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# 000129

NO. DC-08-08056-E

MARCELA AND JOSE BUSTAMANTE, §  
AS NEXT FRIENDS OF DANIELLA §  
BUSTAMANTE, §

IN THE DISTRICT COURT

Plaintiffs, §

v. §

JORGE FABIO LLAMAS-SOFORO, §  
M.D., JORGE FABIO LLAMAS §  
SOFORO, M.D., P.A. D/B/A EL PASO §  
EYE CENTER; ENRIQUE N. PONTE, §  
JR., M.D.; PEDIATRIX MEDICAL §  
SERVICES, INC., AND PEDIATRIX §  
MEDICAL GROUP, INC. §

OF DALLAS COUNTY

Defendants. §

101<sup>ST</sup> JUDICIAL DISTRICT

**SECOND CORRECTED FINAL JUDGMENT**  
**(NUNC PRO TUNC)**

On the 24th day of October, 2011 came on to be heard the above-entitled and numbered cause. Jose and Marcela Bustamante, as next friends of Daniella Bustamante, Plaintiffs, appeared in person by and through their attorney of record, Mr. Jim Girards of the Girards Law Firm, and announced ready for trial. Defendants Jorge Fabio Llamas-Soforo, M.D. and Jorge Fabio Llamas-Soforo, M.D., P.A. d/b/a El Paso Eye Center appeared in person and by and through their attorneys of record, Ms. Elizabeth Fraley of Fraley & Fraley, L.L.P. and Mr. Paul Bracken of Robles, Bracken and Hughes, L.L.P. and announced ready. Enrique N. Ponte, Jr., M.D., Pediatrix Medical Services, Inc. and Pediatrix Medical Group, Inc. appeared by and through their attorneys of record, Ms. Susan Cooley and Ms. Lisa Wilson of Schell Cooley, L.L.P. and announced ready. A jury having been previously demanded, a jury consisting of 12 qualified jurors and 2 alternate jurors was empanelled and the case proceeded to trial.

Prior to the commencement of the trial, former Defendants Towers/Vista Hills Holding Co. and El Paso Healthcare System, Ltd., d/b/a Del Sol Medical Center settled the claims Plaintiffs brought against those entities for the total sum of \$185,000. On November 4, 2011, prior to the submission of this case to the Jury, Defendants filed pleadings electing a dollar-for-dollar credit for the settlement between Plaintiffs and Towers/Vista Hills Holding Co., and El Paso Healthcare System, Ltd. d/b/a Del Sol Medical Center.

At the conclusion of the evidence and after all parties rested and closed, the Defendants moved for directed verdict which the Court granted as to any direct liability claims against Pediatrix Medical Group, Inc.

The 12 voting members of the jury were submitted questions of fact in the case by the Honorable Marty Lowy of the 101<sup>st</sup> Judicial District Court, Dallas County, Texas. The Charge of the Court and verdict of the jury are incorporated herein for all purposes by reference as if fully set forth.

With reference to the pretrial settlement between Plaintiffs and Towers/Vista Hills Holding Co., and El Paso Healthcare System, Ltd. d/b/a Del Sol Medical Center, Plaintiffs received those settlement funds on May 6, 2009. From the amount of the settlement, the Court has applied the sum of \$229.32 to prejudgment interest accruing prior to the date of the settlement on the past damages found by the jury. Therefore, the Court finds the net settlement credit equals \$184,770.68.

After the receipt of the verdict, Plaintiffs filed their motion for entry of judgment on the verdict, and Defendants filed their motions for judgment notwithstanding the verdict or to disregard certain of the jury's findings. The Court heard argument on such motions and considered additional briefs and motions submitted by the parties. The Court hereby GRANTS Plaintiffs' motion for judgment on the verdict to the extent set forth below. The Court hereby DENIES Defendants' motions for judgment notwithstanding the verdict and to disregard findings of the jury.

On August 31, 2012, the Court heard the Defendants' renewed Motions for Judgment Notwithstanding the Verdict and Motions for New Trial. Except for the correction of certain computational errors and other revision of the provisions for payment of a part of future damages by period payments, such motions are hereby DENIED.

On September 10, 2012, the Court entered its Corrected Final Judgment. The Court has determined that the Corrected Final Judgment contains a typographical error. This Second Corrected Final Judgment is entered solely to correct that error, and is intended by the Court to be effective *nun pro tunc* as of September 10, 2012.

