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Western Pa. Federal Jury Awards \$14.5M Over Birth Injury

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Of the Legal Staff

A western Pennsylvania jury has awarded nearly \$14.5 million to a family over an allegedly mishandled delivery that led an infant to develop severe cerebral palsy.

A federal jury from the U.S. District Court for the Western District of Pennsylvania handed up a \$14.48 million award in the medical malpractice case *Welker v. Carnevale* on Jan. 27.

Kline & Specter attorneys Dominic Guerrini and Mark Polin, who is also an OB-GYN, handled the case for the plaintiffs.

"We thought it vindicated our case, our client and our decision to proceed in what is seen by many to be a very difficult jurisdiction," Guerrini said. According to Guerrini, the plaintiffs moved to Ohio shortly after the incident took place.

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Attorneys would have had to file the claims in the Clearfield County Court of Common Pleas, but instead chose to file the claim in federal court.

Guerrini noted that the case was tried in the Western District's Johnstown division, which pools jurors from Somerset, Bedford, Cambria, Blair and Clearfield counties. Guerrini said he could not comment on whether the parties had agreed to a high-low agreement, but said that the entire award is collectable.

According to a pretrial memo on behalf of plaintiffs Nicole Welker and Justin Brinkley, the crux of their claims stemmed from the use of the uterine stimulant, Pitocin, and doctor Thomas Carnevale's alleged failure to properly monitor the

pregnancy, or swiftly deliver the baby when the heart rate appeared to be dropping.

Welker, the memo said, was admitted to Clearfield Hospital in the afternoon of July 19, 2012. Carnevale monitored her contractions and dilation. The memo said the doctor failed to notice that Welker's dilation and contractions had been progressing, and so he ordered that Pitocin be administered to accelerate the contractions. According to the memo, Carnevale started Welker on an inappropriately high dose of the medication.

The memo said the fetal heart rate progressively slowed for the next hour, dropping to 60 beats per minute by 8:10 p.m., and Carnevale took some steps to expedite the delivery. By that point Carnevale should have taken Welker off Pitocin, the memo said, but Welker remained on the drug for the rest of the delivery.

By 8:20 p.m., the memo said, the baby's head was crowning so it could have

been delivered by vacuum or forceps, but the delivery continued for about another 10 minutes before Carnevale cut an episiotomy and the baby was born.

Carnevale, in his pretrial memo, contended that the treatment was proper, and he properly determined that vaginal delivery would be the quickest route for delivery. He also said that, although he had no independent memory of ordering that the Pitocin be stopped, he said it had always been his practice to stop the drug when the fetal heart rate slowed.

The hospital also contended that the treatment had been proper, and both defendants further contended that the cerebral palsy was due to other factors, including insufficiencies in the placenta, seizures and meconium aspiration syndrome, in which the fetus aspirates on its stool.

According to the memo, the infant

developed spastic tetraparesis cerebral palsy, his cognition was impaired and he experiences seizures as well as global aphasia. The plaintiffs contended he will require 24-hour care, and their home will need to be retrofitted for ramps, mechanical lifts and other medical equipment.

The trial, which Judge Kim Gibson presided over, lasted two weeks and the jury deliberated for about four hours, Guerrini said. The jury apportioned 60 percent liability to Carnevale and 40 percent to the hospital.

Both Michael D. Pipa of Saxton & Stump, who handled the case for Carnevale, and John McIntyre of McIntyre, Hartye, Schmitt & Sosnowski, who handled the case for Clearfield Hospital, did not return calls for comment.

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