



## OB-GYN failed to perform C-section despite signs of fetal distress: lawsuit

**Type:** Verdict-Plaintiff

**Amount:** \$13,385,000

**Actual Award:** \$12,050,000

**State:** Maryland

**Venue:** Harford County

**Court:** Harford County, Circuit Court, MD

**Injury Type(s):**

- *brain* - brain damage; encephalopathy; internal bleeding
- *other* - seizure; ischemia
- *mental/psychological* - neuropsychological; learning disability; cognition, impairment
- *pulmonary/respiratory* - hypoxia

**Case Type:**

- *Medical Malpractice* - Nurse; OB-GYN; Hospital; Childbirth; Birth Injury; Informed Consent; Failure to Communicate; Prescription and Medication

**Case Name:** Kenyetta Lewis, as Parent and Next Friend of Kameron Lewis, a minor v. Upper Chesapeake Medical Center, Inc. a/k/a University of Maryland Upper Chesapeake Health System, Inc., Upper Chesapeake Women's Care, LLC and Arthur Morey, No. C-12-CV-20-000844

**Date:** July 27, 2022

**Plaintiff(s):**

- Kameron Lewis, (Male, 1 Years)

**Plaintiff Attorney(s):**

- E. Merritt Lentz; Gilman & Bedigian, LLC; Philadelphia PA for Kameron Lewis
- H. Briggs Bedigian; Gilman & Bedigian, LLC; Timonium MD for Kameron Lewis
- Jon S. Stefanuca; Gilman & Bedigian, LLC; Timonium MD for Kameron Lewis

**Plaintiff Expert  
(s):**

- Mark Lieberman M.A., C.R.C.; Vocational Rehabilitation; Forest Hill, MD called by: E. Merritt Lentz, H. Briggs Bedigian, Jon S. Stefanuca
- Mary Edwards-Brown M.D.; Pediatric Radiology; Indianapolis, IN called by: E. Merritt Lentz, H. Briggs Bedigian, Jon S. Stefanuca
- Laura Mahlmeister R.N., Ph.D.; Obstetrics Nursing; Belmont, CA called by: E. Merritt Lentz, H. Briggs Bedigian, Jon S. Stefanuca
- Howard Mandel M.D.; OB-GYN; Los Angeles, CA called by: E. Merritt Lentz, H. Briggs Bedigian, Jon S. Stefanuca
- Joseph Khoury M.D.; Neonatology; Richmond, VA called by: E. Merritt Lentz, H. Briggs Bedigian, Jon S. Stefanuca
- Thomas C. Borzilleri Ph.D.; Economics; Bethesda, MD called by: E. Merritt Lentz, H. Briggs Bedigian, Jon S. Stefanuca
- Carolyn Crawford M.D.; Neonatology; Camden, NJ called by: E. Merritt Lentz, H. Briggs Bedigian, Jon S. Stefanuca
- Darlene M. Carruthers M.Ed.; Life Care Planning; Buffalo, NY called by: E. Merritt Lentz, H. Briggs Bedigian, Jon S. Stefanuca
- Michael Katz M.D.; Pediatric Neurology; Hackensack, NJ called by: E. Merritt Lentz, H. Briggs Bedigian, Jon S. Stefanuca
- Michael S. Cardwell M.D.; OB-GYN; Columbia, MO called by: E. Merritt Lentz, H. Briggs Bedigian, Jon S. Stefanuca
- Susannah Hughes Ph.D.; Neuropsychology; Silver Spring, MD called by: E. Merritt Lentz, H. Briggs Bedigian, Jon S. Stefanuca

**Defendant(s):**

- Arthur Morey
- Upper Chesapeake Women's Care LLC
- Upper Chesapeake Medical Center Inc.

**Defense  
Attorney(s):**

- Neal M. Brown; Waranch & Brown, LLC; Lutherville, MD for Upper Chesapeake Women's Care LLC, Upper Chesapeake Medical Center Inc.
- Thomas J. Whiteford; Whiteford Taylor Preston LLP; Baltimore, MD for Arthur Morey
- Saamia H. Dasti; Waranch & Brown, LLC; Lutherville, MD for Upper Chesapeake Women's Care LLC, Upper Chesapeake Medical Center Inc.

**Defendant  
Expert(s):**

- John Allbert M.D.; Fetal Medicine; Charlotte, NC called by: for Neal M. Brown, Saamia H. Dasti
- Mark Mahone Ph.D.; Neuropsychology; Baltimore, MD called by: for Neal M. Brown, Saamia H. Dasti
- Amber Richter R.N.; Nursing; Rockville, MD called by: for Neal M. Brown, Saamia H. Dasti
- James Rost M.D.; Neonatology; Rockville, MD called by: for Neal M. Brown, Saamia H. Dasti
- Trudy R. Koslow M.Ed.; Vocational Rehabilitation/Counseling; Alexandria, VA called by: for Neal M. Brown, Saamia H. Dasti
- Andrea Gropman M.D.; Pediatric Neurology; Washington, DC called by: for Neal M. Brown, Saamia H. Dasti
- Thomas F. Grogan; Economics; Springfield, PA called by: for Neal M. Brown, Saamia H. Dasti
- Richard Towbin M.D.; Neuroradiology; Phoenix, AZ called by: for Neal M. Brown, Saamia H. Dasti
- Kimberly Kushner R.N.; Life Care Planning; Southampton, PA called by: for Neal M. Brown, Saamia H. Dasti

**Facts:**

On July 26, 2004, plaintiff Kameron Lewis was born at Upper Chesapeake Medical Center. He was delivered by Dr. Arthur Morey, an OB-GYN, who was assisted by two nurses. Kameron's mother, Kenyetta Lewis, contended that her son suffered a hypoxic brain injury during the delivery.

Kenyetta Lewis, acting as the parent and next friend of her son, sued Morey and Upper Chesapeake Medical Center. The lawsuit alleged that Morey and the nurses were negligent during Lewis' labor, which caused a brain injury to Kameron, and that Upper Chesapeake Medical Center was vicarious liable for the actions of the doctor and nurses.

The lawsuit also initially included a claim against Morey's practice, Upper Chesapeake Women's Care. That company was dismissed prior to trial.

Plaintiff's counsel argued that Morey prematurely broke Kenyetta Lewis' water when she arrived at the hospital on the morning of July 26. Lewis was 41 weeks pregnant at the time and had come to the hospital because she thought she was in labor. Morey had broken Lewis' water in order to induce her labor.

