Special Master's Final Report

The Honorable Daniel Perez
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6523 - Representative Tuck
Relief/Darline Angervil and J.R./South Broward Hospital District

SUMMARY

This is a settled claim for $6,100,000 by Darline Angervil ("Ms. Angervil") and her daughter, J.R. ("J.R.") (collectively referred to as "Claimants") against the South Broward Hospital District ("SBHD" or "Respondent") for medical injuries and damages based on the negligence of the SBHD. This claim arises out of negligence in the context of the treatment of a pregnant woman and resulting damages to the then-unborn child. Ms. Angervil presented to Memorial Hospital West (a hospital run by the SBHD) at 30.3 weeks pregnant with complaints of decreased fetal movement, pregnancy-induced hypertension, and severe headaches. Ultimately, Ms. Angervil was diagnosed with preeclampsia and J.R. was delivered via emergency cesarean section ("C-section") and required neonatal resuscitation due to birth related injuries.

FINDINGS OF FACT

J.R. is the third child of Ms. Angervil. Throughout her pregnancy with J.R., Ms. Angervil had been receiving prenatal care from All Women's of Sawgrass, and received regular care including ultrasounds, genetic screening for abnormalities, routine medical office visits, and lab work. By all accounts, Ms. Angervil's pregnancy was normal and not a "high-risk" pregnancy.

Darline Angervil was admitted into Memorial West Hospital[1] on the afternoon of January 14, 2014. Ms. Angervil was 30.3 weeks pregnant at the time with a primary complaint of decreased fetal movement, as well as pregnancy-induced hypertension and severe headaches. Dr. Emil Abdalla, Ms. Angervil's obstetrician, ordered continuous fetal monitoring ("CFM") and that Ms. Angervil's vital signs be taken at least once every two hours. Ms. Angervil's vital sign flowsheets showed elevated blood pressure levels throughout the afternoon and evening hours of January 14, including a systolic blood pressure of 160 mm Hg or higher on at least two occasions at

[1] Memorial West Hospital is a hospital owned, operated, and controlled by the South Broward Hospital District. The South Broward Hospital District is an independent special tax district within the State of Florida operating hospitals across South Broward County.

least four hours apart while resting in bed.

Based upon Ms. Angervil's symptoms and consistently elevated blood pressure readings upon being admitted, she was diagnosed with preeclampsia[2] with "severe features,"[3] which made her pregnancy a "high-risk" pregnancy. The only way to remedy preeclampsia is to deliver the baby; thus, Ms. Angervil was to remain in the hospital and she and the baby were to be monitored until it was "safe and prudent" to deliver the baby.

Due to the diagnosis of preeclampsia, magnesium sulfate[4] was ordered for neuroprotection of the baby at 2:00 a.m. on January 15. Magnesium sulfate had a secondary effect which was to help stabilize Ms. Angervil's blood pressure. The magnesium sulfate was discontinued at 9:34 a.m. on January 16, at which point Ms. Angervil's blood pressure began to increase. Ms. Angervil complained of severe headaches throughout the day on January 16 and at 5:30 p.m. her vital sign flowsheets began, again, to show abnormal blood pressure readings. On January 16, shortly after the nurse shift changed to the night shift, Nurse Melanie Wells (the nurse assigned to Ms. Angervil for the night shift) recorded that Ms. Angervil continued to complain of headaches and maintained consecutive abnormal blood pressure readings. Additionally, her electronic fetal monitoring strip showed a prolonged deceleration occurring around 8:16 p.m. At around 8:25 p.m. Nurse Wells contacted Dr. Abdalla and negligently requested an order to discontinue the CFM.

At 8:27 p.m., relying on the information provided to him by Nurse Wells, Dr. Abdalla entered an order to remove the CFM. After discontinuing the CFM, Ms. Angervil continued to have consecutive abnormal blood pressure readings. Specifically, at 8:29 p.m., 9:07 p.m., 9:24 p.m., and 10:33 p.m., Nurse Wells documented abnormal blood pressure readings. Despite the consecutive abnormal blood pressure readings, Nurse Wells failed to replace the CFM or call to inform Dr. Abdalla of the additional abnormal readings.

