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LITIGATION FILES

**Jury Awards \$59 Million to Girl Brain-Damaged During Birth
Walnut Creek Hospital Failed to Make Sure Child Received the Appropriate Care**
By Joan Osterwalder

[PHOTO NOT SHOWN] caption: **“She’s basically trapped in a body,” attorney Bruce Fagel says of his 3-year-old client.**

Caitlin Greenwell is turning 3 today. The girl is permanently brain-damaged from a birth injury, but she may have a happier celebration after winning a \$59.3 million verdict against the hospital she was born in.

Her attorney, Bruce Fagel of Beverly Hills-based Fagel & Associates, a boutique law firm specializing in medical malpractice, says John Muir Medical Center in Walnut Creek failed to make sure Caitlin was given the appropriate care during her birth, which led to her cerebral palsy, a motor disorder.

“She’s basically trapped in a body,” Fagel says.

The young child can’t walk, talk or eat, but she is cognitively normal, he says.

Caitlin’s parents, Julia and Steven Greenwell of Bay Point, filed a medical malpractice lawsuit against the hospital and the obstetrician, Dr. Alan Kaplan. After deliberating 1½ days, a Contra Costa County jury found John Muir Medical Center negligent, but the panel voted 9-3 not to hold the doctor responsible for his actions on Oct. 21, 1999. *Caitlin Greenwell v. Alan Kaplan*, MSC00-02889 (Contra Costa Super. Ct. Oct. 2, 2002).

The jurors decided that the hospital must pay an actual amount of \$7.8 million to generate the total award over the next 62 years that Caitlin is expected to live.

Because the girl is a minor, California law requires that the court supervise the investment of that amount, which is the largest medical malpractice verdict in Contra Costa County history, Fagel says.

The jury awarded the Greenwell family \$49 million for lifetime medical costs, \$9.8 million for future loss of earnings and \$500,000 for pain and suffering.

The hospital disagrees with the jury.

“This is a very sad case, and we all sympathize with the little girl,” says a John Muir Medical Center spokeswoman. “Testimony from well-qualified experts in nursing and other medical specialties supported our belief that the nurses provided excellent care and did not cause the girl’s injuries.”

Fagel, who was an emergency doctor for 10 years before becoming a lawyer, says Julia Greenwell was nine days past her due date when she had her labor induced and developed complications. The lawyer says the hospital was negligent because it allowed a brand-new nurse to look after Julia Greenwell although the hospital had a well-trained staff.

“The jury basically felt the hospital allowed an inexperienced nurse to care for a high-risk patient,” Fagel says. “It’s the hospital’s job to protect the patient.”

Julia Greenwell planned to have a vaginal delivery but ended up having a Caesarean section because her baby was upside-down in the womb. Fagel claims Caitlin was injured from

a lack of oxygen and blood supply, which was caused by a combination of excessive amounts of a labor-inducing drug and pregnancy-induced hypertension.

“This baby ran out of reserves and could no longer compensate, and that’s when the injury occurred,” Fagel says.

The 31-year-old mother was admitted to the hospital at 8 p.m. Oct. 20, 1999. Six hours later, the nurse noted that Julia Greenwell had elevated blood pressure, but the nurse didn’t call the doctor at home, Fagel said. At 6:30 a.m. Oct. 21, Kaplan diagnosed Julia Greenwell with pregnancy-induced hypertension, which made her a high-risk patient, Fagel says.

Although the doctor ordered that Julia Greenwell be given medication, nurses testified that they didn’t believe that the mother-to-be had pregnancy-induced hypertension, Fagel says.

At a 3 p.m. shift change, a nurse who was being oriented to the labor and delivery room was put in charge of Julia Greenwell’s care, the attorney says. The junior nurse testified that she was unable to read fetal monitor results by herself, he says.

At 5:15 p.m., Kaplan returned and tried to deliver the baby, but he was unable to and ordered a Caesarean section at 6 p.m., Fagel says. The baby was delivered 23 minutes later with signs of severe perinatal asphyxia, he says.

The hospital’s attorney, Randall Andrada of Andrada & Schanzenbach in Oakland, declined to comment.

Fagel says the hospital claimed the injury occurred from unpredictable umbilical cord compression in the operating room before the Caesarean section and an undiagnosed infection in the placenta.

The doctor’s attorney, John L. Supple, a partner at Gordon & Rees in San Francisco, where he heads the firm’s health care practice group, says his defense worked.

Supple says he argued that the plaintiffs’ expert who testified about Kaplan’s alleged lack of care was a “hired gun.”

“All of the experts and the plaintiffs admitted that [Kaplan’s] prenatal care and post-delivery care was very thorough,” Supple says.

The lawyer says he argued it made no sense that his client wouldn’t apply the same standard of care during labor.

“We were pleased that the jury recognized the quality of Dr. Kaplan’s care throughout the entire pregnancy,” Supple says. “It was an extremely difficult case; emotions ran very high.”

Before the case went to trial, Judge James Trembeth in Martinez ordered five settlement conferences, Fagel says. Kaplan offered to pay \$925,000, and the hospital made a \$1 million offer before trial, he says. At trial, Fagel says he asked the jury to return a \$73 million verdict. But, Fagel says, his clients are “gratified” with the award.

“It was very difficult for the Greenwells,” he says.