



Morgan & Morgan Can't Nix \$5M Legal Malpractice Verdict

By **Y. Peter Kang**

Law360 (December 7, 2018) -- A Florida state judge has rejected Morgan & Morgan PA's bids to vacate or reduce a \$5 million jury award in a legal malpractice suit accusing a firm attorney of botching a medical malpractice suit over a baby's brain damage.

After a four-week trial ending Oct. 17, the Sarasota County jury found that Morgan & Morgan attorney Armando Lauritano negligently handled a suit lodged on behalf of Rock and Shawna Pollock accusing Gulf Coast Obstetrics & Gynecology Ltd. and others of causing their son Rock Jr.'s severe brain damage during childbirth.

Circuit Court Judge Frederick P. Mercurio shot down Morgan & Morgan's motions for a new trial, judgment as a matter of law, and remittitur — or a reduction of the jury's award — saying the verdict was not contrary to the law or the evidence, and noted that a jury is given "wide latitude" in determining the amount of damages, according to three brief orders all dated Dec. 3.

Counsel for the Pollocks told Law360 on Friday that they were pleased with the judge's post-trial decisions and look forward to a hearing set for Dec. 11 to determine whether they are entitled to attorneys' fees of \$1.2 million and costs of \$400,000.

Under Florida law, if a plaintiff recovers damages that are greater than 125 percent of a previous settlement offer, he or she is entitled to an award of reasonable costs and attorneys' fees, according to one of the Pollocks' attorneys, Donald St. Denis of St. Denis & Davey PA.

St. Denis said because his clients made two separate offers to settle for amounts that were below the 125 percent threshold, he remains confident the judge will grant their fees request.

In a statement, Morgan & Morgan founder John Morgan said the firm plans to appeal the award.

"This case is a long way from over," he said. "We defended this case because we think we

are right. And we will continue fighting it because we still believe we are right. We fully expect to win outright on appeal and have a judgment in our favor entered by the appellate courts.”

St. Denis also expressed optimism regarding a potential appeal, noting that the vast majority of cases are not overturned on appeal.

“We are pretty confident about it,” he said. “In the state of Florida, 90 percent of the time the [appellate] court doesn’t reverse the lower court.”

In the underlying suit, the Pollocks alleged that Gulf Coast, its certified nurse midwife Laura Danner and Sarasota Memorial Hospital failed to timely order an emergency C-section after Shawna began experiencing complications following the administration of a labor-inducing drug.

The baby was deprived of oxygen as a result and suffered a permanent and severe brain injury, while Shawna suffered a ruptured uterus and can now no longer be intimate with her husband, according to court papers.

The couple said that because Lauritano was so focused on obtaining a large contingency fee from the baby’s catastrophic injury, he neglected to file the necessary paperwork for the alleged injuries sustained by Shawna and Rock Sr. and allowed the statute of limitations period on those claims to expire.

The Pollocks also asserted that after learning the baby would qualify for no-fault benefits from the Florida Birth-Related Neurological Injury Compensation Association, Lauritano withdrew as counsel, and because the limitations period had already expired, no attorney would agree to take up their case.

The Pollocks are represented by Donald W. St. Denis and Eric M. Bradstreet of St. Denis & Davey PA.

Lauritano and Morgan & Morgan are represented by Thomas Saieva and Lesley A. Stine of La Cava & Jacobson PA, Dinah Stein of Hicks Porter Ebenfeld & Stein PA, and Scott M. Whitley of Morgan & Morgan PA.

The case is Rock Pollock Sr. et al. v. Morgan & Morgan PA et al., case number 2011-CA-008757NC, in the 12th Judicial Circuit Court of the State of Florida.