At around 2:24 a.m. on January 17, Ms. Angervil called for help from the nurse complaining of headache, chest pain, and difficulty breathing. Nurse Wells administered oxygen and checked Ms. Angervil's vital signs. At 2:26 a.m., Ms. Angervil's blood pressure was "dangerously high," and a second blood pressure reading at 2:28 a.m. confirmed a "hypertensive crisis." Additional consecutive extremely high blood pressure readings were recorded at 2:32 a.m., 2:37 a.m., and 2:40 a.m.

At 2:40 a.m., Nurse Wells erroneously called the midwife on duty and was told by the midwife to contact Dr. Abdalla.[5] Subsequently, at 2:43 a.m., Nurse Wells called Dr. Abdalla and an order

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[2] Preeclampsia is a complication of pregnancy which typically results in elevated blood pressure and high levels of protein in urine which is indicative of kidney failure or damage. Preeclampsia generally begins after 20 weeks of pregnancy in women whose blood pressure had previously been in the standard range. Left untreated, preeclampsia can lead to serious, even fatal, complications for both the mother and the baby. Treatment of preeclampsia is delivery of the baby. If preeclampsia develops and it is too early to safely deliver the baby, treatment includes careful monitoring and medications to lower blood pressure and manage complications. *See* Mayo Clinic: *Preeclampsia*, https://www.mayoclinic.org/diseases-conditions/preeclampsia/symptoms-causes/syc-20355745 (last visited Feb. 27, 2025).

[3] "Severe preeclampsia," also referred to as preeclampsia with severe features, means a systolic greater than 160 and/or diastolic between 105-110.

[4] The available evidence suggests that magnesium sulfate given before anticipated early pre-term birth reduces the risk of cerebral palsy in surviving infants. *See* The American College of Obstetricians and Gynecologists, *Magnesium Sulfate Before Anticipated Preterm Birth for Neuroprotection*, Number 455, March 2010, https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2010/03/magnesium-sulfate-before-anticipated-preterm-birth-for-neuroprotection (last visited Feb. 26, 2025).

[5] In deposition transcripts, Nurse Wells admitted that it was "human error" to call the on-call midwife, as opposed to the Obstetrician in this emergent scenario.

was entered at 2:50 a.m. to administer hydralazine to lower Ms. Angervil's blood pressure. Until this point in time, there had been no monitoring of the baby, as the CFM had been removed. Around 2:50 a.m., other nurses entered the patient room began attempting to obtain fetal heart tones of the baby and assess her well-being.

Due to the difficulty in finding fetal heart tones, the nurse manager contacted another OB/GYN who was present on the unit to assist in detecting fetal heart tones with an ultrasound. At 2:56 a.m., "critically low heart tones were visualized," resulting in the need for an emergency C-section. At 2:59 a.m., Nurse Wells contacted Dr. Abdalla to inform him of the low heart tones and difficulty detecting them; Dr. Abdalla was already in route to the hospital. Subsequently, Dr. Abdalla began the emergency C-section at 3:05 a.m., and J.R. was delivered at 3:17 a.m. on January 17.

J.R. was born weighing 2 pounds, 5.2 ounces. At delivery, J.R. was noted to be "flaccid (no muscle tone/limp), cyanotic (blue in color from top to bottom), apneic (not breathing), and asystolic (no heart rate)…essentially lifeless." She had an Apgar score[6] of 0 at one minute[7], 1 at five minutes[8], and 3 at ten minutes (0-1-3); J.R. required intubation at eight minutes of life. J.R.'s birth record and NICU treatment are entirely consistent with a hypoxic injury around the time of delivery. J.R.'s catastrophic injuries and needs include:

- Mixed quadriparetic cerebral palsy[9] related to hypoxic ischemic encephalopathy,
- Global profound developmental delay[10],
- Periventricular leukomalacia (PVL)[11],
- Failure to thrive[12],

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[6] The Apgar score is an accepted and convenient method for reporting the status of a newborn immediately after birth to determine whether resuscitation is needed to establish breathing. The Apgar score is comprised of 5 elements: (1) color, (2) heart rate, (3) reflexes, (4) muscle tone, and (5) respiration. The Apgar score is reported at 1 minute and 5 minutes after birth for all infants; it is reported at 5 minute intervals thereafter for 20 minutes in infants with a score of less than 7. Very few infants with an Apgar score of 0 at 10 minutes have been reported to survive with a normal neurologic outcome. See *See* The American College of Obstetricians and Gynecologists, *The Apgar Score*, Number 644, October 2015, https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2015/10/the-apgar-score (last visited Feb. 27, 2025).

