



## Defense: Doctor was right to send expectant mother home

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** Michigan

**Venue:** Wayne County

**Court:** Wayne County, Circuit Court, MI

**Injury Type(s):**

- *other - death*

**Case Type:**

- *Wrongful Death*
- *Medical Malpractice - Childbirth; Failure to Admit; Failure to Monitor*

**Case Name:** Nyesha Riley, as Personal Representative of the Estate of A'Nyiah Riley, Deceased v. VHS Harper-Hutzel Women's Hospital, Inc. d/b/a Hutzel Women's Hospital, VHS of Michigan, Inc. d/b/a Detroit Medical Center, Manasi Patwardhan, M.D., Kia Lannaman, M.D., and Wayne State University Physician Group, Jointly and Severally, No. 18-001187 -NH

**Date:** August 04, 2021

**Plaintiff(s):**

- Estate of A'Nyiah Wheeler, (Female, 1 Years)

**Plaintiff Attorney(s):**

- Robert P. Roth; RP Roth Law PC; Southfield MI for Estate of A'Nyiah Wheeler

**Plaintiff Expert (s):**

- Mark B. Landon M.D.; Fetal Medicine; Columbus, OH called by: Robert P. Roth

**Defendant(s):**

- Kia Lannaman
- Manasi Patwardhan
- VHS of Michigan Inc.
- Wayne State University Physician Group
- VHS Harper-Hutzel Women's Hospital Inc.

**Defense Attorney(s):**

- D. Jennifer Andreou; Plunkett Cooney, PC; Detroit, MI for Manasi Patwardhan, Wayne State University Physician Group
- Eric T. Ramar; Plunkett Cooney, PC; Detroit, MI for Manasi Patwardhan, Wayne State University Physician Group
- None Reported for VHS Harper-Hutzel Women's Hospital Inc., VHS of Michigan Inc., Kia Lannaman

**Defendant Expert(s):**

- Frank A. Manning M.D.; Fetal Medicine; Hawthorne, NY called by: for D. Jennifer Andreou, Eric T. Ramar
- Gregory O. Utter M.D.; Fetal Medicine; Kalamazoo, MI called by: for D. Jennifer Andreou, Eric T. Ramar
- Suzanne M. Jacques M.D.; Pathology; Detroit, MI called by: for D. Jennifer Andreou, Eric T. Ramar

**Insurers:**

- The Doctors Co.

**Facts:**

On Oct. 17, 2014, plaintiff's decedent A'Nyiah Wheeler was stillborn. Several days earlier, on Oct. 13, the child's mother, Nyesha Riley, had an appointment with maternal fetal medicine specialist Dr. Manasi Patwardhan, at the High Risk Clinic at Hutzel Women's Hospital, which is part of the Detroit Medical Center. Riley was being followed by a team of specialists during her pregnancy. She was at high risk for intra-uterine fetal demise due to longstanding diabetes, morbid obesity, hypertension and a large-for-gestational-age fetus.

During the Oct. 13 appointment, a fetal non-stress test (NST) was performed. Patwardhan interpreted the results as nonreactive. She then ordered a second exam, a biophysical profile (BPP), which was performed by fellow Kia Lannaman. The fetus scored well on the BPP, so Patwardhan discharged Riley. Riley was told to return for more tests in three days.

When Riley returned for these follow-up tests on Oct. 16, a bedside ultrasonography did not detect a heartbeat. The fetus was determined to be nonviable. Labor was induced, and A'Nyiah was delivered stillborn 18 hours later.

Riley, acting as the representative of her late daughter's estate, sued Patwardhan and the doctor's practice, Wayne State University Physician Group. The lawsuit alleged that Patwardhan was negligent in her treatment of Riley, resulting in A'Nyiah's death, and that Wayne State University Physician Group was vicariously liable for Patwardhan's actions.

The child was originally identified as A'Nyiah Riley in the complaint. The estate also originally sued Hutzel Women's Hospital, Detroit Medical Center and Lannaman, but they were dismissed prior to trial.

The estate's counsel argued that the NST strip showed decelerations of the fetus' heartbeat. All experts and Patwardhan agreed that this finding would have warranted further monitoring of the baby.

The estate's counsel retained as an expert the recognized authority in fetal maternal medicine for diabetic pregnant women. He opined that the troubling NST result should have trumped the more reassuring BPP test. The expert said that Patwardhan should have had Riley admitted to Hutzel on Oct. 13. The expert further opined that if Riley had been kept for further monitoring, the fetus's deterioration would have been discovered and intervention would have resulted in a live baby.

The defense contended that Riley's obesity made the NST, which requires placing a belt around the mother's belly, particularly difficult to interpret, and disputed whether the NST strip showed decelerations. The defense maintained that the BPP was the more reliable test result, and that Patwardhan was correct to send Riley home once that exam showed the fetus was healthy.

The defense retained two maternal fetal medicine specialists, including the doctor who created the BPP test. They each maintained that the BPP trumps the NST, and that, given the reassuring BPP, it was appropriate to discharge Riley.

The defense further maintained that Patwardhan and the other doctors at the clinic did everything they could to help Riley during her pregnancy. Defense counsel argued that Riley was told to come to the clinic every three days during the last month of her pregnancy, while similar high-risk clinics only test their patients once a week. The defense also contended that the clinic had Riley meet with a dietician and nutritionist and that Riley additionally received a glucose log and a glucometer so she could monitor her blood sugar, but Riley still failed to get her diabetes under control during her pregnancy.

**Injury:**

Once doctors determined that A'Nyiah was deceased, they induced Riley's labor. She was in labor for 18 hours before delivering her stillborn baby. The estate's counsel asserted that Riley had to suffer emotionally during these 18 hours.

The estate's expert opined that Riley's hyper-production of insulin overwhelmed the fetus, leading to the baby's death. The estate's counsel argued that the hospital could have controlled Riley's blood sugar if the expectant mother had been admitted on Oct. 13, 2014. Counsel alleged that A'Nyiah's death was slow, which meant that hospital doctors would have had time to save A'Nyiah by delivering her once they noticed the fetus in distress.

Riley testified that she still thinks about A'Nyiah, and also noted that her surviving children missed out on having another sister. The estate sought recovery of damages for Riley's past and future pain and suffering. The estate's counsel asked the jury to award approximately \$1 million.

Defense counsel noted that A'Nyiah's autopsy listed three possible causes of death: a placental infection, a tightly coiled umbilical cord or an epileptic seizure. The defense maintained that all of these events were acute, unpreventable and unpredictable. The defense argued that even if Riley had been in the hospital when the event occurred, doctors would not have been able to deliver the baby fast enough to save A'Nyiah. The defense also noted that Riley admitted she could feel A'Nyiah kicking in the two days after the Oct. 13 appointment, which was additional evidence that an acute event caused A'Nyiah's death.

The estate's counsel argued that none of the possible causes of death listed on the autopsy rose to the legal standard of more probable than not. The estate's expert also dismissed the possibility that a placental infection, a tightly coiled umbilical cord or an epileptic seizure caused the fetus' death.

**Result:**

The jury rendered a defense verdict: no cause of action.

**Trial Information:****Judge:**

Charles S. Hegarty

**Demand:**

\$250,000 (total, from Patwardhan and Wayne State University Physician Group)

**Offer:** None

**Trial Length:** 4 days

**Trial  
Deliberations:** 70 minutes

**Jury Vote:** 6-2

**Jury  
Composition:** 5 male, 3 female; 2 Black, 6 white

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's counsel and counsel of Patwardhan and Wayne State University Physician Group. Additional information was gleaned from court documents. The remaining defendants' counsel were not asked to contribute.

**Writer** Melissa Siegel

## OB-GYN: Brachial plexus injury was not due to negligence

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** Ohio

**Venue:** Montgomery County

**Court:** Montgomery County, Court of Common Pleas, OH

**Injury Type(s):**

- *arm*
- *other* - dystocia; physical therapy; shoulder dystocia; decreased range of motion
- *shoulder*
- *neurological* - Erb's palsy; brachial plexus; nerve damage/neuropathy; neurological impairment; neuroma

**Case Type:**

- *Medical Malpractice* - OB-GYN; Dystocia; Childbirth; Birth Injury

**Case Name:** Symphony Oberry, a minor, by her parent, Individually and as next friend, Shalonda Jones v. Andre T. Harris, M.D., No. 2016 CV 02987

**Date:** March 01, 2019

**Plaintiff(s):**

- Shalonda Jones (Female, 29 Years)
- Symphony Oberry (Female, 1 Years)

**Plaintiff Attorney(s):**

- Zev T. Gershon; Gershon Willoughby & Getz; Baltimore MD for Symphony Oberry, Shalonda Jones
- Pamela Pantages; Nurenberg Paris Heller & McCarthy; Cleveland OH for Symphony Oberry, Shalonda Jones
- Shannon A. Slater; Gershon Willoughby & Getz; Baltimore MD for Symphony Oberry, Shalonda Jones

**Plaintiff Expert(s):**

- Amy Kutschbach M.R.C; Life Care Planning; Cleveland, OH called by: Zev T. Gershon, Pamela Pantages, Shannon A. Slater
- Marc Engelbert M.D.; OB-GYN; New York, NY called by: Zev T. Gershon, Pamela Pantages, Shannon A. Slater
- Daniel G. Adler M.D; Pediatric Neurology; Englewood, NJ called by: Zev T. Gershon, Pamela Pantages, Shannon A. Slater
- Harvey S. Rosen Ph.D.; Economics; Cleveland, OH called by: Zev T. Gershon, Pamela Pantages, Shannon A. Slater
- Robert Allen Ph.D.; Biomedical; Baltimore, MD called by: Zev T. Gershon, Pamela Pantages, Shannon A. Slater

**Defendant(s):**

- Andre T. Harris

**Defense Attorney(s):**

- Brant E. Poling; Poling Law; Columbus, OH for Andre T. Harris
- Patrick Adkinson; Poling Law; Dayton, OH for Andre T. Harris

**Defendant Expert(s):**

- Frank A. Manning M.D.; Fetal Medicine; Sunrise, FL called by: for Brant E. Poling, Patrick Adkinson
- Michael Noetzel MD; Pediatric Neurology; St. Louis, MO called by: for Brant E. Poling, Patrick Adkinson
- Michele J. Grimm Ph.D.; Biomechanics; Detroit, MI called by: for Brant E. Poling, Patrick Adkinson

**Insurers:**

- Doctors Co. (The)

**Facts:**

On May 30, 2013, plaintiff Symphony Oberry was born at Miami Valley Hospital in Dayton. She was later diagnosed with a permanent injury of her brachial plexus, which is a network of nerves emanating from the spine to the shoulder, arm, hand and fingers.

Symphony's mother, Shalonda Jones, acting individually and on behalf of her daughter, sued Andre Harris, M.D., the delivering obstetrician, alleging that Harris was negligent in performing the delivery.

Jones alleged that Harris was performing a vaginal delivery when right shoulder dystocia was encountered. Harris freed the shoulder after flexing the mother's legs, performing an episiotomy and attempting to deliver the posterior arm. He accomplished the birth about one minute after appreciating the shoulder dystocia.

Jones claimed Harris was negligent in managing the shoulder dystocia. She further alleged that this negligence constituted malpractice and caused her daughter's permanent right brachial plexus injury.

Jones alleged that Harris used excessive lateral traction to deliver the baby. Jones argued that this led to the brachial plexus injury.

Jones' biomedical engineering expert opined that the only way a permanent brachial plexus injury can occur is if the delivering physician pulls the baby too hard in the wrong direction.

Jones' OB-GYN expert opined that, when a baby suffers a permanent nerve injury during birth, it must be the result of doctor malpractice.

The defense contended that Harris used an appropriate amount of gentle traction during the moments when he applied force to facilitate the delivery and disputed whether negligence by Harris caused the brachial plexus injury. The defense instead maintained that a combination of uterine contractions and maternal pushing led to the injury.

The defense's OB-GYN, pediatric neurology and biomechanical engineering experts all said that these maternal forces can cause such an injury during childbirth.



**Injury:** Symphony Oberry suffered a brachial plexus nerve injury and developed Erb's palsy in her right shoulder. Experts on both sides described the likely injury as a neuroma as opposed to an avulsion or rupture. The likely neuroma was probably at the C5-6 level and possibly involved C7, as well.

Symphony was discharged from the hospital a few days after her birth. She was then referred to Cincinnati Children's Hospital Medical Center. After several appointments with doctors at that facility, she underwent a triple nerve transfer. The procedure took place in October 2013, when Symphony was four months old.

Symphony then underwent formal physical therapy until she was approximately three years old. She now continues to do therapeutic exercises at home.

While Symphony can feed and dress herself, the motion in her right arm remains limited. Specifically, she is unable to raise her right hand completely above her head.

A life care planner stated that the brachial plexus injury will severely limit Symphony's job prospects in the future.

The plaintiffs sought damages for future lost earnings and past and future pain and suffering.

The defense's pediatric neurology expert opined that Symphony would still be able to perform most jobs, despite her brachial plexus injury.

**Result:** The jury determined that Harris was not negligent in the care and treatment provided and a defense verdict was entered.

### **Trial Information:**

**Judge:** Timothy S. Hogan

**Trial Length:** 6 days

**Trial Deliberations:** 1.5 hours

**Jury Vote:** 8-0

**Editor's Comment:** This report is based on information that was provided by defense counsel. Additional information was gleaned from court documents. Plaintiffs' counsel did not respond to the reporter's phone calls.

**Writer** Melissa Siegel

## Use of vacuum device led to brachial plexus injury: lawsuit

**Type:** Verdict-Plaintiff

**Amount:** \$2,750,000

**State:** Ohio

**Venue:** Montgomery County

**Court:** Montgomery County, Court of Common Pleas, OH

**Injury Type(s):**

- *arm*
- *other* - dystocia; physical therapy; decreased range of motion; scar and/or disfigurement
- *wrist*
- *shoulder*
- *neurological* - Erb's palsy; brachial plexus; nerve damage/neuropathy

**Case Type:**

- *Medical Malpractice* - OB-GYN; Dystocia; Childbirth; Birth Injury; Informed Consent

**Case Name:** Matthew Harrison, a minor, by his parent, Individually and as next friend, Maurita Henry v. Horizon Women's Health Care, LLC And Andre T. Harris, M.D., No. 2016 CV 06114

**Date:** January 31, 2018

**Plaintiff(s):**

- Maurita Henry
- Matthew Harrison (Male, 1 Years)

**Plaintiff Attorney(s):**

- Pamela Pantages; Nurenberg Paris Heller & McCarthy; Cleveland OH for Maurita Henry, Matthew Harrison
- Jeffrey M. Heller; Nurenberg Paris Heller & McCarthy; Cleveland OH for Maurita Henry, Matthew Harrison

**Plaintiff Expert(s):**

- John Burke Ph.D.; Economics; Cleveland, OH called by: Pamela Pantages, Jeffrey M. Heller
- John Pullman; Vocational Rehabilitation; Cleveland, OH called by: Pamela Pantages, Jeffrey M. Heller
- Marc Engelbert M.D.; OB-GYN; New York, NY called by: Pamela Pantages, Jeffrey M. Heller
- Daniel G. Adler M.D; Pediatric Neurology; Englewood, NJ called by: Pamela Pantages, Jeffrey M. Heller
- Maryanne Cline R.N.; Life Care Planning; Cleveland, OH called by: Pamela Pantages, Jeffrey M. Heller

**Defendant(s):**

- Andre T. Harris
- Horizon Women's Health Care, LLC

**Defense Attorney(s):**

- Patrick Adkinson; Poling Law; Dayton, OH for Horizon Women's Health Care, LLC, Andre T. Harris

**Defendant Expert(s):**

- Frank A. Manning M.D.; Fetal Medicine; Sunrise, FL called by: for Patrick Adkinson
- Michael Noetzel M.D.; Pediatric Neurology; St Louis, MO called by: for Patrick Adkinson
- Michele J. Grimm Ph.D.; Biomechanics; Detroit, MI called by: for Patrick Adkinson

**Insurers:**

- Doctors Co.

**Facts:**

On Feb. 9, 2007, plaintiff Matthew Harrison was born at Miami Valley Hospital. The delivering physician was Andre Harris, M.D. During the birth, shoulder dystocia was encountered. Harris was able to free the shoulder and accomplish the birth about two minutes after appreciating the shoulder dystocia. However, Matthew had a completely flaccid right arm at birth. He was later diagnosed with a complete injury of his brachial plexus, which is a network of nerves emanating from the spine and the shoulder, arm, hand and fingers

Maurita Henry, acting on behalf of her son, sued Harris. She claimed Harris was negligent in the use of a vacuum device during labor and delivery and that he mismanaged the shoulder dystocia. Henry alleged that this negligence constituted malpractice and caused her son's permanent right brachial plexus injury. Henry also claimed that Harris failed to obtain her informed consent prior to his use of the vacuum. Henry additionally sued Harris' corporation, Horizon Women's Health Care LLC, for vicarious liability.

Maurita Henry had presented to Miami Valley Hospital to deliver her full-term baby. Henry had been treating with Harris and his professional corporation since July 2006. Harris had completed his obstetric residency in June 2006 and opened his solo practice shortly thereafter. Henry was among his first patients.

Near the end of Henry's labor, according to Henry, Harris used a vacuum device to expedite the baby's delivery. Henry argued that, that according to medical records, five pop-offs with the vacuum were documented. A delivery room nurse's testimony corroborated this documentation. Henry claimed this violated the manufacturer's warnings

against excessive applications of the vacuum. Moreover, Henry alleged that, after the first few attempts with the vacuum failed, Harris should have performed a C-section. Henry alleged that Harris caused the shoulder dystocia with this negligent use of the vacuum, citing Harris' lack of experience performing vacuum-assisted deliveries on his own. Henry maintained that Harris should have called for assistance once Matthew's delivery became difficult.

Henry further argued that after causing the shoulder dystocia, Harris used excessive force in freeing the shoulder and accomplishing the birth. Henry said that this caused the brachial plexus injury. All the doctors at the trial reportedly agreed that there was no justification for excessive force during this delivery. Henry alleged that Harris should have performed one of the accepted maneuvers that doctors use to deal with shoulder dystocia, which would have avoided adding stress to Matthew's neck during the delivery.

The defense contended that Harris had done plenty of vacuum-assisted deliveries during his residency and was qualified to do the procedure on his own and the shoulder dystocia was unavoidable. Harris maintained that he only performed three pop-offs, which was within the accepted standard of care. He claimed that while he attempted five pop-offs, during two of those pop-offs he was unable to get a proper seal on the vacuum due to Matthew's hair.

Harris further maintained that he managed the shoulder dystocia in textbook fashion. He said he attempted two of the accepted maneuvers, specifically suprapubic pressure and the McRoberts maneuver. While he admitted using traction to deliver the baby, he maintained that the traction was gentle and not excessive. He said that this gentle traction fell within the accepted standard of care.

Defense counsel said that the brachial plexus injury resulted from a combination of the uterine contractions and maternal pushing. Defense counsel retained a biomechanical expert who stated that these forces are strong enough to cause a brachial plexus injury.

**Injury:**

Matthew Harrison was an otherwise normal newborn and was discharged from Miami Valley shortly after his birth. Two weeks later, he was seen at the brachial plexus clinic at Cincinnati Children's Hospital. An EMG showed injuries to all five brachial plexus nerves. He was diagnosed with nerve ruptures at C7, C8 and T1, a probable nerve avulsion at C5, and a possible avulsion at C6. An OB-GYN expert and a pediatric neurology expert agreed at trial that Matthew had suffered at least one avulsion.

Matthew had follow-up appointments at the hospital every few months and showed some signs of function in his right fingers, hand, wrist and forearm. However, doctors were not satisfied with the lack of function in his right shoulder and performed a nerve transfer when Matthew was 22 months old.

Matthew had physical therapy through the age of five and continues to have regular follow-up appointments at Cincinnati Children's Hospital. At the time of trial, there was a five-inch discrepancy in the size of his left and right arms.

Because of his birth injury, Matthew has limited use and decreased sensation in his right arm. He also cannot lift that arm above his head.

A life care planner described Matthew's future medical and supportive needs, including regular MRIs, X-rays, physical therapy, occupational therapy, vocational assessment, psychological counseling, and assistive devices to maintain his independence as he grows older.

A vocational expert testified that Matthew's permanent brachial plexus injury will affect his future earning capacity. The expert stated that Matthew's loss of income was \$1.75 million if he did not obtain a college degree and \$4.6 million if he did graduate from college. These numbers were calculated by an economics expert.

Matthew sought economic and noneconomic damages. His mother also filed a derivative claim for loss of services and loss of consortium.

The defense maintained that Matthew has coped well with his injury and disputed whether he would need vocational assessments or psychological therapy in the future. Defense counsel further maintained that Matthew would be employable in white-collar jobs.

The defense retained a maternal fetal medicine doctor as an expert, as well as a pediatric neurology expert, who each testified that Matthew did not suffer an avulsion. They pointed to Matthew's medical records, which showed some signs of improvement over time. They maintained that if an avulsion had occurred, Matthew's condition would not have improved.

**Result:**

The jury found that Harris was negligent in his care and treatment of Maurita Henry and Matthew Harrison and that this negligence was a cause of injury to Harrison. The jury awarded \$2.25 million to Matthew Harrison and \$500,000 to his mother, for a total of \$2.75 million.

**Matthew Harrison**

\$1,500,000 Personal Injury: future economic damages

\$750,000 Personal Injury: noneconomic damages

**Maurita Henry**

\$500,000 Personal Injury: loss of consortium

**Trial Information:**

**Judge:** Mary Wiseman

**Demand:** \$1,000,000 (total, by both plaintiffs)

**Offer:** None

**Trial Length:** 8 days

**Trial  
Deliberations:** 4 hours

**Jury Vote:** 8-0

**Editor's  
Comment:** This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents. Defense counsel did not respond to a request for comment.

