



STORAGE NAME: h3555.CJS

DATE: 4/3/2015

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

Bill #: HB 3555; Relief/Michael Rardin/North Broward Hospital District

Sponsor: Artilles

Companion Bill: CS/SB 80 by Judiciary, Flores

Special Master: Parker Aziz

Basic Information:

Claimants: Michael Rardin

Respondent: North Broward Hospital District

Amount Requested: \$2,000,000.00

Type of Claim: Local equitable claim; Result of a settlement agreement

Respondent's Position: North Broward County Hospital District will not oppose, obstruct or delay the passage of the claims bill or direct its representatives, agents or lobbyist to oppose, obstruct or delay the passage of said claims bill for \$2,000,000.00.

Collateral Sources: Unknown settlement amount between Michael Rardin and Dr. Susan Nesselroth. Claimant also received \$200,000 from North Broward County Hospital District.

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 the lobbyist's fees, if any, will be included in the 25% fee cap.

Notwithstanding the attorney's affidavit, the bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.

Prior Legislative History: This is the first time House Bill 3555 by Representative Artilles and Senate Bill 80 by Senator Flores have been introduced to the Legislature.

Procedural Summary: On December 7, 2012, Michael Rardin ("Claimant") filed a medical

malpractice suit against Susan Nesselroth M.D., Phoenix Emergency Medicine of Broward, LLC., and North Broward County Hospital District ("District"), in the 17th Judicial Circuit, in and for Broward County, Florida. Prior to trial, the case was settled between Claimant and the District in mediation in the amount of \$2,200,000. Pursuant to the settlement, the District paid the sovereign immunity limit of \$200,000, and the parties agreed that Claimant could seek an additional \$2,000,000 through an uncontested claim bill. Additionally, Claimant has reached a confidential settlement agreement and release with Dr. Nesselroth and Phoenix Emergency Medicine of Broward, LLC.

Facts of Case: On July 14, 2011, Michael Rardin, a 42 year old contractor, arrived at the emergency room at the North Broward Medical Center, complaining of chest pain, shortness of breath and the need to sleep during the day. Claimant's vital signs at the time of arrival were alarming with a heart rate at 106, blood pressure 108 over 93 and an oxygen saturation of 53 percent on room air. Based upon these concerning vital signs, Claimant was triaged as a priority one, critical patient.

Claimant was evaluated by Dr. Susan Nesselroth, who noted that his chief complaint was persistent shortness of breath with an associated cough. Dr. Nesselroth ordered an oxygen saturation monitor, which reported a critical oxygen saturation level of 53 percent, and a nonrebreather mask with supplemental oxygen. Claimant was to be monitored in the emergency department. A blood gas test was performed which indicated acidosis and a high level of carbon dioxide in his blood. Claimant was not placed on a centrally monitored respiratory or cardiac monitor. A chest x-ray was performed which indicated a left lower lobe infiltrate, and Dr. Nesselroth's diagnostic impression was left lower lobe pneumonia and hypoxia.

Claimant's condition progressively deteriorated for the next two hours. Dr. Nesselroth was called to Claimant's bedside and a nurse noted increased respiratory distress and difficulty arousing Claimant. Dr. Nesselroth evaluated Claimant as unresponsive, diaphoretic, and as having agonal respirations. The first of two intubation attempts resulted in an esophageal intubation, where oxygen is delivered to the stomach rather than the lungs. Claimant remained intubated incorrectly for nearly five minutes. Claimant became asystolic and a code was called, which led to the administration of cardiopulmonary resuscitation and advance life support efforts. Claimant was left in a condition of no heart rate, no blood pressure and minimal oxygen being delivered to his brain.

By the time hospital personnel were able to successfully intubate Claimant, he had suffered a serious and permanent hypoxic brain injury due to the length of time, roughly ten minutes, during which his brain did not receive sufficient oxygen.

Claimant's alarming vital signs should have elicited a higher level of vigilance by the hospital staff. Claimant was not closely monitored, improperly placed on a rebreather mask rather than intubated initially, and intubated incorrectly. Numerous members of the hospital staff, all of which were employees of the District acting within the scope of their employment, breached the standard of care owed to Claimant. As a result of Dr. Nesselroth and the Hospital's staff's breach of their duty of care, Claimant sustained significant and permanent injury.

Claimant now suffers from a permanent brain injury and symptoms such as visual disturbances, short-term memory loss, difficulty performing everyday tasks, and severe depression. These conditions prevent Claimant from being able to return to work. Mr. Rardin is unable to support his family or provide the company and affection that he otherwise would have provided to his wife, Patricia Rardin, and their two minor children, Emily and Kayla Rardin. Claimant has been declared disabled by the Social Security Administration and is currently receiving disability benefits. Claimant's life care plan indicates past and future life care costs of \$2,036,613 and past and future lost earnings of \$2,448,642. Mr. Rardin will require care and assistance for the remainder of his life.

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Given these estimates, the \$2 million awarded through the claim bill appears to be an appropriate settlement.

Recommendation: The bill should be amended to correctly reflect that Patricia Rardin, Michael's wife, is also a claimant. I respectfully recommend that House Bill 3555 be reported **FAVORABLY**.

Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Artiles, House Sponsor
Senator Flores, Senate Sponsor
Michael Billmeier, Senate Special Master