

[Verdicts & Settlements]

Infant born with cognitive delays, cerebral palsy

Plaintiff asserts earlier admission would have prevented birth defects

\$1.625 million

In a confidential medical-malpractice case, the plaintiff mother filed suit against defendant hospital for plaintiff minor's cognitive delays and deficits and cerebral palsy at birth.

The plaintiff treated prenatally with a midwife prenatal clinic, attended appointments regularly, and was noted to have a family history significant for hypertension. On Oct. 20, 1998, she called her provider with complaints of swelling of both feet and ankles, a common finding during late pregnancy, and was told to elevate her feet.

The next day, she called her prenatal provider with complaints of decreased fetal movement since the night before, severe edema in feet and ankles, dizziness and blurred vision.

She was advised to go to labor and delivery at defendant hospital to be evaluated and to rule out preeclampsia. The diagnosis of preeclampsia requires high blood pressure (140/90) and protein in the urine.

Plaintiff presented to defendant hospital for evaluation. The hospital records note only complaints of swollen feet and blurred vision. She had normal blood pressure and urine protein levels, and preeclampsia was ruled out.

A nonstress test was performed by the hospital in-house OB/GYN physician. It was initially nonreactive, but then became reactive (reassuring). A biophysical profile also was performed, and it revealed a score of 8/8 (very reassuring).

Test results were reported to plaintiff's certified nurse-midwife prenatal provider, who did not come to the hospital. She was discharged home via telephone order from the



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prenatal provider with instructions to perform fetal kick counts to monitor fetal movement.

She also was sent home on preeclampsia precautions.

On Nov. 3, approximately 36 weeks into the pregnancy, plaintiff called in the late afternoon with complaints of contractions since 11 a.m., low back pain, headache, and swollen feet and ankles. She was advised to go to labor and delivery at defendant hospital for evaluation.

Plaintiff presented to defendant hospital more than an hour later. Blood pressure was severely elevated and urine protein was 3+. Fetal heart tones were nonreassuring.

The nurse contacted the prenatal care provider OB/GYN, who was completing another delivery. Plaintiff-minor was not delivered until one hour and 14 minutes later by emergency C-section.

Upon delivery, a mild placental abruption was noted. Plaintiff-minor had low Apgars numbers, decreased respiratory effort, and low cord blood gases.

The initial diagnosis was birth depression and hypoxic ischemic encephalopathy. Subsequent head imaging, however, showed white matter brain damage (periventricular leukomalacia), which typically occurs between 28-32 weeks' gestation.

Plaintiff-minor suffers from cognitive delays and deficits, and cerebral palsy.

Plaintiff asserted that she should have

Type of action: Medical malpractice

Type of injuries: Cognitive delays and deficits, cerebral palsy

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; April 2009

Tried before: Mediation

Name of judge: Withheld

Case evaluation: \$1.5 million

Settlement amount: \$1.625 million

Most helpful experts: InFocus Research Group, Shelby Township

Attorney for plaintiff: Jesse M. Reiter, Juliana B. Sabatini

Attorney for defendant: Withheld

Key to winning: Focus grouping early in discovery

been admitted to the hospital Oct. 29 for observation, 24-hour urine testing, and continued fetal monitoring.

It was plaintiff's position that, had this been done, the blood pressure and urine protein would have been increased, and the fetal monitor tracing would have been abnormal. Delivery should then have occurred Oct. 30.

Plaintiff further asserted that on Nov. 3, delivery should have occurred sooner based on the nonreassuring fetal monitor tracing. Plaintiff also asserted that the MRI films did not show periventricular leukomalacia as reported.

Defendants contended that the injury occurred during the prenatal period (28-32 weeks) as evidenced by the head imaging that showed periventricular leukomalacia.

Therefore, sooner delivery would not have made a difference in outcome.

In addition, defendant hospital claimed that plaintiff did not have preeclampsia on Oct. 29 (as the blood pressure and urine protein levels were normal), but had reassuring fetal status, and therefore could be discharged.

The case settled for \$1.625 million, though the defendants had issues on appeal at the time.