

PRECIS

This appeal arises from a claim in medical negligence concerning the birth of Aeden Balwah on 19 May 2002. Aeden suffers from cerebral palsy and claims that it was caused by a hypoxic-ischaemic brain injury sustained prior to birth.

At trial, a central issue became the timing of any such injury, and whether it occurred during the intrapartum period of labour and delivery. The trial judge found that Dr Marwan Abdulla and Surgi-Med Clinic Company Limited had breached their duties but dismissed the claim on the basis that the injury could not have occurred during the intrapartum period.

The Court of Appeal allowed Aeden's appeal against Dr Abdulla but dismissed it against Surgi-Med. It found that the trial judge was wrong not to hold Dr Abdulla to his pleaded admissions as to the time labour began; and if labour had begun at the pleaded time, the injury could have occurred during labour. The Court of Appeal concluded that causation was established and entered judgment against Dr Abdulla.

There are now joined appeals before the Board: Dr Abdulla appeals against the finding of liability; Aeden appeals the dismissal of the claim against Surgi-Med; and Surgi-Med cross-appeals on the same substantive grounds as Dr Abdulla.

The issues include: (i) whether the Court of Appeal erred in reversing the trial judge's finding as to the time of Dr Abdulla's arrival; (ii) whether, on that basis, it was correct to conclude that the injury occurred during the intrapartum period and that causation was established; and (iii) whether any finding of liability should also apply to Surgi-Med.

PROCEDURAL CHRONOLOGY

NO.	DESCRIPTION OF DOCUMENT	DATE FILED
TRIAL COURT CV 2013-01909		
1	Claim Form / Statement of Case	3 rd May 2013
2	Joint Defence	25 th Sept 2013
3	Claimant's Reply to the Defence	20 th Dec 2013
4	Notice of Change of Attorney on behalf of the Third Defendant	
5	Notice of Application to Adduce Claimants' Expert Reports of: A. Dr Wellesley St Clair Forbes B. Dr Rotimi Jaiyesimi	13 th July 2015
6	Claimant's Statement of Issues on Liability	15 th Sept 2015
7	First and Second Defendant's Statement of Issues on Liability	15 th Sept 2015
8	Notice of Change of Attorney on behalf of the Second Defendant	17 th March 2017
9	Claimant's Notice of Application to Amend the Statement of Case	26 th Oct 2015
10	Filed Amended Statement of Case	26 th Feb 2016
11	Filed Amended Defence of the First Defendant	31 st March 2016
12	Filed Amended Defence of the Second Defendant	4 th April 2016
13	Second Defendant's Statement of Issues on Liability	4 th April 2016
14	Claimant's Reply to the Amended Defence of the First Defendant	31 st May 2016
15	Claimant's Reply to the Amended Defence of the Second Defendant	31 st May 2016
16	Claimant's Evidential Objections – Witness Statements and Restriction of Experts	7 th Dec 2016

17	Second Defendant's Evidential Objections	20 th April 2017
18	Notice of Change of Attorney – First Defendant	15 th May 2017
19	Claimant's Notice of Discontinuance against the Third Defendant	16 th May 2017
20	First Defendant's Evidential Objections	23 rd May 2017
21	Claimant's Notice of Application to Amend the Reply to the Amended Defence of the Second Defendant	1 st June 2017
22	Claimant's Notice of Application to Adduce the Second Supplemental Expert Report of Dr Wellesley St Clair Forbes	6 th June 2017
23	Claimant's Notice of Application for Specific Disclosure	7 th June 2017
24	Decision of Ramcharan J re. Claimant's Applications to Amend Reply and to Adduce Expert Report	22 nd Sept 2017
COURT OF APPEAL - PROCEDURAL APPEAL S302-2017		
25	Appellant's (Second Defendant) Notice of Appeal	2 nd Oct 2017
26	Filed Submissions of the Appellant (Second Defendant)	31 st Jan 2018
27	Hearing and Decision of Procedural Appeal	5 th Feb 2018
TRIAL COURT CV 2013 – 01909		
28	Claimant's Notice of Application for Specific Disclosure – Medical Records	2 nd July 2018
29	Affidavit of Jared Jagroo for the Second Defendant in Response	10 th Aug 2018
30	Order of Ramcharan J re. Claimant's Application for Specific Disclosure and Restriction of Experts	11 th Jan 2019
31	First Defendant's Notice in Compliance with order dated 11 th Jan 2019	28 th Feb 2019
TRIAL STARTS: 14TH MARCH 2019		
32	First Defendant's Re-Amended Defence	21 st March 2019

