



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
03/02/04	SM	Fav/2 amendments
03/16/04	HC	Fav/CS
03/25/04	FT	Favorable

March 2, 2004

The Honorable James E. "Jim" King, Jr.
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 40 (2004)** – Senator Alex Diaz de la Portilla
Relief of Cindy Haider, the wife of Jeffrey Haider, deceased; Alan Haider, the adult dependent child of Jeffrey and Cindy Haider; and Max, Jonathan and Jessica Haider, the adult children of Jeffrey and Cindy Haider

SPECIAL MASTER'S FINAL REPORT

THIS IS AN EQUITABLE CLAIM FOR \$3.8 MILLION PLUS LIQUIDATED INTEREST IN THE AMOUNT OF \$46,437 BASED ON A CONSENT FINAL JUDGMENT SUPPORTED BY A SETTLEMENT AGREEMENT IN WHICH THE SOUTH BROWARD HOSPITAL DISTRICT AGREED TO COMPENSATE THE FAMILY OF JEFFREY HAIDER, NOW DECEASED, FOR SEVERE AND PERMANENT INJURIES SUSTAINED IN AN INCIDENT OF MEDICAL MALPRACTICE.

FINDINGS OF FACT:

From 1997-2000, Jeffrey Haider, who was then a 45-year-old man, had a history of headaches, hypertension, and diabetes, sought medical care from various physicians while his condition continued to deteriorate. While seeking care and treatment during this period, Mr. Haider suffered memory loss, difficulty concentrating, and confusion and ultimately lost employment as a plant manager.

In 1997, Dr. Carlos Levy erroneously diagnosed and treated Mr. Haider for Bell's Palsy. Dr. Michael Margolis treated Mr. Haider in October, 1999, for complaints of weakness in

his left hand and again on an urgent basis for an onset of dizziness in December, 1999. Neither physician ordered radiological nor neurological studies for Mr. Haider.

While playing basketball with his children on May 7, 2000, Mr. Haider collapsed due to shortness of breath and profuse sweating. Dr. Jerry Parkolap, an employee of Inphynet Contracting Services, Inc., at Westside Regional Medical Center's Emergency Department treated and diagnosed Mr. Haider for shortness of breath. Mr. Haider was later discharged that day from the hospital with directions to follow-up with a physician at Dr. Harry Pepe & Associates, Inc., again without any radiological or neurological studies ordered.

Three days later Mr. Haider saw Dr. Margolis on an urgent basis after complaints of severe headaches and was diagnosed with a muscle tension headache. Although Mr. Haider informed the doctor that he had complained of headaches when seen earlier at the Westside Regional Medical Center, Dr. Margolis ordered a stress test and prescribed medication for his headache but did not order any other studies for Mr. Haider.

Complaining of confusion and memory loss, Mr. Haider sought care from Dr. Bart Gershenbaum on May 24, 2000. Dr. Gershenbaum ordered a neurological consultation for Mr. Haider.

Dr. Islon Seliger, a neurologist, noted that Mr. Haider's symptoms may be due to an ischemic event and ordered a magnetic resonance imaging (MRI), an electroencephalogram (EEG), and a carotid ultrasound. On May 31, 2000, an MRI was performed by OMI of Plantation, Inc., and read by Dr. David Saks. Dr. Saks found that there was a large oval-shaped mass within the right temporal lobe of Mr. Haider's brain based on his interpretation of the MRI. Dr. Saks' impression of the MRI was that a considerable mass was swelling in Mr. Haider's brain. Dr. Saks telephoned and told Dr. Seliger's partner, Dr. Harvey Schwartz, that additional studies were needed. At this point, it was unknown whether this mass in Mr. Haider's brain was an aneurysm, an abnormally blood-filled dilation of a blood vessel which may rupture, or a tumor. On June 1, 2000, Dr. Seliger noted in his records that his impression was that

Mr. Haider had a brain tumor and ordered a neurological consultation immediately.

On or about June 2, 2000, Mr. Haider saw Dr. Luis Rodriguez, a neurologist, at Memorial Regional Medical Center. After review and consultation of Mr. Haider's films and the May 31, 2000 report completed by Dr. Saks, Dr. Rodriguez noted that Mr. Haider may have a hemorrhagic large tumor measuring about 3.5 centimeters in the right temporal lobe of his brain. No additional neurological pre-operative studies were performed.

