

MICHIGAN

FEATURED VERDICT

CHILDBIRTH

Birth Injury — Hospital — Nurse — OB-GYN

C-section should have been performed, plaintiff claimed

VERDICT \$144,585,020

CASE Markell VanSlembrouck, a legally incapacitated Minor, by and through her Conservator, Eric Braverman v. Andrew Jay Halperin M.D. and William Beaumont Hospital, a Domestic Nonprofit Corporation, No. 06-074585-NH

COURT JUDGE Oakland County Circuit Court, MI
Rudy J. Nichols

DATE 10/18/2011

PLAINTIFF

ATTORNEY(S) Geoffrey N. Fieger (lead), Fieger, Fieger, Kenney, Giroux & Danzig, Southfield, MI
Jack Beam, Beam & Raymond Associates, Chicago, IL
Douglas J. Raymond, Beam & Raymond Associates, Boulder, CO

DEFENSE

ATTORNEY(S) D. Jennifer Andreou, Plunkett Cooney, P.C., Mr. Clemens, MI
Joseph F. Babiarz, Jr., Plunkett Cooney, P.C., Bloomfield Hills, MI

FACTS & ALLEGATIONS On Dec. 1, 1995, plaintiff Markell VanSlembrouck was delivered by staff at William Beaumont Hospital in Royal Oak.

Markell, who was nearly 11 pounds at birth, underwent a vaginal delivery. She was born with a fractured clavicle. She spent roughly two and a half weeks in intensive care and was diagnosed as a quadriplegic during her infancy. A suit was filed on Markell's behalf against Andrew Halperin, the obstetrician who had overseen her delivery, as well as the hospital.

The suit alleged that Halperin departed from accepted standards of medical care in failing to deliver Markell via Cesarean section despite her large size, and in administering a uterine-contraction inducer that allegedly worsened the extent of the injuries — allegedly including three separate cerebral hemorrhages — caused by Markell's passage through the vaginal canal.

The hospital was accused of being vicariously liable for its obstetric nurses' alleged failures to recognize that Halperin's

judgment was compromised and to prevent Halperin from engaging in conduct that they recognized would likely result in extensive injuries to Markell.

Experts in obstetrics retained by plaintiff's counsel testified that Halperin should have recognized Markell's large size and performed a C-section, rather than using the contraction inducer Pitocin to facilitate a vaginal delivery. It was further argued that Markell's mother had gestational diabetes, a known risk factor for abnormally large babies.

An expert in obstetrics nursing called to the stand by plaintiff's counsel opined that the nurses in the delivery room had departed from accepted standards in failing to immediately seek out their superiors once they recognized that Halperin was intent on vaginally delivering a newborn with excessive weight.

During discovery plaintiff's counsel obtained medical records that appeared to indicate that hospital staff had mistaken the VanSlembrouck delivery for that of another family, the Vergeldts, whose newborn was expected to have a much smaller birth weight than Markell.

The defense argued that Halperin and the hospital's nursing staff had rendered appropriate care during a delivery whose complications could not possibly have been prevented.

It was contended that there was no indication for a C-section: a glucose tolerance test during the pregnancy was negative, and, as a result of Markell's mother's obesity, estimated fetal weights based on ultrasound were not reliable.

With respect to the claim regarding improper administering of Pitocin, the defense contended that the drug would have been completely out of Markell's mother's system by the time of Markell's birth.

Finally, defense counsel denied the existence of any patient mix-up, arguing that the two babies were born six hours apart in different rooms, and that any notations suggesting such a mistake had been made were actually harmless clerical errors.

INJURIES/DAMAGES *brain damage; fracture, clavicle; hemorrhage; quadriplegia; subarachnoid hemorrhage*

According to the complaint, Markell suffered subdural, subarachnoid and intraventricular hemorrhages during her delivery. She was reportedly limp, not breathing and covered in bruises upon being born. Experts in pediatric neurology, neuroradiology and perinatology who were retained by plaintiff's counsel testified that Markell's quadriplegia is consistent with the extensive injuries she suffered during her delivery.

An expert economist called to the stand by plaintiff's counsel provided estimates of how much Markell would have earned if she were able to work through 2061, when she would have reached her anticipated retirement age. Those estimates, which featured gradual annual increases, totaled more than \$12 million.