33	Second Defendant's Re-Amended Defence	21 st March 2019
34	Claimant's Amended Reply to the Re-Amended Defence of the Second Defendant	21 st March 2019
TRIAL ENDS: 27TH MARCH 2019		
35	Oral Decision of Ramcharan J	17 th Jan 2020
36	Order for Costs of Ramcharan J	26 th March 2020
37	Draft Written Judgement of Ramcharan J	8 th Jan 2021
38	Written Judgment of Ramcharan J	4 th September 2021
CIVIL APPEAL S071-2020		
38	Appellant's (Claimant's) Notice of Appeal (Substantive) S071-2020	27 th Feb 2020
39	Second Defendant's Notice of Appeal (Cost Only) S117-2020	16 th June 2020
40	First Defendant's Notice of Appeal (Cost Only) S120-2020	23 rd June 2020
41	Appellant's (Claimant's) Amended Notice of Appeal (Substantive and Cost) S071-2020	29 th June 2020
42	Filed Record of Appeal	29 th March 2021
43	Appellant's Submissions	28 th June 2021
44	First Respondent's (First Defendant's) Submissions in Reply	30 th Aug 2021
45	Appellant's Submissions in Response to the First Respondent's Reply	30 th June 2022
46	Second Respondent's (Second Defendant's) Submissions in Reply	13 th Sept 2022
47	Appellant's Submissions in Response to the Second Respondent's Reply	31 st Jan 2023
48	First Respondent's Speaking Note	7 th July 2023

49	Appellant's Speaking Note	14 th July 2023
50	Substantive Appeal S071-2020 before the Court of Appeal The Honorable Justices of Appeal: Mme. Mira Dean-Amorer, Mr. Vasheist Kokaram, and Mr. Malcolm Holdip	21 st July 2023
51	Judgement of the Court of Appeal S071-2020	30 th July 2024
52	Decision of the Court of Appeal Refusing Appellant's Motion for Conditional Leave	14 th May 2025

JCPC: 2025/0063

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

BETWEEN:

DR MARWAN AHMAD ALSAYED ABDULLA

Appellant

- v -

AEDEN BALWAH

(By Shelly-Ann Balwah His Mother and Next Friend)

- v -

SURGI-MED CLINIC COMPANY LIMITED

Respondents

JCPC: 2025/0065

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

BETWEEN:

AEDEN BALWAH

(By Shelly-Ann Balwah His Mother and Next Friend)

Appellant/Cross-Respondent

- v -

SURGI-MED CLINIC COMPANY LIMITED

First Respondent/Cross-Appellant

DR MARWAN AHMAD ALSAYED ABDULLA

Second Respondent

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STATEMENT OF FACTS AND ISSUES

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1. This Statement of Fact and Issues is structured as follows:
 - i. The Parties
 - ii. Introduction
 - iii. The Medical Background
 - iv. The Claim
 - v. The Interlocutory Appeal on the Pleadings and Evidence
 - vi. The Proceedings at First Instance
 - vii. The Proceedings before the Court of Appeal
 - viii. Issues for the Board to determine

