HEARTACHES
MEDIATION

Confidential Information for Ellen and Elliot Fairday
Parents of Joshua Fairday (deceased)

Background information both spouses would know

Ellen and Elliot Fairday are 32 and 35 years old and have been teachers in the Farmington, Ohio public schools for the past 8 years. Ellen moved from the larger City to Farmington, when she finished her teaching degree and got her first job at Farmington Elementary. Elliot had an excellent reputation as a junior high science teacher and had no trouble finding a job in the Farmington Middle School. A few years ago, Elliot was promoted to Assistant Principal While Ellen remained a first-grade teacher, she was given responsibility (and some extra income) for coordinating the younger elementary enrichment programs.

Information for one or both Fairdays

Two years ago, you were both thrilled at the news of Ellen's pregnancy, after many years of trying. However, several months into the pregnancy, an ultra-sound indicated that your unborn son had a serious heart defect. You were told there were many surgical techniques available to correct the defect, and that while he might need an interim procedure shortly after birth, he would not have open-heart surgery until he was a little bit older.

Your son, Joshua Fairday, was in fact born with the heart defect known as "Transposition of the Great Arteries" ("TGA"). He died approximately 6 ½ months later, as a result of that defect and unsuccessful surgery to correct it.

As you understand Joshua's TGA, his left ventricle was connected to the pulmonary artery, instead of his aorta, and the right ventricle was connected to the aorta, instead of the pulmonary artery. Immediately after his birth, Joshua was placed in a neo-natal intensive care unit ("ICU"), and you were referred to the pediatric cardiologist on staff who explained the problems with Joshua's heart in terrible detail. The cardiologist referred you to a surgeon at Farmington Hospital, describing them as "one of the region's most experienced surgeons" who could correct this condition in neo-natal infants.

While in the ICU, Joshua was treated with Prostaglandin E to keep the arterial duct open. You understood (from the cardiologist) that this is usually rapidly effective in improving the blood oxygenation by encouraging more blood flow to the lungs and more alleviating flow through the hole between the two atriums (which is common in hearts with TGA). At that point, Joshua received a cardiac catheter – a type of closed heart surgical procedure to help him survive prior to the open-heart Arterial Switch surgery that his condition required.

You now know TGA is one of the most common of the dangerous heart abnormalities, and that the Arterial Switch operation was first developed and used approximately ten years ago, replacing an older treatment procedure requiring multiple sequential surgeries. Because

you were told the Arterial Switch procedure was not experimental, involved only one surgery, and would improve your son's chances of long-term survival, you approved it. Frankly, when someone learns their newborn baby has a serious heart defect, they have no choice but to trust the doctors.

The pediatric cardiologist told you Joshua was doing well with the Prostaglandin E. You understood the Arterial Switch is generally performed when a baby is three to four months old. However, Joshua seemed so small and thin, it was hard for you to give him back to the doctors for general anesthesia, long surgery, and difficult recovery. The cardiologist said you could delay the surgery until he had grown a bit. Surgery was finally scheduled when Joshua was 28 weeks – 6 ½ months old.

Your final appointment with the surgeon, Dr. Dellahunt, the day before the surgery, went smoothly. Dellahunt seemed kind and gentle, perhaps a bit tired or harried, nothing unusual. Dellahunt again explained the Arterial Switch operation and briefly examined Joshua. While noting that surgery is always delicate, Dellahunt said Joshua was a good candidate, and "we should be able to switch things round so this fellow will grow to be big and healthy – much more 'pink' than he is now."

The day of the surgery was torture for both of you. You hated to take your tiny son and give him to the doctors. The wait during surgery seemed interminable. It was at least 7 hours from the time you left Joshua until he came out of the operating room. After 4 hours, you began to suspect things were not going well, because one of the nurses had said the surgery should only last "four hours, give or take."

When the nurse told you Joshua was out of surgery and in the ICU recovery area, you rushed in to see him. You greeted the Dr. Dellahunt, who was by his side. Dellahunt looked up, smiled, and said to you and to the ICU nurse, "Well it took a while, but he looks nice and pink," and made a notation on Joshua's chart before walking away. When you looked at Joshua, he did not look at all well. Besides the various breathing tubes and bandages, his skin looked light grayish, particularly at his feet and hands. You thought you saw small tremors going through his body. When you said something, the nurse promised to check on it. The nurse then gently suggested you go to the cafeteria and get some rest, because it had been a tough day.

