

Jury awards parents in death

Damages set at nearly \$1.6 million. Baby was born at St. Luke's.

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Lehigh County jury has awarded almost \$1.6 million to a New Jersey couple whose baby died 31/2 days after he was born in St. Luke's Hospital-Fountain Hill in 2002.

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The case of H. Gregory Gulick, a FBI agent, and his wife, Elizabeth Gulick, who had worked in the hospital's quality resources department, was unusual because the jury returned a verdict on damages before there was a verdict on whether the hospital and doctors were liable.

In December, Judge Alan M. Black "reverse bifurcated" the case, meaning he divided it and ordered the damages stage to precede the liability phase. In most cases of alleged medical malpractice, who, if anyone, is responsible is decided first and the amount that should be paid to the plaintiffs is determined later.

"I think the judge thought the way to get the case resolved was to have the jury set a fair value for the case, at which point the plaintiffs would hopefully accept the jury's determination of fair value," said lawyer Arthur W. Hankin, who represents the hospital and Drs. Waseem Akhter, a neonatologist, and Steven Feinstein, a perinatologist.

Hankin, who has been practicing law for almost 38 years, said this is the first time he has seen a reverse bifurcation.

In a written order, the judge said that after the first verdict, "the parties shall make a good faith effort to settle the liability issue."

It's unclear what will happen next in the case in which the parents allege that a series of mistakes led to the collapse of their son's lungs and a decision to end life support after the baby was transferred from St. Luke's to St. Christopher's Hospital for Children in Philadelphia.

On Monday, the jury awarded the Gulicks, of Red Bank, \$500,000 for their son's pain and suffering and \$1,047,500 for lost earnings over his lifetime minus living expenses.

Hankin said Tuesday he will not file an appeal on behalf of his clients. "All, or most of us," he said, referring to the defendants, "think this [the amount] is fair value. I think the defense is prepared to pay this amount."

Two defendants, Drs. William R. Cherry, an anesthesiologist, and Max Ramenofsky, a surgeon, already have settled the case for \$500,000 each, but the jury was not told that.

Attorney Frederick J. Stellato, who represents Cherry, and lawyer Timothy McCann, counsel for Ramenofsky, said Wednesday they could not comment on pending litigation.

Defendants' lawyers emphasized that no one has admitted malpractice.

According to court documents the defendants filed, the Gulicks rejected a joint settlement offer of \$1 million on behalf of all defendants.

The Gulicks, Hankin said, could accept the jury's verdict and not proceed to a liability trial, and the defendants who haven't settled already can decide how much each should pay to make up the balance of the verdict. But that doesn't appear likely.

The Gulicks' lawyers, Thomas R. Kline and Matthew A. Casey, said they will pursue the case so another jury can apportion liability by percentage among defendants. Depending on the outcome of that trial, the plaintiffs could get more than the \$1.6 million award because they already received \$1 million from the two doctors who settled. If the jury finds no one is liable, the parents still will get the \$1 million settlement.

Kline was optimistic about a second trial, saying, "There is virtually no chance that the defendants will escape liability."

In such cases where settlements are pondered and each side weighs strengths and weaknesses of its evidence, lawyers can make strategic decisions to focus on certain defendants to increase the amount of the award or to limit liability.

Plaintiffs' documents called the case "a clear liability medical misadventure" at the hands of various medical providers. Documents said an outside expert hired by the hospital found that multiple defendants were negligent.

Prenatal testing showed the baby had an abdominal wall defect that could be corrected in surgery after birth, the parents' suit said.

On Oct. 18, 2002, Dr. Karen Sciascia, who also is a defendant, delivered the baby, Connor G. Gulick. Sciascia's lawyer, Mark R. Zolfaghari, could not be reached for comment.

The baby was taken to an operating room and was administered anesthesia, after which his heart and lungs failed, according to the complaint. The plaintiffs alleged that the baby was given anesthesia when his lungs were not mature enough to endure it, and that there were ways the health care providers could have assessed the infant's lung development.

The baby was put on a ventilator and taken to St. Christopher's where he was attached to a heart and lung bypass machine. When Connor's condition deteriorated, the parents stopped life support, and the baby died Oct. 21, 2002.

The Gulicks have two other children, ages 6 years and 7 months.

Elizabeth Gulick worked at the hospital from 1987 to November 2003. Her husband was a former emergency medical technician.

When the Gulicks were considering legal action over their son's death, hospital officials told Elizabeth Gulick "that she would be fired" if she pursued litigation, according to plaintiffs' documents filed in court.

The defendants asked the judge to prohibit testimony about the reasons for Elizabeth Gulick's departure from the hospital, saying it was irrelevant. Black granted that request.