

Copyright (C) 2005 Pennsylvania Jury Verdict Review & Analysis

CRUZ vs. NORTHEASTERN HOSPITAL.
94-03-3396

DATE OF VERDICT/SETTLEMENT: August 3, 2000

TOPIC: MEDICAL MALPRACTICE - FAILURE TO ADEQUATELY MONITOR LABOR - FAILURE TO PERFORM TIMELY CAESAREAN SECTION - CEREBRAL EDEMA TO NEWBORN - CEREBRAL PALSY.

SUMMARY:

Result: \$10,810,000 Verdict Against Hospital Only

EXPERT WITNESSES:

Plaintiff's: [Michael Goodman](#) from Rockville, Md.: Plaintiff's obstetrician.

[Warren Cohen](#) from Nassau County, N.Y. and [Lawrence Brown](#) from Philadelphia.: Plaintiff's pediatric neurologists.

[Sandra Koffler](#) from Philadelphia.: Plaintiff's neuropsychologist.

[Lorraine Buchanon](#) from Blue Bell.: Plaintiff's life care planner.

[Mark Lukas](#) from Fort Washington, Pa.: Plaintiff's vocational expert.

[rian Sullivan](#) from Philadelphia.: Plaintiff's economist.

Defendant's: Joseph Ferroni from Philadelphia.: Defendant physicians' expert obstetrician/gynecologist.

[Leonard Graziani](#) from Philadelphia.: Defendant's pediatric neurologist.

[Lucy Rorke](#) from Philadelphia.: Defendant's neuropathologist.

[James Mattson](#) from Connecticut.: Defendant's life care planner.

ATTORNEY:

Plaintiff's: [Anne E. Pedersen](#), [J. Martin Futrell](#) and [George Badey, III](#) of Sheller, Ludwig & Badey in Philadelphia for plaintiff.

Defendant's: [Edward C. Mintzer, Jr.](#) of Rawle & Henderson in Philadelphia for defendant hospital.

[Mark R. Zolfaghari](#) of Wright, Young & McGilvery in Blue Bell for defendant physicians.

JUDGE: Carolyn Engel Temin

RANGE AMOUNT: \$5,000,000-999,999,999

STATE: Pennsylvania

COUNTY: Philadelphia County

INJURIES:

MEDICAL MALPRACTICE - FAILURE TO ADEQUATELY MONITOR LABOR - FAILURE TO PERFORM TIMELY CAESAREAN SECTION - CEREBRAL EDEMA TO NEWBORN - CEREBRAL PALSY.

FACTS:

This medical malpractice action was brought against the defendant hospital and two ob/gyns who treated the plaintiff mother prior to delivery of her son in 1992. The plaintiffs alleged that the defendants failed to adequately monitor the mother's

labor and failed to perform a timely Caesarean section, which would have prevented her son from being born with cerebral edema and resulting cerebral palsy. The defendant maintained that the plaintiff was adequately monitored and that the fetal monitoring strips showed no distress. The defense alleged that the baby's condition was linked to sepsis which presented no symptoms prior to the birth.

The evidence revealed that the plaintiff mother had been leaking fluids for several days before the birth of her son in the defendant hospital. The plaintiff mother and baby were to be monitored with a fetal heart monitor and scalp electrode while the mother was receiving Pitocin. The plaintiff alleged that the defendant hospital's nurse was inattentive to the monitoring strips when the strips showed signs of fetal distress. The plaintiff claimed monitoring of the baby ended over an hour before the Pitocin was stopped and that the hospital's nurse had attempted to cover up this fact by writing incorrect times on the fetal monitor strips. The plaintiff's son was born vaginally, full term with APGAR scores of 3 at one minute and 4 at 5 minutes. He exhibited seizure behavior within twelve hours of birth.

The plaintiffs' medical experts testified that the plaintiff mother's elevated temperature four hours before the birth and fluid leak of several days duration clearly signaled an infection. The plaintiff contended that the fetal monitoring strips showed fetal distress which was not appreciated by the defendants. The plaintiff's expert ob/gyn pointed to the monitoring strips and opined that they showed severe variable decelerations. The plaintiff's experts opined that a Caesarean section, performed three hours before the birth, would have prevented the injuries sustained by the infant.

The plaintiffs' experts testified that the minor plaintiff suffers a permanent hypoxic brain injury and cerebral palsy. He will never be able to live independently and will be required to reside in an extended care facility or group home for the remainder of his life, according to the plaintiff's claims. The plaintiff's economic expert estimated the plaintiffs' total economic damages to be more than \$8 million. The defendants argued that the plaintiff mother was adequately monitored and that fetal monitoring strips were available until approximately 13 minutes before the birth and never indicated fetal distress. The defendants' experts testified that the baby did not suffer an hypoxic injury. The defense maintained that the child's injuries resulted from sepsis which presented no signs nor symptoms which would have allowed its diagnosis prior to the birth. The defense also argued that the baby could have suffered kernicterus (a form of jaundice which can be fatal if untreated) after his transfer to another hospital. The defendants agreed that the minor plaintiff will require long-term care, but contested the figures set forth by the plaintiff's economist.

After deliberating for seven hours, the jury found that the defendant doctors were not negligent. The jury found the defendant hospital 100% negligent and awarded the plaintiffs \$10,810,000. Post-trial motions are pending.

COMMENTARY:

The magnitude of this award is grounded in the severe, debilitating condition of the young plaintiff, age eight at trial. It was virtually uncontested that he will never attain independence and will require daily living assistance for the remainder of his life. As is so often the case in claims involving the alleged failure to perform a timely Caesarean Section, the fetal monitoring strips played a major role at trial. The defendants' ob/gyn insisted that at no time did the strips indicate fetal distress and there was nothing to alert the doctors as to any possible fetal compromise. The plaintiff's expert presented an entirely different interpretation of the strips, stating that severe, variable decelerations were obvious. The defense pointed to evidence that the fetal monitor strips showed monitoring up until 13 minutes before the birth. However, the plaintiff argued that the hand written times on the monitoring strips were inconsistent with the length of the strips. The plaintiff contended that the times were subsequently placed on the strips (which record a constant display) in an attempt to demonstrate a longer period of monitoring than actually occurred. In post-trial conversations with jurors, some indicated a belief that the defendant's nurses were not properly advising the

(Publication page references are not available for this document.)

physicians of the plaintiff's condition. This line of reasoning may explain the finding of 100% liability against the defendant hospital. The defendants' offered a global settlement of \$750,000 during the trial, which was rejected by the plaintiff. The plaintiff has requested that delay damages in excess of \$5 million be added to the award.

Jury Verdicts Review Publications, Inc.

PUBLISHED IN: Pennsylvania Jury Verdict Review & Analysis, Vol. 18, Issue 12

2000 WL 33716363 (Unknown State Ct.), 18 Pa. J.V.R.A. 12:C2

END OF DOCUMENT