

COMMONWEALTH OF MASSACHUSETTS

Worcester, SS.

SUPERIOR COURT

JANE DOE, MARY DOE, and JOHN DOE,
Plaintiffs,

v.

WORCESTER POLYTECHNIC
INSTITUTE, AARTI MADAN, ANNE T.
OGILVIE, RICHARD F. VAZ, SUSAN
VERNON-GERSTENFELD, and CHERYL
A. MARTUNAS,
Defendants

CIVIL ACTION
NO.: 1585-CV-0570 B

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
AGAINST ALL DEFENDANTS

Plaintiffs Jane Doe, Mary Doe, and John Doe, by their counsel, respectfully request that this Honorable Court enter summary judgment in their favor pursuant to Mass. R. Civ. P. 56(b) on the issue of Jane Doe's contributory negligence.

The defendants cannot meet their burden of proof as to the issue of Jane Doe's negligence. As grounds for this motion, the plaintiffs state as follows:

1. The defendants' argument that Ms. Doe failed to protect herself and therefore caused herself to be raped is not supported by law, evidence or public policy, and is nothing more than an attempt to harass, intimidate and re-victimize this young woman.
2. No rational view of the evidence in this matter could support a finding that Ms. Doe failed to exercise reasonable care or subjected herself to an unreasonable risk of rape.


There is no genuine issue of material fact on the issue of Jane Doe's negligence, and plaintiffs are entitled to summary judgment in their favor. A memorandum of law accompanies this Motion which more fully sets forth the grounds for the relief sought herein.

WHEREFORE, the plaintiffs respectfully request that this Court allow Plaintiffs' Motion for Partial Summary Judgment.

PLAINTIFFS REQUEST A HEARING ON THIS MOTION IF THE COURT DEEMS IT APPROPRIATE.

Respectfully submitted,

The Plaintiffs, Jane Doe, Mary Doe, and John Doe,
By their attorneys,



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4-4-16

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR
PARTIAL SUMMARY JUDGMENT AGAINST ALL DEFENDANTS**

The plaintiffs, Jane Doe, Mary Doe and John Doe, hereby submit this Memorandum of Law in support of their Motion for Partial Summary Judgment as to the affirmative defense of contributory negligence raised by all defendants. This defense strategy, that Jane Doe "asked for it," or caused and/or contributed in any way to her own aggravated sexual assault, is offensive, inappropriate and should not be permitted.¹ For the reasons set forth below, the plaintiffs' motion should be allowed.

I. INTRODUCTION

This action arises from the rape of the plaintiff, Jane Doe, while she was studying abroad in Puerto Rico, by the security guard on duty at her apartment building (hereinafter

¹ The use of quotation marks in this sentence is to call attention to the common and improper notion that a rape victim can provoke her own attack through her manner of dress or behavior, a strategy employed by the defendants in this case, and is not intended to be a direct quote of the defendants or defense counsel.

the “Ashford Imperial”).² Jane Doe, a student at Worcester Polytechnic Institute (hereinafter “WPI”), was required to live at the Ashford Imperial, which was leased and controlled by the defendants for the purpose of student housing. The security guard who committed the sexual assault was convicted of the aggravated rape of Jane Doe by a unanimous guilty jury verdict in the state court of Puerto Rico and is currently serving a twenty year sentence for this crime.

The plaintiffs have brought claims against the defendants for reasons including but not limited to their negligent failure to provide and/or secure safe and adequate student housing, resulting in Jane Doe’s rape and subsequent injuries. All defendants have asserted the defense of contributory negligence, alleging that Jane Doe’s behavior on the evening of her rape, which they characterize as “unreasonable,” contributed to and was a cause of the criminal assault committed against her. The defendants’ argument that Ms. Doe failed to protect herself and therefore caused herself to be raped is not supported by law, evidence or public policy, and is nothing more than an attempt to harass, intimidate and re-victimize this young woman. Ms. Doe is entitled to summary judgment on the issue of her alleged negligence, as no rational view of the evidence in this matter could permit a finding that she contributed to or was a cause of her own aggravated rape.

II. DEFENDANTS’ ALLEGATIONS OF CONTRIBUTORY NEGLIGENCE

The defendants’ allegations as to Jane Doe are set forth in each Answer to Plaintiffs’ Complaint, and were explained by defense counsel at the deposition of Jane Doe, taken on January 8, 2016. In their Answers, each defendant asserts the following affirmative defenses:

² For the purposes of this motion, “plaintiff,” will refer to Jane Doe.

This defendant states that the negligence of the plaintiff contributed to and was a cause of any damages alleged and such damages, if any, should be diminished in accordance with G.L. Chapter 231, Section 85, as amended.

This defendant states that the plaintiff's negligence was greater than that of the defendant, and the plaintiffs are thereby barred from recovery under G.L. Chapter 231, section 85, as amended.

Defendants' Answers to Plaintiffs' Complaint, p. 9, Joint Appendix Exhibit ("Ex.") 17-22.

Additionally, at the deposition of Jane Doe, and in response to an objection by plaintiffs' counsel, counsel for the defendants stated:

I also have a right to ask questions bearing on the behavior of the plaintiff on the night of the incident . . . My question was, I asked for a description of what occurred from the time she entered the Ashford until she got to the roof. That period of time. Which bears directly on her behavior and looking out for herself, which is a defense, one of our defenses to the case.

Deposition of Jane Doe, pages 137-138, Ex. 10. The defendants intend to allege that Jane Doe negligently put herself at risk of rape by agreeing to go to the roof of her apartment building with the security guard on duty, and by having consumed alcohol earlier that evening. See, Section III.B., *supra*. These allegations are not supported by the record, and the issue of Jane Doe's negligence should be decided as a matter of law in the plaintiffs' favor because no rational view of the evidence warrants the finding that Ms. Doe's conduct on April 14, 2012 was in any way unreasonable or contributed to her rape.

III. STATEMENT OF FACTS

In compliance with Superior Court Rule 9A, the plaintiff has provided a Statement of Undisputed Facts (hereinafter "SOF") in support of her Motion. The facts set forth below are offered for the convenience and clarification of the Court:

A. 4/14/12 Rape of Jane Doe.

In the early morning hours of April 14, 2012, Jane Doe was raped by the security guard on duty at the Ashford Imperial, which was selected, leased and controlled by the defendants for the purpose of student housing in San Juan, Puerto Rico. SOF at ¶ 7; Ex. 1, pp. 27, 56-57; Ex. 7. Ms. Doe returned to the Ashford Imperial after an evening out with fellow students at a local bar. SOF at ¶¶9, 11; Ex. 9, p. 4; Ex. 10, p. 128. She entered the building and then slipped and fell as she passed the security desk in the lobby. SOF at ¶11; Ex. 9, p. 6; Ex. 10, p. 139-140. Ashford Imperial security officer, William Rodriguez, stepped out from the security desk and assisted Ms. Doe to her feet. Id. Rodriguez then walked with Ms. Doe down the corridor to the elevator bank and followed her into the elevator. SOF at ¶12; Ex. 9, p. 6; Ex. 10, p. 139-140; 147-148. Ms. Doe pushed the button for the eighteenth floor, where her apartment was located, but was lured to the roof of the condominium by Rodriguez, who asked if she wanted to see a beautiful view of the city.³ Id. Ms. Doe had never exchanged more than polite greetings in the lobby with Rodriguez, but she felt like she could trust him because he was a uniformed security officer who worked regularly at the Ashford Imperial, and because it was his job to keep her safe. SOF at ¶14; Ex. 9, pp. 4, 6; Ex. 10, pp. 121-122, 149-150, 175. When they reached the roof, Rodriguez directed Ms. Doe to a corner to see the view, then pushed her against a railing at the edge of the building – which was more than twenty stories high – and raped her. SOF at ¶15; Ex. 9, pp. 4, 6; Ex. 12. After the rape, Rodriguez took the elevator back down to the lobby where he resumed his post at the lobby security desk. SOF at ¶16; Ex. 9, pp. 6-7; Ex. 13, p. 1. After reaching the elevator bank from the roof, Ms. Doe ran down the stairs to her

³ The roof was a common area of the apartment building. SOF at ¶13; Ex. 11, pp. 48-49.

apartment on the eighteenth floor and immediately informed her roommate and WPI's then on-site faculty advisor, Aarti Madan, that she had been raped. *Id.* Ms. Madan contacted the police who responded to the scene and arrested Rodriguez on sexual aggression charges for the rape of Jane Doe. SOF at ¶17; Ex. 13, p. 1.

Prior to working as a security officer, Rodriguez had served as a state police officer in Puerto Rico. SOF at ¶19; Ex. 11, pp. 125-128; Ex. 14, p. 4; Ex. 1, pp. 96-97. He was dishonorably discharged from the police force for corruption after he was arrested in August 2011 for selling police-issued ammunitions to an undercover agent. *Id.* The news of Rodriguez's arrest was covered by the local newspapers. *Id.* At the time of Jane Doe's rape in April 2012, Rodriguez had a felony conviction and was not licensed as a security guard in violation of Puerto Rico law. SOF at ¶20; Ex. 11, pp. 125-128.

On December 11, 2012, Rodriguez was convicted of the aggravated rape of Jane Doe by a unanimous guilty jury verdict in the state court of Puerto Rico. SOF at ¶21; Ex. 12, p. 2. As an aggravating factor the jury found that the rape was committed with the use of physical force, violence and intimidation. *Id.* Jane Doe testified and was cross-examined at the criminal trial of Rodriguez for six days regarding the circumstances of her rape. SOF at ¶22; Ex. 16. The conviction was appealed. SOF at ¶23; Ex. 12. On October 29, 2015, in a unanimous decision, the Supreme Court of Puerto Rico reinstated the felony conviction of aggravated sexual assault committed by Rodriguez. *Id.* Rodriguez was sentenced and is currently serving twenty years in prison for this crime. SOF at ¶23; Ex. A., ¶26.