Kameron's counsel argued that Morey broke Lewis' water before the baby's head had descended into the mother's pelvis. Plaintiff's counsel claimed that this violated the standard of care. Plaintiff's counsel specifically contended that breaking the water before the baby's head has reached the pelvis can increase the risk of cord compression. Kameron's counsel claimed that, shortly after Lewis' water broke, the fetal heart monitor started showing signs of oxygen deprivation consistent with cord compression. The abnormal fetal tracings continued through the time of delivery, plaintiff's counsel alleged.

Plaintiff's counsel argued that the doctor and the nurses then negligently administered Pitocin to further induce labor. Kameron's counsel contended that Morey had ordered this medication, and that the nurses then carried out the order. Kameron's counsel contended that the Pitocin further deprived Kameron of oxygen.

Kameron's counsel maintained that either Morey or the nurses should have realized the fetal heart tracing was abnormal and indicative of fetal distress. As a result, plaintiff's counsel claimed, they should have either stopped administering the Pitocin or not given the medication in the first place. Plaintiff's counsel argued that the nurses had the authority to stop the Pitocin even if the doctor did not instruct them to do so, and they also supposedly administered a dosage of Pitocin that was greater than what Morey had ordered.

Plaintiff's counsel claimed that the excess Pitocin caused abnormal uterine activity, and Kenyetta Lewis experienced too many contractions that were too close together in time. Plaintiff's counsel argued that Morey should have noticed the abnormal uterine activity and the non-reassuring fetal heart tracings, and performed a Caesarean section.

Kameron's counsel similarly argued that the nurses had an independent duty to advocate for their patient and tell Morey that a C-section was necessary. Per plaintiff's counsel, the hospital's nursing expert admitted that the subject nurses breached Upper Chesapeake Medical Center policy with their management of the Pitocin and their failure to inform Morey about the concerning fetal tracings and uterine activity.

Kameron's counsel made an informed consent claim against Morey, as well. Plaintiff's counsel contended that Morey should have told Lewis about the changes in the fetal tracings and the abnormal uterine activity. Plaintiff's counsel argued that Morey should have then notified Lewis that she had the option of getting a C-section.

Morey admitted that the fetal heart monitor showed abnormal tracings shortly after he broke Lewis' water. He also admitted that the abnormalities were consistent with fetal oxygen deprivation, and that he failed to inform Lewis about the abnormalities. He had an attorney at trial, but that attorney did not put on a separate case.

The hospital maintained that its nurses were not negligent. Defense counsel called a fetal medicine specialist and a nursing expert who each opined that the hospital's nurses complied with the standard of care. The hospital's counsel specifically argued that the nurses simply listened to and followed Morey's instructions.

The hospital's counsel further argued that the hospital was not liable for any negligence by Morey because he was not an agent of Upper Chesapeake Medical Center. The hospital's counsel contended that Morey did not have an employment contract or fill out a W-2, but was a privately employed doctor who merely had privileges at Upper Chesapeake Medical Center.

Plaintiff's counsel maintained that Morey was a hospital agent. Kameron's counsel argued that Morey was directly paid by the hospital and had served as the chief of the Labor and Delivery Department, and was also an apparent agent of the hospital at the time of the delivery.

### **Injury:**

Kameron suffered bleeding in his brain. Plaintiff's counsel retained two neonatology experts who opined that the fetus was deprived of oxygen during labor due to the cord compression and the abnormal uterine activity. This oxygen deprivation then led to the brain bleed, the experts concluded.

Plaintiff's counsel specifically argued that Kameron suffered hypoxic-ischemic encephalopathy. Following the delivery, he spent some time at the intensive care unit at Johns Hopkins Hospital.

After his discharge, Kameron was followed by a pediatrician. He was diagnosed with a learning disability and developmental delays. He has mood issues and emotional outbursts. He also has trouble understanding others and expressing himself, leading to difficulty with social interactions. Kameron, who turned 18 years old during the trial, sees a psychiatrist to help him cope with these deficits.

Kameron temporarily suffered from seizures and had to take medication to control them. He has no lingering physical limitations other than some stiffness. However, plaintiff's counsel claimed Kameron has a severe cognitive impairment and an IQ of 69. According to plaintiff's counsel, Kameron cannot perform second-grade-level math or read at a third-grade level. Plaintiff's neuropsychology expert concluded that Kameron qualifies as intellectually disabled.

Plaintiff's counsel argued that Kameron will never be able to work or live on his own. Counsel presented an \$11 million life-care plan. The life-care planner determined that Kameron will either have to live with his mother until she is too old to care for him, or he will have to transition to a supportive living environment. This care made up the bulk of the plan's cost. The life-care plan also included medications, imaging and evaluations.

The plaintiff sought recovery of future medical expenses, future lost earning capacity and noneconomic damages.

The defense disputed whether any actions by Morey and the nurses caused injury to Kameron. The hospital's counsel retained a neonatology expert who contended that Kameron's brain bleed occurred three or four weeks before the delivery, and resulted from an intrauterine growth restriction. The expert concluded that the bleed resolved and did not cause any long-term problems.

Defense counsel also retained a neuroradiology expert who contended that Kameron had congenital abnormalities within his brain structure, which explained Kameron's deficits. Per plaintiff's counsel, this claim was disputed by Kameron's treaters and the plaintiff's radiology expert.

The defense further maintained that Kameron's cognitive issues were minor. The hospital's pediatric neurology expert opined that Kameron's symptoms were consistent with attention-deficit/hyperactivity disorder (ADHD) rather than an intellectual disability.

The hospital's neuropsychology expert similarly opined that Kameron was not intellectually disabled, and could live on his own and be gainfully employed. The hospital's vocational rehabilitation expert agreed that Kameron is able to work. Meanwhile, the hospital's expert life-care planner disputed how much future care Kameron needs. The defense's life-care plan cost around \$400,000.

**Result:**

The jury found that Morey and the nurses were negligent, and the hospital was liable for the negligence of the three individuals. The jury awarded Kameron \$13,385,000, including \$2 million in noneconomic damages.

The noneconomic damages award was reduced to \$665,000 pursuant to a state cap, resulting in a net verdict of \$12,050,000.

