

STORAGE NAME: h0061.cla  
DATE: January 2, 2002

Florida House of Representatives  
Committee on Claims  
Summary Claim Bill Report

Bill #: HB 61  
Sponsor: Representative Seiler  
Companion Bill: SB 10 Senator Villalobos  
Special Master: Tonya Sue Chavis, Esq.

**A. Basic Information:**

1. **Claimants:** Mark Schwartz, a minor, by and through individually, his parents and legal guardians, Larry Schwartz and Lori Schwartz.
2. **Respondent:** North Broward Hospital District (district).
3. **Amount Requested:** \$400,000, as the remaining outstanding amount of the district's agreed proportionate responsibility of \$600,000, of which \$200,000, the statutory limit as established in s. 768.28, F.S., has been paid in partial settlement. Funding for the \$400,000 will come from the district's Self Insured Trust ( a commercial umbrella liability policy which would provide a source for payment for any claims bill) and will not jeopardize any county programs.
4. **Type of Claim:** Equitable – based on a settlement agreement.
5. **Respondent's Position:** The district has agreed to take a pro-active interest in the passage of the claims bill.
6. **Collateral Sources:** Total recovery is \$7,620,000 (including the Respondent's settlement of \$600,000), consisting of the following:  
  
Kathy Fair, CNM: \$250,000 less \$123,540.98 (attorney fees & costs to date) = \$126,459.02 (\$20,000 to the parents & \$106,459.02 to Mark);  
  
Humana Medical Plan, and Kraemer, PA: \$6,750,000 less \$1,785,444.71 (attorney fees & costs to date) less \$5,069.17 (medical lien) = \$4,959,486.12 (\$1,500,000 to the parents and \$3,439,486.12 to Mark);  
  
Dr. Kraemer, individually: \$20,000 (no attorney fees or costs). This amount to be placed in a guardianship account for Mark.
7. **Prior Legislative History:** HB 1113 filed in 2001. Died in Committee on Claims. No Senate companion.

**B. Procedural Summary:** In March 1999, the claimants brought suit against the North Broward Hospital District in Broward County, Florida, and Humana Medical Plan, Inc.; Elihu Kraemer, M.D.; Kraemer & Zafran, P.A.; Kathy Fair, CNM; and Julie Straight, CNM. At mediation, the case was

settled with the parties, resulting in a consent judgment by the district of \$600,000, which was filed with the court on November 30, 2000. The district has paid its statutory limit of \$200,000 and is actively seeking the passage of this claims bill.

**C. Facts of Case:** Mark Schwartz, age 4, suffered serious brain injury on April 29, 1997, during his birth at Coral Springs Medical Center, a hospital within the North Broward Hospital District in Broward County, Florida. This was a second pregnancy for Lori Schwartz who had previously undergone a cesarean section and was, therefore, at greater risk for a uterine rupture. Lori Schwartz was a physician-delivery-only patient which would not have allowed a nurse/midwife to deliver and had agreed to allow a trial of labor before a cesarean section would be performed. [The standard of care for obstetricians and gynecologist in the United States is to allow a patient who has had a previous c-section to proceed with a trial labor prior to performing a second c-section.]

Mrs. Schwartz arrived at the Coral Springs Medical Center Emergency Room in active labor at 4:45 a.m., on April 29, 1997. At 7:44 a.m., Mrs. Schwartz's membranes ruptured and clear fluid came out indicating that the child was not in fetal distress at that time. Numerous experts testified that the labor and delivery nurses committed numerous breaches of standards of care and failed to notify Dr. Kraemer at various times that there was repetitive variable decelerations of fetal heartbeats as indicated by the numerous non-reassuring fetal monitor patterns. In addition, the labor and delivery nurses violated the standard of care with their failure to turn off the Pitocin and their increase of the administration of Pitocin. The failure of the labor and deliver nurses to notify Dr. Kraemer caused Mark, before delivery, to have oxygen deprivation or a decrease in oxygen for as long as 70 minutes until he was delivered by cesarean section.

At 1:20 p.m., the time of delivery, Mark was cyanotic, depressed, flaccid, and poorly responsive. He required resuscitation and ventilation and was admitted to the neonatal intensive care unit for respirator distress and possible sepsis. He had severe metabolic acidosis and was, the following day, discovered to be in renal failure and had elevated enzymes. Mark was subsequently diagnosed as suffering from hypoxic ischemic encephalopathy caused by a global decrease of blood flow and/or oxygen to his brain during delivery. According to Mark's Pediatric Neurologist, Mark will not progress in any significant fashion from a cognitive or motor skills viewpoint. Mark has poor head control which is unlikely to improve. Mark is extremely spastic and tight in his muscles and his stiffness makes it difficult for his arms to be extended or to bend his joints. Mark has spastic quadraperisis and his life expectancy is expected to be at least 20 to 30 years. At three years of age, Mark's cognitive ability is less than that of a six month old. He will never be able to speak or walk, think or function in any real capacity. Mark has a depressed immune system and is more susceptible to illness, particularly aspiration pneumonia. He will never be able to make his wants known. Experts have testified that Mark will require lifetime care. A forensic economist has performed an economic evaluation which takes the life care plan and itemizes the costs reflected in the plan. The present money value of Mark's economic damages for his care over his lifetime is between Six Million (\$6,000,000) and Twenty-Two Million Dollars (\$22,000,000).

SM: \_\_\_\_\_ SD: \_\_\_\_\_ Date: \_\_\_\_\_  
Tonya Sue Chavis Stephanie O. Birtman