THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/1/11	SM	Favorable
3/25/11	RC	Favorable

February 1, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 16 (2011)** – Senator Jeremy Ring
HB 609 (2011) – Representative Marti Coley
Relief of Laron S. Harris, Jr., Melinda (Williams) Harris, and Laron S. Harris, Sr.

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF $2 MILLION AGAINST THE NORTH BROWARD HOSPITAL DISTRICT FOR MEDICAL MALPRACTICE IN CONNECTION WITH THE BIRTH OF LARON S. HARRIS, JR., WHO WAS DELIVERED AT CORAL SPRINGS MEDICAL CENTER ON APRIL 1, 2003, AFTER HAVING SUFFERED A CATASTROPHIC BRAIN INJURY IN UTERO DUE TO AN UNREASONABLE DELAY IN DIAGNOSING HIS MOTHER'S PLACENTAL ABRUPTION.

FINDINGS OF FACT:

Melinda Harris was eight months pregnant with her first child when she awoke early in the morning on April 1, 2003, experiencing excruciating abdominal pain and vaginal bleeding. Her husband, Laron S. Harris, Sr., called 911 for help. Soon thereafter, Mrs. Harris was taken by ambulance to Coral Springs Medical Center (Coral Springs), a public facility located in Coral Springs, Florida, which the North Broward Hospital District owns and operates. Mrs. Harris was admitted to the hospital at 5:47 a.m. and taken to the labor and delivery floor.

Mrs. Harris's obstetrician, Dr. Alison DeSouza, was not at the hospital when Mrs. Harris arrived. An initial evaluation was performed by Laura Richman, R.N., who noted, among other things, that Mrs. Harris was in acute pain, wearing blood-stained clothing, and suffering from extremely high blood pressure. Although these symptoms are associated with a potentially life-threatening condition known as a placental abruption (meaning the placenta is tearing away from the uterus), the nurse did not call Dr. DeSouza until 6:25 a.m., some 38 minutes after Mrs. Harris's admission to the hospital.

Dr. DeSouza immediately ordered a STAT (urgent) ultrasound, among other things. A radiology technologist named Moises Pena performed a sonographic study at Mrs. Harris's bedside using a portable ultrasound machine. This took 20 minutes, from 6:52 a.m. to 7:12 a.m. Mr. Pena wrote in his notes that, based on the study, he could not rule out a placental abruption; he also noted that the ultrasonic images were of poor quality (although, as it turns out, they were, in fact, of diagnostic value, contrary to Mr. Pena's opinion). Mr. Pena sought out the radiologist, Dr. Richard Spira, to tell the doctor about the significant finding he had made, namely that Mrs. Harris possibly had a placental abruption. Mr. Pena was unable to locate Dr. Spira, however, and shortly thereafter he left Coral Springs, his shift having ending at 7:00 a.m. Consequently, Mr. Pena failed to communicate to anyone that an emergency situation might be developing.

Ms. Richman, the nurse who had examined Mrs. Harris upon admission, also left work at 7:00 a.m. when her shift ended. Neither Ms. Richman nor her successor, Olufunke O'Niyi, R.N., was made aware of the possibility that Mrs. Harris had a placental abruption. Consequently, neither nurse reported such a possibility to a physician.

Meantime, Dr. Spira (the radiologist) arrived at the hospital and reviewed the ultrasound study that Mr. Pena had performed. Based on a "wet" (preliminary) read of the study, Dr. Spira determined that the findings were "very suspicious for placental abruption." Dr. Spira further concluded that a repeat ultrasonic examination should be conducted in the radiology department, where better equipment than the portable machine was available. He reported his finding and recommendation to the labor and delivery nursing station at

7:55 a.m. For some reason, however, only part of Dr. Spira's message, i.e. the recommendation that Mrs. Harris be transported to the radiology department for a second study, made it into the patient's chart; Dr. Spira's suspicion of a placental abruption was not communicated to Dr. DeSouza (the obstetrician) or any other physician.

The request to take Mrs. Harris from labor and delivery to radiology led to an unfortunate, protracted delay, as Dr. DeSouza (who was now at the hospital but still unaware that Dr. Spira suspected a placental abruption) objected to moving her patient. While Dr. DeSouza and the radiology department argued about whether Mrs. Harris should be moved, the fetal heart monitor began reporting non-reassuring signs, namely a lack of fetal heart rate variability (meaning that the baby's heart rate was not fluctuating in speed the way it should) and, even more worrisome, variable decelerations (meaning the baby's heart rate was decreasing in relation to uterine contractions). Ms. O'Niyi, the nurse, failed to identify and tell a physician about these troubling developments, which suggested that the baby was in distress.

