$3,800,000 – $7,100,000 Recovery in Wrongful Birth, Cystic Fibrosis Case

Daryl L. Zaslow obtained a $2.0 million recovery on behalf of a 4-year-old boy with Cystic Fibrosis and his parents. A portion of the settlement is being used to purchase an annuity which will result in total payments to the child between $3.8 – $7.1 million, depending on how long the child lives. The settlement also allocates $468,000 to be split by the parents.

The child's mother maintained that she was offered an elective screening test for Cystic Fibrosis carrier status at her first prenatal visit and she wanted to be screened. The mother testified that immediately after she left the obstetricians' office with multiple requisition forms for laboratory tests, including the test for Cystic Fibrosis, which she took to them to a national laboratory. Notwithstanding this testimony, the laboratory maintained that they never received a request to screen the mother for Cystic Fibrosis and, since this is not a routine test, the mother's blood was not screened for carrier status.

Although all of the mother's prenatal blood tests were normal, the defendant physicians failed realize they had not received Cystic Fibrosis test results until after the child was born and diagnosed with this condition.

The gene causing Cystic Fibrosis was identified in 1989 and screening for Cystic Fibrosis has been offered to pregnant patients since the mid-1990s. Cystic Fibrosis is inherited in a recessive fashion meaning that both parents have to be carriers for a child to be born with the disorder. The initial screening test for carrier status is simply a blood test and if both parents are carriers, then the baby has a 25% chance of being born with the defect. After parents both test positive for carrier status, they may then choose to undergo an invasive amniocentesis or chronic villus sampling which will determine whether the baby has Cystic Fibrosis.

Mr. Zaslow argued that had the mother's request to be screen been fulfilled, she would have learned she was a carrier, the father would have also undergone screening which would have been positive and the they would have elected to undergo an amniocentesis. Had an amniocentesis been performed it would have diagnosed Cystic Fibrosis and plaintiff's mother would have terminated the pregnancy, thereby avoiding the mental anguish and extraordinary costs associated with raising and caring for a person with Cystic Fibrosis.

Cystic Fibrosis is a genetic disorder affecting multiple organ systems including the digestive system, pancreas, liver, intestines, sinuses and respiratory system. The defective gene resulting in Cystic Fibrosis causes the mucus to become perniciously thick and sticky. In terms of digestive problems this thick, sticky mucus blocks pancreatic ducts. As a result, digestive enzymes that are produced by the pancreas cannot reach the small intestine.

The respiratory system is the most serious problem for people with Cystic Fibrosis. The thick mucus builds up in the lungs and blocks the airways. This allows bacteria to grow in the lungs and results in serious lung infections, lung damage and ultimately respiratory failure. Today, the average life expectancy of people with Cystic Fibrosis is 37 however, just ten years ago, the life expectancy was 18 years of age.

The defendant physicians argued that the mother decided she did not want to be screened for carrier status and after the child was born advised the physicians she would not have terminated the pregnancy even if she was told the baby had Cystic Fibrosis. The laboratory also maintained they ran the tests that were ordered by the physicians.