

VIRGINIA:

IN THE CIRCUIT COURT FOR FRANKLIN COUNTY

VICTORIA L. GARDNER,

Plaintiff,

v.

Case No. CL17-1951

WDBJ TELEVISION, INC.,

Defendants.

**AMENDED COMPLAINT**

COMES NOW, the Plaintiff, Victoria L. Gardner, by and through undersigned Counsel, and files her Amended Complaint ("Complaint") against the Defendant as granted by Court Order. In support, Mrs. Gardner states as follows:

**FACTS**

1. Plaintiff, Victoria L Gardner, ("Vicki" or "Plaintiff") is a citizen and resident of the Commonwealth of Virginia.
2. Defendant WDBJ Television, Inc. ("WDBJ") is an Indiana corporation registered and authorized to do business in the Commonwealth of Virginia, and at all times relevant herein, was the owner of the WDBJ television station located in Roanoke, Virginia.
3. Vester Lee Flanagan II, a.k.a. Bryce Williams, ("Flanagan") was hired by WDBJ in March of 2012.
4. Within two months of hiring Flanagan, management at WDBJ documented three separate occasions within a one month period where Flanagan physically threatened co-workers. Flanagan was threatening his co-workers with grievous

bodily harm (and threats of death) during this time. He was not terminated from his employment with WDBJ at that time.

5. Within four months of beginning employment at WDBJ, Flanagan received another written warning from WDBJ indicating that he would be released from employment, unless there was immediate improvement to his behavior. He was not terminated from his employment with WDBJ at that time.
6. It took nearly nine months after the first reports of Flanagan's violent speech and threatening behavior for WDBJ to finally fire Flanagan. On February 1, 2013, Flanagan was terminated and presented a severance package by WDBJ Assistant News Director Greg Baldwin.
7. When Flanagan realized he was being let go, he violently and aggressively "slammed his fist down on the table" so loudly that "...people reported that they thought a bomb had gone off".
8. Immediately thereafter, Flanagan became increasingly physically aggressive and agitated before warning, "I'm not leaving, you're going to have to call the f\*\*\*ing police... I'm going to make a stink and *it's going to be in the headlines.*"
9. Police officers were then called to WDBJ headquarters and they had to physically escort Flanagan from the building. Before leaving, Flanagan threw a hard, wooden cross (similar in appearance and shape to crosses placed on gravesites) at the Assistant News Director Greg Baldwin and stated, "You're gonna need [this]." This threat made it clear that Flanagan intended to kill a WDBJ employee. As a result of Flanagan's violent outburst, and due to their actual knowledge of his propensity for violence, WDBJ sought and obtained extra police protection and

armed security for their television station headquarters in Roanoke, Virginia, in order to protect themselves (and their employees) from Flanagan.

10. Subsequent to his threat to WDBJ, on March 27, 2014, Flanagan filed an employment discrimination lawsuit against WDBJ, which was an active civil case for over a year, until it was finally dismissed on July 2, 2015. In the year between his termination from his employment with WDBJ, and the filing of his civil lawsuit against the television station, Flanagan's hatred of, and anger towards, his former employer grew, and he continued to threaten physical violence and death against agents of the Defendant and others. When the lawsuit he filed against WDBJ was dismissed, Flanagan's rage and threats of violence that he had expressed both while employed at WDBJ and at the time of his termination, which had become exacerbated during the pendency of the civil lawsuit, shortly thereafter culminated in his acting upon these threats in his exacting a deadly revenge against WDBJ on August 26, 2015.
11. Less than two months after failing to successfully sue WDBJ, on Wednesday, August 26, 2015, Flanagan went on a violent and deadly rampage at Smith Mountain Lake, exacting his revenge on WDBJ and the broadcasting company's employees and its guest, Vicki Gardner. As he promised his employer at the time of his termination from employment with WDBJ, his violent and deadly act indeed "made headlines."
12. Flanagan learned of the live Mornin' news broadcast from Bridgewater Plaza, when he saw the broadcast promo on television, which began at 6:00 a.m. on the morning of the shooting. Flanagan knew that Ms. Parker and Mr. Ward would be

unprotected and unguarded outside of the studio during the live remote broadcast at the Plaza. Having decided to carry out his premeditated plan to kill Alison and Adam, and to “make good” on his previous threats, he headed towards the Plaza, stopping on his way to Bridgewater Plaza to ask directions to the location that he saw on television. He then proceeded directly to the Plaza to commit murder.

