



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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November 15, 1999

<u>SPECIAL MASTER'S FINAL REPORT</u>	<u>DATE</u>	<u>COMM</u>	<u>ACTION</u>
The Honorable Toni Jennings	11/19/99	SM	Favorable
President, The Florida Senate	12/08/99	HC	Favorable
Suite 409, The Capitol	02/10/00	FR	Favorable
Tallahassee, Florida 32399-1100			

Re: SB 26 - Senator Ron Silver
Relief of Clarice Holland

THIS \$1,682,500 CLAIM IS BASED ON A CONSENT FINAL JUDGMENT, SUPPORTED BY A SETTLEMENT AGREEMENT IN WHICH THE SOUTH BROWARD HOSPITAL DISTRICT AGREED TO COMPENSATE THE CLAIMANT FOR THE WRONGFUL DEATH OF SIDNEY HOLLAND, JR., FOR INJURIES AND DAMAGES SUSTAINED IN AN INCIDENT OF HOSPITAL MALPRACTICE.

FINDINGS OF FACT:

Sidney Holland, Jr., was employed as a conductor with the CSX Railroad. In June, 1995, during an annual physical examination required by his employer, the examining physician observed Mr. Holland in an episode of transient seizures. Dr. James Chen, the examining physician, who noticed the suspected neurological deficit informed Mr. Holland and prescribed anti-seizure medication to treat the seizures. Dr. Chen referred Mr. Holland to Dr. Lynn Atkinson, a neurosurgeon and an employee of the South Broward Hospital District d/b/a Memorial Regional Hospital.

After examination and diagnostic testing, Dr. Atkinson diagnosed Mr. Holland's arterial venous malformation (AVM) within the anterior temporal lobe of his brain. An AVM is a congenital disorder of blood vessels in the brain or other organ that consists of a web of abnormal arteries

and veins. The abnormal web of arteries and veins in an AVM permits a high-flow shunting of blood. The high-flow shunting causes low blood pressure in the vessels feeding the AVM and surrounding tissue in the brain or organ that those vessels normally supply with blood.

Symptoms of an AVM in the brain include headaches, bleeding, seizures and neurological problems such as paralysis, or loss of speech, memory, or vision. Treatment of an AVM may involve surgical removal of the AVM or non-surgical means such as occlusion may be used which involve closing off the vessels of the AVM. Embolization, an attempt to obstruct the flow of feeding vessels of the AVM, is often used before surgery to minimize bleeding and the complications of surgical removal of the AVM.

Mr. Holland was not allowed to return to work after the physical examination in June. CSX Railroad required Mr. Holland to have the AVM treated as a pre-condition of his return to work. At Baptist Hospital in Miami, Florida, two attempts were made to perform pre-operative embolization of Mr. Holland's AVM which were unsuccessful. According to the medical records, due to the high-flow nature of Mr. Holland's AVM, only partial embolization could be attempted.

After a pre-embolization for the AVM, a surgical resection of Mr. Holland's AVM was performed by Dr. Lynn L. Atkinson and Dr. Greg Zorman on October 6, 1995. Drs. Atkinson and Zorman were employees of South Broward Hospital District d/b/a Hollywood Memorial Hospital. During the surgical resection, Mr. Holland suffered a massive cerebral hemorrhage and stroke which resulted in massive brain damage. Mr. Holland sustained injuries during the surgery which left him permanently and totally disabled and unable to communicate and care for himself. Mr. Holland was discharged on December 22, 1995, from the hospital. Mr. Holland required continuous nursing care and was a resident of Washington Manor Nursing Home from the date of discharge from the hospital until his death. After the surgery, Mr. Holland remained in a comatose and vegetative state until his

death at age 47 from the complications of pneumonia on February 11, 1998.

The survivors of Sidney Holland, Jr., include: Clarice Holland, his widow and wife of 22 years, age 48, who is employed as an Administrative Assistant at the Center for Family and Child Enrichment in Miami, Florida; and his children, Jamal Holland, his son, age 22 and Jamia Holland, his daughter, age 19. Jamal graduated from Southern University in Baton Rouge, Louisiana in June 1999 and Jamia is a sophomore at Florida State University in Tallahassee, Florida.