B. 1/8/16 Deposition of Jane Doe.

Jane Doe was deposed by counsel for the defendants on January 8, 2016. The tone of her deposition, which spanned multiple hours, was improperly hostile and accusatory given

the sensitive nature of this case and Ms. Doe's status as a victim of sexual assault. Indeed, almost half of this deposition was spent questioning Ms. Doe on the issue of her alleged "negligence," including what steps she took to protect herself on the evening of the rape and whether she had engaged in behavior characterized by defense counsel as "unwise" or "risky." Deposition of Jane Doe, pp. 76-150, Ex. 10. For example, Ms. Doe was asked:

Q: As a kid we were all instructed by parents, you don't get into cars with strangers, you don't take candy from strangers, things of that nature . . .

Q: I'm not trying to oversimplify this at all. While growing up did your parents ever provide you with any guidance or recommendations about protecting yourself from a sexual assault.

A: I'm sure they did. I can't recall a specific time. Deposition of Jane Doe, pp. 92-93, Ex. 10.

Q: It says, "all WPI students who are participating in the Puerto Rico D-2012 project centers are expected to behave in a manner so as not to put themselves at risk." Did I read that correctly?

A: Yes.

Q: And did you read that before going down?

A: I did.

Q: And you understood that while you were down there you should not engage in risky behavior; right?

A: Correct. Deposition of Jane Doe, pp. 85, Ex. 10.

Q: You would agree with me, or would you agree with me, that you're [sic] going to the roof with Mr. Rodriguez who you didn't know, you had never spoken to in detail, you didn't even know his name, was contrary to the training you had received from WPI with respect to minimizing or eliminating the risk of sexual assault?

A: I personally don't think so.

Q: . . . Why not?

A: Because I think I should have trusted him no problem. I was told, “he will protect you, you’re okay with him.” So I mean, I don’t see anything wrong with what I did.

Q: So it was okay to, despite that fact that you felt it was weird and you were surprised that he got in the elevator with you, you felt it was okay to go to the roof, a dark secluded roof with a man who you know nothing about, whose name you don’t even know, and you felt that was not risky behavior? Do you understand my question?

A: Yeah. No I don’t think it’s risky behavior is my answer.

Q: Okay. Would you agree with me that if you had not gone to the roof with Mr. Rodriguez this incident wouldn’t have occurred?

A: I can’t speculate that. Deposition of Jane Doe, pp. 149-150, Ex. 10.

This testimony represents just a small fraction of the questions asked of Ms. Doe regarding her alleged “unwise” and “risky” behavior.

Additionally, Jane Doe was questioned at length regarding her alcohol consumption, not only about how many drinks she consumed on the evening of the rape, but also about her blood alcohol level reported in her rape kit, her history with alcohol, whether she had ever engaged in “binge drinking” or drinking to excess, whether she believed binge drinking was “risky behavior,” whether she had ever violated WPI’s alcohol policy, and so on.

Deposition of Jane Doe, pp. 67, 84-90, 98-100, 107, 112-115, 124-135, Ex. 10. The extent and manner of this questioning were entirely inappropriate given the nature of the rape in this case, which was a criminal attack and plainly not the result of any “unwise” decision or misunderstanding fueled by alcohol. See, Section IV.B.2., *supra*. Ms. Doe was of legal age

to drink at the time the rape occurred and had spent that evening at a bar with fellow students, as permitted by the university.⁴

Based on her deposition, plaintiffs anticipate the defendants will allege that Ms. Doe subjected herself to an unreasonable risk of rape on April 14, 2012 when she (1) drank at a bar with fellow students that evening, and (2) agreed to go to the roof with the security guard of her apartment building to see the beautiful view.⁵ Because no rational view of the evidence warrants this finding, and for all of the following reasons, this defense is without merit and the plaintiff is entitled to summary judgment in her favor.

IV. ARGUMENT

A. Legal Standard

Summary judgment is appropriate when the record shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Cassesso v. Comm'r of Corr., 390 Mass. 419, 422 (1983); Mass. R. Civ. P. 56(c). The moving party must affirmatively demonstrate that there are no genuine issues of material

⁴ Defense counsel engaged in other improper behavior throughout this deposition that, although not entirely relevant to this motion, tends to show that the defense of contributory negligence has not been raised in good faith. For example, defense counsel violated an agreement between counsel not to duplicate testimony given by Ms. Doe in her deposition taken as part of parallel litigation in Puerto Rico against other defendants, and for which WPI was present, represented by counsel, and questioned Ms. Doe. Deposition of Jane Doe, pp. 5-6, Ex. 10. As a result, Ms. Doe was needlessly re-questioned about sensitive topics such as the details and circumstances of her rape and her resulting damages. Additionally and over objection by counsel, Ms. Doe was asked to watch security footage of herself and her rapist, after the rape had occurred, to point out the precise time after her attack that she felt "in complete shock" and "dizzy," as detailed in her Answers to Interrogatories. Deposition of Jane Doe, pp. 164-167, Ex. 10. This line of questioning was an obvious attempt to upset and intimidate this young woman, and serves no relevant purpose to this matter.

⁵ Defendants have not raised the issue of consent and so plaintiffs do not include it in this motion. This notwithstanding, the conviction of William Rodriguez for the aggravated rape of Jane Doe would be admissible to prove that she did not consent to the sexual act that is the subject of this lawsuit.

fact in dispute. Pederson v. Time, Inc., 404 Mass. 14, 17 (1989); see also, Cmty. Nat'l Bank v. Dawes, 369 Mass. 550, 553 (1976) (commenting that summary judgment is a “device to make possible the prompt disposition of controversies on their merits without a trial, if in essence there is no real dispute as to the salient facts or if only a question of law is involved”). This burden may be satisfied by demonstrating that the non-moving parties have no reasonable expectation of proving an essential element of their claim. Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991).

If the moving party establishes the absence of a triable issue, the party opposing the motion must respond and allege specific facts which would establish the existence of a genuine issue of material fact. Pederson, 404 Mass. at 17. An opposing party cannot defeat the motion for summary judgment by resting on the pleadings and mere assertions of disputed facts. LaLonde v. Eissner, 405 Mass. 207, 209 (1989). Moreover, while the issue of negligence is generally a question of fact for the jury, this rule is not absolute and the court may decide the issue as a matter of law when no rational view of the evidence could warrant a finding of negligence. Bergendahl v. Mass. Elec. Co., 45 Mass. App. Ct. 715, 720 (1998) (summary judgment for defendant-electric company because no reasonable juror could find it was negligent in failing to insulate wires that electrocuted plaintiff when she touched them with aluminum ladder); Manning v. Nobile, 411 Mass. 382, 388-390 (1991) (summary judgment for defendant-hotel after guest who was served alcohol at party was injured in automobile accident, because no reasonable juror could find that hotel was reckless by failing to follow internal policy of providing bartenders at parties of more than thirty-five people); Harrington v. Francisco, No. CV201000743E, 2012 WL 676175, at *2 (Jan. 20, 2012) (in action involving an automobile accident, summary judgment granted as

to plaintiff's comparative negligence because no evidence on the record that she failed to use due care when operating her vehicle).

B. There is no Evidence to Support the Defendants' Claims that Jane Doe Contributed to or was a Cause of her Rape.

The plaintiff is entitled to summary judgment on the issue of her contributory negligence because no rational view of the evidence in this matter could support a finding that she failed to exercise reasonable care or subjected herself to an unreasonable risk of rape.

1. It was reasonable for Jane Doe to trust that Rodriguez, a uniformed security officer, was there to protect her and would not rape her.

The defendants' argument that Ms. Doe engaged in "risky behavior" by going to the roof of her apartment building with Rodriguez is without merit and contrary to common sense. Rodriguez was a uniformed security officer who worked regularly in the apartment building where WPI required Ms. Doe to live. She was familiar with him and was expected to trust him simply by virtue of his status as a guard. Indeed, the definition of "security guard" according to Merriam-Webster, is "a person whose job is to guard a place . . . **and make sure the people and things in it are not harmed.**"⁶ Moreover, the defendants encouraged Ms. Doe's trust in Rodriguez by not only selecting the Ashford Imperial, but by representing to her and to WPI students that the Ashford Imperial was safe because it had a "guard in attendance at all times." SOF at ¶8; Ex. 8, p. 19.

No reasonable person in Ms. Doe's position would have been suspicious of this guard's invitation to see a beautiful view of San Juan from the roof – a common area of the

⁶ Merriam-Webster, www.merriam-webster.com/dictionary/securityguard (last visited April 4, 2005).

apartment building. To the contrary, it would have been unreasonable for Ms. Doe *not* to trust Rodriguez or to believe that he might harm her. This sentiment was echoed by Ms. Doe's classmates who, after her rape, expressed to the defendants that they no longer felt safe at the Ashford Imperial and shared the general feeling that, "If you can't trust a security guard in the place where you are staying, then whom can you trust?" SOF at ¶18; Ex. 14, p. 4; Ex. 15, p. 4. Jane Doe was a victim of a criminal act perpetrated against her by a figure of authority. Contrary to the defendants' arguments, the record is abundantly clear that this is not the case of an "unwise" young woman going off with a suspicious stranger against her better judgment. The defendants cannot claim or establish that Jane Doe was "negligent" by trusting an individual whom they put in place to protect her, and no rational view of this evidence could support a finding that Jane Doe failed to protect herself.

2. It was reasonable for Jane Doe to consume alcohol on the evening of her rape and it was not a cause of her rape.

The defendants' effort to focus on Jane Doe's alcohol consumption in this case is a red herring, and the defendants have no proof that it caused or contributed to her rape. The attention to Ms. Doe's history of drinking and what she drank on the evening of the rape is a transparent attempt to confuse and mislead the jury and to attack Ms. Doe's character. Ms. Doe was of legal drinking age and permitted by the university to consume alcohol while studying abroad in Puerto Rico. SOF at ¶10; Ex. 1, pp. 108, 110-111. The students participating in the program would regularly drink and socialize at local establishments, and were occasionally joined by the on-site WPI professors, who would consume alcohol with them. Id. Ms. Doe was entitled to drink on the evening of her rape and it was not negligent or unreasonable for her to do so.

