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 The Legal Intelligencer  
 By Gina Passarella  
 June 25, 2009

A \$20.5 million verdict in a birth-defect case out of Lackawanna County got a boost last week when a judge denied the defendants' post-trial motions and added nearly \$7 million in delay damages to the verdict.

Judge Terrence R. Nealon denied six defense motions in *White v. Behlke*, including one that the jury award was excessive and should be remitted. He granted a motion for delay damages in the amount of \$6.85 million, bringing the total award to \$27.35 million.

In a 73-page opinion, Nealon ruled an alternate juror did properly replace an original juror, a plaintiffs' expert was qualified to testify, the jury was properly instructed regarding applicable causation principles, the plaintiffs' evidence was sufficient and the liability finding was not a shock to the conscience or sense of justice.

Last November, a 12-member jury awarded a couple and their son \$20.5 million against a doctor and a Scranton, Pa., hospital for birth complications that ultimately led to brain injury and a diagnosis of cerebral palsy.

Voting 11-to-1 on all questions, the jury found the obstetrician, Richard Behlke of OB-GYN Consultants Ltd., 60 percent liable and the Community Medical Center 40 percent liable, according to court papers provided by the plaintiffs' attorneys, husband-and-wife team Jeffrey M. Kornblau and Lynn Sare Kornblau, both of Kornblau & Kornblau in Jenkintown, Pa. The pair was assisted by appellate attorney Howard Bashman during the post-trial motions.

Dan and Laura White were awarded \$2 million for health care expenses and related costs associated with caring for their son, Cody, until he is 18. The jury did not award the parents anything for the pecuniary value Cody would have provided up until his 18th birthday.

The jury awarded Cody \$10 million for health care expenses that would occur after he turns 18 and another \$3.5 million for lost earning capacity after he turns 18. An additional \$2.5 million each was awarded for past pain and suffering and future pain and suffering.

According to court documents, a pregnant Laura White went to the emergency room June 30, 2001, after calling her doctors at OB-GYN Consultants with concerns about her unborn son because of decreased fetal movement. She was due that July. White arrived about 2:35 p.m. and monitoring showed some abnormalities, according to court documents.

Behlke, who wasn't White's primary OB-GYN but was covering at the hospital that day, was called and, about two hours later, he ordered tests, Jeff Kornblau said at the time of the verdict. One of the tests was a biophysical profile that would have further demonstrated whether there was a lack of oxygen. When the results came in and showed further abnormalities, Kornblau said, the doctor chose to induce White instead of performing an emergency Caesarean section.

It was after four hours, and the administration of the drug Pitocin — which the plaintiffs argued should have been known by the nursing staff to pose a threat to the already stressed fetus — that White was brought in for an emergency C-section. Kornblau said the Pitocin resulted in a dramatic drop in the baby's heart rate, forcing the need for a C-section.

The main issue in the case, as described by both sides in a joint pretrial memorandum, was whether a C-section should have been performed earlier.

Eugene Feeney of Weber Gallagher Simpson Stapleton Fires & Newby and James Sargent of Lamb McErlane represented Behlke in the post-trial motions and Michael Perry of O'Malley Harris Durkin & Perry and Matthew Rapple of Stevens & Lee represented Community Medical Center.

(Copies of the 73-page order in *White v. Behlke*, PICS No. 09-1058, are available from The Legal Intelligencer. Please call the Pennsylvania Instant Case Service at 800-276-PICS to order or for information. Some cases are not available until 1 p.m.)

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