[7] Pursuant to expert testimony provided by Dr. Marcus Hermansen, a pediatric neonatologist, "if you have no signs of life, you are a [Apgar score] zero. Zero is basically a stillborn baby."

[8] Neonatal Encephalopathy and Neurologic Outcome, Second Edition (2014), defines a 5-minute Apgar score of 7-10 as "reassuring," a score of 4-6 as "moderately abnormal," and a score of 0-3 as "low" in the term infant and late-preterm infant. American College of Obstetrics and Gynecology, Task Force on Neonatal Encephalopathy; American Academy of Pediatrics, *Neonatal Encephalopathy and Neurologic Outcome,* 2d Ed.(2014).

[9] Cerebral palsy affects muscles and movement and most often occurs due to brain damage occurring in fetal development or during labor and delivery. Mixed cerebral palsy causes symptoms of two or more types of cerebral palsy (spastic, dyskinetic, and ataxic). Cerebral Palsy Guidance, Pat Bass, M.D., *Mixed Cerebral Palsy*, https://www.cerebralpalsyguidance.com/cerebral-palsy/types/mixed/ (last visited Feb. 26, 2025).

[10] "Global profound developmental delay" is a profound delay in the achievement of motor or mental milestones in the domains of development of a child. National Institute of Health National Library of Medicine, *Profound Global Developmental Delay*, https://www.ncbi.nlm.nih.gov/medgen/766364 (last visited Feb. 27, 2025).

[11] PVL is a type of brain injury most common in very premature babies. PVL is injury to the white matter around the fluid-filled ventricles of the brain and can cause damage to the nerve pathways that control motor movements. Boston Children's Hospital, *Periventricular Leukomalacia*, https://www.childrenshospital.org/conditions/periventricular-leukomalacia#:~:text=Periventricular%20leukomalacia%20(PVL)%20is%20a,of%20brain%20to%20the%20other (last visited Feb. 27, 2025).

[12] "Failure to Thrive" is a term that is traditionally used for children who have failed to physically develop and grow normally. Johns Hopkins Medicine, *Failure to Thrive*,

- Dysphagia[13],
- Gastronomy tube placement,
- Seizure disorder,
- Esophagitis,
- Dystonia and dyskinesias,
- Impairment of mobility, and
- Impairment of communication/cognition.

Put simply, J.R. requires skilled nursing care 24 hours a day, 7 days a week. She cannot walk, she cannot stand, she is confined to a wheelchair, she cannot speak, she requires a feeding tube, and she will require constant skilled care for the rest of her life.

LITIGATION HISTORY

On March 7, 2016, Claimants filed a lawsuit against the SBHD, Dr. Abdalla and his employer, and Dr. Vicki Johnston and her ARNP and their employers. The claims against all respondents except the SBHD were settled in 2020 for a total of $6,500,000, prior to satisfaction of fees, costs, and liens. In September of 2022, the case proceeded to trial and, after a six-week trial, the jury was unable to reach a verdict and a mistrial was declared.

In October of 2023, the second trial on the matter began. During the second week of the second trial, shortly after the Plaintiffs (Claimants) rested their case, the parties reached a settlement agreement and the jury was dismissed.

POSITIONS OF CLAIMANT AND RESPONDENT

Claimants' Position

Claimants argue that that Ms. Angervil and J.R. have suffered multi-million-dollar injuries and that Respondent's negligence caused the injury by:

- Failing to follow the standard of care of continuous fetal heart monitoring in a pregnant patient diagnosed with preeclampsia.
- Failing to inform Dr. Abdalla of Ms. Angervil's continued abnormal blood pressure readings.
- Failing to resume continuous fetal monitoring after elevated blood pressure readings and concerning symptoms continued.
- Failing to perform any fetal assessment on J.R. for a period of approximately 30 minutes during a hypertensive crisis.