**Writer** Melissa Siegel

## Hospital's negligent treatment caused birth defects: plaintiffs

**Type:** Verdict-Plaintiff

**Amount:** \$53,000,000

**State:** Illinois

**Venue:** Cook County

**Court:** Cook County Circuit Court, IL

**Injury Type(s):**

- *brain - cerebral palsy*
- *mental/psychological - birth defect; learning disability; cognition, impairment*
- *pulmonary/respiratory - hypoxia*

**Case Type:**

- *Medical Malpractice - Hospital; Childbirth; Birth Injury; Brain Injuries; Delayed Treatment; Failure to Monitor; Negligent Treatment*

**Case Name:** Isaiah Ewing, Lisa Ewing and First Midwest Bank v. Sarah Adams, M.D., Jill Moran, M.D., Dr. Kiley, Michael Gavino, M.D., Laura DiGiovanni, M.D., University of Chicago Hospital, Perpetua Goodall, M.D., Yashica Kishor, John Does, Todd Deutsch, M.D., Larry Morgenstern, M.D., Judith Hibbard, M.D., Natasha Jenkins, M.D., Melissa Bishop, M.D. and Melissa Gilliam, M.D., No. 2013-L-013750

**Date:** June 29, 2016

**Plaintiff(s):**

- Lisa Ewing (Female, 24 Years)
- Isaiah Ewing (Male)

**Plaintiff Attorney(s):**

- Geoffrey N. Fieger; Fieger Law PC; Southfield MI for Isaiah Ewing, Lisa Ewing
- Jack Beam; Beam & Raymond Associates; Chicago IL for Isaiah Ewing, Lisa Ewing

**Plaintiff Expert  
(s):**

- Gary M. Yarkony M.D.; Physical Medicine; Elgin, IL called by: Geoffrey N. Fieger, ,
- Ronald S. Gabriel M.D.; Pediatric Neurology; Los Angeles, CA called by: Geoffrey N. Fieger, ,
- Russel Jelsema M.D.; Fetal Alcohol Syndrome; Grand Rapids, MI called by: Geoffrey N. Fieger, ,
- Anthony M. Gamboa, Jr. Ph.D.; Vocational Rehabilitation; Louisville, KY called by: Geoffrey N. Fieger, ,
- Jeffrey Soffer M.D.; Obstetrics; Westfield, NJ called by: Geoffrey N. Fieger, ,
- Kathleen L. Lagana R.N.; Obstetrics Nursing; Portland, OR called by: Geoffrey N. Fieger, ,
- Michelle L. Murray R.N.; Obstetrics Nursing; Albuquerque, NM called by: Geoffrey N. Fieger, ,
- Yitzchak Frank M.D.; Pediatric Neurology; New York, NY called by: Geoffrey N. Fieger, ,

**Defendant(s):**

- Dr. Kiley
- Jane Does
- John Does
- Sarah Adams MD
- Yashica Kishor
- Ghelani Shah MD
- Jill Moran M.D.
- Judith Hibbard MD
- Melissa Bishop MD
- Michael Gavino MD
- Todd Deutsch M.D.
- Melissa Gilliam MD
- Natasha Jenkins MD
- Laura DiGiovanni MD
- Perpetua Goodall MD
- Larry Morgenstern MD
- University of Chicago Hospital
- University of Chicago Medical Center



**Defense  
Attorney(s):**

- Jennifer A. Lowis; Lowis & Gellen LLP; Chicago, IL for Judith Hibbard MD, Sarah Adams MD, Jill Moran M.D., Dr. Kiley, Michael Gavino MD, Laura DiGiovanni MD, University of Chicago Medical Center, Perpetua Goodall MD, Yashica Kishor, John Does, Todd Deutsch M.D., Larry Morgenstern MD, University of Chicago Hospital, Jane Does, Ghelani Shah MD, Natasha Jenkins MD, Melissa Bishop MD, Melissa Gilliam MD
- Pamela L. Gellen; Lowis & Gellen LLP; Chicago, IL for Judith Hibbard MD, Sarah Adams MD, Jill Moran M.D., Dr. Kiley, Michael Gavino MD, Laura DiGiovanni MD, University of Chicago Medical Center, Perpetua Goodall MD, Yashica Kishor, John Does, Todd Deutsch M.D., Larry Morgenstern MD, University of Chicago Hospital, Jane Does, Ghelani Shah MD, Natasha Jenkins MD, Melissa Bishop MD, Melissa Gilliam MD
- Bryan C. Larsen; Lowis & Gellen LLP; Chicago, IL for Judith Hibbard MD, Sarah Adams MD, Jill Moran M.D., Dr. Kiley, Michael Gavino MD, Laura DiGiovanni MD, University of Chicago Medical Center, Perpetua Goodall MD, Yashica Kishor, John Does, Todd Deutsch M.D., Larry Morgenstern MD, University of Chicago Hospital, Jane Does, Ghelani Shah MD, Natasha Jenkins MD, Melissa Bishop MD, Melissa Gilliam MD

**Defendant  
Expert(s):**

- Frank A. Manning M.D.; Fetal Medicine; Scarsdale, NY called by: for Jennifer A. Lowis, Pamela L. Gellen, Bryan C. Larsen
- Harry T. Chugani M.D.; Pediatric Neurology; Detroit, MI called by: for Jennifer A. Lowis, Pamela L. Gellen, Bryan C. Larsen
- Janell F. Fuller M.D.; Neonatology; Albuquerque, NM called by: for Jennifer A. Lowis, Pamela L. Gellen, Bryan C. Larsen
- Marcia Patterson R.N.; Obstetrics Nursing; Naperville, IL called by: for Jennifer A. Lowis, Pamela L. Gellen, Bryan C. Larsen
- Richard Lazar MD; Physical Medicine; Chicago, IL called by: for Jennifer A. Lowis, Pamela L. Gellen, Bryan C. Larsen
- Jonathan M. Fanaroff MD, JD, FAAP; Neonatology; Cleveland, OH called by: for Jennifer A. Lowis, Pamela L. Gellen, Bryan C. Larsen

**Insurers:**

- self-insured

**Facts:**

On April 19, 2004, Lisa Ewing, 24, who was 40 weeks pregnant, presented to University of Chicago Medical Center for a routine prenatal exam and reported she was experiencing some contractions. She underwent tests, which were completely normal and reassuring. Ewing was sent home and was instructed to return for routine testing one week later.

That night, April 20, 2004, at approximately 2:01 a.m., Ewing was admitted to the University of Chicago Medical Center's triage unit for observation after she reported decreased fetal movement. Ewing was evaluated in triage with a series of tests, including a non-stress test and an attempted acoustic stimulation. The non-stress test was not reactive and the acoustic stimulation failed. The resident doctors admitted Ewing for non-reassuring fetal well-being and delivery for fetal distress at approximately 4:20 a.m.

At or about 5:20 a.m., Ewing was transferred into a labor room from triage at the hospital's labor and delivery unit. Instead of performing a cesarean section for non-reassuring fetal well-being and fetal distress, at approximately 7:53 a.m., Ewing was induced for a trial of labor with the induction agent Cervidil (Dinoprostone). The fetal

heart rate remained non-reassuring throughout Ewing's delivery according to all medical records and all testimony at trial.

After approximately 11 hours of non-reassuring fetal heartrate tracing and a failed induction of labor, Ewing was evaluated by a board-certified attending physician for the first time at 1:05 p.m. Following the attending physician's evaluation, a decision was made to proceed with emergency C-section for fetal distress, according to numerous medical records.

At approximately 1:49 p.m., Ewing gave birth to plaintiff Isaiah Ewing. The birth was performed by caesarian section. Isaiah was admitted to the hospital's neonatal intensive care unit for nearly three weeks.

The parties presented conflicting proofs about whether there were signs of fetal distress during the birthing process.

Lisa Ewing claimed that Isaiah Ewing was born with severe hypoxic brain damage.

Isaiah Ewing, a minor by his guardian, First Midwest Bank, sued the University of Chicago Medical Center d/b/a The University of Chicago Hospital. Isaiah sued 16 medical professionals who had treated Lisa as agents of the hospital during her pregnancy and prior to inducing delivery. There were initially claims against individual physicians and nurses that were voluntarily dismissed. prior to trial, and the matter proceeded to a trial against The University of Chicago Medical Center.

Plaintiffs' counsel alleged that the party sued was negligent in its treatment of Lisa and that it failed to deliver her unborn baby immediately by caesarian section and instead induced her with a contraindicated induction medication. Counsel asserted that it was a violation of the standard of care to induce Lisa for vaginal delivery, despite obvious and documented non-reassuring fetal well-being and fetal distress for a period of about 12 hours. Isaiah was born via emergency C-section nearly 12 hours after Lisa's arrival.

The Ewings' pediatric neurology experts testified that Isaiah suffered severe hypoxic brain damage near the time of his birth. Both experts testified that had Isaiah been delivered sooner by cesarean section, he would not have suffered any brain damage. The Ewings' obstetrical nurse experts opined that the nursing staff at the sued hospital deviated from the standard of care in numerous ways. The experts opined the nursing staff failed to properly assess and analyze the fetal heart monitor and the signs of fetal distress, failed to properly communicate with the attending physicians, failed to advocate for the safety of Isaiah, including preventing the administration of a contraindicated medication and advocating for earlier necessary delivery. The Ewings' maternal fetal medicine expert and obstetrical expert testified that the attending physicians at the sued hospital deviated from the standard of care by failing to personally evaluate Lisa considering the documented findings of non-reassuring fetal well-being and fetal distress. The experts stated the attending physicians failed to properly oversee the resident doctors who were managing Lisa's improper induction. Ultimately, the experts opined that all of the attending physicians and the residents deviated from accepted practice by attempting to induce Lisa instead of performing an immediate caesarian section at or around the time she arrived to the hospital for fetal distress. The maternal fetal and obstetrical experts concluded that had Isaiah been delivered by cesarean section as was required by the standard of care, he would not have suffered from brain damage. Further, each of the Ewings' experts agreed

there was no other cause of Isaiah's injuries other than prolonged hypoxia during labor.

Defense counsel contended nothing it did was negligent and that Isaiah's brain damage was caused by an undiagnosed, in utero infection that occurred sometime before April 20, 2004. The defense contended there was no significant hypoxia since the cord gases showed normal oxygen and only mild acidemia that would not account for the significant brain damage. There were other objective laboratory results that could only be explained by an event more than 24 hours prior to delivery. The only explanation that would explain everything was an in utero infection, supported by chorioamnionitis on the placental pathology and the mother's complaint of decreased fetal movement for 24 hours. Furthermore, the monitor strips and other information required continued monitoring but not an immediate or emergency caesarian section. The hospital's expert neonatologist testified that there was an in utero event that caused brain damage at least 24 hours prior to delivery. The most likely cause of the brain damage, based on laboratory results including the cord gases, was an infection that occurred at least 24 hours to the delivery and an earlier delivery would not have changed the outcome. The defense's expert in obstetrical nursing opined that the fetal monitor strips were stable throughout, that the nursing monitoring was within the standard of care, and that there was no reason for the nurses to "go up the chain of command" to suggest an immediate caesarian section.

The hospital's expert in maternal fetal medicine testified that the cord gases ruled out hypoxic injury during the time of the hospitalization. Additional objective laboratory evidence clearly supported an injury at least 24 hours prior to delivery. This was supported by Lisa's complaint of decreased fetal movement on arrival at the hospital and chorioamnionitis on the placenta pathology report. Furthermore, the fetal monitor strips were stable throughout Lisa's course at the hospital and there was nothing requiring a decision to proceed to immediate caesarian section in this first time mom until that decision was reached. Upon deciding to proceed to caesarian section, the delivery was accomplished within an appropriate time. The most likely explanation and the only one that explained all of the objective evidence was an infection in utero prior to the time of arrival at the hospital. An earlier delivery would not have prevented the brain damage, which had already occurred prior to arrival at the hospital.

**Injury:**

On April 20, 2004, Isaiah was born with birth asphyxia, hypoxic brain damage and now has severe cerebral palsy. Plaintiffs' counsel claimed that the hospital's negligent treatment was the sole and proximate cause of Isaiah's birth defects.

Plaintiffs' counsel claimed that Isaiah requires daily assistance with routine tasks and chores around the house and that he experiences difficulties with tasks of daily living. Counsel alleged that Isaiah suffers from learning and cognitive impairments, neurological impairments, and has difficulty socializing.

The Ewings' expert in physical medicine and rehabilitation opined that while Isaiah suffered a severe brain injury resulting in permanent physical and cognitive deficits, that with proper treatment including 24/7/365 and extensive therapies, he would live a near normal life expectancy. The Ewings' vocational rehabilitation expert testified at trial that Isaiah's loss of earning capacity was approximately \$2 million to \$3 million. He further stated that the estimated cost of future medical care including 24/7/365 nursing care was more than \$35 million.

The Ewings sought recovery of damages for past pain and suffering, future pain and suffering, disfigurement, loss of normal life, shortened life expectancy, and past/future emotional distress. Further, the Ewings sought recovery of past medical costs, future medical costs, future caretaking expenses, and future loss of earning capacity.

Defense counsel argued that Isaiah's birth defects were caused by an infection that he or his mother had contracted prior to the April 19, 2004 hospital visit. The defense alleged that Isaiah's medical conditions and future ailments were unrelated to his mother's treatment and the caesarian section that was performed at the hospital. The defense's expert in physical medicine and rehabilitation testified that Isaiah had a very shortened life expectancy and would not require 24/7 caregivers for the next 60 to 70 years. Also, the 24/7 care could be delivered in a more-helpful and more-reasonable way, for much less money than requested by the Ewings.

**Result:**

The jury found for the Ewings and awarded \$53 million.

**Isaiah Ewing**

\$346,000 Personal Injury: Past Medical Cost

\$7,250,000 Personal Injury: Future Medical Cost

\$2,770,400 Personal Injury: Past Disfigurement

\$28,852,000 Personal Injury: future caretaking expenses

\$2,770,400 Personal Injury: loss of normal life

\$2,700,000 Personal Injury: future loss of earning capacity

\$2,770,400 Personal Injury: shortened life expectancy

\$2,770,400 Personal Injury: past & future emotional distress

\$2,770,400 Personal Injury: past & future pain & suffering

**Trial Information:**

**Judge:** John P Kirby

**Demand:** \$18,500,000

**Offer:** \$10,000,000

**Trial  
Deliberations:** 4 hours

**Jury Vote:** 12-0

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's and defense counsel.

**Writer** Jacqueline Birzon

## Doctor wasn't qualified to treat pregnancy complications: suit

**Type:** Verdict-Plaintiff

**Amount:** \$6,067,830

**Actual Award:** \$900,000

**State:** Ohio

**Venue:** Montgomery County

**Court:** Montgomery County, Court of Common Pleas, OH

**Injury Type(s):**

- *brain* - internal bleeding
- *other* - death; eclampsia
- *gynecological* - preeclampsia
- *arterial/vascular* - hemorrhage

**Case Type:**

- *Wrongful Death*
- *Medical Malpractice* - OB-GYN; Childbirth

**Case Name:** Terrance Fontaine individually and as representative of the Estate of Karla Fontaine v. Good Samaritan Hospital, Premier Health Partners, Cheryl A. Gill, D.O., Advanced Family Practice Inc., Lauri Guilliford RN, and Anthem Blue Cross and Blue Shield, No. 2013 CV 06873

**Date:** May 13, 2016

**Plaintiff(s):**

- Terrence H. Fontaine (Male, 30 Years)
- Estate of Karla Fontaine (Male, 34 Years)

**Plaintiff Attorney(s):**

- Dwight D. Brannon; Brannon & Associates; Dayton OH for Terrence H. Fontaine, Estate of Karla Fontaine

**Plaintiff Expert  
(s):**

- R. Alan Baker M.D.; Obstetrics; Dayton, OH called by: Dwight D. Brannon
- John F. Burke Jr., Ph.D.; Lost Earnings (Economics); Cleveland, OH called by: Dwight D. Brannon
- Mark Cohen M.D.; Anatomic Pathology; Cleveland, OH called by: Dwight D. Brannon
- Mary Case M.D.; Forensic Pathology; St. Louis, MO called by: Dwight D. Brannon
- Frank A. Manning M.D.; OB-GYN; Scarsdale, NY called by: Dwight D. Brannon
- James Lenhart M.D.; Sports Medicine; Gig Harbor, WA called by: Dwight D. Brannon
- James J. Abrahams M.D.; Neuroradiology; New Haven, CT called by: Dwight D. Brannon
- Kevin Scott Ferentz M.D.; Family Medicine; Baltimore, MD called by: Dwight D. Brannon
- Harlan R. Giles M.D.; Obstetrics; El Paso, TX called by: Dwight D. Brannon
- Bradford Kleinman M.D.; Pregnancy; Silver Spring, MD called by: Dwight D. Brannon

**Defendant(s):**

- Lauri Guilliford RN
- Cheryl A. Gill, D.O.
- Good Samaritan Hospital
- Premier Health Partners
- Advanced Family Practice Inc.
- Anthem Blue Cross and Blue Shield

**Defense  
Attorney(s):**

- Neil F. Freund; Freund, Freeze & Arnold for Cheryl A. Gill, D.O., Advanced Family Practice Inc.
- John F. Haviland Jr.; Bieser, Greer & Landis LLP; Dayton, OH for Good Samaritan Hospital, Premier Health Partners, Lauri Guilliford RN
- Shannon K. Bockelman; Freund, Freeze & Arnold; Dayton, OH for Cheryl A. Gill, D.O., Advanced Family Practice Inc.
- Kenneth J. Rubin; Vorys, Sater, Seymour and Pease LLP; Columbus, OH for Anthem Blue Cross and Blue Shield
- Martha Brewer Motley; Vorys, Sater, Seymour and Pease LLP; Columbus, OH for Anthem Blue Cross and Blue Shield

**Defendant  
Expert(s):**

- Baha M. Sibai M.D.; Obstetrics; Houston, TX called by: for Neil F. Freund, Shannon K. Bockelman
- Mark B. Landon; OB-GYN; Columbus, OH called by: for Neil F. Freund, Shannon K. Bockelman
- Joseph Robert Berger M.D.; Neurology; Philadelphia, PA called by: for Neil F. Freund, Shannon K. Bockelman
- Steven H. Eisinger M.D.; OB-GYN; Rochester, NY called by: for Neil F. Freund, Shannon K. Bockelman

**Facts:**

On March 4, 2009, plaintiff's decedent Karla Fountaine, 34, who was hospitalized at Good Samaritan Hospital due to complications in her pregnancy, experienced what was then recognized and treated as preeclampsia. Cascading complications resulted in her death, pronounced at 5:10 p.m. after CT scans detected no brain flow and lifesaving measures were discontinued. Fountaine's unborn child had been successfully delivered hours earlier by C-section

Fontaine's husband, individually and as representative of Karla's estate, brought a medical malpractice lawsuit against Good Samaritan Hospital and its ownership entity, Premier Health Partners; nurse Lauri Guilliford RN; and Karla's primary obstetrician, Cheryl A. Gill, D.O., as well as Gill's practice entity, Advanced Family Practice Inc. Also included in the lawsuit was Anthem Blue Cross and Blue Shield, against whom negligence was alleged and a violation of Ohio Rev. Code §§ 1751.73-75. Anthem filed a Motion for Judgment on the Pleadings, which was granted in full and all claims against Anthem were dismissed. Good Samaritan, Premier Health Partners and Guilliford were also dismissed prior to trial.

Karla Fontaine had been a patient of Cheryl Gill, D.O. since 1999. From 1999 until 2009, Dr. Gill had monitored Fontaine's blood pressure regularly. During that 10-year period of time Fontaine's blood pressure averaged 105/63.

In February 2009, Fontaine was under the treatment of Dr. Gill for pregnancy. Dr. Gill was a board-certified family physician who had minor privileges to deliver uncomplicated pregnancies at Good Samaritan Hospital. Good Samaritan Hospital maintains a policy entitled Consultation in the Obstetrics Department that details what is considered minor obstetrics and when consultation by an obstetrician is required.

On Feb. 26, 2009, Dr. Gill saw Fontaine in her office for her regular prenatal visit. Fontaine advised Gill that she had a headache and a cough. At that time, her blood pressure had increased to 130/90 and her weight gain since her last visit had been 8.6 lbs. She was advised to return to see Dr. Gill in two weeks. On Feb. 28, 2009, Fontaine contacted Dr. Gill and reported that she had acute vaginal bleeding and a headache. Dr. Gill directed Fontaine to go to the emergency room at Good Samaritan Hospital. She was subsequently admitted to Good Samaritan Hospital on Feb. 28, 2009 with a diagnosis of a potential placental abruption. An ultrasound revealed oligohydramnios, intrauterine growth restriction and a Grade II placenta. During her admission, Fontaine experienced repeated high blood pressure readings, headaches, variable and late decelerations, a D-Dimer reading of 26442, and dropping platelets. A repeat ultrasound again revealed oligohydramnios and intrauterine growth restriction. The suit alleged that at no time during her hospitalization did Dr. Gill obtain a consultation with an obstetrician as she was required to do by the hospital policy. On the morning of March 3, 2009, Karla Fontaine was discharged from Good Samaritan Hospital and was advised to go to Miami Valley Hospital and obtain an ultrasound. Dr. Gill had spoken with the doctor who was going to perform the ultrasound prior to Fontaine's discharge and advised him by phone and subsequently in writing that she wished him to evaluate the oligohydramnios and intrauterine growth restriction. According to the plaintiff, no other information was provided to that doctor. Dr. Gill further advised Fontaine to call her that evening after the ultrasound was performed.

On the evening of March 3, 2009 at approximately 6:00 p.m., Terry Fontaine called Dr. Gill on his wife's behalf and advised her that Karla was vomiting and had abdominal pain and headaches. Dr. Gill reportedly advised Mr. Fontaine to call her back in one hour, which he did. At that time, Mr. Fontaine said he was told to take his wife to the hospital. Karla Fontaine returned to Good Samaritan Hospital at 8:59 p.m. on March 3, 2009. Her blood pressure was 128/103. At 9:30 p.m., her blood pressure was 155/100. She was allegedly grimacing, complaining of a headache front to back that was constant and throbbing, and had facial edema and vomiting. Dr. Gill, who was contacted by the nurse,



ordered that Fontaine be admitted to the hospital for observation. However, Dr. Gill reportedly did not request an evaluation by an obstetrician, although there was an obstetrician on the floor at the time, nor did Dr. Gill come to the hospital to evaluate her patient. Per the plaintiff, Dr. Gill did not come to the hospital to evaluate her patient from the time she was admitted until approximately 4:31 a.m. on March 4, 2009.

