

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

ELIZABETH SOON JEE KIM AND
WILLIAM HOON KIM
CO-ADMINISTRATORS AND PERSONAL
REPRESENTATIVES OF THE ESTATE OF
DANIEL SUN KIM

Plaintiff,

vs.

THE COMMONWEALTH OF VIRGINIA

SERVE: William Mims
Attorney General for the
Commonwealth of Virginia
900 E. Main St.
Richmond, Virginia 23219
(City of Richmond)

JAMES THOMAS BROWN, Dean of Students
501 Draper Road
Blacksburg, Virginia 24060
(Montgomery County)

VICKI ARBUCKLE, Assistant Director
Psychiatric Services
240 McComas Hall
Blacksburg, Virginia 24061
(Montgomery County)

and

CHRISTOPHER FLYNN, Director of Cook
Counseling Center
240 McComas Hall
Blacksburg, Virginia 24061
(Montgomery County)

Defendants

Case No.: 2009-17445

COMPLAINT

COME NOW the Plaintiffs, ELIZABETH SOON JEE KIM AND WILLIAM
HOON KIM CO-ADMINISTRATORS AND PERSONAL REPRESENTATIVES OF

THE ESTATE OF DANIEL SUN KIM, by counsel, and move for judgment against THE COMMONWEALTH OF VIRGINIA, JAMES THOMAS BROWN, VICKI ARBUCKLE, and CHRISTOPHER FLYNN, jointly and severally, on the grounds and in the amount as set forth below:

PARTIES

1. Elizabeth Soon Jee Kim and William Hoon Kim are citizens of the Commonwealth of Virginia who reside at 1422 Greenmont Court Reston, VA 20190 and have been appointed by the Circuit Court of Fairfax County, Virginia as Co-Administrators for the estate of Daniel Sun Kim, their deceased son, and therefore are authorized to bring this action as personal representative of the estate of Daniel Sun Kim.

2. Virginia Polytechnic Institute and State University ("Va. Tech") is a public university and agency of the Commonwealth of Virginia which conducts business throughout the Commonwealth including Blacksburg, Virginia and Fairfax County, Virginia.

3. Thomas Brown was, at all relevant times, Dean of Students for Va. Tech, and a citizen of the Commonwealth of Virginia.

4. Vicki Arbuckle was, at all relevant times, Assistant Director of Psychiatric Services of Cook Counseling Center of Va. Tech, and a citizen of the Commonwealth of Virginia.

5. Christopher Flynn was, at all relevant times, Director of Cook Counseling Center of Va. Tech and a citizen of the Commonwealth of Virginia.

FACTS

6. In November 2007, Daniel Kim was a twenty-one year old senior at Va. Tech and was the oldest child of Elizabeth and William Kim.

7. Daniel's parents, Elizabeth and William Kim, are American Citizens, who were born in Korea. Daniel was born on May 28, 1986 in the United States and graduated high school from South Lakes High School in 2004, and at the time of his death was a senior at Va. Tech.

8. Through the summer of 2007 Daniel had a cumulative grade point average of 3.29.

9. In April, 2007 the Va. Tech community, including Daniel, was exposed to a horrific tragedy known as the Va. Tech massacre where twenty-seven students were killed by a student of Korean descent named Seung-Hui Cho.

10. Subsequent to the April 2007 shootings, it was revealed that Mr. Cho was in need of psychiatric counseling and that he most likely acted out of a psychotic state. In an effort to reassure students, their parents, and the public at large, Va. Tech announced that it was reviewing policies and procedures and would enact safeguards to address, among other things, the safety and welfare of its students.

11. Following the Cho massacre, Daniel told his younger sister that he was afraid that he resembled the notorious shooter.

12. Unbeknownst to Daniel's parents, after returning to school following the Cho massacre, Daniel became withdrawn and eventually stopped attending classes.

13. During his period of isolation Daniel confided in a friend, Shaun Pribush, a student at Rensselaer Polytechnic Institute (RPI), that he was ashamed of being Asian, that he had tried to kill himself twice, that he had purchased a gun, and that he would be successful the third time.

14. Shaun took Daniel's threat seriously and, fearing for Daniel's safety, at 2:59 a.m. on Monday, November 5, 2007, he sent an e-mail to the Va. Tech Student Health Center that read:

Subject: Emergency about suicidal student

Dear health center,

This is a serious email, this is not a joke.

I am Shaun Pribush, a student at RPI, but I am emailing because me and some other individuals are very worried about our friend at Virginia Tech, Daniel Kim.

Daniel has been acting very suicidal recently, purchasing a \$200 pistol, and claiming he'll go through with it. In one incident, he said on a Friday, he would do it after the weekend, but then told us he failed to go through with it.

