

## \$2,100,000 Settlement for Cerebral Palsy Medical Malpractice Case

NEW JERSEY LAW JOURNAL

SUITS & DEALS – JUNE 22, 1998

Castro v. Kappy: Union County Superior Court Judge John Pisansky on Tuesday approved \$2 million settlement for an Elizabeth boy who was born with cerebral palsy after doctors allegedly neglected signs of fetal distress.

Cathy Castro was admitted to Newark Beth Israel Hospital on the evening of Jan. 26, 1994 by her obstetrician Kenneth Kappy to induce labor because a fetal non-stress test was nonreactive, "which was a strong indication for concern and close monitoring," says the Plaintiff's attorney, from Eichen Crutchlow Zaslow, LLP in Edison who represented the Castro family in the medical malpractice claim. A medical resident, John Simonetti, notified Kappy around midnight that there was fetal distress and was led to believe Kappy was coming to deliver the baby by caesarean section.

Kappy's lawyer, Stephen Mortenson, of Springfield's Mortenson & Pomeroy, says his client did not remember receiving the call from Simonetti. In the morning the baby still hadn't been delivered, so the resident obstetrician, Marilyn McArthur, called Kappy in. By then it was too late because the baby had cerebral palsy due to the loss of oxygen. All three doctors were named in the suit.

Mortenson says this was a compromise settlement and there was no admission of liability. In fact, the defense contends that the baby is physical problems were caused by unrelated congenital conditions, Mortenson says.

Under the structured settlement agreement, the initial \$1 million disbursement is expected within 30 days of the agreement, of which The Firm is expected to receive \$494,522 in fees and \$21,910 for reimbursement for litigation costs. A trust will be established for the boy, Dominick Castro, with the remaining 1 million. Within 30 days, Castro can expect to receive \$50,000 followed by monthly payments of \$3,215, which will increase at 3 percent compounded annually. Payments are for the rest of Castro's life or 30 years, whichever is longer.

The settlement is expected to yield a total of \$10.3 million. Mortenson said the hospital's insurance company will pay the settlement amount. McArthur's lawyer, Stephen Schecter, a partner with Milburn's Schechner & Decker, declined to comment. Simonetti's attorney, William Lane, of Westfield's Johnstone, Stok, Loughlin & Lane, did not return telephone calls.

By Heather MacGregor

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