The suit alleged that Fontaine continued to have elevated and labile blood pressure, along with headaches. Although the nurse contacted Dr. Gill again, the plaintiff claimed Dr. Gill still did not come to the hospital to see her patient or ask for evaluation by an obstetrician or any other physician.

On March 4, 2009 at 3:15 a.m., upon entering Fontaine's room, the nurse reportedly found Fontaine with her head hanging over the bed, having vomited, and in an obtunded state. The ACT team was called and an obstetrician who had been present on the floor the entire time was called to evaluate Fontaine. The obstetrician arrived and ordered magnesium sulfate, a medication given for patients with preeclampsia, and hydralazine for her blood pressure. The obstetrician diagnosed Fontaine with eclampsia and immediately transported her to the operating room for delivery of her baby boy by C-section.

Fontaine remained unresponsive. A CT scan was performed and confirmed a massive intracranial hemorrhage. A brain scan was subsequently performed which showed lack of brain flow. At 5:10 p.m. on March 4, 2009, medications were discontinued and Karla Fontaine was pronounced dead.

The lawsuit claimed that Dr. Gill egregiously deviated from the accepted standards of medical care and, as a result, Fontaine suffered severe and permanent injuries resulting in her death. The lawsuit further claimed that Dr. Gill was unjustly enriched and that Fontaine's estate was entitled to complete reimbursement for all services rendered by her. The lawsuit additionally alleged that Dr. Gill materially misrepresented to Karla Fontaine that she was experienced and trained in the treatment of all her obstetrical conditions and fraudulently concealed from Fontaine that her ability to practice obstetrics was restricted to minor obstetrics in accordance with the Good Samaritan Hospital policy. The lawsuit also claimed that Dr. Gill was guilty of constructive fraud, was totally inadequately trained and inexperienced to treat Karla Fontaine, and abandoned her patient by failing to adequately diagnose and treat her condition or refer her to an obstetrician who could provide treatment to her.

The defense argued that Dr. Gill met the standard of care applicable in this case. The defense pointed to the fact that Dr. Gill was credentialed to practice obstetrics at Good Samaritan Hospital. Also, the defense contended that Fontaine's blood pressure values were never sustained and never reached a level which would require Dr. Gill to consult an obstetrician before the event that took place at 3:15 a.m. on March 4, 2009. Additionally, the defense maintained that Dr. Gill did, in fact, consult with a board-certified obstetrician and maternal-fetal medicine expert who ordered continued antepartum testing and induction at 39 weeks, and that Dr. Gill appropriately instructed Fontaine to return to the hospital so that she could be monitored.

The defense argued that Fontaine's complications and death were unforeseeable. The defense contended that Fontaine's blood pressure values were labile and not consistent, her blood pressure never reached a severe level of hypertension and Dr. Gill had no knowledge of Fontaine's family history of stroke.

The defense responded to the allegation that Fountaine was preeclamptic and had an eclamptic seizure by arguing that this was not a seizure and Fountaine never met the criteria for preeclampsia. Additionally the defense argued that the evidence demonstrated that, more likely than not, this was a ruptured aneurysm in a patient with a family history of stroke.

A July 2015 trial date was postponed when Dr. Gill was diagnosed with Stage II breast cancer that required aggressive treatment. Dr. Gill died from that disease in January 2016. The trial proceeded against her estate and medical practice as to all issues. In addition to the medical malpractice claims, the suit included allegations of misrepresentation as to Dr. Gill's medical skills. The ultimate issues considered by the jury were whether Dr. Gill deviated from accepted medical procedures and practices and whether such deviations proximately caused the patient's complications and resulting death.

**Injury:**

Fountaine allegedly died from complications of preeclampsia that caused a major intracranial hemorrhage. She was survived by her husband, newborn infant and two other minor children.

The defense disputed the cause of death.

**Result:**

The jury found that the negligence of Cheryl Gill, D.O and Advanced Family Practice, Inc. was a direct and proximate cause of Karla Fountaine's death.

The jury awarded compensatory damages of \$6,067,830.10, which included \$2,149,378 for the loss of support from the reasonably expected earning capacity of Karla Fountaine; \$801,547 for loss of services of Karla Fountaine; \$2,250,000 for loss of society of Karla Fountaine including companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education suffered by the surviving spouse, children, parents, and next of kin; \$0 for loss of prospective inheritance of Karla Fountaine's heirs at law at the time of her death; \$860,000 for mental anguish incurred by the surviving spouse, children, parents, and next of kin; and \$6,905.10 for reasonable funeral and burial expenses.

The award was reduced to \$900,000 pursuant to a high/low agreement.

**Estate of Karla Fontaine**

\$2,149,378 Personal Injury: FutureLostEarningsCapability

\$801,547 Personal Injury: Loss of Services

\$2,250,000 Personal Injury: Loss of Society

\$6,905 Personal Injury: Funeral Expenses

**Terrence H. Fontaine**

\$860,000 Personal Injury: Mental Anguish

**Trial Information:**

**Judge:** Gregory F. Singer

**Trial Length:** 7 days

**Trial  
Deliberations:** 4 hours

**Jury Vote:** 8-0

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's and defense counsel.

**Writer** Jon Steiger

## Defendants failed to diagnose genetic abnormalities: family

**Type:** Verdict-Mixed

**Amount:** \$50,000,000

**State:** Washington

**Venue:** King County

**Court:** King County Superior Court, WA

**Injury Type(s):** • *mental/psychological* - birth defect; emotional distress

**Case Type:** • *Medical Malpractice* - Wrongful Birth; Failure to Detect; Failure to Diagnose; Negligent Treatment

**Case Name:** Oliver L. Wuth, a minor, by and through his Guardian Ad Litem Keith L. Kessler; and Brock M. Wuth and Rhea K. Wuth, husband and wife v. Laboratory Corporation of America, a foreign corporation; Dynacare laboratories, Inc., a foreign corporation; Dynacare Northwest, Inc., a domestic corporation, d/b/a Dynacare Laboratories, Inc., a domestic corporation; James A. Harding, M.D.; and Obstetrix Medical Group of Washington, Inc., P.S., a domestic corporation; King County Public Hospital District No. 1, d/b/a Valley Medical Center, No. 10-2-43289-2 KNT

**Date:** December 10, 2013

**Plaintiff(s):**

- Rhea Wuth (Female, 32 Years)
- Brock Wuth (Male, 30 Years)
- Oliver Wuth (Male, 1 Years)

**Plaintiff Attorney(s):**

- Todd W. Gardner; Swanson Gardner, P.L.L.C.; Renton WA for Oliver Wuth, Brock Wuth, Rhea Wuth
- Peter E. Meyers; Swanson Gardner, P.L.L.C.; Renton WA for Oliver Wuth, Brock Wuth, Rhea Wuth

**Plaintiff Expert  
(s):**

- Marc H. Incerpi M.D.; Perinatology; Los Angeles, CA called by: Todd W. Gardner, Peter E. Meyers
- Neil K. Kochenour M.D.; Fetal Medicine; Tucson, AZ called by: Todd W. Gardner, Peter E. Meyers
- Paul B. Hofmann Ph.D.; Hospital Administration & Procedures; Moraga, CA called by: Todd W. Gardner, Peter E. Meyers
- James M. Gracey Ed.D; Life Care Planning; Denver, CO called by: Todd W. Gardner, Peter E. Meyers
- Robin Clark M.D.; Genetics; Riverside, CA called by: Todd W. Gardner, Peter E. Meyers
- Robin B. Thomas Ph.D.; Psychology/Counseling; Seattle, WA called by: Todd W. Gardner, Peter E. Meyers
- Deborah Hill Ph.D.; Pediatric Psychology; Seattle, WA called by: Todd W. Gardner, Peter E. Meyers
- Stephen T. Glass M.D.; Pediatric Neurology; Bothell, WA called by: Todd W. Gardner, Peter E. Meyers
- Danielle LaGrave M.S., L.C.G.C.; Genetics; West Jordan, UT called by: Todd W. Gardner, Peter E. Meyers
- Christina P. Tapia Ph.D.; Economics; Bothell, WA called by: Todd W. Gardner, Peter E. Meyers

**Defendant(s):**

- James A. Harding, M.D.
- Obstetrix Medical Group, Inc.
- Laboratory Corporation of America, Inc. / Dynacare
- King County Public Hospital District No. 1, d/b/a Valley Medical Center

**Defense  
Attorney(s):**

- Mary K. McIntyre; McIntyre & Barns PLLC; Seattle, WA for James A. Harding, M.D., Obstetrix Medical Group, Inc.
- Bruce R. Parker; Venable LLP; Baltimore, MD for Laboratory Corporation of America, Inc. / Dynacare
- Anthony Todaro; CCMBP LLP; Seattle, WA for Laboratory Corporation of America, Inc. / Dynacare
- Sherry H. Rogers; Lee Smart, P.S., Inc.; Seattle, WA for King County Public Hospital District No. 1, d/b/a Valley Medical Center
- Dan Von Seggern; Lee Smart, P.S., Inc.; Seattle, WA for King County Public Hospital District No. 1, d/b/a Valley Medical Center

**Defendant  
Expert(s):**

- John E. Scarbrough Ph.D.; Economics; Ridgefield, CT called by: for Bruce R. Parker, Anthony Todaro
- Allen N. Lamb Ph.D.; Genetics; Salt Lake City, UT called by: for Mary K. McIntyre
- Clark D. Todd; Hospital Administration & Procedures; Mount Vernon, WA called by: for Sherry H. Rogers, Dan Von Seggern
- Frank A. Manning M.D.; OB-GYN; New York, NY called by: for Mary K. McIntyre
- Perry R. Lubens M.D.; Pediatric Neurology; Long Beach, CA called by: for Sherry H. Rogers, Dan Von Seggern
- Arthur Brothman M.D., Ph.D.; Pediatric Genetics; Salt Lake City, UT called by: for Bruce R. Parker, Anthony Todaro
- Carrie Haverty M.S.; Genetics; San Francisco, CA called by: for Sherry H. Rogers, Dan Von Seggern
- Judith Parker; Life Care Planning; Bothell, WA called by: for Bruce R. Parker, Anthony Todaro
- Cynthia Curry M.D.; Pediatric Genetics; Fresno, CA called by: for Sherry H. Rogers, Dan Von Seggern
- Forrest C. Bennett M.D.; Pediatrics; Seattle, WA called by: for Bruce R. Parker, Anthony Todaro

**Insurers:**

- Westchester Fire Insurance Co.
- National Union Fire Insurance Co.
- Hudson Specialty Insurance Company
- Ironshore Specialty Insurance Co.
- AXIS Surplus Insurance Co.

**Facts:**

On July 12, 2008, plaintiff Oliver Wuth was born to parents Brock Wuth, 30, and Rhea Wuth, 32, both fourth-grade teachers. Oliver was born in Valley Medical Center, in Renton. It was discovered that he was born with a genetic defect. It was the same genetic defect that was inherited by Brock Wuth, an unbalanced 2-9 translocation (a missing piece of chromosome 2, with a duplicate of chromosome 9.) Mr. Wuth had a cousin with the same genetic defect. According to the plaintiff, Mr. Wuth presented for testing to find out he was a carrier of the abnormality, the results of the testing revealing that he had a 50 percent risk of passing the defect to his child. The parents sought genetic counseling and cytogenetic testing to attempt find out if their child was a carrier of the defect. However, allegedly due to negligence by doctors and a laboratory tasked to test samples of the fetus to determine if the defect was present, the child was undiagnosed with having the abnormality until his birth. Oliver now requires 24-hour disability care, and will require the care for the rest of his life expectancy.

The Wuths, on behalf of themselves and their son, sued the parties involved with the alleged failure to diagnose Oliver with the chromosomal defect. Named as defendants were the hospital where Oliver's parents sought treatment, Valley Medical Center, the company tasked to test the child for having the genetic defect, Laboratory Corporation (shortened to LabCorp., also known as Dynacare) and the doctor that supervised Wuth's treatment, Dr. James Harding, as well as his employer, Obstetrix Medical Group, Inc.

According to the plaintiff, in June 2003, Mr. Wuth underwent testing, which confirmed that he had a 50 percent risk of passing the unbalanced 2-9 translocation to a child (he himself had a balanced 2-9 translocation). When the mother became pregnant in late 2007

the plaintiffs both sought to quickly confirm if the fetus had the genetic issue, intending to terminate the pregnancy if the issue were present.

On Dec. 31, 2007, paperwork detailing Brock Wuth's test results was faxed to Valley Medical Center, with the referral for genetic counseling and a chorionic villus sampling (CVS). However, Valley Medical Center allegedly was not properly staffed, only having staff available for one day per week. The plaintiff alleged that, in violation of their own rules, an appointment with the mother was scheduled for Dec. 31, a day when the genetic counselor was not working. A CVS was performed by Dr. Harding, who then sent the information to a LabCorp facility that same day. However, the information was missing the mother's lab results, and allegedly specified a chromosome study, which would not have been adequate to detect the translocation in question.

The plaintiffs alleged that LabCorp. should have recognized the need for a more specialized test, and should have contacted Valley Medical Center to confirm which test to perform. Instead, employees of the company chose to perform the study, which found no defect. On Jan. 7, 2008, LabCorp sent the results back to Valley Medical Center. According to the plaintiff, employees of Valley Medical Center failed to look at the test results close enough to determine that LabCorp had failed to properly perform its work. As a result, employees of Valley Medical Center informed the Wuths that they were giving birth to a healthy boy, with no genetic abnormalities.

The plaintiffs alleged that all of the checks and balances involved with the working relationships between each defendant all failed to provide a proper diagnosis of the child's genetic abnormalities, which allowed him to be born without his parents having any idea that he would have disabilities. Had LabCorp received the proper information, the plaintiff alleged, then a FISH test could have been performed, which would have been 99 percent likely to find the abnormality. However, Valley Medical Center allegedly created the opportunity for such an accident to occur by negligently understaffing their genetic counseling service.

The defendants each claimed that they acted within the standard of care with regards to their roles in the diagnosis of the genetic abnormality. According to Valley Medical Center, the correct lab sheets were sent to LabCorp, and then they lost the information and failed to perform the proper tests. Dr. Harding also alleged that he submitted the correct information to both Valley Medical Center, who then submitted that information to LabCorp. However, LabCorp contended that they performed all of the tests ordered by Valley Medical Center, and that all of the tests were performed correctly. LabCorp contended that Harding erred in sending the wrong information, and therefore was at fault for the failure to diagnose occurring.

According to testimony from LabCorp's pediatric genetics expert, a follow-up phone call from LabCorp to Valley Medical Center should have been made, but the standard of care did not require that LabCorp do anything more than run the test that was ordered.

**Injury:**

Plaintiff's counsel asked the jury for a total recovery of \$70 million. Included in this amount was a recovery for Oliver's economic damages, including damages for 24-hour disability care, which he would require for the rest of his life. The parents expect that he will have a normal life expectancy.

Also sought was a recovery for his past and future medical costs, including his therapies. In total, \$20 million was sought for Oliver's economic damages.

Also sought was a recovery for noneconomic damages on behalf of the parents, who experienced emotional distress as well as pain and suffering. The plaintiff's parents asked the jury for a recovery of \$20 million to \$50 million.

LabCorp. did not deny that Oliver experienced damages as a result of this incident, but contended that the damages were not nearly as high as claimed by plaintiffs' counsel. According to testimony from the defense's economic expert, who made estimates based on the defense's life care planning expert, the plaintiffs experienced economic damages between \$3.5 million and \$11.5 million. According to LabCorp's pediatrics expert, Oliver was mild to moderately disabled for life, but he could generally function in his daily life with general supervision, as opposed to skilled care.

**Result:**

The jury rendered a verdict against LabCorp and Valley Medical Center, finding them both 50 percent liable. Harding and Obstetrix Medical Group were found not negligent, but they had agreed to a high-low agreement with the plaintiff prior to the incident. Oliver was awarded \$25 million in damages by the jury, while Brock and Rhea Wuth were awarded \$25 million.

**Trial Information:**

**Judge:** Catherine Shaffer

**Demand:** \$40,000,000 (at mediation)

**Offer:** \$10,000,000

**Trial Length:** 7 weeks

**Trial  
Deliberations:** 1.5 days

**Jury Vote:** 12-0



**Jury  
Composition:** 9 male, 3 female

**Post Trial:** Valley Medical Center moved to dismiss the case, which was denied by the court. It then filed a motion for a new trial, which was heard on January 24, 2014, and was denied. Valley Medical Center has indicated that they will file an appeal of the verdict. LabCorp. filed a motion for a new trial, which was also heard on Jan. 24 and was denied. Counsel for LabCorp. said they will appeal.

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's counsel and counsel for LabCorp. Counsel for Valley Medical Center and counsel for Harding did not respond to the reporter's phone calls.

**Writer** Kirk Maltais

## Medical Malpractice - Bacterial Infection - Pregnancy

**Type:** Verdict-Plaintiff

**Amount:** \$6,500,000

**State:** District of Columbia

**Venue:** District of Columbia

**Court:** District of Columbia, Superior Court, DC

**Case Type:**

- *Medical Malpractice*

**Case Name:** Angela M. Taylor v. Maurice F. Naccache, M.D., No. 2007 CA 008012 F

**Date:** October 22, 2010

**Plaintiff(s):**

- Angela M. Taylor (Male, 0 Years)

**Plaintiff Attorney(s):**

- Frank R. Kearney; ; Washington DC for Angela M. Taylor
- Keith W. Donahoe; ; Washington DC for Angela M. Taylor

**Plaintiff Expert(s):**

- John Willis M.D.; Pediatric Neurology; New Orleans, LA called by:
- Douglas Phillips M.D.; Gynecology; Bellmore, NY called by:

**Defendant(s):**

- Maurice F. Naccache, M.D.

**Defense Attorney(s):**

- Steven J. Anderson; Washington, DC for Maurice F. Naccache, M.D.
- Alex Karpinski; Washington, DC for Maurice F. Naccache, M.D.
- William B. Jaffe; Washington, DC for Maurice F. Naccache, M.D.

**Defendant Expert(s):**

- Frank Manning M.D.; Gynecology; Valhalla, NY called by: for
- Marianne Schulien M.D.; Pediatric Neurology; Washington, DC called by: for

**Facts:**

The mother of a man who was born prematurely in 1987 filed this lawsuit against her treating OB/GYN, who she claimed failed to provide appropriate care. Plaintiff argued that the premature birth and the child's resulting disabilities were due to the doctor's failure to treat a bacterial infection. The defendant denied negligence and argued there was no correlation to a failure to treat the bacteria and premature birth. The case was argued before a District of Columbia jury, which found for the plaintiff and awarded a \$6,500,000 verdict.

Plaintiff Angela M. Taylor presented to Defendant Maurice F. Naccache, M.D. for prenatal care at the Anacostia Neighborhood Free Clinic on March 5, 1987, when she was 18 years old. Defendant ordered a number of standard screening tests that included a urinalysis and urine culture. Although plaintiff was asymptomatic, the urinalysis revealed 2+ bacteria. Reportedly, plaintiff was not made aware of the results. She returned to the clinic on April 2, 1987, for her second prenatal visit. According to defendant's notes, the urine culture report was not in the file at that time. As a result, plaintiff again was not informed of the abnormal urinalysis. She was instructed to return to the clinic in two weeks. In the interim, plaintiff began experiencing contractions and soon thereafter experienced a spontaneous rupture of her membranes. She presented to the hospital in advanced labor and within a few hours delivered a 32-week premature baby. At that time, the hospital urinalysis revealed the presence of moderate bacteria in her urine. Plaintiff's infant son experienced severe complications of prematurity that included severe respiratory distress syndrome, a Grade II-III IVH and eventually periventricular leukomalacia (PVL) on MRI scan. The child, who was 23 years old at the time of this trial, was permanently disabled and required assistance with every activity of daily living. Plaintiff filed this lawsuit on his behalf.

Plaintiff alleged defendant violated basic patient safety rules in that he failed to obtain all the information he needed to make a care decision. Plaintiff further maintained that defendant should have treated plaintiff with antibiotics based on the abnormal result or at least repeated the test and obtained the urine culture report. Plaintiff provided evidence that there is a clear association between asymptomatic bacteriuria and pre-term birth. As a result, she argued that treating the condition with antibiotics would have more likely than not prevented the child's pre-term birth.

Defendant contended it was unfair to pursue this matter after the passage of 23 years and that a missing urine culture report might even have been removed by plaintiff's counsel prior to the filing of the suit. Defendant further argued that the urinalysis results were contaminated and there is no scientific proof that eradicating asymptomatic bacteriuria would have prevented a premature birth.

Plaintiff child was a newborn male at the time of the injury. He was 23 years old at the time of trial.

**Injury:**

Failure to properly treat bacterial infection during pregnancy, resulting in premature birth. Plaintiff child suffered severe complications of prematurity that included severe respiratory distress syndrome, a Grade II-III IVH and, eventually, periventricular leukomalacia (PVL), a brain injury. The child was 23 years old at the time of trial. He was permanently disabled and required assistance with every activity of daily living.

**Result:** \$6,500,000. Breakdown: \$1,200,000 for lost earning capacity; \$3,300,000 for future care expenses; \$1,000,000 for past pain and suffering; and \$1,000,000 for future pain and suffering.

**Trial Information:**

**Judge:** Robert I. Richter

**Trial  
Deliberations:** 2 days

**Editor's  
Comment:** Defendant's motion for judgment as a matter of law or, in the alternative, for a new trial or for remittitur was denied.