Moreover, the type of harm Ms. Doe suffered was not a logical result of her drinking, and as such, her decision to consume alcohol cannot be considered a legal cause of her rape to satisfy a negligence claim. It simply does not follow that consuming alcohol at a bar might cause one to be raped within one's own home by the building's security guard. To find otherwise would lead to the unjust conclusion that any time a woman drinks alcohol she negligently puts herself at risk of being raped under any circumstances. No reasonable juror could make such a leap, and summary judgment should be granted in favor of the plaintiff on the issue of her contributory negligence.

C. Contributory Negligence is an Improper Defense in a Negligent Security Claim Where Plaintiff was Raped.

It is improper and against public policy to allow the defense of contributory negligence based on the facts of this case. Jane Doe was the victim of a horrific crime which occurred as a result of the defendants' negligent failure to provide her with safe and adequate student housing, and to allow a criminal to serve as a security officer. Ms. Doe has a legal right to claim compensation for the damages she has suffered as a result of this negligence, and is entitled to do so with dignity and free from outrageous accusations that she "asked for it" or encouraged her own rape simply by agreeing to go to a common area of her apartment building with a male security guard. No view of the facts in this case permits a finding that Jane Doe was negligent, and the defendants' use of this affirmative defense is clearly designed to intimidate, harass, and was not put forth in good faith in violation of Mass. R. Civ. P. Rule 11.

The consequences of rape and sexual assault are unique and long-lasting, particularly the long-term psychological damage suffered by rape victims. As a result of being raped, Jane Doe suffers from PTSD, depression, anxiety and panic attacks. SOF at ¶24; Ex. 9, p.

10. She has trouble trusting people and is fearful of security guards. Id. There is an irrefutable public interest in helping victims recover and return to their lives after being raped. The civil justice system is only recently beginning to offer meaningful remedies to rape victims, and compensation for negligence is an important aspect of this progress. See, Brief Amicus Curiae of the Victim Rights Law Center, *Fuller v. First Financial Ins. Co.*, No. SJC-09677, 2006 WL 3202642, at *4 (Feb. 16, 2006). To allow a defendant to blame a victim for her own rape is offensive to this purpose, and serves only to prevent and dissuade these victims from pursuing claims that they are legally entitled to.

Massachusetts law is clear that a victim's comparative fault will not be considered in intentional tort claims. Flood v. Southland Corp., 416 Mass. 62, 65 (1993). As such, any alleged "negligence" by Jane Doe could never be considered in a claim against her rapist. The use of contributory negligence as a defense against a rape victim simply has no place in modern culture, and this policy should be broadened to apply to negligent tortfeasors, such as the defendants in this matter, whose failure to protect Ms. Doe caused her to be sexually assaulted. This would appropriately encourage due care by tortfeasors such as the defendants and justly compensate victims of rape and sexual assault.

V. CONCLUSION

For the reasons set forth above, and in the accompanying documents, the issue of Jane Doe's contributory negligence should be decided as a matter of law in the plaintiffs' favor. No rational view of the evidence can support a finding that Jane Doe failed to exercise ordinary care or subjected herself to an unreasonable risk of rape. Additionally, it is improper to compare the alleged "negligence" of Ms. Doe, a rape victim, to that of the institution and its employees that failed to protect her. This defense strategy, that Ms. Doe

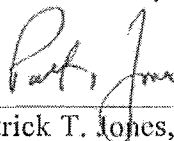
“asked for it” or contributed to her own aggravated rape, is offensive, inappropriate and should not be permitted.

WHEREFORE, the plaintiffs respectfully request that this Court allow Plaintiffs’ Motion for Partial Summary Judgment.

PLAINTIFFS REQUEST A HEARING ON THIS MOTION IF THE COURT DEEMS IT APPROPRIATE.

Respectfully submitted,

The Plaintiffs, Jane Doe, Mary Doe, and John Doe,
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JANE DOE, MARY DOE, and JOHN DOE,)
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Defendants)

DEFENDANTS WORCESTER POLYTECHNIC INSTITUTE, AARTI MADAN, ANNE T. OGILVIE, RICHARD F. VAZ, SUSAN VERNON-GERSTENFELD AND CHERYL A. MARTUNAS' OPPOSITION TO THE PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND INCORPORATED MEMORANDUM OF LAW

Now come the defendants, Worcester Polytechnic Institute, Aarti Madan, Anne T. Ogilvie, Richard F. Vaz, Susan Vernon-Gerstenfeld and Cheryl A. Martunas (hereinafter, "defendants") and submit this Opposition to Plaintiff's Motion for Partial Summary Judgment regarding the defendants' comparative negligence defense.

The plaintiffs' motion must be denied because:

1. The application of the comparative negligence statute is warranted where plaintiffs' claims sound in negligence. See G.L. c. 231, § 85;
2. The intentional and criminal conduct of a third-party does not serve to curtail or eliminate the assessment of comparative negligence as to whether Jane Doe acted reasonably under the circumstances to protect herself from harm; and
3. Jane Doe's actions should be considered by the jury in determining whether she acted reasonably to minimize or eliminate risk and protect herself from harm.

Accordingly, there is no factual or legal basis to preclude the defendants from asserting a comparative negligence defense and the plaintiffs' motion must be denied. Flood v. Southland Corp., 416 Mass. 62 (1993); Mullins v. Pine Manor College, 389 Mass. 47, 54 (1983).

I. Background:

This case arises out of an incident that occurred on April 14, 2012, at the Ashford Imperial Condominiums located in San Juan, Puerto Rico, in which Jane Doe was sexually assaulted by a security guard retained by the Ashford. The security guard, William Rodriguez, was subsequently arrested, tried and convicted for the crime of rape. At the time of the incident, Jane Doe was a student at Worcester Polytechnic Institute (WPI) and was participating in the Interactive Qualifying Project in Puerto Rico. Plaintiffs Jane Doe, her mother, Mary Doe, and her father, John Doe have filed a Complaint in the Worcester County Superior Court alleging negligence, gross negligence and loss of consortium against the defendants WPI, Aarti Madan (WPI's on-site faculty advisor), Anne T. Ogilvie (WPI's Director of Global Operations), Richard F. Vaz (WPI's Dean of Interdisciplinary and Global Studies Division), Susan Vernon-Gerstenfeld (WPI's former Director of Academic Programs and Planning for Interdisciplinary and Global Studies) and Cheryl A. Martunas (WPI's Director of Public Safety and Chief of Police). Plaintiffs also assert a negligence based breach of implied contract claim against WPI. (See Complaint, Exh. 23.) The plaintiffs do not allege that the defendants' conduct was intentional or that anyone other than Mr. Rodriguez committed an intentional or criminal act.

Upon acceptance into the IGSD Puerto Rico program, Jane Doe signed the Participant Statement of Agreement in which she agreed to abide by the WPI behavioral polices and attend "all pre-departure and re-entry meetings and/or courses as established by WPI." (Participant Statement of Agreement, 2011-2012, Exh. 24.) Before traveling to Puerto Rico for the IGSD

program, Jane Doe attended four mandatory orientation/training programs. (WPI Answers to interrogatories, Exh. 2, No. 12; Ogilvie Answers to Interrogatories, Exh. 3, No. 11; Doe Dep., Exh. 10, pp. 69-70.) WPI required that all students attend the orientations and training programs in order to provide them with the tools to make good decisions and manage their behavior, so as not to put themselves at risk, including the risk of sexual assault. (Madan Dep., Exh. 1, pp. 21, 25, 42-44, 168; Deposition of Susan Vernon-Gerstenfeld ("Gerstenfeld Dep."), Exh. 26, p. 13.) To that end, Jane Doe attended orientation seminars specifically dealing with sexual assault and alcohol use and abuse. (Madan Dep., Exh. 1, pp. 113-118; Doe Dep., Exh. 10, pp. 70, 84, 94-99.) These seminars included information and instruction that the students should look out for each other, learn about the place they were going, travel in groups, avoid excessive or irresponsible consumption of alcohol, never leave anyone at a bar, and always come home in a group. (Gerstenfeld Dep., Exh. 26, p. 48.)

As a participant in the 2012 IGSD program, Jane Doe was also provided with written materials, including the Going Global @ WPI Puerto Rico D 2012 Student Handbook (Exh. 8; Doe Dep., Exh. 10, pp. 74-75.) The Going Global Handbook specifically advises students that the program sponsors cannot guarantee the safety of the participants, eliminate all risks, or monitor and control all of their daily personal decisions and activities, including preventing the students from engaging in dangerous, risky or unwise activities. (Exh. 8, p. 5.) The Handbook also makes clear that the students should read and carefully consider all materials issued by the sponsor, research the health and safety concerns of the country(ies) they plan to visit, and avoid excessive or irresponsible consumption of alcohol. (Exh. 8, p. 6.) Given the obvious limitations on WPI's control, it was the students who were primarily responsible for their own health and welfare. (Exh. 8, p. 6; Madan Dep., Exh. 1, pp. 42-43, 47); Gerstenfeld Dep., Exh. 26, pp. 48-

50; Deposition of Anne Ogilvie (“Ogilvie Dep.”), Exh. 27, pp. 72-73.) Prior to traveling to Puerto Rico, Jane Doe knew that there were steps she could take to minimize or eliminate the risk of sexual assault, including not walking alone, not drinking too much, and not going to unfamiliar or secluded places with people she did not know. (Doe Dep., Exh. 10, pp. 90-96.) Jane Doe knew that while in Puerto Rico she was not to engage in risky behavior. (Doe Dep., Exh. 10, p. 85.) This risky behavior included drinking to excess. (Doe Dep., Exh. 10, pp. 86-90.) Nevertheless, Jane Doe disregarded the instructions and training provided to her and her own knowledge of the reasonable steps she could and should take to eliminate risks and protect herself from harm. (Doe Dep., Exh. 10, pp. 89-90).¹

Jane Doe’s disregard of the training she received and failure to take reasonable steps to protect herself from harm is demonstrated by her action prior to the happening of the incident, when she and several friends/fellow WPI students went out to Jimmy’s at the San Juan Hotel. (Doe Dep., Exh. 10, pp. 124-125.) While at Jimmy’s, Jane Doe claims to have consumed only one watermelon drink, but acknowledged that it contained three to four shots of liquor and therefore actually amounted to three to four drinks. (Doe Dep., Exh. 10, pp. 128-129.) Other than a few beers she drank earlier in the day, Jane Doe claims that the one watermelon drink was the only one she consumed during the course of the night or at any time prior to the

¹ Recognizing the known risks associated with study abroad programs, Jane Doe signed the Acknowledgment and Release, which specifically provided that:

Assumption of Risk and Release of Claims. Knowing the risks described, and in consideration of being permitted to participate in the Program, I agree, on behalf of my family, heirs, and personal representative(s), to assume all the risks and responsibilities surrounding my participation in the Program. To the maximum extent permitted by law, I release and indemnify Worcester Polytechnic Institute, and its officers, employees and agents, from and against any present or future claim, loss or liability for injury to person or property which I may suffer, or for which I may be liable to any other person, during my participation in the Program (including periods in transit to or from any site in country where the Program is being conducted).

