

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD KEELEAN, SANDRA J. KEELEAN,
JAMES WOOD, LINDA WOOD, MATTHEW S.
MURPHY, MELINDA L. MARSDEN, JOSHUA A.
KEELEAN, BRETT J. KEELEAN, and AMY L.
KEELEAN,

UNPUBLISHED
March 7, 2000

Plaintiffs-Appellees,

v

DEPARTMENT OF CORRECTIONS,

No. 209847
Court of Claims
LC No. 95-015969-CM

Defendant-Appellant.

Before: Kelly, P.J., and Markey and Collins, JJ.

PER CURIAM.

Defendant Department of Corrections appeals by right the Court of Claims' decision and order holding that a settlement agreement resolving plaintiffs' grievance with it and the Michigan State Employees' Association constituted a contract for mental solicitude, that defendant breached the contract by not providing an inmate's written medical records to plaintiffs, and that defendant's breach proximately caused plaintiffs' mental anguish and suffering. On de novo review, we affirm.

I: Facts

The Exposure

Plaintiffs Richard Keelean and James Wood are plumbers employed at defendant's Michigan Reformatory in Ionia. As plaintiffs were pulling on an auger in an attempt to unplug a toilet in inmate Pluckett's cell, a full-sized bath towel, covered with clotted blood, released suddenly and launched from the toilet. Both men staggered backward as the towel came loose, but the towel sprayed the men with water mixed with blood clots. The blood came from inmate Holmes' cell, which shared plumbing drains with the cell with the clogged toilet. The evidence showed that inmate Holmes, who was a homosexual and known self-mutilator, flushed a blood-stained towel down the toilet. Later, a guard also dumped

into that plugged toilet a small milk container of blood he found in Holmes' cell. Plaintiffs' efforts to clear the towel from the pipes apparently drew the blood from Holmes' toilet into Pluckett's toilet, where it sprayed onto plaintiffs.

Both men immediately felt blood and water on their faces, mouths, eyes, inside and outside their glasses, and down the front of their bodies. After the exposure, plaintiffs used water in the "slop sink" in the cell block to wash off as best as they could. Plaintiffs washed again using industrial soap and an iodine scrub when they returned to the maintenance shop. Neither man rinsed out his eyes. No one gave plaintiffs a change of clothes or told them to change their clothes. After completing employee accident reports and exposure incident investigation forms, plaintiffs reported the incident to Frank Russell, the personnel officer at the reformatory, and asked Russell if they could go to Ionia County Memorial Hospital for blood tests and medical evaluation in light of their exposure to the inmate's blood. Russell refused because plaintiffs had already received their hepatitis B shots. Given that the men received this news near quitting time, they went home in their still-damp blood-stained clothing. Both plaintiffs' wives touched the clothing with their bare hands, included it in the family laundry, and did not use bleach on the clothing.¹

Notably, under the DOC's own rules, blood-contaminated clothing must be bagged carefully and properly labeled, must not be worn home, and must be handled by workers wearing utility gloves. The policies also stated that after the employee's exposure to blood-borne pathogens, the source individual's blood must be tested and results given to the employee or employee's physician.

The day after the exposure, Keelean filed a freedom of information act request asking the prisoner be blood tested or for his blood test results and for any history of infectious diseases. His request was denied.

As a result of defendant's failure to cooperate with plaintiffs' requests for inmate Holmes' medical information and initial refusal to test plaintiffs for HIV and AIDS, plaintiffs filed a grievance against defendant on December 6, 1993.