**Writer**

## Suit alleged medical staff's delays caused baby's brain injury

**Type:** Settlement

**Amount:** \$7,500,000

**State:** California

**Venue:** Alameda County

**Court:** Alameda County Court, CA

**Injury Type(s):**

- *brain - cerebral palsy*
- *mental/psychological - developmental delay*

**Case Type:**

- *Medical Malpractice - Birth Injury; Delayed Diagnosis; Delayed Treatment*

**Case Name:** E.T., a minor, and E.T.'s mother v. Doe Physician, Doe Hospital, and Roe Hospital, No.

**Date:** June 14, 2010

**Plaintiff(s):**

- E. T. (Male)
- E.T.'s mother (Female)

**Plaintiff Attorney(s):**

- Bruce G. Fagel M.D.; Bruce G. Fagel & Associates; Beverly Hills CA for E. T., E.T.'s mother

**Plaintiff Expert  
(s):**

- Ira T. Lott M.D.; Pediatric Neurology; Irvine, CA called by: Bruce G. Fagel M.D.
- Ron J. Bahar M.D.; Pediatric Gastroenterology; Encino, CA called by: Bruce G. Fagel M.D.
- Barry D. Pressman M.D.; Neuroradiology; West Hollywood, CA called by: Bruce G. Fagel M.D.
- David A. Schwartz M.D.; Placental Pathology; Atlanta, GA called by: Bruce G. Fagel M.D.
- Frank A. Manning M.D.; OB-GYN -- See also Gynecology; New York, NY called by: Bruce G. Fagel M.D.
- Jacob Neufeld M.D.; Pediatric Rehabilitation; Oakland, CA called by: Bruce G. Fagel M.D.
- Karen Preston R.N.; Life Care Planning; Sacramento, CA called by: Bruce G. Fagel M.D.
- Michael Sherman M.D.; Neonatology; Columbia, MO called by: Bruce G. Fagel M.D.

**Defendant(s):**

- Doe Hospital
- Roe Hospital
- Doe Physician

**Defense  
Attorney(s):**

- None reported for Doe Physician, Doe Hospital, Roe Hospital

**Defendant  
Expert(s):**

- John Wachtel M.D.; OB-GYN -- See also Gynecology; Palo Alto, CA called by: for None reported
- Donna Ferriero M.D.; Pediatric Neurology; San Francisco, CA called by: for None reported
- Karen M. Harmon R.N., M.S.N., C.N.S.; Nursing; San Diego, CA called by: for None reported
- Linda D. Olzack M.D.; Life Care Planning; Napa, CA called by: for None reported
- Scott J. Kush M.D.; Life Expectancy & Mortality; San Francisco, CA called by: for None reported
- Arturo E. Mendoza M.D.; Placental Pathology; San Diego, CA called by: for None reported
- Harvey J. Kliman M.D.; Placental Pathology; New Haven, CT called by: for None reported
- Jerome A. Barakos M.D.; Neuroradiology; San Francisco, CA called by: for None reported
- Joseph T. Cappell M.D.; Physical Medicine; Fresno, CA called by: for None reported
- Marvin D. Nelson M.D.; Neuroradiology; Los Angeles, CA called by: for None reported
- Melvin Heyman M.D.; Pediatric Gastroenterology; San Francisco, CA called by: for None reported
- Robert A. Zimmerman M.D.; Pediatric Neurology; Philadelphia, PA called by: for None reported
- Gilbert Martin M.D.; Neonatology; West Covina, CA called by: for None reported
- Jeffery J. Pomerance M.D.; Neonatology; Los Angeles, CA called by: for None reported
- Michael Ross M.D.; Perinatology; Los Angeles, CA called by: for None reported
- Rebecca Guinto R.N.; Neonatal Nursing; Los Angeles, CA called by: for None reported
- Richard Sweet M.D.; Perinatology; Sacramento, CA called by: for None reported
- William A. Weiss M.D.; Neurology; San Francisco, CA called by: for None reported
- William K. Hoddick M.D.; Radiology; Walnut Creek, CA called by: for None reported
- Mary Kay Dyes M.D.; Pediatric Neurology; Long Beach, CA called by: for None reported
- Philippe S. Friedlich M.D.; Neonatology; Los Angeles, CA called by: for None reported

**Facts:**

On July 14, 2008, the plaintiff, 38, presented to a hospital for induction of labor at a little more than 40 weeks gestation, after an ultrasound by her obstetrician showed a low level of amniotic fluid though the fetal monitoring strip was reassuring. The baby was delivered at 6:33 p.m. The hospital had a policy of using neonatal resuscitation program (NRP) certified nurses to attend deliveries, although it had a contract with another hospital to provide physicians to staff the neonatal intensive-care unit. Subsequently, the baby was transferred to the NICU at the other hospital, for brain cooling, with a diagnosis of hypoxic-ischemic encephalopathy. An MRI on July 19, showed injury to the baby's basal ganglia and hippocampi.

The plaintiffs sued the obstetrician and both hospitals for medical malpractice. The plaintiffs contended the baby's injuries were due to delays by the hospital and staff

The plaintiffs contended that since the fetal monitoring strip was normal on admission to the hospital, the baby's hypoxic injury occurred during the delivery and immediate neonatal period when the endotracheal tube was likely misplaced and caused further hypoxia and metabolic acidosis. The plaintiffs further claimed the mother likely had oligohydramnios and chorioamnionitis, which led to decreased placental function and led to a depressed infant at birth. Counsel argued that proper resuscitation would have improved outcome.

Prior to presenting to the hospital, the mother had a normal amniocentesis and she was seen by a perinatologist during the pregnancy as a precaution, but no problems or complications were noted during the pregnancy. On the date in question, after admission to the labor and delivery unit at 11:30 a.m., the fetal monitor strip showed a normal reactive tracing. Cervidil was placed at 1:35 p.m. to soften the cervix. At 3:30 a.m. on July 15, Pitocin was started. At 7:50 a.m., the obstetrician ruptured membranes and found no amniotic fluid. The examination at that time showed 1 centimeter dilation, 50 percent effacement and -2 station. Pitocin was increased over the next several hours, and an examination by the obstetrician at 2 p.m. showed 6-7 centimeter dilation, 100 percent effacement and 0 station. The fetal monitoring strip was still reassuring. At 3:57 p.m., a vaginal examination by the nurse showed complete dilation at a +1 station, however, the mother's temperature was now 101.3 degrees. The plaintiffs claimed the nurse called the obstetrician at his office and ordered antibiotics. The obstetrician returned to the hospital was 4:15 p.m., but proceeded with a vaginal delivery of another patient. At 4:40 p.m., the nurse had the mother start pushing. The obstetrician returned to his office to see other patients. Between 5 p.m. and 5:35 p.m. the fetal monitor showed late decelerations with every other contraction, but the nurse did not consider them to be repetitive so the Pitocin was not turned off. At 5:55 p.m. the obstetrician returned and noted a fetal monitoring strip pattern of late and variable decelerations, and a Cesium-section was ordered at 6:02 p.m. The mother was moved to the operating room at 6:10 p.m., and the surgery started at 6:27 p.m. under epidural anesthesia. The baby was delivered at 6:33 p.m.

The plaintiffs claimed that at the time of birth, there was a pediatrician on the unit, but she was not notified about this delivery until 6:41 p.m. The pediatrician arrived in the operating room at 6:45 p.m. and assisted with the resuscitation. At 6:48 p.m., the baby was moved to the special care nursery, where it was noted that the oxygen saturations were very low. At 7:07 p.m., the baby was re-intubated and his vital signs and oxygen saturations improved. Although the cord blood gas showed a normal pH, a blood gas that was obtained just prior to the re-intubation showed a pH of 6.5 and a pCO<sub>2</sub> of 130. The neonatologist arrived in special care nursery at 7:15 p.m., and he arranged for the baby to be transferred to the NICU at the other hospital.

The defense argued there was no medical indication to deliver the baby before the delivery occurred and the staff was surprised by the poor condition of the baby at birth. The nurses attending the delivery were all NRP-certified and qualified to intubate the baby. The defense contended that the baby's severe brain injury was likely caused by an infection in the mother's placenta and not due to anything during the labor or delivery.



**Injury:** The minor plaintiff suffered cerebral palsy. He is also left with developmental delays.

The plaintiffs claimed past medical care expenses that were paid by private insurance, future medical care costs using least expensive annuity with age rating of 48 of \$7.3 million.

The defense contended future medical care costs using least expensive annuity with age rating of 48 would be \$5.1 million and future loss of earnings would be \$1.8 million to \$2.4 million present cash value based on parents' advanced degrees.

**Result:** This case settled after two mediation sessions for \$7.5 million cash.

**Trial Information:**

**Judge:** Charles Hawkins

**Editor's Comment:** This report is based on information that was provided by plaintiffs' counsel. Defense counsel was not asked to contribute.

**Writer** Priya Idiculla

## Doctors missed streptococcus that led to brain damage: family

**Type:** Decision-Plaintiff

**Amount:** \$29,159,535

**State:** Illinois

**Venue:** Federal

**Court:** U.S. District Court for the Northern District, Chicago, IL

**Injury Type(s):**

- *brain* - brain damage; cerebral palsy
- *other* - loss of consortium
- *mental/psychological* - cognition, impairment
- *paralysis/quadriplegia* - spastic quadriplegia

**Case Type:**

- *Medical Malpractice* - Birth Injury; Failure to Test; Failure to Treat; Delayed Treatment; Negligent Treatment
- *Government* - Federal Tort Claims Act

**Case Name:** Christian Arroyo, a minor by his parents and next friends, Carlos Arroyo and Maria Solarzano, and Carlos Arroyo and Maria Solarzano, individually v. United States of America, No. 07 C 4912

**Date:** April 02, 2010

**Plaintiff(s):**

- Carlos Arroyo (Male, 30 Years)
- Maria Solarzano (Female, 30 Years)
- Christian Arroyo (Male, 1 Years)

**Plaintiff Attorney(s):**

- Patrick A. Salvi II; Salvi, Schostok & Pritchard P.C.; Chicago IL for Christian Arroyo, Carlos Arroyo, Maria Solarzano
- David J. Pritchard; Salvi, Schostok & Pritchard P.C.; Chicago IL for Christian Arroyo, Carlos Arroyo, Maria Solarzano

**Plaintiff Expert(s):**

- Gary Yarkony M.D.; Physical Medicine; Elgin, IL called by: Patrick A. Salvi II, David J. Pritchard
- James P. Hieber M.D.; Pediatrics; Dallas, TX called by: Patrick A. Salvi II, David J. Pritchard
- Harlan R. Giles M.D.; Obstetrics; Pittsburgh, PA called by: Patrick A. Salvi II, David J. Pritchard
- Charles Linke Ph.D.; Economics; Champaign, IL called by: Patrick A. Salvi II, David J. Pritchard

**Defendant(s):**

- United States of America

**Defense Attorney(s):**

- Eileen M. Marutzky; United States Attorney; Chicago, IL for United States of America
- Eric Pruitt; U.S. Attorney's Office; Chicago, IL for United States of America

**Defendant Expert(s):**

- Frank Manning M.D.; Physical Medicine; Hawthorne, NY called by: for Eileen M. Marutzky, Eric Pruitt
- Robert Kimura M.D.; Neonatology; Chicago, IL called by: for Eileen M. Marutzky, Eric Pruitt

**Facts:**

On May 17, 2003, plaintiff Christian Arroyo was delivered to mother Maria Solarzano, 30s. The first-time mother presented to Northwestern Memorial Hospital in Chicago with labor pains on the afternoon of May 16. The obstetric and neonatal care was provided by an obstetrician and pediatricians from Erie Family Health Center, a federally-employed staff. During the course of labor, the staff attempted to artificially rupture the fetus' membrane to induce labor. However, it was discovered that that the membrane had already ruptured, but it was unclear as to when. Christian was eventually born without complication the next morning.

Solarzano alleged that, five hours after Christian was born and for the next 36 hours, he exhibited multiple signs and symptoms of neonatal infection, including resistance to feed, change in skin color and temperature and grunting. The first pediatrician to see the newborn performed a birth assessment within hours of birth by ordering a complete blood count and blood culture to detect any infection or abnormalities. Several hours later, the pediatrician called for the results and learned that the blood clotted and the test was inconclusive, but the physician did not repeat the test. Solarzano claimed that the second pediatrician to come after the first pediatrician never came to the hospital, nor ordered antibiotics. By May 18, a neonatal physician was called and discovered that the child was infected and immediately moved him to intensive care, where he was diagnosed with Group B Beta Streptococcus (GBS), which caused the minor to suffer severe brain damage, cerebral palsy and spastic quadriplegia.

Solarzano and her husband sued the federal government for violation of the Federal Tort Claims Act and medical malpractice. According to plaintiff's counsel, the physicians failed to recognize two of the four risk factors associated with GBS set forth by the American College of Obstetricians and Gynecologists and American Academy of Pediatrics. The two risk factors were: Solarzano was premature at 36.5 weeks gestation, which was miscalculated at 37 weeks; and a ruptured membrane set greater than 18 hours.

The plaintiff's obstetrics expert testified that when it is discovered that a membrane has already been ruptured, the doctor has to assume that the membrane has been ruptured for 18 hours, at which point antibiotics are required. The plaintiffs' pediatrics expert opined that, given Christian's symptoms hours following his birth, the pediatrician who saw him was required by standard of care to administer antibiotics.

The defendant denied the allegations. Defense counsel argued that there was no breach of standard of care, and that the federal employees who delivered plaintiff adhered to hospital and governmental standards.

**Injury:**

Since birth, Christian has required daily therapy and medication. He can only eat through a tube that goes directly into his stomach. He is in a wheelchair and will be dependent on someone else to take care of his daily needs. The minor is permanently disabled, both physically and mentally, and will never be employed. His family sought \$25.8 million to \$33.6 million for past and future medical expenses, lost earning capacity, pain and suffering and loss of a normal life.

The child's mother quit her full-time job to take 24-hour care of her son, while the father is working evening hours so that he can assist his wife in caring of their son.

**Result:** During a bench trial, the court found against defendant and in favor of plaintiffs in the amount of \$29,159,535.37.

**Christian Arroyo**

\$600,380 Personal Injury: Past Medical Cost

\$15,468,905 Personal Injury: Future Medical Cost

\$2,000,000 Personal Injury: disfigurement

\$3,990,250 Personal Injury: future economic loss

\$2,100,000 Personal Injury: past and future pain and suffering

\$5,000,000 Personal Injury: past and future loss of a normal life

**Trial Information:**

**Judge:** Amy J. St. Eve

**Trial Length:** 5 days

**Writer** Aaron Jenkins

## Hospital denied negligence in tracking baby's heart rate

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** Pennsylvania

**Venue:** Delaware County

**Court:** Delaware County Court of Common Pleas, PA

**Injury Type(s):**

- *brain* - brain damage; cerebral palsy
- *other* - seizure disorder
- *paralysis/quadruplegia* - spastic quadriparesis

**Case Type:**

- *Medical Malpractice* - Childbirth; Birth Injury; Failure to Monitor

**Case Name:** Brenda Gomez and Julio Galindo, on behalf of their son, Victor Galindo v. Crozer-Keystone Health System, Crozer Chester Medical Center, Delaware Valley Women's Health Associates, Helen Kuroki, Emily Reeves, Dolores Turse, Health Access Network, Women's Health Source, Tenet Health System Hahnemann LLC and the Pennsylvania Department of Public Welfare, No. 2007-012946

**Date:** December 02, 2009

**Plaintiff(s):**

- Brenda Gomez (Female, 25 Years)
- Victor Galindo (Male, 1 Years)

**Plaintiff Attorney(s):**

- Marc Brecher; Wapner, Newman, Wigrizer, Brecher & Miller, P.C.; Philadelphia PA for Victor Galindo

**Plaintiff Expert(s):**

- S. Charles Bean M.D.; Pediatric Neurology; Wilmington, DE called by: Marc Brecher
- Betsy Bates B.S.N., C.R.R.N., C.M.; Life Care Planning; Elkton, MD called by: Marc Brecher
- David L. Hopkins A.S.A.; Economics; King of Prussia, PA called by: Marc Brecher
- Tammy Dickerson R.N.C.; Nursing; Southbury, CT called by: Marc Brecher
- Andrew Steele M.D.; Neonatology; New Hyde Park, NY called by: Marc Brecher
- Robert A. Zimmerman M.D.; Radiology; Philadelphia, PA called by: Marc Brecher
- Ronald Bolognese M.D.; OB-GYN -- See also Gynecology; Philadelphia, PA called by: , Marc Brecher

**Defendant(s):**

- Emily Reeves
- Helen Kuroki
- Dolores Turse
- Health Access Network
- Women's Health Source
- Crozer Chester Medical Center
- Crozer-Keystone Health System
- Tenet Health System Hahnemann LLC
- Delaware Valley Women's Health Associates
- Pennsylvania Department of Public Welfare

**Defense Attorney(s):**

- Donald N. Camhi; Post & Schell, P.C.; Philadelphia, PA for Women's Health Source, Health Access Network, Dolores Turse, Crozer-Keystone Health System
- Andrew K. Worek; Weber, Gallagher, Simpson, Stapleton, Fires & Newby, LLP; Philadelphia, PA for Helen Kuroki
- Gary M. Samms; Obermayer, Rebmann, Maxwell & Hippel, L.L.P.; Philadelphia, PA for Delaware Valley Women's Health Associates
- Benjamin A. Post; Post & Post, LLC; Berwyn, PA for Crozer Chester Medical Center
- B. Craig Black; The Chartwell Law Offices, LLP; Harrisburg, PA for Tenet Health System Hahnemann LLC, Emily Reeves

**Defendant Expert(s):**

- Gary Dildy M.D.; Gynecology; Salt Lake City, UT called by: for B. Craig Black
- Frank A. Manning M.D.; OB-GYN -- See also Gynecology; New York, NY called by: for Andrew K. Worek
- Andrew Gerson; OB-GYN -- See also Gynecology; Bryn Mawr, PA called by: for Benjamin A. Post

**Facts:**

At 3:22 a.m. on Dec. 28, 1998, plaintiff, Brenda Gomez, a 25-year-old homemaker, delivered her son, Victor, by emergency Cesarean section, at Crozer Chester Medical Center, in Chester. Victor was diagnosed with cerebral palsy, seizure disorder and spastic quadraparesis, in addition to other disabilities.

Gomez and her husband, Julio Galindo, sued Crozer Chester Medical Center, on behalf of their son, alleging medical malpractice and seeking to recover personal injury damages. The plaintiffs also named Gomez's obstetrician, Helen Kuroki; Kuroki's physicians' group, Delaware Valley Women's Health Associates; obstetrics resident, Emily Reeves; Reeves' physician's group, Tenet Health System Hahnemann; and nurse Dolores Terse, along with Terse's medical group, Crozer-Keystone Health System. In addition, Pearl Hart, Drexel Hill University College of Medicine, Health Access Network and Women's Health Source were named in the action but dismissed before trial. The Pennsylvania Department of Public Welfare also asserted a claim to recover Victor's past medical bills.

Plaintiffs' counsel claimed the defendants negligently monitored the child's heartbeat and in fact mistook the mother's heart rate for the child's and thus failed to determine the baby's heart rate was dropping. This misunderstanding continued for 12 minutes between 2:56 a.m. and 3:08 a.m. because Gomez became short of breath and her heart rate increased, so it appeared to the defendants as if they were looking at two heart rates instead of one, said counsel. During this time the baby suffered bradycardia and as a result suffered significant, permanent brain damage, counsel concluded.

Counsel for the plaintiffs also argued that if the staff had been attuned to the baby's heart rate and recognized it was suffering bradycardia, the staff could have ordered the Cesarean section delivery within and delivered the child in a healthy state by 3:08 a.m., 14 minutes before Victor was actually delivered with severe brain damage. Counsel asserted that the difference in time would have prevented the permanent brain damage Victor developed.

Counsel for all the defendants argued that Gomez sustained an amniotic fluid embolism which cut off oxygen supply to both Gomez and her child. The defendants maintained that Gomez's condition was caused by anaphylactic shock due to the amniotic and fetal cells entering the material circulation. The defendants contended that in most cases either the child or mother dies or the child sustains neurological damage.

Counsel for all the defendants contended that Gomez's initial shortness of breath was appropriately treated with oxygen, fluids and the repositioning of the patient. The defendants noted that the fetal heart rate appropriately recovered following Gomez's initial shortness of breath and it was not until approximately 3:08 a.m. that the effects of the amniotic fluid embolus became clear, at which time Gomez suddenly became unconscious. The defendants testified that they also relied on the audible sound produced by the monitoring equipment to verify that they were, in fact, monitoring the baby's heart rate, from the time of the initial maternal shortness of breath until Gomez became unconscious, and that the fetal heart rate had returned to a reassuring pattern. The defendants also noted that they expected the child's delivery was imminent until Gomez suddenly became unconscious at 3:08 a.m. The defendants said they responded by moving Gomez to the delivery room for an emergency Cesarean section delivery. Gomez was then taken to the intensive care unit and placed on a respirator. Gomez recovered from the incident without permanent injury.



**Injury:** Plaintiffs' counsel asserted that Victor suffers from significant brain damage, cerebral palsy and seizure disorder. At 10 years old, counsel noted that Victor was unable to walk, sit, talk or perform basic daily life tasks. Counsel asserted that the cost of future care, including 24-hour attendant care, would be between \$11.7 million and \$43.1 million. Counsel also sought unspecified past and future pain and suffering damages along with emotional distress damages for Gomez.

The defendants maintained that Gomez had fully recovered from her injuries.

**Result:** The jury found that the defendants had all met the standard of care and weren't liable for any damages to the plaintiffs.

**Trial Information:**

**Judge:** Charles B. Burr, II

**Demand:** \$6,000,000

**Trial Length:** 11 days

**Trial Deliberations:** 3 hours

**Jury Vote:** 12-0

**Editor's Comment:** This report is based on information that was provided by counsel for the plaintiffs, for Crozer Chester Medical Center and for Kuroki. Counsel for the other defendants did not respond to the reporter's phone calls.