Kameron Lewis

\$ 10,500,000 Future Medical Cost

\$ 885,000 Future Lost Earnings

\$ 2,000,000 noneconomic damages

**\$ 13,385,000 Plaintiff's Total Award**

**Trial Information:**

**Judge:** M. Elizabeth Bowen

**Trial Length:** 3 weeks

**Trial  
Deliberations:** 100 minutes

**Jury Vote:** 6-0

**Jury  
Composition:** 6 female; 1 Black, 5 white

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

**Writer** Melissa Siegel

## Newborn's injury occurred in utero, hospital contended

**Type:** Decision-Defendant

**Amount:** \$0

**State:** Ohio

**Venue:** Court of Claims

**Court:** Court of Claims, OH

**Injury Type(s):**

- *brain* - cerebral palsy
- *other* - loss of society; seizure disorder
- *sensory/speech* - speech/language, impairment of
- *mental/psychological* - cognition, impairment
- *pulmonary/respiratory* - hypoxia

**Case Type:**

- *Medical Malpractice* - OB-GYN; Childbirth; Birth Injury; Brain Injuries; Cerebral Palsy; Delayed Treatment

**Case Name:** Sooshyance Gharibshahi (a minor) by and through his mother and next friend, Newsha Kuhbanani, Newsha Kuhbanani, Individually, and Shahram Gharibshahi, Individually v. State of Ohio, The Ohio State University Medical Center, The Ohio State University Health System and The Ohio State University Medical Center Service Board, No. 2011-08547JD

**Date:** December 12, 2017

**Plaintiff(s):**

- Newsha Kuhbanani (Female, 33 Years)
- Shahram Gharibshahi (Male, 38 Years)
- Sooshyance Gharibshahi (Male, 1 Years)

**Plaintiff Attorney(s):**

- William S. Jacobson; Nurenberg, Paris, Heller & McCarthy; Cleveland OH for Sooshyance Gharibshahi, Newsha Kuhbanani, Shahram Gharibshahi
- Ellen M. McCarthy; Nurenberg, Paris, Heller & McCarthy; Cleveland OH for Sooshyance Gharibshahi, Newsha Kuhbanani, Shahram Gharibshahi



**Plaintiff Expert(s):**

- John F. Burke Jr., Ph.D.; Economics; Cleveland, OH called by: William S. Jacobson, Ellen M. McCarthy
- Barry D. Pressman M.D.; Radiology; Beverly Hills, CA called by: William S. Jacobson, Ellen M. McCarthy
- Laura R. Mahlmeister Ph.d RN; Nurse Practitioner; Belmont, CA called by: William S. Jacobson, Ellen M. McCarthy
- Edward Karotkin M.D.; Pediatrics; Norfolk, VA called by: William S. Jacobson, Ellen M. McCarthy
- Joseph G. Ouzounian M.D.; Perinatology; Pasadena, CA called by: William S. Jacobson, Ellen M. McCarthy
- Cynthia L. Wilhelm; Life Care Planning; Chapel Hill, NC called by: William S. Jacobson, Ellen M. McCarthy
- Yitzchak Frank M.D.; Pediatric Neurology; New York, NY called by: William S. Jacobson, Ellen M. McCarthy

**Defendant(s):**

- State of Ohio
- The Ohio State University Health System
- The Ohio State University Medical Center
- The Ohio State University Medical Center Service Board

**Defense Attorney(s):**

- Julia A. Turner; Freund, Freeze & Arnold; Columbus, OH for The Ohio State University Medical Center, The Ohio State University Health System, The Ohio State University Medical Center Service Board, State of Ohio
- Mark L. Schumacher; Freund, Freeze & Arnold; Columbus, OH for The Ohio State University Medical Center, The Ohio State University Health System, The Ohio State University Medical Center Service Board, State of Ohio
- Jeffrey L. Maloon; Office of Attorney General; Columbus, OH for The Ohio State University Medical Center, The Ohio State University Health System, The Ohio State University Medical Center Service Board, State of Ohio

**Defendant Expert(s):**

- Jay Goldsmith M.D.; Neonatology; New Orleans, LA called by: for Julia A. Turner, Mark L. Schumacher, Jeffrey L. Maloon
- Steven A. Ringer M.D.; Neonatal Resuscitation; Boston, MA called by: for Julia A. Turner, Mark L. Schumacher, Jeffrey L. Maloon
- Michael Belfort M.D.; Fetal Medicine; Salt Lake City, UT called by: for Julia A. Turner, Mark L. Schumacher, Jeffrey L. Maloon

**Facts:**

On May 17, 2008, at 1:52 a.m., plaintiff Sooshyance Gharibshahi, a newborn male, was born at Ohio State University Medical Center (OSUMC). He was subsequently diagnosed with a significant and permanent brain injury.

Sooshyance's mother, Newsha Kuhbanani, and father, Shahram Gharibshahi, filed suit individually and on behalf of their son, alleging medical malpractice.

According to the lawsuit, Newsha Kuhbanani had experienced a normal pregnancy and was at full-term when she presented for induction of labor at OSUMC on May 16, 2008. At some point after 1:00 a.m. on May 17, the pediatric resuscitation team was summoned to the delivery room because meconium (fetal bowel movement) was detected in the amniotic fluid. This is a common event in labor and in most cases does not affect the fetus, but its presence in the amniotic fluid may indicate the need for routine resuscitation

of the baby after delivery.

The plaintiffs asserted that the fetal heart rate dropped precipitously about 20 to 25 minutes prior to delivery and the baby became bradycardic (abnormally low heart rate). The plaintiffs alleged that just 12 minutes prior to delivery, the fetal heart tracings were a concern for severe birth depression. Sooshyance was, in fact, born severely depressed at 1:52 a.m., with a heart rate in the 60s. The newborn quickly became pulseless with no heart rate, respirations, muscle tone or reflexes. Attempts to suction meconium from the baby's trachea were made during the first minute, followed by positive pressure ventilation (PPV). The resuscitation team attempted to ventilate the newborn by this method for about the first three minutes of life and then attempted an endotracheal intubation. The on-call neonatal fellow, Daniel Malleske, M.D., arrived in the delivery room about four minutes after the child's birth. He reportedly did not see adequate chest rise and reintubated Sooshyance at five minutes of life. The plaintiffs claimed the baby remained in complete cardiorespiratory arrest during the first five minutes of life due to the fact that effective ventilation had not been established during that period. At six minutes, Malleske administered the first of two doses of epinephrine to jump-start the baby's heart and, at nine minutes, the infant showed the first signs of a heart rate since his delivery.

The resuscitation team consisted of a third-year resident, second-year resident and an intern. The plaintiffs claimed the members of the team were relatively inexperienced, particularly with intubation of a newborn in distress. The plaintiffs additionally alleged that the hospital's nurses and resuscitation team failed to timely summon Malleske, who had experience in resuscitating severely depressed neonates and who was nearby and available to assist with the delivery. Also, the plaintiffs alleged that Malleske, had he been timely summoned, would have been able to administer epinephrine a few minutes earlier and resuscitation efforts would have been significantly expedited had Malleske been called prior to delivery. The plaintiffs asserted that the pediatrics team did not have the appropriate level of experience to handle the resuscitation of a severely depressed neonate and the delay in timely resuscitation proximately caused Sooshyance's injuries.

