

## **JURY AWARDS \$9 MILLION IN MED-MAL CASE**

A Delaware County jury yesterday delivered a \$9 million verdict in a medical malpractice case, just seconds after the Medical Professional Liability Catastrophe Loss Fund declined to back a settlement offer that the attorneys and parties in the case were prepared to accept, the winning lawyer said.

The offer was characterized by the attorney for the plaintiffs, Louis Podel, of Wapner, Newman & Wigrizer, as “substantially less” than the \$9 million award.

The defense lawyer, George L. Young, Jr. of Wright Young & McGilvery, said that he was preparing to file post-trial motions for a new trial on multiple grounds. He declined to discuss the pre-verdict negotiation, saying it would “prejudice the respective positions of the parties” to do so.

According to Podel, the complaint in *Lahav v. MainLine Obstetrics and Gynecology* said that after Mary Wiener Lahav underwent amniocentesis in 1990, her pregnancy began to go awry.

Lahav began to complain of fluid leaking from her vagina, Podel said. At the time the amniocentesis was performed, records showed, she had a normal level of amniotic fluid. The doctors in the case, the complaint said, did not diagnose the cause or source of the leaking. If they had, Podel said, they could have prescribed bedrest, and Lahav might have been able to carry her pregnancy to term.

But two months after the amniocentesis, Podel said, tests showed she had retained no amniotic fluid. Bacteria formed in a hole in the amniotic sac and uterine wall and caused early labor, Podel said. Lahav’s son was born in the 32rd week of pregnancy, more than one month prematurely, with cerebral palsy. Babies born prematurely have a higher risk of suffering from cerebral palsy, Podel said.

## **SEVEN-DAY TRIAL**

The jury got the case after seven days of trial, and began deliberating about 3:30 p.m. Monday. By 2 p.m. yesterday, the jury was still out and for the first time in the case, defense lawyers were ready to discuss settling the case, Podel said.

According to Podel, the lawyers, clients and insurance companies were prepared to agree on a settlement figure, but needed money from the catastrophic loss fund and thus the consent of the state-managed fund.

“As we were all talking, the jury announced it was ready,” Podel said.

Delaware County Common Pleas Court Judge R. Barclay Surrick decided to keep the jury in the deliberation room for 30 minutes to afford an opportunity for the sides to wrap up the settlement

talks. When the catastrophic loss fund balked, Surrick called in the jury, Podel said.

“The judge finally asked us to come back with a decision on settlement within the next five minutes,” Podel said. “When it was decided not to settle, the jury was swept into the courtroom in about 30 seconds and announced a verdict of \$9 million.”

Found liable were Dr. Stephen P. Krell and Main Line Obstetrics and Gynecology, the group through which he practiced.

Another doctor who was sued, Stephen J. Ellen, the chief of obstetrics at Bryn Mawr Hospital, was found not liable by the seven-man, five-woman jury.

## **BIG VERDICT**

Podel said the figure was “one of the biggest verdicts I have seen in the [four suburban Philadelphia] counties.”

Young spoke with jurors after the case, and said their opinion of the lifetime care needs of the boy, now 5 years old, had a great impact in the case.

“The jury was obviously influenced by the anticipated future needs and life care of the boy” Young said. “In our opinion, that reflects that error was committed by the trial court.”

Podel pointed to two keys to securing the verdict.

“It was convincing to the jury that very sparse records were kept by the physician,” Podel said.

There was no written record that a nitrozene paper test, claimed to have been used by doctors which would have showed that the fluid leaking from Lahav was indeed amniotic fluid, was performed, Podel said.

“The records say ‘examination negative’ but it doesn’t indicate that the doctors did that test,” Podel said.

Also, Podel claimed that a professional relationship between the defendant doctors and a defense expert hurt the defense.

“The doctors were both affiliated with Bryn Maw Hospital ..., and their main expert, the chief of obstetrics at [Thomas] Jefferson [University] Hospital, is on the consulting staff at Bryn Mawr,” Podel said. “I don’t think the jurors would have expected the main expert to have a professional relationship with” the doctors.

But Young said that, in discussions with the jurors yesterday afternoon, no one had mentioned the professional relationship as affecting their deliberations.

“I spoke to three different jurors, and no one mentioned that, and I don’t think it played a major role.” Young said

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