

The DeBerry's Legal Odyssey Concludes With A \$7.75 Million Settlement



Chris Searcy, David DeBerry and Greg Barnhart

Tom and Gwenda DeBerry of Vero Beach have fought two battles for over a decade, raising a severely brain damaged child and pursuing a medical malpractice case against the doctors who negligently treated their newborn son, David. The DeBerry's legal

battle ended in May when they accepted a \$7.75 million settlement from Doctors' Clinic of Vero Beach and obstetrician Robert Klomp.

Chris Searcy and Greg Barnhart pursued the medical malpractice case on behalf of the DeBerrys. The suit accused the doctors of causing David's mental retardation by failing to treat him properly within the first 12 hours after his birth at Indian River Memorial Hospital in 1981. Born five weeks premature, David developed a systemic infection shortly after birth. Proper medical treatment for the infection and respiratory problems would have prevented David's oxygen deprivation and severe brain damage. David, now 14, requires 24-hour supervision and extensive therapy. His daily living skills are assessed at an 18 month to 2 year-old level.

The DeBerry's legal odyssey has spanned twelve years, including five trials, (three mis-trials), and six appeals. The litigation has been handled by ten judges through the
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years. The case was tried in Indian River County three times between 1985 and 1988, each time ending in a mistrial.

In 1985, the DeBerrys accepted a \$1.5 million settlement from Indian River Memorial Hospital. These funds were used to re-design the DeBerry home to make it wheelchair accessible and user friendly for David so he could continue to live at home. However, these funds could only begin to adequately take care of David's extensive needs...the fight had to continue.

Before the fourth trial in 1990, the case was moved to Martin County because of pretrial publicity. Later that year, the DeBerrys entered into a \$500,000 conditional settlement with Dr. Daniel Thornton, David's pediatrician.

In a 1990 Martin County trial, a jury awarded the DeBerrys \$12.5 million from Klomp and Doctors' Clinic, a Martin County record verdict at the time. The 4th District Court of Appeal overturned that verdict in 1993, ruling that jurors had improperly been given information on a doctor's prior settlement. A new trial was ordered.

Before the fifth trial began, the DeBerrys rejected settlement offers of \$2 million, \$3.5 million and \$5 million. The fifth trial ended in

May after 6 weeks of testimony when the \$7.75 million settlement was reached. Defense attorneys had threatened to appeal the case if the jury awarded a large amount to the DeBerrys. The St. Lucie County jurors polled after the announcement of the settlement stated they would have awarded the DeBerrys more than the settlement amount.

The settlement means a secure future for David. The money goes to a guardianship, administered by a judge, for David's benefit. If invested wisely, the money will be sufficient to care for David at home for the rest of his life.

Searcy Denney Scarola Barnhart & Shipley, P.A. made a commitment to the DeBerrys to proceed with this case against all obstacles. That commitment was sustained through twelve years of litigation. Hundreds of thousands of dollars in costs and thousands upon thousands of hours were expended on trial preparation as well as on the numerous trials and appeals. The DeBerrys made a commitment to fight for justice for their son regardless of the time and the toll it has taken on them personally. After reaching the settlement, Gwenda DeBerry said, "When Tom and I felt like quitting, all we had to do was look at our little boy. He's not a quitter. He's a fighter. He has more courage, strength, character and determination than anyone I know." ■