(Acknowledgment and Release, Exh. 25; Doe Dep., Exh. 10, pp. 68-69.)

happening of the incident. (Doe Dep., Exh. 10, p. 129.) But that claim is contradicted by her medical records from San Juan Hospital, which reflect that at 7:30 a.m. on April 14, 2012, approximately five hours after the happening of the incident, she had a blood alcohol level of 193 mg/dl. (Exh. 28.) The amount of alcohol she consumed was not only unreasonable, but as the report reflects, it resulted in a blood alcohol level in the “toxic” range. (Exh. 28.)² It cannot be denied that the elevated level of alcohol in the blood would drastically affect her ability to make reasonable decisions.

After leaving Jimmy’s without her friends, Jane Doe arrived at the Ashford and realized that she did not have her key. She rang the bell and was buzzed in by the security guard, William Rodriquez. (Doe Dep., Exh. 10, pp. 134, 139.) Jane Doe recognized Mr. Rodriquez as a one of the security guard at the Ashford, but other than having exchanged casual greetings she had never previously spoken to him. (Doe Dep., Exh. 10, p. 122.) In fact, she did not know Mr. Rodriquez’ name, did not know if he spoke English and had never had any in-depth conversations with him. (Doe Dep., Exh. 10, pp. 121-122.) Upon entering the door to the Ashford, Jane Doe began to walk across the lobby, but as she passed the security desk where Mr. Rodriquez was stationed she fell. (Doe Dep., Exh. 10, pp. 139-140.) Mr. Rodriquez came out from behind the desk, picked her up off of the lobby floor and assisted her over to the elevator. (Doe Dep., Exh. 10, pp. 139-140.) When the elevator arrived, she got on and Mr. Rodriquez followed. (Doe Dep., Exh. 10, p. 140.) Significantly, Jane Doe felt that his getting on the elevator was “weird” and it surprised her. (Doe Dep., Exh. 10, pp. 139-140, 142-143.) Nevertheless, when Mr. Rodriquez asked her she wanted to go to the roof to look at the lights

² To convert serum ethanol level to BAC, move the decimal point 3 places to the left. For example, a 193 mg/dL serum ethanol level is equivalent to a 0.193 (g/dL) BAC, or 0.193% (weight/volume). (See, <http://emedicine.medscape.com/article/2090019-overview>)

she agreed to go. (Doe Dep., Exh. 10, pp. 139, 143.)³ Jane Doe had never been on the roof prior to the night of the incident. (Doe Dep., Exh. 10, p. 122.) The roof was not an area that was readily accessible to the students, and required the unlocking of a steel bar door and climbing a ladder. (Doe Puerto Rico Dep., Exh. 29, pp. 106-111; Doe Dep., Exh. 10, pp. 144-146.) In fact, access to the roof was limited to representatives/technicians from Sprint, Centennial and the HVAC contractor. (Joaquin Dep., Exh. 11, pp. 77-79.) Despite having received training and instruction from WPI in sexual assault and alcohol safety/awareness, in which she was specifically advised to stay with her group, stay away from dark, secluded, unfamiliar places, not go to places with people she did not know, and avoid excessive and irresponsible consumption of alcohol, Jane Doe disregarded that training, and her own better judgment, and in an extremely intoxicated state agreed to go to the secluded roof with a man with whom she had never previously spoken, whose name she did not know, and whose behavior had not only surprised her, but which she felt was “weird.” (Doe Dep., Exh. 10, pp. 147-148.) By failing to heed the training and instruction she had been provided by the defendants, Jane Doe put herself in the unfortunate position where the risk of sexual assault was greatly increased, a fact she realized too late. (Doe Puerto Rico Dep., Exh. 29, pp. 114, 116.)

II. Argument:

The plaintiffs’ mischaracterize the defendants’ comparative negligence defense. The defendants are not seeking to “blame a victim for her for her own rape,” nor do they assert that Jane Doe “asked for it” or otherwise provoked her own attack through her manner of dress or behavior. The defendants’ comparative negligence defense has nothing to do with the

³ Jane Doe could not recall if she and Mr. Rodriguez communicated in English or Spanish, or if he even understood her. (See Deposition of Jane Doe from Puerto Rico action (“Doe Puerto Rico Dep.”), Exh. 29, pp. 97-102.)

commission of the sexual assault or who was responsible for that crime. That issue has been decided and the person responsible, William Rodriguez, has been tried and convicted. The claims asserted against the defendants in this case involve a different issue. Here, the plaintiffs allege that the defendants were negligent in failing to protect Jane Doe from the criminal acts of a third-party. As such, they have the burden of proving that the defendants failed to exercise reasonable care to protect Jane Doe from a foreseeable risk. Mullins v. Pine Manor College, 389 Mass. 47, 54 (1983); Carey v. New Yorker of Worcester, Inc., 355 Mass. 450, 454 (1969). Like any other negligence claim, the jury will also determine whether Jane Doe acted reasonably under the circumstances, including whether she took reasonable steps to protect herself from harm. To that end, the defendants will present evidence that Jane Doe disregarded the information, orientation and training provided to her by the defendants, and her own knowledge and common sense, and by doing so failed to take reasonable steps to protect herself from harm. "In deciding on the reasonable foreseeability of harm, all the circumstances are examined." Flood, 416 Mass. at 72; Mullins, 389 Mass. at 56; Luisi v. Foodmaster Supermarkets, Inc., 50 Mass. App. Ct. 575, 577 (2000).

There is ample evidence to support the defendants' comparative negligence defense based upon Jane Doe's failure to follow the training and orientation provided by the defendants, and her own knowledge of the risks presented to a young woman participating in a study abroad program in an unfamiliar place. As a requirement for participating in the IGSD Puerto Rico program, Jane Doe was required to attend and participate in in four mandatory orientation/training programs, designed to provide the students with the tools to manage their behavior so they do not put themselves at risk, including the risk of sexual assault. (Madan Dep., Exh. 1, pp. 21, 25, 42-44, 168; Gerstenfeld Dep., Exh. 26, p. 13.) The training and

orientations included a seminar specifically dealing with Sexual Assault & Safety for Student Travelers and alcohol use and abuse. (Madan Dep., Exh. 1, pp. 113-118; Doe Dep., Exh. 10, pp. 70, 84, 94-99.) Prior to the incident, Jane Doe knew that there were simple steps she could take to minimize or eliminate the risk of sexual assault, including not walking alone, not drinking to excess and not going to unfamiliar or secluded places with people she did not know. (Doe Dep., Exh. 10, pp. 90-96.) Despite having received training from WPI in sexual assault in which she was specifically advised to stay with her group, stay away from dark, secluded, unfamiliar places and not go to places with people she did not know, Jane Doe admittedly disregarded that training and agreed to go to the secluded roof with a man who she had never spoken to, whose name she did not know and whose behavior she felt was surprising and "weird." (Doe Dep., Exh. 10, pp. 147-148.) These facts should be considered by the jury in determining whether Jane Doe acted reasonably under the circumstances to protect herself from harm and assessing her comparative negligence.

Furthermore, being of legal age, it was not unreasonable for Jane Doe to consume alcohol. However, the jury may properly consider whether her excessive consumption of alcohol was unreasonable and contrary to the instruction and training provided to her by the defendants. Jane Doe was instructed not to drink to excess, because of the risks such a condition presented. Moreover, while plaintiffs assert that the excessive consumption of alcohol should not be considered evidence of comparative negligence, Jane Doe acknowledged that binge drinking and drinking to excess was risky behavior, and that when she drank to excess while in Puerto Rico she engaged in risky behavior. (Doe Dep., Exh. 10, pp. 86-90.) The jury may weigh the effect of excessive alcohol consumption on Jane Doe's ability to make reasonable decisions. See Sweenor v. 162 State St., Inc., 361 Mass. 524, 527 (1972); (liquor impairs senses and

enhances the possibility of irrational acts); O'Hanley v. Ninety-Nine, Inc., 12 Mass.App.Ct. 64, 69-70 (1981) (evidence of intoxication is to be weighed by the jury in determining the percentages of negligence to be assigned to the plaintiff and the defendant under G.L. c. 231, § 85). According to the medical records, Jane Doe's blood alcohol level at 7:30 a.m., approximately five hours after the incident, was .193 mg/dL, which was considered to be at a "toxic" level. (Exh. 28.) The jury may properly consider this excessive consumption of alcohol and its effect on a person's capacity to make rational decisions in assessing whether Jane Doe took reasonable steps to protect herself from harm. The inferences to be drawn from the facts contained in the pleadings and depositions must be drawn against the movant and in favor of the party opposing a motion for summary judgment. O'Hanley, 12 Mass.App.Ct. at 69-70; Community Natl. Bank v. Dawes, 369 Mass. 550, 559 n.8 (1976).

