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Military Parents, Feds Reach \$5M Settlement Over Bad Birth

By Emma Cueto

Law360, New York (June 21, 2017, 1:54 PM EDT) -- A Nevada federal judge has signed off on a \$5 million settlement between a military family and the United States in a suit accusing an Air Force hospital of negligence while caring for a woman in labor, causing her baby to be born with liver and brain damage.

The federal government will pay over \$3.6 million to Marco and Olalla Aguilar, on behalf of their 3-year-old daughter identified by the initials IKA, and \$1.3 million to their attorneys to settle the Aguilars' suit accusing the Mike O'Callaghan Federal Medical Center at Nellis Air Force Base in Nevada of delaying a cesarean-section after the fetal heart rate decelerated during Olalla Aguilar's labor.

The Aguilars filed suit against the government in January 2016, asking for \$25 million. Marco Aguilar was in the Air Force from 1986 to 2006, and Olalla Aguilar was treated at O'Callaghan during her pregnancy in 2013 and 2014, the complaint said.

Olalla Aguilar went to O'Callaghan to induce labor April 1, 2014, with labor beginning in the early hours of April 2, according to the complaint. During the afternoon of April 2, doctors noted that the fetal heart rate had begun to decelerate, a sign the fetus was in distress, the complaint said. Doctors considered that Olalla Aguilar might need a C-section, and medical records indicate she requested one, but anesthesia was not immediately available at the center, according to the complaint.

IKA was delivered by C-section in the early hours of April 3, according to the complaint. At birth, she was not breathing and had no heartbeat, the complaint said. She was later diagnosed with damage to her liver and brain, including hypoxic-ischemic encephalopathy, according to the complaint.

According to the educational and advocacy group Hope for HIE, hypoxic-ischemic encephalopathy can result in cerebral palsy, epilepsy, cognitive impairment, and a host of other problems.

The government denied all wrongdoing, argued that the Aguilars had not exhausted their administrative remedies, and that Nevada state law would cap their recovery at \$350,000.

The two parties reached an agreement during a settlement conference in April.

Under the agreement, \$3.1 million will be placed in a trust and distributed to IKA in monthly installments of \$4,000. The Aguilars' attorneys will receive \$1,250,000 in fees and reimbursement for \$87,000 in court costs. An additional \$169,000 will repay a lien the Aguilars used to pay medical bills, and just under \$400,000 will go to Marco and Olalla

Aguilar directly.

Counsel for the Aguilers and the government did not respond Wednesday to a request for comment.

The Aguilers are represented by Ivy R. Gage of Gage & Gage LLP.

The government is represented by Lindsay Michele Roberts of the U.S. Attorney's Office.

The case is Marco Antonio Aguilar et al. v. USA, case number 2:16-cv-00153 in the U.S. District Court for the District of Nevada.

--Editing by Orlando Lorenzo.

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