

# Daily Journal

## VERDICTS & SETTLEMENTS

FRIDAY, APRIL 17, 2020

### MEDICAL

#### MALPRACTICE

##### Wrongful Death

**Settlement: \$7,000,000**

**CASE/NUMBER:** Mother of Twins v. Roe Maternal-Fetal Medicine Specialist

**COURT/DATE:** Los Angeles Superior / Dec. 19, 2019

**MEDIATOR**

Jay C. Horton

**ATTORNEYS:**

Plaintiff - Lawrence S. Eisenberg (Eisenberg & Associates APC)

Defendant - Confidential

**EXPERTS:**

Plaintiff -Darryl R. Zengler M.A. (forensic economics); Allen S. Chen M.D. (physical medicine and rehabilitation); Jerome A. Barakos M.D. (pediatric radiology); Richard Haas M.D. (pediatric neurology); Gregory Devore M.D. (maternal fetal medicine)

**FACTS:** Doe Mother, 32, was found to be carrying monochorionic diamniotic twins in the early summer of 2009. As the pregnancy evolved, it became apparent that there was an unequal placental share as between Twin A and the smaller Twin B. In addition to that, the smaller Twin B exhibited persistent absent end-diastolic flow (AEDF) by Doppler ultrasound of the umbilical artery. In addition, there was a velamentous cord insertion in Twin B's placenta.

Roe maternal-fetal medicine specialist did not hospitalize Doe Mother, though he continued seeing her every week until Sept. 29, 2009, which was 27 weeks, 6 days gestation. He next saw her on Oct. 13, 2009, at which time it was appreciated that Twin B had expired.

Twin A was delivered by way of c-section on Dec. 2, 2009. Brain MRI done at six months of age showed bilateral white matter volume loss, most prominently in the parietal and occipital lobes. He was ultimately diagnosed with severe spastic quadriplegia with axial hypotonia and optic nerve atrophy.

**PLAINTIFF'S CONTENTIONS:** Plaintiff alleged that on Sept. 3, 2009, at 24 weeks, 1 day gestation, reverse end-diastolic flow (REDF) was seen in the umbilical artery via Doppler in Twin B. Plaintiffs alleged that the standard of care required that Doe Mother's maternal-fetal medicine specialist appreciate the significance of the reverse end-diastolic flow and hospitalize Doe Mother and carefully monitor both Twin A and Twin B, and to deliver both once Twin B, the smaller of the two, began to deteriorate, which was probable under the circumstances. Plaintiff contended that accepted standards of care required appreciation of the reverse end-diastolic flow in the umbilical artery of Twin B on Sept. 3, 2009. Plaintiff argued that accepted standards of care required hospitalization, with close monitoring of the heart rates, middle cerebral arteries and ductus venosus of both twins. Once there was evidence of deterioration in Twin B, plaintiff argued that accepted standards of care required delivering both twins.

Plaintiff contended that, on the death of Twin B, which likely occurred several days following the Sept. 29, 2009 visit with ROE perinatologist, surviving Twin A suffered a hypovolemic hypoxic insult, which rendered him profoundly brain-injured.

**DEFENDANT'S CONTENTIONS:** The defense contended that all care and treatment provided by Roe maternal-fetal medicine specialist was well within accepted standards of care. Although there was growth discordance as between the twins, the smaller Twin B had essentially caught up with Twin A in terms of estimated fetal weight such that it was reasonable, in late September 2009, to monitor every two weeks.

Defense disputed that the fetal ultrasound showed evidence of reverse end-diastolic flow on Sept. 3, 2009. Defense did agree that Twin B likely expired within several days of the Sept. 29, 2009 visit with Roe, and further agreed that it was probable that Twin A suffered a hypoxic insult at that time.

**INJURIES:** Plaintiff had argued that the child's life expectancy was on the order of 40 additional years, but the defense contended that his life expectancy was far less than that. Both sides agreed that the child will require 24/7 care over the balance of his life.

**RESULT:** The case resolved for \$6 million at mediation. Plaintiff also settled with her obstetrician for \$1 million.