Eventually, at about 9:20 a.m., Mrs. Harris was transported to the radiology department, where a second ultrasound was performed. Dr. DeSouza was with the patient during this study, as was another physician, Dr. Christine Edwards, a perinatologist. Reviewing the images, Drs. DeSouza and Edwards both realized that Mrs. Harris had a placental abruption, and at 9:36 a.m. Dr. DeSouza made the call to perform an emergency Caesarean section. Mrs. Harris was taken back to labor and delivery at 9:39 a.m., where she was prepared for surgery. At 9:46 a.m., she was transported to the operating room.

Dr. DeSouza began the C-section at 10:14 a.m., more than a half an hour after the decision to operate had been made. The surgery revealed a severely damaged placenta that had torn from the uterine wall. At 10:18 a.m. Laron Harris, Jr. was born. Laron's heart, which had been beating at 134 beats per minute at 10:00 a.m. when last monitored, was now stopped, and he was not breathing. Simply put, Laron was practically dead at birth from asphyxiation. The neonatologist in attendance, Dr. Fernando Ginebra, began aggressive resuscitative efforts. For 14 minutes after being

removed from his mother's womb, Laron had no heartbeat. Then his heart started. Although Laron was revived and would survive, he had suffered permanent, catastrophic injuries.

As a result of the placental abruption, Laron was deprived of oxygen through the placenta and drowned in his mother's blood. This led to a massive stroke, which severely damaged most of his brain. The insult to Laron's brain has left him suffering from cerebral palsy, spastic quadriplegia, severe psychomotor retardation, neuromuscular scoliosis, ischemic encephalopathy, hydrocephalus, seizures, and cortical blindness. He is in a persistent near vegetative state, unable to walk, talk, hold his head erect, or sit up without the assistance of a supportive devise. Laron cannot eat and receives nutrition through a gastric feeding tube.

Laron's condition is not expected to improve. He will require care and treatment around the clock for the rest of his life.

Craig H. Lichtblau, M.D., performed a comprehensive medical evaluation of Laron and prepared a continuation of care plan, which quantifies the future medical expenses that will be incurred over the course of Laron's lifetime. The report prepared by the plaintiffs' expert economist, Fred H. Tramell, which takes into account Dr. Lichtblau's continuation of care plan, concludes that the present value of Laron's future medical needs is $18.4 million. (In contrast, defense expert John K. McKay, Ph.D., determined that the present value of Laron's future medical needs is approximately $1.4 million, based on the assumption that Laron will not survive past the age of 13.) Further, Laron's lost earnings, reduced to present value, amount to $1.4 million. The undersigned accepts as more persuasive the evidence establishing that Laron's economic losses total approximately $20 million.

LEGAL PROCEEDINGS:

In 2004, Mr. and Mrs. Harris brought suit on their son's behalf, and in their respective individual capacities, against the North Broward Hospital District and others. The action was filed in the Circuit Court in and for Broward County, Florida.

The case proceeded to trial in 2009. After jury selection and opening statements, the parties agreed to attend a mediation

conference. At mediation, the plaintiffs and all of the defendants made agreements to settle the case. The North Broward Hospital District agreed to the entry of a Consent Judgment in the plaintiffs' favor, and against the district, in the sum of $2.2 million. The district agreed to pay (and has paid) the plaintiffs $200,000 under the sovereign immunity cap. The district further agreed to take no action that might prevent the passage of a claim bill for the remaining $2 million.

Under the settlement agreements, the plaintiffs have received the following sums from the defendants indicated:

Dr. DeSouza ……$250,000

Cigna Healthcare of Florida, Inc.
& Connecticut General Life Ins. Co. ……..$4,000,000

Dr. Spira/North Broward Radiologists, P.A. ……$775,000

North Broward Hospital District ……$200,000

From this gross recovery, the plaintiffs have paid their attorneys approximately $2.3 million. In addition, they have paid (or put funds in trust for) medical and legal expenses totaling approximately $0.3 million. Thus, the plaintiffs' net recovery to date is about $2.6 million.