THE PARTIES

2. **Aeden Balwah ('the Appellant/Cross-Respondent in JCPC/2025/0065 and the Respondent in JCPC/2025/0063')**, the Claimant/Appellant in the proceedings below, was born on the 19th May 2002 and suffers from cerebral palsy resulting from a brain injury which occurred prior to his birth. He is represented by his mother and next friend, Shelly-Ann Balwah ('Mrs. Balwah').
3. **Dr. Marwan Ahmad Alsayed Abdulla ('the Appellant in JCPC/2025/0063')**, the Second Defendant/Second Respondent in the proceedings below, is a general practitioner who was contracted to provide obstetric care to Mrs. Balwah and who delivered Aeden.
4. **Surgi-Med Clinic Co. Limited ('the Respondent/Cross-Appellant in JCPC/2025/0065')**, the First Defendant/First Respondent in the proceedings below, owns Surgi-Med Clinic, the private hospital where Aeden was born.

5. For clarity and ease of reference, the parties are referred to by their names rather than their roles in the joined appeals i.e., ‘Aeden’, ‘Dr Abdulla’, and ‘Surgi-Med’.

INTRODUCTION

6. Aeden has cerebral palsy. Experts for the parties agreed that the most likely of a number of possible causes of Aeden’s cerebral palsy was a hypoxic-ischemic brain injury suffered at some stage before his birth. It was Aeden’s case that the hypoxia was suffered shortly before birth, during labour. Dr Abdulla and Surgi-Med both disputed the likely cause of the hypoxia and its timing.
7. The trial Judge found that Dr Abdulla had a duty to (i) ensure that he competently delivered Aeden and (ii) not do anything that would cause Aeden and his mother any avoidable harm [EB/75/130], and that Surgi-Med had a duty to record and monitor Aeden’s condition and that of his mother during their stay (from the time of admission to the time of discharge) [EB/74/129].
8. He further found that both parties had breached their respective duties as follows: Surgi-Med in failing to keep proper records in certain respects and in failing to monitor Aeden’s heart rate between 8pm and 12:30am on the night of the delivery [EB/75/131]; Dr Abdulla in administering an excessive dose of misoprostol to induce delivery [EB/76/133]. The trial Judge further found that a breach of these duties would only become relevant if the event causing

injury was found to have occurred during the intrapartum period of labour and delivery, and not before [EB/77/136].

9. The trial Judge said *“of paramount importance in this case is the time of the arrival of the 2nd Defendant at the 1st Defendant’s facility on the morning of the 19th day of May. The half hour difference between the parties is critical in whether enough time would have elapsed, the hour or more of damage required to have caused the PPHI due to an intrapartum event”* [EB/79/139]. The Court of Appeal recorded that *“During the course of the trial, the parties all agreed to a ‘qualifying factor’ in determining if there was negligence or not”* [EB/109/97].
10. Aeden’s position is that the trial judge’s finding on the time of Dr Abdulla’s arrival determined whether the hypoxic injury occurred during the intrapartum period; Dr Abdulla’s and Surgi-Med’s position is that the finding determined only whether the hypoxic injury could have occurred during that period.

MEDICAL BACKGROUND

11. In 2001, Mrs. Balwah became pregnant. Dr Abdulla provided antenatal care for the duration of her pregnancy, which progressed normally and was uneventful. On the advice of Dr Abdulla, Mrs. Balwah was admitted to Surgi-Med on the evening of the 18th May 2002 to undergo an induction of labour as she was one week post-date.

12. At 6:15 a.m. on the 19th May 2002, Aeden was born following an emergency Lower Segment Caesarean Section ('LSCS').¹

13. Aeden was attended to by Dr Raymond Aguilar, Neonatal Pediatrician. Evidence from Dr Aguilar's record of Aeden's condition at birth showed:²

13.1 7 lbs. birth weight;

13.2 Resuscitation required using suction and Ambu Bag;

13.3 Mild Birth Asphyxia;

13.4 Apgar scores of 3 at 1 minute, 5 at 5 minutes and 10 at 10 minutes;

13.5 Limp Tone;

13.6 Scattered cry; and

13.7 Staring ++.

Aeden was transferred to an incubator and given supplemental oxygen, intravenous antibiotics and glucose. At 7:30 a.m. and at 1:00 p.m. he was observed to have twitching of the fingers and toes.³

