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\$4.2M Settlement of Suit Over Defect Not Detected in Utero

Yepez v. Englewood Hospital: The family of a 5-year-old girl born with a heart defect that was not diagnosed in utero has accepted \$4.2 million from four medical defendants in a wrongful birth case.

According to the plaintiff's attorneys, Dayna Yepez, of Teaneck, is developmentally delayed as a result of being born with a deformed left ventricle on Dec. 11, 1996, and since then has undergone three surgeries.

While pregnant, the girl's mother, Debra Yepez, consulted an obstetrician at Planned Parenthood of Greater Northern New Jersey in Hackensack and was referred to an obstetrician at Englewood Hospital, where an ultrasound was performed.

The ultrasound technician reported he could not obtain a four-chamber view of the heart and signaled the possibility of a heart defect. The radiologist and the obstetrician should have ordered a follow-up ultrasound that would have verified the existence of the problem, according to the plaintiff's counsel, **Bruce Nagel** and **Robert Solomon**, partners in Livingston's **Nagel Rice Dreifuss & Mazie**.

Shortly before the July 10 start of trial, held by Union County Superior Court Judge **Thomas Lyons**, the plaintiff accepted a \$1-million settlement from the obstetrician. As indemnification for the obstetrician, the hospital added \$675,000 and Planned Parenthood contributed \$25,000.

On July 17, at the end of the plaintiff's case, the radiologist settled for \$2.5 million, according to Solomon and the radiologist's lawyer, **James Sharp** of Parsippany's **Reisman Sharp Brown & Rosenberg**.

A confidentiality agreement barred lawyers from identifying the obstetrician or radiologist.

Sharp said his evidence showed that the radiologist provided the proper standard of care by passing along the ultrasound technician's warning that the ultrasound had not shown all four chambers of the heart. It was the obstetrician's responsibility to order the follow-up study, according to the defense.

On behalf of the obstetrician, **Daniel Pomeroy** of Springfield's **Mortenson & Pomeroy** prepared expert evidence that the obstetrician relied on the radiologist's expertise.

The radiologist, besides saying the heart pictures were incomplete, advised the obstetrician to explore possible clinical symptoms of a defect. Finding none, the obstetrician was not required to order another ultrasound, according to the obstetrician's defense.

David Cooner, a partner at Newark's **McCarter & English**, represented Planned Parenthood. **Michael Prigoff** of Englewood's **Lebson, Prigoff & Baker** and **Patrick Clare**, a partner in Springfield's **Hardin, Kundla, McKeon, Poletto & Polifroni**, represented the hospital.