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Erie Times-News (PA)

Jury: Doctor negligent

December 13, 2002

Tag: 0F7E623608DDB2E5

Section: Front Page Page: 1 LISA THOMPSON

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An Erie County jury ordered an obstetrician to pay a Girard couple a record \$4.1 million dollars for negligently causing their infant son's death in a botched delivery.

The award for Richard and Mary Ellen Brown and against Erie doctor David Beaton is the largest in Erie County history. It came after a three-day civil trial in Judge John A. Bozza's courtroom.

"I'm elated at the result. This is the largest medical malpractice award in Erie County history and in all of northwestern Pennsylvania," said Leonard Ambrose, an attorney for the Browns.

"I hope this sends a message to the medical community to clean out the incompetence before they start complaining about malpractice rates because it is people like this that kill and maim people because of their utter incompetence.

"If they can't police themselves, I intend to do so," Ambrose said.

Ambrose and his partner, **William Weichler**, represented the couple in their two-year legal battle over their son's death.

Beaton's attorney, Thomas Lent, declined to comment. He asked jurors in his closing to render an unprejudiced award.

"This was an outcome no one wanted," he said.

The Browns sued Beaton and Metro Health Center for negligence after their son died March 31, 1999, as a result of complications that arose in what began as a routine child birth.

Ambrose told jurors that a healthy Mary Ellen Brown checked into Metro Health Center on March 29 to deliver her baby after her water broke. Her labor was prolonged and after an initial digital exam was performed by the doctor, an infection developed in her womb.

Beaton, however, failed to order antibiotics and stopped and started labor-inducing drugs, court papers said. The child's heart began to race. His mother was vomiting and burning with fever.

An expert testified at trial that Beaton should have ordered a Caesarian section the morning of March 30. But Beaton did not order a Caesarian section until 20 hours later. in the 42nd hour of the child's delivery. By

then it was too late.

The infection had sickened Mary Ellen Brown severely and overwhelmed her child.

Ambrose repeatedly told jurors that the baby drowned in pus and his blood turned to lactic acid as it was poisoned by the infection. The boy was still born.

"This baby died the most painful death imaginable," Ambrose said. "It drowned in its own pus in its mother's womb while the doctor did nothing."

"There is no rational explanation for what happened," **Weichler** said. "That C-section should have been done hours and hours before it was."

The Browns said they were told the death was caused by a so-called "placental web" that made the umbilical cord kink. There was no medical record to support that, however, Ambrose and **Weichler** said.

The Browns said they did not find out until years later in the course of trial preparation that the true cause of death was the massive untreated infection and the delay in performing the Caesarian section.

The hospital reached a monetary settlement with the Browns. Beaton conceded at trial that his negligence harmed the couple. It was left only for jurors to decide the amount of damages to award the couple.

Ambrose said the doctor continues to practice medicine.

"We plan to report him to the osteopathic board for them to take, we hope, appropriate action," he said.

The award exceeds the amount recoverable set by statutory limits in this state. Generally, a physician's primary malpractice insurance, combined with money that can be recovered from the state medical care fund in Pennsylvania, gives doctors up to \$1.2 million in coverage.

Thomas Falasca, D.O., president of the Erie County Medical Society, said the judgment may financially impact other physicians statewide.

"An award like this may increase premiums across the state," he said. "The physicians in this area may also be placed in a higher risk group and have to pay higher premiums."

Mary Ellen Brown wept and hugged her husband as the verdict was read.

The Browns said the case for them was not about the money. During trial preparations, they turned down settlement offers because those offers came with demands that the case be kept secret.

The couple said they would rather risk not winning a dollar, so that others would know what happened.

"I think when you go to the doctor you assume you are going to be treated properly and competently," said Richard Brown, 32, an engineer. "We had no idea there was a problem and then they lied to us about what happened."

"They should have some type of people who review these people if they have more than a couple of claims over time to see if they need to revoke their license or go through additional training," he said. "That's the way it is in other trades. It was devastating to find out it was unnecessary and preventable."

preventable.

The Browns have had two children since losing the boy they named Jacob. While nothing will bring him back to them, they said, the jury's verdict helped bring justice.

"Just for the world, and that's what those 12 (jurors) are to me, to say (Beaton) has to take accountability for my son's life and the suffering I went through, it brings closure acquiring justice for my son, when he can't speak for himself," said Mary Ellen Brown, 33.

Some jurors who lingered afterward asked to speak with the couple. They greeted the pair with bear hugs as they walked in the jury room. Someone produced a plate of Christmas cookies as the group stood and talked.

Jury foreman Richard Travers said the panel had no doubt that Beaton should pay for his negligence. The question was how much.

"I think the jury just felt there was an extreme amount of gross negligence on the part of Dr. Beaton," Travers said. "I think we made a unanimous decision that both Mary Ellen and Richard Brown went through an extreme amount of pain and suffering and probably will for the rest of their lives.

"It's something no one should be able to do — to take someone from somebody and not pay for it," Travers said.

"I think we want to believe that most doctors take an oath to do no harm," Travers said. "In this case, that oath was extremely broke. The trust these people had was grossly misused."

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