You were not going to leave Joshua alone, but over the next half an hour, you and your spouse took turns getting coffee from the cafeteria, calling relatives, etc. About an hour after Joshua arrived in the ICU, you saw the nurse nervously check Joshua's monitor and sound an alarm. The anesthesiologist, Dr. Wilson, and various doctors and nurses rushed in, and began manipulating Joshua's chest, administering shots of some kind, and finally giving him electric shocks. Within 10 minutes, you could see that he was not responding. The resident physician sadly told you Joshua had not survived.

Dr. Dellahunt, who had come in as the ICU team was working on Joshua, turned to you and said, "I am so sorry. Joshua was a sick little boy. His poor heart must have been tired out from waiting so long before the Switch." Dellahunt looked down, and slowly walked away.

It was many months before the overwhelming numbness subsided enough for you to function. Before Joshua's death, through a hospital sponsored support group, you had become friendly with several other parents whose children were also diagnosed with heart defects. At first you were reluctant to get back in touch because you knew these parents' were preparing for surgery. Joshua's death made you feel like a pariah. You worried your presence would remind them of their worst fears. But you finally called another parent when you learned her baby had also died after surgery by Dr. Dellahunt, several months before Joshua. Through her, you learned of two other babies who had died, one on the operating table, and one a week or so after surgery.

Eight months ago, five months after Joshua's death, you noticed a column in the local paper called "Comings and goings down at Farmington Hospital." The columnist noted that the pediatric anesthesiologist, Dr. Wilson, had resigned after only a short time, and had filed suit against the hospital, claiming that they were effectively terminated, or forced to resign after discovering just how "down on the farm and backward in time" the practice was there. Wilson claimed charges of Wilson's shortcomings and "being difficult" were trumped up because Wilson had called them on their botch-ups. Wilson claimed to have evidence that the surgeons at Farmington Hospital performing heart surgery on babies had much higher mortality rates than surgeons in "quality" hospitals elsewhere. Wilson stated that one of the surgeons finally admitted they couldn't handle neo-natal heart surgery, and was giving it up, "but not before they decided to sack me, because secrets are more important than patients in this terribly chummy backwater town." Hardly an in-depth report, the article cited an anonymous nurse who stated it was not a responsible hospital practice to use the same ICU and the same surgeons for tiny babies as for adults. The nurse was constantly depressed by seeing so many babies die on the operating table. "Yes, it's part of the risk you take when you work in the ICU," the nurse said, "but there seems to be a curse on Farmington." The balance of the article quoted the Medical Staff Director and other hospital officials who asserted they couldn't comment on particulars, but "it should be obvious to the public Wilson was bitter about their termination and is just pointing fingers at everyone else."

You decided to talk to a lawyer. Before reading that article, it had seemed silly to talk to a lawyer because you did not intend to file a lawsuit. Nothing could bring Joshua back to life; you knew he had a serious heart defect. You had accepted that the Arterial Switch surgery was complex and involved the risk that he would not survive, no matter how skillful the surgeon or hospital care. Dr. Dellahunt and everyone on Farmington's medical and nursing staff had seemed knowledgeable, professional, and sincerely sorry when Joshua died.

A family friend referred you to Attorney Hoffman, "one of the finest medical malpractice attorneys in the state – worth the drive to the city." Attorney Hoffman met with you on an initial consultation basis and listened carefully. While cautioning you that pediatric heart

surgery was always difficult, the attorney mentioned they too had heard some troubling rumors about Farmington Hospital, suggesting it had promoted its pediatric cardiac surgery too soon as a way to expand business, but before the specialized surgical expertise was in place. The attorney offered do some initial investigation on your behalf, using paralegals to search data bases concerning mortality rates for the Arterial Switch surgery, and perhaps checking on Dellahunt. The attorney asked your permission to write to the hospital on your behalf and obtain Joshua's complete medical records. In addition, they would seek an informal opinion from a trusted doctor, and perhaps speak with the Dr. Wilson mentioned in the newspaper article. The attorney offered to do this research for a modest hourly fee, not to exceed $3000, but stated that if there appeared to be some merit to a malpractice claim, they would be willing to take the case on a 33% contingency fee, plus expenses.

You authorized Attorney Hoffman to go ahead with this initial research. You explained that you wanted to know the real reason Joshua had died. And, if the attorney learned that mistakes were made, you want to help make sure that these mistakes would happen again, so that Joshua's death would not be in vain.

