

Long Island Business NEWS

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Law of the land

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Friday, February 10, 2006

LI lawyer makes history with jury verdict

Psst. Last June, Hauppauge lawyer Kevin Fox won the largest jury verdict ever awarded in New York.

In a settlement overseen by Suffolk County Supreme Court Judge Ralph F. Costello, Fox won his clients more than \$212 million (\$212,580,000 to be exact). The six-week medical malpractice trial stemmed from a 1998 childbirth gone horribly bad.

The baby, now eight years old, suffered what Fox called “very severe brain damage” because his doctors didn’t perform a cesarean section. According to Fox’s verdict report, the doctors should have detected warning signs in the mother’s labor pointing toward the need for a C-section, given complications that arose during the mother’s first pregnancy two years earlier, which the same doctors supervised.

The birth took place at St. Charles Hospital in Port Jefferson, though the obstetricians worked for North Harbor Ob/Gyn Associates Inc., according to Fox’s verdict report.

Fox and all but one of the defendants’ counsels – representing the hospital, nurses, doctors and insurance companies – agreed to settle the case before closing arguments. The jury then met to assign damages and delivered the massive verdict. The terms of the settlement remain confidential, but the liability is clear.

Over the course of 57 years, the family will receive \$145 million to cover skilled nursing and therapy, nearly \$22 million for medical care and roughly \$10 million for prescription-drug costs. The jury also awarded Fox’s clients \$20 million for pain and suffering and \$13 million for lost income and benefits.

The size of the award didn’t come as a surprise, Fox said. An expert economist witness outlined for the jury how much 60 years of physical therapy would cost, especially after factoring inflation and other variables. The jury based the award “exactly on the proof we presented,” Fox said.

“We had good facts,” he said of his side’s case. Fox’s team consisted of himself and a paralegal, who is also his wife.

Fox said Suffolk County has a reputation for skimpy verdicts, but that proved not to be true. Fox credited Suffolk’s High-Tech Courtroom, the only one at the court complex in Riverhead, allowing him to present videotaped depositions, images of medical records and time lines to the jury, judge, witnesses and counsels.

“It’s great stuff, and few people use it,” he said.

Fox didn’t publish the verdict officially until late December. One doctor didn’t join in on the settlement and filed what Fox described as standard appeal to either set aside the decision or lower the jury award.

The \$212 million beats a \$197 million verdict won by the firm of Johnny Cochran, which, until Fox’s case, appeared to be the largest award ever in New York. The award also bests New York’s medical malpractice record, a \$116 million verdict won by another Long Island law firm, Pegalis & Erickson in Lake Success.

Fox’s victory came to the newspaper’s attention when Fox politely pointed out that the award should have put him on the list of

the Top 10 jury verdicts of 2005, a national survey conducted by a sister paper of the Long Island Business News. The list ran in the Jan. 27 issue of LIBN.

By Fox's reckoning, the \$212 million award should have been No. 4, just behind a Vioxx trial in Texas and ahead of a bicycle-accident case in Florida that resulted in a \$164 million verdict.

The case's outcome won't erase the damage done to the boy's brain, nor will it eliminate the burden of a life of physical therapy and constant medical attention, Fox said.

"But the burden of worrying, 'How am I going to do it?' is taken away," he said.

Lateral move

Rivkin Radler, the Uniondale law firm that's already Long Island's biggest, got a little bigger last month, particularly in its real estate, zoning and land use practice group. The firm lured away a partner and two associates from real-estate specialists Forchelli, Curto, Schwartz, Mineo, Carlino & Cohn in Mineola.

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