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Despite String of Big Verdicts, Birth Injury Cases Uncommon

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Of the Legal staff

Despite a recent string of high-profile, eight-figure verdicts in birth injury cases in Pennsylvania, lawyers say the cases are still uncommon, are hardly surefire wins for plaintiffs and present numerous risks to both sides.

Additionally, attorneys observe that while the verdicts can appear massive, defendants often pay far less by way of purchasing annuities.

Recently, three birth injury cases in Pennsylvania have produced individual verdicts numbering in the tens of millions, including a \$55 million verdict in Lehigh County, a \$42.9 million verdict in Philadelphia and a \$32.8 million verdict in Chester County. Additionally, the largest verdict in Philadelphia during 2012 was a birth injury case that rendered a \$78.5 million verdict in *Nicholson-Upsey v. Touey*.

Attorneys note that on the whole, birth injury cases do not frequently arise and, in fact, may be declining.

"There are fewer ... birth injury cases today compared to a decade ago," said Thomas R. Kline of Kline & Specter. Kline represented the parents of brain-damaged child Phinees Fortson in *Harris v. Chestnut Hill Hospital*, the case that produced the \$42.9 million verdict.

The reason for this, Kline observed, is that "better standardization of obstetrical labor and delivery practice, plus advances in neonatology practice, especially 'head cooling' of babies born with prenatal asphyxia, has contributed to better results and fewer birth injury lawsuits."

... The size of a large birth-injury verdict is linked to the projected medical expenses for the plaintiffs.

"The verdicts are driven in large measure by future care costs awarded under the MCARE Act, which requires a line-by-line assessment of life expectancy of the injured child," Kline said. "That, in turn, has led to juries in both the Fortson case and the Lehigh and Chester County cases [giving] an award for damages in the future based upon large expectations of life

care, medical and nursing care needs."

Future life care costs spanning anywhere from 30 to 50 years can enlarge verdicts, but what increases their size even more is the implementation of inflationary models to compensate for the predicted increase in health care costs.

... Kline noted that a defendant's obligation to pay yearly sums expires when the plaintiff dies.

NonEconomic Damages Rare

In determining the future needs for a plaintiff, attorneys consult life care planners, economists and actuaries to construct base numbers and inflationary models.