On June 5, 2000, Dr. Rodriguez operated on Mr. Haider at Memorial Regional Medical Center with a pre-operative diagnosis that Mr. Haider had a right temporal lobe mass, probably a tumor. During the operation, Dr. Rodriguez made a stab incision in what he thought could represent a tumor and it began to bleed under pulsating pressure once a second incision was made. At that point, Dr. Rodriguez realized that the large mass was, in fact, an aneurysm. An intra-operative angiogram, a test to look at the blood vessels in the brain, was then obtained and reviewed by Dr. Rodriguez and Dr. Neil Kappelman, a radiologist, which provided confirmation for Dr. Rodriguez's post-operative diagnosis of Mr. Haider's condition, a large giant middle cerebral artery bifurcation aneurysm. In deposition testimony, Dr. Rodriguez admitted that during surgery he discovered that Mr. Haider did not have a tumor but an aneurysm and further admitted that he missed the pre-operative diagnosis of an aneurysm.

After the initial operation, Dr. Rodriguez thought that Mr. Haider needed to have the aneurysm surgically repaired. A second operation was performed on June 6, 2000. Dr. Rodriguez attempted to complete an anastomosis, a procedure to repair the aneurysm in which adjacent vessels are joined, but found that it was impossible to do so once the surgery commenced. Dr. Rodriguez indicated that surgery was necessary to repair the aneurysm because Mr. Haider exhibited dangerous neurological symptoms which included decerebration movement and dilation of the right pupil. In deposition testimony, Dr. Rodriguez further acknowledged that Mr. Haider had a serious life-threatening condition resulting from the tremendous size and pressure of the aneurysm which eventually led to Mr. Haider's neurological

deterioration. Dr. Rodriguez indicated that coiling and other options for treatment to repair the aneurysm did not appear viable due to the size of the aneurysm. The operative report for the second operation also notes that the CT scan of Mr. Haider's brain had shown no bleeding but significant mass affect and that Mr. Haider needed immediate repair of the aneurysm and removal of the large mass.

Mr. Haider never regained consciousness following the June 6, 2000 surgery. He remained in a significantly neurologically impaired state. Mr. Haider could not communicate and care for himself. On August 4, 2000, Mr. Haider was admitted to Vencore Hospital and was later transferred to Miami Heart Institute on November 30, 2000, for continuity of care. The only location that Mr. Haider could safely be treated was in a hospital setting. He received around-the-clock care at the Miami Heart Institute. Mr. Haider required constant nursing, physical therapy, and daily evaluations by internists, pulmonary physicians, and infectious disease specialists.

Since the surgery to repair the aneurysm on June 6, 2000, Mr. Haider had continuous medical problems including decubitus ulcers, pulmonary infections, a right hip wound, a persistent poor state of responsiveness with the development of severe right flexion contractures which are involuntary tightening and shortening of muscles, and a persistent fever. A neurosurgeon previously reported that his life expectancy would remain substantial if Mr. Haider had continued to be treated in an acute care hospital. At age 48, Mr. Haider died on January 1, 2004, due to respiratory failure and intracranial bleeding.

The claimants presented evidence of the total economic loss for this claim by an economist they retained. Total damages include a present value assessment of the loss or diminution of future earning capacity, the loss of past earnings, the cost of future life care needs, the cost of household assistance and the cost of childcare and family support required by the claimant, Mr. Haider. Total damages are estimated at \$58,469,531.

EXPERT TESTIMONY:

The claimants presented expert testimony by a neurologist and a radiologist that South Broward Hospital District, by and through its employees, fell below the standard of care that a

reasonably prudent physician under similar circumstances and conditions would attain and as a result of such actions and omissions, Mr. Haider had suffered injuries and damages. The experts opined that the standard of care was deviated from by the employee of South Broward Hospital District to Mr. Haider due to the failure to:

- Timely and appropriately diagnose a giant aneurysm;
- Timely and appropriately evaluate for, consider and recommend, embolization procedures, a treatment whose goal is to decrease the risk of an aneurysm rupture by sealing or blocking off the aneurysm and stopping further blood from entering into the aneurysm or rebleeding;
- Timely and appropriately order and obtain an angiogram prior to surgery;
- Timely and appropriately appreciate the significance of the pulsating artifact or line evident on the MRI as an indication of a giant aneurysm and not a mass tumor;
- Timely and appropriately identify the mass evident and noted on the May 31, 2000, MRI as a giant aneurysm and not as a brain tumor; and
- Timely and appropriately provide care and treatment for a giant aneurysm.

