



**THE FLORIDA SENATE**  
**SPECIAL MASTER ON CLAIM BILLS**

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DATE	COMM	ACTION
12/1/04	SM	Fav/4 amendments

December 1, 2004

The Honorable Tom Lee  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **SB 20 (2005)** – Senator Dennis Jones  
Relief of Adam Susser

**SPECIAL MASTER'S FINAL REPORT**

THIS IS AN EQUITABLE CLAIM FOR \$668,781.96 BASED UPON A CONSENT FINAL JUDGMENT IN WHICH NORTH BROWARD HOSPITAL DISTRICT AGREED TO COMPENSATE ADAM SUSSER, MINOR CHILD OF GARY AND JUDITH SUSSER, \$668,781.96 FOR BIRTH-RELATED INJURIES AS A RESULT OF THE NEGLIGENCE OF NORTH BROWARD HOSPITAL DISTRICT. THE HOSPITAL DISTRICT HAS PAID THE STATUTORY LIMIT OF \$200,000.

FINDINGS OF FACT:

Shortly after Gary and Judith Susser married, they decided that they wanted to have children. In late 1999, when she was almost 47 years old, Judith Susser became pregnant with twins through in vitro fertilization. During her pregnancy, she kept all of her appointments with her obstetrician. She did not smoke or drink, took vitamins, kept her weight down, and exercised regularly. She was also seen by a perinatologist, who is a specialist in caring for high-risk pregnancies. All prenatal tests of the babies, including ultrasounds and genetic testing, were normal. She did develop gestational diabetes, which is diabetes that lasts only for the period of the pregnancy. Gestational diabetes creates a risk that the babies will be born larger than normal

and be hypoglycemic at birth. She also had some preterm labor, which was resolved. In summary, she had a relatively normal pregnancy despite the presence of risk factors.

On July 6, 2000, Mrs. Susser's membrane ruptured for the twin who would be named Adam. The rupture of Adam's amniotic sac and loss of protective fluid put him at increased risk of developing an infection or being put under excessive stress. Mrs. Susser was admitted to Coral Springs Medical Center that morning with orders that she be placed on continuous fetal heart rate monitoring. Shortly after admission, she was seen by an obstetrician, Dr. Greenspan, who was a member of her obstetrician's group but who had not seen her before. Dr. Greenspan performed an obstetrical ultrasound and ordered that Mrs. Susser be placed on magnesium sulfate to slow down her labor. Mrs. Susser was also examined by a perinatologist, Dr. Edwards, who also had not seen her before. Dr. Edwards added an order to give Mrs. Susser steroids to help mature the twin's lungs so that they would not be born with breathing problems. Dr. Edwards also recommended that delivery be delayed until the 34th week (July 9) unless infection or other problems required earlier delivery. At this time, Mrs. Susser was 33 weeks and 3 days pregnant.

Upon admission to the hospital, Mrs. Susser was placed on a fetal monitor that had dual leads in order to pick up both fetal heart rates. However, throughout Mrs. Susser's labor the tracing for Adam's heart rate was consistently poor or non-existent, even when Brandon's heart rate tracing was strong. There were extended periods of time when the monitor did not reflect a reading for Adam. The hospital's policies and procedures require the nurses to notify the doctors when they are unable to maintain continuous fetal monitoring of both twins of a twin pregnancy. The doctors were not notified of the problems, and other available methods to obtain a better reading were not used.

The nurses at Coral Springs Medical Center are employees of the respondent, North Broward Hospital District.

In addition to problems with picking up Adam's heart rate when the fetal monitor was on, a nurse turned off the fetal monitor from 11:15 p.m. on July 7 until 9:00 a.m. the next morning, except for approximately 30 minutes at 2:00 and

6:00 a.m. The nurse testified in deposition that a doctor ordered her to do it, but that she had not written the order down. The doctor denied giving the order. Both the doctor and the nurse agreed that it would be below the standard of care for the nurse to turn off the monitor without a doctor's order. When the monitor was turned back on at 9:00 a.m., Adam's heart rate was not detected until shortly after noon.

