THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/20/25	SM	Favorable
	JU	
	HP	
	RC	

March 20, 2025

The Honorable Ben Albritton
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 28** – Senator Martin
HB 6523 – Representative Tuck
Relief of Darline Angervil by the South Broward Hospital District

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM BILL FOR LOCAL FUNDS IN THE AMOUNT OF $6,100,000, PAYABLE FROM UNENCUMBERED FUNDS OF THE SOUTH BROWARD HOSPITAL DISTRICT, BASED ON A SETTLEMENT AGREEMENT BETWEEN DARLENE ANGERVIL AND THE DISTRICT. THE SETTLEMENT AGREEMENT RESOLVED A CIVIL ACTION THAT AROSE FROM THE ALLEGED NEGLIGENCE OF THE DISTRICT THAT CAUSED INJURIES TO MS. ANGERVIL AND HER CHILD, J.R., A MINOR.

FINDINGS OF FACT:

On January 14, 2014, Darline Angervil (then known as Darline Rocher), just over 30 weeks pregnant, was admitted to Memorial Hospital West, a hospital owned by the South Broward Hospital District (District). Ms. Angervil went to the hospital concerned about decreased fetal movement, hypertension, and headaches. Her obstetrician, Dr. Emil Abdalla, ordered continuous fetal monitoring and that her vital signs be taken at least once every two hours. Records show that her blood pressure was elevated throughout the day of January 14, including a systolic blood pressure of 160 mm or

higher on two occasions at least four hours apart. Ms. Angervil was diagnosed with preeclampsia with severe features, making this a high-risk pregnancy.

Preeclampsia is a condition that remains during the remainder of the pregnancy until the baby is delivered. The objective was to treat the mother with medications and rest, monitor the mother and baby, hoping to delay delivery until it was considered safe and prudent to deliver the baby.

Throughout the following two days, January 15 and 16, records show that Ms. Angervil continued to complain about headaches. One of these headaches, on January 16, Ms. Angervil rated 7 out of 10 on the severity scale. Nurse Melanie Wells, a District employed labor and delivery nurse, began her shift on January 16 at 7:00 p.m., and was assigned to Ms. Angervil.

At approximately 8:25 p.m. on January 16, Nurse Wells contacted Dr. Abdalla to request an order to remove the continuous electronic fetal heart rate monitor. At 8:27 p.m., Dr. Abdalla provided Nurse Wells with a telephone order to remove the electronic fetal monitor. The records and testimony provided do not show that Nurse Wells notified Dr. Abdalla of Ms. Angervil's consecutive high blood pressure readings, the fetal monitoring strip showing a prolonged deceleration some 9 minutes earlier, or the headaches when she requested the order removing the monitor.

Expert testimony provided to the Special Master opined that Nurse Wells, when requesting removal of the monitor, should have specifically mentioned to Dr. Abdalla that the patient had complained of a headache off and on throughout the afternoon hours requiring treatment; that the fetal monitoring had exhibited prolonged decelerations; and that the blood pressures were trending up. The expert testimony concluded that Nurse Wells should have advocated to continue fetal monitoring rather than for the monitor to be removed.

That evening, Ms. Angervil continued to have consecutive abnormal blood pressure readings at 8:29 p.m. (149/89), 9:07 p.m. (153/90), 9:24 p.m. (159/91), and 10:33 p.m. (156/89). Nurse Wells did not put the fetal monitor back on Ms. Angervil or notify Dr. Abdalla of the continuing high blood pressure

readings. Blood pressure readings were not recorded after the 10:33 p.m. reading until 2:00 a.m. on January 17.

At 2:24 a.m. on January 17, Ms. Angervil called for the nurse complaining of headache, chest pain, and difficulty breathing. Nurse Wells initiated oxygen and checked Ms. Angervil's vital signs. At this time, J.R. was not being monitored. At 2.26 a.m., Ms. Angervil's blood pressure reading was dangerously high (194/104). A similar blood pressure reading at 2:28 a.m. (197/101) confirmed a hypertensive crisis. Additional extremely high blood pressure readings were recorded at 2:32 a.m. (196/102) and 2:37 a.m. (194/104). At 2:40 a.m., Nurse Wells called Dr. Abdalla's nurse midwife, despite directions that Dr. Abdalla was to be called directly, if needed. The nurse midwife told Nurse Wells she needed to call Dr. Abdalla. At 2:43 a.m., Nurse Wells contacted Dr. Abdalla, which call lasted four minutes. On the call, Dr. Abdalla ordered the administration of Hydralazine to lower Ms. Angervil's blood pressure, and at 2:54 a.m., records show the Hydralazine was administered.