**Writer** Joshua Couzens

## Twin died before delivery, sibling sustained brain damage

**Type:** Verdict-Plaintiff

**Amount:** \$4,000,000

**State:** Florida

**Venue:** Palm Beach County

**Court:** Palm Beach County Circuit Court, 15th, FL

**Injury Type(s):**

- *brain* - brain damage; cerebral palsy
- *other* - death
- *mental/psychological* - mental retardation

**Case Type:**

- *Wrongful Death*
- *Medical Malpractice* - Hospital; Childbirth; Delayed Treatment

**Case Name:** Jordon Preshong Brown, a minor, by and through her parents, Stephanie Preshong Brown and Donald Brown, and Stephanie Preshong Brown and Donald Brown, Individually v. Good Samaritan Hospital Inc. d/b/a Good Samaritan Medical Center, No. 50199 CA 00 7754

**Date:** March 24, 2009

**Plaintiff(s):**

- Donald Brown (Male, 40 Years)
- Sydney Brown (Female, 1 Years)
- Jordon Preshong Brown (Female, 1 Years)
- Stephanie Preshong Brown (Female, 40 Years)

**Plaintiff Attorney(s):**

- Scott M. Newmark; Sheldon J. Schlesinger, P.A.; Fort Lauderdale FL for Jordon Preshong Brown, Sydney Brown, Stephanie Preshong Brown, Donald Brown
- Sheldon J. Schlesinger; Sheldon J. Schlesinger, P.A.; Ft. Lauderdale FL for Jordon Preshong Brown, Sydney Brown, Stephanie Preshong Brown, Donald Brown
- Crane A. Johnstone; Sheldon J. Schlesinger, P.A.; Fort Lauderdale FL for Jordon Preshong Brown, Sydney Brown, Stephanie Preshong Brown, Donald Brown

**Plaintiff Expert (s):**

- Paul D. Gatewood M.D.; OB-GYN -- See also Gynecology; Canfield, OH called by: Scott M. Newmark, Sheldon J. Schlesinger, Crane A. Johnstone
- Corinne LaMont R.N.; Nursing; Benicia, CA called by: Scott M. Newmark, Sheldon J. Schlesinger, Crane A. Johnstone

**Defendant(s):**

- Good Samaritan Hospital Inc.

**Defense Attorney(s):**

- John E. Hall Jr.; Hall Booth Smith & Slover, P.C.; Atlanta, GA for Good Samaritan Hospital Inc.
- Michael A. Pannier; Hall Booth Smith & Slover, P.C.; Atlanta, GA for Good Samaritan Hospital Inc.
- Addison J. Meyers; Mintzer Sarowitz Zeris Ledva & Meyers, LLP; Coral Gables, FL for Good Samaritan Hospital Inc.
- Jack Gresh; Hall Booth Smith & Slover, P.C.; Atlanta, GA for Good Samaritan Hospital Inc.

**Defendant Expert(s):**

- Frank A. Manning M.D.; OB-GYN -- See also Gynecology; New York, NY called by: for John E. Hall Jr., Michael A. Pannier, Addison J. Meyers, Jack Gresh

**Insurers:**

- CNA

**Facts:**

On Aug. 22 1997, plaintiff Jordon Brown and plaintiffs' decedent Sydney Brown, who are identical twins, were delivered by Caesarean section to mother Stephanie Preshong Brown at Good Samaritan Medical Center in West Palm Beach. She had been admitted in July to the high risk level 3 maternal fetal ward. After the decision was made to deliver the twins via C-section, the mother had to wait several hours for an operating room to be available. Jordon was born with cerebral palsy and Sydney died eight days earlier in utero from an umbilical cord accident.

The mother and her husband, Donald Brown, on behalf of themselves and their children, sued Good Samaritan Medical Center for medical malpractice. Plaintiffs' counsel contended that the mother, who was in her 40s, was a known high-risk pregnancy. Plaintiffs' counsel stated that the fetal monitoring strips and a biophysical profile indicated that Jordon was not receiving enough oxygen. Based on the lack of oxygen, a C-section should have been scheduled immediately.

Defense counsel contended that the delay made little difference as the children were premature, noting that the pregnancy was only 28 weeks along.

**Injury:**

Jordon suffers from cerebral palsy, hypoxic-ischemic permanent brain damage and mental retardation. She is unable to speak, feed herself or wash herself. She requires 24-hour care. Sydney died during childbirth.

**Result:**

The jury found that the hospital was liable for Jordon's injuries but was not liable for Sydney's death. It awarded \$4 million.

**Donald Brown**

\$100,000 Personal Injury: Pain and Suffering

**Jordon Preshong Brown**

\$2,800,000 Personal Injury: Future medical costs and lost earning

\$1,000,000 Personal Injury: Pain & Suffering

**Stephanie Preshong Brown**

\$100,000 Personal Injury: pain and suffering

**Trial Information:**

**Judge:** Glenn Kelley

**Trial Length:** 7 weeks

**Trial  
Deliberations:** 2.5 days

**Jury Vote:** 6-0

**Jury  
Composition:** 3 male, 3 female

**Editor's  
Comment:** This report is based on information provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

**Writer** Stephen DiPerte

## Misuse of Pitocin in C-section birth resulted in injuries

**Type:** Verdict-Mixed

**Amount:** \$22,646,023

**State:** Ohio

**Venue:** Hamilton County

**Court:** Hamilton County, Court of Common Pleas, OH

**Injury Type(s):**

- *brain* - cerebral palsy; encephalopathy
- *other* - seizure disorder; loss of consortium
- *sensory/speech* - vision, impairment; cortical blindness
- *mental/psychological* - mental retardation; cognition, impairment

**Case Type:**

- *Medical Malpractice* - OB-GYN; Childbirth; Birth Injury; Negligent Treatment

**Case Name:** Heather Grow and James Grow, Individually and as Parents, Natural Guardians and Next Friends of Cassie Grow, a Minor v. Lisa Yang, M.D., Good Samaritan Hospital Inc. and Cincinnati Group Health Associates, No. A0200425

**Date:** May 19, 2008

**Plaintiff(s):**

- James Grow (Male, 40 Years)
- Cassie Grow (Female, 15 Years)
- Heather Grow (Female, 22 Years)

**Plaintiff Attorney(s):**

- Mark R. Mueller; Mueller Law Offices; Austin TX for Heather Grow, James Grow, Cassie Grow
- Hunter Thomas Hillin; Mueller Law Offices; Austin TX for Heather Grow, James Grow, Cassie Grow
- Patrick J. Beirne; The Lawrence Firm, PSC; Covington KY for Heather Grow, James Grow, Cassie Grow

**Plaintiff Expert(s):**

- Barry Schiffrin M.D.; OB-GYN -- See also Gynecology; Encino, CA called by: Mark R. Mueller, Hunter Thomas Hillin, Patrick J. Beirne
- Harvey Rosen Ph.D.; Economics; Cleveland, OH called by: Mark R. Mueller, Hunter Thomas Hillin, Patrick J. Beirne
- Robert J. Lerer M.D.; Pediatrics; Fairfield, OH called by: Mark R. Mueller, Hunter Thomas Hillin, Patrick J. Beirne
- Robert Ancell Ph.D.; Life Care Planning; Southfield, MI called by: Mark R. Mueller, Hunter Thomas Hillin, Patrick J. Beirne
- Robert A. Zimmerman M.D.; Pediatric Neurology; Philadelphia, PA called by: Mark R. Mueller, Hunter Thomas Hillin, Patrick J. Beirne
- Kenneth F. Swaiman M.D.; Pediatric Neurology; Minneapolis, MN called by: Mark R. Mueller, Hunter Thomas Hillin, Patrick J. Beirne

**Defendant(s):**

- Lisa Yang, M.D.
- Good Samaritan Hospital Inc.
- Cincinnati Group Health Associates

**Defense Attorney(s):**

- Thomas M. Evans; Fry, Kiely & Dennis, LLP; Cincinnati, OH for Good Samaritan Hospital Inc.
- Arthur E. Phelps Jr.; Fry, Kiely & Dennis, LLP; Cincinnati, OH for Good Samaritan Hospital Inc.
- James P. Triona; Triona Calderhead & Lockemeyer; Cincinnati, OH for Lisa Yang, M.D., Cincinnati Group Health Associates
- David C. Calderhead; Triona Calderhead & Lockemeyer; Cincinnati, OH for Lisa Yang, M.D., Cincinnati Group Health Associates

**Defendant Expert(s):**

- Max Wiznitzer M.D.; Pediatric Neurology; Cleveland, OH called by: for Thomas M. Evans, Arthur E. Phelps Jr.
- Alan D. Bedrick M.D.; Neonatology; Baltimore, MD called by: for James P. Triona, David C. Calderhead
- David Merrill M.D., Ph.D., M.F.M.; OB-GYN -- See also Gynecology; Winston-Salem, NC called by: for Thomas M. Evans, Arthur E. Phelps Jr.
- Frank A. Manning M.D., M.F.M.; OB-GYN -- See also Gynecology; New York, NY called by: for James P. Triona, David C. Calderhead
- Karen Meyers J.D.; Economics; Cincinnati, OH called by: for James P. Triona, David C. Calderhead
- Larry Griffin M.D., F.A.C.O.G.; OB-GYN -- See also Gynecology; Louisville, KY called by: for James P. Triona, David C. Calderhead
- Doreen Spak R.N.; Life Care Planning; Cuyahoga Falls, OH called by: for James P. Triona, David C. Calderhead

**Insurers:**

- ProAssurance

**Facts:**

On Sept. 4, 1997, plaintiff Cassie Grow was born at Good Samaritan Hospital in Cincinnati. Ten days earlier, the mother, plaintiff Heather Grow, 22, was diagnosed with both a large baby and a narrow pelvic outlet. Pregnant with her first child, the mother underwent cervical ripening on Sept. 3 and induction. Obstetrician Lisa Yang and the nurses at Good Samaritan Hospital continued the induction and increased the Pitocin throughout hours of charted hyperstimulation and elevated resting tone.

Grow claimed that despite these risk factors, she was never offered a Cesarean section and the labor progressed with minimal progress but increasing Pitocin. During this process, Cassie's head was wedged into the pelvis in an unfavorable position with no room to descend while being subjected to unrelenting uterine contractions and high pressures for more than six hours. A C-section was eventually called at about 10 p.m. after Yang, for the first time, assessed that Cassie's head was in the persistent occiput posterior position (when the back of the head is facing the back of the mother) but not descended. The doctor determined that there was no way for her to safely fit through the birth canal. Cassie was born at 10:25 p.m.

According to the mother, the doctors and nurses disregarded the high resting tones and the frequent contractions. As a result, Cassie developed multiple birth-related injuries including cerebral palsy.

Grow and her husband, James Grow, on behalf of Cassie, sued Good Samaritan Hospital Inc., Yang and her practice, Cincinnati Group Health Associates for medical malpractice. Plaintiffs' counsel argued that there was a misuse of Pitocin that caused uterine hyperstimulation and a high resting tone which, combined with relative cephalopelvic disproportion, resulted in compressive forces on the fetal head and increased and sustained intracranial pressure causing an ischemic/hypoxic parasagittal or "watershed" injury to the brain.

This argument was supported by the plaintiffs' OB/GYN expert, who testified that the nurses and doctor were negligent in the administration of Pitocin when uterine hyperstimulation and a high resting tone were demonstrated on the electronic fetal monitor tracing. The expert added that there were failures by the defendants on many fronts, including failure to appreciate the position of the baby's head, failure to appreciate hyperstimulation and a failure to appreciate changes on the monitor of the decrease in variability and tachycardia prior to the onset of pushing, which were all indications that the fetus was not able to tolerate the uterine environment.

Additionally, the expert said that there was an arrest of descent of the baby's head when it became wedged in the mother's pelvis, and that there was no expectation of vaginal delivery for hours before the staff abandoned efforts for a vaginal delivery.

The plaintiff's pediatric neuroradiology expert said that Cassie's injury had occurred within 24 hours of the initial CT scan, clearly within the time frame of the mother's hospital admission.

The plaintiffs' pediatric neurology expert, testified that there was a parasagittal injury to the fetal brain due to compressive forces that decreased blood flow in the watershed distribution as intracranial pressure exceeded mean arterial pressure in that region, resulting in hypoxic-ischemic encephalopathy.

The defendants denied the allegations.

Counsel for the hospital contended that the IUPCs (intrauterine pressure catheter) utilized at the hospital at the time were notoriously unreliable, and that the nurses must have been assessing the uterus as "soft." Otherwise, the nurses would have made a notation of a problem with high resting tone, and the fetal monitor tracing would have demonstrated

decelerations. All of the defendant's experts denied that ischemic brain injury to a baby could be caused by sustained high intrauterine pressure with an impacted head due to cephalopelvic disproportion, and that the lab studies at the time of birth demonstrating a normal PH ruled out an asphyxial injury occurring in the hours before delivery.

Yang's neonatology expert testified that there is no support in the literature for the mechanism advanced by the plaintiffs; that the initial CT scan indicated an injury 48 hours prior to birth; and that the clinical findings and laboratory studies are inconsistent with injury occurring in the labor and delivery period.

Larry Griffin, one of Yang's OB-GYN experts, testified that the care by the nurses and doctor was within applicable standards of care, and that the actual readings of the IUPC utilized in monitoring uterine contractions in this case were unreliable, as there was no indication of deceleration of the fetal heart tones, which would be expected if the readings were accurate. Griffin opined that there was no indication to discontinue or decrease the infusion of Pitocin, and that the mechanism of injury advanced by the plaintiffs was only a "theory" that is not recognized by the medical community. These opinions were also advanced by Frank A. Manning, Yang's other OB-GYN expert, and Good Samaritan's OB/GYN expert.

Good Samaritan's pediatric neurology expert testified in a manner similar to the plaintiff's neonatology expert.



**Injury:**

Within 15 hours of her birth, Cassie developed seizures. Doctors diagnosed a seizure disorder two years later. On Sept. 12, Cassie was discharged and began ongoing treatment at Cincinnati Children's Hospital Medical Center. On Jan. 6, 1998, Cassie exhibited developmental delays due to hypoxic-ischemic encephalopathy and then cortical visual impairment in September. She later developed cerebral palsy.

The plaintiff's pediatric expert outlined Cassie's current condition and the need for services provided in the life care plan. The family sought approximately \$415,000 for past medical expenses.

Cassie, who's now 10 years old, has limited ambulation and can walk short distances, but relies on a wheelchair for longer distances. She attends public school regularly and lives with her parents. Requiring assistance with almost every aspect of her life, Cassie will require 24-hour medical and custodial supervision via a licensed practical nurse.

Cassie will also require a van conversion and home modifications. The family sought a life-care plan with a present value of about \$21 million.

The plaintiffs' economist presented a future lost earning capacity of approximately \$850,000 to \$2.9 million, which hinged on the scenarios of a high school education, a two-year college education and a four-year college education, as well as various years for retirement.

The parents testified about how they want to care for Cassie all of her life, but know that there will be a point when they will no longer be able to do so. They sought an unspecified amount for loss of consortium and a non-quantified amount for past and future pain and suffering on behalf of their daughter.

The defense's life-care planning expert testified that care from a licensed practical nurse would not be required, only a certified medical assistant, and that the cost of care would be approximately \$58,000 annually with additional medication costs of approximately \$62,400 for the next two years.

The defense's annuity expert testified that those needs outlined by the defense's life-care planning expert could be met by upfront cash and the purchase of an annuity with a total cost of between \$1.8 million and \$4.4 million, depending on whether the annuity payments increase at a rate of 3 percent or 6 percent over time.

**Result:**

The jury found that Yang was negligent in her care to the mother and Cassie and that her negligence was a proximate cause of Cassie's injuries. The jury found that Good Samaritan Hospital was negligent in its care to the plaintiffs but that its negligence was not a proximate cause of Cassie's injuries. The family was awarded \$22,646,023.

**Cassie Grow**

\$230,000 Personal Injury: Past Medical Cost

\$7,959,747 Personal Injury: Future Medical Cost

\$1,956,276 Personal Injury: FutureLostEarningsCapability

\$500,000 Personal Injury: Past Pain And Suffering

\$3,000,000 Personal Injury: Future Pain And Suffering

\$7,500,000 Personal Injury: future loss of ability to perform usual functions or activities

**Heather Grow**

\$750,000 Personal Injury: loss of consortium

**James Grow**

\$750,000 Personal Injury: loss of consortium

**Trial Information:**

**Judge:** Beth A. Myers

**Trial Length:** 24 days

**Trial  
Deliberations:** 3.5 days

**Jury Vote:** 6-2

**Jury  
Composition:** 3 male, 5 female

**Post Trial:** The parties settled for a confidential amount.

**Editor's  
Comment:** This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

**Writer** Aaron Jenkins

## Medical Malpractice - Childbirth - Delayed Delivery

**Type:** Verdict-Plaintiff

**Amount:** \$2,500,375

**State:** Ohio

**Venue:** Hamilton County

**Court:** Hamilton County, Court of Common Pleas, Cincinnati, OH

**Case Type:**

- *Wrongful Death*
- *Medical Malpractice*

**Case Name:** Jason Scott Brown and Lori Brown v. Seven Hills OB-GYN Associates, Inc. d/b/a Seven Hills Women's Health Center, No. A-0510711

**Date:** November 16, 2007

**Plaintiff(s):**

- Lori Brown
- Jason Scott Brown (0 Years)

**Plaintiff Attorney(s):**

- Donald C. Moore Jr.; ; Cincinnati OH for Jason Scott Brown
- Marc G. Pera; ; Cincinnati OH for Jason Scott Brown

**Plaintiff Expert(s):**

- James Mirabile M.D.; Gynecology; Overland Park, KS called by:
- Esther Battle Ph.D.; Psychology/Counseling; Yellow Springs, OH called by:

**Defendant(s):**

- Seven Hills OB-GYN Associates, Inc. d/b/a Seven Hills Women's Health Center

**Defense Attorney(s):**

- David C. Calderhead; Cincinnati, OH for Seven Hills OB-GYN Associates, Inc. d/b/a Seven Hills Women's Health Center
- Joel L. Peschke; Cincinnati, OH for Seven Hills OB-GYN Associates, Inc. d/b/a Seven Hills Women's Health Center

**Defendant Expert(s):**

- Frank Manning M.D.; Gynecology; Scarsdale, NY called by: for

**Insurers:**

- Proassurance

**Facts:**

A husband and wife were awarded a total of \$2,500,375 for the wrongful death of a fetus. The parties disagreed as to whether the mother had diabetes and preeclampsia and whether a decision should have been made to deliver the child at an earlier date.

Plaintiff Lori Brown was pregnant with her second child. At 37 weeks gestation, she called her OB/GYN's practice, Defendant Seven Hills OB-GYN Associates, Inc. and informed defendant's staff that her baby was not moving normally. She was directed to come into the office. Upon presentation, she was given a non-stress test. The test was reactive, indicating that the baby was moving appropriately. At the same visit, Lori's blood pressure was high and she had significant protein in her urine. She was sent home with a jug and ordered to collect her urine for 24 hours. The results of the 24 hour urine test confirmed that Lori had significant protein in her urine.

At 38.5 weeks gestation, Lori again called Defendant Seven Hills and stated that her baby was not moving normally. Lori maintained she was told that she had been in a short time ago and that the baby was fine. According to Lori, she was advised that, if she did not feel movement for 24 hours, to call back or go directly to the hospital. Two days later, the baby died and was stillborn. The baby was 12 pounds, 12 ounces. This lawsuit was brought by Lori and her husband, Plaintiff Jason Brown.

Plaintiffs alleged defendant's employees were negligent in not diagnosing Lori with diabetes, preeclampsia and macrosomia (large baby). Plaintiffs alleged the baby should have been delivered at 37 weeks. They further argued that defendant's employees negligently advised Lori to wait 24 hours when she complained that her baby was not moving normally.

Defendant contended Lori did not have diabetes or preeclampsia and there was no indication to deliver the baby before term. Defendant also disputed proximate cause and claimed the phone call in which Lori claimed she was told to wait 24 hours was not recorded in their phone logs and never happened.

Plaintiffs' decedent was a fetus.

**Injury:**

Failure to diagnose diabetes, preeclampsia and macrosomia (large baby) and failure to schedule an earlier delivery, resulting in the death of a fetus.

**Result:**

\$2,500,375. Breakdown: \$750,000 to Lori Brown for loss of society; \$600,000 to Lori Brown for mental anguish; \$750,000 to Jason Brown for loss of society; \$400,000 to Jason Brown for mental anguish; and \$375 for funeral expenses.

**Trial Information:****Judge:**

Richard A. Niehaus

**Trial** 2 days  
**Deliberations:**

**Editor's** Per plaintiffs' counsel, all doctors agreed that the alleged phone advice, if given, was  
**Comment:** substandard.

**Writer**

## Failure to monitor infant's cyst resulted in liver transplant

**Type:** Verdict-Plaintiff

**Amount:** \$16,500,000

**State:** Georgia

**Venue:** Fulton County

**Court:** Fulton County, State Court, GA

**Injury Type(s):**

- *other - vomiting/vomition*
- *gastrointestinal/digestive - liver; diarrhea*

**Case Type:**

- *Medical Malpractice - Failure to Monitor; Negligent Treatment; Failure to Communicate*

**Case Name:** Brooke Yamada, a Minor, by and through her Guardian, Mina Leigh Yamada, and Takahiro Yamada and Mina Leigh Yamada, Individually v. Northside Hospital, Inc., Northside Pediatrics & Adolescent Medicine, P.C. and Women's Health Associates, P.C., No. 2005VS076354G

**Date:** August 17, 2006

**Plaintiff(s):**

- Brooke Yamada (Female, 4 Years)
- Takahiro and Mina Yamada (Male, 33 Years)

**Plaintiff Attorney(s):**

- Thomas W. Malone; Malone Law Office; Atlanta GA for Brooke Yamada, Takahiro and Mina Yamada
- Adam Malone; Thomas William Malone; Atlanta GA for Brooke Yamada, Takahiro and Mina Yamada

**Plaintiff Expert (s):**

- Joel E. Lavine; Pediatrics; San Diego, CA called by: Thomas W. Malone, Adam Malone
- Frank A. Manning; Obstetrics; , called by: Thomas W. Malone, Adam Malone
- Linda Rueckert R.N.; Nursing; Largo, FL called by: Thomas W. Malone, Adam Malone
- Tracy Trotter M.D.; Pediatrics; San Ramon, CA called by: Thomas W. Malone, Adam Malone

**Defendant(s):**

- Northside Hospital Inc.
- Women's Health Associates, P.C.
- Northside Pediatrics & Adolescent Medicine, P.C.