On July 7, Dr. Edwards ordered tests for blood sugar levels as well as a biophysical profile. These tests were performed on the morning of July 8. The blood sugars came back unusually high, but there is no indication that the nurses informed the doctors or that the doctors checked the results themselves.

Adam was also found to have a problematic biophysical profile. A biophysical profile is performed on an ultrasound machine as a means of determining how unborn babies are handling the stress of labor. The profile measures such parameters as breathing, fetal movement, and fetal tone. The scores range from 0 to 10, with 10 being the best. Adam's biophysical profile score was 4, which is abnormal. The nurses did not call Dr. Edwards, the perinatologist who had ordered the test. However, Dr. Greenspan reviewed the results and attributed Adam's low score to the magnesium sulfate. Medical literature does not indicate that magnesium sulfate is a cause for low biophysical profile scores.

Mrs. Susser's labor continued through the 8th and the morning of the 9th, during which time there was little effective fetal monitoring of Adam. Again, the nurses did not notify doctors of the problem. Adam's heart rate was picked up at about 1:00 p.m. on July 9, and it showed very little activity. Mrs. Susser's white blood count was also high, indicating possible infection. On the afternoon of July 9, the date Dr. Edwards had originally suggested for delivery, Dr. Greenspan indicated that she would consider delivering the twins subject to Dr. Edward's concurrence. However, nobody called Dr. Edwards.

Dr. Kuhn, Mrs. Susser's primary obstetrician, came in at 8:30 p.m. Mrs. Susser's temperature had risen, giving further indication of an infection. At 10:45 p.m., Dr. Kuhn ordered administration of Pitocin, a drug that increases the intensity of contractions. Pitocin should not be given when there is a

non-reassuring fetal heart pattern such as Adam's. Dr. Kuhn testified in deposition that the nurses had told him that the pattern was fine, and that he would not have ordered Pitocin if he had known otherwise. After administering the Pitocin, the fetal monitor showed heart decelerations. The nurses did not notify Dr. Kuhn that the twins were not responding well to the Pitocin. Furthermore, from 11:00 p.m. until 1:30 a.m., the nurses continued to increase the Pitocin dosage in accordance with standard protocols even though the decelerations were also increasing. Dr. Kuhn testified in deposition that it was below the accepted standard of care for the nurses to fail to inform him of the reaction to the Pitocin and to continue to increase the dosage.

Mrs. Susser was transferred to the operating room at 1:30 in the morning. Dr. Kuhn requested a fetal monitor, but none was obtained for the first 35 minutes. Then, a single monitor was used. Dr. Kuhn was told that a twins monitor was not available because it was attached to the wall and could not be moved. There is conflicting information over whether or not the twins monitor could be moved, but in any event only Brandon was monitored in the operating room. The failure to monitor Adam during this critical period was below the accepted standard of care.

Despite indications that Adam's physical situation required an earlier Caesarean delivery, he was delivered vaginally at 2:28 a.m. on July 10. His umbilical cord was wrapped around his neck and he was blue, limp, unmoving, and not crying. He had to be intubated and have chest compressions to get his heart beating. He was also hypoglycemic and had metabolic acidosis. Neither of these conditions were tested and treated promptly, possibly contributing to the severity of Adam's injuries.

Brandon, the other twin, was born 23 minutes after Adam. Brandon was much healthier at birth. At 18 months he was found to have hydrocephalus, which required the implantation of a shunt to drain fluid from the brain. Other than this, Brandon has developed normally.

Dr. Brown, a pediatric neurologist, diagnosed Adam as having "static encephalopathy with spastic paraplegia secondary to perinatal hypoxic ischemic encephalopathy." He cannot walk, talk, or drink or feed himself. He is cortically

blind, and is not likely to ever be self sufficient. Dr. Brown conducted genetic testing that indicated that Adam's medical problems are not congenital. They are attributed to the problems that occurred during the few days prior to his birth.