On about November 2nd, Daniel told me and a friend over "Instant Messenger" that he just swallowed 22 pills and said this is the end and signed off, but on the morning of November 5th, he logged on saying "third time will be a charm I made myself puke up the pills when I was on the road and then I ... couldn't shoot myself so then I was thinking about getting into a car accident then I got all depressed over that shit and slept in my car, next time I wont be a ...pussy"

We are very concerned for his safety and are unsure the next time he might attempt suicide or go through with it, please forward this to who can give him the best care. Once again, this is very serious; this is not a joke.

Please update me if you acknowledge this and take action so I know if I reached the right email address. Thank you.

*Sincerely,
Shaun*

15. The previous e-mail was immediately followed with another e-mail from Shaun, at 3:10 a.m. that read:

"I'm sorry I did not think this through in the first e-mail. I realize there may be more than one Daniel Kim. He is 21 years of age and a Senior. I do not recall what his major was, but if this is not enough information, I will try to narrow this down more for you."

16. In September 2006, Va. Tech published "Guidelines for Appropriate Action" in a document known as the "Care Team Manual", which established a "Student Crisis and Emergency Response Protocol" in order "to coordinate the timely response by the university to student emergencies" such as the one described by Shaun Pribush.

17. According to the protocol set forth in the Care Team Manual, “[i]f a student has made an actual suicide attempt and/or any gesture or reference to suicide he or she *must be seen* by the psychologist on call” (emphasis added).

18. At 7:26 a.m., November 5, 2007, the Health Center forwarded Shaun’s e-mail to Tom Brown, Dean of Students and head of the Care Team, and to Sharrika Davis, Associate Dean of Students and member of the Care Team.

19. At 7:37 a.m., the Health Center also sent a copy of Shaun’s e-mail to Phyllis Smith and Christopher Flynn of the Cook Counseling Center (the mental health provider for students), and Lt. Wooddell of the Va. Tech Police Department (“VTPD”), with the subject: “Emergency about suicidal student”.

20. After several e-mail exchanges between the VTPD and Shaun, Officer Wooddell of the VTPD learned Daniel Kim’s full name, complete date of birth, social security number, and his Blacksburg address.

21. At 8:00 a.m., Lt. Jackson of the VTPD e-mailed Shaun and told him that his e-mail had been provided to the VTPD “for a welfare check” and thanked him for providing the “intervention information”.

22. According to the Care Team Manual:

- a. “The Care Team meets every Monday morning at 11:00 to review [among other things] medical and psychiatric situations...regarding individual students”.
- b. A Cook Counseling Center “psychologist/counselor will be on call to assist with crises or emergencies at all times while the University is in session” and “a staff member serves as a consultant with...parents...for the evaluation of students in crises”.

- c. "If a student has made an actual suicide attempt and/or any gesture or reference to suicide, he or she must be seen by the psychologist on call."

23. November 5, 2007 was a Monday, and at 11:00 a.m., the Care Team met in Dean Thomas Brown's conference room to address a number of matters, including the e-mail from Shaun Pribush regarding Daniel Kim. There were a number of people present from Va. Tech, including Dean Brown, Vicki Arbuckle, and Lt. Cook of the VTPD.

24. During the Care Team meeting, Officer Wooddell advised Lt. Cook that he had located Daniel and that he had asked the Blacksburg Police to check on Daniel's well-being. Despite Va. Tech's protocols that required Va. Tech to have Daniel seen by a psychologist, the Care Team concluded its meeting without any attempt to communicate directly with Daniel or have him speak with a school counselor or psychologist, and without any attempt to consult with Daniel's parents.

25. Following the Care Team meeting, Officer Wooddell advised Lt. Cook that Detective Jeff Robinson of the Blacksburg Police had spoken with Daniel Kim who denied knowing Shaun Pribush and "gave no indications that he was going to harm himself and he did not appear to be troubled or act in a suspicious manner".

26. Although the Blacksburg Police Department has a number of officers on staff who are trained in suicide intervention, (referred to as crisis intervention team, CIT, officers) Detective Robinson was not a CIT officer and not qualified to determine whether Daniel was in need of intervention.

27. Later in the day on November 5, 2007, Dean Brown brought up Daniel's case at a meeting of the Threat Assessment Team and despite Va. Tech's protocols and the fact that no one from Va. Tech had spoken with Daniel, his family, or roommates, it was "determined that no action was going to be taken" regarding Shaun's attempt to help Daniel.

28. At 4:25 p.m. on November 5, 2007, Lt. Cook sent his final e-mail message to Shaun asking Shaun to let them know if he “receive[s] anymore information that [Daniel] may harm himself” and expressing that Va. Tech is “very concerned about Mr. Kim and would like to provide him with some assistance.” Shaun concluded that he had done all that was necessary to help Daniel.

29. The next Care Team meeting was held the following Monday (November 12, 2007) and it was again chaired by Dean Brown and attended by Vicki Arbuckle and Christopher Flynn. Although Va. Tech had done nothing to contact Daniel, had made no effort to comply with Va. Tech’s protocols, had made no effort to speak with Daniel’s roommates or professors, and had made no effort to contact Daniel’s parents, Daniel’s case was closed.