**Defense  
Attorney(s):**

- Jack G. Slover Jr.; Hall, Booth, Smith, & Slover, P.C.; Atlanta, GA for Northside Pediatrics & Adolescent Medicine, P.C.
- Susan V. Sommers; Atlanta, GA for Northside Hospital Inc.
- Carol P. Michel; Weinberg, Wheeler, Hudgins, Gunn & Dial LLC; Atlanta, GA for Women's Health Associates, P.C.
- Pat M. Anagnostakis; Atlanta, GA for Northside Hospital Inc.
- Shubra R. Mashelkar; Weinberg, Wheeler, Hudgins, Gunn, & Dial, LLC for Women's Health Associates, P.C.
- Terrell W. Benton III; Atlanta, GA for Northside Pediatrics & Adolescent Medicine, P.C.

**Defendant  
Expert(s):**

- David Cronin M.D.; Transplant Surgery; New Haven, CT called by: for Carol P. Michel, , Shubra R. Mashelkar, ,
- David Glasgow; Pediatrics; , called by: for Jack G. Slover Jr., , , Terrell W. Benton III
- Peter F. Whittington; Liver Pathology; , called by: for Susan V. Sommers, Pat M. Anagnostakis
- Deborah Lee; Obstetrics; , called by: for Carol P. Michel, , Shubra R. Mashelkar, ,

**Insurers:**

- Medical Protective
- Zurich Insurance
- FPIC

**Facts:**

In October 2003, plaintiff Brooke Yamada was born at Northside Hospital. Previously, her mother, Mina Leigh Yamada, underwent prenatal ultrasounds throughout her pregnancy to monitor an abdominal cyst that was detected in her unborn child. After she was born, Brooke began to experience nausea, vomiting, diarrhea and pale-colored stools. In late October, the mother asked Northside Pediatrics & Adolescent Medicine--where Brooke was being treated for her illnesses--if Brooke's problems could be related to the cyst. She also had the prenatal ultrasounds faxed from Women's Health Associates, P.C.--where her OB-GYN was based--to Northside Pediatrics.

On Nov. 5, the mother took her daughter to a Northside Pediatric gastroenterologist because of the digestive problems. She told the doctor about the cyst finding. The gastroenterologist found no signs or symptoms of liver failure and diagnosed the baby with a milk allergy. Frustrated with Northside Pediatrics, Yamada and her husband changed pediatric groups. In January 2004, Brooke was seen by her new doctor and was immediately sent to Children's Healthcare of Atlanta, where she was diagnosed with a cyst on the common bile duct and liver failure. Brooke was found to have biliary atresia, which prior to the advent of liver transplant in infants is always fatal. In February 2004, Brooke underwent a liver transplant.

Individually and on behalf of Brooke, Yamada and her husband, Takahiro Yamada, sued Northside Hospital, Northside Pediatrics and Adolescent Medicine and Women's Health Associates for medical malpractice for their negligent treatment. Specifically, their attorneys argued that the defendants failed to provide follow-up treatment; failed to

communicate with each other; and failed to monitor Brooke's cyst. Proper monitoring of her liver would have led to early intervention at a time when her liver was clearly salvageable, the Yamadas counsel argued.

Plaintiffs' counsel contended that they were assured by Women's Health Associates, that an order for an ultrasound would be placed in the baby's chart and that the cyst would be followed up on after birth. However, plaintiffs' counsel contended that Women's Health Associates never ordered an ultrasound, nor did it tell Northside Pediatrics about the cyst. In addition, plaintiffs' counsel argued that the mother's prenatal records, which were faxed to Northside Hospital, contained a notation of a cyst, but this information was not placed in Brooke's newborn chart by the Northside Hospital's nurses. Plaintiffs' counsel contended that both the Yamadas were also fully informed of the prenatal findings and of the need for an ultrasound after the birth of the baby. The information was placed in Yamada's chart and the computer system in Northside Hospital, but not in the baby's paper chart. Prior to discharge from the hospital, the mother asked Northside Pediatrics about the result of the tests on the cyst and was told everything was fine.

Women's Health Associates denied telling the Yamadas that an ultrasound order would be placed in the chart.

Neither the plaintiffs' counsel nor the defense counsel disputed that information about the prenatal finding of the cyst was noted on the "problems lists" in the Northside Hospital prenatal records, which was available to all caregivers at Northside Hospital after the baby was born.

The defense contended that they communicated properly through medical records and even if they did follow-up on the cyst and diagnose it properly, Brooke would have still needed a liver transplant because she had biliary atresia, an unpreventable, unpredictable and incurable condition.

**Injury:**

Brooke underwent a liver transplant and then she experienced one mild episode of liver rejection. She will remain on anti-rejection medications for life.

Despite not knowing what Brooke's future medical damages would incur, Yamada's counsel asked the jury to award sufficient general damages to compensate for the anxiety, grief and worry Brooke would have been certain to experience if she did not have funds to cover a possible liver transplant and other future medical needs. As an organ transplant recipient, Brooke will face many difficult decisions such as whether to become a mother, as pregnancy would demand the almost impossible choice of stopping the anti-rejection medications with the attendant risk of rejection or staying on the medications and subjecting her baby to the effects of powerful drugs.

No specific amount was asked of the jury, but \$30 million, \$15 million and \$9 million were suggested to the jury on three occasions throughout the trial.

**Result:**

During the second week of trial, Northside Hospital and Northside Pediatrics settled for a confidential amount. The jury found that Women's Health was negligent in treating Brooke Yamada's cyst. It awarded \$16.5 million.



**Brooke Yamada**

\$15,000,000 Personal Injury: Future Pain And Suffering

**Takahiro and Mina Yamada**

\$1,500,000 Personal Injury: compensatory damages

**Trial Information:**

**Judge:** John R. Mather

**Demand:** \$1 million

**Offer:** \$250,000 from Women's Health

**Trial Length:** 9 days

**Trial Deliberations:** 3.5 hours

**Writer** Michael Rehak

## C-section would have prevented mother's injury, plaintiff alleged

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** New York

**Venue:** Richmond County

**Court:** Richmond Supreme, NY

**Injury Type(s):**

- *other* - sacroiliac joint
- *pelvis*

**Case Type:**

- *Medical Malpractice* - Childbirth

**Case Name:** Jennifer Keschecki v. St. Vincent's Medical Center, Women's Health Care Specialists, P.C. and Christopher LaPorta, M.D., No. 11887/01

**Date:** June 09, 2005

**Plaintiff(s):**

- Jennifer Keschecki (Female, 32 Years)

**Plaintiff Attorney(s):**

- Robert A. Sgarlato; Slater & Sgarlato P.C.; Staten Island NY for Jennifer Keschecki

**Plaintiff Expert (s):**

- Dr. Brian Maloney; Pain Management; Staten Island, NY called by: Robert A. Sgarlato
- Maurice Simon; OB-GYN -- See also Gynecology; Forest Hills, NY called by: Robert A. Sgarlato
- Stephen Brenner M.D.; Orthopedics; Hillsdale, NJ called by: Robert A. Sgarlato

**Defendant(s):**

- Christopher LaPorta
- St. Vincent's Medical Center
- Women's Health Care Specialists P.C.

**Defense  
Attorney(s):**

- Timothy J. Lenane; Schiavetti, Corgan, Soscia, DiEdwards & Nicholson LLP; White Plains, NY for St. Vincent's Medical Center, Women's Health Care Specialists P.C., Christopher LaPorta

**Defendant  
Expert(s):**

- Frank Manning; Perinatology; New York, NY called by: for Timothy J. Lenane
- Herbert S. Sherry M.D.; Orthopedic Surgery; New York, NY called by: for Timothy J. Lenane

**Insurers:**

- Medical Liability Mutual Insurance Co.

**Facts:**

On Dec. 17, 1998, plaintiff Jennifer Keschecki, a 32-year-old woman in the final month of pregnancy, presented to gynecologist Dr. Christopher LaPorta, of Women's Health Care Specialists P.C., to undergo a sonography. LaPorta estimated the fetal weight to be between 8 and 9 pounds. He gave Keschecki three options: going to full term, undergoing a primary Caesarean delivery or undergoing induction for impending macrosomia. She opted for the latter.

The next day, Keschecki was admitted to St. Vincent's Staten Island Hospital, where she was administered Cervidil, a uterine-ripening agent.

The following day, Keschecki was administered Pitocin, a drug that increases the frequency and intensity of uterine contractions for the purpose of inducing labor. The second stage of labor began at about 7 p.m., when Keschecki was 5-centimeters dilated. She became fully dilated about five hours later.

The baby's head emerged with the umbilical cord wrapped twice around its neck, and a shoulder dystocia developed. The nuchal cord was reduced, and a McRoberts maneuver and suprapubic pressure were executed to relieve the dystocia. The baby, weighing 8 pounds, 10 ounces, was delivered at 2:36 a.m. Keschecki was later diagnosed with diastasis of the symphysis pubis--a severe rupture of the sacroiliac joints that occurs during childbirth.

Keschecki commenced a medical malpractice suit against LaPorta, St. Vincent's Staten Island Hospital, and Women's Health Care Specialists. She alleged that the defendants did not properly manage the delivery of her child.

The action against the hospital was dismissed, and the matter proceeded to a trial against LaPorta and Women's Health Care Specialists.

Keschecki's counsel argued that LaPorta should not have induced labor, that he should have performed a C-section, that he improperly executed the McRoberts maneuver and the suprapubic pressure, and that he did not recognize cephalopelvic disproportion that necessitated performance of an episiotomy--an incision of the mother's perineum, performed to widen the vaginal canal.

The defense contended that there was no cephalopelvic disproportion, that it was proper to induce labor, that there were no indications for a C-section, that the McRoberts maneuver and suprapubic pressure were properly executed, and that an episiotomy was performed.

**Injury:** Keschecki sustained diastasis of her symphysis pubis. Her expert orthopedist opined that the injury occurred as a result of the vaginal delivery and that it produced a tilt of her pelvis. The condition necessitated surgery.

Keschecki claimed that she experiences residual pain and difficulty walking. She sought recovery of \$40,000 in future medical expenses and unspecified damages for her past and future pain and suffering.

The defendants' expert orthopedist contended that Keschecki's condition was the result of an incomplete vertebrae, resulting in disc herniations, scoliosis and pelvic tilt. He pointed out that none of the radiological studies, including seven X-rays and three MRIs, showed any disruption or injury to the sacroiliac joints.

Both sides' doctors agreed that the symphysis pubis diastasis resolved over time.

**Result:** The jury rendered a defense verdict. It found that LaPorta did not depart from the standard of care.

### **Trial Information:**

**Judge:** Joseph J. Maltese

**Demand:** \$750,000

**Offer:** None

**Trial Length:** 7 days

**Trial Deliberations:** 3 hours

**Jury Vote:** 6-0

**Jury Composition:** 2 male, 4 female

**Post Trial:** Judge Joseph Maltese dismissed plaintiff's counsel's motion to set aside the verdict as against the weight of the evidence.

**Writer:** Jacqueline Linger

## Postpartum hemorrhage led to brain damage, plaintiff alleged

**Type:** Verdict-Plaintiff

**Amount:** \$1,313,000

**State:** New York

**Venue:** Rockland County

**Court:** Rockland Supreme, NY

**Injury Type(s):**

- *brain* - encephalopathy
- *other* - fibromyalgia
- *mental/psychological* - depression; cognition, impairment; memory, impairment

**Case Type:**

- *Medical Malpractice* - Anesthesiology; Delayed Treatment

**Case Name:** Susan Taylor, by Her Guardian ad Litem, Rosemary Taylor v. Louis A. Martorella, M.D., OBS-GYN of Rockland, P.C. & Nyack Hospital, No. 5169/02

**Date:** October 21, 2004

**Plaintiff(s):**

- Susan Taylor (Female, 36 Years)

**Plaintiff Attorney(s):**

- Conrad Jordan; trial counsel to Burns & Harris; New York NY for Susan Taylor

**Plaintiff Expert (s):**

- Hal S. Gutstein MD; Neurology; Bronx, NY called by: Conrad Jordan
- Alan Gibstein M.D.; OB-GYN -- See also Gynecology; Great Neck, NY called by: Conrad Jordan

**Defendant(s):**

- Nyack Hospital
- Louis A. Martorella
- OBS-GYN of Rockland P.C.

**Defense Attorney(s):**

- Richard W. Nicholson; Schiavetti, Corgan, Soscia, DiEdwards & Nicholson; New York, NY for Louis A. Martorella, OBS-GYN of Rockland P.C., Nyack Hospital

**Defendant  
Expert(s):**

- Jay Coblentz; Neurology; Rye, NY called by: for Richard W. Nicholson
- Frank Manning M.D.; OB-GYN -- See also Gynecology; Bronx, NY called by: for Richard W. Nicholson

**Insurers:**

- Frontier Insurance Co. (in rehabilitation)

**Facts:**

On May 22, 1998, plaintiff Susan Taylor, 36, a full-term pregnant woman, presented to Nyack [N.Y.] Hospital for delivery of her third child. Dr. Louis Martorella, Taylor's treating obstetrician, performed the vaginal delivery. After delivering a healthy baby at 6:12 p.m., Taylor began to hemorrhage. Martorella ordered administration of Pitocin, Methergine and Hemabate to create uterine contractions necessary to deliver the placenta. The placenta could not be delivered through normal means. At approximately 6:25 p.m., Taylor was transferred from the labor room to the operating room, where a hysterectomy was performed.

Five months after her release from the hospital, Taylor claimed that she was suffering from mild hypoxic-ischemic encephalopathy, fibromyalgia and depression. She contended that the conditions stemmed from complications during the hysterectomy.

Taylor's guardian ad litem, Susan Taylor, commenced a medical malpractice suit against Martorella; his employer, OBS-GYN of Rockland P.C.; and the hospital.

Plaintiff's counsel contended that the defendants departed from the accepted standard of care by performing a manual removal of the placenta in the labor room without anesthesia, which caused a delay and excess bleeding. Plaintiff's counsel also argued that the defendants' attempted manual removal of the placenta either never occurred or was too late.

Taylor testified that she believed that Martorella attempted a manual removal in the labor room. She testified that she was in great pain and was in the labor room for an extended period. The plaintiff produced a pathology report, which indicated that the placenta was received in fragments.

Taylor's expert OB-GYN testified that, given that this was a vaginal birth after a previous Caesarean section, it was essential for the defendants to have two units of blood available in the labor room during delivery. He opined the two large infusions between 6:30 p.m. and 7 p.m. were too late.

The defendants claimed that they did not depart from the standard of care. They denied performing a manual removal of the placenta in the labor room, and they contended that the blood replacement was timely. They claimed that a partial successful manual removal was performed in the operating room prior to the hysterectomy.

Martorella testified that he examined Taylor's cervix and vagina in the labor room, but that he did not perform a manual removal until she was in the operating room, at approximately 6:25 p.m. He testified that Taylor's uterus responded to the medication. Martorella also testified that he acted promptly and sequentially in attempts to deliver the placenta, order medications, examine Taylor's cervix, attempt a manual removal of the placenta, and then perform a hysterectomy.

The defendants' expert neurologist testified that Taylor's postpartum clinical picture was insufficient to result in brain damage. He opined that her complaints and the five-month delay in presentation were inconsistent with a hypoxic injury.

**Injury:** After the delivery, Taylor remained in the hospital's intensive-care unit for 26 days. During that time, she developed a coagulation disorder and a paralytic ileus, which resulted in malnutrition, fevers, anemia and pleural effusions.

Five months later, Taylor complained of memory loss and difficulty concentrating. She was diagnosed with mild hypoxic-ischemic encephalopathy, fibromyalgia and depression. Taylor continues to complain of chronic fatigue and joint pain. She claimed that she is unable to return to work.

The plaintiff's expert neurologist testified that Taylor's brain damage and fibromyalgia were causally related to the incident. He opined that Taylor exhibited no evidence of previous neurological or psychological problems.

Taylor asked the jury to award \$2.35 million.

**Result:** The jury rendered a plaintiff's verdict. It awarded Taylor \$1,313,000.

### **Susan Taylor**

\$340,000 Personal Injury: Past Lost Earnings Capability

\$480,000 Personal Injury: FutureLostEarningsCapability

\$333,000 Personal Injury: Past Pain And Suffering

\$160,000 Personal Injury: Future Pain And Suffering

### **Trial Information:**

**Judge:** William A. Sherwood

**Demand:** \$1,000,000

**Offer:** None

**Trial Length:** 10 days

**Trial Deliberations:** 8.5 hours



**Jury Vote:** 6-0

**Jury  
Composition:** 4 male, 2 female

**Editor's  
Comment:** Defense counsel did not respond to a faxed draft of this report or two phone calls.

**Writer** Peter Hayes

## Child's injuries were blamed on doctors' failure to spot abruption

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** New York

**Venue:** New York County

**Court:** New York Supreme, NY

**Injury Type(s):** • *brain* - brain damage; periventricular leukomalacia

**Case Type:** • *Medical Malpractice* - Childbirth; Failure to Diagnose

**Case Name:** Tykisha Walker, an Infant, by Her Mother and Natural Guardian, Nikisha Jackson, and Nikisha Jackson, Individually v. New York Medical Group, P.C., No. 401114/00

**Date:** July 21, 2003

**Plaintiff(s):** • Tykisha Walker (Female, 1 Years)  
• Nikisha Jackson (Female, 21 Years)

**Plaintiff Attorney(s):** • Charles Silverstein; Silverstein & Bast; New York NY for Tykisha Walker, Nikisha Jackson

**Plaintiff Expert (s):** • Philip Bresnick OB-GYN; Obstetrics; Great Neck, NY called by: Charles Silverstein  
• Dr. Steven Wolf; Pediatric Neurology; New York, NY called by: Charles Silverstein  
• Deborah Goodman; Radiology; Stony Brook, NY called by: Charles Silverstein  
• Eleanore Rosman; Sonography; New York, NY called by: Charles Silverstein

**Defendant(s):** • New York Medical Group P.C.

**Defense  
Attorney(s):**

- Eric R. Mishara; Schiavetti, Corgan, Soscia, DiEdwards & Nicholson, L.L.P.; White Plains, NY for New York Medical Group P.C.

**Defendant  
Expert(s):**

- Frank Manning M.D.; Obstetrics; New York, NY called by: for , Eric R. Mishara

**Insurers:**

- State Liquidation Bureau

**Facts:**

In August 1995, plaintiff Nikisha Jackson, 21 years old and unemployed, sought prenatal care at New York Medical Group P.C. Jackson was seven months pregnant at the time. An OB-GYN examined Jackson and determined that her pregnancy would progress to a normal delivery. The doctor scheduled a sonography to assess fetal age and well-being, and to confirm the stage of gestation.

At approximately 2:40 p.m. on Aug. 29, 1995, Jackson returned to the clinic for the sonography, which was performed by a technician. There was no radiologist present at the time of the exam, so the results were not reviewed until the following morning, when the radiologist made his or her scheduled arrival. In the interim, Jackson began to experience abdominal pain. The pain began at approximately 9 p.m. on Aug. 29. At approximately 1:30 a.m. on Aug. 30, she presented to a hospital, where she was diagnosed with a placental abruption. Her child, infant plaintiff Tykisha Walker, was delivered two hours later by Caesarean section.

Jackson, acting individually and on behalf of her daughter, sued New York Medical Group. Jackson presented an expert radiologist, who testified that her sonogram revealed a four-centimeter blood clot, and thus, that it was indicative of placental abruption. Jackson claimed that New York Medical Group's sonography technician was not properly supervised, and that the blood clot and placental abruption should have been diagnosed. She also claimed, via expert testimony, that she required further observation and possible hospitalization following the sonography.

The defense's expert OB-GYN testified that Jackson's sonogram revealed calcifications -- not a blood clot or an abruption. He also contended that Walker's injuries were attributable to her mother's delay in reporting to the hospital, or, possibly, to cigarette use during pregnancy.

**Injury:**

Walker sustained periventricular leukomalacia, which is believed to be a product of insufficient blood supply to the brain during birth or the first few days of life. She suffers from seizures and is severely disabled. She is nonfunctional and bedridden, and she must be fed via a stomach tube. She has been hospitalized for hypothermia and pneumonia.

The plaintiffs asked the jury for \$3 million for past pain and suffering, \$9 million for future pain and suffering, \$750,000 for past loss of services, and \$850,000 for future loss of services.

**Result:**

Although the jury found that New York Medical Group departed from accepted medical standards in its care of Jackson it also found that the departure was not a significant cause of Walker's injuries.

