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\$70 million for Ashley's future?

By Tina Damikolas

A 7-year-old Claremont girl paralyzed by a botched delivery will receive at least some of a recent \$70 million court judgment against a medical insurance company. The case relates to the 1991 trial of 3 doctors accused of malpractice in the birth of Ashley Hughes, who was left a quadriplegic and on a ventilator.

In the 1991 court action, attorneys for Southern California Physicians Insurance Exchange defended Ashley's two neonatologists whom it insured. They also offered an attorney to Dr. Neil Jouvenat, the uninsured doctor who delivered Ashley.

That case resulted in a \$19.8 million verdict for Ashley, with \$9.8 million expected of Dr. Jouvenat, forcing the obstetrician into bankruptcy.

That \$9.8 million has remained in limbo.

In the recent suit, Ashley's lawyer, Bruce Fagel, went back to court, this time with Dr. Jouvenat's bankruptcy trustee as his plaintiff, to fight the medical insurance company.

His argument? In the 1991 trial, the insurance company inadequately defended Dr. Jouvenat to protect the clients it insured, neonatologists Andrew Hsu and Yu-Shen Wu, who cared for Ashley after delivery.

He explained that the insurance company had nothing to lose if the uninsured Dr. Jouvenat was found mostly to blame and forced to pay up. However, the more its clients were found at fault, the more the insurance company would have to pay.

"I suspected actions taken [by Dr. Jouvenat's attorney] that seemed to be to the advantage of the insured co-defendants at the expense of the doctor," explained Mr. Fagel.

The company action kept Ashley from collecting much of her \$19.8 million award since Dr. Jouvenat—who owned half of it—was forced into bankruptcy.

"My prime motivation was to get the money Ashley wouldn't have otherwise gotten," said Mr. Fagel. "The uninsured doctor had nothing near \$9.8 million. The insurance company thought the doctor would be discharged in bankruptcy and they could all walk away."

A Los Angeles Superior Court jury agreed with Mr. Fagel. The jury found the insurance company had fraudulently defended Dr. Jouvenat, making him appear more financially responsible for Ashley's injuries than he actually was.

The jury determined the percentage of fault among the 3 doctors, finding the two insured doctors more at fault—in fact, \$5.7 million more at fault, which the insurance company will have to pay. The jury also slapped the insurance company with \$65 million in punitive damages for fraud.

Mr. Fagel says the case sets a precedent—"that jurors will not stand for the insurance industry and attorneys trying to manipulate the system," he said.

But insurance company attorney Robert Wrede says his company did not fraudulently defend Dr. Jouvenat. In fact, he declares that the company had more to gain by properly defending the doctor.

The insurance company feared Dr. Jouvenat's bad reputation—the doctor admitted abusing drugs at Ashley's birth—would unfairly bias the jury against the two neonatologists.

“It’s an unfortunate fact of any litigation that evidence inflames a jury and results in vastly inflated verdicts,” he adds.

The insurance company decided that properly defending Dr. Jouvenat would benefit everyone, according to its attorney. “The best way to minimize it was to make sure he had competent counsel,” Mr. Wrede adds. “This is sort of an example [the defense] of ‘let no good deed go unpunished’.”

The insurance company will appeal the case.

Where the \$70 million will eventually go is the confusing part. The money will be collected by Dr. Jouvenat’s bankruptcy trustee and taken to bankruptcy court, where a judge will decide how it is to be distributed among the creditors.

As one of Dr. Jouvenat’s creditors, Ashley will at least receive the \$9.8 million that the doctor owes her from the 1991 malpractice verdict. The judge will decide on the rest. “The \$5 million is clearly Ashley’s money”, commented Mr. Fagel. The amount will also depend on whether the insurance company successfully appeals the case.

Ashley’s spinal cord was damaged at birth by Dr. Jouvenat, who was believed to have used forceps negligently. Mr. Fagel asserted that the neonatologists worsened the situation by covering up the doctor’s negligence. “There was evidence that Hsu and Wu were responsible for [Ashley’s] damages tripling,” said Mr. Fagel. “These doctors ignored it for 6 weeks. They told the family she had a congenital problem and would die within a year. As a result, she wasn’t treated.”

If she had been treated in time, Mr. Fagel said Ashley at least wouldn’t need the ventilator. “Being on the ventilator, she requires highly skilled 24-hour care,” he said. The ventilator increased care costs from \$100,000 to \$300,000 a year, he said.

Mr. Wrede disagreed. He said that the two neonatologists had called in a pediatric neurologist who diagnosed Ashley as having a genetic disease. “It was an honest error and I think the record is absolutely clear on that,” he added. “Even if they’d known about the neck, there was nothing they could have done about it.”

In attempting to prove Dr. Jouvenat’s poor defense, Mr. Fagel asserted that the doctor’s attorney could have helped his client by calling on neonatologist Gilbert Martin to testify that Ashley’s injury worsened from lack of treatment after delivery. But the attorney never did. “He said he didn’t want to point fingers at the co-defendants [the two neonatologists],” said Mr. Fagel. “It’s a basic conflict of interest.”

Mr. Wrede responded that by California law, Dr. Jouvenat was 100% responsible for the baby’s injuries anyway. “As a matter of law, when a treating doctor malpractices and subsequent treatment is given, [the treating doctor] is responsible for 100% of the injury,” he said.

Mr. Wrede believes the emotional aspects of the case biased the jury. “I believe the jury was seriously misled,” he said. “The jury considered the likelihood that some of these damages would go to Ashley Hughes and that wasn’t the point in this case at all.”

Ashley’s grandmother Linda Hughes is just thinking about the personal ramifications of the case. The money received so far has allowed the Hugheses to care for the little girl at their Indian Hill Boulevard home with medical equipment and nursing care that otherwise would be too expensive. “There’s no way Gerry and I could have taken her out of the hospital without that [1991] award,” said Ms. Hughes. As a young single parent, Ashley’s mother found caring for the child to be too difficult. Ms. Hughes is raising Ashley with her husband Gerald.

—Tina Damikolas

Photo Caption:

Ashley Hughes demonstrates her customary cheery attitude toward life while in her Claremont home. Her grandfather is in the background of the photograph below, where she is checking a television monitor.

COURIER photos/Trish Branley