

STORAGE NAME: h1021.HCC
DATE: Feb. 23, 2007

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 1021
Sponsor: Rep. Hasner
Companion Bill: SB 38 by Sen. Jones
Special Master: Stephanie Birtman, Esq.

A. Basic Information:

1. **Claimants:** Judith and Gary Susser, parents of Adam Susser, a minor.
2. **Respondent:** North Broward Hospital District (hospital district)
3. **Amount Requested:** \$668,781.96
4. **Type of Claim:** Equitable, based on a settlement agreement.
5. **Respondent's Position:** Supports the passage of the bill. The CFO for the North Broward Hospital District provided an affidavit stating that the monies required by the claim bill have been earmarked and are accruing interest until such time as the claim bill is enacted.
6. **Collateral Sources:** Together with this claim bill, the claimants will receive a total of \$9.8 million.
7. **Attorney's Fees:** The attorney has certified that his fees will not exceed the 25% statutory cap, and have in fact been reduced to 15% of the amount to be awarded via this claim bill. Lobbying fees of 5% are in addition to the attorney's fees. Outstanding costs total \$8,447.76.
8. **Prior Legislative History:**

HB 959 was filed in 2004 by Rep. Seiler, but died in the Claims Committee as a Senate companion was not timely filed as required by Senate rule 4.81.

HB 615 (2005) was filed by Rep. Negron and died on the House Calendar. SB 20 (2005) was filed by Sen. Jones and was never considered by the Senate.

HB 853 (2006) was filed by Rep. Negron and died in the Justice Council. SB 58 (2006) was never considered by any Senate committee.

B. Procedural Summary: On December 5, 2002, Gary and Judith Susser filed a medical malpractice suit in the 17th Judicial Circuit in and for Broward County. The suit named the following doctors and

their professional associations: Dr. Greenspan (settled for \$500,000), Dr. Kuhn (settled for \$500,000 plus \$3,250,000 in a bad faith award), Dr. Edwards (settled for \$500,000), Dr. Mata (released), North Broward Radiologists (released), Dr. Beach (released), Pediatrix Medical Group, Inc. (released), and the North Broward Hospital District. Prior to trial, the North Broward Hospital District settled with the claimants for a total of \$5.3 million. Of this amount, \$4,431,218 was paid by the hospital district's insurance carrier and \$200,000 has already been paid pursuant to the statutory cap, leaving a claim bill in the amount of 668,781.96.

C. Facts of Case: On July 6, 2000, Mrs. Susser arrived at Coral Springs Medical Center at 33 weeks gestation. She had the following risk factors: advanced maternal age (she was 47); twin gestation; gestational diabetes; pre-term labor; premature rupture of membranes; and invitro fertilization. This pregnancy required close observation and medical care by the health care providers charged with managing the pregnancy. The acceptable standard of care was breached in the following ways: over four days in the hospital, baby 'A' was not included on the electronic fetal monitoring strips 80% of the time; hospital policy was not followed which required a physician to be notified if there is a problem maintaining electronic fetal monitoring; biophysical profiles were ordered but the results were not checked for two days, and the 'very abnormal' results were not provided to the delivery doctor; the electronic fetal monitor was turned off without a physician's order for almost 24 hours; failure to respond to Mrs. Susser's elevated blood sugar levels; failure to respond to Mrs. Susser's elevated temperature; ordered Pitocin rather than perform a caesarian section; increased the Pitocin in violation of hospital policy given baby A's heart deceleration; complete breakdown in communication amongst treating physicians; and no electronic fetal monitoring in the operating room. Baby A, Adam, was vaginally delivered in critical condition. The one neonatal team in the room had to resuscitate him, but failed to check his blood sugar, prescribe glucose, or check his cord blood gas. Baby B, Brandon, was then born, showing APGAR scores of 7 and 8. The Susser family was sent home believing that both babies were perfectly healthy. However, Adam has been diagnosed with estatic encephalopathy and cortical blindness. He is blind and incapable of walking, talking, or feeding himself. He will never be employable or be self-sustaining. Brandon has a shunt in his brain to decompress the pressure caused by significant hydrocephalus; the shunt will remain in his brain for the rest of his life. He is unsteady on his feet and has a left-sided hemiparesis. Experts have provided sworn deposition testimony that the care and treatment of Mrs. Susser fell below the standards of medical care, and that had acceptable standards of medical care been followed, Adam's brain injury would not have occurred. Adam is now 6 years old, and can neither walk nor talk. He underwent surgery in January of 2007 on both of his hips to try to ameliorate the dislocation of his left hip and partial dislocation of his right hip due to severe spastic diplegia.

SM: _____
Stephanie O. Birtman

SD: _____
Stephanie O. Birtman

Date: _____