Several weeks later, Attorney Hoffman called you meet and review the preliminary results of the research and investigation. The attorney asked if you objected to their inviting Dr. Wilson, the anesthesiologist mentioned in the article, who had been Joshua's anesthesiologist and present at his death. You agreed Dr. Wilson could be present, though you thought it a bit unorthodox.

At that meeting, Attorney Hoffman and Dr. Wilson presented you with information that filled you with overwhelming anger, grief, and bitterness. Apparently, the Arterial Switch surgery performed by Dr. Dellahunt on Joshua was first used approximately 10 years earlier, replacing another surgical sequence which was less surgically difficult, but less effective for patients. When the Arterial Switch surgery was first performed, the operations tended to be lengthy, as long as 6 or 7 and even up to 8 hours, and large number of patients failed to survive. Surgical techniques aside, length of surgery alone contributed to mortality rates. During open-heart surgery, patients are hooked up to a heart-lung machine. It is hard on the body and its vital organs to be on that machine for lengthy period of time. This is particularly true for infants and small children. After four or five years of experience with the Arterial Switch surgery, average times were drastically reduced – to no more than 4 or 4 ½ hours, barring unforeseeable circumstances. These times were reduced at pediatric cardiac surgical centers in London, Australia, Boston, Chicago, Seattle, Philadelphia, and the City, due to refined surgical techniques and better coordinated surgical teams. Thus, within 5 years after this surgery was pioneered, the mortality rate for infants was less than 20-21% in most major centers, and recently as low as 15% in some centers. According to Dr. Wilson, the mortality rate at Farmington Hospital during his short tenure there was 35-40%.

You learned that Dr. Wilson had become alarmed at the number of infants dying during or shortly after Arterial Switch surgery and in Atrio-Ventricular Septal Defect ("AVSD") surgery, performed by Dr. Dellahunt and Dr. Rasheesh. Wilson talked to a nurse-colleague in the ICU,

who had also moved recently to Farmington Hospital. The nurse agreed with Wilson's observation that too many infants were dying when these doctors operated, more than in other hospitals, and that the surgery seemed to take much longer. The nurse commented that Dr. Dellahunt had a habit of telling parents that their deceased baby had been "so very sick and weakened," when they had been relatively robust prior to surgery. The nurse had also observed Dellahunt record on patients' post-operative charts in the ICU that they were "pink and tolerated surgery well," when that wasn't true. The nurse suspected Dellahunt was trying to shift blame, to make it look like the surgery had been successful, but post-operative care would be to blame if the patient did not survive.

These observations caused Dr. Wilson to raise concerns within the surgical team, and at the morbidity conferences held by the surgical team in the wake of a death or "adverse outcome." Each time, Dr. Rasheesh or Dr. Dellahunt would describe the case as very difficult or unusual and launch into technical discussions of the presenting arteries or the size of the hole in the patient's heart. Occasionally, they would complain that the cardiologist's reports and tests had failed to reveal an aspect of the patient's heart defect, which came as a surprise and took additional time in surgery. With every death, the surgical team would nod and accept their explanations.

Dr. Wilson was not nodding, however. He was disturbed enough about the situation to speak to Dr. Knowles separately, but Knowles seemed satisfied with the reports provided by the surgeons. Dr. Wilson spoke on a confidential basis to a former medical professor and colleague he met at a conference, who advised him to gather the evidence.

Dr. Wilson then began to investigate, gaining access to the surgeons' files through central file archives. He compiled statistics for the last few years, since Dellahunt's and Rasheesh's arrival and the beginning of pediatric cardiac surgery at Farmington. Wilson prepared a report summarizing the findings: for the previous two years, the mortality rates for Arterial Switch surgery at Farmington were 35-40%, compared to rates of 20 – 21% percent at most major pediatric surgery centers, and 15% in some centers. Also, the time elapsed in average surgery was far longer, 6 – 6 1/2 hours at Farmington, vs. 4 hours or less elsewhere. Dr. Wilson's report questioned the experience and qualifications of Dr. Dellahunt, whose major training was in adult cardiac surgery and had limited exposure to pediatrics. Finally, Dr. Wilson noted that Farmington's lack of dedicated surgical teams, operating rooms, and ICU facilities for neo-natal and surgery on very young children compromised the quality of care.

As the attorney and Dr. Wilson explained, statistics work in funny ways. When absolute numbers of surgeries performed are small, a short run of bad luck and difficult cases can dramatically affect percentages. If surgery is skillfully performed, these things will "even out" over time, and a small hospital's mortality rates should be no higher than any other. However, if the numbers do not even out, the statistical variation would be strong evidence that the standard of care was not being met, either in surgery or in post-operative care.