CONCLUSIONS OF LAW:

The claimants have established to this Special Master's satisfaction, by a preponderance of evidence, that the respondent's employees, owed Mr. Haider a duty of care, that their applicable duty to Mr. Haider was breached, and that the claimants' injuries and damages were a proximate and foreseeable result of that breach.

As in many cases of this nature, the various named defendants shared responsibility for the result, and although reasonable people might disagree with the allocation of the responsibility among the defendants, I find that the sum to be paid by the respondent, South Broward Hospital District, is supported by the evidence against it, in light of all circumstances.

THE SETTLEMENT:

Prior to trial, suit was filed in the Circuit Court of Broward County against David A. Saks, M.D.; Radiology Resource, Inc.; The OMI Group Inc.; Open Magnetic Imaging, Inc.; Harvey Schwartz, M.D.; Islon Seliger, M.D.; Sunrise Medical Group, Inc.; South Broward Hospital District d/b/a Memorial

Regional Hospital; Neil B. Kappelman, M.D.; Radiology Group, P.A.; Rosendorf, Margulies, Borushok, Schoenbaum Radiology Associates of Hollywood, Inc.; Team Health Group, Inc.; Michael I. Margolis, D.O.; Dr. Harry Pepe & Associates, Inc.; Adan L. Hernandez, M.D.; Carlos Levy, D.O.; Jerry Parkolap, M.D.; Inphynet Contracting Services, Inc.; Columbia Hospital Corporation of South Broward, Inc., d/b/a Westside Regional Medical Center; and Vista Healthplan, Inc., f/k/a HIP Health Plan, Inc. During the pendency of the underlying action, Vista Healthplan, Inc., filed a complaint in intervention to protect its lien against the claimants, and on or about August 19, 2002, the claimants served Vista Healthplan, Inc., with a notice of intent to initiate medical malpractice litigation. On or about February 5, 2003, before Vista Healthplan, Inc., could be added to the underlying action as a party defendant, the claimants and Vista Healthplan, Inc., entered into a settlement agreement.

The Circuit Court in Broward County granted the motion for summary final judgment for Neil B. Kappelman, M.D.; Radiology Group, P.A.; Rosendorf, Margulies, Borushok, Schoenbaum Radiology Associates of Hollywood, Inc., on February 10, 2003. The claimants voluntarily dismissed with prejudice the defendants, Adan L. Hernandez, M.D., and Team Health Group without an order of the court before trial.¹ The Circuit Court in Broward County approved the partial settlement with Vista Healthplan, Inc., for \$550,000 and a waiver in the past and future of any liens; and Harvey Schwartz, M.D.; Islon Seliger, M.D.; Sunrise Medical Group, Inc., for \$275,000; Jerry Parkolap, M.D.; and Inphynet Contracting Services, Inc., for \$100,000 on February 27, 2003. Vista Healthplan, Inc., an intervening plaintiff, filed a notice of voluntary dismissal with prejudice of its complaint in intervention based upon its resolution of all issues between the claimants and the intervening plaintiff on April 30, 2003.² The Circuit Court in Broward County approved an order of dismissal as to defendants, Harvey Schwartz, M.D.; Islon Seliger, M.D.; and Sunrise Medical Group, Inc., on April 29, 2003.

The Circuit Court in Broward County at a hearing on or about April 9, 2002, approved the partial settlement between the claimants and the defendants, OMI of Plantation, Inc.; OMI Group, Inc.; and Open Magnetic Imaging, Inc., for \$1 million and re-issued an order on May 20, 2003 due to the fact that

the original previous order appeared to be missing from the court file. The claimants entered a settlement with Carlos Levy, D.O. for \$250,000 on September 27, 2002 and the Circuit Court in Broward County granted the joint stipulation of final judgment of dismissal with prejudice on October 17, 2002.