Plaintiffs' reliance on Flood v. Southland Corp., 416 Mass 62 (1993) is misplaced. The Flood case, heard by both the Appeals Court and Supreme Judicial Court, confirms the defendants' right to assert a comparative negligence defense. In Flood, the plaintiff sustained serious injuries when he was stabbed by his friend, John Darcy, outside a 7-Eleven store owned and operated by Southland Corporation (Southland). The plaintiff filed suit against Darcy and Southland, claiming both were negligent. At trial, the judge found no evidence that Darcy's conduct was intentional, and therefore submitted the case to the jury on negligence only. The jury found both defendants liable. On appeal, the Appeals Court held that the jury should have been asked to determine the nature of Darcy's conduct, because if it was found to be intentional, Darcy's conduct would not be involved in the jury's comparative negligence assessment. On the other hand, Southland would be entitled to the full reduction for the plaintiff's comparative negligence by virtue of the negligence claim asserted against it. Flood,

33 Mass. App. Ct. 287, 295-296 (1992). On further review, the SJC agreed with the Appeals Court, holding that intentional tortious conduct cannot be negligent, and thus comparative negligence would not apply to Darcy's conduct if found to be intentional. However, the comparative negligence defense was still available to Southland, increasing the prospect that the jury would conclude that the criminal action of Darcy was not a reasonably foreseeable act for which Southland was responsible. Flood, 416 Mass. 62, 64-65 (1993); *Cf.* Waters v. Blackshear, 412 Mass. 589, 590 (1992)(no room for the jury to believe the uncontroverted evidence that putting firecracker in the plaintiff's shoe was not intentionally harmful, but merely negligent).

The application of a comparative negligence assessment is clearly permissible and warranted in the present case, where the plaintiffs' claims sound in negligence. Moreover, the security guard who committed the crime, William Rodriguez, is not a co-defendant. Thus, while his intentional criminal conduct would preclude an assessment of comparative negligence in any claim brought against Mr. Rodriguez, it is irrelevant to the comparative negligence defense raised by the defendants. Flood, 416 Mass. at 64-65; 33 Mass. App. Ct. at 295-296.

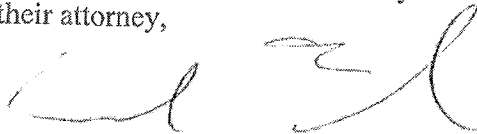
Finally, the plaintiffs attempt to impose a strict liability standard on the defendants is unfair and not supported by the applicable law. The issue in this case is whether the sexual assault of Jane Doe by a security guard was a foreseeable risk, and if so, whether the defendants took adequate steps to protect Jane Doe from that risk. Mullins, 389 Mass. at 54. In making that determination, the jury "is asked how a person of ordinary prudence would act in the circumstances." Goldstein v. Gontarz, 364 Mass. 800, 805 (1974). The comparative negligence statute provides for the comparison of plaintiff's negligence to that of anyone else against whom recovery is sought. See G.L. c. 231, § 85. "[T]he policy of negligence liability presumes that

people will, or at least should, take reasonable measures to protect themselves and others from harm.... However, if the injured person's unreasonable conduct also has been a cause of his injury, his conduct will be accounted for in apportioning liability for damages.” Correia v. Firestone Tire & Rubber Co., 388 Mass. 342, 354 (1983). Even where there is a claim for gross negligence, the jury must compare the negligence of all parties. Lane v. Meserve, 20 Mass. App. Ct. 659, 664-665 (1985). Here, in determining liability for claims sounding in negligence, the jury must consider the actions of all parties, including Jane Doe, in determining whether each acted reasonably under the circumstances.

III. Conclusion:

For the above stated reasons, and in the absence of any legal or factual basis to preclude the defendants from asserting a comparative negligence defense, the plaintiffs’ Motion for Partial Summary Judgment must be denied.

The defendants,
Worcester Polytechnic Institute, Aarti Madan,
Anne T. Ogilvie, Richard F. Vaz,
Susan Vernon-Gerstenfeld and Cheryl A. Martunas,
By their attorney,



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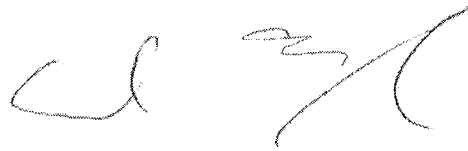
CERTIFICATE OF SERVICE

I, David W. McGough, attorney for the defendants, Worcester Polytechnic Institute, Aarti Madan, Anne T. Ogilvie, Richard F. Vaz, Susan Vernon-Gerstenfeld, and Cheryl A. Martunas, hereby certify that on this 22nd day of April, 2016 I have served a copy of the following document:

DEFENDANTS WORCESTER POLYTECHNIC INSTITUTE, AARTI MADAN, ANNE T. OGILVIE, RICHARD F. VAZ, SUSAN VERNON-GERSTENFELD AND CHERYL A. MARTUNAS' OPPOSITION TO THE PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND INCORPORATED MEMORANDUM OF LAW

by mailing a copy of the same first class mail, postage prepaid, to counsel of record:

Donna R. Corcoran, Esq.
Patrick T. Jones, Esq.
Audrey R. Poore, Esq.
Jones Kelleher, LLP
21 Custom House Street
Boston, MA 02110



David W. McGough

COMMONWEALTH OF MASSACHUSETTS

Worcester, SS.

SUPERIOR COURT

JANE DOE, MARY DOE, and JOHN DOE,
Plaintiffs,

v.

WORCESTER POLYTECHNIC
INSTITUTE, AARTI MADAN, ANNE T.
OGILVIE, RICHARD F. VAZ, SUSAN
VERNON-GERSTENFELD, and CHERYL
A. MARTUNAS,
Defendants

CIVIL ACTION
NO.: 1585-CV-0570 B

**JOINT STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT AGAINST ALL DEFENDANTS**

Plaintiffs Jane Doe, Mary Doe and John Doe, by their counsel, submit the following statement of undisputed material facts as required by Superior Court Rule 9A(b)(5):

1. In the spring of 2012, Jane Doe, a third-year student at Worcester Polytechnic Institute ("WPI"), was enrolled to participate in WPI's eight-week study abroad program in San Juan, Puerto Rico (hereinafter "the Program"). Deposition of Defendant Aarti Madan/30(b)(6) Deposition Testimony of WPI, p. 13, Joint Appendix Exhibit 1.

Resp. No. 1:

Admitted.

2. Defendant, Aarti Madan, was employed by WPI in 2012 as the Program's on-site faculty advisor. Defendant WPI's Answers to Interrogatories, p. 4, Jt. Appx. Ex. 2.

Resp. No. 2:

Admitted that Aarti Madan was a professor at WPI and in 2012 also served as one of the on-site faculty advisor in Puerto Rico. (Madan Dep., Exh. 1, pp. 11-12.)

3. Defendant, Anne Ogilvie, was employed by WPI in 2012 as the Director of Global Operations, and was responsible for overseeing risk management, operations, and program administration for WPI's off-campus programs, including the 2012 Puerto Rico Program. Defendant Anne Ogilvie's Answers to Interrogatories, p. 4, Jt. Appx. Ex. 3.

Resp. No. 3:

Admitted.

4. Defendant, Susan Vernon Gerstenfeld, was employed by WPI in 2012 as the Director for the Puerto Rico Project Center, and was responsible for coordinating student housing at the Ashford Imperial Condominium ("Ashford Imperial"). Defendant Susan Vernon Gerstenfeld's Answers to Interrogatories, p. 3, Jt. Appx. Ex. 4.

Resp. No. 4:

Admitted that Susan Vernon Gerstenfeld was employed by WPI in 2012 as an Adjunct Professor and also served as the Director of Academic Programs and Planning for Interdisciplinary and Global Studies/Director for the Puerto Rico and Costa Rica Project Center, which included coordinating student housing. (Exh. 4, No. 3 and 5.)

5. Defendant, Richard Vaz, was employed by WPI in 2012 as the Dean of the Interdisciplinary and Global Studies Division, and had supervisory power over those

employees responsible for the planning and operation of the 2012 Puerto Rico Program. Deposition of Richard Vaz, pp. 6-7, Jt. Appx. Ex. 5.

Resp. No. 5:

Admitted that in 2012 Richard Vaz was the Dean of and oversaw the Interdisciplinary and Global Studies Division. Although the Director of Global Operations, Anne Ogilvie, reported to him, he deferred to her and/or her staff's in the area of study abroad, health, safety and risk management. (Vaz Dep., Exh. 5, p. 6.)

6. Defendant, Cheryl Martunas, was employed by WPI in 2012 as the Chief of Police and Director of Public Safety. Defendant Cheryl Martunas' Answers to Interrogatories, p. 1-2, Jt. Appx. Ex.

Resp. No. 6:

Admitted.

7. WPI selected, leased and controlled a portion of the premises at the Ashford Imperial Condominium in San Juan for the purpose of student housing for the 2012 Puerto Rico Program. 30(b)(6) Deposition Testimony of WPI, pp. 27, 56-57, Jt. Appx. Ex. 1.; Short Term Lease Agreement, Jt. Appx. Ex. 7.

Resp. No. 7:

Admitted that WPI selected and leased apartments at the Ashford Imperial Condominium in San Juan for the housing of students participating in the IGSD program. Denied that WPI controlled those premises or a portion of those premises. (Madan Dep., Exhibit 1, pp. 42-44, Gerstenfeld Dep., Exh. 26, pp. 47-49; Deposition Cheryl Martunas ("Martunas Dep."), Exhibit 31, p. 28.)

8. WPI required students participating in the Program, including Jane Doe, to reside at the Ashford Imperial, and represented to the students that the building was safe and was protected by a security guard on duty at all times. Going Global Handbook, p. 5; 30(b)(6) Deposition Testimony of WPI, p. 27, Jt. Appx. Ex. 1; Going Global @ WPI Handbook, p. 19, Jt. Appx. Ex. 8.

