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ADVANCE PHOTO BY MICHAEL McWEENEY

The Baldassano family: John, left, sons, Louis, 10 and John, 7, and Mary.

\$12 million awarded for Island boy's birth defect

Jury finds mother's untreated infection during 4-day delay in delivery caused baby's cerebral palsy; attorney for doctor, hospital plans appeal

By ROCHELLE STEINHAUS
ADVANCE SUPREME COURT BUREAU

Like many 10-year-olds, Louis Baldassano prefers playing Nintendo to baseball. But that may be because cerebral palsy has kept the Bulls Head boy from knowing what it's like to swing a bat.

It didn't have to be that way, according to a Brooklyn jury that awarded him \$12.2 million, after finding a New Jersey doctor and a Brooklyn hospital guilty of medical malpractice.

Louis suffered brain damage that resulted in cerebral palsy while his mother was in labor, a four-day period during which she suffered an untreated infection in her uterus, according to the boy's attorney, Thomas A. Moore.

The lawsuit against obstetrician Dr. Steven Berkman and Long Island College Hospital alleged that medical staff missed the chance to prevent the brain damage by failing to remove him from his mother's womb.

"By leaving me there for 93 hours and not delivering my

son, he wound up with brain damage," Mary Baldassano, Louis' mother, said yesterday. "The second that these doctors decided not to deliver Louis, our lives changed forever."

The verdict, rendered Friday in Brooklyn Supreme Court, came after three weeks of testimony and two days of jury deliberations.

"The key was the delay in delivery," said Moore, a medical malpractice lawyer based in Manhattan.

Mrs. Baldassano, a former nurse, and her husband, John, now a retired police officer, weren't expecting complications in the arrival of their first baby when she was admitted to the hospital on Sept. 4, 1989.

But since her water broke before labor began, Mrs. Baldassano was more susceptible to infection, and before delivery she developed an infection in her uterus.

Moore successfully argued that Mrs. Baldassano was never given antibiotics. Nor did she undergo a sonogram,

which would have revealed the true weight of the baby. Doctors left the child in the womb because they said it was too small to deliver.

"Instead, they 'guesstimated' the infant to be four pounds," he said. "They painted a picture — all on conjecture — of a premature, low-weight infant, prompting them to leave the baby in the womb despite the dangers created by the infection. They ignored medical protocol."

Louis remained in his mother's womb for four days until he was born, checking in full-term at 7.8 pounds.

"It's been a horror," said Mrs. Baldassano, recalling how the first half of Louis' life was filled with seizures and numerous trips to specialists. "Every time we went to a doctor, he wound up with something worse. It was a nightmare. It was heartbreak after heartbreak."

But Louis has shown progress. Doctors at first said he would never walk, but Louis took his first steps at age 2. Now a fifth-grader in PS 69, New Springville, Louis still faces challenges, including 24-hour care, his mother said.

"It's very hard for him to have friends. He can't relate to kids his age," she said of Louis, who has a healthy, 7-year-old brother, John-John.

The defense, represented by Richard Kaplan of the Manhattan law firm Aaronson, Rappaport, Feinstein & Deutsch, maintained the infant was premature in gestation and weight and therefore could not be delivered.

But Moore argued to the panel

of two men and four women that, regardless of whether the infant was premature, medical protocol dictates that when infection is present, immediate delivery is performed.

"This is where the tragedy of errors occurred," Moore said, claiming that if the doctors had "reviewed a sonogram performed early in Mrs. Baldassano's pregnancy, they would not have miscalculated the gestation period."

Moore charged that during the case the defense tried to "cover up" their mistakes by not producing medical records that would have proved negligence.

But Kaplan disputed such claims yesterday.

"Whenever something is not in a hospital chart the claim is there is a reason for it not being there," Kaplan said yesterday. "In this case, it is totally unfounded."

Kaplan said yesterday he plans to file an appeal and will also seek to have the current award reduced.

"While it's sad that the young man has developmental problems, it's clear that the jury was unable to focus on the adequacy of the medical care," he said. "We are confident that the verdict will not be upheld."

Mrs. Baldassano is optimistic her son's needs will be taken care of for the rest of his life.

"I think this is bittersweet. If I could have my son back the way he would have been, I would have everything," she said. "It can't replace what he would have been like, but we can at least give him whatever he needs."

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