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## Family settles for \$18.5M for newborn brain injury

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A family whose newborn daughter suffered a brain injury after a delayed meningitis diagnosis has settled its federal lawsuit for \$18.5 million.

Plaintiffs Maria Saldana and Valentin Guevara sued the federal government in 2014, alleging physician Pamela Roper failed to identify and timely order tests to treat symptoms of infection and sepsis in their 15-day-old daughter Paola, causing her to suffer the injury in September 2011.

Guevara, who was primarily taking care of Paola and her twin sister as Saldana recovered from post-delivery complications, brought Paola to federally funded Access Family Health Center in Pilsen for a sick visit after noticing she was more irritable than normal, feeding poorly and running a fever higher than 100 degrees.

However, Paola's temperature was just higher than 96 degrees when Roper took a reading during the visit.

Although that kind of temperature instability is a sign of infection, Roper performed a physical exam and recorded normal findings on a well-child exam form before sending them home with directions to return in another two weeks, said Matthew Williams, a partner at Salvi, Schostok & Pritchard P.C. who represented the plaintiffs.

"Basically, when a newborn has an infection, it disrupts their nor-

mal habits so you look for a newborn just acting differently in different ways," he said. "This newborn was demonstrating that in several different ways, and unfortunately the pediatrician didn't pick up on it."

Paola's condition worsened with another fever above 100 degrees after returning home, so Guevara took her that night to Holy Cross Hospital — which transferred her to Mount Sinai Hospital because it did not have a pediatric unit.

The two arrived at Mount Sinai Hospital around 2 a.m. the morning after their visit with Roper, Williams said, and Paola was seen by resident physicians who "didn't immediately appreciate what was going on."

The attending physician who saw Paola about four hours later "immediately" suspected she was suffering from meningitis and sepsis, he said, but her catastrophic brain damage had already set in by the time she underwent tests and received antibiotics around 7:30 that morning.

Today, at 5 years old, Paola has cerebral palsy and cannot function independently, Williams said. She cannot feed herself, will never be able to walk and will always require someone to provide her with round-the-clock care.

"One of the saddest things about this case is she's got this twin who is an exact replica of what Paola should be and could be," he said. "It made this case so much more compelling, I think, because for the day-in-the-life



Matthew L. Williams

videos we did, we had a person interacting with her who we were going to suggest to the judge is how Paola should be."

In denying the plaintiff's allegations, Williams said, the federal government contended Paola did not appear sick during her visit with Roper, who also did not believe the newborn's low temperature was abnormal for a neonate.

It also contended irritability alone isn't enough to send a baby to an emergency room, and the medical outcome of Paola's condition would have been the same even if she was treated the same day as her visit with Roper.

"One of the problems with their defenses was that their standard-of-care argument hurt their causation defense because if you believe that the baby was fine when Dr. Roper saw her, then the damage isn't done at that point," he said. "So, if you start antibiotics early on in the infectious

process, you have a much better chance of avoiding injury."

Former assistant U.S. attorney David R. Lidow represented the government. A spokesman with the U.S. Attorney's Office declined to comment.

The parties had completed discovery and were prepared for a trial date in October when the case settled during a pretrial conference with Magistrate Judge Sheila M. Finnegan, Williams said. The settlement was approved by the necessary parties last month, he said.

"I think the facts of the case were strongly in our favor," he said. "The defense's experts were in a difficult position to reasonably dispute the standard-of-care and causation arguments that we set forward in our case."

The settlement will allow the family to move from their third-floor apartment, purchase a home and modify it to fit Paola's needs, Williams said. It will also cover all of her future medical expenses and help compensate either her mother or anyone else the family might hire to provide necessary in-home care, he said.

"Their life will never be the same, but it might become a little easier with the additional help," he said.

Salvi, Schostok & Pritchard partner Tara R. Devine, associate Elizabeth R. Olszewski and staff attorney John A. Mennie also represented the plaintiffs.

The case is *Paola Guevara et al. v. United States of America, et al.*, 14 CV 151.