The Court hereby RENDERS judgment for Plaintiffs. The Court hereby RENDERS judgment against Defendants Jorge Fabio Llamas-Soforo, M.D. and Jorge Fabio Llamas-Soforo, M.D., P.A. d/b/a El Paso Eye Center and Defendants Enrique N. Ponte, Jr., M.D., and Pediatrix Medical Services, Inc. It is, therefore,

**ORDERED, ADJUDGED AND DECREED** that Plaintiffs Marcela and Jose Bustamante, as next friends of Daniella Bustamante, recover from Defendants Jorge Fabio Llamas-Soforo, M.D. and Jorge Fabio Llamas-Soforo, M.D., P.A. d/b/a El Paso Eye Center, jointly and severally, the sum of \$872,653.19, representing 45% of \$1,939,229.32 (total damages found by the jury of \$2,124,000 minus the net settlement credit of \$184,770.68); in addition, said Defendants are jointly and severally responsible for post-judgment interest on the sum of \$872,653.19 at the annual rate of 5% compounded annually and computed from the date the judgment is rendered until the date of its satisfaction. This judgment may be payable in part in periodic payments as set forth below. It is further

**ORDERED, ADJUDGED AND DECREED** that Plaintiffs Marcela and Jose Bustamante, as next friends of Daniella Bustamante, recover from Defendants Enrique N. Ponte, Jr., M.D. and

Pediatrix Medical Services, Inc., jointly and severally, the sum of \$872,653.19, representing 45% of \$1,939,229.32 (total damages found by the jury of \$2,124,000 minus the net settlement credit of \$184,770.68); in addition, said Defendants are jointly and severally responsible for post-judgment interest on the sum of \$872,653.19 at the annual rate of 5% compounded annually and computed from the date the judgment is rendered until the date of its satisfaction. This judgment may be payable in part in periodic payments as set forth below.

Defendants have jointly requested to pay future medical and custodial care damages in periodic payments in accordance with Texas Civil Practice and Remedies Code § 74.503.

The Court finds that \$500,025 of the damages to be recovered from Defendants Jorge Fabio Llamas-Soforo, M.D. and Jorge Fabio Llamas-Soforo, M.D., P.A. d/b/a El Paso Eye Center should be payable in cash, and that the balance, having a present value of \$372,629.19, should be payable in periodic payments as set forth below. It is, therefore,

**ORDERED, ADJUDGED AND DECREED** that Defendants Jorge Fabio Llamas-Soforo, M.D. and Jorge Fabio Llamas-Soforo, M.D., P.A. d/b/a El Paso Eye Center shall make periodic payments of \$18,867.00 each to Plaintiffs, commencing on January 1, 2013 and continuing annually on January 1 of each year thereafter until and through January 1, 2070, or until the death of Daniella Bustamante, which ever first occurs. The recipient of the payments shall be Plaintiffs Marcela and Jose Bustamante as Next Friends of Daniella Bustamante until such time as Daniella Bustamante attains the age of majority and is under no other legal disability. Defendants shall fund their obligations for the periodic payments in accordance with the requirements of Texas Civil Practice and Remedies Code § 74.505(b)(1-3) unless another means of funding is approved by a further order of the Court. Any periodic payment coming due at a time when enforcement of this judgment has been suspended pending appeal shall be payable immediately upon this judgment become final and

non-appealable, together with interest on such payment accruing at five percent per annum from the date such payment became due until the date it is paid.

Pursuant to § 74.505(a), the Court takes notice that Defendants Jorge Fabio Llamas-Soforo, M.D and Jorge Fabio Llamas-Soforo, M.D., P.A., d/b/a El Paso Eye Center are not adequately insured for this judgment. The Court takes further notice that, within 30 days after the date of the Court's original Final Judgment, said Defendants have deposited the sum of \$962,612.64 into the registry of the Court. The Court concludes that such deposit is both a sufficient bond to suspend enforcement of the Final Judgment pending appeal and evidence of financial responsibility sufficient to support the authorization of periodic payments of future damages in accordance with § 74.505(a).

The Court finds that \$500,025 of the damages to be recovered from Defendants Enrique N. Ponte, Jr., M.D. and Pediatrix Medical Services, Inc. should be payable in cash, and that the balance, having a present value of \$372,629.19, should be payable in periodic payments as set forth below. It is, therefore,

**ORDERED, ADJUDGED AND DECREED** that Defendants Enrique N. Ponte, Jr., M.D. and Pediatrix Medical Services, Inc. shall make periodic payments of \$18,867.00 each to Plaintiffs, commencing on January 1 of the year after the year in which this judgment becomes final and non-appealable and continuing annually on January 1 of each year thereafter until and through January 1, 2070, or until the death of Daniella Bustamante, which ever first occurs. The recipient of the payments shall be Plaintiffs Marcela and Jose Bustamante as Next Friends of Daniella Bustamante until such time as Daniella Bustamante attains the age of majority and is under no other legal disability. Defendants shall fund their obligations for the periodic payments in accordance with the requirements of Texas Civil Practice and Remedies Code § 74.505(b)(1-3) unless another means of funding is approved by a further order of the Court. Any periodic payment coming due at a time

when enforcement of this judgment has been suspended pending appeal shall be payable immediately upon this judgment becoming final and non-appealable, together with interest on such payment accruing at five percent per annum from the date such payment became due until the date it is paid.

