



STORAGE NAME: h0457.CVJS

DATE: 2/15/2012

Florida House of Representatives Summary Claim Bill Report

Bill #: HB 457; Relief/Denise Gordon Brown & David Brown/North Broward Hospital District

Sponsor: Representative Nehr

Companion Bill: SB 6 by Senator Negron

Special Master: Tom Thomas

Basic Information:

Claimants:	Denise Gordon Brown and David Brown, parents of Darian Brown
Respondent:	North Broward Hospital District
Amount Requested:	\$2,000,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	North Broward Hospital District agrees that settlement in this matter is appropriate and has agreed to remain neutral and not take any action adverse to the pursuit of the claim bill.
Collateral Sources:	The Browns have received \$10,550,000 from the District to date toward the settlement of this matter.
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.
Prior Legislative History:	In 2011, HB 855 by Representative Thurston, passed the Civil Justice Subcommittee, but died on the Calendar. SB 306 by Senator Rich passed the Rules Committee, but died on the Calendar.

Procedural Summary: The Browns filed a lawsuit against the Hospital District for negligence in the 17th Judicial Circuit Court, in and for Broward County. After trial, the jury returned a verdict in favor of the Browns, in the amount of \$34,418,577. The jury's verdict was affirmed on appeal.

The District sued its insurers seeking a declaration of coverage for the damages awarded to the Browns. The coverage lawsuit led to a global settlement under which the District's insurers paid the

Browns \$10.35 million, the district paid its sovereign immunity limit of \$200,000, and the parties agreed that the plaintiffs could seek an additional \$2 million through an uncontested claim bill. Under the settlement agreements, the plaintiffs' net recovery to date (after satisfying medical and legal expenses and attorneys' fees) is approximately \$8.5 million. They have paid roughly \$3.3 million to their attorneys.

Facts of Case: On January 10, 2000, Denise Gordon Brown, at 33 weeks gestation, was admitted as a high-risk obstetrical patient at Broward General Medical Center in Fort Lauderdale, Florida. Because the fetal heart rate of the baby she was carrying was elevated, her physician ordered continuous fetal monitoring. Mrs. Brown had delivered prematurely in the past.

On the evening of January 14, 2000, the fetal monitoring showed significant risk to the fetus. Denise Brown's obstetrician, Dr. Danoff, had given standing orders that the nurse on duty was to notify the obstetrician if the baby's heart rate ever exceeded 160 beats per minute.

On January 15, 2000, the monitoring indicated an accelerated heart rate (a condition known as tachycardia). The nursing staff did not notify the obstetrician of this development, despite the standing order to do so. Over the next few hours, the fetal monitoring strips showed increasingly worrisome signs, namely consistent fetal tachycardia and loss of fetal heart rate variability. Variability indicates fetal wellbeing.

At 11:00 p.m., the baby's heart rate started to slow periodically after uterine contractions. When this occurs, it is called a "late deceleration." Late decelerations are an ominous sign, especially in conjunction with tachycardia and loss of variability. The nursing staff, however, did not notify the obstetrician, or any other physician, that Mrs. Brown's baby might be in trouble.

The continued fetal tachycardia and loss of reactivity, necessitated immediate delivery. Ms. Brown's child, Darian Brown, was not delivered immediately and sustained a hypoxic brain injury as a result of the delay. Darian had been oxygen-deprived in his mother's womb for hours before his birth. As a result, he was born with numerous complications, including respiratory distress syndrome, cystic kidney disease, neonatal jaundice, neonatal hypoglycemia, and newborn intraventricular hemorrhage. He required aggressive resuscitation. Eventually, Mrs. Brown and Darian were discharged from the hospital. The Browns were not told, however, that Darian might have suffered a serious brain injury.

In October 2000, Mrs. Brown became concerned that her son was not meeting developmental milestones. Her inquiries to the pediatrician resulted in a computed tomography (CT) scan of Darian's brain being ordered. The CT scan showed that Darian's brain had been seriously and irreversibly damaged by partial prolonged hypoxia (oxygen deprivation) in the hours before his birth. The damage to Darian's brain has left him suffering from cerebral palsy, spastic quadriplegia, and developmental delay.

Darian is unable to talk but smiles at family members and communicates basic needs by gesturing. Darian has no bladder or bowel control, cannot feed himself, and is unable to perform any activities of daily living. He will be totally dependent on others for care and treatment for the rest of his life. The economic report prepared by Raffa Consulting Economists, Inc., concludes that the present value of Darian's future medical needs is between \$11.5 and \$13.6 million, and that his estimated lost earning capacity, reduced to present value, is approximately \$0.68 million.

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Recommendation: I respectfully recommend that House Bill 457 be reported **FAVORABLY**.

Tom Thomas, Special Master

Date: February 15, 2012

cc: Representative Nehr, House Sponsor
Senator Negron, Senate Sponsor
Judge John G. Van Laningham, Senate Special Master