Resp. No. 8:

Admitted that the students were required to reside at the Ashford Imperial, which had a security guard on duty at all times. Denied that WPI represented to the students that the building was safe at all times and protected by the security guard at all times. The students were free to come and go as they chose to do and had primary responsibility for their health and welfare. (Vaz Dep., Exh. 5, pp. 14-15, 35-36; Going Global Handbook, Exhibit 8, p. 6; Madan Dep., Exh. 1, pp. 42-43, 47, 111; Gerstenfeld Dep., Exh. 26, pp. 48-50; Ogilvie Dep., Exh. 27, pp. 72-73.)

9. On the evening of April 13, 2012, Jane Doe went with fellow WPI classmates to Jimmy's, a nearby bar in the San Juan Hotel, and consumed a watermelon beverage with three or four shots of alcohol. Jane Doe's Answers to Defendant WPI's Interrogatories, p. 4, Jt. Appx. Ex. 9; Deposition of Jane Doe, p. 128, Jt. Appx. Ex. 1

Resp. No 9:

Admitted that Jane Doe claims that she went with fellow WPI classmates to Jimmy's, a bar in the San Juan Hotel, and consumed a watermelon beverage with three or four shots of alcohol. However, medical records from San Juan Hospital reflect a blood alcohol level from a sample drawn at 7:30 a.m. on April

14, 2014, approximately five hours after the incident, of 193 mg/dL, which was considered to be at a “toxic” level. Otherwise, denied. (See Puerto Rico Public Health Laboratory Report, Exhibit 28.)

10. In April 2012, Jane Doe was twenty-one years old and of legal age to consume alcohol. She and other WPI students were permitted by the defendants to consume alcohol while participating in the Program. The students were occasionally joined by WPI’s on-site faculty advisors, including Aarti Madan, who would consume alcohol with the students. 30(b)(6) Deposition Testimony of WPI, pp. 108, 110-111, Jt. Appx. Ex. 1.

Resp. No. 10:

Admitted that In April 2012, Jane Doe was twenty-one years old and of legal age to consume alcohol. Admitted that those WPI students who were at least 21 years old were permitted by the defendants to consume alcohol while participating in the Program. Admitted that from time to time Prof. Madan would join the students for a drink. However, the defendants deny any inference that Jane Doe was permitted to binge drink or drink to excess. Jane Doe was advised that she should avoid excessive and irresponsible consumption of alcohol, but disregarded that advice and on the night of the incident consumed enough alcohol to place her blood alcohol level in the toxic range. (Going Global, Exhibit 8, p. 6; Lab Report, Exhibit 28.)

11. In the early morning hours of April 14, 2012, Jane Doe returned home to the Ashford Imperial. She entered the building and then slipped and fell as she passed the security desk in the lobby. Ashford Imperial security officer, William Rodriguez

(“Rodriguez”), stepped out from the security desk and assisted Ms. Doe to her feet. Jane Doe’s Answers to Defendant WPI’s Interrogatories, p. 6, Jt. Appx. Ex. 9; Deposition of Jane Doe, p. 139-140, Jt. Appx. Ex. 10.

Resp. No. 11:

Admitted that in the early morning hours of April 14, 2012, Jane Doe returned to the Ashford Imperial alone, having left her friends/WPI classmates at Jimmy’s. Admitted that Jane Doe fell as she passed the security desk due to a number of factors, including her consumption of alcohol, and that Mr. Rodriguez helped her off the floor. Otherwise, denied. (Doe Puerto Rico Dep., Exh. 29, pp. 95-96; Doe Dep., Exhibit 10, pp. 134, 139-140.)

12. Rodriguez then walked with Jane Doe down the corridor to the elevator bank and followed her into the elevator. Ms. Doe pushed the button for the eighteenth floor, where her apartment was located, but was lured to the roof of the condominium by Rodriguez, who asked if she wanted to see a beautiful view of the city. Jane Doe’s Answers to Defendant WPI’s Interrogatories, p. 6, Jt. Appx. Ex. 9; Deposition of Jane Doe, pp. 139-140, 147-148, Jt. Appx. Ex. 10.

Resp. No. 12:

Admitted that Rodriguez assisted Jane Doe down the corridor to the elevator bank and followed her into the elevator. When the elevator arrived, she got on and Mr. Rodriguez followed. (Doe Dep., Exh. 10, p. 140.) Mr. Rodriguez asked her she wanted to go to the roof to look at the lights she agreed to go. (Doe Dep., Exh. 10, pp. 139, 143). Jane Doe had never been on the roof prior to the night of the incident. (Doe Dep., Exh. 10, p. 122.) The roof was not an area that was

readily accessible to the students, and required the unlocking of a steel bar door and climbing a ladder. (Doe Puerto Rico Dep., Exh. 29, pp. 106-111.) Despite the fact that she did not know Mr. Rodriguez' name, had never really spoken to him, did not know if he spoke English, and whose behavior she felt was surprising and "weird, " Jane Doe agreed to accompany him to the roof. Otherwise, denied. (Doe Dep., Exh. 10, pp. 147-148.)

13. The roof was a common area of the Ashford Imperial Condominium. Deposition of Abraham Joaquin-Hidalgo/30(b)(6) Deposition Testimony of Consejo de Titulares Condominio Ashford Imperial, pp. 48-49, Jt. Appx. Ex. 11.

Resp. No. 13:

Denied. According to the Standard Operating Procedures for the Ashford Imperial Security Guards, the gate to the roof was to be opened only to identified personnel of Sprint, Centennial and A/C/ Doctor & Electrical Services. (Joaquin pp. 77-78.) Jane Doe had never been on the roof prior to the night of the incident. (Doe Dep., Exhibit 11, p. 122.) The roof was not an area that was readily accessible to the students, and required the unlocking of a steel bar door and climbing a ladder. (Doe Puerto Rico Dep., Exh. 29, pp. 106-111; Doe Dep., Exh. 10, pp. 144-146.)

14. Jane Doe had never exchanged more than polite greetings in the lobby with Rodriguez, but she felt like she could trust him because he was a uniformed security officer who worked regularly at the Ashford Imperial, and because it was his job to keep her safe. Jane Doe's Answers to Defendant WPI's Interrogatories, pp. 4, 6, Jt. Appx. Ex. 9; Deposition of Jane Doe, pp. 121-122, 149-150, 175, Jt. Appx. Ex. 10.

Resp. No. 14:

Admitted that prior to the incident, Jane Doe did not know Mr. Rodriguez name, did not know if he spoke English and, other than exchanging greetings, had never had any in-depth conversations with him. (Doe Dep., Exh. 10, pp. 121-122. Admitted Jane Doe has testified that with a blood alcohol level of at least of .193, which was considered to be in the “toxic” range, she felt she could trust Mr. Rodriguez and go to the dark secluded roof with him, despite the fact that she did not know his name, did not know if he spoke English, had never had any in-depth conversations with him and felt that his behavior was surprising and “weird.” Doe Dep., Exh. 10, pp. 121-122, 147-148.

15. When they reached the roof, Rodriguez directed Jane Doe to a corner to see the view, then pushed her against a railing at the edge of the building – which was more than twenty stories high – and raped her. Jane Doe’s Answers to Defendant WPI’s Interrogatories, pp. 4, 6, Jt. Appx. Ex. 9; People v. Rodriguez, 2015 TSPR 139 (P.R. 2015) (Certified English Translation), Jt. Appx. Ex. 12.

Resp. No. 15:

Admitted.

16. After the rape, Rodriguez took the elevator back down the lobby where he resumed his post at the lobby security desk. After reaching the elevator bank from the roof, Ms. Doe ran down the stairs to her apartment on the eighteenth floor and immediately informed her roommate and WPI’s then on-site faculty advisor, Aarti Madan, that she had been raped. Jane Doe’s Answers to Defendant WPI’s

Interrogatories, pp. 6-7, Jt. Appx. Ex. 9; Incident Report by Aarti Madan, p. 1, Jt. Appx. Ex. 13.

Resp. No. 16:

Admitted.

17. Ms. Madan contacted the police who responded to the scene and arrested Rodriguez on sexual aggression charges for the rape of Jane Doe. Incident Report by Aarti Madan, p. 1, Jt. Appx. Ex. 13.

Resp. 17:

Admitted.

18. After Jane Doe was raped, students and parents of students participating in the Program expressed to the defendants that they no longer felt safe at the Ashford Imperial. The general feeling among the students in Puerto Rico was, “if you can’t trust a security guard in the place where you were staying, then whom can you trust?” Incident Report by Creighton Peet, p. 4, Jt. Appx. Ex. 14; Puerto Rico Incident Chronology, p. 4, Jt. Appx. Ex. 15;

Resp. No. 18:

Admitted that in his Incident Report, Creighton Peet reported that after hearing accounts in the news media regarding Mr. Rodriguez’ criminal record, discharge from the Puerto Rico Police Department, and a false report that Mr. Rodriguez had been released on bail, some of the students had doubts in their minds about their safety, whether they could trust the guards and why the security company that provided guards for the Ashford Imperial had hired Mr. Rodriguez. Notice of the false report of Mr. Rodriguez being out on bail was relayed

to the students and parents. According to Prof. Peet, the two other regular guards, “Angel” in the daytime on weekdays and “Ephraim” in evenings and daytime on weekends, were both reliable. Otherwise, denied. (Exh. 14, p. 4; Exh. 15 (April 27, 2012)).

19. Prior to working as a security officer, Rodriguez had served as a state police officer in Puerto Rico. He was dishonorably discharged from the police force for corruption after he was arrested in August 2011 for selling police-issued ammunitions to an undercover agent. The news of this arrest was covered by local newspapers. Incident Report by Creighton Peet, p. 4, Jt. Appx. Ex. 14; 30(b)(6) Deposition Testimony of WPI, pp. 96-97, Jt. Appx. Ex. 1; . Deposition of Abraham Joaquin-Hidalgo/30(b)(6) Deposition Testimony of Consejo de Titulares Condominio Ashford Imperial, pp. 125-128, Jt. Appx. Ex. 11.