14. At 6:00 p.m., Dr Aguilar informed Aeden's parents that he needed to be transferred to the Neonatal Intensive Care Unit ('NICU') at the San Fernando General Hospital ('SFGH') for further monitoring and treatment. The SFGH medical records show that they were informed at 6:25 p.m. of Aeden's imminent transfer and that he had experienced 3 episodes of fits before transfer.⁴

¹ [EB/33/6] / [EB/95/32]

² [EB/453-454]

³ [EB/457]

⁴ [EB/481]

15. At 7:00 p.m., Aeden was transferred to the NICU accompanied by a nurse from Surgi-Med and a transfer note from Dr Aguilar. The transfer note recorded the diagnoses of ⁵:
- 15.1 Birth Asphyxia;
 - 15.2 Neonatal Seizures;
 - 15.3 Hypotonia; and
 - 15.4 LSCS for failed induction and Prolonged Second Stage.
16. The SFGH records also show that Aeden was diagnosed with: ⁶
- 16.1 Perinatal Hypoxia;
 - 16.2 Hypoxic Ischemic Encephalopathy ('HIE') Grade 2; and
 - 16.3 Neonatal Seizures.
17. Aeden remained in the NICU for 9 days where his condition was listed as serious before becoming stable. During this time, he continued to suffer from distressed breathing requiring assisted ventilation, seizures requiring anti-convulsant medications, increased muscular tone, weak MORO reflexes and cyanosis. A lumbar puncture was done that ruled out any infections.
18. During the first months of life, Aeden continued to show a persistent head lag, a slowly growing head circumference despite a normal sized head at birth. He also had motor deficits, abnormal tone and an eye squint. He experienced twitching of the extremities and an increased startle response⁷. A CT scan done at day 19 of life was contemporaneously reported as normal

⁵ [EB/471-473]

⁶ [EB/479,482]

⁷ Medical Report of SFGH NICU: [EB/711-715]

by local radiologists, but subsequently reviewed and agreed by the parties' trial experts to show abnormalities to the brain. Aeden was subsequently diagnosed with:

- 18.1 Spastic Cerebral Palsy;
- 18.2 Developmental Delays;
- 18.3 Microcephaly; and
- 18.4 Seizure Disorder.

PROCEEDINGS BEFORE THE HIGH COURT

19. On the 3rd May 2013, Aeden filed a claim for medical negligence against Surgi-Med, Dr Abdulla and Dr Aguilar. It was alleged that Aeden suffered permanent brain damage from a Prolonged Partial Hypoxia Ischemia ('PPHI'), which went undetected due to inadequate foetal heart rate ('FHR') monitoring. It was further alleged that this hypoxia-ischemia was because of either:

- 19.1 An overdose of the drug Misoprostol which caused rapid labour to occur; and/or
- 19.2 The general mismanagement of labour and delivery including:
 - 19.2.1 A delay in delivery;
 - 19.2.2 A prolonged second stage of labour; and/or
 - 19.2.3 Impaction of the fetal head during attempts at vaginal delivery.

20. The claim against Dr Aguilar was discontinued in 2017.

21. At the start of trial in March 2019, Dr Abdulla's and Surgi-Med's Amended Defences admitted the following timeline:

- 21.1 At 8:00 p.m. Dr Abdulla administered 200mcg vaginal Misoprostol, checked maternal vitals and monitored the FHR, before leaving the premises⁸;
- 21.2 There was no FHR monitoring done between 8:00 p.m. - 12:30 a.m. (270 mins)⁹;
- 21.3 Mrs. Balwah's membranes ruptured spontaneously at 3:00 a.m. (this was admitted by Surgi-Med but not by Dr Abdulla, who was not present at the time)¹⁰;
- 21.4 Dr Abdulla arrived at approximately 4:00 a.m. and Mrs. Balwah was taken to the delivery room¹¹; and
- 21.5 Vaginal delivery was attempted for 1 hour without progress between 4:00 a.m. – 5:00 a.m.¹².

