

Verdicts & Settlements

Florida Jury Awards \$24 Million In Birth Injury Case

By Natalie White

It took a Florida family seven years and a Florida jury seven hours to come to a \$24 million verdict against an obstetrician for a botched birth that left Raven Shoaf severely disabled.

Florida jurors in Seminole County recently ordered the doctor to pay the award to the family of the 7-year-old Orlando girl who suffered from oxygen deprivation during a bad delivery. "This was a nightmare delivery that never should have happened," said John Elliott Leighton of Miami, the family's attorney. He said the case has been through seven years of appeals and delays, and that he expects more appeals.

The family is unlikely to recover the multimillion dollar award since the doctor carried only \$250,000 of medical malpractice insurance, Leighton said.

A Risky Delay

Raven Shoaf was born at Florida Hospital Altamonte in November 1997. Her mother began bleeding internally and suffered a ruptured uterus, depriving the baby's brain of oxygen and causing severe cerebral palsy.

Her parents sued the obstetrician, Dr. Michael Geiling, an osteopath, saying his decision to use vacuum pressure and fundal pressure – basically, squeezing the baby out by applying pressure to the upper abdomen – caused the complications that could have been avoided with a caesarean section. The mother began to hemorrhage, blocking blood flow to the baby and requiring her to have an emergency hysterectomy.

When Raven was born the medical staff had to resuscitate her.

According to defense attorney Thomas Dukes III, the plaintiff's emergency was unpredictable and uterine ruptures occur in less than 3 percent of patients who try vaginal birth after a previous caesarian section.

He said the nurses testified that Mrs. Shoaf was adamant in her desire for a vaginal birth, and that she was advised of the risk of a uterine rupture, not only by Dr. Geiling, but by at least one other doctor.

Dukes also argued that his client's response to the emergency was well within the standard of care.

"It's hard for a doctor to know when the uterus ruptures," he said. "Here, even in retrospect, no one could say for sure. Dr. Geiling believes that from the time he could have or should have reasonably suspected uterine rupture, the baby was delivered as expeditiously as possible, and faster than a c-section."

But Leighton put the blame squarely on the doctor's shoulders, noting that he never even informed Mrs. Shoaf of the risks of continued labor.

Mrs. Shoaf had already had two caesarean sections, which Leighton said increased the risk for ruptures and complications during a vaginal birth after caesarean. They contended Mrs. Shoaf had never been told of those risks.



Raven Shoaf cannot talk or use her limbs, and must communicate through slight movements of her head.

Leighton argued at trial that given the previous caesarean sections, Dr. Geiling should have shifted to a c-section birth when the birth became complicated and the baby began to show signs of distress on fetal monitors.

Instead, Dr. Geiling encouraged Mrs. Shoaf to attempt three more days of exhausting and non-productive labor inducement and then used a vacuum suction cup for an unusually lengthy period of time.

When that did not work, he ordered nurses to perform "fundal pressure." The plaintiff's experts testified that fundal pressure is considered controversial and should not be used in a vaginal birth if a woman has had caesareans in the past.

At trial the two sides disagreed over how long it took to deliver the baby, who was born at 3:51 a.m. The defendant's attorney argued it took about 14 minutes but plaintiffs' experts said it was closer to an hour.

The plaintiffs' case was bolstered by testimony from nurses present at the birth, who said they should have refused to apply fundal pressure considering the way the birth was going, Leighton said.

Raven did not testify, Leighton said, but she did do a demonstration in front of the jurors to show how she communicates. The youngster cannot use her arms or legs and cannot talk and must eat through a feeding tube. She can

move her head slightly.

With her father, she used a special computer to answer yes and no questions. She also indicated answers to such questions as "Which animal barks?" by looking the correct picture.

The six-member jury deliberated for seven hours after a three-week trial before ruling against the obstetrician, who has since left Florida to practice in California.

A Long String Of Appeals

The case was subject to three appeals before it even reached trial, according to Leighton.

The defense claimed that Raven's case fell under Florida's Birth Related Neurologic Injury Compensation Act, known as NICA. Under this act, the state pays for care of children neurologically injured at birth and neither the doctor nor the hospital may be found at fault.

When the plaintiffs prevailed on that argument, the defendant appealed. Then, when the defendant won that appeal, it was the plaintiffs' turn to appeal.

At this point, an administrative trial judge determined that Raven was not substantially mentally impaired, which is required for the case to fall under NICA.

The defendants appealed that ruling to Florida's 5th District Court of Appeals, and a three-judge panel reversed the administrative law judge, 2-1.

That prompted Leighton to ask for an en banc decision from the court. It was the first time in 10 years that the court agreed to hear a case en banc – and the judges voted in favor of the plaintiffs 8-2.

The defendant then asked the Florida Supreme Court to review the case, but the court declined, clearing the way for trial.

"You have to interpret NICA in the most conservative sense, and the child must have severe and permanent mental damage," Leighton said. He added that while Raven suffered brain damage, she has normal intelligence, can interact with people and is not severely mentally retarded.

"She's just trapped inside a body that doesn't work," he said.

Plaintiffs' Attorney: John Elliott Leighton, Mark A. Sylvester and Patricia M. Kennedy of Leesfield, Leighton & Rubio in Miami; Jay M. Levy of Law Offices of Jay M. Levy in Miami; and John E. Fisher of Fisher, Rushmer, Werrenrath in Orlando, Fla.

Defense Attorneys: Thomas Dukes III of McEwan, Martinez & Dukes in Orlando, Fla.; Pierre Seacord of Ringer, Henry Buckley & Seacord in Orlando, Fla.

The Case: *Shoaf v. Geiling*; June 4, 2005; Circuit Court of the 18th Judicial Circuit in and for Seminole County, Fla.; Judge Harry Stein.

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Questions or comments can be directed to the features editor at: bill.ibell@lawyersweekly.com