The evening before Joshua's surgery, Dr. Wilson presented their report and findings to the surgical team and to Dr. Knowles, during a morbidity conference scheduled to discuss the death of an earlier infant patient of Dr. Dellahunt. The surgical team was outraged and berated Dr. Wilson for invading other doctors' files, told Wilson not to be naïve about statistics when the absolute numbers are small, and noted that a run of difficult cases can make numbers misleading. Dr. Wilson argued strongly that Dr. Dellahunt should not be permitted to operate; pending surgery should be delayed, and a specialist brought in from the City or elsewhere. Dr. Wilson pressed Dr. Dellahunt for review of the circumstances leading to the prior adverse outcomes. Dr. Dellahunt again maintained that the infants' heart conditions had presented unusual and difficult challenges, not foreseeable from the cardiologist's reports or prior tests, and the infants were terribly weak. The matter was put to a vote, and all but Dr. Wilson voted in favor of permitting Joshua's surgery to go forward.

The next morning, when you brought Joshua in for his "pre-op" preparation, *no one mentioned this controversy to you*, or suggested that you consider bringing Joshua to another pediatric cardiac surgeon. The surgery went ahead as scheduled. Joshua died that day.

The next day, the surgical team announced that it would refuse to operate with Dr. Wilson as the anesthesiologist. Members of the surgical and medical staff avoided Wilson in the hallways, treating Wilson like a traitor. Only a few sympathetic nurses appeared willing to speak with Wilson at all. One of those nurses, B.J. Stanton, a friend of Dr. Wilson's, announced that they would no longer work on pediatric ICU patients. Dr. Dellahunt gave notice to Dr. Knowles that they would no longer perform the Arterial Switch, though willing to perform other, less complex procedures. Dr. Wilson does not know if there was any special conference among the surgical team to review the circumstances of Joshua's "adverse outcome." If so, Wilson was not invited.

The next week, Dr. Wilson was summoned to the office of Pat Burns, the hospital's Medical Director, to review issues relating to their clinical privileges at Farmington Hospital. (Dr. Wilson had technically been employed by GAS- General Anesthesiology Services – but that employment relied upon having clinical privileges at Farmington.) Without officially terminating Wilson's privileges, Burns reported the Farmington surgeons all refused operate with Wilson as anesthesiologist (giving Wilson no income) and Burns would not interfere on Wilson's behalf. Burns left the clear impression that Wilson's privileges would be terminated in the near term unless they chose to resign. Wilson did so.

You and your spouse were simply overwhelmed by this information. You both began to sob, knowing that Joshua might be living, had you brought him to a different hospital and a different surgeon. At first, you just felt crushing guilt and overwhelming grief. Your attorney thanked Dr. Wilson for you, sent him home, and suggested you take some time for yourselves. Rather than schedule another appointment, you both asked to reconvene the meeting in an hour, and went for a long, sad, silent walk by the river.

By the time you returned to your attorney's office, you were deeply, deeply angry at every living soul at Farmington Hospital who saw what was happening there, even Dr. Wilson. How could they cover up and make excuses? How could they let this happen again and again, in the spite of the numbers and the needless deaths? How could they believe Dr. Dellahunt's self-serving stories? How could they (even Dr. Wilson) let Joshua's surgery go forward, without telling you about the meeting the night before? Why didn't one of the nurses or Dr. Wilson take you aside and tell you to get your child out of there and take him to a more skilled surgeon?

Your attorney listened to you pour out anger and incredulity and agreed. Then the attorney softly and wisely said, "We can't bring Joshua back. The question is: what do you want to do now?" He went on to explain that you had a number of options: You could make an appointment to see the General Counsel or the CEO or any other official at Farmington Hospital, to present them with what you had learned, and ask for an explanation. You could expose the story to the newspapers. You could begin an effort to connect with parents of other babies or children who died after heart surgery at Farmington Hospital, through a news story, town bulletin boards, doctor's offices, or social media and the internet to try to understand the magnitude of the problem and find any patterns.

"One option," the attorney explained, "is to immediately file a lawsuit for medical malpractice. We know there appears to have been malpractice by the hospital and its officials, and by Dr. Dellahunt, so they would be named directly in the suit. Depending upon the evidence we discover, and on your feelings, we might also individually name Dr. Wilson, other individuals in the surgical team and various nurses. Under Ohio law, we must file a medical malpractice suit within a year of the time we knew or should have known of the malpractice. To the extent that the problem is one of negligent credentialling – allowing doctors to begin performing surgery or continuing to perform surgery for which they were not qualified – we probably have two years. There would be some controversy over when we "should have known" but, to play it safe, I'd suggest filing within the next few months, before the first anniversary of Joshua's death."