Some of the settlement funds that Laron has received to date have been placed in a special needs trust. In accordance with federal law, see 42 U.S.C. § 1396p(d)(4)(A), any money remaining in the trust at the time of Laron's death must first be used to reimburse the State for any benefits he has received under the Medicaid Program. As of the final hearing, Laron had discharged a Medicaid lien in the amount of approximately $103,000, which the State had placed on the previously realized settlement proceeds that were attributable to medical expenses. See Arkansas Dep't of Health and Human Services v. Ahlborn, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006). There are currently no outstanding Medicaid liens relating to benefits provided to Laron.

CLAIMANTS' ARGUMENTS:

The North Broward Hospital District is vicariously liable for the negligent acts of its employees and agents, including but not limited to:

- Failing timely and accurately to alert medical doctors of Mrs. Harris's symptoms upon admission, which were suspicious for placental abruption.

- Failing to ensure that the ultrasound technician's first study, which was completed at 7:12 a.m., was immediately reported to the radiologist.

- Failing to report to Mrs. Harris's treating physicians the radiologist's "wet" read of the first sonographic study, which found, as of 7:55 a.m., that Mrs. Harris likely had a placental abruption.

- Failing to identify, treat, or bring to a physician's attention the non-reassuring fetal heart monitor readings, which indicated that the baby was possibly in distress.

- Failing to perform the second ultrasound on an emergency basis.

Failing to have Mrs. Harris prepared and ready for an emergency C-section in less than 30 minutes.

RESPONDENT'S POSITION:

The North Broward Hospital District does not oppose the bill. The district has "claim bill" insurance that will fully satisfy the Consent Judgment, provided that a claim bill is enacted. Thus, payment of the bill will not impair the district's ability to provide normal services.

CONCLUSIONS OF LAW:

As provided in s. 768.28, Florida Statutes (2010), sovereign immunity shields the North Broward Hospital District against tort liability in excess of $200,000 per occurrence. See Eldred v. North Broward Hospital District, 498 So. 2d 911, 914 (Fla. 1986)(§ 768.28 applies to special hospital taxing districts); Paushter v. South Broward Hospital District, 664 So. 2d 1032, 1033 (Fla. 4th DCA 1995). Unless a claim bill is enacted, therefore, Laron and his parents will not realize the full benefit of the settlement agreement they have made with the District.

Under the doctrine of respondeat superior, the North Broward Hospital District is vicariously liable for the negligent acts of its agents and employees, when such acts are within the course and scope of the agency or employment. See Roessler v. Novak, 858 So. 2d 1158, 1161 (Fla. 2d DCA 2003).

The nurses and radiology technicians who were involved in Mrs. Harris's treatment were employees of the district acting within the scope of their employment. Accordingly, the negligence of these actors is attributable to the district.

Each of the referenced individuals had a duty to provide Mrs. Harris and Laron with competent medical care. Such duty was breached, with tragic consequences: Had Laron been delivered before about 10:00 a.m., as he reasonably should have been, Laron likely would not have suffered a catastrophic brain injury in utero on April 1, 2003. The negligence of the district's employees and agents was a direct and proximate cause of Laron's substantial damages.

The sum that the North Florida Hospital District has agreed to pay Laron ($2.2 million) is a relatively small percentage of Laron's economic damages, assuming he survives to adulthood, which seems more likely than not. Taking the past and future non-economic damages of Laron and his parents into account, which were not quantified because the case was not tried to conclusion, the total damages here easily could have been fixed at a sum in excess of $20 million. Although there are other parties, besides the district, whose negligence contributed to the injury, there is no persuasive basis in the record for finding that the district's share of the fault should be fixed at less than 10 percent; rather, the record supports the conclusion, which the undersigned reaches, that the district's fault is at least that much. The undersigned concludes, therefore, that the settlement at hand is both reasonable and responsible.

ATTORNEYS FEES:

Section 768.28(8), Florida Statutes, provides that "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." The law firm that the Harris family retained, Diez-Arguelles & Tejedor, P.A., has submitted a proposed closing statement showing that, if the claimants were awarded $2 million under the claim bill at issue, the

attorneys' fees would be limited to $500,000, or 25 percent of the compensation being sought, leaving $1.5 million for Laron.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 16 (2011) be reported FAVORABLY.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Jeremy Ring
Representative Marti Coley
R. Philip Twogood, Secretary of the Senate
Counsel of Record