

MISSOURI LAWYERS WEEKLY

Family of disabled boy secures compensation for care

Claim says compromised birth caused cerebral palsy



Maurice Graham

\$2 Million Settlement

A settlement reached four weeks prior to trial meant a disabled Missouri boy and his family will have \$2 million for his care needs.

James "Caleb" Bruns, diagnosed with cerebral palsy after what the plaintiff said was a compromised birth, also is blind and deaf and has an uncertain life expectancy.

A large Medicaid lien was one of the obstacles to settling the case, according to plaintiff's attorney Maurice Graham. Following negotiations with the Department of Social Services, the settlement, minus 20 percent for legal fees and expenses, was paid into a special needs trust with Commerce Bank as the trustee.

Dennis Bruns, who filed the lawsuit and is Caleb's grandfather, was named primary caregiver for the boy. Caleb lives in Dennis Bruns' home. According to the terms of the trust, Dennis Bruns will arrange for medical care for Caleb with the trust's proceeds.

Graham said 9-year-old Caleb

has a life expectancy of another 5-to-12 years. In the event of Caleb's death, any balance remaining in the trust will be used first to satisfy the Medicaid lien.

Caleb was born June 5, 1997, to 16-year-old Amanda Bruns. He was diagnosed with cerebral palsy after the birth and requires full-time care.

His family waited over five years to contact attorneys to investigate Caleb's delivery. As a result of the investigation, a claim was filed against the obstetrician who had delivered Caleb, Dr. John Patty, and against the hospital where Caleb was born. Attorneys declined to disclose the hospital's name in accordance with the settlement agreement, but court records show that Poplar Bluff Regional Medical Center Inc. was a defendant.

The principal allegations against the doctor and hospital's nurses were that, based on maternal and fetal clinical indications and fetal monitoring strips, the doctor and nurses should have realized that the fetus was compromised and in distress.

Graham, who was traveling out of the country and couldn't be reached for an interview, said in a statement that delivery was induced with Pitocin at the rate of 18 milliunits per minute. He argued that the doctor and nurses should have either backed off and allowed more time for natural delivery or performed an emergent Caesarean section.

During deposition, both Patty and the primary obstetrical nurse who was caring for Bruns' mother stated that they did not believe the fetus was in distress

or that a Caesarean section was necessary.

"As a precaution, they testified that they requested an operating team be called in to be available for emergency surgery," Graham said.

However, hospital supervisors testified that they had no documentation of an operation team being requested and hospital records offered no verification of any such request.

Trial was set to begin in April. Graham's assistant said that the settlement was completed May 3.

Patty's portion of the settlement consisted of his insurance policy limits, with the hospital paying the remainder. The hospital's share was not disclosed, per the terms of the agreement.

Defense lawyers were not available for detailed comment.

Facts of the Case

Type of Action: Obstetrical medical malpractice

Type of Injuries: Severe anoxic brain injury

Court/Case Number/Date: Cape Girardeau County Circuit Court/03CV739497/May 3, 2006

Caption: James "Caleb" Bruns by and through next friend Dennis Bruns v. Poplar Bluff Regional Medical Center Inc. and Dr. John Patty

Judge, Jury or ADR: Judge

Name of Mediator: William L. Syler

Verdict or Settlement: \$2 million settlement; insurance policy limits (Dr. John Patty) confidential settlement payment by the hospital

Special Damages: N/A

Allocation of Fault: N/A

Last Demand: N/A

Last Offer: N/A

Attorney for Plaintiff: Maurice B. Graham, Gray, Ritter & Graham PC, St. Louis

Attorneys for Defense: For hospital, Joseph C. Blanton Jr., Blanton, Rice, Sidwell, Nickell, Cozean & Collins LLC, Sikeston; for Dr. John Patty, Ted R. Osburn, Michael D. Murphey,

Osburn, Hine, Kuntze, Yates & Murphey LLC, Cape Girardeau

Insurance Carrier: Medical Assurance for Patty; hospital was self-insured

Plaintiff's Experts: Garrett C. Burris, M.D., (pediatric neurologist) St. Louis; Robert A. Dein, M.D., (obstetrician) Rosemont, Penn.; Michael J. DeRosa, M.D., (obstetrician) St. Louis; Robert A. Zimmerman, M.D., (pediatric neurologist) Philadelphia; Terri Clark, (nursing) Hamden, Conn.; Tracy Wingate (life care) Olathe, Kan.

Defendants' Experts: Michael Cardwell, M.D., (perinatologist) Cape Girardeau, Mo.; Elias G. Chalhub, M.D., (pediatric neurologist) Mobile, Ala.; Ira Casnoff, M.D., (pediatrics), Evanston, Ill.; Steven Donn, M.D., (neonatal-perinatal medicine) Ann Arbor, Mich.; Harry F. Farb, M.D., (maternal and fetal medicine) Minnetonka, Minn.; Herbert Grossman, M.D., (life expectancy) Sherman Oaks, Calif.; Lori Luchtman-Jones, M.D., (pediatrics) St. Louis; Richard Molteni, M.D., (neonatal-perinatal medicine and pediatrics) Seattle, Wash.; Rebecca Summary (economist) Cape Girardeau, Mo.; Gordon K. Sze, M.D., (neuroradiology) New Haven, Conn.; Linda Samson (nursing) Frankfort, Ill.; Jerry Vlasak (damages) Houston.