After the call with Dr. Abdalla, Nurse Wells attempted to find fetal heart tones but was unable to do so. At 2:54 a.m., due to the difficulty in finding fetal heart tones, the nurse manager contacted an OB/GYN who was working on the floor, Dr. Gazon, to assist in detecting fetal heart tones with an ultrasound machine. At 2:56 a.m., critically low fetal heart tones were observed, whereby Dr. Gazon ordered an emergency cesarean section. Dr. Abdalla arrived at the Hospital and began the cesarean section at 3:05 a.m.

J.R. was delivered at 3:17 a.m. with an extremely low Apgar score of 0-1-3.[1] J.R. was noted to be flaccid (totally limp), cyanotic (bluish or purplish discoloration of the skin due to low blood oxygen levels), apneic (not breathing), and asystolic (no heart rate), essentially lifeless, resulting in emergency neonatal resuscitation. Within the first day, J.R. was transferred from Memorial West Hospital to Joe DiMaggio Children's Hospital for a higher level of care. J.R.'s birth, resuscitation, and subsequent course of neonatal treatment are consistent with a hypoxic injury around the time of delivery, and her medical records include numerous

[1] The Apgar score is a standardized assessment of a neonate's status immediately after birth and the response to resuscitation efforts. National Institute of Health, https://www.ncbi.nlm.nih.gov/books/NBK470569/ (visited February 12, 2025).

references to her "Birth-related hypoxia." J.R.'s treating physicians provided assessment notes describing the profound nature of J.R.'s catastrophic injuries and constant needs.

Brain ultrasound scans taken over a five-week period demonstrate that the injury to J.R. occurred at or near the time of her birth. According to expert testimony provided by neuroradiologist, Dr. Jerome Barakos, the brain ultrasound scan taken on:

- The afternoon of her birth, January 17, 2014, showed normal echogenicity throughout the brain without any abnormal findings for a premature infant;
- January 24, 2014, showed a characteristic injury to J.R.'s brain, which had not evolved to the point of being identifiable on that first scan; that at this point there had been enough time for the brain changes of injury to occur;
- February 24, 2014, showed a loss of brain volume, proving that there was damage so great, demonstrating atrophy.

Further testimony provided by Dr. Barakos opined that the course of a day or two is needed before the brain cells actually start changing shape and falling apart such that an injury of this type will show in a brain ultrasound scan. He stated that when these changes on the scan take at least a day or two before you can see those changes, the brain injury happened very close to the time of the first scan; that if the injury happened days before J.R.'s birth, the injury would have shown on the first scan.

LITIGATION HISTORY:

On March 7, 2016, Claimant filed a lawsuit against the District, Dr. Abdalla and his employer, and neonatologist Dr. Vicki Johnston and her nurse practitioner and their employer. In 2020, the claims against all the defendants except the District were settled. In September of 2022, the case proceeded to trial against just the District. After a six week trial, the jury was unable to reach a verdict and a mistrial was declared.

The second trial against the District began in October of 2023. During the second week of this trial, shortly after the Claimant rested their case, the parties reached a settlement. Pursuant to the settlement agreement, the District agreed to the entry of a consent judgment of $6.4 million, which was entered on September 6, 2024. The terms of the agreement required the District to pay the sovereign immunity limits of $300,000, with

the remaining $6.1 million balance to be paid upon the passage of a claim bill.

RESPONDENT'S POSITION: The District admits there was a deviation from the standard of care by the District related to the failure to monitor the fetal status of J.R. in a timely and adequate manner and the failure to notify the attending physician of Ms. Angervil's changes in status in a timely manner that caused a neurological injury to J.R. The District has agreed to support the claim bill.

CONCLUSIONS OF LAW: The claim bill hearing held on January 9, 2025, was a *de novo* proceeding to determine whether the District is liable in negligence for damages it may have caused to the Claimant and J.R., and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the special master prior to, during, and after the hearing. The Legislature is not bound by settlements or jury verdicts when considering a claim bill, the passage of which is an act of legislative grace.

Section 768.28, of the Florida Statutes, limits the damages a claimant can collect from government entities as a result of its negligence or the negligence of its employees to $200,000 for one individual and $300,000 for all claims or judgments arising out of the same incident. Damages in excess of this limit may only be paid upon approval of a claim bill by the Legislature. Thus, the Claimant will not receive the full amount of the settlement unless the Legislature approves a claim bill authorizing additional payment.