13. On that same August 26, 2015 Wednesday morning, Vicki was preparing to participate in an interview conducted by WDBJ’s employee Reporter Alison Parker at this live television broadcast of WDBJ’s “Mornin’” news program.
14. Agents of WDBJ had contacted Vicki earlier that week and requested that the “Mornin’” show be broadcast live from Smith Mountain Lake, Moneta, Virginia, in celebration of the fiftieth anniversary of Smith Mountain Lake.
15. WDBJ’s representatives requested Vicki’s presence, and asked that she take part in the interview. Vicki agreed to the request. The interview was conducted by Videographer Adam Ward and News Correspondent Alison Parker and was broadcast live that morning through the WDBJ station.
16. During the interview on August 26<sup>th</sup>, 2015, at 6:46 a.m., Flanagan approached the three participants of the interview and produced a handgun. Flanagan videotaped the whole incident as it happened, with the intent of it “making headlines,” as he had previously promised WDBJ. When no one noticed the gun in plain view, Flanagan retreated and waited briefly, and then approached once more until his handgun was immediately next to Mr. Ward’s shoulder.
17. Flanagan proceeded to fire his gun 17 times, striking all three participants.

18. Mr. Ward and Ms. Parker were killed, and Vicki was seriously injured by the resulting gunfire.
19. Vicki only escaped further injury or death, by pretending that she was dead.
20. Vicki's injuries required extensive treatment and she was forced to seek psychiatric counseling for PTSD after incurring the deep emotional distress of seeing two people murdered in front of her and having to feign death in front of Flanagan in order to survive.
21. As a result of Flanagan's actions, Vicki had to undergo multiple surgeries, a hospital-stay, and an extended recovery. Vicki's medical expenses due to the shooting at this time have totaled in excess of \$221,850.00.
22. WDBJ did not properly vet Flanagan before hiring him. The company unreasonably relied on Flanagan's agent to perform the employment vetting process even though this agent stood to financially gain from the procurement of employment for his client. The reliance by WDBJ on having Flanagan's agent assure them that Flanagan posed no threat to others was fatally flawed.
23. By relying on Flanagan's own agent to screen him, rather than the station screening Flanagan itself, the station abandoned its responsibility to properly vet its employees.
24. Had WDBJ taken any reasonable investigatory action, they would have discovered Flanagan's repeated tendencies for violence against his fellow employees and others, and his propensity (and unquenchable desire) to grievously injure others.
25. Had WDBJ vetted Flanagan properly, it would have also found that Flanagan was previously fired from WTWC-TV in Tallahassee, Florida and had filed an

employment discrimination suit which was removed to federal court by WTWC-TV, Inc. In its Defendant's Answer And Affirmative Defenses, WTWC-TV, Inc. identified the reasons for Flanagan's firing as: "... [Flanagan's] performance and behavior including, [Flanagan's] poor performance; [Flanagan's] misbehavior with regards to co-workers; [Flanagan's] failure to respond to corrective recommendations on his performance; [Flanagan's] refusal to follow directions; [Flanagan's] use of profanity on the premises . . ."

26. The WTWC-TV Answer also recounts Flanagan's verbal abuse of women at WTWC-TV to the point that female co-workers feared for their lives. On one occasion, Flanagan had angered the husband of one of his female co-workers to the extent that the husband threatened to "beat the stuffing out" of Flanagan, if he (Flanagan) talked to his wife that way again.
27. Flanagan's reputation for violence was previously known. A former supervisor of Flanagan at WTWC-TV reported that Flanagan would fight with other employees and had threatened their lives.
28. After Flanagan was fired from his previous position at WTWC-TV, WTWC-TV management advised employees to immediately contact 911 should Flanagan return to work.
29. Both the information and the reason for Flanagan's termination by WTWC-TV was public record at the time WDBJ hired Flanagan in March of 2012, and it is clear that WDBJ had the opportunity (through a reasonable investigation and screening process) to discover the fact that Flanagan was dangerous and had a history of threatening to do great bodily harm to his co-workers and others.

Flanagan's law suit against WTWC-TV, Inc.; which was filed February 18, 2000 in the Second Circuit Court of Florida, case no. 00-418, and which was removed to the Northern District of Florida on March 31, 2000, case no. 4:00cv121-WS was a matter of public record when Flanagan was hired by WDBJ in March of 2012.

