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MONDAY, APRIL 21, 2008

DailyBusinessReview.com

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## Jury Verdicts & Settlements

### Decade after loss in trial, plaintiffs win Broward medical malpractice case

**Case:** Jacob Thomas Tomlian, a minor, by and through his parents and natural guardians, Dora Lee Tomlian and Kevin James Tomlian; and Dora Lee Tomlian and Kevin James Tomlian, individually, vs. Mark S. Grenitz, M.D.; Mark S. Grenitz M.D., P.A.; Humana of Florida Inc., d/b/a Humana Hospital-Bennett n/k/a Columbia Hospital Corporation of South Broward, d/b/a Westside Regional Medical Center

**Case no.:** 94-08121

**Description:** Medical malpractice

**Filing date:** July 7, 1994

**Trial dates:** Feb. 28-April 7, 2008

**Judge:** Broward Circuit Judge Charles M. Greene

**Plaintiff attorneys:** Crane Johnstone and Steven Hammer, Law Offices of Sheldon J. Schlesinger, in Fort Lauderdale

**Defendant attorneys:** James Haliczzer and Kenneth Miller, Haliczzer Pettis & Schwamm, Fort Lauderdale, and John Mauro and Kevin Vannatta, Billing Cochran Heath Lyles Mauro & Ramsey, Fort Lauderdale

**Details:** Dora Tomlian was pregnant in October 1990 when she began to see Grenitz, an obstetrician and gynecologist. She had a Caesarean section for her first son, Zack, after she

was in labor for more than 12 hours. Grenitz recommended she have a vaginal birth for her second delivery, and Tomlian agreed.

When she was 42 weeks pregnant, Tomlian, then 36 years old, checked into Humana Hospital, now Westside Regional Medical Center, on May 11, 1991, to give birth to her second son, Jacob. Tomlian was in labor for nearly nine hours before doctors performed a C-section. Her second son was born oxygen deprived and brain damaged.

In February 1993, Jacob Tomlian was diagnosed with cerebral palsy and mental retardation, Johnstone said. Now 16 years old, the boy cannot walk well, wears leg braces, needs crutches or a wheelchair to get around, and reads at a first-grade level.

The Tomlians sued the doctor and the hospital. When the case first went to trial in 1998, the jury found for the defense. The case went up on appeal, and the Florida Supreme Court reversed the verdict because the trial court barred testimony from a neuropsychologist. The state's high court opened the door to limited testimony on brain damage and brain development, and the case was remanded in 2003 for a retrial.

**Plaintiff case:** Johnstone contended the C-



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**Crane Johnstone helped a family win a \$30 million verdict, the largest medical malpractice verdict ever awarded in Broward County.**

section should have been performed earlier based on fetal heart monitoring strips indicating the baby was in distress. He said it should have been obvious to the medical staff that Jacob was not going to be born via the birth canal.

The plaintiffs argued the doctor and hospital were negligent in monitoring and treating Dora Tomlian.

**Defense case:** Haliczzer, one of the doctor's attorneys, had no comment on

the trial. The other defense attorneys did not return calls seeking comment before deadline.

Johnstone said the defense took the position that fetal monitoring did not indicate any problems. They also contended Jacob's brain injuries developed earlier in the pregnancy rather than during birth.

**Outcome:** After deliberating for three days, the jury found that Jacob Tomlian's injuries were

caused by negligence by Grenitz and the hospital and awarded the family a total of \$30 million.

The jury awarded Jacob Tomlian \$24.5 million: \$8 million for medical expenses and lost earnings and \$16.5 million for past and future pain and suffering.

His mother was awarded \$3.5 million for past and future loss of Jacob's comfort. His father, Kevin Tomlian, was awarded \$2 million for past and future loss of comfort.

The jury found Humana 85 percent liable and Grenitz 15 percent responsible for the largest medical malpractice verdict in Broward County history.

**Comments:** "The big concern was that Jacob will never marry or drive a car or support himself, so what will happen to him when his parents eventually pass away?" Johnstone asked. He said the award will create a trust fund for Jacob and allow the family to alter their home to accommodate their son's needs.

Haliczzer said: "We are very disappointed in the verdict. This case was tried 10 years ago, and the jury returned a verdict in favor of Dr. Grenitz. We are exploring our options in response to the verdict."

**Post verdict:** Johnstone expects the defense to file a motion for a new trial. ■

— Jordana Mishory