

## Appellate Court Affirms \$10.9 Million Birth Injury Jury Award and Upholds Trial Court's Rejection of Special Interrogatories

December 28, 2004

On December 23, 2004, the Appellate Court of the First District, in an opinion authored by Justice James G. Fitzgerald Smith, affirmed a jury verdict in the amount of \$10,912,500 against the University of Chicago Hospitals and upheld a trial court decision to refuse three of the hospital's special interrogatories. Our client, the mother of a baby boy, sued the hospital on behalf of her son now 15, who suffered brain damage at birth. The original verdict was rendered at trial in January 2002 before Cook County Circuit Court Judge James Flannery.

At trial, defendant University of Chicago Hospitals submitted three special interrogatories that were refused by the trial court:

- Did the defendant, [UCH], deviate from the standard of care by failing to have a second OR room available to perform a C-section?
- Did the obstetrical nurse deviate from the standard of care in failing to place the fetal monitor on the patient on or about 3:30 p.m.?
- Do you find that the boy's brain injury occurred within 45 minutes of the delivery at 5:20 p.m. on October 31, 1998?

Plaintiff argued that the defendant's interrogatories were not dispositive of the issues at trial, and the court rejected the interrogatories as improper. On appeal, the University of Chicago Hospitals contended that the interrogatories worked together to test the verdict against the hospital. The appellate court upheld the trial court's ruling that the interrogatories were improper, opining that each interrogatory was improper in its own right, as a proper special interrogatory "consists of a single, direct question that, standing on its own, is dispositive of an issue in the case such that it would, independently, control the verdict with respect thereto."

### Attorneys

- Kenneth T. Lumb

### Related Practices

- Medical Negligence
- Personal Injury & Wrongful Death

On October 31, 1988 the mother arrived at the University of Chicago Hospital after informing the hospital on five occasions by telephone of having passed brownish-yellowish fluid in her urine. At 3:20 p.m. the nurses noticed meconium-stained amniotic fluid and the mother was admitted and placed in a labor room and a fetal monitor was attached to her stomach at 3:50 p.m. The monitors showed a normal fetal heart rate, but also recorded several decelerations during which the fetus' heart rate would decline for a brief time and return to normal. A vaginal exam of the mother was performed at 4:05 p.m. and it was determined that she was still 12 to 20 hours away from a vaginal delivery. About fifteen minutes later, at 4:22 p.m., a second prolonged deceleration in the fetal heart rate was noted, and the physicians concluded that the fetus was in distress. The mother consented to an emergency C-section, but operating rooms within the hospital were unavailable. Eventually an open operating room was found, and the initial incision took place nearly an hour later, at 5:15 p.m. The infant, delivered at 5:20 p.m., suffered severe brain damage. He now requires 24-hour care and functions at the level of a two- to three-year-old.

The boy's mother was represented at trial by Kenneth Lumb of Corboy & Demetrio. On appeal, she was represented by Michael Regan of the law firm of Herbolzheimer, Lannon, Henson, Duncan & Regan, Ltd. and Corboy & Demetrio.