Every claim bill must be based on facts sufficient to meet the "greater weight of the evidence" standard. The "greater weight of the evidence" burden of proof "means the more persuasive and convincing force and effect of the entire evidence in the case."[2] With respect to this claim bill, the Claimant proved that the District had a duty to the Claimant, the District breached that duty, and that the breach caused the Claimant's injuries and resulting damages.

Negligence
Negligence is "the failure to use reasonable care, which is the care that a reasonably careful person would use under

[2] Fla. Std. Jury Instr. (Civ.) 401.3, *Greater Weight of the Evidence*.

like circumstances";[3] and "a legal cause of loss, injury or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, injury or damage, so that it can reasonably be said that, but for the negligence, the loss, injury or damage would not have occurred."[4]

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages – actual harm.[5]

In this matter, the District's liability depends on whether the District's employee, Nurse Wells, violated the applicable standard of care during her shift that began on January 16, 2014, and whether this breach caused the resulting injuries to Ms. Angervil and J.R.

Duty

A legal duty may arise from statutes or regulations; common law interpretations of statutes or regulations; other common law precedent; and the general facts of the case.[6] A health care provider generally has a duty when providing health care services, to provide such services in a non-negligent manner. This duty is known as the "standard of care." Section 766.102(1), of the Florida Statutes, establishes that the prevailing professional standard of care in a medical malpractice claim against a health care provider is "that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers." The standard of care in medical malpractice cases is determined through consideration of expert testimony.[7]

Under the doctrine of *respondeat superior*, an employer is liable for acts of employees performed within the course of

[3] Fla. Std. Jury Instr. (Civ.) 401.4, *Negligence*.
[4] Fla. Std. Jury Instr. (Civ.), 401.12(a) - *Legal Cause, Generally*.
[5] *Williams v. Davis*, 974 So. 2d 1052, 1056 (Fla. 2007). *See also* Fla. Std. Jury Instr. (Civ.) 401.4, *Negligence*.
[6] *McCain v. Fla. Power Corp*., 593 So. 2d 500, 503 n. 2 (Fla. 1992).
[7] *Pate v. Threlkel*, 661 So. 2d 278, 281 (Fla. 1995).

their employment.[8] In this matter, the District, and its employee, Nurse Wells, had a duty to provide its services in a non-negligent manner.

Breach
A preponderance of the evidence establishes that the District breached its duties by failing to render its services in a non-negligent manner by not continually monitoring the fetal heart tones during the evening of January 16, 2014, and into the early morning of January 17, 2014, as well as by failing to notify the attending physician of Ms. Angervil's changes in status in a timely manner. These failures led to the delay in the emergency delivery of J.R.

Causation
In order to prove negligence, the Claimant must show that the breach of duty caused the specific injury or damage to the plaintiff.[9] Proximate cause is generally concerned with "whether and to what extent the defendant's conduct foreseeably and substantially caused the specific injury that actually occurred."[10] To prove proximate cause, the Claimant generally must submit evidence that there is a sequence between the District's negligence and the Claimant's injuries such that it can be reasonably said that but for the District's negligence, the injuries would not have occurred.

In this matter, the injuries suffered by J.R. were the direct and proximate result of the District's failure to fulfill its duties in a non-negligent manner. Expert testimony showed that had the fetal heart tones been monitored continually:

- It would have shown sooner that J.R. was in fetal distress.
- That the cesarean section would have been performed sooner.
- That J.R. would have been delivered before the oxygen deprivation could have caused her neurological injuries.

Damages
J.R.'s birth-related medical record is consistent with a hypoxic injury around the time of delivery, and her medical records are replete with discussions of her "birth-related hypoxia" (oxygen deprivation at birth). The Claimant has established that J.R.

[8] *Dieas v. Associates Loan Co.,* 99 So. 2d 279, 280-281 (Fla. 1957); *Stinson v. Prevatt*, 94 So. 656, 657 (Fla. 1922).
[9] *Stahl v. Metro Dade Cnty.*, 438 So. 2d 14 (Fla. 3rd DCA 1983).
[10] *Dept. of Children and Family Svcs. v. Amora*, 944 So. 2d 431, 435 (Fla. 4th DCA 2006).

suffered irreversible neurological injuries during labor and delivery due to lack of oxygen. The challenges and disabilities that she now faces are consistent with, and caused by, the birth injury that she experienced. J.R. is expected to live into her fifties.

