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DATE: 4/09/2008

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 183; Relief/Adrian Fuentes/South Broward Hospital District
Sponsor: Representative Jenne
Companion Bill: SB 60 by Senator Ring
Special Master: Tom Thomas

Basic Information:

- Claimants:** Adrian Fuentes, a minor, by and through his parents and natural guardians, Luz and Jose Fuentes
- Respondent:** South Broward Hospital District
- Amount Requested:** \$1,600,000
- Type of Claim:** Equitable; result of a settlement agreement.
- Respondent's Position:** Consents to and agrees to support the claim bill in the requested amount.
- Collateral Sources:** The Claimants received settlements of \$1,000,000 from the insurance company of Dr. Leonard Rosendorf and \$1,000,000 from the insurance company of Radiology Associates of Hollywood, P.A. The Claimants also received a settlement of \$250,000 from Broward Women's Healthcare, Inc. The South Broward Hospital District has paid \$200,000 of its \$1,800,000 settlement, which is the statutory limit authorized under s. 768.28(5), F.S.
- Attorney's/Lobbying Fees:** The Claimant's attorney has submitted documentation that his fees are limited to 25% of the recovery, and lobbying fees are limited to an additional 4% of the recovery. Outstanding costs are estimated to be \$10,654.42.
- Prior Legislative History:** This is the first year that a claim bill has been filed in this matter.

Procedural Summary: The Claimants filed a negligence suit against the South Broward Hospital District in the Seventeenth Judicial Circuit in and for Broward County on January 26, 2006. Prior to trial, the parties entered into a settlement agreement whereby the South Broward Hospital District agreed to pay the Claimants a total of \$1,800,000, of which \$200,000 has already been paid pursuant to the cap on government liability in s. 768.28(5), F.S. The settlement includes costs and attorney's fees. The settlement was approved, and a final order was entered, by the Court on July 20, 2007.

Facts of Case: Luz Fuentes began receiving prenatal medical care for her first pregnancy at Memorial Hospital Primary Care Center, an entity operated by the South Broward Hospital District, in December, 2001. Although the attending physician supervising her care was Andreas Spyridakis, D.O., all examinations of Luz Fuentes were conducted by certified nurse midwives. On April 18, 2002, during an examination by a midwife, at 36 weeks' gestation, a discrepancy was noted between the weeks of gestation and the fundal height of the fetus. An obstetrical ultrasound was ordered by Sharon Harrison, C.N.M., to determine the estimated fetal weight. The obstetrical ultrasound was scheduled for five days later. The ultrasound was performed at South Broward Hospital on April 23, 2002.

The obstetrical ultrasound was interpreted on the same day as it was performed, April 23, 2002, by Leonard Rosendorf, M.D., whose findings showed an amniotic fluid index of 9, which is a normal reading, but indicated a low abdominal circumference, which possibly indicated intrauterine growth restriction. On that same day, April 23, 2002, Dr. Rosendorf ordered that his findings and report be "STAT faxed" to the ordering midwife at Memorial Hospital Primary Care Center.

No one at Memorial Hospital Primary Care Center responded to the "STAT faxed" report by Dr. Rosendorf on either April 23 or April 24, 2002. The report from Dr. Rosendorf was reviewed and signed by Rosanne Wohlman, C.N.M., at Memorial Hospital Primary Care Center on April 25, 2002, during a scheduled follow-up examination of Luz Fuentes. During the April 25th examination at Memorial Hospital's Primary Care Center, Nurse Wohlman ordered a nonstress test with results that she described as prolonged decelerations, a fetal heart rate of 90 beats per minute, and decelerations lasting 60 seconds. Based upon these findings, Nurse Wohlman then had Luz Fuentes transported to Memorial Hospital, where it was determined that the fetus was in serious distress. Within 32 minutes of Luz Fuentes' arrival at Memorial Hospital, Adrian Fuentes was delivered by emergency cesarean section. The amniotic fluid was noted at delivery to be meconium (the infant's first stool) stained and anhydramnios (absence of amniotic fluid) was detected, indicating fetal distress, a change from the amniotic fluid index of 9 on April 23, 2002.

South Broward Hospital District undertook the duty to the Claimants of providing medical services in accordance with that level of care and skill that is recognized as acceptable and appropriate by reasonably prudent similar health care providers in the same or similar community. The record and the included expert witness testimony demonstrate that the delay in responding to the initial obstetrical ultrasound report prepared by Leonard Rosendorf, M.D., resulted in Adrian Fuentes being in significant fetal distress for a sufficient period of time to cause irreversible brain damage. The record and the included expert witness testimony demonstrate that had someone at Memorial Hospital Primary Care Center acted on the initial obstetrical ultrasound report prepared by Leonard Rosendorf, M.D., within the first 24 hours of the report being prepared and ordered "STAT faxed," Luz Fuentes would have been monitored for signs of fetal distress and Adrian Fuentes would have been delivered prior to any brain damage occurring.

The record does not demonstrate exactly who failed in getting the report to one of the certified nurse midwives at the Memorial Hospital Primary Care Center, but it was either one of two groups of persons, both of which are all employees of the South Broward Hospital District. The report was either not faxed or otherwise sent from Dr. Rosendorf's office in a timely manner by one group of hospital employees, or it was not brought to the attention of a certified nurse midwife at Memorial Hospital Primary Care Center by another group of hospital employees that receive medical reports at that office. The actions of the hospital employees constitute negligence and, as a result of such negligence, Adrian Fuentes was born with severe brain damage, neurological dysfunction, and other serious and permanent injuries.

Adrian Fuentes is six years-old, confined to a wheelchair, and is unable to walk on his own. He is dependent on his parents and others for essentially all activities of daily living. During his

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most recent developmental exam, Adrian was only able to say his name and was unable to recognize shapes or write. Adrian's life care plan and economic analysis made part of the record demonstrates:

- Due to developmental delays impacting Adrian both cognitively and physically, he is not expected to be gainfully employable in the competitive labor market and his future earning capacity is zero.
- The present value of the loss of lifetime earning capacity, plus the present value costs of future life care needs, is estimated to range from \$9,825,496 (assuming a high school degree) to \$9,863,720 (assuming an Associate's Degree).

Special Master

Date

cc: Representative Jenne
Senator Ring
Judge Eleanor Hunter, Senate Special Master