"Another option," the attorney continued, "is for me to write a strong 'lawyer letter' to the General Counsel at Farmington Hospital, articulating your claims – why you have every right to be horrified by the level of care, blindness, and downright cover-ups at Farmington Hospital, which led to the tragic and possibly unnecessary death of your son. We could wait for their response, perhaps see if someone from the hospital will meet with us."

The attorney emphasized: "In either event, it will be important for you both to think about what you would like to see come out of this, what your interests are. You could certainly collect for any monetary losses you have incurred, but I don't know what those are. You may be able to collect damages for 'loss of enjoyment of life, loss of companionship, and pain and suffering, including psychological injury,' and punitive damages. These are subject to strict limits under our state law. However, a recent case calls into question how these limits be applied to psychological suffering. When we go forward, we can discuss this further."

You and your spouse explained that your primary interests are not money, but the loss of your son has caused you some financial hardship. While Elliot has continued in his job as Assistant Principal, you have both suffered from depression, which has also taken a toll on your marriage. You have paid for psychological counseling and some short-term marriage counseling. (Your marriage is now stronger than ever, thanks to that.) But Ellen has been unable to shake her depression. She found it impossible to walk into the elementary school building and work with children. She had taken a six month leave after Joshua was born, because you knew his medical condition would require her care. After he died, she extended the leave for an additional six months, and then returned as a "teacher's assistant" at 2/3 of her former teacher's salary. (As a teacher's assistant, if she is absent a day or two because of depression, it is not as critical to the functioning of the classroom.) Ellen has also given up all responsibilities for enrichment curriculum. Before Joshua's death, she was earning $52,000 a year - $48,000 as a first-grade teacher and $4,000 for the curriculum responsibilities. When she returned as a teacher's assistant, her salary dropped to $32,000. You do not know how long she will have to remain in that position, or whether she will be able to overcome depression enough to maintain it. Both of your psychological and other counseling has cost at least $10,000, and you are likely to require an additional $6,000 a year in counseling and prescription drugs. Of course, money cannot begin to compensate you for the loss of your child, or for your inability to enjoy life on a day-to-day basis.

Your primary goal is to make sure that nothing like this ever happens again, not to any child in Farmington, indeed, not to any child in Ohio, or anywhere. You want to make sure that incompetent surgeons are not permitted to wield a scalpel, and that doctors don't defer to their self-serving buddies when they should know it puts a child at risk. You strongly believe the hospital administrators, doctors, nurses, and everyone who knew what was going on should be punished for covering it up, hiding information, trying to silence the doctor who brought forth the data, and failing to stop Joshua's surgery on the morning of his death.

You also feel strong allegiance to the families of other children who might not have died, had they had heart surgery at City Children's Hospital instead of Farmington Hospital. Their lost children should be represented too. On the one hand, you believe it right to reach out to these families and let them know what you have learned about Dellahunt and Rasheesh and Farmington Hospital. They might want to join you in action against the hospital, and force corrective action. On the other hand, perhaps it is more ethical to spare them the information. Should you spare them terrible guilt you both suffer from now, knowing Joshua might be alive had you made different choices?

You ultimately decided to ask your attorney to draft a "lawyer letter" to the Hospital's General Counsel and the CEO and also asking for them to meet and listen to you. Your lawyer drafted a wonderful five-page letter outlining your legal claims against the hospital and its doctors, expressing your outrage at the events leading to Joshua's death, and requesting a meeting. The response received from the CEO expressed "sorrow at Joshua's unavoidable death due to a congenital heart defect" and directed all future correspondence and

discussions to the hospital's outside counsel. You were outraged; they had not even deigned to sit down with you!

You instructed your lawyer to file a lawsuit against the hospital and the surgeon, and to commence the legal process. (The lawyer agreed to take the case on a contingency basis.) The lawyer raised the option of naming Dr. Wilson as a defendant as well, given Wilson's knowledge of Dr. Dellahunt's incompetence and their failure to alert you or any other parents. You thought long and hard about this issue, finally deciding NOT to name Dr. Wilson because "Wilson was the only one who had tried to do anything." The attorney agreed that Dr. Wilson would be a good witness for your side, and that, in terms of helping parents in the future, it was important "not to punish the whistleblower, even if the whistle should have been blown sooner and louder."

