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#### Footnotes

- 1 OMRDD is now known as the Office for People With Developmental Disabilities.
- 2 This was one of three investigative reports. There was also a report issued by the Department of State Office of Fire Prevention and Control, released in June 2009, and a grand jury report released in December 2009.