A vocational rehabilitation expert testified that, based on an expected age of death of roughly 82, Markell's future medical costs would total nearly \$113 million, with increasing annual estimates of mid-six figures through her 20s and 30s, and of up to mid-seven figures by her elder years.

MICHIGAN

VERDICTSEARCH MEDICAL MALPRACTICE

Plaintiff's counsel asked the jury to award Markell more than \$150,000 a year through 2077 for her future pain and suffering.

The defense retained experts in pediatric neurology and genetics, who opined that Markell's brain damage actually stemmed from a rare group of conditions referred to as pontocerebellar hypoplasia (PCH). PCH retards development of the part of the brain that coordinates movement, those experts explained, and those suffering from it often die young. The defense's experts estimated that Markell would likely not reach her 21st year.

An expert in fetal medicine called to the stand by defense counsel testified that Markell had suffered only minor intraventricular hemorrhages, and that they could not have been caused by her abnormally large size. That physician called attention to the fact that some minor hemorrhaging is frequently seen in vaginal deliveries.

According to the defense, a CT scan taken on the third day of life showed that roughly half of Markell's cerebellum and one-third of her brain stem were missing, and that there was no evidence of any damage to Markell's brain as a result of her vaginal delivery.

Defense counsel unsuccessfully requested that plaintiff's medical experts be precluded from arguing oxygen deprivation as a result of vaginal-delivery trauma on the ground that a majority of Michigan's appellate courts had found no basis for such a claim in similar medical-malpractice cases.

The defense did not call to the stand the expert economist or expert life-care planner they had retained prior to trial.

RESULT The jury found that Halperin and the hospital's nurses had been negligent with respect to Markell's delivery, and that their negligence was a proximate cause of Markell's injuries. Markell was awarded damages totaling nearly \$144.6 million, with roughly 80 percent of that amount being for future medical costs.

MARKELL

VANSLEMBROUCK \$150,000 past medical cost
 \$118,499,230 future medical cost
 \$12,246,790 future lost earnings
 \$2,500,000 past pain and suffering
\$11,189,000 future pain and suffering
 \$144,585,020

DEMAND \$3,000,000 (according to plaintiff's counsel);
 \$1,500,000 (according to defense counsel)

OFFER \$350,000

TRIAL DETAILS Trial Length: 4 weeks
 Trial Deliberations: 3 days
 Jury Vote: 6-2
 Jury Composition: 5 male, 3 female

**PLAINTIFF
EXPERT(S)**

Carolyn Crawford, M.D., neonatology,
 Camden, NJ
 Ronald Gabriel, M.D., pediatric neurology,
 Los Angeles, CA
 Anthony Gamboa, Ph.D., economics,
 Fort Lauderdale, KY
 Kathleen Lagana, Ph.D., obstetrics nursing,
 Portland, OR
 Barry D. Pressman, M.D., neuroradiology,
 Los Angeles, CA
 Barry Schifrin, M.D., obstetrics,
 Northridge, CA
 Jeffrey Soffer, M.D., obstetrics, Westfield, NJ
 Gary Yarkony, M.D., life care planning,
 Elgin, IL

**DEFENSE
EXPERT(S)**

Mary Bedard, M.D., neonatology, Detroit, MI
 Catherine Cochell, R.N., nursing,
 St. Clair Shores, MI
 Steven Leber, M.D., pediatric neurology,
 Ann Arbor, MI
 Paul Makela, M.D., obstetrics, Detroit, MI
 Aubrey Milunsky, M.D., genetics,
 Boston, MA
 Erin O'Callaghan, life care planning,
 Troy, MI (Did not testify)
 Douglas Quint, M.D., neuroradiology,
 Ann Arbor, MI
 John Scarborough, Ph.D., economics,
 Ridgefield, CT (Did not testify)
 Yoram Sorokin, M.D., fetal medicine,
 Detroit, MI

POST-TRIAL Defense counsel intends to file post-trial motions seeking to have the amount of the verdict reduced to present-day value of roughly \$40 million, and for judgment notwithstanding the verdict and/or for a new trial.

EDITOR'S NOTE This report is based on court documents and on information that was provided by plaintiff's and defense counsel.

—Asher Hawkins

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