Resp. No. 19:

Admitted that Mr. Rodriguez was dishonorably discharged from the police force for selling ammunitions to an undercover agent and that an account of his arrest is contained in an article obtained from Adendi.com, which was marked as Exhibit 11 to Abraham Joaquin-Hidalgo’s deposition, but which Mr. Joaquin did not see until after the incident. (Joaquin Dep., Exh. 11, pp. 124 -128; Adendi.com print out, Exh. 32.)

20. At the time of Jane Doe’s rape in April 2012, Rodriguez had a felony conviction and was not licensed as a security guard in violation of Puerto Rico law. Deposition of Abraham Joaquin-Hidalgo/30(b)(6) Deposition Testimony of Consejo de Titulares Condominio Ashford Imperial, pp. 125-128, Jt. Appx. Ex. 11.

Resp. No. 20:

Denied. The citation to the record does not support the fact presented. Mr. Joaquin testified that prior to the incident he did not know that Mr. Rodriguez had been convicted of a felony for selling ammunition and that only after did he learn that Mr. Rodriguez had “had been accused.” (Joaquin Dep., Exh. 11, pp. 125-128.) Furthermore, prior to the incident, Mr. Rodriguez had obtained and provided to Winn Access and the Ashford a Certificate of Good Standing from the Puerto Rico Police indicating that he did not have a criminal record. (See Certificate of Good Standing, Exhibit 30.) Denied that Rodriguez was required to be licensed as a security guard under Puerto Rico law. See, Private Detectives Act of Puerto Rico, 25 L.P.R.A. 285j (Agency Employees)

21. On December 11, 2102, Rodriguez was convicted of the aggravated sexual assault of Jane Doe by a unanimous guilty jury verdict in the state court of Puerto Rico. As an aggravating factor the jury found that the rape was committed with the use of physical force, violence and intimidation. People v. Rodriguez, 2015 TSPR 139 (P.R. 2015) (Certified English Translation), p. 2, Jt. Appx. Ex. 12.

Resp. 21:

Admitted.

22. Jane Doe testified and was cross-examined at the criminal trial of Rodriguez for six days regarding the circumstances of her rape. Criminal Trial Testimony of Jane Doe, Jt. Appx. Ex. 16.

Resp. No. 22:

Admitted that the record attached at Exhibit 16 reflects that Jane Doe testified and/or was cross-examined on six days at the criminal trial.

23. The conviction was appealed. On October 28, 2015, in a unanimous decision, the Supreme Court of Puerto Rico reinstated the felony conviction of aggravated sexual assault committed by Rodriguez. People v. Rodriguez, 2015 TSPR 139 (P.R. 2015) (Certified English Translation); Jt. Appx. Ex. 12. Rodriguez is sentenced and is currently serving twenty years in prison for this crime. Affidavit of Counsel, para. 26, Jt. Appx. Ex. A.

Resp. No. 23:

Admitted.

24. As a result of being raped, Jane Doe suffers from PTSD, depression, anxiety and panic attacks. She has trouble trusting people and is fearful of security guards. Jane Doe's Answers to Defendant WPI's Interrogatories, p. 10, Jt. Appx. Ex. 9.

Resp. No. 24:

Admitted that Jane Doe claims that as a result of the incident she suffers from PTSD, depression, anxiety and panic attacks, and that she has trouble trusting people and is fearful of security guards. (Exh. 9, No. 18.)

25. All defendants have asserted the affirmative defense of contributory negligence. Defendant WPI's Answer to Plaintiffs' Complaint, p. 9, Jt. Appx. Ex. 17; Defendant Aarti Madan's Answer to Plaintiffs' Complaint, p. 9, Jt. Appx. Ex. 18; Defendant Anne T. Ogilvie's Answer to Plaintiffs' Complaint, p. 9, Jt. Appx. Ex. 19; Defendant Richard F. Vaz's Answer to Plaintiffs' Complaint, p. 9, Jt. Appx. Ex. 20; Defendant

Susan Vernon-Gerstenfeld's Answer to Plaintiffs' Complaint, p. 9, Jt. Appx. Ex. 21;

Defendant Cheryl Martunas's Answer to Plaintiffs' Complaint, p. 9, Jt. Appx. Ex. 22.

Resp. No. 25:

Admitted.

26. The defendants intend to allege that Jane Doe negligently put herself at risk of rape by agreeing to go to the roof of her apartment building with Rodriguez, the security guard on duty, and by having consumed alcohol earlier that evening. Deposition of Jane Doe, pp. 76-150, Jt. Appx. Ex. 10.

Resp. No 26:

Admitted that the defendants contend that Jane Doe was comparatively negligent. Jane Doe knew that there were steps she could take to minimize or eliminate the risk of sexual assault, including not walking alone, not drinking to excess and not going to unfamiliar or secluded places with people she did not know. (Doe Dep., Exh. 10, pp. 90-96.) Jane Doe acknowledged that binge drinking and drinking to excess was risky behavior and that when she drank to excess while in Puerto Rico she engaged in risky behavior. (Doe Dep., Exh. 10, pp. 86-90.) According to the medical records, Jane Doe's blood alcohol level at 7:30 a.m. on April 14, 2012, approximately five hours after the incident, was 193 mg/dL, which was considered to be at a "toxic" level. (Exh. 28.) Jane Doe failed to take reasonable steps to protect herself from harm by excessively and irresponsibly consuming alcohol to the point where her blood alcohol level was in the toxic range, and agreeing to go to the secluded roof of the Ashford with a man who she had never spoken to, whose name she did not know, and whose

behavior she felt was surprising and “weird.” Otherwise, denied. (Doe Dep., Exh. 10, pp. 147-148.)

Defendants’ Statement of Additional Undisputed Material Facts:

27. WPI required that all students attend the orientations and training programs in order to provide them with the tools to make good decisions and manage their behavior, so as not to put themselves at risk, including the risk of sexual assault. (Madan Dep., Exh. 1, pp. 21, 25, 42-44, 168; Deposition of Susan Vernon-Gerstenfeld (“Gerstenfeld Dep.”), Exh. 26, p. 13.)

Response No. 27: Denied in part.

Admitted that students were required to complete an online General Orientation about traveling abroad, and attend one site-specific orientation about Puerto Rico, and one sexual assault orientation. Admitted that the sexual assault orientation provided students with information regarding the risk of sexual assault to students studying abroad, including ways they could reduce that risk, such as not leaving drinks unattended, not accepting drinks from strangers, and not inviting strangers and/or members of the host culture back to WPI student housing. Denied that any WPI pre-departure orientation addressed the risk that students might be raped within WPI’s student housing facility by a security guard controlled by the university, and whose job it was to keep students safe. (WPI’s Answers to Ints., Ex. 2, p. 8; WPI Orientation Materials, Sexual Assault & Safety Presentation, Ex. 33; WPI Orientation Materials, Lost in the Translation, Ex. 34).

28. Jane Doe attended orientation seminars specifically dealing with sexual assault and alcohol use and abuse, which included information and instruction that the students should look out for each other, learn about the place they were going, travel in groups, avoid excessive or irresponsible consumption of alcohol, never leave anyone at a bar, and always come home in a group. (Madan Dep., Exh. 1, pp. 113-118; Doe Dep., Exh. 10, pp. 70, 84, 94-99; Gerstenfeld Dep., Exh. 26, p. 48.)

Response No. 28: Denied in part.

See, Response No. 27, incorporated by reference herein. Denied that Jane Doe's alcohol consumption on 4/14/12 was excessive or irresponsible, or that she failed to travel and/or come home in a group that evening. On 4/14/12, Jane Doe socialized with a group of WPI students at a local bar, Jimmy's, where she consumed one watermelon drink with 3 or 4 shots of alcohol in it. Jane Doe left the bar because she was tired and did not want to continue drinking. She received a ride home from a friend of the group, Hugo, who dropped her safely at the front door of the Ashford. Moreover, defendants admitted that WPI's instruction to students, "when they go out at night to travel in groups and come home as groups and never leave anybody in . . . a bar or any other place where they may have been," did not apply while students were at home, inside the Ashford. Defendants admitted that students were never given any advice or caution about walking around, alone or otherwise, inside WPI's student housing facility in Puerto Rico. (WPI's Answers to Ints., Ex. 2, p. 8; WPI Orientation Materials, Sexual Assault & Safety Presentation, Ex. 33; WPI Orientation

Materials, Lost in the Translation, Ex. 34; Gerstenfeld dep., Ex. 26, p. 73; Doe dep., Ex. 10, pp. 133-136).

29. The Going Global Handbook also advised students that the program sponsors cannot guarantee the safety of the participants, eliminate all risks, or monitor and control all of their daily personal decisions and activities, including preventing the students from engaging in dangerous, risky or unwise activities. (Exh. 8, p. 5.)

Response No. 29: Denied.

The defendants' statement misrepresents the document as a whole. The Handbook told students that WPI could not "assume responsibility for actions or for events . . . that are beyond the control of the [university] and its subcontractors . . ." Defendants admitted that they controlled the security officers at the Ashford, and could have a guard removed if the guard posed a risk to WPI students. The Handbook also told students that their safety was WPI's "primary concern" and that WPI was "committed to uphold the [safety] standards of the profession" to ensure that program-sponsored accommodation was reasonably safe. WPI promised students that it would conduct periodic assessments of health and safety conditions in Puerto Rico, conduct inquiries regarding safety and security risks of the Ashford Imperial Condominium, advise local vendors of WPI's expectations with respect to their role in the health and safety of WPI students, and that, "The Ashford Imperial has a guard in the attendance at all times." Jane Doe believed that WPI's student housing facility was reasonably safe, and that the security guards at the Ashford were

there to keep protect her, and would not rape her. (Going Global Handbook, pp. 4-5, 19; Doe dep., Ex. 10, pp. 149-150, 175).

30. The Handbook instructs the students to avoid excessive or irresponsible consumption of alcohol. (Exh. 8, p. 6.)

Response No. 30: Denied in part.