30. Had WDBJ performed a proper background check, they would have uncovered information that would have caused the employer to have knowledge of the legitimate and actual potential physical danger of Flanagan (and his propensity for violence) towards others in the workplace.
31. And, during Flanagan's employment, WDBJ would also gain specific knowledge that Flanagan was a threat to the safety and lives of WDBJ employees and guests.
32. The Assistant News Director, Jeff Marks, would later describe Flanagan as "a man with a lot of anger... It came out in his relationships. He had trouble working with fellow employees and he had a short fuse."
33. In fact, the Chief Photographer shortly after the shooting occurred on live TV said to an editor, "Do you think that's Bryce?" Bryce Williams was one of the on-air names of Flanagan, and even the WDBJ staff knew of his hatred of WDBJ and Flanagan's propensity for violence because they had been exposed to it themselves.
34. In addition, referencing hiring Flanagan, WDBJ's President and General Manager, Jeff Marks, admitted: "'There were probably things we can do, we can probably screen more... one is going to slip through the cracks every now and then'".



**CAUSES OF ACTION  
COUNT I  
NEGLIGENT HIRING**

35. Plaintiff incorporates and realleges each allegation in the paragraphs 1-34 above as if fully set out herein.
36. WDBJ, as an employer, had a duty to protect others from those that it employs who may cause injuries, and it knew or should have known and/or discovered by reasonable investigation, the lethal propensities of Flanagan for violence (and committing violent acts against others in the workplace) prior to placing him in an employment position. Had WDBJ conducted a reasonable investigation, it would not have hired Flanagan.
37. WDBJ knew and/or should have reasonably known that Flanagan had the propensity to cause physical injury and be violent toward others in the workplace, and that hiring him could cause great bodily harm to employees and/or third parties. And, due to his previous violent employment history, it was foreseeable that Flanagan posed a threat of injury to others in (and connected with) the workplace, including but not limited to the Plaintiff.
38. Had WDBJ properly conducted any reasonable investigation of any kind into Flanagan's background, they would have found through a rudimentary search of public records that Flannagan's threats of violence and mortal harm against others were well-documented, and his propensity for aggressive and threatening behavior was well-known at his previous employment.
39. Not only did WDBJ fail to conduct a reasonable investigation, they failed to conduct any investigation at all. Here, WDBJ failed to properly screen Flanagan



and did not conduct any criminal background check. WDBJ relied on Flanagan's agent (who was financially invested in retaining immediate employment for his client Flanagan) to conduct Flanagan's background investigation before hiring him. Had WDBJ performed a proper background check, they would have uncovered information that would have caused the employer to have knowledge of the legitimate potential danger to others caused by the hiring of Flanagan.

40. Finally, due to WDBJ's failure in their negligent hiring of Flanagan, Flanagan was employed at the Defendant's company, was later fired from said company, and as a direct and proximate consequence of its negligent hiring of Flanagan, Flanagan exacted his deadly revenge against both the employees of the company and the Plaintiff.

41. The negligent hiring of Flanagan by WDBJ was the proximate cause of Plaintiff's injuries. And as a direct result, Plaintiff suffered a life-changing gunshot wound at the hands of Flanagan (as he carried out his intended and foreseeable deadly revenge against his previous employer WDBJ) of which she endures pain and suffering to this day. But for the negligent hiring of Flanagan by WDBJ, Plaintiff would not have been injured.

## **COUNT II**

### **NEGLIGENT RETENTION**

42. Plaintiff incorporates and realleges each allegation in the paragraphs 1-41 above as if fully set out herein.

43. An employer can be held liable for its negligence in retaining (i.e., failing to discharge) an employee who engages in tortious conduct when the employer had

knowledge or should have had knowledge that an employee was dangerous and likely to harm, and (2) the employer's negligence in retaining the employee was the proximate cause of the Plaintiff's injuries.

44. Here, Flanagan was hired by WDBJ in March of 2012.
45. Within two months of being hired, WDBJ management had documented 3 separate occasions within a one month period where Flanagan physically threatened bodily harm and/or death to his co-workers. WDBJ did not discharge Flanagan at that time.
46. An additional two months later, Flanagan received another written warning from WDBJ indicating that he would be fired, unless there was immediate improvement. Flanagan had once again threatened significant physical violence against others at the station. WDBJ did not terminate Flanagan's employment at that time either.
47. Despite these "red flags", acts by Flanagan that were extreme enough for the station to threaten termination if there was no immediate improvement, WDBJ continued in their failure to conduct a proper post-hiring investigation and screening of Flanagan, and instead chose to continue to ignore his past, and allowed him to continue his employment which only served to fuel his rage against his employer and its employees.
48. More importantly, WDBJ knew or should have known that Flanagan was dangerous and likely to cause harm to others due to his history, and his criminal assaults of its employees, as well as the continuous complaints by other employees. Not only did WDBJ not properly vet Flanagan, they continued to allow his employment to continue, even 9 months after the first complaint of Flanagan's

violent verbal abuse and threats of imminent criminal battery against its employees began.