The defense contended that there were no violations in the standard of care and that members of the pediatric resuscitation team properly followed an established protocol known as the Neonatal Resuscitation Program (NRP). Moreover, the defense argued that there was no standard of care that required the most experienced person in resuscitating depressed neonates to be present at the time of the birth. The defense further contended that the baby's injury occurred in utero prior to birth due to cord compression and lack of perfusion and that the newborn lacked a heart rate immediately before and after birth.

**Injury:**

Sooshyance Gharibshahi was diagnosed with a significant and permanent brain injury caused by hypoxic ischemic encephalopathy, resulting in spastic quadriplegia, a type of cerebral palsy that affects all four limbs and fine motor activity. As a result, Sooshyance is fed primarily through a gastric tube in his abdomen, although he can eat some food by mouth. He has significant cognitive abnormality that impedes learning, seizure disorder which is partially controlled by medication, and significant problems with speech and language.

The defense did not dispute Sooshyance's injuries, but argued that the injuries occurred in utero and were not due to any action or inaction of the nurses or pediatrics team.

**Result:** The magistrate judge found that the plaintiffs failed to prove Sooshyance's injury was the direct and proximate result of any breach by the hospital and recommended judgment for Ohio State University Medical Center. Judge Patrick M. McGrath subsequently adopted the magistrate's decision and recommendation and entered judgment for the hospital.

**Trial Information:**

**Judge:** Patrick M. McGrath

**Editor's Comment:** This report is based on information that was gleaned from court documents and confirmed by a representative of the attorney general's office. Plaintiffs' counsel did not respond to a request for comment.

**Writer** Margi Banner

**Suit: Neonatologist and ordered blood were both late on arrival****Type:** Decision-Mixed**Amount:** \$23,100,000**State:** Illinois**Venue:** Cook County**Court:** Cook County Circuit Court, IL**Injury Type(s):**

- *brain* - epilepsy; brain damage; cerebral palsy
- *other* - fine motor skills, impairment
- *arterial/vascular* - blood loss
- *mental/psychological* - birth defect

**Case Type:**

- *Medical Malpractice* - Childbirth; Birth Injury; Brain Injuries; Delayed Treatment

**Case Name:** Drew Kerrins by her guardians ad litem Rebecca Kerrins and Rebecca Liptak v. Thomas Myers, M.D., Renaissance Medical Group, Palos Community Hospital, Maysoon N. Alnaqeeb, M.D., Grace Carreon, M.D., Kristin M. Commito, M.D., Robert F. Lingren, M.D., Mario Sanchez, M.D., Southwest Pediatrics, Ltd., and Brian C. Sullivan, M.D., No. 2014-L-004914**Date:** May 09, 2017**Plaintiff(s):**

- Drew Kerrins (Female, 1 Years)

**Plaintiff Attorney(s):**

- James T. Ball; The Ball Law Group; Chicago IL for Drew Kerrins

**Plaintiff Expert  
(s):**

- Dr. John F. Burke Jr.; Lost Earnings (Economics); Cleveland, OH called by: James T. Ball
- Henry P. Brennan M.S., S.L.P., C.C.M., C.L.C.P.; Life Care Planning; Westchester, IL called by: James T. Ball
- Laura R. Mahlmeister Ph.d RN; Nurse Practitioner; Belmont, CA called by: James T. Ball
- Louis Halamek M.D.; Neonatology; Palo Alto, CA called by: James T. Ball
- Gordon K. Sze M.D.; Neuroradiology; New Haven, CT called by: James T. Ball
- Steven Sloan M.D.; Blood/Blood Banks; New York, NY called by: James T. Ball
- Thomas E. Wiswell M.D.; Neonatology; Orlando, FL called by: James T. Ball
- Yitzhak Frank M.D.; Pediatric Neurology; New York, NY called by: James T. Ball

**Defendant(s):**

- Thomas Myers, M.D.
- Grace Carreon, M.D.
- Mario Sanchez, M.D.
- Brian C. Sullivan, M.D.
- Robert F. Lingren, M.D.
- Kristin M. Commito, M.D.
- Palos Community Hospital
- Maysoon N. Alnaqeeb, M.D.
- Renaissance Medical Group
- Southwest Pediatrics, Ltd.

**Defense  
Attorney(s):**

- Terrence M. Burns; Dykema Gossett PLLC; Chicago, IL for Palos Community Hospital
- Aiju C. Thevatheril; Swanson, Martin & Bell, LLP; Chicago, IL for Palos Community Hospital
- Michael D. Huber; Cray Huber Horstman & VanAusdal, L.L.C.; Chicago, IL for Thomas Myers, M.D.
- Ian M. Sherman; Dykema Gossett PLLC; Chicago, IL for Palos Community Hospital
- Aimee K. Lipkis; Cray Huber Horstman & VanAusdal, L.L.C.; Chicago, IL for Thomas Myers, M.D., Renaissance Medical Group
- Katherine Morrison; Dykema Gossett PLLC; Chicago, IL for Palos Community Hospital

**Defendant  
Expert(s):**

- Jay Goldsmith M.D.; Neonatology; Atlanta, GA called by: for Terrence M. Burns, Aiju C. Thevatheril, Ian M. Sherman, Katherine Morrison
- Lisa Thornton M.D.; Pediatric Rehabilitation; Chicago, IL called by: for Terrence M. Burns, Aiju C. Thevatheril, Ian M. Sherman, Katherine Morrison
- Paul Graham Fisher M.D.; Pediatric Neurology; Palo Alto, CA called by: for Michael D. Huber, Aimee K. Lipkis
- Elias G. Chalhub M.D.; Pediatric Neurology; Mobile, AL called by: for Terrence M. Burns, Aiju C. Thevatheril, Ian M. Sherman, Katherine Morrison
- Frank P. Stafford Ph.D.; Economics; Ann Arbor, MI called by: for Terrence M. Burns, Ian M. Sherman, Katherine Morrison
- Alyssa F. Ziman M.D.; Blood/Blood Banks; Los Angeles, CA called by: for Terrence M. Burns, Aiju C. Thevatheril, Michael D. Huber, Ian M. Sherman, Aimee K. Lipkis, Katherine Morrison
- Bonnie F. Chez R.N.; Obstetrics Nursing; Tampa, FL called by: for Terrence M. Burns, Aiju C. Thevatheril, Ian M. Sherman, Katherine Morrison
- Harvey J. Kliman M.D.; Placental Pathology; New Haven, CT called by: for Terrence M. Burns, Aiju C. Thevatheril, Michael D. Huber, Ian M. Sherman, Aimee K. Lipkis, Katherine Morrison
- Jeremy Marks M.D.; Neonatology; Chicago, IL called by: for Michael D. Huber, Aimee K. Lipkis
- Cathlin Vinett Mitchell R.N.; Life Care Planning; Brentwood, TN called by: for Terrence M. Burns, Aiju C. Thevatheril, Ian M. Sherman, Katherine Morrison
- Michael G. Ross M.D.; Perinatology; Torrance, CA called by: for Terrence M. Burns, Aiju C. Thevatheril, Ian M. Sherman, Katherine Morrison
- Patrick D. Barnes M.D.; Neuroradiology; Palo Alto, CA called by: for Terrence M. Burns, Aiju C. Thevatheril, Michael D. Huber, Ian M. Sherman, Aimee K. Lipkis, Katherine Morrison

