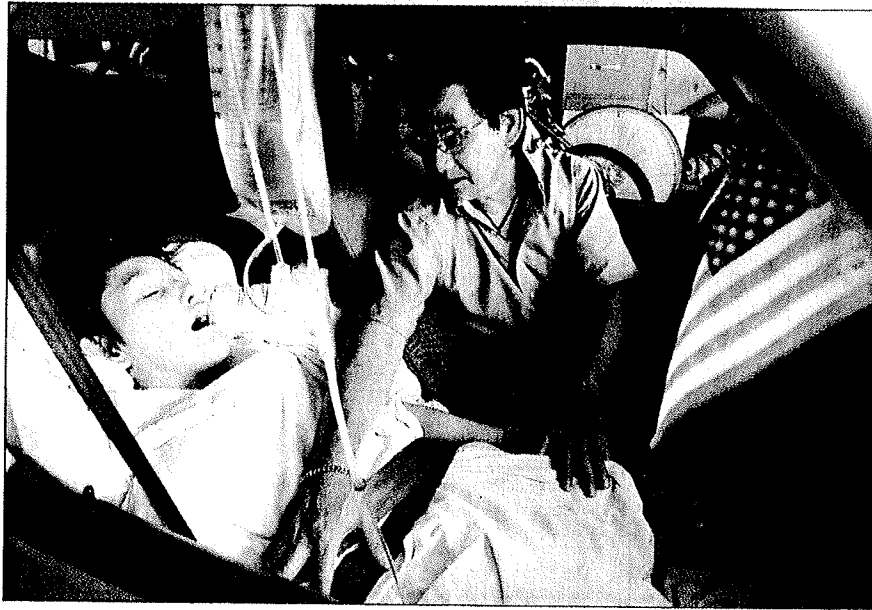


A BATTLE CONSIDERED LOST



Lawsuit close to an end

Malpractice case set for settlement will bring \$2.75M for disabled son, despite father's wish to fight in court

By **SUSAN HERENDEEN**
BEE STAFF WRITER

Attorneys for a severely disabled 10-year-old boy are poised to settle a medical malpractice lawsuit for \$2.75 million — even though his father would rather have a trial.

The case revolves around Hector Yamamoto, who cannot see, walk or talk. Nor can he feed himself. Hector, who was a happy, healthy baby, has been a brain-damaged quadriplegic since he was 4.

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HECTOR'S STORY

On Hector's behalf, San Francisco attorney Thomas Brandi is suing the Patterson Hospital District, Golden Valley Health Centers, Doctors Medical Center of Modesto, physician Andrew Jaramillo and others.

The settlement is on Monday's calendar in U.S. District Court in Fresno. If the case comes to an end then, it will be against the wishes of Hector's father, his full-time caregiver.

Hugo Yamamoto was removed as guardian ad litem, a legal distinction that allowed him to control the fate of his son's case, because he repeatedly insisted that he wanted a trial instead of a settlement.

"Win or lose, I have lost already," said Yamamoto, 55, who formerly worked as a gardener.

Hector had been coughing and wheezing for three days when his father took him to the Patterson Hospital District's Del Puerto Hospital Clinic on Nov. 23, 1997.

Dr. Maxine Ingham diagnosed Hector with bronchitis and gave him an inhaler.

She also prescribed Motrin and amoxicillin, according to a scheduling order by U.S. District Judge Oliver W. Wanger. The order summarizes the claims made by

SEE BACK PAGE, MALPRACTICE



Hector Yamamoto was 4 when when his father, Hugo, took him to Golden Valley Health Center for a persistent cough and wheezing. The doctor thought it was a cold. Weeks later, Hector turned blue and lost consciousness while a doctor and nurse held down his thrashing body. He was rushed to Doctors Medical Center and his lung was punctured trying to remove pus that had built up inside it. Hector was then placed on life support. He survived but now needs constant care.



PHOTOS
BY
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MALPRACTICE: Settlement means no one admits negligence

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both sides.

On Nov. 26, 1997, Yamamoto took Hector to Golden Valley Health Center in Newman for follow-up care. Yamamoto told Dr. John Francis that his son had been coughing at night, wheezing, had diarrhea and did not want to eat.

The doctor told him that his son should drink fluids, use Motrin and Triaminic, and return in five days, according to the judge's order.

No improvement

There were no appointments available for 10 days, so Yamamoto brought his son back Dec. 5, 1997. Hector had not improved.

Francis and a nurse administered an Albuterol nebulizer, and held Hector down to do so, because he was kicking and would not cooperate. Hector's face was purplish blue when the nurse removed an inhaler.

"He became so quiet," Yamamoto recalled. Yamamoto said he grabbed his son and ran. Francis called an ambulance and told Yamamoto he could not leave with his son so sick. They screamed at each other in the parking lot.

At 3:09 p.m., the Yamamotos arrived by ambulance at Doctors Medical Center, where Jaramillo took over Hector's treatment. Hector was ashen in color and had improved en route, according to the judge's order.

A social worker took Yamamoto and his eldest son, Andrew, to a waiting room while the emergency room staff tended to Hector. Yamamoto said the social worker returned several times, crying, telling him to call his family and friends for support.

"His heart stopped," Yamamoto recalled the social worker saying. "They're working it."

Brandi, who is suing on Hector's behalf, hired Dr. Michael MacQuarrie of Truckee to review Hector's medical records.

MacQuarrie told the court that Hector had two X-rays, an ultrasound and a chest scan from 3:27 to 5:36 p.m. Each time, hospital staff saw a mass, or fluid, in Hector's right lung. A radiologist suggested that a chest tube be used to drain the mass. A therapist found it difficult to ventilate Hector.