You did write a letter to the local paper, even though your lawyer advised waiting because the "threat" to write a letter would give you leverage. You didn't care about leverage. You wanted to alert parents in town to the danger of taking their children for surgery at Farmington Hospital. The letter was printed, but you do not know what effect it had.

The lawsuit was formally filed. Your lawyer called you shortly thereafter to explain that they had attended an initial scheduling conference before a magistrate judge and had been asked if the Fairdays would consider mediation. Because formal discovery had not yet begun, your lawyer insisted on voluntary exchange of certain information: Joshua's full medical record, including the cardiologist's, surgeon's, anesthesiologist's, and nursing files and all charts, and records of mortality and other adverse outcomes (such as brain damage) in pediatric cardiac surgeries performed by Dr. Dellahunt. When the hospital's and Dr. Dellahunt's attorneys objected to providing records other than Joshua's, the attorney made an oral "offer of proof" to the magistrate describing Dr. Wilson's statistical study and the meeting on the evening prior to Joshua's surgery. The magistrate advised the defense attorneys to provide the requested information, because "information produced for mediation is covered by the mediation privilege, unless otherwise discoverable. Besides, counsel, let me tell you right now that if I were ruling on a formal motion for discovery in this litigation, I'd allow it."

The mediation was scheduled for a few months later, to give the parties' time to agree on a mediator and to have Joshua's medical records and other documents reviewed by independent experts. The lawyers agreed to exchange expert reports a week before the mediation. Defense counsel agreed to make sure necessary insurance carriers were put on notice, and party-representative with full settlement authority would attend the mediation.

Unfortunately, the cost of expert reports and the mediator are expensive, and not covered in the contingency fee arrangement. Both sets of your parents (Joshua's grandparents) agreed to lend you the funds needed to cover these costs.

You gave your attorney permission to select whichever mediator they thought best: "as long as he or she is fair and honest and not a buddy of anyone at Farmington Hospital." You were happy to see the mediator selected was from the larger City, with excellent credentials and a great deal of experience.

Last week, your attorney sent you both sides' expert reports. Not surprisingly, the defense expert, a semi-retired cardiologist from Columbus, reviewed only Joshua's medical record. He concluded that Joshua's was a difficult TGA defect, with a seriously enlarged hole between the heart's chambers, and his heart muscle appeared to have been in weakened condition prior to surgery. The expert concluded there was no evidence of surgical technique that fell below the standard of care.

The experts retained by your attorney, a pediatric cardiologist and a surgeon from Harvard Medical School and Children's Hospital in Boston, agreed that TGA is a serious heart defect and that Joshua's case was not simple. However, they observed that Joshua's TGA was not worse than most others, which are repaired in the Arterial Switch surgery by experienced surgeons. They reviewed Joshua's vital signs and test results from doctor's visits in the months prior to surgery and on the morning of his admission. They disagreed with the assertion that Joshua was in a "weakened condition" prior to surgery, though they noted that waiting 6 ½ months for the Arterial Switch is a bit long and can take its toll on the patient. They also disagreed with Dr. Dellahunt's notation of Joshua being "pink" and having gone through surgery well, based upon his troubling vital signs in the ICU immediately after surgery. Finally, your experts dismissed Dellahunt's assertion that the cardiologist's reports and tests had missed subtle aspects of Joshua's heart defect, making them unforeseeable. "Dr. Dellahunt may not have studied the reports or the ultrasound pictures carefully enough, but to an experienced reader of such documents, all the necessary information was present." Finally, the surgeon was particularly troubled by the excessive length of the surgery – 7 hours under general anesthesia in the operating theater and 6 ½ hours on the heart-lung machine. He asserted the surgery's duration indicates lack of expertise by the surgeon or surgical team, and "falls below the current standard of care" barring unforeseeable or unusual characteristics of the TGA defect.

Your attorney called you to discuss the experts' reports and suggested you think carefully about your interests prior to the mediation. He emphasized that mediation is an informal process and may yield creative remedies or solutions that not possible with a court verdict.

The attorney also explained that, as a named party, Dr. Dellahunt would be present. The attorney asked you to think about whether you would be comfortable being in the same room with Dr. Dellahunt. If you would not feel comfortable, the attorney would want to let the mediator know in advance. The attorney also asked to meet with you a few days before the mediation, to talk about how you could participate most effectively in the process.

Prepare to participate in the mediation, scheduled to take place soon. You should meet with your attorney at least once prior to the mediation.