**Trial Information:**

**Judge:** Faviola A. Soto

**Demand:** \$750,000

**Offer:** none

**Trial Length:** 7 days

**Trial  
Deliberations:** 2 hours

**Jury Vote:** 5-1 (departure from medical standards); 6-0 (no causation)

**Jury  
Composition:** 4 male, 2 female

**Writer** Peter Scoolidge

## Plaintiffs said doctor didn't react to signs of fetal hypoxia

**Type:** Settlement

**Amount:** \$625,000

**State:** New York

**Venue:** Kings County

**Court:** Kings Supreme, NY

**Injury Type(s):**

- *brain* - brain damage
- *other* - seizure disorder
- *mental/psychological* - learning disability

**Case Type:**

- *Medical Malpractice* - Childbirth

**Case Name:** Goldie Weiss, as Mother and Natural Guardian of Mordechai Weiss, an Infant; Goldie Weiss, Individually; and Joseph Weiss v. Dr. Gideon Panter, No. 22657/97

**Date:** May 22, 2003

**Plaintiff(s):**

- Goldie Weiss (Female, 42 Years)
- Joseph Weiss (Male, 43 Years)
- Mordechai Weiss (Male, 1 Years)

**Plaintiff Attorney(s):**

- Richard A. Gurfein; Gurfein Douglas LLP; New York NY for Goldie Weiss, Joseph Weiss, Mordechai Weiss

**Plaintiff Expert(s):**

- Dan Adler; Pediatric Neurology; New York, NY called by: Richard A. Gurfein
- Andrew Gluck Ph.D.; Economic Analysis; New York, NY called by: Richard A. Gurfein
- Jeffrey Soffer; Obstetrics; , called by: Richard A. Gurfein

**Defendant(s):**

- Gideon Panter

**Defense Attorney(s):**

- Bruce G. Habian; Martin, Clearwater & Bell; New York, NY for Gideon Panter

**Defendant  
Expert(s):**

- Frank Manning M.D.; Obstetrics; New York, NY called by: for Bruce G. Habian
- Gerard Nuovo; Anatomic Pathology; , called by: for Bruce G. Habian
- Dr. Jonathan M. Davis; Neonatology; Mineola, NY called by: for Bruce G. Habian

**Insurers:**

- Medical Liability Mutual Insurance Co.

**Facts:**

On May 22, 1995, plaintiff Goldie Weiss, 42, a homemaker, presented to New York Hospital with symptoms of early labor. Dr. Gideon Panter performed an artificial membrane rupture, which revealed meconium-stained amniotic fluid -- a sign of possible infant distress. Panter administered Pitocin to accelerate the labor process.

Approximately 90 minutes later, the fetal-heart-rate monitor showed an increased heart-rate baseline, with loss of beat-to-beat variability, and multiple, severe, profound variable decelerations. The child, Mordechai, was delivered safely by means of forceps, due to a partial separation of the placenta. It was transferred to the well-baby nursery, but was later found to have sustained minimal brain damage.

Weiss and her husband, Joseph, 43, sued Panter. They claimed that their son's brain damage stemmed from a hypoxic event during labor, and that Panter did not properly react to signs of possible hypoxia.

Panter contended that the hypoxic event was short-lived, and that it occurred after Goldie Weiss had begun pushing during delivery.

The defense hired an anatomic pathologist to examine preserved cuts of Weiss' placental tissue. The examination, performed seven years after the delivery, revealed signs of the Cocksackie virus. Panter contended that the infant's learning disability stemmed from the Cocksackie virus, and that it wasn't a result of hypoxia. He noted that Weiss had received hospital treatment for a non-specific virus one week prior to the delivery.

**Injury:**

Mordechai Weiss sustained minimal brain damage. He is now 8 years old and suffers from a learning disability and a seizure disorder, for which he takes medication.

Weiss' intelligence level is below that of most 8-year-olds. He can speak and understand English and Yiddish, but he cannot read and thus, he does poorly in school.

Panter noted that Weiss' injuries involved seizure activity and cognitive disability, but no motor damage.

**Result:**

The parties settled for \$625,000 during jury deliberations. According to the defense attorney, the jury later revealed that it would have reached a unanimous defense verdict.

**Trial Information:****Judge:**

Joseph S. Levine

**Writer**

Glenn Koch

## Twins born of a single placenta, one dead, other brain damaged

<b>Type:</b>	Settlement
<b>Amount:</b>	\$9,600,000
<b>State:</b>	Illinois
<b>Venue:</b>	Cook County
<b>Court:</b>	Cook County Circuit Court, IL
<b>Case Type:</b>	<ul style="list-style-type: none"><li>• <i>Medical Malpractice</i> - Childbirth; Radiologist; Failure to Diagnose</li></ul>
<b>Case Name:</b>	Megan and Charles Dunfee v. Advocate Trinity Hospital and Edgardo Apolinar, No. 99 L 010480
<b>Date:</b>	May 05, 2003
<b>Plaintiff(s):</b>	<ul style="list-style-type: none"><li>• Megan Dunfee (Female, 21 Years)</li><li>• Charles Dunfee (Male, 23 Years)</li></ul>
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Timothy Schafer; Schafer and Schafer; Merrillville IN for Megan Dunfee, Charles Dunfee</li><li>• Jamie Trapp; Trapp Associates; Chicago IL for Megan Dunfee, Charles Dunfee</li></ul>
<b>Plaintiff Expert (s):</b>	<ul style="list-style-type: none"><li>• Gary Yarkony M.D.; Physical Therapy; Chicago, IL called by: Timothy Schafer, Jamie Trapp</li><li>• Edith Gurewitsch; High Risk Obstetrics; Baltimore, MD called by: Timothy Schafer, Jamie Trapp</li><li>• James Jennings; Economics; Hammond, IN called by: Timothy Schafer, Jamie Trapp</li><li>• Jason Birnholz; Ultrasound; Chicago, IL called by: Timothy Schafer, Jamie Trapp</li><li>• Orland Sneed; Pediatric Neurology; Toronto, Canada, called by: Timothy Schafer, Jamie Trapp, ,</li></ul>
<b>Defendant(s):</b>	<ul style="list-style-type: none"><li>• Edgardo Apolinar</li><li>• Advocate Trinity Hospital</li></ul>

**Defense  
Attorney(s):**

- Abbey Romanek; Tucker, Bower, Robin, and Romanik, L.L.C.; Chicago, IL for Edgardo Apolinar
- Patricia A Barker; Anderson, Bennett, and Partners; Chicago, IL for Advocate Trinity Hospital

**Defendant  
Expert(s):**

- Arid Mintz; Radiology; Chicago, IL called by: for Abbey Romanek, Patricia A Barker
- Rudy Sabbagha; OB/GYN; Chicago, IL called by: for Abbey Romanek, Patricia A Barker
- Frank Manning M.D.; Obstetrics; Manhattan, NY called by: for Abbey Romanek, Patricia A Barker
- Andrew Morgan; Pediatric Neurology; Peoria, IL called by: for Abbey Romanek, Patricia A Barker
- Rebecca Beargen; Placental Pathology; New York, NY called by: for Abbey Romanek, Patricia A Barker

**Insurers:**

- Advocate Health Care
- Illinois State Insurance



**Facts:**

On Jan. 29, 1998, plaintiff Megan Dunfee, a 21-year-old factory worker, was accompanied by her husband, plaintiff Charles Dunfee, a 23-year-old factory worker, to Advocate Trinity Hospital, Chicago, for the delivery of monochorionic (i.e., sharing a single placenta) twins, which is a high-risk delivery that requires careful monitoring and an early-induced delivery in the event of persistent irregularity in umbilical blood flow. Nine days earlier, on Jan. 20, an ultrasound image showed low umbilical artery bloodflow to one twin (Alec). The same ultrasound imaging technique was used six days later, on Jan. 26, at which time the hospital's obstetrician intended to induce delivery if the low bloodflow appeared to have persisted. However, in conducting this second ultrasound, Dr. Edgardo Apolinar, a radiologist at Advocate Trinity, failed to correctly interpret the result, judging the umbilical artery bloodflow to be normal and sending Megan home. On Jan. 29, she delivered her twins; as a result of diminished oxygenated bloodflow, one of the babies (Alec) was born stillborn and the other (Austin) suffered permanent and incapacitating brain damage.

The Dunfees sued Advocate Trinity Hospital and Apolinar for medical malpractice.

The defendants claimed that the monochorionic nature of the pregnancy made it high-risk, and that the resulting complications were attributable to these risks rather than to malpractice.

The plaintiffs agreed that it was a high-risk pregnancy, but argued that such a pregnancy demanded the kind of diagnostic and procedural attention whose lack thereof in this case constituted neglect.

The defendants further claimed that the measured arterial umbilical bloodflow was within normal limits.

However, the plaintiffs countered with the testimony of Dr. Arid Mintz, Apolinar's supervisor, who said that this was not the case. The plaintiffs also demonstrated the abnormality of the bloodflow readings by recourse to standard medical sources. It was also established in depositions of the defendants and expert witnesses that had the Jan. 26 ultrasound been properly interpreted, the babies would have been delivered immediately and would both be alive and healthy at 37 weeks old, which is considered term for twins.

**Injury:**

The Dunfees sought damages for the wrongful death of one child and the brain damage of the other, necessitating 24-hour care and supervision.

**Result:**

One day before trial, the parties settled for \$9.6 million.

**Trial Information:****Judge:**

Daniel M. Locallo

**Writer**

Jamey Hecht

## **Kaiser Misdiagnosed Bowel Cancer By Inadequate Testing**

**Type:** Arbitration

**Amount:** \$1,098,732

**State:** California

**Venue:** San Diego County

**Court:** Superior Court of San Diego County, San Diego, CA

**Case Type:** • *Medical Malpractice - Cancer Diagnosis*

**Case Name:** Alicia Ledesma and David Ledesma v. Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, and Southern California Medical Group, No. Case not filed

**Date:** November 04, 2002

**Plaintiff(s):**

- David Ledesma (0 Years)
- Alicia Ledesma (0 Years)

**Plaintiff Attorney(s):**

- Nancy Sussman; Hayworth & Sussman; San Diego CA for Alicia Ledesma, David Ledesma

**Plaintiff Expert (s):**

- Ned Chambers; General Practice; San Diego, CA called by: Nancy Sussman
- Jeff Silverman M.D.; Radiology; Los Angeles, CA called by: Nancy Sussman
- Daniel Powers M.D.; Radiology; Los Angeles, CA called by: Nancy Sussman
- Harvey Kalan; Oncology; Tarzana, CA called by: Nancy Sussman
- Marcus Contardo M.D.; Pathology; Oceanside, CA called by: Nancy Sussman
- Gregory Sarna M.D.; Oncology; Los Angeles, CA called by: Nancy Sussman
- Hilbert Chu C.P.A.; Economics; San Diego, CA called by: Nancy Sussman
- Elizabeth Holakiewicz R.N.; Life Care Planning; San Diego, CA called by: Nancy Sussman

**Defendant(s):**

- Kaiser Foundation Hospitals
- Southern California Medical Group
- Kaiser Foundation Health Plan, Inc.

**Defense  
Attorney(s):**

- James J. Wallace; Lewis, D'Amato, et al.; San Diego, CA for Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, Southern California Medical Group
- Russell M. Mortyn; Lewis, D'Amato, et al.; San Diego, CA for Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, Southern California Medical Group

**Defendant  
Expert(s):**

- Dan Andrus M.D.; General Practice; Temecula, CA called by: for James J. Wallace, Russell M. Mortyn
- Brian Datnow M.D.; Pathology; San Diego, CA called by: for James J. Wallace, Russell M. Mortyn
- David Sievers M.D.; Oncology; Tarzana, CA called by: for James J. Wallace, Russell M. Mortyn
- Frank Manning M.D.; Emergency Medicine; Oceanside, CA called by: for James J. Wallace, Russell M. Mortyn
- Antone Salel M.D.; Oncology; Encinitas, CA called by: for James J. Wallace, Russell M. Mortyn
- Vincent Ricchiuti M.D.; Radiology; La Jolla, CA called by: for James J. Wallace, Russell M. Mortyn

**Insurers:**

- Self-insured

**Facts:**

Claimant Alicia Ledesma, a 45-year-old insurance claims assistant, began experiencing abdominal pain in April 1999, at which time she went to the respondents' facilities for treatment. The diagnosis was irritable bowel syndrome. Despite medications, the symptoms continued and became more extreme. The claimant returned to Kaiser on Feb. 1, 2000, with symptoms of weight loss, occasional rectal bleeding and changes in the nature of her bowel movements. She was again diagnosed with irritable bowel syndrome. On Feb. 26, 2000, she went to the respondents' emergency room in severe pain. Abdominal X-rays were taken which showed a gas stool pattern. There was further unexplained weight loss and anemia. Narcotics for pain were prescribed. Two days later, the claimant called Kaiser complaining of continuing pain and asking for advice. The earlier abdominal films were checked and there was an additional finding of an enlarged liver. A day later, a cat scan was ordered but not done until March 27, 2000. The radiologist's impression was that there was diffuse fatty infiltration of the liver but no hepatic metastases were seen. This scan also revealed an abnormal wall thickening in the colon indicative of a malignancy, which was not noticed by the radiologist. The diagnosis of irritable bowel syndrome remained unchanged and continued to be the diagnosis throughout several visits for the balance of the year. She was continued on prescriptions for that malady.

On Jan. 24, 2001, the claimant went to the respondents' emergency room with severe pain and bleeding from the rectum. The emergency room physician suspected colitis and referred her to a gastroenterologist. A sigmoidoscopy was finally performed and a large mass was found in the colon in the same location that the March 2000 cat scan showed an abnormality of the colon wall. A biopsy proved the mass to be a tumor.

The surgery for removal of the tumor was performed on Feb. 6, 2001. Afterward, the claimant and her husband were informed that the metastatic bowel cancer had spread to the liver and that she had no more than two years of life expectancy.

The claimants alleged that the respondents failed to do more appropriate testing in the first few months of 2000, including a sigmoidoscopy, colonoscopy or a barium enema. Further, a more thorough study of the March 2000 cat scan should have been done when the claimant had already showed all the signs of malignancy in the bowel. The claimants' experts opined that an early surgery for removal of the beginning tumor would have prevented metastasis to the liver and the claimant would have had an excellent chance of survival.

The respondents countered that there was no objective evidence of metastases in the March 2000 cat scan and that their actions did not fall below the standard of care.

**Injury:**

The claimant, the mother of 3 children (ages 20, 14, 18), has metastatic bowel cancer that has spread to the liver. Her lifespan is a matter of a few months. She claimed a total of \$1.7 million, which includes loss of

income, future care costs, and general damages. Her husband claimed loss of consortium.

**Result:** Arbitrator Alfred Lord returned a binding award of \$1,098,732 total.

**Alicia Ledesma**

\$598,732 economic loss

\$250,000 pain and suffering

**David Ledesma**

\$250,000 loss of consortium

**Demand** \$750,000 total, including potential wrongful death claim; raised to \$1.1 million by Alicia Ledesma, \$249,000 CCP §998 by David Ledesma

**Offer** \$550,000 total, including potential wrongful death claim

**Trial Information:**

**Judge:** Alfred Lord

**Trial Length:** 10 days

**Trial  
Deliberations:** 0

**Writer**

## Medical Malpractice - Childbirth - Death of Newborn

**Type:** Verdict-Plaintiff

**Amount:** \$750,000

**State:** Maryland

**Venue:** Frederick County

**Court:** Frederick County, Circuit Court, MD

**Case Type:**

- *Wrongful Death*
- *Medical Malpractice - Hospital*

**Case Name:** Marianne Novakovic and Alexander Novakovic v. Frederick Memorial Hosp. and Gerrit J. Schipper, M.D., No. 10-C-99-002752

**Date:** April 04, 2001

**Plaintiff(s):**

- Marianne Novakovic (Female, 38 Years)
- Alexander Novakovic (Male, 51 Years)

**Plaintiff Attorney(s):**

- Edward L. Norwind; ; Rockville MD for Marianne Novakovic
- Annie P. Kaplan; ; Rockville MD for Marianne Novakovic

**Defendant(s):**

- Frederick Memorial Hosp. and Gerrit J. Schipper, M.D.

**Defense Attorney(s):**

- Barbara M. Stanley; Baltimore, MD for Frederick Memorial Hosp. and Gerrit J. Schipper, M.D.
- Conrad W. Varner; Frederick, MD for Frederick Memorial Hosp. and Gerrit J. Schipper, M.D.

**Defendant Expert(s):**

- Frank Manning M.D.; Gynecology; Manhattan, NY called by: for
- Andrew London M.D.; Gynecology; Baltimore, MD called by: for
- Steven Noskow M.D.; Gynecology; Ellicott City, MD called by: for
- William Weisburger M.D.; Pathology; Arnold, MD called by: for

**Insurers:**           • Frederick Memorial Hospital

**Facts:**               Plaintiff Marianne, a 38 year old female, presented to Defendant Hospital for childbirth. Plaintiff Alexander was Marianne's husband. Defendant OB/GYN administered Prostin E2 to Marianne to accelerate her labor and intermittently monitored fetal well-being. After several hours of labor, fetal monitoring was discontinued to allow plaintiff to take a prolonged shower for pain control. Defendants began monitoring plaintiff again 73 minutes later and discovered that the fetal heart rate had dropped significantly. An emergency C-section was performed. The baby had no heartbeat at birth and was not breathing. Resuscitation attempts failed.

Plaintiffs alleged that: (1) fetal monitoring indicated variable decelerations which defendants failed to appreciate as fetal distress; (2) this was a high risk pregnancy because of Marianne's age and fetal monitoring should have been done on a more consistent basis to ensure the well-being of the baby; and (3) the administration of Prostin was inappropriate and led to fetal distress.

Defendants contended that variable decelerations are not necessarily abnormal findings and they provided appropriate and adequate medical and nursing care to plaintiff mother and the baby.

**Injury:**             Failure to recognize fetal distress resulting in death of newborn. Plaintiffs subsequently had two other children.

**Result:**             \$750,000

**Trial Information:**

**Judge:**             Mary Ann Stepler

**Trial  
Deliberations:**   5.75 hours

**Writer**

## Medical Malpractice - Childbirth - Erb's Palsy

**Type:** Verdict-Plaintiff

**Amount:** \$3

**State:** Maryland

**Venue:** Baltimore County

**Court:** Baltimore County, Circuit Court, MD

**Case Type:**

- *Medical Malpractice*

**Case Name:** Eric McCleary, et al. v. Sheo P. Sharma, M.D., No. 03-C-99-001715

**Date:** February 02, 2001

**Plaintiff(s):**

- Eric McCleary, et al. (Male, 7 Years)

**Plaintiff Attorney(s):**

- Barry L. Steelman; ; Baltimore MD for Eric McCleary, et al.

**Plaintiff Expert (s):**

- Jed Gould M.D.; Gynecology; Laurel, MD called by:

**Defendant(s):**

- Sheo P. Sharma, M.D.

**Defense Attorney(s):**

- Barbara M. Stanley; Baltimore, MD for Sheo P. Sharma, M.D.

**Defendant Expert(s):**

- Frank Manning M.D.; Gynecology; Manhattan, NY called by: for

**Insurers:**

- Med Mutual



**Facts:** Plaintiff's mother, a petite female, presented to defendant OB/GYN for childbirth. During the delivery, the baby was not dropping the way he should. Defendant encountered shoulder dystocia and used forceps to facilitate the baby's birth. Plaintiff child suffered a fractured collarbone and a brachial plexus injury. As a result, plaintiff, who was 7 at the time of the trial, was unable to lift his right arm over his head or bear weight over 10 pounds.

Plaintiff alleged that there were indications of cephalopelvic disproportion (CPD) (the baby's head being too large to fit down the birth canal), and a C-section should have been performed.

Defendant contended that there was no cephalopelvic disproportion and shoulder dystocia was a normal complication of childbirth.

**Injury:** Fractured collarbone and brachial plexus injury to right arm resulting in Erb's palsy with permanent disfigurement and inability to lift arm over head or bear weight of over 10 pounds. Plaintiff claimed loss of future earning capacity.

**Result:** \$425,000

### **Trial Information:**

**Judge:** John O. Hennegan

**Trial  
Deliberations:** 2.5 hours

**Writer**

## Medical Malpractice - Hospitalization - Stillborn Infant

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** Ohio

**Venue:** Montgomery County

**Court:** Montgomery County, Court of Common Pleas, Dayton, OH

**Case Type:**

- *Wrongful Death*
- *Domestic Relations*
- *Medical Malpractice*

**Case Name:** Susan Crain (Administratrix), and James Thomas for the Estate of Jordan Thom v. Bruce J. Bernie, M.D., No. 98-cv-3959

**Date:** January 01, 2001

**Plaintiff(s):**

- Susan Crain (Administratrix), and James Thomas for the Estate of Jordan Thom (Male, 0 Years)

**Plaintiff Attorney(s):**

- Thomas W. Gallagher; ; Toledo OH for Susan Crain (Administratrix), and James Thomas for the Estate of Jordan Thom

**Plaintiff Expert (s):**

- John Elliott M.D.; Pediatrics; Phoenix, AZ called by:

**Defendant(s):**

- Bruce J. Bernie, M.D.

**Defense Attorney(s):**

- Patrick Addison; Dayton, OH for Bruce J. Bernie, M.D.

**Defendant Expert(s):**

- Frank Manning M.D.; Gynecology; Manhattan, NY called by: for

**Facts:** Plaintiff mother, Susan Crain, was in the last month of her pregnancy when she detected decreased movement of the baby. She presented to her OB/GYN, Defendant Bernie, who performed non-stress tests in the hospital, but determined they were not significant and sent plaintiff home. The baby was ultimately stillborn and an autopsy showed a problem with the umbilical cord. The baby's father, Plaintiff James Thomas claimed a loss of consortium.

Plaintiff alleged that: (1) the variable decelerations detected in the non-stress tests indicated a compressed umbilical cord; (2) plaintiff should have remained in the hospital to be monitored and delivered, if necessary; and (3) decedent's death was the result of defendant's failure to properly monitor and observe the situation.

Defendant contended that the mild, variable decelerations were not significant and that all other tests were normal. Releasing plaintiff from the hospital did not violate any standards of care.

