

THE PALM BEACH POST, October 3, 2000

“Boy who was fetus during crash awarded \$6 million”

By: Bill Douthat

A jury Monday awarded \$6 million to a 5- year-old boy who suffered prenatal brain damage in a 1994 auto crash.

Braden Garner was a 3-month-old fetus when his mother, Ana Martinez, was seriously injured in the accident west of Boca Raton.

The accident left both the mother and her yet-to-be-born child with brain damage, said attorney Gregg Schlesinger, who represented the child and his father, Brian Garner in a 10-week trial before Judge Edward Fine.

Brian Garner was awarded \$800,000 by the jury. Martinez, who survived the accident but was in a coma for more than three months of her pregnancy, settled a separate lawsuit during the trial.

Martinez was carrying her fetus when she struck by another car while she waited at Glades Road to turn onto State Road 7.

Two other drivers, Felipe Jonior of Pompano Beach and Mark Samarel of Boca Raton and Brian Garner’s insurer, Southern Group Indemnity, were defendants in the trial.

The jury assigned most of the fault of the accident to Samarel, who Schlesinger argued was speeding through the construction zone.

“The defense blamed 100 percent of the accident on road construction and somehow the people lost their ability to drive,” Schlesinger said. Although the roadway was lined with traffic cones, both Jonior and Samarel violated traffic rules, Schlesinger said.

Garner’s insurer was named because the company had claimed he retroactively canceled his coverage a month after the accident. The jury found that the policy was in force.

Roadbuilder Hardrives of Delray Inc. had been a defendant in a lawsuit brought by Martinez but reached a confidential settlement during the trial, he said.

Schlesinger said Brian Garner suffered because his 20-day-old marriage was devastated by the crash.

“The family split up right after the baby was born,” Schlesinger said. He said the father has partial custody of the 5-year-old.

“The nature of the tragedy is so beyond belief as to what Brian had to go through,” Schlesinger said.