Respondent's Position

Pursuant to the terms of the settlement agreement, SBHD does not oppose and supports the passage of this claim bill. SBHD, pursuant to the terms of the settlement, did not offer testimony at the hearing and did not cross-examine any of the witnesses offered by the Claimants. At both trials on the matter, SBHD contested liability, causation and damages and, pursuant to the express language in the settlement agreement, SBHD denies liability and any wrongdoing as it related to the Claimants. However, for the purposes of the claim bill, SBHD concedes that there

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https://www.hopkinsmedicine.org/health/conditions-and-diseases/failure-to-thrive (last visited Feb. 27, 2025).

[13] "Dysphagia" is a difficulty to swallow. Some people with dysphagia may be completely unable to swallow or may have trouble safely swallowing liquids, foods, or saliva. National Institute of Health National Library of Medicine, *Dysphagia*, https://www.nidcd.nih.gov/health/dysphagia (last visited Feb. 27, 2025).

was a deviation of the standard of care that caused J.R.'s injuries and subsequent damages.

CONCLUSIONS OF LAW

Negligence

Regardless of whether there is a jury verdict or settlement agreement, each claim bill is reviewed *de novo* in light of the elements of negligence. The fundamental elements of an action for negligence, which a claimant must establish, are:

- Duty: The existence of a duty recognized by law requiring the respondent to conform to a certain standard of conduct for the protection of others including the claimant.
- Breach: A failure on the part of the respondent to perform that duty.
- Causation: An injury or damage to the claimant proximately caused by the respondent.
- Damages.

As provided in s. 768.28, F.S., sovereign immunity shields the SBHD against tort liability in excess of $200,000 per individual or $300,000 per incident.[14] Under the doctrine of respondeat superior, an employer- in this case the SBHD- is vicariously liable for the negligence of its employee when the employee acts within the course and scope of his or her employment. Nurse Wells and the other hospital providers that were caring for Ms. Angervil while she was an admitted patient were employees of the SBHD and were acting in the course and scope of their employment with Memorial West Hospital and the SBHD when monitoring, treating, and caring for Ms. Angervil. As such, the actions or inactions by hospital staff are attributable to the SBHD under respondeat superior.

Respondeat Superior

Under the common law *respondeat superior* doctrine, an employer is liable for the negligence of its employee when the:

- Individual was an employee when the negligence occurred;
- Employee was acting within the scope of his or her employment; and
- Employee's activities were of a benefit to the employer.[15]

For conduct to be considered within the course and scope of the employee's employment, such conduct must have:

- Been of the kind for which the employee was employed to perform;
- Occurred within the time and space limits of his employment; and
- Been due at least in part to a purpose serving the employment.[16]

Duty

In Florida, to prevail on a medical malpractice claim, a plaintiff must show what standard of care was owed by the defendant, how the defendant breached that standard of care, and that the breach was the proximate cause of the damages to the plaintiff.[17] The professional standard of care is the level of care, skill, and treatment which, in light of all surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.[18] Generally, expert testimony is required to establish the standard of care prevalent in a particular

[14] *See Eldred v. North Broward Hospital District*, 498 So. 2d 911, 914 (Fla. 1986)(providing that s. 768.28, F.S., applies to special hospital taxing districts).
[15] *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353 (Fla. 3d DCA 2001).
[16] *Spencer v. Assurance Co. of Am.*, 39 F.3d 1146 (11th Cir. 1994) (applying Florida law).
[17] *Gooding v University Hosp. Bldg., Inc.*, 445 So. 2d 1015 (Fla. 1984); *Ruiz v. Tenent Hialeah Healthsystem*, Inc., 260 So. 3d 977 (Fla. 2018).
[18] S. 766.102(1), F.S.

medical specialty or field. The services rendered by a physician or medical provider are scrutinized by other physicians or providers in the same field to determine whether there was a failure to adhere to the standard of care.[19]

It is clear that SBHD and its providers owed a duty of care to Ms. Angervil when she was admitted as a patient at Memorial West Hospital.

