

THE NATIONAL LAW JOURNAL/WWW.NLJ.COM

Monday, October 14, 2002

\$59M VERDICT

Hospital hit in negligence suit

In a rare outcome, the doctor is cleared.

By Peter Page

SPECIAL TO THE NATIONAL LAW JOURNAL

A JURY IN CALIFORNIA has awarded \$59.3 million to a 3-year-old girl left gravely disabled at birth after finding the hospital where she was born negligent, but not the obstetrician who supervised the delivery. The jury decided the hospital must pay \$6.43 million now to generate the estimated \$49 million cost of caring for the girl, Caitlin Greenwell, for the 62 years she is estimated to live, plus \$904,000 for the child's lifetime earnings, which the jurors estimated at \$9.8 million.

Neither John Supple of Gordon and Rees of San Francisco—the attorney defending physician Alan N. Kaplan—nor plaintiff's counsel Bruce G. Fagel of the Law Offices of Bruce G. Fagel and Associates of Beverly Hills, Calif., could recall such a split verdict. "This is not too common," said Supple. "I never predicted the hospital alone would get hit but not Dr. Kaplan."

Fagel said the jury's verdict was unlike any other in his career. "This is the first case in my experience where the hospital was found liable but the doctor was not," he said. "It was surprising to everyone in the courtroom, including the doctor. He was sure he was going to lose."

The hospital was represented by J. Randall Andrada of Oakland, Calif.'s Andrada & Schanzenbach. Andrada declined to comment on the case. According to trial testimony and court records, Julia Greenwell was admitted to John Muir Medical Center in Walnut Creek, Calif., on Oct. 20, 1999. Kaplan, who had provided all of Greenwell's prenatal care, arrived at the hospital around 6:30 a.m. on Oct. 21 and diagnosed Greenwell with pregnancy-induced hypertension, a form of high blood pressure.

Kaplan prescribed magnesium sulfate, a powerful drug not ordinarily administered during labor except to treat pregnancy-induced hypertension, then left the hospital for his office with plans to return later to deliver the baby. Fagel said jurors told him that they believed the crucial period was the final 2 ½ hours of labor when Greenwell was attended by two nurses, a supervising nurse and a second nurse newly assigned to the delivery room who was being trained. The less experienced nurse was doing most of the evaluation, all the communication with Kaplan and writing all of the nurses' notes, Fagel said. "The jury felt that was where things really went wrong because the nurse who should have been supervising was not as involved as she should have been," he said.

According to testimony, when Kaplan arrived at the hospital at about 5:15 p.m., he found the baby to be dangerously out of position for delivery. He tried without success to rotate the baby into position but

gave up at about 6 p.m. and ordered delivery by caesarean section. When the fetal monitor was reattached to the baby in the operating room, the child's heart rate was found to be very slow and the C-section was sped up on an emergency basis.

Fagel argued that Caitlin suffered acute asphyxia beginning around 5:50 p.m., and the prolonged deprivation of oxygen resulted in the child being born with cerebral palsy. Fagel, who is a physician as well as a lawyer and a specialist in obstetrical medical malpractice, said providing lifetime care for children disabled at birth results in huge jury awards such as the one Greenwell received.

Supple said he was careful during trial not to blame the hospital or nurses but emphasized the care Greenwell had received from Kaplan during her pregnancy, noting he had seen her for twice the number of prenatal visits and diagnosed the cause of her chronic anemia as beta thalassemia, a genetic blood disorder.

Greenwell v. John Muir Medical Center, No. MSC00-02889 (Contra Costa Co., Calif., Super. Ct.). [PHOTO NOT SHOWN] caption: CAITLIN GREENWELL: She suffered acute asphyxia, resulting in cerebral palsy.