

IN THE SUPREME COURT OF FLORIDA  
(CONSOLIDATED CASES)

**FILED**

SID J. WHITE

MAY 29 1997

CLERK, SUPREME COURT

By

Chief Deputy Clerk

UNIVERSITY MEDICAL CENTER, INC.,  
etc., et al.,

Petitioner

v.

DEVIN ATHEY, etc., et al.,

Respondents

CASE NO: 89,986

and

THE BOARD OF REGENTS OF THE  
STATE OF FLORIDA, et al.,

Petitioners,

v.

DEVIN ATHEY, etc., et al.,

Respondents

CASE NO: 89,991 ✓

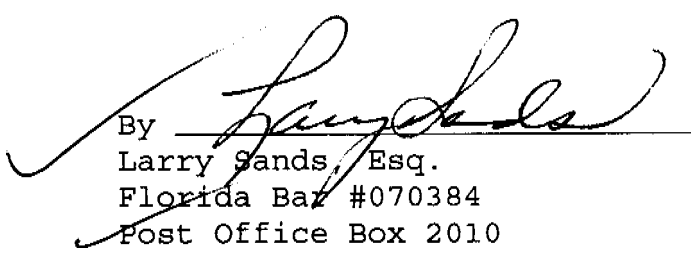
ON DISCRETIONARY REVIEW OF A CERTIFIED QUESTION  
FROM THE DISTRICT COURT OF APPEAL, FIRST DISTRICT

B R I E F

ON BEHALF OF RESPONDENT, WILSON BROADEN  
ADOPTING AND SUPPLEMENTING BRIEF OF RESPONDENTS,  
ATHEY ON THE MERITS

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\* To avoid duplication, the Respondents, WILSON/BROADEN, adopt the Table of Contents, Table of Cases, Statement of the Case and Facts, Issues, Summary of Argument, Argument, Conclusion and Prayer for Relief, as supplemented above, of the Respondent, ATHEY, in their Brief of the merits.

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**I.**  
**STATEMENT OF THE CASE AND FACTS**

This Brief is submitted on behalf of the Respondents, THERESA LYNN WILSON, as Personal Representative of the Estate of CHANYSE CHANELLE WILSON BROADEN, deceased, TERESA LYNN WILSON, individually and ERIC JEROME BROADEN, individually, herein referred to as "WILSON-BROADEN," adopting the abbreviations used by the Petitioners BOARD OF REGENTS ("BOR") and UNIVERSITY MEDICAL CENTER ("UMC"). To avoid duplication, the Respondents, WILSON-BROADEN, adopt the Table of Contents, Table of Cases, Statement of the Case and Facts, Issues on Discretionary Review, Summary of the Argument, Arguments, Conclusion, and Prayer for Relief of the Respondents, ATHEY, in their Brief on the Merits. The Statement of Case and Facts and the Argument are supplemented with the following undisputed facts:

1. Drs. Thompson, Johnston and Cooper, all employees of the BOARD OF REGENTS, State of Florida, are not additional party Plaintiffs in the WILSON-BROADEN case. They are additional party Plaintiffs in the ATHEY case. Dr. Luis Sanchez-Ramos, an employee of the BOARD OF REGENTS, State of Florida, was Mrs. Wilson's attending physician during her hospitalization at UMC from May 20,

1989 to May 25, 1989 and was a participating member of the 'Florida Birth Related Neurological Compensation Injury Plan". (R. 3)

2. CHANYSE CHANELLE WILSON BROADEN, was born at UNIVERSITY MEDICAL CENTER on May 21, 1989.

3. It is undisputed that MRS. WILSON was never provided with a "Notice to Obstetrical Patients of Participation in the Plan" required by Section 766.316, Fla. Stat. (1988 Supp.) (R. 325-331)