As a result of Mr. Holland's disability and death, his family has incurred debt. Medical subrogation liens totaling \$173,075 were incurred to cover Holland's hospitalization and medical expenses. After a partial payment, medical subrogation liens totaling \$87,827 remain due to the Florida Medicaid program (\$16,607) and Healthcare Recoveries, an agent of the Railroad Employee National Health and Welfare Plan (\$71,220).

The claimants retained a economist, who testified on the past and future economic losses sustained by the survivors of Sidney Holland, Jr. The expert's opinion was based upon the earnings of the decedent for the last full year of employment (\$55,000 in 1994), a work life expectancy to age 63, and a joint life expectancy of Clarice and Sidney Holland of 25 years. The expert's testimony did not include medical expense, funeral expense, or non-economic losses of mental pain and suffering of the survivors. The present value of past economic losses (past lost earnings, loss of services, loss of support, and loss of net accumulations to the estate) to Mrs. Clarice Holland and her children, Jamal and Jamia total \$195,264. The present value of future economic losses to Mrs. Holland and the children total \$893,335. The total present value for economic losses, support and services equals \$1,088,599.

EXPERT'S TESTIMONY:

The claimant presented the testimony of Daniel R. Neagoy, M.D., a neurosurgeon, to support its allegation that the death of Mr. Holland was due to the deviation from applicable standards of care by the attending

physician and neurosurgeon, Dr. Atkinson, who performed the AVM resection surgery on October 6, 1995. Dr. Neagoy explained that an AVM is an abnormal communication between the arteries and veins. Dr. Neagoy explained that normally arteries become progressively smaller as they traverse the body and that this gradual and progressive decrease in vessel size provides resistance to blood flow. With an AVM, the arteries pass directly into veins without the gradual reduction in vessel size so that blood flow remains very high through the abnormal communication between the arteries and veins. The blood flow is so high from the AVM that it has the effect of "stealing" blood from surrounding normal tissue. The removal or occlusion of an AVM has the effect of increasing the blood flow to the already weakened blood vessels in surrounding tissue and causes swelling and other complications. "Normal perfusion breakthrough" occurs when the AVM's high blood flow is removed or abruptly occluded.

Dr. Neagoy testified that in his opinion the surgical resection for a high-flow AVM which Mr. Holland suffered should have been performed by a team of neurosurgeons who specialize in AVM surgery. Dr. Neagoy believed that the pre-operative standard of care would have required Dr. Atkinson to have performed: (1) Blood-flow studies to predict the risk of "normal perfusion pressure break through"; and (2) Embolization of the AVM to facilitate its removal and to lower the blood through the malformation and to minimize the effect of "normal perfusion break through" during surgery and to occlude most of the deep arterial vessels feeding the AVM.

Dr. Neagoy also testified that Dr. Atkinson deviated from the applicable standard of care by her failure to take the following precautions during the AVM resection: (1) Positioning Mr. Holland's head so that it was as high as possible above the heart to reduce pressure within the AVM to promote venous drainage; (2) Inserting a spinal ventricular drain to relax the brain and to facilitate exposure of the AVM and its deep arterial feeders; (3) Adequately monitoring Mr. Holland's blood flow to minimize bleeding; and (4) Administering drugs to lower Mr. Holland's blood pressure to minimize bleeding and to

facilitate the surgeon's control of the AVM's deep feeding vessels during the resection.

Dr. Neagoy testified that Dr. Atkinson failed to expose and occlude the deep arterial feeding vessels of Mr. Holland's AVM through the Sylvian fissure, which is the space between the frontal and temporal lobes of the brain, or through the space which the arteries feeding Mr. Holland's AVM passed. Dr. Neagoy found that Dr. Atkinson dissection went blindly down through Mr. Holland's brain behind the AVM, violating the margins of the malformation without any control of the AVM's feeding vessels. Dr. Neagoy testified that Dr. Atkinson's approach during the resection resulted in Mr. Holland's catastrophic hemorrhage and eventually led to Mr. Holland's brain swelling and irreversible brain damage. According to the medical records, Mr. Holland lost approximately 3500cc (3.5 liters).

