

"\$8.5 Million Settlement Approved for Brain Damage at Birth"

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Cook County's chief judge on Wednesday approved an \$8.5 million settlement for a 15-year-old Arlington Heights boy who was born with irreversible brain damage.

Chief Circuit Judge Donald P. O'Connell today entered an order of distribution and dismissed the medical negligence case against a drug manufacturer, a doctor and Lutheran General Hospital in Park Ridge, according to Thomas A. Demetrio, a Chicago attorney who represents the youth.

Sterling Drug Co. and its subsidiary, Winthrop Laboratories, which manufactured and sold the drug Marcaine, used during Christine Rafter's 1981 labor, also contributed to the settlement along with the hospital and doctor, he added.

Rafter went to Lutheran General in late 1981 to deliver her first child after an uneventful pregnancy, Demetrio said. Dr. Arnold Berman, Rafter's obstetrician, conducted a procedure called a paracervical block. In that procedure, a local anesthetic is injected by needle near the cervix to reduce labor discomfort.

The drug used in Rafter's procedure is called Marcaine. After Rafter received the third dose of Marcaine, the fetus suffered severe bradycardia — a dangerously low heart rate — that led to a significant loss of oxygenated blood to the brain, Demetrio said. An emergency cesarean section was performed, but Michael Rafter was born with irreversible brain damage that resulted in cerebral palsy, he added.

Marcaine was initially sold in the U. S. in 1973. The next year, the FDA asked that the drug manufacturer market Marcaine as "contraindicated" for paracervical blocks, which instructs doctors not

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to use the drug for such blocks, according to Demetrio, a partner with Corboy & Demetrio. The New York City-based Sterling didn't contraindicate Marcaine, but stated to doctors using the drug that it was not recommending it for use in the blocks until further studies were conducted, he added.

Demetrio said he was set to present evidence that Sterling prior to 1981 knew of 10 fetal deaths after doctors used Marcaine during paracervical blocks but didn't inform doctors they knew used the medication. In 1983, Sterling began telling doctors that Marcaine shouldn't be used in paracervical blocks, he noted.

The complaint alleged that Berman, who has an office in Park Ridge, acted negligently in administering Marcaine and performing the paracervical block, Demetrio said. The hospital was allegedly negligent for failing to diagnose the drug intoxication in the boy and failing to remove the Marcaine from his system sooner, possibly reducing the severity of his injuries, he added.

Sterling/Winthrop will pay \$4.5 million of the settlement, while Lutheran General and Berman will each pay \$2 million, according to Demetrio. The defendants all denied liability in the settlement, he said.

Frank A. McAleenan, a Garretson & Santora Ltd. partner, served as Sterling's local counsel. Lutheran General was represented by Rudolph G. Schade, a partner with Cassidy, Schade & Gloor, while William C. Anderson III, a Lord, Bissell & Brook partner, represented Berman.

The case was settled shortly before a trial was set to start. Michael Rafter, a minor, by his parents and next friends, Christine Rafter and Martin Rafter v. Winthrop Laboratories, et al., No. 92 L 5805.

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