Breach & Causation

Claimants argue that Respondent's nursing staff was negligent in not providing complete information to Dr. Abdalla when requesting an order to remove the CFM from Ms. Angervil. Claimants also argue that Respondent was negligent in not re-initiating the CFM after multiple consecutive high blood pressure readings were recorded from Ms. Angervil and in failing to notify Dr. Abdalla of the continued abnormal blood pressure readings. Claimants further argue that Respondent was negligent in the delay during which no attempt was made to perform any fetal assessment on J.R. for approximately 30 minutes during Ms. Angervil's hypertensive crisis.

Claimants provided testimony from a number experts in support of their argument that Respondent's nursing staff failed to meet the relevant standard of care; an overview of some of the findings by the experts included testimony by:

- Dr. Marcus Hermansen, a neonatologist, who testified that, within a reasonable degree of medical probability, J.R.'s neurological injuries occurred in the "final moments before birth." Dr. Hermansen testified that J.R.'s condition was the result of an avoidable prolonged hypoxic event near the time of deliver; essentially, J.R. had a prolonged period of oxygen deprivation that occurred right before or very close to the time she was delivered by C-section. He testified that J.R.'s Apgar scores were indicative of a stillborn baby at 1-minute, and a score of 1 at 5 minutes.[20]

  Further, Dr. Hermansen testified that J.R.'s blood tests showed a high level of metabolic acidosis, meaning a buildup of acid in the body resulting from the baby not getting enough oxygen. Acidosis at the levels that were recorded in J.R. likely result in permanent brain damage. Specifically, Dr. Hermansen testified that, based upon a review of medical records, there was no evidence that J.R.'s injuries could be attributed solely to her premature birth or an infection of any kind.

- Dr. Mark Landon, an OB/GYN and specialist in maternal fetal medicine, who testified that once Ms. Angervil had been diagnosed with severe preeclampsia, even if she had a period of normal blood pressure readings, the preeclampsia diagnosis remained and close observation would still need to continue in hopes that the baby would get more time to develop before birth. Further, Dr. Landon testified that, based upon his review of the medical records, Dr. Abdalla was not informed of the abnormal blood pressure that occurred after entering the order to discontinue CFM. Dr. Landon testified that Dr. Abdalla should have been informed of such abnormal readings. Dr. Landon testified that, to a reasonable degree of medical probability, it was a breach of the accepted standard of care for Nurse Wells not to report the four elevated, abnormal blood pressure readings after she removed the CFM to Dr. Abdalla. He testified that had the CFM been continued, concerning changes and trends in the decline of J.R.'s health would have been apparent and would have triggered emergency delivery prior to the hypoxic crisis.

  Additionally, Dr. Landon testified that, from the evidence reviewed, it did not appear that

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[19] *Moisan v. Frank K. Kirz, J.K., M.D., P.A.*, 531 So. 2d 398, 399 (Fla. 2d DCA 1988).
[20] Dr. Hermansen testified that physicians look for scores of 8-9 in a healthy newborn. According to Dr. Hermansen, most babies who score 3 or less for 10 minutes either die or have brain damage. Numbers like J.R.'s cause significant concern about the baby's future.

the multiple decelerations in the baby's heart rate were reported to Dr. Abdalla; such decelerations, including a prolonged deceleration, are a significant finding that must be presented if a physician is entertaining discontinuing CFM. Dr. Landon testified that Nurse Wells should not have asked Dr. Abdalla to discontinue the CFM based upon the readings that the monitoring had been producing, let alone coupled with Ms. Angervil's severe preeclampsia. Dr. Landon testified that Nurse Wells failed to meet the standard of care by not informing Dr. Abdalla of Ms. Angervil's abnormal blood pressures in a timely manner, by asking that the CFM be discontinued, by not restarting the CFM once Ms. Angervil's blood pressure readings spiked consecutively, and by calling the on-call midwife rather than Dr. Abdalla. Dr. Landon testified that, within a reasonable degree of medical probability, the injuries to J.R. occurred within the 15 minutes prior to her being delivered during the C-section.