On June 11, 2003, the Circuit Court in Broward County granted an order approving the settlement and dismissing the action as to defendants, David A. Saks, M.D. and Radiology Resource, Inc., for \$1 million; Michael Margolis, D.O.; Dr. Harry Pepe & Associates, Inc., for \$500,000; and Columbia Corporation of South Broward, Inc., d/b/a Westside Regional Medical Center, for \$50,000. On June 24, 2003, the Circuit Court in Broward County granted a supplemental order approving the settlement and dismissing with prejudice the complaint against the defendant, Columbia Hospital Corporation of South Broward, Inc., d/b/a Columbia Westside Regional Medical Center. The claimants settled with defendants other than South Broward District Hospital for a total sum equal to \$3.7 million.

On February 27, 2003, the Circuit Court in Broward County granted a motion for approval of the settlement between the claimants and the South Broward Hospital District d/b/a Memorial Regional Hospital for a total sum of \$ 4 million. The settlement required South Broward Hospital District to tender payment of the statutory cap of \$200,000 and provided that the remainder of the amount owed would be subject to passage of a claim bill. The South Broward Hospital District agreed that it would not lobby against the passage of the claim bill or contend that the amount paid under the claim bill be reduced by virtue of the death of Mr. Haider, or the settlement of any claims against any other defendants in the pending lawsuit. Under the settlement, the district agreed to pay interest on the \$3.8 million at the same rate of interest that the district earns on the funds set aside for the payment of a claim bill from the period of June 20, 2003 until the claim bill is paid.³

ATTORNEYS FEES:

The attorney for the claimants has provided the Senate with an affidavit to the effect that the fees will be limited to 25 percent of the total amounts paid or to be paid by the respondent.⁴

RESPONDENT'S POSITION: As part of the settlement, the South Broward Hospital District has agreed to support the passage of Senate Bill 40 (2004).

The initial \$200,000 of the claim is to be paid by the South Broward Hospital District out of operating funds. The South Broward Hospital District has the ability to pay the remaining \$3.8 million plus interest accrued from a segregated trust fund for payment of medical malpractice claims and has the option of paying the claim from its operating funds. For the period from June 20, 2003 to October 31, 2003, the South Broward Hospital District has accrued interest in the amount of \$20,770 on the \$3.8 million to be paid by the district on this claim. As of November 17, 2003, the South Broward Hospital District has agreed to pay interest in the sum of \$46,437 in addition to the \$3.8 million for a total of \$3,846,437.

GUARDIANSHIP: To protect the funds to be paid by the respondent, and to ensure their appropriate expenditure, the Circuit Court in Broward County, Florida had established a guardianship with Cindy Haider, the wife of Jeffrey Haider, acting as guardian. The Circuit Court in Broward County has retained jurisdiction over the expenditures from the account.

PROTECTION OF FUNDS: The Legislature finds that there is a necessity to protect and preserve the above funds over a reasonable length of time for the purposes for which they are awarded, and imposes the least restrictive method appropriate under the circumstances to accomplish that end. The claimants, Alan Haider, Max Haider, Jonathan Haider, and Jessica Haider, and the attorney for each of the claimants shall, as a condition of payment, nominate a financial institution doing business in this state, or an independent individual who is not related to the claimants by either blood, marriage, or contract, to act as a trustee for an irrevocable inter vivos trust established for the benefit of each respective claimant. In addition, the proceeds that are paid to Alan Haider, Max Haider, Jonathan Haider, and Jessica Haider shall be placed in separate irrevocable inter vivos trusts, to be used solely for the health care, support, maintenance, and education of each respective claimant until that claimant is 30 years of age. The trustee must take into consideration any other resources and income of the beneficiary of a trust before disbursing any funds from a trust to the claimant who is the

beneficiary of that trust. To that end, the trustee of the trusts must possess experience in financial and trust management.

COLLATERAL SOURCES
AND OTHER SOURCES OF
INCOME:

Vista Healthplan, Inc., f/k/a HIP Health Plan of Florida, Inc., was Mr. Haider's health maintenance organization.⁵ Vista Healthplan has agreed to pay the claimants \$550,000 and to waive any past or future liens. As of December 12, 2002, Vista Healthplan had paid out \$1,356,462.41 on behalf of Mr. Haider.⁶ Mr. Haider (\$1,626 monthly) received Social Security disability until his death and, Max Haider (\$813 monthly), his adult child, currently receives Social Security disability income.⁷

LEGISLATIVE HISTORY:

House Bill 1257 (2003) was filed by Representative Mack on March 4, 2003 and referred to the House Subcommittee on Claims and the House Committee on Judiciary. House Bill 1257 (2003) died in the House Subcommittee on Claims. There was no companion bill filed in the Senate.