Admitted that the Handbook instructed the students to avoid excessive or irresponsible consumption of alcohol. Denied that Jane Doe's consumption of alcohol on 4/14/12 was excessive or irresponsible. Jane Doe consumed one watermelon drink at Jimmy's that had three or four shots of alcohol in it. (Doe dep., Ex. 10, pp. 128-132).

31. Prior to traveling to Puerto Rico, Jane Doe knew that there were steps she could take to minimize or eliminate the risk of sexual assault, including not walking alone, not drinking alcohol to excess, and not going to unfamiliar or secluded places with people she did not know. (Doe Dep., Exh. 10, pp. 90-96.)

Response No. 31: Denied in part.

Denied that Jane Doe contributed to her rape on 4/14/12, or failed to minimize or eliminate the risk of sexual assault in any way. Denied that she drank alcohol to excess, or that she traveled to an unfamiliar place with a person she did not know. Jane Doe drank one watermelon drink with three or four shots of alcohol while out socializing with fellow WPI students, which was permitted by the university. When Jane Doe was raped she was not in an "unfamiliar place," but was in her home, where WPI required her to reside, and which WPI represented to her was safe. She knew and trusted Rodriguez, her rapist, because he was a

uniformed security officer who worked regularly at the Ashford, and because it was his job to keep her safe. (Jane Doe's Answers to Defendant WPI's Interrogatories, Ex. 9, pp. 4, 6; Deposition of Jane Doe, Ex. 10, pp. 121-122, 128-132, 149-150, 175).

32. Jane Doe knew that while in Puerto Rico she was not to engage in risky behavior, which included drinking to excess. Nevertheless, Jane Doe engaged in risky behavior by drinking to excess. (Doe Dep., Exh. 10, pp. 85-90).

Response No. 32: Denied.

Denied that Jane Doe engaged in risky behavior by drinking to excess on 4/14/12, or that her consumption of alcohol caused or contributed to her rape in any way. (Doe dep., Ex. 10, pp. 128-132).

33. Jane Doe had a blood alcohol level of 193 mg/dl. at 7:30 a.m. on April 14, 2012, approximately five hours after the happening of the incident, which was reported to be in the "toxic" range. (Exh. 28.)

Response No. 33: Denied.

The citation to the record does not support the fact presented. Admitted that the hospital reported Jane Doe's blood alcohol level to be in the "toxic" range at 193 mg/dl. Denied that Jane Doe's blood alcohol level was toxic, or that her alcohol consumption of 4/14/12 was excessive or irresponsible. Moreover, defendant, Aarti Madan, admitted that the care provided to Jane Doe at the San Juan Hospital was "incompetent." (Incident Report by Aarti Madan, Ex. 13, p. 2; Laboratory Records from the Hospital San Juan, Ex. 35).

34. Jane Doe left Jimmy's without her friends or her key and upon arriving at the Ashford had to be let in by the security guard, William Rodriguez. (Doe Dep., Exh. 10, pp. 134, 139.)

Response No. 34: Denied in part.

Denied that Jane Doe contributed to her rape on 4/14/12, or failed to minimize or eliminate the risk of sexual assault in any way. Jane Doe left Jimmy's because she was tired and wanted to go home to bed, and did not want to stay out with the group of WPI students who continued to drink. She did not leave alone, and received a ride home from a friend of the group, Hugo Fuentes, who dropped her safely at the front door of the Ashford. She was buzzed in by the security officer, William Rodriguez, because she had forgotten her key. (Doe dep., Ex. 10, pp. 128-132).

35. Other than having exchanged casual greetings, Jane Doe had never previously spoken to Mr. Rodriguez, did not know his name and did not know if he spoke English. (Doe Dep., Exh. 10, p. 122.)

Response No. 35: Denied in part.

Denied that Jane Doe contributed to her rape on 4/14/12, or failed to minimize or eliminate the risk of sexual assault in any way. Jane Doe had never exchanged more than polite greetings in the lobby with Rodriguez, but she felt like she could trust him because he was a uniformed security officer who worked regularly at the Ashford Imperial, and because it was his job to keep her safe. She does not recall whether Rodriguez spoke English, but Jane Doe would speak with the security guards at the Ashford in Spanish. (Jane Doe's

Answers to Defendant WPI's Interrogatories, Ex. 9, pp. 4, 6; Deposition of Jane Doe, Ex. 10, pp. 44-45, 121-122, 149-150, 175).

36. Upon entering the door to the Ashford, Jane Doe began to walk across the lobby, but as she passed the security desk where Mr. Rodriguez was stationed she fell. (Doe Puerto Rico Dep., Exhibit 29, pp. 95-96; Doe Dep., Exh. 10, pp. 139-140.)

Response No. 36: Admitted.

37. Mr. Rodriguez came out from behind the desk, picked her up off of the lobby floor and assisted her over to the elevator. (Doe Dep., Exh. 10, pp. 139-140.)

Response No. 37: Denied in part.

Denied that Jane Doe was "assisted" to the elevator. Rodriguez helped Jane Doe to her feet after she slipped and fell near the security desk in the lobby, then walked with her down the corridor to the elevator bank and followed her into the elevator. (Jane Doe's Answers to Defendant WPI's Interrogatories, Ex. 9, p. 6; Deposition of Jane Doe, Ex. 10, p. 139-140)

38. When the elevator arrived, she got on and Mr. Rodriguez followed. Jane Doe felt that Mr. Rodriguez' entry on to the elevator was "weird" and it surprised her. (Doe Dep., Exh. 10, pp. 139-140, 142-143.)

Response No. 38: Denied in part.

Admitted that Rodriguez followed Jane Doe onto the elevator. Jane Doe testified that she "thanked him, expecting to get into the elevator alone, and he followed me in there, which I thought was kind of weird, but he was the security guard so I thought he was doing his job making sure I got to my room okay." She testified that she used the word "weird" because she was not expecting him

to get into the elevator with her, but she did not think he was a threat and believed that “he’s probably escorting me to my room like a good security guard would.” Denied that Jane Doe felt threatened or alarmed when Rodriguez got on the elevator with her. Jane Doe trusted Rodriguez, even though she didn’t know his name, because he was a uniformed security officer. (Doe dep., Ex. 10, 139-140, 163-164, 175, Errata).

39. Despite the fact that she had never previously spoken to Mr. Rodriguez, did not know his name and did not know if he spoke English, Jane Doe agreed to go to the secluded roof with him. (Doe Dep., Exh. 10, pp. 139, 143).

Response No. 39: Denied.

Jane Doe trusted Rodriguez, even though she did not know his name, because he was a uniformed security officer put in place by WPI to protect her. She does not recall whether Rodriguez spoke English, but Jane Doe would often speak with the security guards at the Ashford in Spanish. Jane Doe agreed to go to the roof with Rodriguez because he told her how gorgeous the view was, and that she was “only in Puerto Rico once and [she] should see it.” She felt safe with Rodriguez and did not think she had any reason to mistrust or be suspicious of him because he was the Ashford security officer. (Doe dep., Ex. 10, pp. 44-45, 139-140, 147-148, 175).

40. Jane Doe had never been on the roof prior to the night of the incident. (Doe Dep., Exh. 10, p. 122.)

Response No. 40: Admitted.

41. Access to the roof was limited and was not an area that was readily accessible to the students, requiring the unlocking of a steel bar door and climbing a ladder. (See Deposition of Jane Doe from Puerto Rico action (Doe Puerto Rico Dep., Exh. 29, pp. 106-111; Doe Dep., Exh. 10, pp. 144-146; Joaquin Dep., Exh. 11, pp. 77-79.)

Response No. 41: Admitted.

At the time Jane Doe was raped, the door to the roof was locked, which violated requirements set by the Puerto Rico fire department. The President of the Board of the Ashford testified that the roof was a common area of the condo, and that the door should have remained open so that the roof could be accessed by condo residents. Admitted that Jane Doe had to climb a short ladder to get to the roof. Jane Doc had never been to the roof before 4/14/12, and did not know the nature of the roof or rooftop access before she was lured there by Rodriguez. (Deposition of Abraham Joaquin-Hidalgo/30(b)(6) Deposition Testimony of Consejo de Titulares Condominio Ashford Imperial, Ex. 11, pp. 48-49, 79, Doe dep., Ex. 10, p. 122).

42. Despite having received training and instruction from WPI in sexual assault and alcohol safety/awareness, in which she was specifically advised to stay with her group, stay away from dark, secluded, unfamiliar places, not go to places with people she did not know, and avoid excessive and irresponsible consumption of alcohol, Jane Doe disregarded that training and her own better judgment, and agreed to go to the secluded roof with a man with whom she had never previously spoken, whose name she did not know, and whose behavior had not only surprised her, but which she felt was “weird.” (Doe Dep., Exh. 10, pp. 147-148.)

Response No. 42: Denied.

Denied. Jane Doe knew and trusted Rodriguez, even though she did not know his name, because he was a uniformed security officer who worked regularly at the Ashford, and because it was his job to keep her safe. When Jane Doe was raped she was not in a “secluded” or “unfamiliar” place, but was in her home, where WPI required her to reside, and which WPI represented to her was safe. See, Response Nos. 28, 31, and 38, incorporated by reference herein. (Jane Doe’s Answers to Defendant WPI’s Interrogatories, Ex. 9, pp. 4, 6; Deposition of Jane Doe, Ex. 10, pp. 121-122, 128-132, 149-150, 175; 30(b)(6) Deposition Testimony of WPI, Ex. 1, p. 27).

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The defendants,
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By their attorneys,

The defendants,
By their attorney,



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COMMONWEALTH OF MASSACHUSETTS

Worcester, SS.

SUPERIOR COURT

JANE DOE, MARY DOE, and JOHN DOE,
Plaintiffs,

v.

WORCESTER POLYTECHNIC
INSTITUTE, AARTI MADAN, ANNE T.
OGILVIE, RICHARD F. VAZ, SUSAN
VERNON-GERSTENFELD, and CHERYL
A. MARTUNAS,
Defendants

CIVIL ACTION
NO.: 1585-CV-0570 B

**JOINT APPENDIX TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY
JUDGMENT AGAINST ALL DEFENDANTS**

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