

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EVELYN BARLOW, as Personal)
Representative of the Estate of)
SAMUEL EDWARD BARLOW and EVELYN)
BARLOW, individually,)
)
Claimants,)
)
vs.) Case No. 00-3917MA
)
NORTH OKALOOSA MEDICAL CENTER,)
)
Defendant.)
_____)

ARBITRATION AWARD

The final arbitration hearing in this case was held before William J. Kendrick, Chief Arbitrator; Brian T. Hayes, Arbitrator; and Charles L. Cetti, Arbitrator; on February 20 and 21, 2001, in Shalimar, Florida.

APPEARANCES

For Claimants: Stanley Bruce Powell, Esquire
David R. Swanick, III, Esquire
Lacey Clark, Esquire
Powell and Swanick, P.A.
Post Office Box 400
Niceville, Florida 32588-0400

For Defendant: Pamela K. Frazier, Esquire
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PRELIMINARY STATEMENT

At the conclusion of the arbitration hearing, the following award was agreed to by all three arbitrators and announced on the record:

Non-economic damages:	\$240,000.00
Economic damages:	\$ 85,000.00
Claimant's attorney's fees and costs:	<u>\$ 48,750.00</u>
	\$373,750.00

It was further the agreement of the arbitrators that the amount awarded as economic damages was inclusive of interest and that the amount awarded as economic damages represented the present monetary value of the award. The arbitrators further agreed that the arbitration award be paid to Evelyn Barlow, individually.

Following the announcement of the award, but before it had been formalized, the Claimants filed a Motion for Clarification and Request for Entry of an Order Containing Sufficient Information for Appellate Review. Upon consideration of the motion, it was the arbitrators' view that the Claimants' motion was meritorious in part, and they resolved to restate the award with particularity so that the parties might have a more clear understanding of the award and to facilitate appellate review should any party so elect.¹

In undertaking to restate the award, it became apparent to the arbitrators that an error had occurred in calculating the

amount of economic damages in two particulars. The first error occurred when calculating the replacement value for loss of services. With regard to that award, the arbitrators were of the opinion that such award should be calculated at \$9.00 per hour, 20 hours per week, 52 weeks per year, for a 10-year period. That calculation produced a figure of \$93,600.00; however, in rendering the award it was erroneously reduced to 80 percent (\$74,880.00). The second error was a failure to allow sufficient interest on the funeral expense (an award of \$1,354.50, as opposed to \$1,683.72). Finally, since damages were understated, the award for Claimants' attorneys' fees and costs was also understated. Consequently, the arbitrators resolved to correct such errors when the award was restated. In all other respects the award was confirmed.

AWARD

The following award was agreed to by all three arbitrators:

Economic damages,
Section 766.207(7)(a), Florida Statutes:

- | | | |
|--|----|-----------|
| 1. Loss of earning capacity ² : | | |
| a. Past: | \$ | 0.00 |
| b. Future: | \$ | 0.00 |
| 2. Replacement value of lost services, at present value ³ : | | |
| a. Past: | \$ | 18,541.00 |
| b. Future: | \$ | 75,059.00 |
| 3. Funeral expenses: | \$ | 8,765.50 |

4. Loss of Social Security benefits ⁴ :	
a. Past:	\$ 0.00
b. Future:	\$ <u>0.00</u>
Gross Economic Damages:	<u>\$102,365.50</u>
Less Collateral Source Payments:	\$ <u>0.00</u>
NET ECONOMIC DAMAGES:	\$102,365.50
<u>Noneconomic Damages Section</u>	
<u>766.207(7)(b), Florida Statutes:</u>	
TOTAL NONECONOMIC DAMAGES:	\$240,000.00
<u>Interest, Section 766.207(7)(e),</u>	
<u>Florida Statutes: (assessed on</u>	
<u>Funeral expenses⁵):</u>	
	\$ <u>1,683.72</u>
TOTAL DAMAGES:	\$344,049.22
<u>Attorney's Fees and Costs,</u>	
<u>Section 766.207(7)(f), Florida</u>	
<u>Statutes: (15% of award reduced</u>	
<u>to present value):</u>	
	\$ <u>51,607.38</u>
TOTAL AWARD:	\$395,656.60

It was further the agreement of the arbitrators that the award be paid to Evelyn Barlow, individually, and that the Defendant, consistent with the provisions of law, pay all the costs of the arbitration proceeding, including the fees of all of the arbitrators other than the administrative law judge, and the cost of the court reporter.

DONE AND ENTERED this 8th day of March, 2001, in
Tallahassee, Leon County, Florida.

WILLIAM J. KENDRICK, Chief Arbitrator
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of March, 2001.

ENDNOTES

1/ Except to the extent herein addressed, the Claimants' motion was denied.

2/ Here, the evidence demonstrated that because of the debilitating consequences of the cranial bleed the decedent suffered, prior to the act or omission on which the subject claim was based, it was unlikely he would have been able to return to gainful employment. Consequently, the proof failed to support an award for loss of earning capacity.

3/ Notwithstanding his inability to return to the workforce, it was resolved that the decedent, but for his death, would still have been able to contribute some services to the household. Those services were agreed to be valued at \$9.00 per hour, with the expectation that the decedent might be expected to contribute up to 20 hours of services per week, 52 weeks each year, for 10 years. The award for loss of past services was calculated from March 1, 1999, through February 21, 2001 (723 days, at \$25.6438 per diem) and the award for loss of future services was calculated from February 22, 2001, through February 28, 2009 (2,927 days, at \$25.6438 per diem).

The present value calculation for future loss of services is actually a straight line calculation which, given the circumstances of this case, it was resolved fairly represented present money value. That conclusion was reached due to the de

minimus annual difference (.36% or .0036) between the household services earnings growth rate (4.79%, as stated by Dr. Turner) and the discount rate (5.15%).

Future damages are stated in lump sum because it was the arbitrators' understanding that was the parties' desire. If not, the award for future damages (\$75,059.00) would be payable to Evelyn Barlow, in 10 equal installments, over a 10-year period, with the first installment due 20 days from the date of this award and an equal sum each year thereafter, together with an annual growth rate of 4.79%.

4/ No award was made for lost social security benefits to the estate since the Claimants failed to establish that there would exist any net accumulation after consumption. Stated differently, Claimants failed to demonstrate that the social security benefits did not fairly represent the monies that would have been required to maintain the decedent. Notably, Section 766.207(7)(a), Florida Statutes, calls for an award of "net economic damages," and there is no apparent reason to conclude that established principles used to calculate net economic damages should not apply to this case.

5/ Interest on the funeral expense was calculated at 10% per annum from April 3, 1999, through December 31, 2000 (639 days, at .000274 daily), and at 11% per annum from January 1, 2001 through February 21, 2001 (51 days, at .0003333 daily). April 3, 1999, was selected as the date the expense was incurred since, there being no other date of record, it was presumed that Mrs Barlow paid by the date (April 3, 1999) specified in her agreement with the funeral services provider.

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RIGHT TO JUDICIAL REVIEW

Any party who is adversely affected by this arbitration award is entitled to judicial review pursuant to Sections 120.68 and 766.212, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Clerk of the Division of Administrative Hearings and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal for the district in which the arbitration took place. The Notice of Appeal must be filed within 30 days of rendition of the arbitration award to be reviewed.