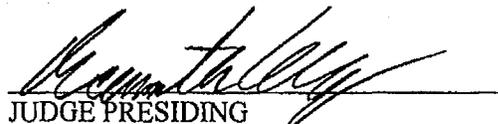
Upon the death of Daniella Bustamante, any obligation of the Defendants to make further periodic payments shall end. On termination of the periodic payments of future damages, the Court orders the return of the security, or as much as remains, to the Defendants instanter.

The Court finds that the total value of the periodic payments for future medical and custodial care expenses ordered herein, based on a projected life expectancy for Daniella of 65 years (through May 7, 2070), is \$2,113,104, and that the present value of such payments, discounted at the statutory postjudgment interest rate of five percent per annum, is \$745,256.38. The Court has assumed that the amounts found by the jury for future medical and custodial care expenses represented present values on the date of the verdict.

All costs of court incurred herein and taxable pursuant to rule or statute are taxed to the Defendants. One-half of said costs are taxed to Defendants Jorge Fabio Llamas-Soforo, M.D and Jorge Fabio Llamas-Soforo, M.D., P.A., d/b/a El Paso Eye Center, jointly and severally. One-half of said costs are taxed to Defendants Enrique N. Ponte, Jr., M.D. and Pediatrix Medical Services, Inc., jointly and severally.

All relief not expressly granted in this Judgment is hereby denied. This Judgment disposes of all issues as to all remaining parties and is final.

SIGNED this 9th day of October, 2012.

  
JUDGE PRESIDING



6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. Unless you are otherwise instructed, the answers to the questions must be based on the decision of at least 10 of the 12 jurors. The same 10 or more jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

#### DEFINITIONS

"Dr. Llamas" means Defendant Jorge Fabio Llamas-Soforo, M.D.

"Dr. Ponte" means Defendant Enrique N. Ponte, Jr., M.D.

"Negligence," when used with respect to Dr. Llamas, means failure to use ordinary care.

That is, failing to do that which an ophthalmologist of ordinary prudence would have done under

the same or similar circumstances or doing that which an ophthalmologist of ordinary prudence would not have done under the same or similar circumstances.

"Negligence," when used with respect to Dr. Ponte, means failure to use ordinary care. That is, failing to do that which a neonatologist of ordinary prudence would have done under the same or similar circumstances or doing that which a neonatologist of ordinary prudence would not have done under the same or similar circumstances.

"Negligence," when used with respect to Del Sol Medical Center, means failure to use ordinary care. That is, failing to do that which a hospital of ordinary prudence would have done under the same or similar circumstances or doing that which a hospital of ordinary prudence would not have done under the same or similar circumstances.

"Ordinary care," when used with respect to the conduct of Dr. Llamas, means that degree of care that an ophthalmologist of ordinary prudence would use under the same or similar circumstances.

"Ordinary care," when used with respect to the conduct of Dr. Ponte, means that degree of care that a neonatologist of ordinary prudence would use under the same or similar circumstances.

"Ordinary care," when used with respect to the conduct of Del Sol Medical Center, means that degree of care that a hospital of ordinary prudence would use under the same or similar circumstances.

"Proximate cause," when used with respect to the conduct of Dr. Llamas, means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that an ophthalmologist using ordinary care would have foreseen that the event, or some similar event, was reasonably likely to result therefrom. There may be more than one proximate cause of an event.

"Proximate cause," when used with respect to the conduct of Dr. Ponte, means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a neonatologist using ordinary care would have foreseen that the event or some similar event was reasonably likely to result therefrom. There may be more than one proximate cause of an event.

"Proximate cause," when used with respect to the conduct of Del Sol Medical Center, means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a hospital using ordinary care would have foreseen that the event, or some similar event, was reasonably likely to result therefrom. There may be more than one proximate cause of an event.

