

# Florida Supreme Court Decision Regarding NICA

July 08, 2011

The Florida Supreme Court narrows definition of "birth-related neurological injury" for NICA claims and holds that health care providers are not entitled to benefit of statutory rebuttable presumption in favor of NICA compensability. On July 7, the Florida Supreme Court made it more difficult for a health care provider to establish that a brain damaged infant has suffered a "birth-related neurological injury" and is therefore statutorily limited to only no-fault compensation under the Florida Birth-Related Neurological Injury Compensation Plan (NICA) as the exclusive remedy for his or her injury. In *Bennett v. St. Vincent's Medical Center, Inc.*, Case No. SC10-364 (Fla. July 7, 2011), the Florida Supreme Court quashed the First District Court of Appeal's decision in *St. Vincent's Medical Center, Inc. v. Bennett*, 27 So. 3d 65 (Fla. 1st DCA 2009) and approved the Fifth District Court of Appeal's decision in *Orlando Regional Healthcare System, Inc. v. Florida Birth-Related Neurological*, 997 So. 2d 426 (Fla. 5th DCA 2008), holding that in order for a "birth-related neurological injury" to occur, both the oxygen deprivation that causes the injury and the brain injury itself must occur during labor, delivery or resuscitation in the immediate postdelivery period - a period that requires ongoing and continuous efforts of resuscitation. The court also held that the statutory rebuttable presumption in favor of compensability may only be invoked by a claimant who is actually seeking NICA benefits - not a health care provider or the NICA program. As a result of the *Bennett* decision, a health care provider seeking to enforce NICA exclusivity will have the burden to produce evidence (1) proving that the infant at issue suffered oxygen deprivation or mechanical injury during labor, during delivery, or during an ongoing and continuous period of resuscitation immediately following delivery, (2) proving that the infant's brain injury occurred during that same time period, and also (3) proving that the oxygen deprivation or mechanical injury caused the infant's brain injury. The health care provider will not be able to claim the benefit of the statutory presumption that a brain injury caused by oxygen deprivation or mechanical injury qualifies for coverage under the NICA plan when the timing is unknown.

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