4. Beginning in January of 1989 MRS. WILSON received prenatal care at the Duval County Public Health Unit. (Deposition of Teresa Wilson, pp. 24.) It is indisputed that between October 1, 1987 and March 31, 1989, UMC was the contract provider of all maternity services at the Duval County Public Health Unit. For at least the first three months of MRS. WILSON's prenatal care, UMC directly employed the nurses or mid-wives who provided prenatal to MRS. WILSON. In fact, the prenatal medical records of MRS. WILSON are on forms bearing the heading "University Hospital Jacksonville Maternal and Child Health Project". (A 1)

Like MRS. ATHEY, MRS. WILSON was informed on her visits to the clinic that her baby would be delivered at UMC. (Deposition of Teresa Wilson, pp. 33, 39) According to the Petitioners, after

April 1, 1989, the clinic was operated by the Department of Health and Rehabilitative Services, State of Florida. Nevertheless, there remained a direct relationship between the clinic and UMC inasmuch as it was the only local hospital accepting medicare patients from the clinic.

In addition, it is undisputed that MRS. WILSON arrived at UMC for her baby's delivery at 1:45 a.m. on May 20, 1989. Her baby was not delivered until 8:45 a.m. on May 21, 1989. She was in the hospital for thirty-one (31) hours before delivery. The records further show that she that signed a consent for "obstetrical delivery; to deliver my baby vaginally or by caesarean section with anesthesia as necessary," on May 19, 1989, a **day before** she was actually admitted to the hospital in labor. In addition, she had been at the UMC on May 12, 1989 and May 17, 1989 for prenatal ultrasound examinations. (A 2)

In summary, it is undisputed that UMC had direct involvement in MRS. WILSON's prenatal care between January and March of 1989; MRS. WILSON visited the hospital on at least three occasions for prenatal care prior to her admission to deliver her baby; MRS. WILSON was advised by the clinic that when it was time to deliver

her baby she should go to the UMC; the UMC was the only hospital in town accepting medicare patients from the clinic and therefor had a direct relationship to the clinic even after the State of Florida assumed its operation; and MRS. WILSON was an inpatient at the UMC for thirty-one (31) hours prior to the delivery of her baby.

As a result, the Petitioners had ample opportunity to advise MRS. WILSON that the physician who would deliver her baby would be a participant in the NICA Plan. It is undisputed that no notice was given to MRS. WILSON by anyone involved in her treatment.

#### **ARGUMENT**

The Respondents, WILSON-BROADEN, adopt in full the Arguments of the Respondents, ATHEY, in their Brief on the Merits with reference to the facts set forth above.

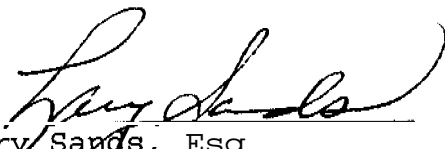
#### **CONCLUSION**

It is respectfully submitted that the certified question should be answered as it was answered in Galen of Florida, Inc. v. Braniff, 22 Fla. L. Weekly s227 (Fla. May 1, 1997), and that the District Court's decision should be approved. Alternatively, because the Court has "postponed jurisdiction," and because the question has already been answered in Braniff, review could simply be denied.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been furnished by U.S. Mail this 28<sup>th</sup> day of May, 1997 to: Stephen E. Day, Esquire, Taylor, Day, Currie & Burnett, 50 North Laura Street, Suite 3500, Jacksonville, FL 32202; Searcy Denney, Scarola, Barnhart & Shipley, P.A., Post Office Box 3626, West Palm Beach, FL 33402 and Joel D. Eaton, Esquire, Podhurst, Orseck, Josefsberg, Eaton, Meadow, Olin & Perwin, P.A., 25 West Flagler Street, Suite 800, Miami, FL 32130; Ronald L. Harrop, Esquire, Gurney & Handley, P.A. Post Office Box 1273, Orlando, FL 32802 and to Bruce Culpepper, Esquire, William Whitney, Esquire, at Pennington & Haben, P.A., Post Office Box 10095, Tallahassee, FL 32302-2095, and a copy was mailed to: Wilbur Brewton, Esquire, Kelly Brewton, Esquire, at Taylor Brion, Buker & Greene, 225 South Adams Street, Suite 250, Tallahassee, FL 32301.

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