Dr. Neagoy testified that Dr. Atkinson deviated from the applicable standard of care when she took actions to control Mr. Holland's hemorrhage. In an attempt to control the bleeding, Dr. Atkinson permanently clipped the middle cerebral artery which fed a significant portion of Mr. Holland's healthy brain. According to Dr. Neagoy, when Dr. Atkinson clipped the artery and subsequently retracted Mr. Holland's brain, Dr. Atkinson's acts aggravated the swelling of surrounding brain tissue and required the surgeon to remove swollen brain tissue that was otherwise normal. Dr. Neagoy expressed an opinion, that Dr. Atkinson's deviations from the standard of care in the treatment of Holland's AVM during the October 6, 1995 surgery, ultimately led to Mr. Holland's chronic brain damage and subsequent death.

CONCLUSIONS OF LAW:

In 1995, Memorial Regional Hospital located in Hollywood, Florida, was licensed to and operated by the Respondent. The claimant has established to my satisfaction, by a preponderance of evidence, that the hospital staff owed Mr. Holland a duty of care, that their applicable duty to Mr. Holland was breached by the hospital staff, and that claimant's damages were a proximate and foreseeable result of that breach.

As in many cases of this nature, the various named defendants shared responsibility for the result, and although reasonable people might disagree with the allocation of the responsibility among the defendants, I find that the sum to be paid by the South Broward District is supported by the evidence against it, in light of all the circumstances.

LEGISLATIVE HISTORY:

House Bill 1747 was filed by Representatives Bullard and Logan on March 10, 1999, and referred to the House Committee on Claims and passed favorably on April 5, 1999. The bill was placed on the House calendar on April 8, 1999. HB 1747 passed the House of Representatives (99-13) on April 21, 1999, and was in messages to the Senate. On April 23, 1999, the bill was referred to the Special Master of the Senate, the Senate Committee on Health, Aging and Long-Term Care and the Senate Committee on Fiscal Resources. On May 1, 1999, the bill died in committee.

THE SETTLEMENT:

Suit was filed in the Circuit Court of Broward County against the South Broward Hospital District d/b/a Memorial Regional Hospital, Sheridan HealthCorp, Inc., f/k/a Southeastern Anesthesia Management Associates (an entity that provided the anesthesia), and Arthur Smith, M.D. (the anesthesiologist).

The claimant and South Broward Hospital District had a pre-trial mediation in October 1998, and entered into a settlement and final judgment for the total sum of \$1,882,500. The settlement covers economic damages of \$1,088,599 for loss of support and services, medical subrogation liens equal to \$173,075 and \$620,826 for noneconomic damages sustained by survivors of Sidney Holland, Jr. which include past, present, and future mental pain and suffering. The South Broward Hospital District has already paid \$200,000. Payment of the \$1,682,500 balance is contingent on the passage into law of this claim bill. On February 3, 1999, the Circuit Court of Broward County entered a final judgment approving the settlement between the claimants and South Broward Hospital District. Subsequent to the settlement, suit against Sheridan HealthCorp, Inc., f/k/a Southeastern Anesthesia Management Associates and the

anesthesiologist was voluntarily dismissed with prejudice on March 22, 1999.

RESPONDENT'S POSITION: As part of the settlement, the District has agreed to support the passage of Senate Bill 26 (2000). The District had no medical malpractice insurance to pay the claim. The settlement's payment will be paid out of funds already allocated for this purpose and will not involve any likelihood of an increase in South Broward Hospital District tax or require any additional tax.

ATTORNEYS FEES: The attorney for the claimant has provided the Senate with an affidavit to the effect that the fees will be limited to 25 percent of all gross amounts paid or to be paid by the South Broward Hospital District, either before or after the claim bill is enacted into law.

RECOMMENDATIONS: Accordingly, I recommend SB 26 (2000) be reported FAVORABLY.

Respectfully submitted,

Barry J. Munroe
Senate Special Master

cc: Senator Ron Silver
Faye Blanton, Secretary of the Senate
Jo Ann Levin, House Special Master