\$1.3 million malpractice award will be appealed

Attorney David Christensen Is gearing up for a second appearance before the state Court of Appeals—and ultimately the Supreme Court—in the Robert Kolosowski medican lapractice case.

"There's no precedent for the Court of Appeals Joing what it did," said the attorney from Bloomfield Hills. He said he was "confused" at how the court last week decided his retarded client was awarded no more than \$1.3 million in a suit raginst William Beaumont Hospital and a doctor.

"The Supreme Court should pass on it because it's an upprecedented decision by the Court of Appeals," he said.

ROBERT WILL celebrate his 10th birthday Nov. 13 in Taylor with his parents, Stanley and Jadwiga Kolsowski — though "celebrate" may be the wrong word.

At his birth, his mother was unattended in the hospital. Robert fell on his bead, fracturing bis skull. Clumsy, ridiculed by other kids, and with an 1Q of 60 to 80, he will be educable only to the fourth grade level, will

'There's no precedent for the Court of Appeals doing what it

- David Christensen attorney for mentally
disabled youth

will live seven years less than normal, expert witnesses said.
Here is the legal history:

• An Oakland Circuit Court jury awarded Robert \$5 million; his immigrant mother \$1.5 million; and his father, \$500,000 — a total of \$7 million. It placed 30 percent of the blame on the hospital, 70 percent on Dr. Christopher Marlowe, an obstetrician and gynecologist.

• Judge Allice Gilbert, saying the verdict "shocked the conscience," cut it to \$107,000 for the boy alone plus interest.

• The appellate panel upheld Gilbert on 15 questions regarding conduct of the trial but raised the limit on damages. Judge Walter Cynar favored \$1.8 million for Robert; Judge Barbara MacKenzie and Michael E. Kobza favored \$1.3 million. They

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award.
The case was a celebrated one —
occurring in the midst of a major
statewide controversy over soaring
liability insurance costs and generous jury awards. The Miehigan Trial
Lawyers Association said "let the
jury decide." Medical and insurance
people criticized the "Instant millionaire" mentality of juries.

lionaire" mentality of furies.

The Judicial Tenure Commission investigated Gilbert, but she was ultimately cleared of misconduct. The case had political impact, too. Gilbert's award of \$105.098.01, with interest, would have amounted to \$250,000 — precisely the amount many legislators then were proposing as a statutory limit.

Gilbert's calculations in determining the verdict was excessive had no basis in Michigan law.
 The judge "should have determined the present value of the jury award rather than what the award could have yielded at the investment rate of 10 percent."

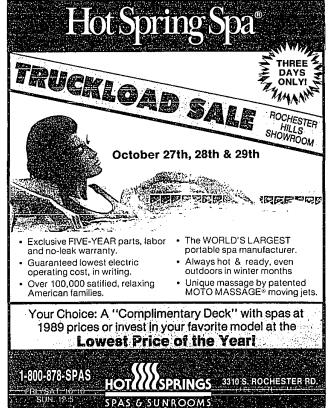
minimum wage of \$3.35 an bour to calculate lost wages rather than "what the plaintill could have carned but for the injury."

The judge "compounded (the) error by reducing the future lost wages by the amount of income tarcist that would have to be paid."

The judge "erred by finding

that plaintills oriered amost to evidence to support non-commendan-ages for pain and suffering, mental anguish, denial of social pleasures, embarrassment and humiliation."

On a long list of other questions— such as the relevancy of attorneys' sugettings to expert witherses—the



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