

Pa. Judge Awards \$41.6M Over Baby Brain Injury

By **Y. Peter Kang**

Law360, Los Angeles (April 20, 2017, 4:00 PM EDT) -- A Pennsylvania federal judge ruled Thursday that the federal government must pay \$41.6 million to a couple after determining that a doctor at a federally funded health clinic negligently used forceps to deliver the couple's baby, which caused permanent brain damage.

Following a six-day bench trial in September, U.S. District Judge Sylvia H. Rambo determined that an obstetrician employed by Keystone Women's Health Center, Dr. Thomas Orndorf, breached the standard of care when he delivered Christina Late and Nathan Armolt's baby, referred to as D.A. The judge said Orndorf's premature and multiple use of forceps in an attempt to deliver the baby caused D.A.'s permanent physical and intellectual disabilities.

"D.A.'s injuries occurred at birth and will cause him to suffer for the entirety of his life," the judge wrote in a 19-page ruling. "The brain injuries are severe, permanent, and will prevent D.A. from performing life's basic functions and caring for himself."

Judge Rambo ordered the federal government to pay the couple approximately \$32.9 million for D.A.'s future medical expenses, \$5 million to D.A. for noneconomic damages such as pain and suffering and disfigurement, and \$2.7 million in future lost wages, among other awards.

The verdict is believed to be the largest award in a medical malpractice case in the Middle District of Pennsylvania, according to the couple's attorneys.

Orndorf had admitted that medical best practices guidelines recommend a forceps delivery only during a prolonged second stage of labor, after the mother has pushed for two hours and when there is a suspicion of danger to the fetus.

However, Orndorf applied forceps after only one push and later reapplied the forceps and forcefully pulled three more times, which Late's medical expert, Dr. Andrew Gerson, testified was a breach of the standard of care, according to the ruling.

"Dr. Gerson opined that Dr. Orndorf deviated from the standard of care because neither the mother nor baby suffered from any condition for which use of forceps was indicated," the judge said. "Dr. Gerson described how forceps are to be applied and that the application of forceps to D.A. deviated from the standard of care and caused his skull fractures."

Those skull fractures, along with brain bleeding and other injuries to the brain, resulted in the child's numerous intellectual disabilities, including an inability for D.A. to express himself, an inability to read or write, as well as multiple physical disabilities that will require use of a motorized wheelchair, according to the ruling.

An attorney for the couple, Regan Safier of Kline & Specter PC, said in a statement that the judge made the correct decision.

"Judge Rambo appropriately held the government and Dr. Orndorf responsible for the catastrophic injuries caused to this little boy," Safier said. "The court recognized the severity of D.A.'s injuries and awarded what plaintiffs argued was necessary to care for him throughout his lifetime."

A representative for the U.S. Attorney's Office for the Middle District of Pennsylvania did not immediately respond to a request for comment Thursday.

The couple is represented by Shanin Specter and Regan S. Safier of Kline & Specter PC.

The federal government is represented by Michael J. Butler and G. Michael Thiel of the U.S. Attorney's Office for the Middle District of Pennsylvania.

The case is Christina Late et al. v. U.S., case number 1:13-cv-00756, in the U.S. District Court for the Middle District of Pennsylvania.

--Editing by Breda Lund.

Update: This story has been updated to include more detail on the ruling.