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Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 1303; Relief of Lois Lacava/Munroe Regional Health System
Sponsor: Fresen
Companion Bill:
Special Master: Tom Thomas

Basic Information:

Claimants: Lois Lacava

Respondent: Munroe Regional Health System

Amount Requested: \$250,000

Type of Claim: Local equitable claim; result of a settlement agreement.

Respondent's Position: Munroe Regional Health System supports and agrees to cooperate with the Legislative approval of the consent judgment and to support the passage of a claims bill.

Collateral Sources: Pursuant to injuries sustained as a result of this incident, claimant received a payment from Medicare. This payment has been repaid from damages already recovered. The claimant also filed suit against Dr. Brill individually. That case was settled in the amount of \$245,000.

Attorney's/Lobbying Fees: The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that any lobbying fees will be included in the 25% fee cap.

Prior Legislative History: This is the first year that this claims bill has been brought before the Legislature.

Procedural Summary: Lois Lacava sued Munroe Regional Health System alleging negligence. Prior to trial, the parties agreed to a consent judgment against Munroe Regional Health System in the amount of \$450,000. Of this amount, \$200,000 has already been paid to the claimant pursuant to the statutory cap on liability imposed by section 768.28, Florida Statutes. The remaining \$250,000 balance is stipulated to be paid in consecutive amounts of \$125,000 in consecutive years.

Facts of Case: On September 3, 2005, Claimant Lois Lacava fell at her home and fractured her right hip. Ms. Lacava went to the emergency room at Munroe Regional Medical Center (MRMC) for treatment. Dr. Robert Brill (Brill) was assigned by MRMC to treat Ms. Lacava's fracture. Brill admitted

Ms. Lacava to the hospital and performed surgery on her injured right hip. In the weeks following the surgery, the fracture did not form a union and Brill decided to readmit Ms. Lacava for a partial hip replacement surgery.

Dr. Brill previously suffered a stroke that left him with permanent brain damage and limited use of his left arm. The State of Florida Physicians Recovery Network permitted Dr. Brill to continue seeing patients under limited circumstances. These restrictions prohibited Dr. Brill from performing emergency room services and prohibited Dr. Brill from operating on any patient after noon.

The hip replacement surgery was elective. At the time of her admission to MRMC for the hip replacement surgery, Ms. Lacava was without pain and could bear her total weight on her injured hip. On November 10, 2005, Brill attempted the partial hip replacement surgery. During the course of the surgery, Brill decided to perform a total hip replacement. The surgery began in the late afternoon and ended at 6:06 P.M. Brill reported that the surgery was successful and without complication. The post-operative X-ray showed that the prosthetic hip was dislocated and there were new fractures in the hip and acetabulum as a result of the surgery. No action was taken to follow-up on the dislocation or the new fractures.

On November 11, 2005, the day following the operation, additional x-rays were ordered that also showed problems with Ms. Lacava's right hip. No follow up treatment was provided to address the dislocation or new fractures. Additionally, MRMC nursing staff failed to perform appropriate neurovascular assessments of the right leg. At this time, Ms. Lacava was experiencing a loss of sensation in her right leg, which is a symptom of an arterial blockage. Appropriate neurovascular assessment would likely have discovered the symptoms associated with the arterial blockage.

On November 12, 2005, another doctor employed by MRMC, Dr. Mehta, examined Ms. Lacava and discovered her right leg was cold below the knee to her toes. Additionally, Ms. Lacava had decreased movement in her right leg and discoloration in her right toes. Dr. Mehta ordered an arterial Doppler test be performed STAT. The arterial Doppler test measures the blood flow in the arteries in a patient's leg. The next day, hospital staff informed Dr. Mehta that a venous Doppler test was performed and the results were negative. The Doppler technician did not perform an arterial Doppler because of issues involving the coding procedure of the computer used in conjunction with the Doppler test. The coding procedure required a venous Doppler test be performed prior to an arterial Doppler test, even if no venous Doppler test was necessary. A venous Doppler test was subsequently requested STAT so that an arterial Doppler test could be performed. Another venous Doppler test was performed, which was negative in accordance with the initial test. The arterial Doppler test still was not performed. Had the arterial Doppler test been performed, it is likely that it would have revealed that there was a femoral artery occlusion that blocked blood flow to Ms. Lacava's right leg.

Upon learning of the second failure to perform the arterial Doppler test, Dr. Mehta ordered a vascular surgery evaluation. The vascular surgeon ordered a STAT angiogram which revealed a right femoral artery occlusion that was related to a stretching injury at the time of the initial surgery. At this time, Ms. Lacava's right foot was purple from the lack of blood flow and her leg was cold from mid-one third of the right leg downwards.

Ms. Lacava was scheduled for emergency surgery. Brill performed another hip replacement surgery because the initial hip prosthesis was still dislocated. Brill began this surgery in the late evening and finished at 9:00 P.M. A vascular surgeon then repaired a tear in Ms. Lacava's right femoral artery. By this point, Ms. Lacava's right leg had been without blood flow for so long that gangrene set in. As a result, Ms. Lacava had to have her right leg amputated above the knee.

X-rays performed following the amputation revealed that Ms. Lacava's right hip was still dislocated and

that she still had fractures of the superior pubic ramus. Brill attempted a fourth repair of Ms. Lacava's right hip, which was unsuccessful.

Ms. Lacava still suffers from a dislocated right hip. Ms. Lacava is confined to a wheelchair and will never walk again as a result of the amputation of her right leg. Ms. Lacava is not able to use a prosthetic leg because the site of the amputation is high on her leg above the knee. Ms. Lacava currently lives in Rhode Island with her sister. Ms. Lacava receives social security income of \$1,097 per month.

Lois Lacava sued Munroe Regional Health System alleging negligence. Prior to trial, the parties agreed to a consent judgment against Munroe Regional Health System in the amount of \$450,000. Of this amount, \$200,000 has already been paid to the claimant pursuant to the statutory cap on liability imposed by section 768.28, Florida Statutes. The remaining \$250,000 balance is stipulated to be paid in consecutive amounts of \$125,000 in consecutive years. Ms. Lacava also filed suit against Brill alleging medical malpractice. That case settled prior to trial for the amount of \$245,000.

The bill is not consistent with the settlement agreement with respect to the phasing of the payments. The parties agree, and I recommend that the bill be amended to require the claim to be paid in two equal amounts of \$125,000 in consecutive years.

Recommendation: Accordingly, based on the foregoing, I recommend this claim be reported FAVAORBLY, with the changes suggested above.

Tom Thomas, Special Master

Date

cc: Representative Fresen, House Sponsor
Senator Dean, Senate Sponsor
Judge Bram D. E. Canter, Senate Special Master