**Facts:**

On June 21, 2011, plaintiff Drew Kerrins was delivered at Palos Community Hospital. During delivery, the mother, Rebecca Kerrins, and a nurse saw a large pool of blood that had collected on her bed. Drew lost 60 percent of her total blood volume between 45 minutes and 20 minutes before her delivery due to an occult fetal vessel hemorrhage, which was caused by either placental abruption or vasa previa. Drew's heart stopped beating and the mother experienced a gush of blood two minutes later. The obstetrician was called for an emergency Caesarian section within 11 minutes of the heart stopping. The baby was delivered eight minutes later but her heart had already not beaten for 21 minutes. Dr. Thomas Myers was the hospital's neonatologist. Hospital staff tried multiple times to page Myers and reach him on his cellphone. An associate of Myers' was contacted and came to the hospital to supervise Drew's care. Myers was later reached at home and arrived at the hospital 20 minutes later.

Blood was ordered for the baby after delivery by Myers' associate, but it wasn't enough and more blood was ordered but there was a delay in it arriving. Drew suffered massive blood loss during her delivery and was not fully transfused for some three hours after her birth. Drew suffered brain damage.

Myers did not work directly for Palos Community Hospital. He was considered the employee of Renaissance Medical Group that provided neonatology services to the hospital.

On behalf of Drew, the mother sued Myers, Renaissance Medical Group and Palos Community Hospital and several medical practices with whom the hospital contracted for certain medical services. All defendants besides Myers and the hospital were granted unopposed summary judgment dismissals near the end of the discovery period. Prior to trial, a stipulation was reached to waive a jury and proceed to a bench trial. The stipulation also provided that there would be no appeal from the court's ruling.

The family claimed that Myers failed to properly attend to the medical emergency in a timely fashion. Because Myers failed to attend to Drew's emergency in a timely manner and, combined with the unavailability of adequate blood, Drew suffered vast and permanent injuries, the family claimed.

Kerrins claimed that she had chosen Palos Community Hospital because the hospital advertised having an onsite neonatologist. This was important to her because she was 38 years old, making it a high-risk pregnancy.

Myers admitted that his unavailability due to the inability to reach him by telephone. He testified that he had finished working in the hospital's neonatal intensive care unit and was heading home, and for the first and only time in 41 years he had left his cellphone and pager at the hospital when he changed clothes before leaving. However, his unavailability notwithstanding, Myers argued that Drew was properly delivered and attended to by his associate, and that the circumstances of Drew's birth were such that she had suffered irreparable harm by the time of her delivery.

**Injury:**

Drew suffers ongoing health problems attributed to complications at birth, including cerebral palsy and epilepsy. She undergoes occupational, physical and speech therapy and is reliant on someone for every single bodily function in her daily life. Drew's mother, who has a master's degree in clinical counseling, worked as a program manager at Mercy Home for Boys & Girls in Chicago but had to quit in order to care for her daughter.

Myers' counsel argued that Drew suffered massive brain damage before delivery, and neonatologists only care for babies after they are delivered. It was argued that there was no causal connection between anything Myers did or did not do and Drew's brain damage. Physiologically, no amount of blood replacement can heal an already damaged brain.

Defense counsel noted that the plaintiff's own experts conceded that 15 minutes of no heart beat was sufficient to cause brain damage and cerebral palsy.

**Result:**

Judge Kay Marie Hanlon ruled that Myers was negligent but Palos Community Hospital was not negligent. However the hospital is liable on a theory of agency with respect to its providing neonatal care through Renaissance. She awarded \$23.1 million.

The court attributed \$2 million of the damages to Myers and Renaissance, which was the high end of a \$2 million high-low agreement stipulated to prior to trial. The hospital was held to be responsible for the balance of the \$23.1 in damages.

**Trial Information:**

**Judge:** Kay Marie Hanlon

**Demand:** None reported

**Offer:** \$2,000,000 by Myers

**Trial Length:** 4 days

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

**Writer** Jon Steiger



## Failure to timely treat fetal distress caused brain damage: parents

**Type:** Settlement

**Amount:** \$5,000,000

**State:** Florida

**Venue:** Federal

**Court:** U.S. District Court, Middle District of Florida, Jacksonville, FL

**Injury Type(s):**

- *brain* - brain damage; encephalopathy
- *other* - seizure disorder
- *mental/psychological* - developmental delay; cognition, impairment
- *pulmonary/respiratory* - hypoxia

**Case Type:**

- *Medical Malpractice* - Childbirth; Birth Injury; Brain Injuries; Delayed Treatment

**Case Name:** Jennifer Mochocki and Sean Mochocki, individually, and as parents and next friends of their son H.M., a minor v. The United States of America, No. 3:15-cv-00377

**Date:** May 01, 2017

**Plaintiff(s):**

- H. M. (Male, 1 Years)
- Sean Mochocki
- Jennifer Mochocki

**Plaintiff Attorney(s):**

- Michelle L. Davis; Cronin & Maxwell, PL; Jacksonville FL for Jennifer Mochocki, Sean Mochocki, H. M.
- Michael V. Nakamura; Shulman, Rogers, Gandal, Pordy & Ecker, P.A.; Potomac MD for Jennifer Mochocki, Sean Mochocki, H. M.
- Sean B. Cronin; Cronin & Maxwell, PL; Jacksonville FL for Jennifer Mochocki, Sean Mochocki, H. M.