**Injury:** Wrongful death of fetus in 36 to 37th week of pregnancy.

**Result:** Defense verdict

### **Trial Information:**

**Judge:** Michael L. Tucker

**Trial  
Deliberations:** 1 hours

**Writer**

## Medical Malpractice-Childbirth

**Type:** Verdict-Plaintiff

**Amount:** \$1,800,000

**State:** New York

**Venue:** New York County

**Court:** New York Supreme, NY

**Case Type:** • *Medical Malpractice - Childbirth*

**Case Name:** Frank and Karen Mirazita as p/n/g of Michael Mirazita v. Neils Lauersen, No. 129264/93

**Date:** December 23, 1998

**Plaintiff(s):** • Frank and Karen Mirazita as p/n/g of Michael Miraz (Female, 1 Years)

**Plaintiff Attorney(s):** • Jeffrey B. Bloom; Gair, Gair, Conason, Steigman & Mackauf; New York NY for Frank and Karen Mirazita as p/n/g of Michael Miraz

**Plaintiff Expert (s):** • Dr. Nancy Lebowitz; Obstetrics; Manhattan, NY called by:  
• Marcia Bergtraum M.D.; pediatric neurologist; Lake Success, NY called by:

**Defendant(s):** • Neils Lauersen

**Defense Attorney(s):** • Glen T. Pewarski; Law Offices of Gerard T. Marulli; New York, NY for Neils Lauersen

**Defendant Expert(s):** • Frank Manning M.D.; Obstetrics; Manhattan, NY called by: for

**Insurers:** • MLM and MMIA

**Injury:**

Pltf. Karen Mirazita received prenatal treatment from Deft. for her third pregnancy in 1993. Her family history revealed that her mother was an insulin-dependent diabetic, but there was no notation of this fact in Deft.'s office records. Deft. claimed awareness of the history through a history sheet filled out by Pltf., which was subsequently lost or misplaced. Pltf. claimed that Deft. failed to diagnose Karen Mirazita's gestational diabetes by failing to perform a fasting glucose challenge test in his office during a pre-natal visit, which, Deft. maintained, was performed. Pltf. further contended that Deft. was negligent in failing to order a repeat blood test for glucose level in the hospital, after her glucose level was found to be abnormally high during hospitalization for pre-term labor. Deft. argued that the glucose level was elevated in part as a result of Pltf.'s taking Ritodrine for pre-term labor, and the fact that she had eaten shortly before the test. Pltf. argued that Ritodrine is known to cause macrosomic (greater than 10 lb.) babies when taken by a patient with gestational diabetes.

Pltf. further contended that Deft. failed to anticipate a large baby by failing to order additional sonograms following an increase of approximately 700 g. in estimated fetal weight in 4 days, measured by three different sonograms, and that he failed to estimate the fetal weight upon admission for delivery. The infant Pltf. weighed 10 lbs., 7 oz. at birth. Pltf. claimed that a Caesarean section should have been performed due to the size of the baby. Pltf. also contended that Deft. was negligent in the manner in which he performed the vaginal delivery in that he used fundal pressure, which exacerbated the shoulder dystocia, and used excessive traction on the fetal head, causing the injuries. Deft. argued that the margin for error of fetal weight estimation was so great that a reported increase in fetal weight could not have been accurate, and Deft. claimed that he acted appropriately in attempting a vaginal delivery.

Injuries: Brachial plexus injury, resulting in Erb's palsy of the left arm. Pltf. claimed that the injury was caused by Deft.'s application of excess traction on the fetal head. Deft. denied applying traction during delivery. Pltf., age 6 at trial, cannot lift his arm above his shoulder level.

**Result:**

\$1,800,000. Breakdown: \$300,000 for past pain and suffering; \$1,500,000 for future pain and suffering. Jury: 4 male, 2 female.

**Trial Information:****Judge:**

Karla Moskowitz

**Trial Length:**

2

**Trial  
Deliberations:**

4

**Writer**

## Delay in Delivery

**Type:** Settlement

**Amount:** \$100,000

**State:** California

**Venue:** San Diego County

**Court:** Superior Court of San Diego County, San Diego, CA

**Case Type:**

- *Medical Malpractice*

**Case Name:** Aimee Herrera v. Sharp Chula Vista Hospital, No. 711 318

**Date:** September 22, 1998

**Plaintiff(s):**

- Aimee Herrera (Female, 25 Years)

**Plaintiff Attorney(s):**

- Jeffrey E. Estes; Jeffrey E. Estes & Associates; San Diego CA for Aimee Herrera

**Plaintiff Expert (s):**

- Arnold Mearis; Perinatology; Rancho Palos Verdes, CA called by:
- William D. Rhine M.D.; Neonatology; Menlo Park, CA called by:
- Patricia Spier RN; Nursing; San Bernardino, CA called by:

**Defendant(s):**

- Sharp Chula Vista Hospital

**Defense Attorney(s):**

- Nancy L. Vaughn; Chapin, Fleming, McNitt, Shea & Carter; San Diego, CA for Sharp Chula Vista Hospital
- Glen F. Dorgan; Chapin, Fleming, McNitt, Shea & Carter; San Diego, CA for Sharp Chula Vista Hospital
- Stephen L. Smith; Harrington, Foxx, Dubrow & Canter; San Diego, CA for Sharp Chula Vista Hospital

**Defendant  
Expert(s):**

- Kay Lake; Nursing; Solana Beach, CA called by: for
- Frank Manning M.D.; Neonatology; San Diego, CA called by: for
- Larry M. Cousins M.D.; Neonatology; San Diego, CA called by: for

**Facts:**

5/25/96: Plaintiff, a 25-year-old medical receptionist, was admitted to Defendant Hospital for the delivery of her first child. At 2:50 p.m. her water broke with thick meconium noted. Gradually, the fetal monitor strips began to depict episodes of tachycardia and repetitive late decelerations. For three hours prior to birth, Plaintiff mother was prepared for delivery. At 7:45 p.m. (one-half hour prior to birth) Plaintiff was told to stop pushing as her physician had not yet arrived. Twenty-five minutes prior to delivery, one of the nurses pushed on the infant's head to delay her delivery. There was confusion among the hospital staff as to which physician would attend the delivery. A physician arrived at 8:10 p.m.; delivery was at 8:15 p.m. The infant was born absent vital signs but was quickly resuscitated. However, she died eighteen days later.

**Plaintiff claimed** the infant suffered a hypoxic event during labor as evidenced by the fetal monitor strips and meconium staining. Had an amnioinfusion been ordered by the attending physician, the infant would have survived. It was beneath the standard of care for the attending physician not to be present as the hospital in the second stage of delivery once an epidural had been given to Plaintiff mother.

**Defendant argued** the infant suffered a hypoxic event prelabor and there was no evidence of fetal distress on the fetal monitor strips.

**Injury:**

**Injuries:** Death of an infant.

**Result:**

Negotiations: **1st Offer:** \$24,999 CCP 998 from doctors **1st Demand:** \$50,000 to doctors and \$150,000 to hospital

Settlement: \$100,000 total; \$85,000 from hospital in 9/98 and \$15,000 from physicians in 3/99.

Note: Defendant physicians submitted a motion for summary judgment, which was denied.

**Trial Information:**

**Judge:**

Raymond F. Zvetina

**Trial Length:**

0

**Trial  
Deliberations:**

0

**Writer**

S Domer

## Medical Malpractice-Childbirth

**Type:** Verdict-Plaintiff

**Amount:** \$175,000

**State:** New York

**Venue:** Kings County

**Court:** Kings Supreme, NY

**Case Type:** • *Medical Malpractice - Childbirth*

**Case Name:** Minaxi Barot, indiv. and as m/n/g of Krunall Barot, inf. v. Brookdale Hospital Medical Center; Kings, No. 21059/93

**Date:** June 16, 1998

**Plaintiff(s):** • Minaxi and Krunall Barot (Female, 27 Years)

**Plaintiff Attorney(s):** • Peter D. Rosenberg; Rosenberg, Minc & Armstrong; New York NY for Minaxi and Krunall Barot

**Plaintiff Expert (s):** • Leon Charash M.D.; Pediatric Neurology; , called by:  
• Edmond Provder; Vocational Rehabilitation; Manhattan, NY called by:  
• Dr. Sidney J. Siegel FACOG; obstetrics; Boca Raton, FL called by:

**Defendant(s):** • Sook Marino M.D.  
• Leslie Desrouleaux  
• Ranjani Chandramouli  
• Kingsboro Medical Group  
• Brookdale Hospital Medical Center

**Defense Attorney(s):** • Glen T. Pewarski; Gerard J. Marulli; New York, NY for Brookdale Hospital Medical Center  
• Philip D. Lerner; Aaronson, Rappaport, Feinstein & Deutsch; New York, NY for Brookdale Hospital Medical Center



**Defendant  
Expert(s):**

- Frank Manning M.D.; Obstetrics; Manhattan, NY called by: for
- Dr. Radha Giridharan; Drugs & Controlled Substances; Brooklyn, NY called by: for
- Ingrid Taff M.D.; Pediatric Neurology; Great Neck, NY called by: for

**Insurers:**

- Combined Coordinating Counsel
- Group Counsel Mutual

**Injury:**

In early 1987, Pltf. Minaxi Barot, age 27 at the time and approximately 4 months pregnant, underwent a sonogram that showed that the fetus was in a breech position. Pltf. contended that Deft. Desrouleaux negligently failed to follow the infant with serial sonography to determine if the fetus remained in a breech presentation. She contended that he should have performed an earlier Caesarean section, before the onset of labor on 7/6/87. Pltf. mother presented to Brookdale Hospital at 3 AM on 7/6/87, 2 days past her due date, in early labor. A non-stress test performed upon admission was normal. A resident examining Pltf. on admission noted the breech position and the need for a Caesarean. The chart indicated that Ms. Barot did not want a Caesarean, although she denied this at trial.

Pltf. claimed that Deft. Dr. Desrouleaux failed to timely appear at the hospital after being called at 3 AM. He was first noted to be present at 6:15 AM. Pltf. also contended that Deft. delayed in timely performing the Caesarean, which was performed at 7:30 AM. Mild stained meconium fluid was noted during labor and during laryngoscopic suction of the infant following birth. His Apgar was 9 at 1 minute, but an elevated respiration rate required his transfer to the neonatal intensive care unit within hours of his birth. Pltf. claimed that the infant suffered hypoxia during labor and further hypoxia following delivery, due to meconium aspiration. A resident initially read a chest X-ray of the infant as showing meconium aspiration, but an official radiology reading 1 week later noted retained pulmonary fluid only, which is consistent with birth by a Caesarean section.

Pltf. contended that the infant's newborn nursery course of elevated respiration, episodes of poor feeding, mild hypotonia, and lethargy were evidence of an hypoxic episode at the time of labor or delivery. The infant has an IQ of 45, which is in the moderate-to-severe range of mental retardation.

Deft. Dr. Desrouleaux claimed that he was first contacted after completion of the non-stress test sometime after 4 AM, and that his arrival at the hospital at approximately 6:15 AM was within accepted standards. He also claimed that the time frame in which the Caesarean was performed was within accepted practice because the Caesarean was performed on an elective basis. He denied that there was any evidence of fetal distress prior to the delivery. Deft. claimed that the 1-minute Apgar of 9, as well as the lack of major neurological signs in the first 24 hours of birth, disproved an hypoxic episode of a magnitude that could cause brain damage. He attributed the infant's elevated respiration rate to transient tachypnea. Pltf. contended, however, that strips from external fetal monitoring performed during labor were not retained by the Hospital.

Pltf.'s expert contended that the infant's low CO<sub>2</sub> blood level 2 days after birth was evidence of metabolic acidosis caused by hypoxia during labor and delivery. Deft. argued that an arterial blood gas performed 3 hours after birth showing a pH of 7.41 conclusively ruled out acidosis from labor and delivery. Deft. also contended that the infant's brain damage was genetic in origin. Pltf. argued that multiple chromosome tests, all of which were normal, that were performed on the infant and parents ruled out genetic origin with

reasonable certainty. Deft. contended that a physical examination of the infant revealed multiple minor physical anomalies that indicated an increased likelihood of genetic malformation of the brain. Deft. also contended that the child's treating physicians' records supported a genetic etiology for his mental retardation.

Pltf.'s vocational rehabilitation expert testified that Pltf. has future lost earnings of \$43,000 per year starting at age 22, with a 43-year work life expectancy. The infant, age 10 at trial, attends a special school.

Specials: \$43,000 per year for lost earnings (work life expectancy of 43 years) Offer: \$175,000; demand: \$3,000,000; amount asked of jury: \$7,000,000.

**Result:** Defense verdict for Kingsboro Medical Group and Desrouleaux (6/0). Defts. Brookdale, Marino, and Chandramouli settled for \$175,000 during trial. Post-trial motions were denied. Jury: 3 male, 3 female.

**Trial Information:**

**Judge:** Michelle Weston Patterson

**Trial Length:** 3

**Trial Deliberations:** 0.33

**Writer**

## **FAILURE TO DIAGNOSE HYDROCEPHALUS IN UTERO ALLEGED**

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** New York

**Venue:** New York County

**Court:** New York Supreme, NY

**Case Type:**

- *Medical Malpractice*

**Case Name:** Rachel and David Lipton, indiv., and as p/n/g of Chaya Lipton, infant under the age of 14 v. Robert Kaye, M.D. and Martin Gubernick, M.D., No. 9841/92

**Date:** February 28, 1997

**Plaintiff(s):**

- Chaya Lipton (Female, 0 Years)
- David Lipton (Male, 0 Years)
- Rachel Lipton (Female, 39 Years)

**Plaintiff Attorney(s):**

- David P. Kownacki; ; New York NY for Rachel Lipton, David Lipton, Chaya Lipton

**Plaintiff Expert(s):**

- M. Lita Alonso M.D.; Genetics; New York Hospital, NY called by:
- Leon Charash M.D.; Pediatric Neurology; Hicksville, NY called by:
- Dr. Morton I. Jaffe; Economics; New York, NY called by:
- Dr. Sidney J. Siegel FACOG; Obstetrics; Lake Success, NY called by:
- Dr. Richard Schuster; Vocational Rehabilitation; Manhattan, NY called by:

**Defendant(s):**

- Robert Kaye, M.D.
- Martin Gubernick, M.D.

**Defense Attorney(s):**

- Glen T. Pewarski; Gerard J. Marulli; New York, NY for Martin Gubernick, M.D.
- Glenn W. Dopf; Kopff, Nardelli & Dopf; New York, NY for Robert Kaye, M.D.

**Defendant  
Expert(s):**

- Fred Epstein M.D.; Pediatric Neurosurgery; Manhattan, NY called by: for
- Mary L. Buyse M.D.; Genetics; Boston, MA called by: for
- Frank Manning M.D.; Obstetrics; Manhattan, NY called by: for
- Dr. Arthur Rose; Pediatric Neurology; Brooklyn, NY called by: for

**Insurers:**

- Medical Liability Mutual Ins. Co.

**Facts:**

Pltf. Rachel Lipton presented to Deft. Kaye in 1989 regarding her second pregnancy. Dr. Kaye recommended that amniocentesis be performed because she was 39 years old at the time. The evaluation of the amniotic fluid was performed at New York Hospital by Dr. Lita Alonso, a cytopathologist. (Actions against Dr. Alonso and the Hospital were dismissed based on a motion for summary judgment and subsequent review by the Appellate Division. *Lipton v. Kaye*, 214 A.D.2d 319, 624 N.Y.S.2d 590.) It was undisputed that Dr. Alonso's office called Dr. Kaye's office for the purpose of reporting a "normal female." It was Dr. Alonso's practice to have her secretary only report the normal findings, and that Alonso would personally discuss any abnormal findings with the obstetrician. Based upon the call made by Alonso's secretary, Dr. Kaye's office informed Lipton that she was pregnant with a normal female fetus. Approximately 10 days after Rachel's due date, Dr. Kaye's partner, Deft. Gubernick, ordered a sonogram as part of a biophysical profile, which revealed a fetus with a massively large head as a result of hydrocephalus. A Caesarean section was performed. Three days later a neurosurgeon at New York Hospital performed a shunting procedure in order to decompress the infant Pltf.'s hydrocephalic head.

Pltfs. claimed that Dr. Alonso had sent a written report to Dr. Kaye that referenced a missing "X" chromosome with respect to one of 40 cells studied. Alonso stated in the written report that this was probably an artifact (a false signal), but suggested that the pregnancy be followed with ultrasound. She testified at trial that she was concerned about a "very remote chance" of Turner's Syndrome. Pltfs. argued that Defts. departed from good and accepted obstetrical practice by failing to follow Dr. Alonso's recommendation. Pltfs. contended that good and accepted obstetrical practice in 1989 included routine serial sonography for a woman with "advanced maternal age" who was high risk. Pltfs.' expert testified that if the infant Pltf. had been delivered 5 weeks earlier, she would have had a normal neurological outcome, i.e., that earlier shunting would have prevented the buildup of pressure within the brain, which allegedly caused the irreversible brain damage. There was no dispute at trial that if sonography had been done 5 to 10 weeks prior to delivery, the hydrocephalus would have been discovered.

Defts. argued that Dr. Alonso's written report was not sent until approximately 5 months after the amniocentesis procedure was performed and subsequent to the delivery of the infant Pltf. Gubernick maintained that if the report been sent in a timely fashion, he would not have performed serial sonography because Dr. Alonso's recommendation made no sense. Both Gubernick and Kaye contended that medical guidelines in 1989 did not mandate routine ultrasound for advanced maternal age. Defts. argued that earlier decompression would have had no effect on the neurological outcome, based on the finding that the infant Pltf. suffered from a porencephalic cyst, missing cortex, and micropolygyria, arguing that none of these defects were caused by the hydrocephalus. Defts. further argued that these defects were independently capable of causing all of the infant Pltf.'s neurological problems. Defts. contended that the proper test would have been a repeat amniocentesis, and claimed that sonography after the 20th week of gestation would not have aided in diagnosing Turner's Syndrome in utero.

**Injury:** Injuries: brain damage with severe neurological defects. Pltf. has difficulty ambulating and has problems processing auditory information. Pltf.'s experts testified that she will require constant supervision and eventual placement in a group home, and opined that she may possibly be able to work in a supervised environment.

Demonstrative evidence: drawings demonstrating the congenital defects.

**Result:** No offer; demand: \$2,750,000; amount asked of jury: \$68,000,000.

VERDICT: Defense verdict (6/0). Post-trial motions were denied.

**Trial Information:**

**Judge:** Alice S. Schlesinger

**Trial Length:** 0

**Trial Deliberations:** 2 days

**Writer**

## Medical Malpractice: Malfunction of IV in Premature Infant

**Type:** Settlement

**Amount:** \$2,570,000

**State:** California

**Venue:** Los Angeles County

**Court:** Confidential, CA

**Case Type:**

- *Medical Malpractice*

**Case Name:** Baby A vs. Doe Hospital and Roe 1 & 2 Medical Device, No. Confidential

**Date:** January 21, 1997

**Plaintiff(s):**

- Baby A (6 Years)

**Plaintiff Attorney(s):**

- M.D. Lawrence Lallande; Perona, Langer & Beck; Long Beach CA for Baby A

**Plaintiff Expert (s):**

- Jan Roughan; Nursing; Pasadena, CA called by:
- Frank Manning M.D.; Neonatology; San Diego, CA called by:
- Peter Formuzis; Economics; Santa Ana, CA called by:
- Robin Koeppe R.N.; Nursing; Orange, CA called by:
- Robert L. Podosin M.D.; Pediatric Neurology; Beverly Hills, CA called by:
- Kenneth Huff M.D.; Pediatric Neurology; Torrance, CA called by:
- Theodore B Eyrick Ph.D., P.E.; Biomedical; San Antonio, TX called by:

**Defendant(s):**

- Roe 1
- Roe 2
- Doe Hospital

**Defense Attorney(s):**

- Confidential; Confidential for Roe 2, Doe Hospital, Roe 1

**Insurers:**

- Confidential

**Facts:**

Baby A was born prematurely at approximately 26 weeks post-gestation. Six weeks after birth, Baby A was receiving parenteral nutrition through an IV system which used a syringe infusion pump to slowly infuse the nutritive solution into the patient at a regulated rate. Medical tubing descended from the IV bag to a three-way stop cock (valve) which was hooked directly onto the end of the infusion pump syringe. The stop cock was incorrectly positioned such that it closed off the flow from the infusion pump to the patient. At the same time, the lines from the IV bag to the patient were directly open. The lines from the IV bag to the patient should have been clamped off at a minimum of two locations to prevent direct flow. The pump's alarm which would have alerted the nursing staff to the occluded flow from the infusion pump failed to sound. Baby A received an overdose of approximately 150cc's instead of receiving 3cc's per hour as ordered. This caused her blood sugar levels to rise to a hyperglycemic state with resulting seizures. Anti-seizure medication was ordered. The nurse miscalculated the dosage and the baby received an overdose of the anti-seizure medication. The baby went into cardiac arrest. Resuscitation efforts were undertaken and the baby was placed on a pacemaker.

**Contentions:**

**Plaintiff Claimed** the Defendants' treatment fell below the standard of care, thereby causing all Plaintiff's injuries and damages. Further, the pump used was dangerously defective.

**Defendant Hospital Argued** that the infusion pump was negligently designed and manufactured. Defendant manufacturers argued that the hospital personnel maintained the pump for the 12 years after its sale. During that period, members of the hospital biomedical department replaced the screw nut when the nylon nut wore out. This, when combined with the split design, allows the feed screw to skip in the nut instead of continue to attempt to drive into the nut. Accordingly, the pressure does not build up sufficiently for the transducer to sense the occlusion, and thus, the alarm does not sound to alert the hospital staff. The manufacturer of the pump sold feed nut screws to Doe hospital and others. Defendant manufacturers maintain that the pump which was involved in this incident may not have been properly identified and preserved. They also contended that the infusion pump was so far out of calibration that the feed screw was not the cause of the occlusion alarm failing to sound.

**Injury:**

**Injuries:** Hypoxic-ischemic Encephalopathy with cortical blindness and probable deafness, seizure disorder and apneic spells, spastic quadriplegia and permanent full neurologic deficit, sensory deprivation and profound developmental retardation.

**Residuals:** Neurologic devastation with profound developmental disability.

**Specials:** Medical Costs: Not reported; Loss of Earnings: Not reported



**Result:**                    **Negotiations:** OFFER: Not firm. DEMAND: Not firm

**Settlement:** \$2,570,000; Settlement funds were used to fund two A + + annuities which pour into a special needs trust.

Note:

**Trial Information:**

**Judge:**                    Confidential

**Trial Length:**        0

**Trial  
Deliberations:**        0

**Writer**