

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

KEIRY GARAY AND KEIRY GARAY, AS
CO-PERSONAL REPRESENTATIVES OF THE
ESTATE OF GLADIS GARAY, DECEASED, ON
THE BEHALF OF THE ESTATE OF GLADIS
GARAY AND ON BEHALF OF JOSE GARAY,
INDIVIDUALLY, AND ON BEHALF OF
BEVERLY GARAY, JEFFREY GARAY,
JOSE GARAY, JR., AND KASE GARAY,

Case No. 20-4950MA

Claimants,

vs.

MARGARET MGBEMENA, M.D.,

Defendant.

_____ /

AMENDED ARBITRATION AWARD

The final arbitration hearing in this case was held before June C. McKinney, Chief Arbitrator; David Halberg, Arbitrator; and Ilisa Hoffman, Arbitrator, on June 16 through 18, 2021, by Zoom conference.

For Claimants: Nancy La Vista, Esquire
Clark Fountain La Vista Prather
Keen & Littky-Rubin
1919 North Flagler Drive, Second Floor
West Palm Beach, Florida 33407

For Defendant: Steven M. Lury, Esquire
La Cava Jacobson & Goodis
701 Northpoint Parkway, Suite 330
West Palm Beach, Florida 33407

At the conclusion of the arbitration hearing and presentation of all evidence, the following award was agreed to by a majority vote of the arbitrators on June 18, 2021, and announced to the parties the same day:

1. Past Economic Damages:

a. Jose Garay, Sr. Past Loss of Services \$29,613.00

2. Future Economic Damages Reduced to Present Money Value:

a. Jose Garay, Sr. Loss of Services \$1,390,980.00

b. Beverly Garay Loss of Services \$97,613.00
Set-off for Social Security \$(48,160.00)

Total \$49,453.00

b. Kasey Garay Loss of Services \$57,801.00
Set-off for Social Security \$(48,160.00)

Total \$9641.00

3. Estate Funeral Expenses Claim: \$6,878.00

4. Medical Bills: \$457,401.33
Set-off for lien \$(114,000.00)

Total \$343,401.33

4. Non-economic damages for 100% Loss of Capacity to Enjoy Life:

a. Jose Garay, Sr. \$250,000.00

b. Beverly Garay \$250,000.00

c. Jeffrey Garay \$250,000.00

d. Jose Garay, Jr. \$250,000.00

e. Kasey Garay \$250,000.00

Total Arbitration Award: \$3,079,966.33

The parties have agreed to pay Arbitrators Halberg and Hoffman at the rate of \$750.00 per hour. Accordingly, no later than 30 days from the date of this Arbitration Award, Defendant Margaret Mgbemena, M.D., shall pay each arbitrator other than the Chief Arbitrator. Defendant shall also pay for the costs of the arbitration proceeding.

The Arbitration Panel determined that the reasonable attorney's fees to be paid by Defendant for Claimants' attorney's fees shall be 15 percent of the present value of the total award, in the sum of \$461,994.95.

In the original Arbitration Award dated June 24, 2021, jurisdiction was reserved to address provisions for periodic payments. Each party responded unilaterally. Claimants' Unilateral Notice of Compliance with Arbitration Award Regarding Periodic Payments maintained that "Claimants are not requesting periodic payments of the Arbitration Award pursuant to §766.207(7)(c), Florida Statutes (2020) and as defined in §766.202(9), Florida Statutes (2020)." Defendant contends in [Defendant's] Unilateral Notice of Compliance with Arbitration Award Regarding Periodic Payments that "[Defendant] proposes that pursuant to § 766.207(7)(c), Florida Statutes, that all damages awarded for future economic losses shall be paid by periodic payments as provided for in § 766.202(9), Florida Statutes."

Section 766.207 provides that "damages for future economic losses shall be awarded to be paid by periodic payments pursuant to s. 766.202(9)." Section 766.202(9)(c) provides that "the provision for payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amounts of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made." No schedule was provided to aid in the undersigned's decision-making regarding periodic payments pursuant to section 766.202(9)(c). Therefore, the future economic damages from this award, \$1,450,074.00, shall be paid to Claimants by periodic payments over the next year in quarterly installments. All other damages shall be paid within 30 days.

DONE AND ORDERED this 20th day of July, 2021, in Tallahassee, Leon County, Florida.



JUNE C. MCKINNEY, Chief Arbitrator
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of July, 2021.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.