The Grievance and The Settlement Agreement

Plaintiff's grievance against defendant listed twelve violations of the collective bargaining agreement between the MSEA and defendant. Plaintiffs' grievance resulted in an arbitration hearing in October 1994. Both plaintiffs were anxious to have the arbitration because they had not yet received inmate Holmes' blood test results that Kelli Corner, plaintiffs' AIDS/HIV consultant from the Ionia County Health Department, needed to accurately assess plaintiffs' risk factors. Only after testimony began at the arbitration hearing did defendant's labor relations representative offer to settle the grievance. The parties reached an agreement in lieu of continuing with the arbitration, which the parties signed October 25, 1994. The parties subsequently executed a "Corrected Settlement Agreement Between The Michigan Department of Corrections and The Michigan State Employees Association," that stated as follows:

RECITALS

On October 25, 1994, the parties to this Agreement entered into a Settlement Agreement to resolve a grievance filed by the Michigan State Employees Association (“MSEA”) on behalf of Richard Keelean and James Wood against the Michigan Department of Corrections (AAA #54 390-00224-94). That Settlement Agreement may not have accurately and clearly reflected the intent of the parties and therefore this Corrected Settlement Agreement is entered into by the parties. This Corrected Settlement Agreement supersedes and completely replaces the Settlement Agreement of October 25, 1994 and the parties agree that the Settlement Agreement dated October 25, 1994 is void and of no effect.

AGREEMENT

In consideration of the mutual agreements set forth below the Michigan State Employees Association (“Grievant”) and Richard Keelean and James Wood and the Michigan Department of Corrections agree to settle the grievance . . . filed by MSEA on behalf of Richard Keelean and James Wood against the Michigan Department of Corrections on the following terms:

1. The Department shall comply with all Federal and State laws, Department Policies, Procedures and [D]irectives pertaining to bloodborne pathogens.
2. *The Department will provide the employees’ health care provider(s) with all information necessary, under MIOSHA’s Bloodborne Pathogens Rules, to enable the provider(s) to adequately evaluate the exposed parties’ medical status and to give a written opinion to the employees within 15 days of the evaluation. The Department, upon receiving consent from the employees, shall request from the provider(s) the providers’ recommendations for follow-up care. The Department, upon receiving the consent of the employees, agrees to follow the providers’ recommendations.*
3. The Department shall comply with all departmental policies and procedures relative to personal protective equipment/clothing in accordance with MIOSHA and OSHA standards/requirements.
4. The Department’s response on the MIOSHA Form 200 shall be modified. The words “Potential Exposure Incident” shall be changed to “Blood [E]xposure [I]ncident.”
5. Settlement of this grievance does not constitute an admission by the employer that a contractual violation has occurred, nor is the Union considered to have waived any contractual rights.

6. The Union agrees to withdraw this grievance and Richard Keelean and James Wood consent to the withdrawal of the grievance. This settlement is made voluntarily, without duress or coercion, is non-precedent setting and with prejudice.

7. This Agreement constitutes a full and binding settlement of the grievance and resolves all grievances, complaint, demands or other causes of action that the Union may have now or at any time have had against the Department of Corrections and its agents relative to this grievance. [Emphasis added.]

Defendant, however, persisted in its refusal to produce any reports regarding inmate Holmes. As a result, both plaintiffs became more and more fearful that inmate Holmes was HIV positive and that defendant was attempting to hide this from them and their families.

Due to defendant's failure to produce the test results despite the settlement agreement, plaintiffs filed the instant action, and the Court of Claims entered an order directing defendant to produce inmate Holmes' blood test on March 6, 1996.² Neither plaintiffs nor the health department received the test results until after this order was entered. Finally, via a March 19, 1996, letter from Assistant Attorney General Allan Soros to plaintiffs' counsel, defendant turned over Holmes' blood test results from his January 23, 1994, HIV test.

Because, however, defendants had not tested inmate Holmes again before releasing him, plaintiffs remained concerned about Holmes' HIV status. Fortunately, plaintiffs' counsel's secretary was able to track Holmes to a morgue in Los Angeles, California, where he was tested for HIV post-mortem in 1997. This test was negative.