RECOMMENDATIONS:

Accordingly, this Special Master recommends that SB 40 (2004) be amended to authorize and direct the South Broward Hospital District to appropriate from funds of the district not otherwise appropriated to compensate the claimants Cindy Haider, the wife of Jeffrey Haider, deceased; Alan Haider, the adult dependent child of Jeffrey and Cindy Haider; and Max, Jonathan, and Jessica Haider, the adult children of Jeffrey and Cindy Haider, for injuries and damages sustained as a result of the negligence of employees of the district the sum of \$3,800,000, plus liquidated interest of \$46,437, for a total of \$3,846,437 as agreed to by the claimants and the district, in the following distribution to the claimants, after payment of attorneys fees and costs:

- 60 percent to be paid to Cindy Haider;
- 10 percent to be paid to the trust established for Max Haider;
- 10 percent to be paid to the trust established for Jonathan Haider;
- 10 percent to be paid to the trust established for Jessica Haider; and
- 10 percent to be paid to the trust established for Alan Haider.

Consistent with this report, I recommend that claimants, Alan Haider, Max Haider, Jonathan Haider, and Jessica Haider, and the attorney for each of the claimants shall, as a condition of payment, nominate a financial institution doing business in this state, or an independent individual who is not related to the claimants by either blood, marriage, or contract, to act as a trustee for an irrevocable inter vivos trust established for the benefit of each respective claimant. In addition, the proceeds that are paid to Alan Haider, Max Haider, Jonathan Haider, and Jessica Haider shall be placed in separate irrevocable inter vivos trusts, to be used solely for the health care, support, maintenance, and education of each respective claimant until that claimant is 30 years of age. The trustee must take into consideration any other resources and income of the beneficiary of a trust before disbursing any funds from a trust to the claimant who is the beneficiary of that trust. To that end, the trustee of the trusts must possess experience in financial and trust management.

For the foregoing reasons, I recommend that Senate Bill 40 (2004) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Barry J. Munroe
Senate Special Master

cc: Senator Alex Diaz de la Portilla
Faye Blanton, Secretary of the Senate
House Subcommittee on Claims

¹ See Rule 1.420 (a)(1) Florida Rules of Civil Procedure.

² See Rule 1.420 (a)(1) Florida Rules of Civil Procedure.

³ On November 17, 2003, the South Broward Hospital District agreed to pay interest at a liquidated amount on the claim in the sum of \$46,437.

⁴ Claimant's attorney provided a distribution statement for the claim bill (SB 40) based on a settlement amount without the liquidated interest. This statement reveals costs associated with the settlement between the claimants and respondent, South Broward Hospital District, are included in the settlement amount. Lobbying fees are estimated \$228,000 (6 percent) and are included in the settlement amount.

⁵ Mr. Haider was covered under Vista Healthplan, Inc., an HMO, available through Mrs. Haider's employment as a librarian.

⁶ During the pendency of the underlying action, Vista Healthplan, Inc., filed a complaint in intervention to protect its lien against the claimants and on or about August 19, 2002, the claimants served Vista Healthplan, Inc., with a notice of intent to initiate medical malpractice litigation. On or about February 5, 2003, before Vista Healthplan, Inc., could be added to the

underlying action as a party defendant, the claimants and Vista Healthplan, Inc., entered into a settlement agreement. Vista Healthplan, Inc., further agreed to voluntarily dismiss with prejudice its complaint and intervention as a lienholder against the claimants.

⁷ Pursuant to §768.76, F.S., social security disability is not considered a collateral source when the disability income is for an existing disability or a disability that did not arise from an incident arising out of this claim bill. See *Morales v. Scherer*, 528 So.2d 1 (4th DCA 1988) reh den and approved, in part, quashed, in part on other grounds in *Florida Patient's Compensation Fund v. Scherer*, 558 So.2d 411 (Fla. 1990).