



THE MICHIGAN TRIAL REPORTER

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Oakland County

Circuit Court — Pontiac

Premature Infant's Brain Damage Claim Settles

Case Caption:

Anonymous Mother and Anonymous Infant Son v. Anonymous Physicians and Anonymous Hospital

Settlement: \$1,550,000

Judge: Withheld

Settlement Date: 11/6/2007

Attorneys:

Plaintiff: Jesse M. Reiter, Bloomfield Hills
Juliana B. Sabatini, Bloomfield Hills

Defendant: Withheld

Facts: A premature infant suffered from cerebral palsy, which plaintiff mother blamed on excessive ventilation during the first few days of his life. Defendants denied the allegations, but agreed to settle the case for \$1,550,000 prior to trial.

Plaintiff mother was 17 years old when she began receiving prenatal care from defendants in October 1995. Her estimated due date was May 10, 1996. On January 10, 1996 at 21 weeks gestation, she complained of some vaginal spotting. Plaintiff was hospitalized overnight and treated for a urinary tract infection. On March 16, 1996, at 31 weeks gestation, plaintiff mother presented to the hospital with complaints of contractions. Within a few hours, she delivered a baby boy vaginally. Maternal lab tests revealed a positive marijuana screen and the baby tested positive for carbon monoxide, suggestive of maternal cigarette smoking. Within a few minutes of delivery, the child experienced difficulty breathing due to his prematurity. He was diagnosed with respiratory distress syndrome, intubated and transferred to a neonatal intensive care unit at another hospital. He remained hospitalized for one month.

Evaluation: None

Case Number: WITHHELD

Editor's Notes: For confidentiality reasons, the court location was chosen at random.

Physical and neurological examinations during the hospital stay were normal. During the first four days of hospitalization, he was ventilated and his carbon dioxide levels became low, but his other blood gases were normal. Around the fourth day, plaintiff infant developed bilateral pneumothoraces (holes in the lungs), which were successfully treated. Four head ultrasounds performed during the hospitalization were read as normal. However, subsequent review of those films by a neuroradiologist expert showed an evolving periventricular leukomalacia (white matter brain damage commonly seen in premature babies) which occurred while in the hospital. Plaintiff infant was diagnosed with cerebral palsy at 1 year of age and subsequently was found to have a low to normal IQ. He was 11 years old by the date of settlement.

Plaintiff mother alleged the child was excessively ventilated, causing his carbon dioxide levels to become abnormally low during the first 24 to 36 hours of life. Plaintiff mother also claimed the ventilator should have been weaned much more quickly, which would have avoided this injury. Plaintiff mother maintained that the child's genetic testing was normal.

Defendant physicians and hospital contended that three to four days of ventilation was not too long and, if the child was weaned too quickly, injury would have resulted from lack of oxygen. They pointed out that blood gasses were normal and plaintiff minor was weaned quickly from the ventilator. Defendants also argued that carbon dioxide levels were never low enough to cause brain damage. Defendants asserted that, if brain damage occurred neonatally, there should have been abnormal physical and neurological findings, but there were not. Defendants maintained that the brain damage occurred several days before birth and the neonatal course was normal and prematurity caused the bilateral pneumothoraces. Further, defendants contended the brain damage may have resulted from his premature birth and/or that plaintiff minor's condition was genetic.

Plaintiff Profile: Plaintiff was a 17 year old single female who was unemployed and the mother of plaintiff newborn male.

Alleged Injury: Excessive ventilation causing cerebral palsy and a low to normal IQ.