You are instructed that a professional association can only act by and through its employees. The Defendants have stipulated that Dr. Llamas was an employee of Jorge Fabio Llamas-Soforo, M.D., P.A. d/b/a El Paso Eye Center, acting in the course and scope of his employment during his care and treatment of Daniella Bustamante. The Defendants have stipulated that Dr. Ponte, was an employee of Pediatrix Medical Services, Inc. acting in the course and scope of his employment during his care and treatment of Daniella Bustamante.

**QUESTIONS**

**QUESTION NO. 1:**

Did the negligence, if any, of Dr. Llamas proximately cause the injury in question?

Answer "Yes" or "No."

ANSWER: Yes

**QUESTION NO. 2:**

Did the negligence, if any, of Dr. Ponte proximately cause the injury in question?

Answer "Yes" or "No."

ANSWER: Yes

If you answered "yes" to Question No. 1, Question No. 2, or both, then answer Question No. 3. Otherwise, do not answer any more questions.

**QUESTION NO. 3:**

Did the negligence, if any, of Del Sol Medical Center proximately cause the injury in question?

Answer "Yes" or "No."

ANSWER: Yes

If you answered "Yes" to more than one of Question No. 1, Question No. 2 and Question No. 3, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 4:**

For each of those named below that you found caused or contributed to cause the injury, find the percentage of responsibility attributable to each.

Assign percentages of responsibility only to those you found caused or contributed to cause the injury. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

Assign percentages of responsibility to:

- a. Dr. Llamas 45%
- b. Dr. Ponte 45%
- c. Del Sol Medical Center 10%

Total: 100 %

**QUESTION NO. 5:**

What sum of money, if paid now in cash, would fairly and reasonably compensate Daniella Bustamante for her damages, if any, that resulted from the injury in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Do not include any amount for any condition existing before the occurrence in question, except to the extent, if any, that such other condition was aggravated by any injuries that resulted from the occurrence in question.

Answer separately, in dollars and cents, for damages, if any, for:

- a. Mental anguish sustained in the past by Daniella Bustamante:

Answer: \$ 6,000.00

- b. Physical pain and mental anguish that, in reasonable probability, Daniella Bustamante will sustain in the future:

Answer: \$ 104,000.00

- c. Medical care expenses that, in reasonable probability, Daniella Bustamante will sustain in the future after age 18:

Answer: \$ 962,000.00

- d. Attendant care expenses that, in reasonable probability, Daniella Bustamante will sustain in the future after age 18:

Answer: \$ 988,000.00

- e. Disfigurement sustained in the past by Daniella Bustamante

Answer: \$ 6,000.00

- f. Disfigurement that, in reasonable probability, Daniella Bustamante will sustain in the future:

Answer: \$ 52,000.00

- g. Physical impairment sustained in the past by Daniella Bustamante:

Answer: \$ 6,000.00

- h. Physical impairment that, in reasonable probability, Daniella Bustamante will sustain in the future:

Answer: \$ 0.00

Answer the following question regarding Dr. Llamas only if you unanimously answered "Yes" to Question No.1 regarding Dr. Llamas. Otherwise, do not answer the following question regarding Dr. Llamas.

Answer the following question regarding Dr. Ponte only if you unanimously answered "Yes" to Question No.2 regarding Dr. Ponte. Otherwise, do not answer the following question regarding Dr. Ponte.

You are instructed that, in order to answer "Yes" to any part of the following question, your answer must be unanimous. You may answer "No" to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

**QUESTION NO. 6:**

Do you find by clear and convincing evidence that the harm to Daniella Bustamante resulted from gross negligence on the part of those named below?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Gross negligence" means an act or omission by Defendant,

- (a) which when viewed objectively from the standpoint of Defendant at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
- (b) of which Defendant has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

Answer "Yes" or "No" for each of the following:

- a. Dr. Llamas \_\_\_\_\_
- b. Dr. Ponte \_\_\_\_\_

**Instructions Regarding the Presiding Juror:**

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:

- a. Have this complete charge read aloud if it will be helpful to your deliberations.
- b. Preside over your deliberations. This means the presiding juror will manage the discussions, and see that you follow these instructions.
- c. Give written questions or comments to the bailiff who will give them to the judge.
- d. Write down the answers you agree on.
- e. Sign or get the signatures for the verdict certificate.
- f. Notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

**Instructions for Signing the Verdict Certificate:**

1. You may answer the questions on a vote of 10 or more jurors. The same 10 or more jurors must agree on every answer in the charge. This means you may not have one group of 10 or more jurors agree on one answer and a different group of 10 or more jurors agree on another answer.

2. If 10 or 11 jurors agree on every answer, those 10 or 11 jurors sign the verdict. If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 or 11 who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.

  
JUDGE PRESIDING