The Court of Claims' Decision

At the conclusion of the proofs and closing arguments, the trial court made the following findings as a matter of law: (1) defendant and plaintiffs entered into a contract when they signed the settlement agreement; (2) by relinquishing their legal rights to arbitrate their grievance against defendant, plaintiffs provided adequate consideration for the contract; (3) defendant's agreement to give plaintiffs' health care provider all information necessary to adequately evaluate plaintiffs' medical status and give a written opinion to plaintiffs within fifteen days of the evaluation was arguably beyond any existing legal duty defendant had, despite the fact that defendant had the authority to provide the inmates' blood test results to the HIV counselor; (4) the contract was exclusively for the purpose of providing mental solace to these employees; (5) plaintiffs were exposed to the fresh blood of an inmate known to have engaged in homosexual acts; (6) plaintiffs' fears were not unreasonable given departmental policies and counseling that such exposures should be treated with extensive precautionary measures that were not taken in this case; (7) defendant's representatives acknowledged that plaintiffs' concerns were reasonable; (8) defendant breached the contract by (a) failing to furnish the information set forth in paragraph 2 of the settlement agreement, (b) failing to communicate that Holmes had been tested for HIV within several weeks of the exposure and that his test was negative, (c) failing to test Holmes again before he was discharged to see if he were HIV or HIB positive; and (9) both plaintiffs and their wives testified credibly that they suffered great fear as a result of defendant's breach of contract. The court

therefore awarded each plaintiff \$85,000 and each plaintiff's wife \$15,000 in past damages; plaintiff's children received nothing.

This appeal ensued.

II: The Issues

Defendant raises five issues on appeal: First, whether the trial court erred in finding that the settlement agreement constituted a contract supported by legally sufficient consideration; second, whether the trial court erred in finding that the contract was entered into exclusively to allay plaintiffs' mental anguish and solicitude; third, whether the trial court erred in finding that defendant breached the contract; fourth, whether the trial court erred in determining that defendant's breach was the proximate cause of plaintiffs' damages; and fifth, whether the trial court erred in awarding damages to plaintiffs based on their breach of contract claim where their claim sounds in tort and is barred by governmental immunity. We affirm the Court of Claims on all grounds.

A: The Settlement Agreement Is A Contract

Defendant argues that the inadequacy of the consideration precludes the corrected settlement agreement from being considered a contract and that plaintiffs' complaint actually sounds in tort, not in contract. Accordingly, plaintiff's complaint is barred by governmental immunity. We reject both arguments.

Whether the parties' settlement agreement constituted a contract supported by sufficient consideration and, therefore, did not implicate governmental immunity, involves a question of law that this Court reviews *de novo*. *Burt Twp v Dep't of Natural Resources*, 227 Mich App 252, 255; 576 NW2d 170 (1997), *aff'd* 459 Mich 659; 593 NW2d 534 (1999).³

Michigan courts have consistently held that a settlement agreement is a contract and should be treated as such. See *Plamondon v Plamondon*, 230 Mich App 54, 56; 583 NW2d 245 (1998) (“[u]nder usual contract principles, plaintiff is bound by the settlement agreement absent a showing of mistake, fraud, or unconscionable advantage”); *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994). Here, the parties signed the settlement agreement, which said “[t]his Agreement constitutes a full and binding settlement of the grievance . . .” In order to convince plaintiffs to dismiss the grievance, defendant made certain promises. Defendant approached plaintiffs and negotiated the deal that put an end to the just-started arbitration. Defendant's labor representative knew plaintiffs' concerns regarding the need for Kelli Corner to obtain Holmes' medical records, and he thought the concerns were reasonable. Thus, defendant agreed *inter alia* to provide the information set forth in paragraph 2 of the settlement agreement (rather than face the consequences of the arbitration hearing), and plaintiffs agreed to drop their grievance, and dismiss the arbitration.