22. Aeden further alleged that the midwife's records show the FHR being monitored 6 times between 12:30 a.m. – 4:30 a.m., and no record of the FHR being monitored for 105 mins before birth between 4:30 a.m. – 6:15 a.m. This claim was denied by both Surgi-Med and Dr Abdulla.

⁸ Aeden's AmSOC [EB/226/18a], AmDef of Surgi-Med [EB/260/15a], AmDef of Dr Abdulla [EB/277/18]

⁹ Aeden's AmSOC [EB/226/18c], AmDef of Surgi-Med [EB/260/15c], AmDef of Dr Abdulla [EB/278/19]

¹⁰ Aeden's AmSOC [EB/226/18e], AmDef of Surgi-Med [EB/260/15e], AmDef of Dr Abdulla [EB/278/21]

¹¹ Aeden's AmSOC [EB/227/18g], AmDef of Surgi-Med [EB/260/15g], AmDef of Dr Abdulla [EB/278/22]

¹² Aeden's AmSOC [EB/227/18h], AmDef of Surgi-Med [EB/260/15g], AmDef of Dr Abdulla [EB/278/22]

23. As to the relevant timings, Dr Abdulla further averred:

23.1 That he was summoned when Mrs. Balwah's cervix was fully dilated¹³; and

23.2 That Mrs. Balwah's cervix was fully dilated at 4:30 a.m.¹⁴.

24. **Pleaded Particulars of Negligence against Dr Abdulla included *inter alia* that he:**

24.1 Administered an overdose of Misoprostol which had increased the risk of causing rapid labour and/or intrapartum hypoxia¹⁵;

24.2 Failed to allow the fetal head to descend before active pushing was commenced during the second stage of labour, causing the fetal head to be impacted with the pelvic bone¹⁶;

24.3 Failed to diagnose fetal distress during labour and delivery¹⁷;

24.4 Failed to monitor the FHR adequately in the 105 mins before birth¹⁸; and

24.5 Failed to determine at an appropriate time that a LSCS was indicated¹⁹.

25. **Pleaded Particulars of Negligence against Surgi-Med included *inter alia* that they:**

¹³ AmDef of Dr Abdulla [EB/293/34.23]

¹⁴ AmDef of Dr Abdulla [EB/292/34.21]

¹⁵ AmSoC of Aeden [EB/232-234/i]

¹⁶ AmSoC of Aeden [EB/237/xv]

¹⁷ AmSoC of Aeden [EB/236/x]

¹⁸ AmSoC of Aeden [EB/235/viii]

¹⁹ AmSoC of Aeden [EB/236/xii]

- 25.1 Failed to implement and follow standard guidelines for monitoring Aeden during the induction and delivery²⁰;
 - 25.2 Failed to monitor the FHR in the hours prior to delivery²¹; and
 - 25.3 Failed to adhere to the standard practices of recording and documentation of all events²².
26. Both Surgi-Med and Dr Abdulla denied all allegations of negligence against them²³.

THE INTERLOCUTORY APPEAL ON THE PLEADINGS AND EVIDENCE

27. The trial was first listed for June 2017. Four days before its start, Aeden's neuroradiologist reviewed the day 19 CT scan and concluded that the contemporaneous report of a normal scan was erroneous. Aeden applied to (i) amend his pleadings to deny normality, and (ii) adduce fresh expert evidence that the scan was abnormal.
28. Dr Abdulla and Surgi-Med opposed the applications and the trial dates were vacated. In September 2017, the trial judge allowed both applications. Dr Abdulla appealed this decision and the matter was heard before the Court of Appeal presided over by Chief Justice Ivor Archie in February 2018.

