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Suits & Deals: Monmouth Co. Wrongful Birth Suit Settled for \$4.65M During Trial

David Gialanella, New Jersey Law Journal

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A woman claiming her doctor failed to heed warning signs of Down syndrome in her unborn child had a \$4.65 million settlement approved Nov. 13 in *Walsifer v. Matta*.

In late 2007, Kerri Lee Walsifer of Sea Girt, then in the 19th week of pregnancy, underwent ultrasound imaging with obstetrician Paul Matta, then of the University of Medicine and Dentistry of New Jersey (UMDNJ), according to Walsifer's lawyer, Daryl Zaslow of Eichen Crutchlow Zaslow & McElroy in Edison.

The suit claimed Matta deviated from the standard of care by failing to alert Walsifer to two fetal abnormalities: a wide space between the first and second toes, and an underdeveloped pinky bone. Walsifer was denied the opportunity to undergo amniocentesis, which she alleged would have revealed fetal Down syndrome, and thus also denied an opportunity to abort the pregnancy, according to Zaslow.

Walsifer's son, Nicholas, was born in February 2008 with Down syndrome and now is 7, Zaslow said.

The suit—which named Matta, UMDNJ and Jersey Shore Perinatal Institute, where the ultrasound was performed—alleged a high rate of Down syndrome associated with each of the alleged fetal abnormalities. The suit claimed a high monetary and emotional cost associated with caring for a child with Down syndrome.

The defendants contended that the ultrasound was normal, and neither the toe gap nor the underdeveloped pinky bone are reliable indicators of Down syndrome, according to Zaslow.

The matter proceeded to trial before Monmouth County Superior Court Judge David Bauman.

Meridian Health Systems, of which Jersey Shore Perinatal is a subsidiary, settled prior to jury selection for \$300,000. UMDNJ settled during the fifth week of trial, on Oct. 2, for \$4.35 million, according to Zaslow.

He said the total value of the settlement—including returns on annuities purchased using the proceeds—will be between \$5.91 million and \$7.24 million.

Bauman approved the settlement in a Nov. 13 hearing.

Walsifer also was represented by Thomas Rinaldi, of Zaslow's firm.

Paul Schaaff of Orlovsky, Moody, Schaaff & Gabrysiak in West Long Branch, representing Jersey Shore Perinatal, declined to comment on the settlement.

Jay Scott MacNeill of Post, Polak, Goodsell, MacNeill & Strauchler in Roseland, representing UMDNJ and Matta, didn't return a call seeking comment on the settlement.

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