

## \$4,650,000 Recovery in Wrongful Birth/Down Syndrome Case

After more than 5 weeks of trial [Daryl L. Zaslow, Esq.](#) of Eichen Crutchlow Zaslow, LLP (Edison, Red Bank and Toms River) obtained a [\\$4,650,000 settlement](#) on behalf of a 7-year-old boy with Down syndrome and his parents. Mr. Zaslow was assisted at trial by [Thomas Rinaldi, Esq.](#) of the firm. The settlement was reached as the case was being tried in Monmouth County before the Honorable David F. Bauman, P.J.S.C.

The Plaintiff Mother was sent by her regular obstetrician to the Defendant, a specialist in maternal fetal medicine, for first and second trimester prenatal screening tests due to a family history of birth defects. Although the first trimester screening test performed when Plaintiff was 12 weeks pregnant determined Plaintiff's risk of having a baby with Down syndrome to be 1 in 1,102, Mr. Zaslow argued the Defendant deviated from the accepted standards of care in his interpretation of a second trimester targeted ultrasound performed when Plaintiff was 19 weeks pregnant which Mr. Zaslow argued showed the presence of two "soft markers" for Down syndrome. More specifically, Plaintiffs' experts maintained that the Defendant failed to appreciate the presence of soft markers for Down syndrome referred to as a "sandal gap" and a "hypoplastic mid-phalanx of the fifth digit." During the trial testimony of the Plaintiffs' maternal fetal medicine expert, the jury was shown an ultrasound image the expert testified depicted an abnormal wide space between the first and second toe known as a sandal gap. The jury was also shown another ultrasound image the expert testified demonstrated an underdeveloped bone in the pinky known as a hypoplastic mid-phalanx of the fifth digit. Mr. Zaslow also introduced medical literature to support his argument that a sandal gap is found in 45% of babies born with Down syndrome and that 60% of fetuses with Down syndrome have a hypoplastic mid-phalanx of the fifth digit.

Mr. Zaslow argued that the Defendant needed to inform his client of the presence of both of the soft markers and of their statistical association to Down syndrome so that Plaintiff could make an informed decision whether to pursue an invasive amniocentesis. Had an amniocentesis been performed it would have diagnosed Down syndrome and plaintiff's mother would have terminated the pregnancy, thereby avoiding the extraordinary costs and mental anguish associated with raising and caring for a person with Down syndrome.

In addition to filing suit against the maternal fetal medicine specialist, Mr. Zaslow also named as a defendant the sonographer who performed the targeted ultrasound. Although the defense conceded that the sonographer was not responsible for interpreting the ultrasound, Mr. Zaslow argued she should have brought the alleged abnormalities to the attention of the physician.

The Defendants argued that the ultrasound was entirely normal and did not demonstrate either the sandal gap or a hypoplastic mid-phalanx of the fifth digit. They also had several experts in maternal fetal medicine prepared to testify that a sandal gap and hypoplastic mid-phalanx of the fifth digit are not even considered reliable soft markers for Down syndrome and are therefore even if they are present, they should not be used to counsel patients about their risk for having a baby with Down syndrome.