

White and Williams Secures Superior Court Affirmance of Dismissal of Decade-Old Malpractice Claim Alleging Permanent Brain Damage

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White and Williams recently scored a major victory for a Philadelphia-area pediatric hospital in a medical negligence case that had been ongoing for nearly 13 years. In a published opinion, the Superior Court of Pennsylvania affirmed the Philadelphia Court of Common Pleas' dismissal of the action against the hospital on the grounds of judicial estoppel. The case – initially dismissed after the pretrial conference and on the eve of trial in November 2022 – concerned the determination by a Philadelphia maternal-fetal medicine specialist that a mom pregnant with twins complicated by a grave condition known as twin-to-twin transfusion syndrome was not a candidate for *in utero* laser surgery to address the condition. The mother ultimately received the surgery from another physician in Ohio. Plaintiff alleged in a separate Ohio action that brain injury sustained by one of the twins was caused acutely by negligence in the performance of the Ohio procedure while simultaneously maintaining in Pennsylvania that the delay in treatment of the condition caused her child's brain injury. Plaintiff pursued the stronger case against the Ohio surgeon first, in 2017, and ultimately resolved the matter during jury deliberations by settlement.

Over the course of the next five years, a team of White and Williams lawyers, led by partners Andy Susko, Dan Ferhat and Josh Gajer, pursued every legal avenue to demonstrate to the Philadelphia trial court that Plaintiff's theories of liability in Ohio and Pennsylvania were contradictory and irreconcilable, that Plaintiff's claims against the Philadelphia hospital lacked a legal or factual basis, and that Plaintiff's recovery in Ohio foreclosed any further recovery in Philadelphia on the grounds of judicial estoppel. After years of dogged advocacy and mere days before jury selection in Philadelphia, the trial court agreed with the defense and dismissed the case in its entirety. Our appellate team, including partners, Ed Koch and Marc Penchansky, helped to ensure that the trial court victory would be upheld on appeal.

Andy Susko argued the motion at the trial court and on appeal. In addition to Andy, Dan, Josh, Ed and Marc, over the years defending this case, the White and Williams team was supported by an incredible complement of counsel, associates, paralegals and staff including Rebecca Foley, Maggie MacDonald, Nicole Otto and Louise Berry.