



Parents Robbed Of Tough Choice

\$12M awarded to couple not made aware of birth defects in time to end pregnancy

By THOMAS B. SCHEFFEY
Law Tribune Staff Writer

An inexpensive blood test could have detected the spina bifida, or water on the brain, and other neurological abnormalities Shaun and Nicki Chamberland's unborn son was suffering from, in time to have the pregnancy terminated.

But the test was never administered, and Shaun Jr., born in 1999, will require extensive medical care for the rest of his life.

Last month, a predominantly Catholic jury in Waterbury found a nurse and a midwife failed to adequately communicate the risks and benefits of performing the test on the mother-to-be, and had not obtained her informed consent to waive the tests. Lawyers for Physicians for Women's Health LLC now have the task of toppling what may be the second-highest wrongful birth award in U.S. litigation history.

The Wolcott couple received a total of \$12 million in economic and noneconomic damages in their action against the Waterbury gynecological group. The jury awarded \$5 million for the parents' past and future economic damages, \$5 million for the mother's past and future emotional distress and \$2 million for the father's past and future emotional distress.

Defense lawyer Donna Zito, of Hartford's O'Brien, Tansky & Young, said the defense will challenge the award of emotional distress damages. The parents would not be entitled to emotional distress damages from a botched surgery on their child, said Zito. "[W]e argued that it was bizarre to allow Mrs. Chamberland to recover for emotional distress" from genetically-based injuries that, "by all accounts, were fixed and irreparable long before Mrs. Chamber-

land first appeared at my client's office for prenatal care."

Plaintiff's lawyers Robert B. Adelman and Joram Hirsch, of Bridgeport's Adelman, Hirsch & Newman, also argued a pioneering "wrongful life" count on the son's behalf, contending that he should be compensated for a life of suffering. But Zito persuaded Waterbury Superior Court Judge Elizabeth A. Gallagher to exclude that controversial claim, on grounds that Connecticut does not and should not recognize it.

The massive damages award arose from small missteps. In July 1998, Nicki Chamberland sought pregnancy care from the Waterbury gynecological group. On a key visit, Aug. 2, 1998, the defense contended the mother was fully informed of the significance of the alphafeto protein test, a blood test which detects neural tube defects and Down's syndrome. Mrs. Chamberland testified that she was not informed Aug. 2, and claimed that nurse Betsy Keller called her the next day to ask whether she wanted the test. The wife said she asked whether the health center doctors recommend it. The response she heard, according to Adelman, was that the test wasn't needed because she wasn't at risk.

Zito, in an interview, said the defense also intends to challenge Judge Gallagher's admission of extensive medical records and testimony—MRIs and CAT scans showing the anatomy of the child's defects and details of corrective surgery, and seven vid-



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Plaintiff's lawyer Robert B. Adelman praised the jurors for recognizing 'at least in the United States, the law is settled that a woman has the right to end a pregnancy.'

eotapes which include scenes of him crying during therapy—on grounds they were more prejudicial than probative.

Joshua Akery, an assignment editor at Law Tribune affiliate Verdictsearch.com, said the \$12 million verdict is second only to one other wrongful birth dispute in the company's database—a \$42 million result in Texas in 1998. On appeal, it was completely wiped out. ■