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NEWS

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Hospital To Bear Brunt of \$18M Verdict For Obstetrician's Malpractice

By Henry Gottlieb
 New Jersey Law Journal
 May 3, 2010

An Essex County jury awarded \$18.5 million on April 29 in a birth defect case in which the plaintiff benefited from a finding that negligent doctor was an employee of the hospital and covered by its insurance.

Joan Lieser, a part-time contract physician at Newark Beth Israel Medical Center, who had \$1 million in coverage, was found liable for failing to perform a timely Caesarean section during a delivery, causing cerebral palsy at the birth of the child, now 12.

The plaintiff will receive \$16.75 million under a high-low agreement, placed on the record before Superior Court Judge Thomas Vena while the jury was deliberating. The agreement would have guaranteed \$5.5 million to the plaintiff.

A key issue before the trial was whether Lieser was a private physician who used the hospital's facilities and was covered solely by her own insurance or was a Beth Israel employee covered by the hospital's insurance of up to \$150 million.

The plaintiff's lawyer, David Mazie of Mazie Slater Katz & Freeman in Roseland, says the hospital sought to deny coverage but he obtained an order that Lieser was an employee. That obviated the need for further inquiry under *Cordero v. Christ Hospital*, 403 N.J. Super. 306 (App. Div. 2008).

That ruling says hospitals are liable if a patient has reason to believe a negligent doctor's care is rendered on the hospital's behalf.

Darlene Kim of Edison alleged in *Kim v. Newark Beth Israel Medical Center* that Lieser, of Springfield, and hospital resident Denise McSherry failed to act on signs of fetal distress and undertake a timely Caesarean section to quicken the delivery of Kim's grand nephew, Darius Morgan, on April 20, 1998.

Had they done so, the child would not have developed cerebral palsy caused by oxygen deprivation, requiring a lifetime of care, according to evidence presented during the four-week trial.

Mazie says the evidence showed that the baby was in fetal distress for several minutes after 12:42 a.m. but would have been delivered safely if a Caesarean had been undertaken around 1 a.m. The operation was performed 20 minutes later. The mother, Nichol Morgan, died of lupus in 2004.

The jury awarded \$16.6 million for Morgan's life care, \$1.5 million for lost wages, \$250,000 for pain and suffering and \$167,000 for the cost of past care, Mazie says.

Rowena Duran of Duran & Pandos in Mountainside, who represented Lieser, says the defense evidence showed that Lieser was prepared to perform a timely Caesarean, but had to wait for an anesthesiologist who was finishing up care to another Caesarean patient.

Mazie says the defense also pointed to evidence that the fetal heartbeat was actually improving as the delivery wore on. The defense evidence also suggested that the doctors were reluctant to do a Caesarean because the mother was a Jehovah's Witness and had stipulated before childbirth that she could not receive blood transfusions. Mazie says he countered that the ban on blood transfusions should have compelled the doctors to act earlier to ensure that the Caesarean proceeded smoothly, obviating the need for transfusions.

The other defense counsel, Robert Swift of Fulbright & Jaworski in Houston and Lauren Strollo of Vasios Kelly & Strollo in Union did not return calls.



David Mazie
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