CASE INFORMATION SHEET
FLORIDA LEGAL PERIODICALS, INC.
P.O. Box 3370, Tallahassee, FL 32315-3730
(904) 224-6649/(800) 446-2998 * FAX (850) 222-6266

COUNTY AND COURT:

Circuit Court, 13th Judicial Circuit, Hillsborough County, Florida

NAME OF CASE:

BRETT and ERICA BARRETT, Individually and as Parents and Natural Guardians of ALYSSA BARRETT, a Minor Child,
Plaintiffs,

v.

PAUL L. BENFANTI, M.D. and CHILDREN'S ORTHOPAEDIC AND SCOLIOSIS SURGERY ASSOCIATES, LLP d/b/a CHILDREN'S ORTHOPAEDIC AND SCOLIOSIS SURGERY ASSOCIATES,

Defendants.

CASE DOCKET NO.: 14-CA-001799 **JUDGE:** Hon. Cheryl Thomas

PLAINTIFFS' ATTORNEYS/TRIAL COUNSEL:

Arthur Skafidas
Christopher Jayson
Jayson, Farthing, Skafidas & Wright, P.A.
Tampa, FL

DEFENDANTS' ATTORNEYS/TRIAL COUNSEL:

Richard B. Mangan
Derek J. Bush
Rissman, Barrett, Hurt,
Donahue, McLain & Mangan, P.A.
Tampa, FL

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:

Alyssa Barrett is a 15-year-old female.

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

CHILDREN'S ORTHOPAEDIC AND SCOLIOSIS SURGERY ASSOCIATES, Tampa, Florida, August - December, 2011.

CAUSE OF INJURY:

Alyssa Barrett first presented to After Hours Pediatrics on July 29, 2011, following a fall at gymnastics class approximately one hour prior. An x-ray showed a slight angulated fracture of the radial head with no dislocation. She was diagnosed with a supracondylar fracture, placed in a splint and instructed to follow-up with an orthopedist.

Alyssa followed-up with Dr. Benfanti at COSSA on Monday, August 1, 2011. Dr. Benfanti obtained x-rays of the right forearm which showed a displaced radial neck fracture with no other abnormalities. The following day, August 2, 2011, Dr. Benfanti conducted a closed reduction and long arm casting of the right radial neck fracture under fluoroscopy. He ordered follow-up in one week for an alignment check, and then 2 to 3 weeks later for cast removal and final x-rays.

On August 8, 2011, Alyssa followed-up with Dr. Benfanti, where an alignment check was satisfactory with no concerns. X-ray studies of the right elbow in the cast showed the fracture remained reduced and in acceptable anatomical alignment. Dr. Benfanti relayed to the family that there was good alignment and that she should continue with her activity restrictions and return as scheduled for repeat x-rays and cast removal.

On August 29, 2011, additional elbow x-rays showed the fracture was in excellent alignment and growth plates remained opened. Dr. Benfanti indicated that this was an excellent outcome status-post closed reduction of the right radial neck fracture, and asked her to return in two weeks for a final inspection.

Additional follow-up visits took place in September and November of 2011. Dr. Benfanti noted that the child was experiencing some residual stiffness of the elbow, for which he ordered physical therapy. Physical therapy was unsuccessful at regaining normal range of motion, and Dr. Benfanti informed the patient and her family that it was unlikely she would regain all pronation, but her shoulder range of motion could make up for any limitations.

On December 14, 2011, new radiographs showed a well-aligned and healed radial neck fracture, but a subtle suggestion of some dorsal subluxation and new bone formation on the proximal ulna. Dr. Benfanti noted it was likely that Alyssa sustained a fracture dislocation given the amount of new boney formation at the ulna. He had Alyssa's films reviewed by his partners who agreed with his diagnosis and that no additional intervention was necessary other than a Dynasplint to deal with the blocked pronation.