Defendant argues, however, that it provided no legally sufficient consideration because in paragraph 2, it only agreed to do that which it was otherwise legally required to do, citing *Puett v Walker*, 332 Mich 117, 122; 50 NW2d 740 (1952); *Spruyette v Dep't of Corrections*, 82 Mich

App 145, 147; 266 NW2d 482 (1978). We disagree. In general, “courts will not inquire into the adequacy of the consideration” in a contract action. *Harris v Chain Store Realty Bond & Mortgage Corp*, 329 Mich 136, 145; 45 NW2d 5 (1950). Here, the settlement agreement stated that it was executed “[i]n consideration of the mutual agreements” of the parties. Thus, the parties created a rebuttable presumption that consideration passed. *Claire-Ann Co v Christenson and Christenson, Inc*, 223 Mich App 25, 32; 566 NW2d 4 (1997).

Even assuming that defendant was legally obligated via OSHA bloodborne pathogen policies and defendant’s own directives to provide plaintiffs’ health care providers with Holmes’ health history given plaintiffs’ on-the-job exposure, defendant had chosen, either affirmatively or by omission, to *not* fulfill its legal obligations. Because it failed to fulfill these obligations, plaintiffs were forced to file the grievance. Thus, it begs the question for defendants to argue that there was inadequate consideration when the heart of plaintiffs’ grievance was aimed at forcing defendant to live up to its legal obligations to plaintiffs (or to at least treat them with the degree of seriousness that it treated inmate Holmes and his bloody clothing). Finally, defendant went beyond its legal obligations by agreeing to abide by plaintiffs’ health care providers’ recommendations and evaluations that would be completed once the providers received Holmes’ medical records. Accordingly, the Court of Claims correctly found that the parties’ settlement agreement constituted a contract supported by legally sufficient consideration.

Moreover, the fact that plaintiffs’ cause of action could also lie in tort does not defeat their properly-pleaded complaint for breach of contract. “If a plaintiff successfully pleads and establishes a non-tort cause of action, § 7 [of the governmental immunity act, MCL 691.1407; MSA 3.996(107)] will not bar recovery simply because the underlying facts could have also established a tort cause of action.” *Ross v Consumers Power (On Rehearing)*, 420 Mich 567, 647-648; 363 NW2d 641 (1984), in the companion case of *Rocco v Dep’t of Mental Health*.

B: A Contract Pertaining To Plaintiffs’ Mental Solitude

Defendant argues that plaintiffs’ grievance involved twelve different issues, none of which directly mentioned the desire to be provided inmate Holmes’ blood test results or the words “mental solitude.” Also, because there was more than an iota of the commercial in the settlement agreement at issue, specifically paragraphs 1 and 3, defendant believes that the settlement agreement could not be a contract for mental concern and solicitude. *Isagholian v Carnegie Institute of Detroit, Inc*, 51 Mich App 220, 222; 214 NW2d 864 (1974). We disagree.

Again, whether a contract provides for a matter of “mental concern and solicitude” is a question of law that we review de novo. See *Lane v KinderCare Learning Centers, Inc*, 231 Mich App 689, 692-694; 588 NW2d 715 (1998). In *Lane, supra*, this Court made the following observations in determining that a contract to care for one’s child is a matter of mental concern and solicitude:

The recovery of damages for the breach of a contract is limited to those damages that are a natural result of the breach or those that are contemplated by the parties at the time the contract was made. Therefore, it is generally held that damages for emotional distress cannot be recovered for the breach of a commercial contract. However, our

Supreme Court has recognized that damages for emotional distress may be recovered for the breach of contract in cases that do not involve commercial or pecuniary contracts, *but involve contracts of a personal nature*. *Stewart v Rudner*, 349 Mich 459, 469; 84 NW2d 816 (1957). Our Supreme Court explained:

“When we have a contract concerned not with trade and commerce but with life and death, not with profit but with elements of personality, not with pecuniary aggrandizement but with matters of mental concern and solicitude, then a breach of duty with respect to such contracts will inevitably and necessarily results in mental anguish, pain and suffering. In such cases the parties may reasonably be said to have contracted with reference to the payment of damages therefor in event of breach. Far from being outside the contemplation of the parties they are an integral and inseparable part of it. [*Id.* at 471.]”

