

# VIRGINIA LAWYERS WEEKLY

TRIAL REPORTS

## MEDICAL MALPRACTICE

### Obstetrical

By Virginia Lawyers Weekly Staff

December 15, 1997

**Type of Action** - Medical malpractice

**Type of Injuries** - Brain and lung injuries

**Name of Case** - Bittner v. Gueriera, et al.

**Court/Case No.** - Circuit Court of Prince William County, Law #38346

**Judge or Jury** - Jury

**Name of Judge** - LeRoy F. Millette Jr.

**Awarded or Settled** - Awarded

**Amount** - \$2,750,000 compensatory with pre-judgment interest from date of injury (10/17/84) for a total award of \$5,967,500

**Attorneys for Plaintiff** - Charles J. Zauzig III, Woodbridge; Dov Apfel, Rockville

**Plaintiff's Experts** - Names withheld

**Defendant's Experts** - Herbert G. Hopwood, M.D.; Richard S. Guy, M.D.; James T. Christmas, M.D.; Robert Petres, M.D.; Richard L. Naeye, M.D.; Richard A. Molteni, M.D.

**Other Useful Information** - Emily Dawn Bittner was born on October 17, 1984, the product of an abdominal pregnancy with massive lung damage and irreversible brain injury which occurred 24 to 48 hours prior to birth.

Plaintiff claimed that Dr. Gueriera changed the due date of the pregnancy based on an ultrasound which was performed at 38 weeks gestation despite the clinical evidence of fetal growth restriction. According to plaintiff's counsel, the ultrasound clearly demonstrated an asymmetrical growth restricted baby--such babies have known risks of hypoxia, acidemia, asphyxia and meconium aspiration. If the pregnancy is not managed properly and there is a failure of timely intervention, the baby is bound to succumb to these risks, according to plaintiff's counsel. The plaintiff claimed that in 1984 it was known that third trimester sonograms, particularly at 38 weeks, were not reliable to date pregnancies but were rather used to measure growth. A reasonably prudent obstetrician, once there is suspected growth restriction, would have done antepartum testing, which in 1984 would have included serial ultrasounds, serial estriols and fetal heart rate monitoring (OCTs/NSTs), according to plaintiff's counsel. The defendant in this case failed to consider the risks to this baby, failed to order the appropriate testing and changed the due date by six weeks, the plaintiff claimed.

The plaintiff claimed the defendant allowed the pregnancy to go post dates, which further placed the fetus at risk for asphyxia and meconium aspiration. Seven days prior to birth, an oxytocin challenge test was performed to determine whether or not uterine contractions could be elicited through stimulation by Pitocin. The defendant contended that the purpose of ordering the test was to rule in/rule out abdominal pregnancy, presumably to discount the information on the fetal heart rate portion of the strip, which, although it demonstrated that the baby had not become acidotic at the time, at the same time it would have told a reasonably prudent obstetrician that the pregnancy should not continue according to plaintiff's counsel. The testimony by all the plaintiff's experts and many of the defense experts showed that had the plaintiff been delivered on the original due date of September 27, or no later than October 10 of 1984, the outcome would have been normal. The standard of care allegedly required delivery by C-section to have occurred on later than October 10.

There were no special damages presented to the jury.

[97-T328]

© Copyright 2009, by Virginia Lawyers Media, all rights reserved

---

# Jury Finds Doctor Negligent in Birth

## *Girl's Family Awarded \$6 Million*

---

By Leef Smith

Washington Post Staff Writer

---

A Prince William jury ordered a Manassas obstetrician yesterday to pay about \$6 million to a couple whose child was born with severe brain and lung damage after receiving inadequate prenatal care. The award is thought to be one of the highest civil payouts in county history, court officials said.

After hearing two weeks of testimony and deliberating for three hours, the jury determined yesterday that obstetrician Charles Gueriera negligently handled the pregnancy of Deborah Bittner, causing serious birth defects in her daughter, Emily. Emily lived for 12 years.

During the trial, Bittner's attorneys argued that Gueriera mismanaged the care of Bittner's fetus, which was considered small at 38 weeks. Instead of recognizing that the pregnancy was high risk and that the baby should be delivered, Gueriera extended the pregnancy by six weeks, causing irreparable damage to the child, Bittner's attorneys said.

"As a result this little girl was born with irreversible brain damage, massive lung damage, and spent the first 14 months of her life in intensive care at Children's Hospital in D.C.," said Chuck Zauzig, one of the Bittners' attorneys. "Basically by changing the due date, he doomed this baby."

The jury awarded Emily's estate \$2.75 million in damages, plus about \$3.25 million in interest, which her parents—Deborah and Dan Bittner—will likely receive.

Attorneys for Gueriera could not be reached for comment yesterday.

Emily's birth was made more complicated by the fact that she developed in her mother's abdomen, instead of the womb. Abdominal pregnancies are rare but can be carried to term and can produce healthy babies, Zauzig said.

It was not known until shortly before her birth that Emily was developing outside the womb—a condition often hard to diagnose—and Gueriera's attorneys argued that nothing could have prevented the outcome.

"This trial sent a message out to the community," said Dov Apfel, an attorney who also represented the Bittners. "Doctors have to listen to their patients, and watch the charts and hear what Mom is telling them and intervene with high-risk pregnancy, or else you'll have a horrible outcome."