The family thereafter transferred Alyssa's treatment to other providers. The heterotopic bone formation continued and she ultimately developed right elbow proximal radial ulnar synostosis, measuring 16 x 14 mm.

NATURE OF INJURY:

Ms. Barrett experienced a right elbow proximal radial ulnar synostosis which has her right hand in fixed supination. She is only able to rotate her wrist 15 degrees pronation and requires assistance for typing and some activities of daily living.

PLAINTIFFS' EXPERT WITNESSES:

Stephen D. Heinrich, M.D., M.S.
Pediatric Orthopedic Surgery
New Orleans, LA

Dr. Heinrich provided criticisms of the care and treatment provided by Dr. Benfanti during the treatment from August to December 2011. He believed that Dr. Benfanti failed to properly image the child's complete forearm during the course of treatment, which led to an undiagnosed non-displaced fracture of the ulna.

The untreated deformity ultimately manifested in the child's development of heterotopic ossification and eventual synostosis. Additionally, Dr. Heinrich testified that the alignment of the surgically repaired elbow was unsatisfactory and further complicated the recovery process.

Michael J. Foley, M.D.
Radiology
Tampa, FL

Dr. Foley testified that the imaging studies which were gathered on the night of the original injury showed an abnormal curvature of the ulna and should have been diagnosed as a non-displaced fracture. He further testified that the post-reduction alignment of the radial neck was inappropriate as the radial shaft did not directly bisect the capitellum.

DEFENDANTS' EXPERT WITNESS:

John N. Delahay, M.D., F.A.C.S.
Pediatric Orthopedic Surgery
Washington, DC

Dr. Delahay testified that this child suffered a displaced fracture of the radial neck and no injury to her ulna. He indicated that Dr. Benfanti chose the correct course of treatment and that the inability to pronate is an expected and well known complication from this type of injury/surgery and certainly is not evidence of negligence. Dr. Delahay testified it was not incumbent on Dr. Benfanti to image other joints of the body following the initial injury, nor did he "miss" any other injuries.

Joseph C. Giaconi, M.D.
Musculoskeletal Radiology
Los Angeles, CA

Dr. Giaconi admitted that there was "some bowing" present on the original July 29, 2011, x-ray image, but it was not significant in nature and certainly did not qualify as a fracture. Additionally, the images taken post-operatively by Dr. Benfanti showed a properly reduced radial neck fracture. Dr. Giaconi did not believe there were any additional findings which would have been a concern or call for clinical correlation.

Dr. Giaconi further testified that while the radial head is supposed to intersect the capitellum, there is a much greater range of expected findings in pediatric patients. This is also true in regards to how "straight" the ulna is on radiographic imaging. To call the initial studies in this case as showing a plastic deformity would cause him to report a deformity on nearly all of his patients, which he does not do.

Dr. Giaconi also testified that if the Plaintiffs' theory was correct and there had been a missed ulnar injury, he would expect to see edema, periosteal thickening, an old fracture line, or other signs of the healing of a chronic non-displaced fracture of the ulna. In reviewing subsequent CT scans and MRI images of the child's elbow, these findings were not present, which confirmed his belief that there was no other non-displaced fracture at the time of initial injury in July of 2011.

DATE OF VERDICT:

December 7, 2018

VERDICT:

Defense Verdict

JUDGMENT:

For Defendants

DATE OF JUDGMENT:

December 17, 2018

DEFENDANTS' OFFER:

None.

PLAINTIFFS' DEMAND:

Plaintiffs' counsel asked the jury for an award of $1,900,000 at trial in closing arguments.

ATTORNEY'S COMMENTS: The jury deliberated for 1 hour, 25 minutes following receipt of the evidence.

Submitted By: Derek J. Bush **Date:** January 15, 2019

Firm: Rissman, Barrett, Hurt,
Donahue, McLain & Mangan, P.A.

Address: 1 North Dale Mabry Highway, 11th Floor, Tampa, FL 33609

Telephone: (813) 221-3114 **Fax:** (813) 221-3033