Examples of personal contracts include a contract to perform a cesarean section; a contract for the care and burial of a dead body; a contract to care for the plaintiff’s elderly mother and to notify the plaintiff in the event of the mother’s illness; and a promise to marry. [Citations omitted; emphasis added.]

In *Lane, supra* at 694, citing *Kewin v Massachusetts Mut Life Ins Co*, 409 Mich 401, 417; 295 NW2d 50 (1980), this Court found that if, at the time the contract was executed, it was foreseeable that “*a breach of the contract would result in mental distress damages to plaintiff, which would extend beyond the mere ‘annoyance and vexation’ that normally accompanies the breach of a contract,*” then these damages are clearly within the contemplation of the contracting parties (emphasis added). We therefore reversed the trial court’s grant of summary disposition in favor of the defendant child care company regarding the plaintiff’s breach of contract claim where the defendant’s employees locked the doors of the facility at 6:00 p.m. and inadvertently left the plaintiff’s daughter sleeping inside, causing the plaintiff severe emotional distress. *Id.* at 692.

Here, David Silsbury, defendant’s labor representative who negotiated the settlement agreement at the arbitration hearing, testified that plaintiffs and their representative repeatedly voiced their concerns about obtaining inmate Holmes’ blood test results. Silsbury understood the basis for their concerns and the reasons why Holmes’ medical records were necessary for plaintiffs’ treatment and counseling. He believed their concerns were “reasonable.” Warden Withrow also acknowledged that if she were in plaintiffs’ positions, she would want to know whether Holmes had tested HIV negative or positive so she would get any medical care that she might need.

Therefore, we believe that the Court of Claims correctly found the settlement agreement to be a contract to address plaintiffs’ mental concern and solicitude.⁴ Defendant presents no evidence to dispel the conclusion that, at the time of the arbitration, plaintiffs were primarily concerned with obtaining inmate Holmes’ blood test results. This concern was motivated solely by their personal desires to know whether they had been exposed to HIV-infected blood. The answer to this question carried life-threatening implications for plaintiffs and their families. We find, therefore, that the settlement agreement was not signed to resolve a “commercial” dispute.

C: Defendant Breached The Contract

Defendant argues, in our opinion disingenuously, that it furnished plaintiffs' health care provider all the information she needed to evaluate plaintiffs' status and that no further tests of inmate Holmes were required or within defendant's power to obtain because Holmes had been discharged by the time the settlement agreement was drafted. Thus, defendant surmises that it did not breach the settlement agreement. We disagree.

We review the Court of Claims' findings that defendant breached the contract under the clearly erroneous standard, *Flynn v Korneffel*, 451 Mich 186, 191; 547 NW2d 249 (1996), and "give special deference to the trial court's findings when they are based on the credibility of witnesses," *Dragoo v Dragoo*, 223 Mich App 415, 427; 566 NW2d 642 (1997).

Paragraph 2 of the settlement agreement required defendant to (1) provide all information necessary under MIOSHA's bloodborne pathogens rules to permit plaintiffs' health care providers to adequately (a) evaluate their medical status and (b) give a written opinion to the employees; (2) request from the providers their recommendations for plaintiffs' follow-up care, subject to plaintiffs' consent, and (3) follow the providers' recommendations. The testimony of Kelli Corner established that it was critical for her to see Holmes' blood test results because the tests reveal "indicators" other than strictly positive or negative results. She also needed to know when Holmes was tested. Simply knowing that he was not listed in the chronic diseases database, and thus must be HIV negative, was not enough.⁵ Also, because the blood can convert from HIV negative to positive over time, it was helpful, but not conclusive, to know that Holmes tested negative on January 23, 1994—only 54 days after the exposure—when it can take longer than that to convert.

