



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/10/07	SM	Fav/1 amendment
	HR	

February 10, 2007

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 32 (2007)** – Senator Mike Fasano
Relief of Sharon Jurgrau and Megan Jurgrau

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED EQUITABLE CLAIM FOR \$500,000 OF THE FUNDS OF THE SOUTH BROWARD HOSPITAL DISTRICT TO COMPENSATE SHARON AND MEGAN JURGRAU FOR THE DEATH OF THEIR HUSBAND AND FATHER, MARK JURGRAU, AS A RESULT OF HIS DEATH FOLLOWING SURGERY AT MEMORIAL HOSPITAL IN 1999.

FINDINGS OF FACT:

A hearing on this claim was held by a Senate Special Master in a prior year. The parties declined the opportunity to appear at another hearing, and instead provided a supplement to the record. As a result of my de novo review of the supplemented record, I adopt, with modifications, the prior Special Master's findings of fact and conclusions of law, as my own.

On September 2, 1999, Dr. Michael Rosenbloom performed successful open heart surgery on Mark Jurgrau, a 38-year-old architect at Memorial Hospital, part of the South Broward Hospital District (the hospital district). Mr. Jurgau's defective aortic valve was replaced in what is known as a "Ross procedure" that is commonly used for young people because the valve lasts longer and anticoagulation drugs are not required.

Following surgery, Mr. Jurgrau appeared to be doing fine and was moved to the heart surgery unit. His care was transferred to Thomas Jacob, M.D., and Kathryn Kater, an advanced registered nurse practitioner. Both Drs. Rosenbloom and Jacob were independent doctors and were not agents of the hospital district. Ms. Kathy Kater and the other nurses on Mr. Jurgrau's health care team were employees of the hospital district.

The next day, Mr. Jurgrau was transferred, as heart patients are who are well enough, to a general intensive care unit. Four days after surgery, on the evening of September 6, 1999, Mr. Jurgrau died of internal bleeding. He was survived by his wife of 8 years, Sharon, and his 4-year-old daughter, Megan.

Based on the opinion of experts deposed in preparation for trial, the decision to replace Mr. Jurgrau's aortic valve was appropriate, the choice of the Ross procedure was sound, and the surgery was performed correctly. A well-known risk of valve replacement surgery is that the operative site might bleed internally. If internal bleeding occurs, the symptoms are easily recognizable. Mr. Jurgrau's symptoms and test results indicating internal bleeding were ignored and not properly treated by Ms. Kater and the hospital nursing staff. On September 3, Mr. Jurgrau's hematocrit was 27 percent (meaning 27 milliliters of red blood cells in 100 milliliters of blood). The hematocrit is used to determine the amount of blood needed for a transfusion. Normal for an adult male is a range of 42 to 52 percent. On September 4, his heart rate was normal at 79 beats a minute and his hematocrit was 22.4 percent and his weight had increased 15 pounds. On the morning of September 5, a Sunday, his heart rate fluctuated between 130 and 140 beats a minute, his hematocrit was 21.4, and he complained of difficulty breathing. He received a blood transfusion and the nursing staff on duty telephoned Ms. Kater and reported his condition to her and she prescribed Xanax for anxiety.

Early in the morning on September 6, a nurse on staff telephoned Ms. Kater again because Mr. Jurgrau was complaining of pain in the area of the incision, having difficulty breathing, was sweating, and had a heart rate of 112. Ms. Kater again ordered Xanax for anxiety. A chest X-

ray, later that morning, indicated that the right side was more dense than the left and the words "probably reflecting fluid?" were used on the report. That evening, Mr. Jurgrau went into cardiac arrest and became unresponsive. CPR was begun. He was taken to the heart surgery unit and his chest was opened by Drs. Rosenbloom and Jacob, a large amount of blood was suctioned from his chest and his heart was massaged, but Mr. Jurgrau died.

Mr. Jurgrau's death resulted from postoperative care that was not adequate or aggressive enough based on his condition. He was given medication for pain that interfered with platelets and blood transfusions that were inadequate considering the amount of blood he was losing, as evident from the declining hematocrit and relatively slight, short-lived increases following transfusions. In addition to failing to adequately monitor and respond to the test results and his symptoms, Ms. Kater failed to perform her duty to notify Dr. Jacob that Mr. Jurgrau's postoperative progression was deviating from the norm.

LITIGATION HISTORY:

A wrongful death lawsuit was filed in the circuit court in Broward County in 2001. The parties ultimately agreed to a consent final judgment for \$700,000, which was entered on February 4, 2003.

In November 2002, the court appointed a Guardian Ad Litem to protect the interests of Megan Jurgrau, who was then 7 years old. After reviewing relevant information, the Guardian Ad Litem recommended that Megan receive 25 percent of any distributions. In April 2003, Sharon Jurgrau was appointed plenary guardian of the property of Megan Jurgrau and, as ordered in her appointment, opened a trust account for Megan. Twenty-five percent of the funds received have been deposited in that account.

On February 4, 2003, the circuit court judge entered a consent final judgment. Under the terms of the judgment, the hospital district paid \$200,000 to Sharon Jurgrau. In addition, the hospital district agreed to cooperate and support the passage of a claim bill for an additional \$500,000.

Sharon and Megan Jurgrau received \$200,000 from the insurance company of the late Thomas Jacob, M.D. Claims

against Dr. Rosenbloom and the assisting surgeon, Dr. Richard Perryman, were dropped.

CONCLUSIONS OF LAW:

The Claimants have established that the hospital district employees owed Mr. Jurgrau a duty of care to monitor his condition and respond appropriately; that the duty was breached; that the Claimants' damages were a proximate and foreseeable result of that breach; and that the award is reasonable.

LEGISLATIVE HISTORY:

Senate Bills, on behalf of the Jurgraus, were filed in the 2005 and 2006 legislative sessions.

ATTORNEY'S FEES AND LOBBYIST'S FEES:

The Claimants' attorney has submitted an affidavit certifying that attorney's fees are limited in accordance with s. 768.28(8), F.S., to 25 percent, or \$125,000. Costs, as of November 20, 2006, were \$2,781.03, including costs associated with the claim bill process and the probate proceedings to establish a guardianship for the minor child. Lobbying expenses of 5 percent, or \$25,000, are in addition to attorney's fees.

RECOMMENDATIONS:

As recommended by the previous Senate Special Master, I recommend that Senate Bill 32 be amended to provide that the distribution to the Claimants, after payment of attorney's fees and costs, be 75 percent of the proceeds to Sharon Jurgrau and 25 percent to Megan Jurgrau, deposited in the guardianship account established solely for her benefit.

For the foregoing reasons, I recommend that Senate Bill 32 (2007) be reported FAVORABLY, as amended.

Respectfully submitted,

Eleanor M. Hunter
Senate Special Master

cc: Senator Mike Fasano
Faye Blanton, Secretary of the Senate
House Committee on Constitution and Civil Law
Counsel of Record