The record demonstrates that the nature of J.R.'s injuries and constant needs resulting from her injuries at birth includes mixed quadriparetic cerebral palsy related to hypoxic ischemic encephalopathy, global profound developmental delay, periventricular leukomalacia, constipation, dysphagia, failure to thrive, gastrostomy tube placement, seizure disorder, esophagitis, dystonia and dyskinesias, and impairment of mobility and communication/cognition.

According to J.R.'s doctors, as well as Respondent's own medical evaluations, she will require care of a licensed practical nurse 24 hours a day and continued highly specialized medical care which include physicians, nursing, physical therapy, occupational therapy, speech therapy, orthotists, durable medical equipment, supplies, and surgeries. J.R. is tube-fed and will remain severely cognitively impaired with seizure disorder, nonambulatory, and totally dependent for all activities of daily living.

A Life Care Plan was created for J.R. to determine the needs she has as a direct consequence of the injuries. Raffa Consulting Economists, Inc., created a report based on the Life Care Plan that estimated the present value of the combined economic loss over J.R.'s life for lost wages, medical, educational and support services, as well as ancillary services of transportation, housing and personal items, is between $26,741,930 and $27,570,135. This amount does not include any non-economic damages for J.R., nor any loss, economic or noneconomic, to Ms. Angervil.

The Claimant's attorney asked the jury for a verdict of approximately $45 million in the first trial of this case. It is possible that the jury in the second trial could have found the District 100% at fault and liable for the $45 million award. The Guardian ad Litem appointed by the court for J.R. fully supports the settlement and believes it constitutes an excellent recovery for J.R. and her mother. It is the Guardian's recommendation the settlement, as well as the Claimant's

proposed allocation, be approved as it is in the best interest of J.R.

Should the full amount of the claim bill be awarded, the Claimant proposes the following allocations:

Attorney and Lobbyist Fees (25%)	$1,525,000
Costs[11]	690,107
Medicaid and Health Liens	156,497
J.R. Special Needs Trust	3,000,000
Darline Angervil	728,396
	$6,100,000

As a result of the consent agreement entered by the parties and by the court, the District has paid $300,000 (the maximum allowed under the state's sovereign immunity waiver) with the remaining $6.1 million to be paid if this claim bill is passed by the Legislature and becomes law. The District has an insurance policy that will pay the amount awarded over $2 million.

Based upon the arguments and documents provided before, during, and after the special master hearing, the undersigned believes that the settlement, and the Claimant's proposed allocation, represent a proper and fair agreement.

COLLATERAL SOURCES OF RECOVERY:

The original lawsuit in this matter included as defendants Dr. Abdalla and his employer, and neonatologist Dr. Vicki Johnston and her nurse practitioner and their employer. In 2020, the claims against these defendants were settled for $6,500,000. Of funds paid from this Court-approved settlement with the other defendants, $2,000,000 was placed in a Special Needs Trust for J.R.; $1,150,000 was used to purchase a Structured Settlement for J.R.; $186,919 went to Darline Angervil; and $699,234 was held in trust to partially resolve medical liens ($419,260 in lien reductions from negotiations were distributed to Ms. Angervil).

ATTORNEY FEES:

Attorney fees may not exceed 25 percent of the amount awarded.[12] The Claimant's attorney has agreed to limit attorney and lobbying fees to 25 percent of any amount awarded by the Legislature.

[11] This amount reflects the current costs prior to the Special Master hearing. Claimant's attorneys have agreed to absorb the additional costs incurred for the hearing and going forward from the Claimant's attorney's fees.
[12] *See* s. 768.28(8), F.S.

RECOMMENDATIONS:

Recommended Amendments
Lines 140–144 of the claim bill should be amended to reflect the allocation of the award between J.R. and Darline Angervil, with the funds going to J.R. directly paid to the Special Needs Trust created for her benefit.

Recommendation on the Merits
The greater weight of the evidence in this matter demonstrates that the negligence of the District's employee was the legal proximate cause of the injuries and damages suffered by J.R. and her mother, Darline Angervil. The damage award agreed upon by the parties is well within the actual damages suffered by J.R. and Ms. Angervil.

Accordingly, I recommend that SB 28 be reported FAVORABLY, with recommended amendments, in the amount $6.1 million, with the portion of funds allocated for the benefit of J.R. being paid into a Special Needs trust established for J.R.

Respectfully submitted,

Tom Thomas
Senate Special Master

cc: Secretary of the Senate