Given Holmes' high-risk lifestyle while in prison, i.e., a self-mutilating homosexual, plaintiffs needed more complete information regarding Holmes' HIV/HBV testing status. It took a court order and more than two years before defendant turned over the results of this test in April 1996. Defendant fails to explain this delay.⁶

Moreover, defendant's own policy directive regarding the control of communicable bloodborne diseases states that the prisoner who is a source of an exposure to blood in a manner that could transmit HIV shall be tested for HIV unless the prisoner is already known to be positive. Such exposures include "splashes . . . of blood to . . . eyes, nasal passages or mouth . . ." Paragraph U of the directive requires that the medical director "shall provide HIV/HBV test results of a prisoner to another person if the medical director determines that such person was exposed to the blood or body fluid of the prisoner in a manner which could transmit HIV/HBV, and if the information could be useful in the medical or psychological management of the exposed person," including exposed employees. Obviously, defendant ignored the mandatory nature of the directive in ¶U when, for over two years, it ignored repeated requests for Holmes' blood test results where defendant knew this information was critical to the "medical or psychological management of" plaintiffs. Clearly, defendant breached paragraph 2.

Stated otherwise, had plaintiffs known that defendant would not turn over Holmes' blood test results before they signed the settlement agreement, we believe plaintiffs never would have agreed to adjourn the arbitration or to sign the agreement. Because defendant failed to provide "all information necessary" in a timely manner, defendant breached the settlement agreement.

D: Defendant's Breach Proximately Caused Plaintiffs' Injuries

Defendant argues in essence that it was the exposure to Holmes' blood, not the delay in receiving Holmes' blood test results, that was the proximate cause of plaintiffs' injuries, so plaintiffs were limited to emotional distress damages they suffered only *after* the settlement agreement was executed. Defendant further cites plaintiffs' testimony that even after they received Holmes' HIV-negative blood test results in 1996, plaintiffs continued to live in fear of contracting HIV (because of Corner's three-year testing protocol). Defendant asserts that the evidence failed to establish that anything it did or should have done after the settlement agreement was executed could not have alleviated plaintiffs' fears. Again, we disagree. Defendant's callous disregard for plaintiffs' reasonable requests for Holmes' HIV information exacerbated beyond measure plaintiffs' initial fear at the exposure, and plaintiffs are entitled to emotional distress damages caused by defendant's noncooperation.

The determination of proximate causation includes an evaluation of whether certain consequences are foreseeable and whether a defendant should be held legally responsible for those consequences. *Wechsler v Wayne Co Rd Comm*, 215 Mich App 579, 596; 546 NW2d 690 (1996). It is reasonably foreseeable that defendant's unexplained refusal to give plaintiffs' health care providers Holmes' blood test results for over two years would greatly increase their fear of contracting HIV and of passing it on to their families. This scenario is similar to the situation where a bat or squirrel bites a child, and the animal is not captured. That child must undergo multiple painful shots to guard against *potential* rabies exposure. If the animal is captured and tests negative for rabies, however, no prophylactic course of treatment is necessary. Extending this example to the present scenario, we find that defendant had proverbial possession of the nonrabid animal but refused to reveal its nonrabid status to the child's doctor. The cause and effect of plaintiffs' fear, distress, and anger are clear.

E: Plaintiffs Were Entitled To Damages

As this Court recognized in *Lane, supra* at 649, "damages may be awarded for emotional distress caused by breach of a personal contract even where the emotional distress does not result in a physical injury." Plaintiffs and their wives testified extensively regarding the impact that defendant's failure to reveal Holmes' HIV negative status had on their lives.

With respect to his mental state, Keelean testified that he was quite upset on the exposure date, and his anxiety grew and grew after that. Holmes' homosexual status and his self-mutilating made him more apprehensive. When inmate Holmes' test results were not forthcoming, he became anxious, speculating about "what are they hiding from us and why aren't they willing to give us this man's results." "Did I contract something with this guy?" "There's got to be a reason why they are not providing this to me and what is it." Given that Holmes' blood splattered onto and into him, Keelean

“felt I had a right to know what was going on inside of his body because it was now in my body and I didn’t agree to that.” Woods testified regarding very similar fears regarding the possibility of exposing his wife and family, the confusion regarding how defendant was treating them, and the depression he experienced when the arbitration did not yield the anticipated results.

