

dbr DAILY BUSINESS REVIEW

Defense Lawyers Note Potential Statewide Ripple From Miami Dade College Class Action

The Florida Defense Lawyers Association claimed in the amicus curiae the litigation is not just over a college tuition refund, but the lower court's ruling on sovereign immunity could have a ripple effect on nearly every government institution in the sunshine state.

*By Michael A. Mora
April 09, 2021*



Javier Lopez, managing partner at Kozyak, Tropin & Throckmorton.

Are amici curiae being abused?

That is the position one attorney has as the stakes are high in litigation involving the District Board of Trustees of Miami-Dade College and a student seeking the recovery of his tuition fees for services denied due to the coronavirus pandemic.

The Florida Defense Lawyers Association, a statewide organization of civil defense attorneys with members numbering over 1,000, are among the entities weighing in on the litigation with its own amicus brief.

The lawyers association claimed the litigation is not just over a college tuition refund, but it could have a ripple effect on nearly every government institution in the sunshine state.

Javier Lopez, the managing partner at Kozyak Tropin & Throckmorton in Coral Gables, said this case before the Third DCA is a threat to the Florida law surrounding the decades old precedent of sovereign immunity.

“You have seen colleges and communities in every corner of this state come out and say, ‘We want a say in this. This is a very unique thing,’ ” Lopez said. “ What the readers should take away from this is there is a huge spotlight on this issue.”

According to the brief, the lawyers association works to improve the “adversary system of jurisprudence” in the courts. It said the litigation addresses whether sovereign immunity applies to claims involving the breach of an alleged contract by a public entity.

The association argues that an institution, like Miami Dade College, is protected by sovereign immunity from its students such as Fernando Verdini. He claimed an invoice for tuition created an express contract in which the public school waived its sovereign immunity.

Verdini, who is represented by Adam M. Moskowitz, managing partner at The Moskowitz Law Firm in Coral Gables, pointed to charges for services from his spring and summer semester at **Miami Dade College** that students are denied due to the coronavirus pandemic.

“The No. 1 reason for personal bankruptcy is for student debt,” Moskowitz said. “It’s crazy these people running these public institutions are not looking after the students. Why don’t you just give credits back to students?”

For instance, his courses moved from in-person to online instruction due to social distancing rules, and the Miami-Dade Circuit Court ruled in his favor.

But now, the lawyers association is calling for the Third DCA to reverse

and remand the case with directions to dismiss the complaint. It said if the trial court's decision to deny the motion to appeal because sovereign immunity did not apply, there would be far-ranging implications for Florida colleges and universities and other governmental entities.

The lawyers association cited a previous article from this publication in its brief in which Moskowitz said he is planning to file additional class-action lawsuits against other Florida collegiate academic institutions. The statewide organization said these types of lawsuits would only increase and it would be the taxpayers who pay the bill.

"Disaffected citizens, dissatisfied with an incredibly wide-ranging number of governmental decisions will have an open door to the courthouse through class action litigation seeking hundreds of millions of dollars," the lawyers association said in the brief. "Indeed, these citizens could use just about anything to demonstrate an express, written contract—a permit, a license, a parking meter receipt."

Moving forward, state municipalities are also planning to weigh in on the litigation by filing two new amicus briefs within the next couple of days. However, Moskowitz said the briefs would likely not affect the outcome of the litigation.

"If you have seven amicus briefs from each of the cities in Florida saying, 'We hope never to be sued,' how is that persuasive?" Moskowitz said. "They are not supposed to be redundant. It is the same point Miami Dade College is raising. I do not believe these amicus briefs will be effective."

Moskowitz also opined that it is becoming more common for lawyers to ask their friends to file an amicus brief. He pointed to a separate case in which the organization, Public Justice, provided insight as Moskowitz's team wrote the court documents to make his case more effective, instead of having the legal advocacy organization filing an amicus brief.

"You can call your friends, ask them to file an amicus brief for you, so you get a bunch of them," Moskowitz explained. "Somehow, the law is supposed to be on your side if you have a bunch of friends or contacts? The amicus brief is being abused in today's litigation."