30. By neglecting to follow up on Shaun Pribush’s concern for Daniel’s safety, including failure to comply with Va. Tech’s protocols, Va. Tech, Vicki Arbuckle, Christopher Flynn, Thomas Brown, and the Commonwealth missed the opportunity provided by Shaun Pribush to discover that Daniel was of unsound mind and a threat to his own safety.

31. On December 9, 2007, Daniel was found in a parking lot, dead from a self-inflicted gunshot wound to the head.

COUNT I

NEGLIGENCE OF VIRGINIA TECH AND THE COMMONWEALTH

32. That the preceding paragraphs one through thirty-one are incorporated herein.

33. The Commonwealth of Virginia is liable under the doctrine of *respondet superior*, for the acts of negligence and gross negligence of Va. Tech and its agents, servants and/or employees while acting within the course and scope of their employment.

34. Va. Tech, acting through its agents, servants, and employees, including, but not limited, to Thomas Brown, Vicki Arbuckle, Christopher Flynn, and members of the Care Team, failed to used ordinary care and acted negligently, in that, among other things, they failed to check on Daniel's welfare, they failed to comply with Va. Tech's protocol, they relied upon the observations of an untrained Blacksburg police officer, they misled Shaun Pribush into believing Va. Tech would intervene and address Daniel's condition, they failed to take reasonable steps to determine whether Daniel needed crisis intervention, and they failed to notify Daniel's parents of the warning received from Shaun Pribush.

35. The negligence of Va. Tech acting through its agents, servants, and/or employees was a direct and proximate cause of the death of Daniel Kim.

36. On August 26, 2008, notice was given, pursuant to Va. Code §8.01-195.6, to the Honorable Robert F. McDonnell (then Attorney General for the Commonwealth of Virginia) and to Mr. D. LeMond, Director of Risk Management for the Department of Treasury of the Commonwealth of Virginia.

COUNT II

INDIVIDUAL NEGLIGENCE

37. That the preceding paragraphs one through thirty-six are incorporated herein.

38. Dean Brown, Vicki Arbuckle, and Christopher Flynn failed to use ordinary care and acted negligently in, among other things, departing from protocols, which did not allow for the exercise of discretion, established by Va. Tech for the safety of its students, including Daniel Kim, and such negligence was the direct and proximate cause of Daniel's death.

COUNT III

GROSS NEGLIGENCE

39. The preceding paragraphs one through thirty-eight are incorporated herein.

40. Dean Brown, Vicki Arbuckle, and Christopher Flynn were at all times aware of the fact that an attempted suicide or threat of suicide was a serious threat to the health and safety of Daniel Kim. Dean Brown, Vicki Arbuckle, and Christopher Flynn showed such indifference to Daniel Kim as constituted an utter disregard of caution which amounted to a complete neglect of Daniel's safety in that, among other things, they failed to check on Daniel's welfare, they failed to comply with Va. Tech's protocol, they relied upon the observations of an untrained Blacksburg police officer, they misled Shaun Pribush into believing Va. Tech would intervene and address Daniel's condition, they failed to take reasonable steps to determine whether Daniel needed crisis intervention, they failed to notify Daniel's parents of the warning received from Shaun Pribush, and they failed to follow Va. Tech's established protocols.

41. The gross negligence of Thomas Brown, Vicki Arbuckle, and Christopher Flynn was a direct and proximate cause of the death of Daniel Kim.

DAMAGES

42. As a direct and proximate result of the negligence and gross negligence of the Defendants, acting jointly and severally, Daniel Kim died and his parents and sister have suffered profoundly, including the following damages for which they are entitled to recover:

- a) Sorrow, mental anguish, and solace including the loss of society, companionship, comfort, guidance, kindly offices and advice of the decedent;

- b) Compensation for reasonably expected loss of (i) income of the decedent and (ii) services, protection, care and assistance provided by the decedent;
- c) Reasonable funeral expenses

WHEREFORE, Plaintiffs, Elizabeth Soon Jee Kim and William Hoon Kim, co-administrators and personal representatives of Daniel Sun Kim, request that this Court enter judgment in their favor and against Defendants, jointly and severally, in the amount of FORTY THREE MILLION DOLLARS (\$43,000,000.00) compensatory damages, along with Va. Tech agreeing to assist with the passage of the Daniel Kim Act, which will require all public universities in the State to notify parents when a threat to the safety of their children is present, together with costs, interest from the date of Daniel's death, and any further relief that this Court may deem appropriate.

A TRIAL BY JURY IS REQUESTED.

**Elizabeth Soon Jee Kim and
William Hoon Kim, Co-
Administrators and Personal
Representatives of the Estate of
Daniel Sun Kim,
Plaintiff By Counsel**

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