- Heidi Shinn, a registered nurse in labor and delivery, who testified that Nurse Wells' request to Dr. Abdalla to remove the CFM did not meet the standard of care acceptable for a labor and delivery nurse. She testified that any trained labor and delivery nurse providing care to a high-risk, pre-term patient with consistently elevated blood pressure readings and repeated complaints of severe headaches would not have encouraged or even requested the provider to discontinue the CFM. Further, Nurse Shinn testified that, as illustrated in the medical records, any nurse unsuccessfully attempting to detect a fetal heart rate tone for such a significant period of time, would have and should have reached out to the physician much sooner than what took place in Ms. Angervil's case.

- Dr. Jerome Barakos, a pediatric neuroradiologist, who testified that the brain scans and imaging of J.R.'s brain were consistent with Hypoxic-Ischemic Encephalopathy ("HIE")[21] occurring around the time of delivery.

- Dr. Richard Sandler, a pediatric gastroenterologist at Nemours Children's Hospital, who testified that, based on his 40 years of experience with patients with similar conditions as J.R., that J.R. has a life expectancy into her 40s or 50s with proper care.

According to the medical records and evidence presented, Ms. Angervil clearly exhibited symptoms of severe preeclampsia. Respondent argued that Nurse Wells requested Dr. Abdalla to discontinue the continuous fetal monitoring because it kept beeping and making noises that were annoying and disruptive to Ms. Angervil's ability to healthily rest while on bedrest. Although her blood pressure readings were sporadically within normal ranges, the concern for the significantly elevated consecutive blood pressure readings, eight in a row to be precise, should have far outweighed the nurse's concerns for the patient's quiet environment and ability to rest and relax without being interrupted by the CFM. It seems apparent that, for a high-risk patient admitted at 30.3 weeks of pregnancy, the safety concerns for both mother and baby, would necessitate and should have necessitated continuing the CFM.

Once a duty and a breach thereof are established, causation must be determined. In determining causation, Florida courts follow the "more likely than not" standard, requiring proof that the negligence proximately caused the plaintiff's injuries.[22] In determining whether a defendant's conduct proximately caused a plaintiff's injury, the factfinder must analyze whether the injury was a reasonably foreseeable consequence of the danger created by the defendant's negligent

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[21] HIE is a type of brain damage that is caused by a lack of oxygen to the brain before or shortly after birth. HIE affects the central nervous system and babies born with HIE may have neurological or developmental complications. Nationwide Children's Hospital, *Neonatal Hypoxic-Ischemic Encephalopathy*, https://www.nationwidechildrens.org/conditions/health-library/neonatal-hypoxic-ischemic-encephalopathy (last visited Feb. 27, 2025).

[22] *Gooding v University Hosp. Bldg., Inc.*, 445 So. 2d 1015 (Fla. 1984); *Ruiz v. Tenent Hialeah Healthsystem*, Inc., 260 So. 3d 977 (Fla. 2018).

conduct.[23] This analysis does not require the defendant's conduct to be the exclusive, or even the primary, cause of the injury suffered; instead, the plaintiff must only show that the defendant's conduct was a substantial cause of the injury.[24] In this case, Nurse Wells' decision to request the discontinuation of the CFM was a poor decision that was a proximate cause of J.R.'s injuries. Had Nurse Wells upheld her duty of care to Ms. Angervil, the CFM would not have been discontinued and the subsequent decline of J.R. would, more likely than not, have been detected sooner, allowing quicker intervention and a higher likelihood of a successful and healthy delivery.

In this case, Respondent, as required by the settlement agreement, does not "oppose" the claim bill, and, in fact, supports it. Further, pursuant to the settlement agreement, Respondent concedes that there was a deviation of the standard of care that caused J.R. damages. Therefore, I find that Claimant has carried her burden to demonstrate that Respondent's nursing staff breached the duty of care owed and that breach is a proximate cause of the injuries to J.R.