49. Had WDBJ taken action sooner, they could have avoided the murder of Alison Parker and Adam Ward, as well as the serious injuries that Vicki suffered, and the carnage of August 26, 2015 would have been avoided.
50. Instead, WDBJ took no action, not even conducting a cursory check of publicly available records, to determine and understand the type of problem with which the station was dealing.
51. In truth, the admission made by WDBJ, "There were probably things we can do, we can probably screen more" is a gross understatement and an acceptance that standards were subpar specifically in regard to hiring and retaining employees.
52. Any of several red flags listed below should have alerted WDBJ as to what could, and eventually did transpire:
  - a. Within two months of hiring Flanagan, management at WDBJ were told that he made co-workers feel "threatened and uncomfortable."
  - b. Flanagan was verbally abusing his co-workers and causing them to feel that their lives were being physically threatened while employed at WDBJ.
  - c. Within four months of beginning employment at WDBJ, he received a second written warning from WDBJ for bad behavior.
  - d. There were documented court pleadings showing that previous female co-workers had feared Flanagan to the point of fearing for their lives.
  - e. One of Flanagan's previous employers feared Flanagan so much that they ordered employees to call "911" if Flanagan returned.

53. Nevertheless, and despite these “red Flag” warning signs, WDBJ’s continued retention of Flanagan under these circumstances constitutes negligent retention.
54. As a result of the breach of WDBJ’s duty to not negligently retain an employee that it had specific knowledge of his propensity to do great bodily harm to others, and specifically Flanagan, Vicki was caused to suffer a serious gunshot wound when this same employee took specific and violent actions against his previous coworkers. The Plaintiff’s grievous injuries were proximately caused by the Defendant’s negligent retention of Flanagan. But for WDBJ’s failure to terminate Flanagan immediately after the first incident of violent behavior, Vicki would not have suffered her injuries. Vicki has suffered and continues to suffer injuries and damages directly resulting from WDBJ’s negligence.

### **PRAYER FOR RELIEF**


**WHEREFORE**, Plaintiff prays for judgment against the Defendant, and each of them in accordance with Virginia law as follows:

- A. That Plaintiff, Victoria L. Gardner, be awarded compensatory damages against the Defendant, in the amount of SIX MILLION DOLLARS (\$6,000,000.00) pursuant to Counts I and II;
- B. That the Plaintiff be awarded such other and further relief as the Court deems proper.
- C. Plaintiff demands a trial by jury of all issues so triable as a matter of right.

Respectfully submitted,  
VICTORIA L. GARDNER

By:   
Counsel

William Stanley, Jr., Esq. (VSB# 37209)  
James T. Taylor, Esq. (VSB # 83113)  
The Stanley Law Group, LLC  
13508 Booker T. Washington Highway  
Moneta, Virginia 24121  
Telephone: 540-721-6028  
Email: [bstanley@vastanleylawgroup.com](mailto:bstanley@vastanleylawgroup.com)

  
David C. Gibbs III, Esq.  
Gibbs Law Firm, P.A.  
Florida State Bar No. 0992062  
Texas State Bar No. 24026685  
2648 FM 407, Suite 240  
Bartonville, Texas 76226  
Telephone: 727-362-3700  
Facsimile: 727-362-3908  
Email: [dgibbs@gibbsfirm.com](mailto:dgibbs@gibbsfirm.com)  
*Admitted Pro Hac Vice Motion by the Circuit Court*

  
Paul Scott Miller, Esq.  
Gibbs Law Firm, P.A.  
Texas State Bar No. 24104170  
Florida State Bar No. 0093792  
Tennessee State Bar No. 030516  
2648 FM 407, Suite 240  
Bartonville, Texas 76226  
Telephone: 727-362-3700  
Facsimile: 727-362-3908  
Email: [smiller@gibbsfirm.com](mailto:smiller@gibbsfirm.com)  
*Admitted Pro Hac Vice Motion by the Circuit Court*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was emailed and mailed this 14<sup>th</sup>

day of August, 2019 to:

John R. Owen (VSB No. 29560)  
Julie S. Palmer (VSB No. 65800)  
Jeffrey P. Miller (VSB No. 89410)  
Herman, Claytor, Corrigan & Wellman  
P.O. Box 70280  
Richmond, Virginia 23255  
Tel. 804-747-5200  
Fax 804-747-6085  
jowen@hccw.com  
jpalmer@hccw.com  
jmillier@hccw.com.

