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Local

“Infant awarded \$8.6 million by jury”
By Dexter Filkins

Hospital held 99 percent responsible for severe brain damage

A 16-month-old infant who suffered severe brain damage while under treatment at Broward General Medical Center for an asthma condition was awarded \$8.6 million by a Broward jury in a case the hospital’s lawyer called a “horribly serious mistake.”

The award is one of the largest malpractice verdicts ever handed down against the North Broward Hospital District, which runs four public hospitals,

The bulk of the award, settled on at close to midnight Wednesday by a Broward Circuit Court Jury, was calculated to pay for the child’s care for the rest of his life.

But the verdict will probably only be just the first step in a long legal battle to claim the money, attorneys say, because public institutions like the district are shielded from paying multimillion-dollar judgments.

The suit was filed by the mother of Justin Bates. The child was 16 months old when he was brought to Broward General on Jan. 15, 1985, suffering from an asthmatic seizure.

During the course of treatment, the infant’s lungs collapsed, and he was deprived of oxygen for several minutes. Bates suffered severe brain damage, which has rendered him blind, unable to move much and in need of round-the-clock nursing care.

The hospital’s attorney attributed the accident to a failure of the hospital staff to properly place a tube in Bates’ lungs.

“It was human error, and the hospital has admitted responsibility for it,” said William Scherer, the attorney for the hospital district that covers Broward General. The boy is a complete invalid. He does not even notice the stuffed animals they put in his bed.”

Scherer said Bates is not expected to live past the age of 10..

Bates, now 6 years old, has lived in a private room of Broward General Hospital since the accident. To date, his care has costs \$1.5 million, records show.

Broward General has borne the cost of Bates’ care since his injury, though it placed a lien on any proceeds that the boy’s mother, Cynthia Bates, eventually received from the court case.

But it will probably be a long time before Bates gets the first check from the hospital district.

As a taxpayer-supported institution, the hospital is covered by the state's sovereign immunity law, which ordinarily limits public hospitals liability in malpractice cases to \$200,000.

To compel the hospital district to pay more, Bates will need an act of the Florida Legislature. That process, Bates' attorney said, is cumbersome, expensive and uncertain of success.

"The hospital will now claim that they do not have to pay more than \$200,000," said Sheldon Schlesinger, the Bates' attorney. "The public should be warned. You pay the same price at a public hospital, but you don't get the same protection."

Scherer, the attorney for the hospital district, said he would probably ask the Legislature to reduce the \$8.6 million award. Scherer said the cost of caring for Bates, even if it totaled \$8 million over the course of his life, could be covered by an insurance company for about \$2 million.

Scherer said several other defendants have already agreed in an out-of-court settlement to pay Bates \$3 million, which, he said, should reduce the size of the award.

The six-member jury found the hospital district to be 99 percent negligent in the accident, and Dr. Victor Shabanah to be 1 percent negligent.

Cynthia Bates, who lived in Fort Lauderdale at the time of her son's accident, could not be reached for comment.

Scherer said Bates' accident highlighted the dilemma posing public hospitals who admit a disproportionate number of poor patients. The child's asthmatic condition was advanced and his family was without insurance when they brought the child to Broward General.

"These indigent children come to us really sick," Scherer said. "At the same time, society has said that the medical profession has to be perfect. And we were not perfect in the case of Justin Bates."