

HIGHLAND PARK NEWS

WITH NEWS OF HIGHWOOD

Record settlements target hospital

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Highland Park Hospital was at the center of two lawsuits resulting in what lawyers claim are record settlements and a jury award in the state.

Both lawsuits claimed the hospital was liable for brain damage to a newborn. One of those cases, involving the hospital's chief of staff, resulted in the infant's death.

Last week, a Lake County jury awarded \$18.6 million to 4-year-old Moises Rojas Jr., a Highwood boy who suffered brain injuries at birth. Robert Baizer, who represented the boy with his partner Joseph Kolar, called it the largest lump sum medical malpractice verdict in Illinois history, beating the next highest by \$100,000.

The previous record high jury verdict in Lake County was \$5.2 million, Baizer said.

In addition, the jury found Dr. Cheryl Perlis, the obstetrician in the case, not liable, although her insurance company will pay \$250,000.

The verdict came about two months after a \$2 million settlement was reached in a Cook County case filed in late 1995 on behalf of Leo Mockenhaupt, who was severely brain-damaged at birth.

That lawsuit was filed in Cook County, because Leo Mockenhaupt was a resident of Misericordia Home South in Chicago, where he died in November 1996.

Allen Tish, the attorney in the Cook County proceeding, called it a record medical negligence settlement for the wrongful death of an infant in the state.

Money to aid HMO-banned therapy

Attorney Robert Baizer said 4-year-old Moises Rojas Jr. received the first \$1 million this week, with the balance expected to be paid in a little more than a month. The money will enable the boy to receive needed therapies. Rojas has received no speech therapy beyond what has been provided at his school, because his HMO — Rush Prudential Health Plans — has refused to pay for it.

Although every doctor and therapist who testified at the trial said that he should have speech therapy every day, the HMO permitted physical and occupational ther-

apy only one hour per week each, said Baizer, who added that those therapies are also needed each day.

"The physician of the HMO was outrageous in denying him speech therapy," Baizer said.

The family, he said, is already looking for handicapped accessible housing, as well as a suitable van to transport the boy. Plans are also being made through the Rehabilitation Institute of Chicago to purchase equipment that will enable him to communicate with others.

In the June 2 settlement, Highland Park Hospital agreed to pay \$250,000, while the remainder would be paid by one of the doctors on the case, Richard Adis, chief of staff at the hospital.

Martin Mockenhaupt, the boy's father, said the Rojas decision caused him to go public with Leo's case.

In a prepared statement about the Rojas verdict, Highland Park Hospital President and Chief Executive Officer Ronald Spaeth said, "Highland Park Hospital sincerely regrets this unfortunate 1993 occurrence and extends its sympathy to the family.

"We have always prided ourselves on providing outstanding services, medical staff and facilities," he continued. "We reaffirm our commitment to enhancing our clinical procedures and toward providing the highest level of care to our patients."

A hospital spokeswoman said the same statement applies to the Mockenhaupt case. Dr. Adis was unavailable for comment.

On Sept. 8, a Lake County jury found that on Aug. 7, 1993, a nurse at the hospital failed to recog-

nize signs of fetal distress on a printout of the infant's heart rate. Consequently Dr. Perlis was not notified in time to take actions that would have led to a normal birth.

Perlis did arrive and perform a Caesarian section, but too late to avoid permanent damage.

Rojas, whose parents, Kimberly Bolduan and Moises Rojas Sr., work for Sunset Foods, suffers from cerebral palsy as a result of oxygen deprivation at birth. He is unable to walk or talk but has normal intelligence. His doc-

tors testified that he will probably never walk or talk functionally. Baizer, however, is confident that with the money and his parents' help, the child will exceed expectations.

"He is a beautiful child with an engaging smile," Baizer said. "He only communicates through his eyes, his smile and by nodding his head "yes" and "no" But even with those severe limitations, he demonstrates a terrific sense of humor and understands everything going on around him."

In one of the trial's heart wrenching moments, Baizer asked Moises whether his father was a good cook. The child, flashing a huge grin, turned to the jury and nodded, "No."

Rojas' attorneys had originally asked for a \$21.4 million award. During jury deliberation, the lawyers for both sides entered into what is called a "high-low" agreement.

Under the agreement, Rojas would have received at least \$3.25 million, no matter what the jury decided. It also capped the amount paid to Rojas at (Continued on page 10)

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\$11.5 million, which will be the actual payout.

In addition, the agreement precluded post trial motions or appeals.

Baizer was careful to stress that the settlement does not impact the quality of care at Highland Park Hospital.

"Highland Park Hospital is a fine institution," he said. "My family and I have received treatment there over the years, and we will continue to. Both of our daughters were born at Highland Park Hospital, and if we were going to have more children, they would be born at Highland Park Hospital."

Baizer added that "Mistakes happen. Usually, the consequences are insignificant. Occasionally, they are catastrophic as in this case."

The Mockenhaupt case stemmed from an incident that occurred July 12, 1995, at Highland Park Hospital.

Tish said his clients' case was similar to the Rojas case in how the injury happened.

He said one difference accounting for the monetary outcomes was his client's anticipated future medical expenses. Another significant difference, he said, was that the Rojas case was a hospital case, while the Mockenhaupt case was related to the quality of the physician's care.

He added that the settlement could have been capped at \$500,000 because of recent tort reform legislation, passed in March 1995 now before the Illinois Supreme Court. The Rojas case would have been unaffected, since the child was born prior to that month.

As in the Rojas case, the prospect of a difficult birth was indicated by fetal monitor strips, a printed record of information recorded by electrodes attached either through the birth canal to the baby's scalp or to the mother's abdomen.

Tish said Victoria Mockenhaupt had been in labor for two-and-a-half days, when nurses alerted Adis that the strips indicated oxygen deprivation. According to Tish, Adis looked at the strips 45 minutes later and concluded there was no need for a Caesarian section.

Nor did Adis, Tish said, heed nurses' suggestion that a fetal scalp sample be taken to determine whether oxygen deprivation existed.

In addition, Tish said that Adis did not communicate the concern of the nurses to his colleague Scott Hansfield, who actually presided over the delivery. Hansfield was not found liable in the settlement.

"Ninety percent of his brain was wiped out by oxygen deprivation (according to physicians at Evanston Hospital, where the baby was taken after his birth)," Tish said. "He could respond a little to pain. He possibly recognized his mom and dad by touch. (But) there was little cerebral function."

Tish said doctors from Evanston Hospital attributed brain damage to suffocation during birth, rather than an inherited condition.

Leo Mockenhaupt lived with his parents for almost eight months, before he was transferred to Misericordia Home South, where he died 16 months after his birth.