²⁰ AmSoC of Aeden [EB/231/ii]

²¹ AmSoC of Aeden [EB/231/iv]

²² AmSoC of Aeden [EB/232/vii]

²³ AmDef of Surgi-Med [EB/270/19], AmDef of Dr Abdulla [EB/296/38]

29. The Court of Appeal allowed the appeal, refusing the applications.²⁴.

PROCEEDINGS AT FIRST INSTANCE - THE TRIAL

30. The trial of the matter was heard over 10 days between 14th – 27th March 2019.

31. During cross-examination of Aeden’s factual and expert witnesses, both Surgi-Med and Dr Abdulla relied on different times for the occurrence of key events that were in conflict with their pleaded admissions. Notwithstanding objections made by counsel for Aeden, Dr Michael Powers KC, the trial Judge allowed the cross examination on the basis of the different times. Specifically, there was a 30-minute deviation in respect of each of the three timed events (‘the three timings’):

31.1 The time that Mrs. Balwah’s membranes ruptured was indicated as 3:30 a.m. as opposed to the admitted time (in the case of Surgi-Med) of 3:00 a.m.²⁵;

31.2 The time of Dr Abdulla’s arrival at Surgi-Med was given as 4:30 a.m. as opposed to the admitted time of approximately 4:00 a.m.²⁶; and

31.3 The time that 1 hour of attempts at vaginal delivery was indicated as 4:30 a.m. – 5:30 a.m. as opposed to the admitted period of 4:00 a.m. to 5:00 p.m.²⁷.

²⁴ [EB/147-162]

²⁵ [EB/1150-1153]

²⁶ [EB/1150-1153]

²⁷ [EB/1150-1153], [EB/1160]

32. On the 6th day of trial, Surgi-Med re-amended their pleadings to deny both the time of Dr Abdulla's arrival and the time that 1 hour of attempts at vaginal delivery took place. Surgi-Med maintained their pleaded acceptance of the time of Mrs. Balwah's membrane rupture as 3:00 a.m.²⁸
33. Dr Abdulla did not re-amend his pleadings with respect to the three timings.
34. On 17th January 2020 in an oral decision and via a written judgment delivered on the 8th January 2021, the trial Judge dismissed Aeden's case against both Surgi-Med and Dr Abdulla.
35. Key findings of the trial judge were that:
- 35.1 Dr Abdulla's evidence, insofar as it related to matters not in his notes, was not reliable, as he had admitted that he had no independent recollection of events **[EB/80/142]**;
 - 35.2 Both Dr Abdulla and Surgi-Med had duties of care to Aeden **[EB/74/129-130]**, specifically;
 - 35.2.1 Surgi-Med had a duty to record all the events and the condition of Aeden and his mother; and
 - 35.2.2 Dr Abdulla had a duty to ensure that he competently delivered Aeden and not to do anything that would cause Aeden or his mother avoidable harm.
 - 35.3 Both Dr Abdulla and Surgi-Med had breached their respective duties of care **[EB/75/131-133]**, specifically:

²⁸ **ReAmDef of Surgi-Med [EB/338/15g]**

- 35.3.1 Surgi-Med had no record of the FHR between 8:00pm and 12:30am, no record of Aeden's discharge and very little record of his condition after birth; and
- 35.3.2 Dr Abdulla had administered an overdose of Misoprostol.
- 35.4 The breaches of duty of both Dr Abdulla and Surgi-Med could only have caused damage if fetal distress and the injurious event occurred during the delivery **[EB/77/136]**;
- 35.5 The time of Dr Abdulla's arrival i.e., 4:00 a.m. (as pleaded by Dr Abdulla) or 4:30 a.m. was of paramount importance and critical in determining whether enough time had elapsed for the hour or more of damage caused by the PPHI, to have been due to an intrapartum event **[EB/79/139]**;
- 35.6 The trial judge drew the conclusion that vaginal delivery began at 4:30 a.m. and not 4:00 a.m. **[EB/81/145]**; and
- 35.7 Per an agreement between the parties, if the injurious event was found by the trial judge not to have occurred during the intrapartum period it could not have been caused by the breaches of duty of both Dr Abdulla and Surgi-Med **[EB/82/146]** in the intrapartum period.

