



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
1/25/08	SM	Favorable

March 25, 2008

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 60 (2008)** – Senator Jeremy Ring
HB 183 (2008) – Representative Evan Jenne
Relief of Adrian Fuentes

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM FOR \$1.6 MILLION BASED ON A COURT-APPROVED SETTLEMENT AGREEMENT FOR THE SOUTH BROWARD HOSPITAL DISTRICT TO COMPENSATE ADRIAN FUENTES, AGE 5, FOR CEREBRAL PALSY CAUSED BY THE FAILURE TO DIAGNOSE TIMELY AN INTRAUTERINE GROWTH RESTRICTION BEFORE HE WAS BORN IN 2002.

FINDINGS OF FACT:

On April 18, 2002, Sharon Harrison, a certified nurse midwife employed by Sheridan Healthcorp, Inc., examined Luz Fuentes at the Memorial Hospital Primary Care Center, a South Broward Hospital District (SBHD) pre-natal clinic. Ms. Harrison noted a discrepancy between the weeks of gestation and the fundal height, a measurement used to evaluate fetal growth and development. In keeping with the standard of care to investigate the discrepancy further, Ms. Harrison ordered an ultrasound.

On April 23, 2002, an ultrasound was performed on Mrs. Fuentes at Memorial Hospital, another SBHD facility located nine blocks away from the pre-natal clinic. The radiologist who interpreted the ultrasound, Leonard Rosendorf, M.D., of Radiology Associates of Hollywood, P.A., found indications of intrauterine growth restriction ("IUGR") and suggested a clinical follow up. On the same date, the amniotic fluid index was

measured and was normal, indicating that Adrian's brain and kidneys were functioning normally on that day. Dr. Rosendorf directed that the report be "STAT faxed" to the ordering midwife, Ms. Harrison, at the clinic. There is no evidence that the report was ever faxed. There is no fax number for the clinic listed on the report and no record to confirm either its transmission or receipt. According to the undisputed report by Counsel for the Claimant, various hospital employees testified that they were unaware of a "STAT fax" policy and staff at the clinic testified that they have never before received a report labeled "STAT fax," but they did know that an ultrasound report with results similar to those in the Fuentes report were, according to clinic policy, to be brought immediately to the attention of a nurse midwife or doctor.

Two days later, on April 25, 2002, Mrs. Fuentes came to the clinic. Her counsel reported that she was there for a regularly scheduled appointment, but the report of Sharon Griffin, a disability analyst, indicates that Mrs. Fuentes went to the clinic because she did not feel the baby moving that morning. At the clinic, she was examined by a midwife and was about to leave when she was rushed back into the examining room after someone at the clinic apparently noticed the ultrasound report. Following additional testing, the staff called fire rescue to transport Mrs. Fuentes to Memorial Hospital for an emergency caesarean section. Adrian Fuentes was born within 32 minutes of his mother's arrival at the hospital with abnormally low Apgar scores and no amniotic fluid. Apparently, no follow up tests for neurological deficits were performed. After a stay in the neonatal intensive care unit for hypoglycemia, an abnormally fast respiratory rate, jaundice and IUGR, Adrian was discharged home with his parents.

During his first year, Adrian was diagnosed and hospitalized for gastroesophageal reflux, fever and thyroid abnormalities. When he was approximately a year old, and still unable to crawl, sit up on his own, or hold his bottle, an MRI confirmed that Adrian has cerebral palsy, characterized by spastic triplegia (three severely impaired limbs, his right arm and both legs).

Physically, Adrian is still unable to walk on his own and uses a wheelchair. He is unable to perform most activities of daily living including bathing, brushing his teeth, dressing, and using the bathroom without assistance. Cognitively, he shows

significant pervasive developmental delays. Given his handicaps, Adrian is expected never to be mainstreamed in a regular classroom, to achieve independent ambulation, to have any earning capacity, or to live independently.

The life care plan projects a cost of \$9,096,782 for Adrian's medical care, therapies, surgeries, transportation, supplies, medications, equipment, residential modifications, and attendant care.

LITIGATION HISTORY:

In 2004, a civil suit for damages was filed on behalf of Adrian in Broward County circuit court. In a 2005 partial settlement, the employer for the midwife agreed to pay \$250,000. In a subsequent partial settlement, in 2006, the radiologist and his group agreed to pay \$2,000,000 into a special needs trust created for the benefit of Adrian. In July 2007, the court entered a consent final judgment approving the settlement with the SBHD for \$1,800,000. Of that amount, \$200,000 was paid, leaving the remaining balance of \$1,600,000 subject to this claim bill. All Medicaid liens were paid from the proceeds of the settlements.

CLAIMANT'S POSITION:

The claim bill should be approved. Liability is admitted. If approved, the total recovery from all parties will be \$4,050,000, approximately half of the projected life care plan cost.

SBHD'S POSITION:

SBHD'S counsel conceded that either its employee at the hospital who was given the "STAT fax" order, or its employee at the clinic who failed to alert a nurse midwife or doctor of its receipt must have been negligent.

CONCLUSIONS OF LAW:

Competent substantial evidence supports the conclusion that Adrian Fuentes disabilities are the result of the failure to deliver him before his mother loss amniotic fluid, or up to an estimated 12 hours earlier. An earlier delivery was the standard of care expected in a case of IUGR. His permanent and severe disabilities were directly and proximately caused by the failure of SBHD employees to handle an ultrasound report expeditiously as directed and as their policy provided.

ATTORNEYS' FEES AND LOBBYISTS' FEES:

In compliance with s. 768.28(8), F.S., but not with Section 3 of this claim bill, Claimant's attorneys' fees are set at 25 percent. There is no lobbyist for the bill at this time. As of

October 9, 2007, the attorneys reported having incurred costs of \$115,246.02 for representing the Claimant. The Claimants entered into an agreement to pay attorneys' fees and costs.

RECOMMENDATIONS:

For the reasons set forth in this report, I recommend that Senate Bill 60 (2008) be reported FAVORABLY.

Respectfully submitted,

Eleanor M. Hunter
Senate Special Master

cc: Senator Jeremy Ring
Representative Evan Jenne
Faye Blanton, Secretary of the Senate
House Committee on Constitution and Civil Law
Tom Thomas, House Special Master
Counsel of Record