Sandra Keelean testified that her husband could not sleep after the exposure. This problem continued on the day the agreement was signed and continues even today. She said that he has distanced himself from his children because he feared that he had HIV, and he panicked whenever one of them would get a cut or scrape, so the children have started to avoid him. Even though his test results all came back negative, Keelean still is fearful, which affects his and his wife’s physical relationship. It was only after Holmes’ body was found in Los Angeles, and his blood tested negative for HIV and HBV that Keelean began to relax (i.e., the fear, anxiety, and sleeplessness he experienced began to subside) because there was an actual test taken after the exposure.⁷

Linda Wood testified that her husband had trouble sleeping the whole night through and was worried all the time. His swearing, loudness, and anger upset Linda. Although she was his sounding board, there was nothing she could do to make him feel better. She too lost sleep. After the exposure, Wood was somewhat withdrawn. He wanted to stay home. Linda Wood recalled that the inmate’s body was found in California and tested for AIDS in March 1997. Now that Wood knows that the inmate was negative, he is much calmer. Still, he has made comments about how little people really know about AIDS, and there is always a chance that something could happen.

We believe that this testimony establishes the mental anguish and distress that defendant proximately caused plaintiffs and their wives by refusing to disclose inmate Holmes’ HIV status to plaintiffs’ health care provider in a timely fashion. This Court therefore affirms the Court of Claims’ damage award in favor of plaintiffs and their spouses.

Moreover, as plaintiffs are the prevailing parties in this appeal, this Court permits plaintiffs the right to tax costs, pursuant to MCR 7.219, and, in light of the bizarre facts of this case and defendant’s continued assertion that it was justified in its inaction, this Court further finds that defendant has violated MCR 7.216(C). This appeal was vexatious because it was “taken for purposes of hindrance or delay or without any reasonable basis for belief that there was a meritorious issue to be determined on appeal.” Thus, we remand to the Court of Claims for the purpose of assessing actual and punitive damages against defendant. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ Jane E. Markey

/s/ Jeffrey G. Collins

¹ Notably, a critical incident report admitted into evidence at trial revealed that defendant disposed of inmate Holmes’ bloody clothing, towels, and other materials by placing them in an infectious waste bag and using universal AIDS precautions during the entire incident. Holmes was also placed in an observation cell after being treated by a nurse.

² Apparently, inmate Holmes was tested for HIV in January 1994.

³ Interpreting unambiguous and unequivocal contracts involves a question of law that we review de novo. *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994).

⁴ We note that the word “solicitude” is defined in the Random House Webster’s College Dictionary as “the state of being solicitous” and “solicitous” is to be “anxious or concerned.” Thus, if one is solicitous, he needs solace. Because these two words are easily confused, we provide this clarification.

⁵ Apparently, the Court of Claims gave more credibility to the testimony of Kelli Corner than to Mary MacQueen, a friend of Warden Withrow and plaintiffs’ other HIV counselor, in determining what information was necessary to properly counsel plaintiffs regarding their HIV risks. We should not disturb that determination on appeal. Further, we will not interfere with the jury’s role of determining the credibility of witnesses. *Dragoo, supra*.

⁶ Both parties reference MCL 791.267(5); MSA 28.2327(5), which requires defendant to test a prisoner for HIV and HBV when an employee’s sustains a “percutaneous, mucous membrane, or open wound exposure” to a prisoner’s blood, as specified in MCL 791.267b; MSA 28.2327b. Subsection 267b, which provides the mechanisms for testing, was not in effect in its present form until January 16, 1997, several years after plaintiffs’ exposure, however.

⁷ Until the test results were in, Keelean believed that the inmate had died from AIDS.