Although Adam is severely disabled, with proper care he is expected to have a normal life span. A rehabilitation specialist developed a detailed life care plan on his behalf. The plan projects anticipated medical, rehabilitative, and therapeutic services and equipment that will be needed by Adam throughout his life. An economist calculated the present value of the costs required by the life care plan to be \$15,426,929. In addition, the economist calculated that the present value of Adam's lost future earning capacity ranges between \$902,000 and \$1,868,000, depending upon the level of education that he obtained. Because both Gary and Judith Susser are professionals, it is reasonable for the economist to assume that Adam would have at least obtained an Associate of Arts degree. Unfortunately, it is also reasonable for him to assume that Adam has no future earning capacity due to his medical condition.

Although there could certainly be changes to details of the life care plan that would reduce the present value of the claimant's economic damages, I find that the estimated economic loss in the range of \$16 million to \$17 million is not unreasonable.

The Sussers, on behalf of themselves, Adam, and Brandon, entered into a court-approved global settlement of their claims against all defendants for a total of \$9,800,000. Of this amount, \$5,300,000 was in settlement of claims against North Broward Hospital District and \$4,500,000 for claims against other defendants. The net amount of Adam's portion of the global settlement after payment of attorney's fees and costs is \$6,000,000. Of this amount, \$4,731,218.04 has been placed in the Adam M. Susser Special Needs Irrevocable Trust and \$600,000 used to purchase an annuity that provides monthly payments to the trust. This claim bill in the amount of \$668,781.96 represents the final portion of Adam's settlement. Any amount granted through this claim bill will also be placed in the special needs trust.

North Broward Hospital District is self-insured up to \$1,000,000. Fortunately for all concerned, it also had a

\$15,000,000 insurance policy with Zurich Insurance with available funds. Normally, Zurich would not pay until respondent had paid the first \$1,000,000, which would not have been triggered by payment of the statutory limit of \$400,000 (\$200,000 to both Adam and Brandon). However, because of the extreme exposure in this case, Zurich agreed to fund the majority of the settlement up front. Payment of this claim bill, combined with the respondent's previous payment of the statutory limits, will exhaust the remaining portion of the \$1,000,000 self-insurance coverage.

The respondent has placed funds in the amount of the claim bill in a trust fund to be paid to the claimant's special needs trust if approved by the Legislature. The Chief Financial Officer of the District has affirmed that payment of the claim bill will have no financial impact on the District's provision of health care services to the general public.

I have prepared amendments to the claim bill which were recommended by the respondent and agreed to by the claimant. These amendments make minor factual corrections and remove redundant and unnecessary language, but do not change the substance of the bill.

CONCLUSIONS OF LAW:

The claimant has established by a preponderance of the evidence that the respondent's employees owed the claimant a duty of care, that this duty of care was breached, and that the claimant's injuries and damages were a proximate and foreseeable result of that breach.

It is clear that a number of individuals and entities share responsibility for Adam's condition. There is no exact method for allocating percentages of fault, and settlements may also be limited by available resources. I do not believe that the employees of North Broward Hospital District were more at fault than all of the other defendants. However, I find that the total sum to be paid by the District is reasonable and supported by the evidence. In doing so, I have considered all of the circumstances, including the likelihood that a jury verdict would have been well in excess of the settlement amount.

ATTORNEYS FEES:

The claimant's attorney has submitted an affidavit certifying that attorney's fees for this claim bill are 15 percent, which is within the 25 percent attorney's fee limitation set forth in

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§768.28(8), F.S. Lobbying fees of 5 percent of the amount of the claim bill are in addition to attorney's fees. There are \$3,973.29 in outstanding costs.

RECOMMENDATIONS:

I recommend that Senate Bill 20 (2005) be reported FAVORABLY, as amended.

Respectfully submitted,

Scott E. Clodfelter  
Senate Special Master

cc: Senator Dennis Jones  
Faye Blanton, Secretary of the Senate  
House Claims Committee