

Deal Slashes \$80M Bronx Jury Award Over Prenatal Care

By **Cara Salvatore**

Law360 (October 21, 2022, 9:16 PM EDT) -- A mid-deliberation settlement reached in a medical negligence case will result in an award of much less than the \$80 million a Bronx jury said a New York hospital owes for ignoring a known medical condition in a mother that allegedly led to a predictable and preventable premature birth causing permanent injuries to the baby.

The jury found Thursday that the New York Health and Hospitals Corp. and Jacobi Medical Center owe \$10 million for past pain and suffering and \$70 million for future pain and suffering in the case of mother Theresa Wilson and baby H.Q., who was born in May 2003. It far exceeded what Wilson's counsel had asked the jury for in closing arguments — \$10 million for past suffering and \$28 million for future suffering.

"I think they were trying to send a wake-up call to the city of New York, by the size of the verdict, that the quality of health care for these families in the Bronx has to be improved," Wilson's lawyer, James LiCalzi of Duffy & Duffy, said Friday.

However, a settlement was reached during deliberations for roughly a tenth the amount of the verdict, plus waiver of a \$2 million lien, according to LiCalzi.

Wilson had a known medical condition, "incompetent cervix," but doctors failed to act on it by doing a procedure called a cerclage, which is usually done prophylactically between 13 and 16 weeks' gestation, according to her lawyers. And serial transvaginal ultrasounds could have shown that preterm labor was starting, but they were not done, her complaint also said.

Because of this alleged negligence, baby H.Q. was born severely preterm at 23 weeks. Fetuses that have reached 24 weeks' gestation are considered viable. H.Q. "suffered profound and permanent neurocognitive injuries" including cerebral palsy, seizure disorder and failure to thrive, according to Wilson's lawyers.

The jury found that the failure to perform the cerclage constituted medical negligence. A rescue cerclage was done much later after Wilson began having severe difficulty, but it was too late, according to her lawyers.

However, the jury found two doctors affiliated with a different hospital, St. Barnabas, not liable. Meryl Grimaldi and Steven Inglis did no wrong in their treatment of Wilson and H.Q., the jury found. Grimaldi and Inglis cared for Wilson from May 4, when she was taken there by EMS, to May 9, when H.Q. was born.

According to the verdict sheet, Grimaldi and Inglis made key decisions on the evening of May 8, 2003, not to deliver the baby, to order fetal monitoring that night, and not to deliver the baby by C-section on the morning of May 9.

The suit was filed in September 2011, eight years after H.Q.'s birth. A judge gave the plaintiffs permission at that time "to file a late notice of claim," according to the 2011 complaint.

Lawyers for St. Barnabas Hospital and for Grimaldi and Inglis were not immediately available for comment. A lawyer for Jacobi and New York Health & Hospitals declined to comment.

The plaintiffs are represented by James LiCalzi of Duffy & Duffy.

Jacobi and New York Health & Hospitals Corp. are represented by Sanford Gold of Aaronson Rappaport Feinstein & Deutsch LLP.

St. Barnabas Hospital is represented by Kurt Weinmann of Garbarini & Scher.

Grimaldi and Inglis are represented by Craig Bienstock of Shaub Ahmuty Citrin & Spratt LLP.

The case is Wilson et al. v. Jacobi Medical Center et al., case number 350345/2011, in the Supreme Court of the State of New York, County of Bronx.

--Editing by John C. Davenport.