**Plaintiff Expert  
(s):**

- Paul M. Mason Ph.D.; Economics; Jacksonville, FL called by: Michelle L. Davis, Michael V. Nakamura, Sean B. Cronin
- Caron W. Jones; Nursing; Pittsboro, NC called by: Michelle L. Davis, Michael V. Nakamura, Sean B. Cronin
- Ellen Fernandez; Vocational Rehabilitation; Melbourne, FL called by: Michelle L. Davis, Michael V. Nakamura, Sean B. Cronin
- Laura R. Mahlmeister Ph.d RN; Nurse Practitioner; Belmont, CA called by: Michelle L. Davis, Michael V. Nakamura, Sean B. Cronin
- Nathan Hirsch M.D.; OB-GYN; Miami, FL called by: Michelle L. Davis, Michael V. Nakamura, Sean B. Cronin
- Stuart I. Brown M.D.; Pediatric Neurology; Miami, FL called by: Michelle L. Davis, Michael V. Nakamura, Sean B. Cronin
- Jeffrey Hammer M.D.; Gynecology; Chesapeake, VA called by: Michelle L. Davis, Michael V. Nakamura, Sean B. Cronin

**Defendant(s):**

- United States of America

**Defense  
Attorney(s):**

- Roberto H. Rodriguez Jr.; U.S. Attorney's Office; Jacksonville, FL for United States of America

**Defendant  
Expert(s):**

- John Fahr Ph.D.; Lost Earnings (Economics); Washington, DC called by: for Roberto H. Rodriguez Jr.
- Amber Butterfield; Health Care Management; Denver, CO called by: for Roberto H. Rodriguez Jr.
- Robyn Anne Cash-Howard; Vocational Rehabilitation/Counseling; Orlando, FL called by: for Roberto H. Rodriguez Jr.
- Lauren Allegra Beslow M.D.; Pediatric Neurology; Philadelphia, PA called by: for Roberto H. Rodriguez Jr.
- Robert M. Shavelle Ph.D.; Life Expectancy & Mortality; San Francisco, CA called by: for Roberto H. Rodriguez Jr.
- Suneet P. Chauhan M.D.; OB-GYN; Houston, TX called by: for Roberto H. Rodriguez Jr.
- William F. McCool Ph.D.; Nursing; Philadelphia, PA called by: for Roberto H. Rodriguez Jr.

**Facts:**

At 12:18 p.m. on Oct. 1, 2012, the plaintiff, an infant, was born via a vaginal birth.

The infant's mother, plaintiff Jennifer Mochocki, previously commenced obstetrical care at Naval Hospital Jacksonville, in Jacksonville, while she was pregnant with her son on Feb. 8, 2012. After going into labor on Oct. 1, 2012, she was taken to Naval Hospital Jacksonville. However, shortly after his birth, the infant was diagnosed with hypoxic ischemic encephalopathy, a type of brain damage that occurs when an infant's brain doesn't receive enough oxygen and blood.

Jennifer Mochocki and her husband, Sean Mochocki, who was serving in the Air Force, filed administrative claims with the Office of the Judge Advocate General Tort Claims Unit, in Norfolk, Va., on Aug. 24, 2014. The claims were denied by the Department of the Navy.

The Mochockis, acting individually and as parents of their son, next filed suit against the United States of America in U.S. District Court. They alleged that the hospital and its staff were negligent in the treatment and delivery of their son and that the negligence of the hospital and its staff constituted medical malpractice. The Mochockis also alleged that the United States was vicariously liable for the negligence of the hospital and its staff.

Plaintiffs' counsel contended that the hospital's physicians chose not to order a Caesarean section, despite signs and symptoms of fetal distress and that as a result, the infant was deprived of oxygen, causing his hypoxic ischemic encephalopathy and permanent brain damage. Counsel asserted that the hospital's physicians should have ordered a C-section immediately upon discovering the signs and symptoms of fetal distress, but that, instead, Ms. Mochocki went untreated for 90 minutes.

**Injury:**

Following his birth, the Mochockis' son was diagnosed as having suffered hypoxic ischemic encephalopathy, which caused considerable brain damage.

The Mochockis' son, who was 5 years old at the time of settlement, suffers from considerable cognitive difficulties and mental delays. He also suffers from a seizure disorder related to the hypoxic ischemic encephalopathy. The Mochockis claimed that their son requires care and assistance in his daily activities and that he will continue to require care and assistance for the remainder of his life.

**Result:**

The parties agreed to a \$5 million settlement, which was partially structured. Of the total settlement, the Mochocki family will receive \$1.59 million, plus an additional \$3 million (which could increase or decrease depending on annuity market prices) that will be used to purchase an annuity, which will allow for monthly payments of approximately \$7,600 for the remainder of the child's life. When the child reaches the age of 18, he will receive an additional payment of \$4,500 per month, which will also continue for the duration of his life. The federal government also agreed to pay Ms. Mochocki four annual payments of approximately \$35,000 starting in 2034 and agreed to pay Mr. Mochocki \$129,000 in 2033.

In addition, the court approved a counsel fee in the amount of 25 percent of the settlement amount and reimbursement for litigation costs advanced in the amount of \$148,000.

According to plaintiffs' counsel, the way the settlement was structured, it may produce as much as \$5 million for the benefit of the Mochockis' child, who is in need of a great deal of medical care and assistance for the rest of his life.

**Trial Information:****Editor's  
Comment:**

This report is based on information that was provided by plaintiff's counsel. Defense counsel declined to contribute.

**Writer**

Jon Steiger

## Doctor denied responsibility for infant's brain injury

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** California

**Venue:** Monterey County

**Court:** Superior Court of Monterey County, Monterey, CA

**Injury Type(s):**

- *brain* - brain damage; cerebral palsy; diffuse axonal brain injury
- *other* - ischemia
- *mental/psychological* - emotional distress
- *pulmonary/respiratory* - hypoxia
- *paralysis/quadriplegia* - quadriplegia

**Case Type:**

- *Medical Malpractice* - Childbirth; Birth Injury; Brain Injuries; Delayed Treatment

**Case Name:** Jenovie V. Valdez, Individually and as Parent and Natural Guardian of Emma Victoria Valdez, an Infant v. Salinas Valley Memorial Hospital; Daniel A. Jardini, M.D.; Larry L. Nutting, M.D.; Jose Mario Pauda, M.D.; and Carl F. Yaeger, M.D., No. GNM102561

**Date:** May 28, 2015

**Plaintiff(s):**

- Emma Valdez (Female)
- Jenovie Valdez (Female, 17 Years)

**Plaintiff Attorney(s):**

- David J. Llewellyn; Johnson & Ward; Atlanta GA for Jenovie Valdez
- Charles A. Bonner; Bonner & Bonner; Sausalito CA for Emma Valdez