Jaramillo called for a surgeon at 6 p.m.

At 6:28 p.m., Hector went into respiratory arrest. Jaramillo then placed a needle into Hector's chest and found pus. Another doctor used a chest tube to remove it.

But Hector was deprived of oxygen and did not regain a pulse for 30 minutes. A helicopter then took Hector to Children's Hospital Oakland.

MacQuarrie said the doctors should have performed the procedure after the first chest X-ray showed the presence of a large, white mass.

He said the procedure is so common that paramedics can do it, and the mass might have been detected earlier if Hector had had a chest X-ray during his first two trips to the doctor.

"This is not a situation where medical personnel made a split-second judgment using their best efforts and simply had an unfortunate result," MacQuarrie wrote in a document presented to the court.

Tenet Health Care Corp., which owns Doctors Medical Center, sought a summary judgment to absolve Tenet and Doctors of wrongdoing. In the motion, four doctors said Hector was in deteriorating health when he arrived at the Doctors emergency room.

"The care and treatment the plaintiff received was not negligent and did not breach the required standards of care for a hospital," they said.

The judge declined to dismiss the case



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Andrew Yamamoto, 12, watches over his younger brother, Hector, Friday afternoon.

PROPOSED SETTLEMENT

A retired judge negotiated this proposed settlement of \$2.75 million for Hector Yamamoto:

- \$650,000, payable by the federal government on behalf of Golden Valley Health Centers.
- \$975,000, payable by Tenet Health Care Corp. on behalf of Doctors Medical Center.
- \$1,125,000, payable by Dr. Andrew Jaramillo and the California Emergency Physicians Group.

The settlement provides for a trust, guaranteed for 10 years, or until Hector's death, whichever is longer. The trust would pay:

- \$187,023 to MediCal for Hector's care so far. Hector would remain eligible for public benefits in the future.
- \$200,000 to Hugo Yamamoto for the nursing care that he has provided so far.
- \$27,040 annually to Hugo Yamamoto in the future, with cost-of-living increases.
- \$45,000 for a van equipped to handle a wheelchair.
- \$583,168 to the Brandi Law Firm (\$116,473 for expenses and \$466,696 for legal fees).
- About \$1.3 million — the remainder of the settlement — would be paid to the trust in monthly increments of \$9,902, and could be used for Hector's care, with oversight by a committee of trustees.

against Doctors Medical Center.

Jaramillo remains on staff at Doctors Medical Center, Francis works in Lodi and Ingham works in Reno, according to the California Medical Board. All have medical licenses and no public record of discipline.

Yamamoto must feed his son liquid meals through a button on his stomach, change his diapers and massage him every two hours to keep his circulation going.

Hector wears a brace because his spine is crooked, and he has tennis balls strapped to the palms of his hands, because he clenches his fists.

He grunts and groans, periodically, without any apparent stimulus. He seems to recognize his father's voice, and laughs if Yamamoto calls him "peachy" or sings to him in Japanese or Spanish.

Andrew Yamamoto, 12, said he remembers how much fun his little brother was, and how he was so brave that he would go into the basement by himself. He also remembers the day Hector came home in a wheelchair.

"I wonder how my life would be if my little brother wasn't handicapped," Andrew said. "I wish he could go to school and play with me like a normal kid."

A doctor hired by Brandi concluded that Hector could live until he is 40 or longer. The defendants' doctor said he will probably live less than 10 years.

Yamamoto did not immediately consider a lawsuit, and brought Hector with him on landscaping jobs.

A client gave him Brandi's phone number and said he was well known for suing government agencies and companies with defective products.

A secretary at his firm said Brandi was out of the office for several weeks, and that no one from the firm would comment on the Yamamoto case.

Yamamoto mentions big numbers — \$16 million or \$38 million or \$45 million — when asked what he would settle for.

He also said he would gladly accept the risks of trial, where a jury could award him nothing at all, because he wants to embarrass the doctors who treated his son.

If the settlement is approved, no one will admit any negligence.

"Lose or win, I want to know what happened," Yamamoto said. "I want to deposition all of them."

Judge appointed for Hector's interests

After three settlement negotiations failed, the U.S. attorney's office in Fresno, which represents the federally funded Golden Valley Health Centers, asked that Yamamoto's legal guardianship be re-evaluated.

Two judges who presided over mediation sessions and settlement conferences filed sealed documents with the court, questioning Yamamoto's ability to remain objective.

Brandi urged him to settle, Yamamoto said.

The court named attorney Rich Watters of Fresno to represent Yamamoto in a guardianship hearing. In a memo, Watters urged Yamamoto to settle and said the most he could receive at trial is \$12.8 million.

Yamamoto would not budge.

The judge said Yamamoto's refusal to negotiate showed that he could not put the interests of his child above his own pain and suffering.

On Nov. 19, 2003, the judge appointed retired Fresno County Superior Court Judge Eugene Krum to represent Hector's interests. Krum negotiated the proposed settlement.

Deputy U.S. Attorney General Linda Anderson said everyone involved in the case recognizes that Yamamoto is a dedicated father and skilled caregiver.

She also said the loving father is not a plaintiff in the case, and appears to be so stressed from Hector's medical needs that he cannot understand the nuances of a complex malpractice lawsuit.

"This would be the best for the child," Anderson said.

Yamamoto readily acknowledged that the settlement money would change his life by allowing him to hire nurses and purchase medications and supplies.

But he insisted that is not what he wants.

"I would prefer to go to court and get a fair trial," Yamamoto said.

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