

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2011

PHILADELPHIA, WEDNESDAY, OCTOBER 20, 2021

An **ALM** Publication

Bill Cosby Appears Vulnerable in Latest Suit, After Weathering Multitude of Assault Claims

By Charles Toutant

Of the Legal staff

Any hopes Bill Cosby had for a quiet retirement after last summer's reversal of his sexual assault conviction were dashed by a New Jersey suit just filed by a former "Cosby Show" actress claiming he drugged and sexually assaulted her in 1990.

Lili Bernard says in her suit, filed in U.S. District Court in Camden, New Jersey, on Oct. 14, that Cosby assaulted her at a casino hotel in Atlantic City, after luring her there to meet with a producer who would help her acting career.

But while the decades-old assault allegation poses a challenge for Bernard, Cosby faces his own unique hurdles, given the volume of assault allegations he's faced in recent years.

Bernard isn't the only alleged assault victim suing Cosby.

A suit is pending in a California court by another woman, Judith Huth, who claims the comedian raped her when she was 15 in 1974. And in recent years, Cosby has

settled suits by other women who brought sexual assault claims.

On June 30, Cosby was released from prison after the Pennsylvania Supreme Court overturned a sexual assault conviction that was based on Andrea Constand's allegations that he had drugged and sexually assaulted her in 2004. The court found Cosby had relied on a prosecutor's promise not to press charges against him in exchange for testimony in a civil suit.

'One of the Best Chances to Hold Him Accountable'

Cosby was once a popular sitcom star and commercial pitchman, but allegations that he sexually victimized numerous women have tarnished his image in recent years. But the civil cases against him show that even in the #Me-Too era, women seeking justice for alleged sexual assault face an uphill battle.

Bernard brings claims of assault, battery, intentional infliction of emotional distress and false imprisonment. **She is represented by New York attorney Jordan Merson.**

Like sexual assault victims suing the Boy Scouts and the clergy over long-ago incidents of abuse,

Bernard will have to contend with witnesses whose memories are fuzzy, according to Nancy Erika Smith, a Montclair, New Jersey, attorney who has regularly provided commentary on Cosby's case for CNN and other television outlets.

But Bernard seems to have fresh memories of the episode. She appears to have told friends and relatives about what happened at the time of the incident, and she appears to have suffered as a result of Cosby's actions, Smith said.

"I'm really glad she brought it. It's probably one of the best chances to hold him accountable," Smith said of Bernard's suit.

Also working in Bernard's favor is that Cosby admitted in a prior deposition that he had regularly drugged and molested young women, Smith said.

But Jennifer Bonjean, the New York lawyer representing Cosby, disputes that characterization of Cosby's statement and says he made no such admission.

Smith was referring to a deposition Cosby gave in Constand's 2005 civil suit against him, in which, she said, he admitted

obtaining prescriptions for quaaludes so he could drug and seduce women. The deposition was made public in 2015 after media organizations went to court to seek its release. Constand's civil suit settled confidentially.

"When you have the perpetrator on video saying he drugged and raped women, that's pretty strong," Smith said.

History

And besides the damaging deposition, Bernard will be able to present testimony at trial from other women who were alleged victims of Cosby, Smith said.

Other suits against Cosby by alleged victims of sexual assault have settled in recent years, including one by former model Janice Dickinson, who said her settlement was "epic," but did not give details. Her settlement was reached in 2019, as was another brought by seven women who claimed the comedian sexually assaulted them.

Press accounts said Cosby's insurance carrier, AIG, settled both cases against his wishes. Because statutes of limitations for sexual assault claims were expired in both of those cases, they brought defamation claims against Cosby, citing statements by the comedian or his representatives disputing their claims of sexual assault. Other suits accusing Cosby of assault were dismissed by judges or withdrawn voluntarily by plaintiffs.

Attorney Jennifer Bonjean

To defend the Bernard suit, Cosby has retained New York attorney Bonjean, who also represented

him in the Pennsylvania Supreme Court case that cleared him. Bonjean is best known in New Jersey for a string of civil rights and excessive force suits against the Atlantic City Police Department.

Bernard could find that some jurors are sympathetic to Cosby because of his advanced age, 84, but her attorneys would be wise to show pictures of him at the time he committed the alleged assaults, Smith said.

In cases involving celebrities, some prospective jurors hold on to their idealized version of the defendant and turn a deaf ear to allegations of misconduct, Matthew Galluzzo, a New York attorney who represents defendants in civil suits over sexual assault, said.

But keeping such persons off the jury can be hard because they may not answer jury questions accurately, Galluzzo said.

"It's kind of bizarre but with these prominent people there's always a core of dedicated people who remain with them to the end. If you're a plaintiff, you don't want any of those people on your jury," Galluzzo said.

"As far as bringing a case that's 31 years old, it's a tough case to make. It's not impossible. On the other hand, defending these suits is so expensive and there's always the risk that you lose a huge judgment, so there's an incentive to settle," Galluzzo said.

Galluzzo thinks plaintiffs in such cases may be satisfied to settle for \$100,000, and a \$1 million verdict is unrealistic in such cases. But he may decide to go to trial, to avoid the risk that settling will bring

claimants out of the woodwork, he said.

"It's a difficult situation he's in. It wouldn't surprise me if he tried one, for no other reason than to change public opinion," Galluzzo said.

Smith said Cosby would be wise to settle the Bernard suit, but thinks he might go to trial. She cites his statements after the Pennsylvania Supreme Court vacated his conviction, suggesting that he thinks he was exonerated. "If I were his lawyer, based on all the evidence, all the victims, I would tell him to settle. But he is extremely arrogant. I wouldn't be surprised if he tries the case," Smith said.

Merson, the lawyer for Bernard, did not respond to calls about the case.