**Plaintiff Expert  
(s):**

- Barry D. Pressman M.D.; Neuroradiology; West Hollywood, CA called by: David J. Llewellyn, Charles A. Bonner
- Barry S. Schifrin M.D.; OB-GYN; Northridge, CA called by: David J. Llewellyn, Charles A. Bonner
- Laura Mahlmeister R.N. Ph.D.; Nurse Practitioner; San Francisco, CA called by: David J. Llewellyn, Charles A. Bonner
- Perry R. Lubens M.D.; Pediatric Neurology; Long Beach, CA called by: David J. Llewellyn, Charles A. Bonner
- Dennis A. Hart M.D.; Pediatric Rehabilitation; Sacramento, CA called by: David J. Llewellyn, Charles A. Bonner
- Barbara Burton M.D.; Pediatric Genetics; Chicago, IL called by: David J. Llewellyn, Charles A. Bonner
- Gregory Glasscock M.D.; Neonatology; Salinas, CA called by: David J. Llewellyn, Charles A. Bonner
- Patrick F. Mason Ph.D.; Economics; San Francisco, CA called by: David J. Llewellyn, Charles A. Bonner

**Defendant(s):**

- Carl F. Yaeger, M.D.
- Daniel Jardini, M.D.
- Jose Mario Pauda, M.D.
- Larry L. Nutting, M.D.
- Salinas Valley Memorial Hospital

**Defense  
Attorney(s):**

- Barry C. Marsh; Hinshaw, Marsh, Still & Hinshaw, LLP; Saratoga, CA for Daniel Jardini, M.D., Salinas Valley Memorial Hospital
- None reported for Larry L. Nutting, M.D., Jose Mario Pauda, M.D., Carl F. Yaeger, M.D.

**Defendant  
Expert(s):**

- Karl Erik Volk M.A., B.S.; Economics; Walnut Creek, CA called by: for Barry C. Marsh
- Paul Fisher M.D.; Pediatric Neurology; Palo Alto, CA called by: for Barry C. Marsh
- Francis Blankenberg M.D.; Pediatric Radiology; Palo Alto, CA called by: for Barry C. Marsh
- Harriet T. Cokely M.D.; Pediatric Neurology; Santa Monica, CA called by: for Barry C. Marsh
- Jeffrey P. Phelan M.D.; OB-GYN; West Covina, CA called by: for Barry C. Marsh
- Michael P. Nageotte M.D.; Perinatology; Long Beach, CA called by: for Barry C. Marsh

**Insurers:**

- NORCAL Mutual Insurance Co.

**Facts:**

On Nov. 26, 2008, plaintiff Jenovie Valdez, 17, was in labor at Salinas Valley Memorial Hospital, in Salinas. After a prolonged labor, Jenovie's treating physician, Dr. Daniel Jardini, successfully delivered the infant, plaintiff Emma Valdez, using a vacuum extractor. However, Jenovie alleged that her daughter underwent a prolonged hypoxic ischemic event during labor, resulting in profound brain damage and spastic quadriplegic cerebral palsy.

Jenovie, acting individually and on behalf of her daughter, Emma, sued Jardini, Salinas Valley Memorial Hospital, and several other physicians. Jenovie alleged that the defendants failed to timely deliver her daughter, causing injuries to the baby, and that this failure constituted medical malpractice.

Prior to trial, Salinas Valley Memorial Hospital agreed to a \$1.25 million settlement, with \$250,000 attributed to Jenovie's emotional distress claim. In addition, several of the physicians were voluntarily dismissed from the case. Thus, the matter went to trial against Jardini only.

Plaintiffs' counsel argued that the Jardini failed to assess and address an atypical pattern of accelerations during Jenovie's first stage of labor. Counsel also argued that the defendants failed to deliver the child early when repetitive decelerations and tetanic contractions with an insufficient resting period were detected in the second stage of pregnancy. Plaintiffs' counsel contended that these factors denied the infant of oxygen and resulted in a profound brain injury.

The plaintiffs' ob-gyn expert opined that Jardini failed to properly assess and monitor Emma during labor. The expert testified that fetal heart racing was atypical and that he believed the infant's neurological injury occurred shortly before delivery. However, on cross-examination, the plaintiffs' ob-gyn expert stated that only a neurologist or a neuroradiologist was qualified to identify an injury during labor.

Defense counsel denied there was any negligence on the part of Jardini, and argued that Emma failed to demonstrate activity, which would have required an early delivery.

The defense's pediatric radiologist testified that he believed the infant suffered a subacute brain injury at least one week prior to delivery. The defense's neonatology expert testified that the brain injury sustained by Emma was not compatible with a prolonged hypoxic event and was more likely caused by a genetic dysfunction.

**Injury:**

Emma suffered profound brain damage. Two days following her birth in 2008, Emma underwent an ultrasound, which demonstrated diffuse edema. An MRI performed in December 2012 demonstrated an absence of brain parenchyma in the left and right hemispheres.

Due to her injury, Emma suffers from spastic quadriplegic cerebral palsy and has little voluntary movement. As a result, she requires the use of a feeding tube and a portable aspiration device, in addition to in-home attendant care.

Thus, Jenovie sought recovery of \$910,000 in emotional-distress damages, \$250,000 in past non-economic damages on behalf of her daughter, and between \$12 million and \$27 million for future medical and attendant care costs.

**Result:** The jury found that Jardini was negligent, but that his negligence was not the proximate cause of the infant plaintiff's injury. Thus, it rendered a defense verdict.

**Trial Information:**

**Judge:** Susan Matcham

**Demand:** \$1,000,000 (C.C.P. § 998)

**Offer:** \$300,000

**Trial Length:** 18 days

**Trial  
Deliberations:** 7 hours

**Jury Vote:** 11-1 on negligence; 9-2 on causation

**Jury  
Composition:** 7 male, 5 female

**Editor's  
Comment:** This report is based on information that was provided by counsel for Daniel Jardini, M.D., and counsel for Jenovie Valdez. Counsel for Emma Valdez did not return the reporter's phone calls.

