

## Interim Award

We the undersigned, the arbitration panel herein, having heard all of the evidence and the argument of counsel and considered all documentary evidence received, hereby make our award as follows:

The arbitration panel deliberated the issues presented in this matter for several hours vigorously in early October. All of the input from the individual panel members was of great value in the consideration of this matter and in deciding this difficult matter. There were major disagreements on some of the major issues by and between the arbiters.

The arbitration panel finds, in favor of Claimant, Isabella Ibarra (by and through her Guardian Ad Litem, Monica Morales and against Donald Lindblad, Respondent, that Donald Lindblad failed to use the level of skill, knowledge and care in diagnosis and treatment that other reasonably careful ob-gyn would use in similar circumstances, known also as the standard of care.

The arbitration panel based its decision on the standard of care on the testimony of the experts that testified in this case, including the expert witnesses called by the parties themselves which included the Respondent, Donald Lindblad.

This case was a difficult one and very complex. There was disagreement among the party arbiters on most of the central issues. In coming to the ultimate decisions in this difficult case, the panel had to weigh very carefully the testimony of the two witnesses who testified as to the standard of care, Dr. Richard Paul and Dr. Michael Ross. Ultimately the panel decided that under the totality of the circumstances here, indeed a very close call, that Dr. Paul's opinion on the standard of care should be adopted. It also appears from the evidence that the Claimant's left side deficits are permanent in nature. The next major issue was also the subject of great debate among the arbiters. That issue was to decide whether the negligence of Dr. Lindblad was a substantial factor in causing the "mental deficit" damages alleged to have occurred during the birth that were alleged to have been caused by the Respondent's use of the vacuum device on Claimant. This issue as well was debated vigorously during the deliberative process. Ultimately, it was believed that the facts surrounding the Claimant's condition following birth and the expert evidence that was presented supported the Respondent's position that the Claimant did not exhibit any of the objective indicia following birth that would be associated with and be a sign of intracranial hemorrhage such as convulsions, lethargy, cerebral irritation, increased irritability. Thus, the Claimant failed to carry its burden of proof that Claimant's mental deficits, if any, were caused by any negligence of the Respondent. There was support

in the evidence that the use of vacuum device to assist in birthing may have exacerbated the damage to the brachial plexus to Claimant.

The arbitration panel finds, in favor of Claimant, and that Isabella Morales was harmed and suffered damages as a result of Dr. Lindblad's failure to meet the standard of care.

The arbitration panel agreed, unanimously that Claimant was not entitled to any past economic damages or past non-economic damages.

Further, the panel noted that in its presentation Claimant submitted evidence of what it believed that certain physical and occupational therapy would cost and what anticipated earning capacity/earnings loss (earnings capacity and actual earnings due to the physical limitations) would be, it was not presented in the required manner, i.e., in present cash value of the future awards. The weight of such evidence was not terribly strong but admissible under the Code. However, CACI 3904 requires that such sums be reduced to their present cash value ("...the amount of those future damages must be reduced to their present cash value.) There was no expert, e.g., an economist, called to put the future economic damages in the appropriate form, and there was no stipulation by and between counsel concerning that issue.

The panel is unable to determine the present cash value of the future damages as required by law. Thus it will need to have the assistance of both counsel for Claimant and counsel for Respondent to put this award in proper form before it becomes final.

The panel awards to Claimant the following damages (subject to further input from counsel):

1-Economic Damages:

- a) Future Physical Therapy-50 Sessions per year (3 Years) \$22,500.00  
(Present value, not present cash value)
- b) Future Occupational Therapy-50 Sessions per year (3 Years)  
\$22,500.00 (Present Value, not present cash value)
- c) Loss of Earning Capacity (Left Side Deficits) at SSI Value \$9,000.00 per  
year for expected years of earnings (from age 18-65 or 47 years)  
\$558,000.00 (Present value, not present cash value).

2-Past and Future Non Economic Damages: \$225,000.00

The Respondent is also entitled to a credit against these sums for prior settlements, if any, reached by any joint tortfeasors with this Claimant pursuant to law, including but not limited to California Code of Civil Procedure section 877.

Based on the foregoing an award shall be entered in favor of Claimant as indicated. Each side is to bear its own costs and attorneys' fees unless the parties have contracted or stipulated otherwise, or an offer of settlement pursuant to California Code of Civil Procedure Section 998 had been duly made and not timely accepted.

Any objections to this interim award are to be provided to the arbitration panel in accordance with C.C.P. '1284. This interim award will become the final award if no objections are received within the requirements of the Code.

The panel commends both attorneys for a very professional presentation made with an excellent understanding of the legal and factual issues. The panel also wishes to thank them for all of their assistance with the exhibits and other items.

Date: \_\_\_\_\_

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Victor Persón, Neutral Arbiter

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Arian A. Cohen, Claimant Party Arbiter

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Theodore Hammond, Respondent Party Arbiter