Damages

To sustain a negligence claim, the plaintiff must prove actual loss or damages resulting from the injury, and the amount awarded must be precisely commensurate with the injury suffered.[25] Actual damages may be "economic damages," that is, financial losses that would not have occurred but for the injury giving rise to the cause of action, such as lost wages and costs of medical care. Actual damages may also be "non-economic damages," that is, nonfinancial losses that would not have occurred but for the injury giving rise to the cause of action, such as pain and suffering, physical impairment, and other nonfinancial losses authorized under general law.[26]

Claimant's expert, Dr. Michael Shahnasarian, a licensed psychologist who specializes in rehabilitation, opined that J.R. is the "most disabled child he has ever evaluated" throughout his career. He told the special masters that J.R. will require skilled nursing care from an LPN, at a minimum, 24 hours a day, 7 days a week for the rest of her life. He explained that, due to the severity of her injuries, J.R. will never be able to work and is not a candidate for any form of vocational rehabilitation.

Dr. Shahnasarian provided evidence to the special masters illustrating that J.R. had 10 emergency room visits in the year 2021 and estimated that J.R. will have approximately 3-8 hospitalization days each year for the rest of her life. Due to the extent of her injuries, J.R. will require specialized equipment like assistive technology, wheelchairs, shower chairs, lifts, suction tube, breathing devices, and more as well as extensive specialized medical care throughout the duration of her life and a number of medications. She will also need a number of future surgeries and medical procedures to help with her range of motion, pain levels, and frequent seizure activity. Based on his expertise and an extensive review of materials, records, and conversations with many specialists[27], Dr. Shahnasarian created a life care plan to determine J.R.'s needs as a direct result of the injuries sustained. Raffa Consultation Economists, Inc., created a report based on that life care plan that estimated the present value of the combined economic losses over J.R.'s life for lost wages, medical, educational and support services, as well as ancillary services of transportation and personal items, is between $26,741,930 and $27,570,135.[28]

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[23] *Ruiz*, 260 So. 3d at 981-982.
[24] *Id.* at 982.
[25] *McKinley v. Gualtieri*, 338 So. 3d 429 (Fla. 2d DCA 2022); *Birdsall v. Coolidge*, 93 U.S. 64 (1876).
[26] FLJUR MEDMALP § 107.
[27] In Dr. Shahnasarian's Life Care Plan for J.R., he reviewed materials from and spoke with more than 14 medical specialists who have provided or were providing J.R. care.
[28] This amount does not include any non-economic damages for J.R., nor any loss, economic or non-economic, to Ms. Angervil.

AMOUNT OF CLAIM BILL

The Claimants seek an award of $6,100,000, from the SBHD in accordance with the settlement agreement reached by the parties. Respondent has already paid claimant the sovereign immunity limits of $300,000. Respondent testified that the SBHD has an indemnity policy which will require Respondent to cover the first $2,000,000 of the award, with the remainder being covered under the indemnity. The claim bill is for the relief of Ms. Angervil and J.R. As such, the Claimants proposed that the net settlement proceeds received ($3,728,396), should this claim bill pass, be allocated with $3,000,000 for the benefit of J.R. and $728,396 for Ms. Angervil. Based upon the extent of the injuries and damages sustained by Ms. Angervil and J.R., I find this amount and allocation of funds to be reasonable.

This claim bill is being presented during the 2025 legislative session for the first time. A hearing was held by the House and Senate Special Masters on January 9, 2025, in Tallahassee, Florida.

COLLATERAL SOURCES

Claimants settled with all other parties in this matter, except for the SBHD, for a collective gross settlement of $6,500,000. To date, J.R. and Ms. Angervil have received $3,943,098.60 of the settlement award, with $2,000,000 of that being placed in a special needs trust and $1,150,000 being used to purchase a structured settlement which guarantees a $3,250 monthly trust payment to J.R. for the duration of her life.

ATTORNEY AND LOBBYING FEES

If the claim bill passes, Claimants attest that the attorney fee will not exceed 20 percent of the total amount awarded ($1,220,000), and lobbying fees will not exceed 5 percent of the total amount awarded ($305,000). Outstanding costs total $690,107.02.

RECOMMENDATION

Based on the foregoing, I respectfully recommend that HB 6523 be reported **FAVORABLY**.

Respectfully submitted,

SARAH R. MATHEWS

House Special Master