

Michigan Jury Awards \$12.5 Million Against Ambulance and EMT for Sexual Assault

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On May 11, 2011, a Michigan jury awarded \$12.5 million to a girl who was sexually assaulted by an EMT during a non-emergency transport. The suit arose out of an incident that occurred on July 25, 2006 in Wayne County in a Superior Ambulance.

The victim, who was 14 at the time, had cut herself multiple times and was mentally unstable. She was being transported from the Henry Ford Hospital to Harbor Oaks Hospital, a children's psychiatric facility. She was in a 5 point psychiatric restraint at the time of the assault.

EMT Matt DeFillippo confessed to the sexual assault, pled guilty and was sentenced to serve 3 1/2 years in prison. The ambulance driver, Tim O'Connell, who notified superiors but did not stop the attack, was not criminally charged.

The suit sought damages from Superior Ambulance, DeFillippo and O'Connell. The theory against Superior was based on two theories, respondeat superior and negligent hiring. Respondeat superior is the legal theory that makes an employer liable for the actions of an employee committed within the scope of his/her employment.

As a general rule in respondeat superior cases, sexual assaults are considered to be outside the scope of employment and thus cannot be the basis for an employer to be held liable unless the employer is aware of a propensity of the employee to commit such acts. Recall the infamous Sacramento Porn Star Celebrity Ball case, where the Sacramento Fire Department was held not to be liable for the sexual assault perpetrated by two on duty firefighters because it was outside the scope of their employment.

The Sacramento case is important for another reason: The California Court of Appeals rejected the use of the negligent supervision theory as nothing more than a back-door way of circumventing the scope of employment argument.

Nevertheless, in the Michigan case the jury found DeFillippo to be 70% responsible for what occurred and Superior Ambulance 30% at fault. O'Connell was not found to be liable at all.

An appeal is expected.

Appellate decision in the case prior to trial with a full discussion of the facts.