36. On 26th March 2020, the trial judge made an order for costs in the matter.

PROCEEDINGS BEFORE THE COURT OF APPEAL

37. On 27th February 2020, Aeden filed an appeal against the trial Judge's substantive decision.

38. On 29th June 2020, Aeden filed an Amended Notice of Appeal against both the substantive decision and the order for costs. On the 16th June 2020 and the 23rd June 2020, Dr Abdulla and Surgi-Med, respectively, filed Notices of Appeal against the costs order only. The appeal against costs by all three parties has not been determined to date and remains stayed pending the appeals on the substantive issues of liability.
39. On 21st July 2023, Aeden's substantive appeal was heard at the Court of Appeal before the Honourable Justices of Appeal Mme. Mira Dean-Armorer, Mr. Vasheist Kokaram and Mr. Malcolm Holdip.
40. On 30th July 2024, the Court of Appeal delivered their unanimous judgment. Aeden's appeal against Dr Abdulla was granted, whilst his appeal against Surgi-Med was dismissed.
41. Key findings of the Court of Appeal were that:
- 41.1 There was no appeal against the findings of the trial judge that both Dr Abdulla and Surgi-Med owed a duty of care and had breached their respective duties **[EB/125/163]**;
 - 41.2 Surgi-Med's failure to monitor the FHR between 8:00 p.m. - 12:30 a.m. did not cause Aeden's injuries and the appeal against Surgi-Med was dismissed **[EB/125/165, 167]**;
 - 41.3 The trial judge erred and was plainly wrong in finding that vaginal delivery began at 4:30 a.m. for three reasons: first, he was not qualified to infer without expert evidence that Mrs. Balwah would not be checked for contractions during second stage labour **[EB/128 /179]**; second, he failed to take into account the letter of Dr Aguilar,

who wrote that the second stage was prolonged **[EB/128/180]**; third, he erred in not holding Dr Abdulla to his pleaded admission that he arrived at 4:00 a.m., given his finding that there was no clear evidence to the contrary **[EB/129/181-182]**;

41.4 The second stage of labour started at 4:00 a.m., which implied, as agreed by the parties, that second stage of labour lasted from 4:00 a.m. to 5:30 a.m. and was sufficient for the condition of PPHI to bring about the brain damage suffered by Aeden **[EB/129/183]**;

41.5 The inference, as agreed between the parties, was that this time marked the onset of the second stage of labour which was allowed to continue until 5:30 a.m. in excess of an hour and allowing adequate time for brain damage to have occurred; and

41.6 The inescapable conclusion was that Aeden should have succeeded in establishing causation **[EB/130/186]**.

42. On 31st October 2025, both Dr Abdulla and Aeden were granted permission to appeal by the JCPC.

43. On 23rd February 2026, Surgi-Med was granted permission to appeal on the same substantive grounds as those put forth by Dr Abdulla.

ISSUES FOR THE BOARD TO DETERMINE

44. Did the Court of Appeal err in reversing the trial judge's factual finding of Dr Abdulla's time of arrival?

45. If the Court of Appeal was correct to find that the second stage of labour began at 4:00 a.m., did it err in entering judgment against Dr Abdulla, and in particular, did it err in:
- 45.1 finding as a result, that brain damage occurred in the second stage of labour; and
 - 45.2 finding as a result, that the elements of negligence and causation were established?
46. If the Court of Appeal was correct to find that Dr Abdulla was liable for Aeden’s injuries, should the finding of liability have applied to Surgi-Med on the same basis?

Dr Michael Powers KC

Rajiv Persad SC

Ricardo Williams

Robert Strang

Kiel Taklalsingh

Stefan Ramkissoon

Benjamin Browne KC

Kemrajh Harrikissoon SC

Narad Harrikissoon

Andre Sinanan

12 May 2026