



MEDICAL MALPRACTICE

Childbirth

VERDICT: \$10,000,000.00

CASE: Maureen and James McGuire, as p/n/g of Katie McGuire v. Anthony Barbaro, M.D. and Joseph Dottino, M., No. 17662/94

VENUE: Nassau Supreme, NY

JUDGE: John P. Dunne

DATE: 08-06-1999

PLAINTIFF(S)

ATTORNEY: Stephen E. Erickson; Pegalis, Wachsmann & Erickson; Great Neck, NY, for Maureen and James McGuire, as p/n/g of Katie McGuire

EXPERT: Dr. Stuart Rothman Ph.D.; Neuropsychology; Great Neck, NY
 Brian Sullivan Ph.D.; Economic Analysis; Philadelphia, PA
 Dr. Leon Charash; Pediatric Neurology
 Dr. Barry Stephen Schiffrin; Obstetrics

DEFENDANT(S)

ATTORNEY: Michael T. Ivone; Ivone, Devine & Jensen; Lake Success, NY, for Anthony Barbaro, M.D.

EXPERT: Dr. Robert Zimmerman; Neuroradiology; Manhattan, NY
 Fred Goldman Ph.D.; Economic Analysis; Manhattan, NY
 Mary Andriola M.D.; Pediatric Neurology
 Dennis Davidson M.D.; Neonatology
 Charles Lockwood M.D.; Obstetrics

INSURER: Medical Liability Mutual for Deft; Medical Liability Mutual (\$1,000,000 policy)

FACTS: The infant Pltf. was born on 2/15/92. Pltf.'s mother, Maureen McGuire, was under the care of Deft. obstetricians for the pregnancy and delivery. A sonogram performed by Deft. Goldstein 12 days before the birth revealed an estimated fetal weight of approximately 7 lbs. On admission to the hospital on 2/15/92, the estimated fetal weight was over 8 lbs. Pltf. was admitted at 8 AM and Pitocin was given between 9 AM and 12:30 PM. Her cervix dilated from 2-3 cm at 8:30 AM to 7-8 cm at 12:30 PM, when Pitocin was stopped. Labor then stopped for 3 hours, with no further dilation. At 3:30 PM, Deft. obstetrician ordered

that Pitocin be restarted, and at 3:50 PM, there were abnormalities of the fetal heart rate, which persisted until the infant was delivered vaginally at 4:31 PM, but with good beat-to-beat variability. Pltf. contended that the abnormalities showed that the infant suffered ischemia during the 40 minutes before delivery. At birth, the child weighed 10 lbs., 11 oz., which indicated that Deft. Goldstein had underestimated her weight by 40%, according to sonogram, and 2 lbs., 8 oz., according to abdominal evaluation.

Pltf.'s obstetrical expert testified that the arrest of labor should have alerted Defts. to the presence of cephalopelvic disproportion (CPD), which required a thorough evaluation of the size of the fetus and the mother's pelvis. At 3:30 PM, there was no further dilation of the cervix, despite moderate contractions every 2 minutes. Pltf.'s expert testified that Defts.' failure to properly evaluate Pltf. for CPD was a departure from good and accepted medical practice, and contended that if a proper evaluation had been done, CPD would have been confirmed and a Caesarean section should have been performed.

Pltf.'s experts testified that records showed that the infant had an elevated nucleated red blood cell count shortly after delivery, indicating that she had a decrease in oxygenation during the course of labor. Records also indicated that the child had an elevated creatinine phosphokinase level within hours after delivery, indicating a traumatic delivery.

Defts.' expert obstetricians testified that the arrest of labor was not due to CPD, but was due to the fact that Pitocin had been discontinued at 12:30 PM. Defts.' obstetrician also testified that restarting Pitocin at 3:30 PM was appropriate, and the condition of the infant at birth (Apgars of 9 and 10) indicated that she did not suffer any injury during the course of labor and delivery. MRIs at age 15 months indicated that the infant had suffered an ischemic injury to her brain. Defts.' neuroradiologist testified that MRI findings showed that the injury occurred during the pregnancy at 28-32 weeks gestation, approximately 2 months prior to birth. Defts.' experts also testified that Pltf.'s pediatric neurologist was in error in contending that compression on the head increases pressure inside the head, resulting in shunting of blood from the anterior fossa to the posterior fossa (brain stem) causing Apgars to elevate to normal. They contended that his theory as to why the nucleated red blood cells and creatinine phosphokinase were elevated was also in error.

The infant suffered brain damage, resulting in left hemiplegia. She began experiencing seizures at age 5. Defts. claimed that she

had a normal IQ prior to the onset of seizures. IQ tests performed in 1999, when the child was in first grade, showed an IQ of 73; IQ tests done 2 months later showed an IQ of 68. Defts. argued that the lower IQ scores were the result of the seizure medication the child was taking, and not the result of her brain damage. Defts. also contended that at 18 months of age, an examination indicated that all milestones were normal. At the time of trial, Pltf. had completed the first grade, but was unable to read or perform arithmetic. Pltf.'s experts testified that she will not be employable. Defts.' experts testified that Pltf. will not be able to complete eighth grade, but that she will be employable. Pltf.'s economist calculated future lost earnings at \$5,800,000-\$19,000,000, depending on whether the child would have completed high school, college, or obtained a post-graduate degree. Defts.' economist testified that future lost earnings were approximately \$2,700,000, based on the assumption that the infant would have completed high school and 1 year of college. Defts. contended that Pltf.'s economist's computations were based on the wrong percentage. No offer; demand: \$3,000,000; amount asked of jury: \$13,000,000.

VERDICT INFORMATION: \$10,000,000 for Katie M. (6/0). Breakdown: \$2,000,000 for future pain and suffering; \$8,000,000 for future lost earnings. Jury: 2 male, 4 female.