**Writer** Max Robinson



**Defense: Standard of care for childbirth in 1998 not violated**

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** Illinois

**Venue:** Cook County

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

**Injury Type(s):**

- *other* - shoulder dystocia; scar and/or disfigurement
- *neurological* - brachial plexus

**Case Type:**

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

**Case Name:** Jenel Beaton, as mother and next friend to Marsae Williams, a minor v. Steven Daube, M.D., Imre Hidvegi, M.D., Ingalls Memorial Hospital, and Theresa Yaeger, R.N., No. 11-L-005384

**Date:** March 21, 2014

**Plaintiff(s):**

- Jenel Beaton (Female, 27 Years)
- Marsae Williams (Male, 1 Years)

**Plaintiff Attorney(s):**

- Peter D. Tarpey; Tarpey, Jones & Schroeder, LLC; Chicago IL for Marsae Williams, Jenel Beaton

**Plaintiff Expert(s):**

- Laura R. Mahlmeister Ph.d RN; Nurse Practitioner; Belmont, CA called by: Peter D. Tarpey
- Julian B. Ullman M.D.; OB-GYN; Chicago, IL called by: Peter D. Tarpey

**Defendant(s):**

- Imre Hidvegi, M.D.
- Steven Daube, M.D.
- Theresa Yaeger, R.N.
- Ingalls Memorial Hospital

**Defense  
Attorney(s):**

- Suzanne F. Gillen; Langhenry, Gillen, Lundquist & Johnson LLC; Wheaton, IL for Imre Hidvegi, M.D.
- Sherri M. Arrigo; Donohue, Brown, Mathewson & Smith LLC; Chicago, IL for Steven Daube, M.D.
- Elizabeth E. Jaci; Barker & Castro, LLC; Chicago, IL for Ingalls Memorial Hospital, Theresa Yaeger, R.N.
- Anne S. Kuban; Barker & Castro, LLC; Chicago, IL for Ingalls Memorial Hospital, Theresa Yaeger, R.N.
- Matthew T. Andris; Langhenry, Gillen, Lundquist & Johnson LLC; Wheaton, IL for Imre Hidvegi, M.D.

**Defendant  
Expert(s):**

- Linda Holt M.D.; OB-GYN; Skokie, IL called by: for Suzanne F. Gillen, Matthew T. Andris
- Bonnie F. Chez R.N.; Obstetrics Nursing; Tampa, FL called by: for Suzanne F. Gillen, Elizabeth E. Jaci, Anne S. Kuban, Matthew T. Andris
- Michelle Grimm Ph.D; Biomedical; Detroit, MI called by: for Elizabeth E. Jaci, Anne S. Kuban

**Insurers:**

- ISMIE
- Self-Insured

**Facts:**

On April 17, 1998, plaintiff Marsae Williams was born to his mother Jenel Beaton, at Ingalls Memorial Hospital in Harvey. During the course of his birth, shoulder dystocia occurred when Marsae's shoulder became caught on a pelvic bone, resulting in a brachial plexus injury.

Beaton, on behalf of her son, sued Ingalls Memorial Hospital, as well as the OB-GYN who delivered Marsae, Dr. Imre Hidvegi; the nurse who assisted in the delivery, Theresa Yaeger; and the doctor who performed prenatal care for Beaton prior to the incident, Dr. Steven Daube. The case was originally filed on July 30, 2003, but was voluntarily dismissed by Beaton. It was then refiled on March 6, 2009. Daube was dismissed from the case following jury selection, while Yaeger was dismissed prior to closing arguments.

According to plaintiff's counsel, the maneuvers employed by the defendants in the course of the delivery were negligent. He contended that too much fundal pressure was applied during the second stage of labor. He contended that because of the pressure being improperly used, the brachial plexus injury occurred during Marsae's birth.

Defense counsel contended that the application of fundal pressure during the second stage of labor was an appropriate and accepted maneuver in 1998, despite it not being considered appropriate currently. They also contended that there was no evidence that fundal pressure had been applied to the child's head during the delivery. Therefore, they argued, the hospital did not violate any standards of care in the treatment of Beaton and her child.

**Injury:**

Marsae experienced permanent disfigurement in his left shoulder, which limited his ability to perform daily activities. Plaintiff's counsel asked the jury for a recovery of \$3.7 million, which included amounts for his pain and suffering, disfigurement and disability.

**Result:** The jury rendered a verdict in favor of Hidvegi and Ingalls Memorial Hospital.

**Trial Information:**

**Judge:** Elizabeth M. Budzinski

**Demand:** \$1.5 million

**Offer:** None

**Trial Length:** 10 days

**Trial  
Deliberations:** 2 hours

**Jury  
Composition:** 2 male, 10 female

**Editor's  
Comment:** This report is based on information that was provided by defense counsel for Ingalls Memorial Hospital and Hidvegi. Plaintiff's counsel and defense counsel for Daube did not respond to the reporter's phone calls.

**Writer** Kirk Maltais

## Medical Malpractice - Childbirth - Infant Death

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** Ohio

**Venue:** Montgomery County

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

**Injury Type(s):** • *abdomen*

**Case Type:** • *Wrongful Death*  
• *Domestic Relations*  
• *Medical Malpractice*

**Case Name:** Estate of Lamont Paul Dion Lane, Lamont Lane and Cassandra Floyd v. Katherine S. Lin, M.D., Miami Valley Hospital, United Healthcare of Ohio, Inc., Ohio Department of Job and Family Services, Jackelyn McGuire, Tamara King and Jan Hankins, No. 2010 CV 01750

**Date:** August 24, 2012

**Plaintiff(s):** • Lamont Lane  
• Cassandra Floyd  
• Estate of Lamont Paul Dion Lane (Male, 0 Years)

**Plaintiff Attorney(s):** • Charles H. Cooper; ; Columbus OH for Lamont Lane  
• Adam P. Richards; ; Columbus OH for Lamont Lane

**Plaintiff Expert(s):** • Laura Mahlmeister Ph.D.; Obstetrics Nursing; San Francisco, CA called by:  
• Michael Hall M.D.; Gynecology; Englewood, CO called by:

**Defendant(s):** • Katherine S. Lin, M.D., Miami Valley Hospital, United Healthcare of Ohio, Inc., Ohio Department of Job and Family Services, Jackelyn McGuire, Tamara King and Jan Hankins

**Defense  
Attorney(s):**

- John B. Welch; Dayton, OH for Katherine S. Lin, M.D., Miami Valley Hospital, United Healthcare of Ohio, Inc., Ohio Department of Job and Family Services, Jackelyn McGuire, Tamara King and Jan Hankins
- Gerald J. Todaro; Columbus, OH for Katherine S. Lin, M.D., Miami Valley Hospital, United Healthcare of Ohio, Inc., Ohio Department of Job and Family Services, Jackelyn McGuire, Tamara King and Jan Hankins

**Facts:**

Medical professionals were sued following the death of a newborn. The plaintiffs argued the boy's death was due to mismanagement of labor and delivery. They also claimed the boy's mother suffered injuries and required a hysterectomy due to medical negligence. The defendants denied liability and the case was presented to a Montgomery County jury for consideration. The jury returned a defense verdict.

Plaintiff Cassandra Floyd was admitted to Defendant Miami Valley Hospital on February 23, 2007. She was approximately 34 weeks pregnant at the time, and was suffering from nausea, abdominal pain and contractions. Her pregnancy was determined to be high risk because she had developed gestational diabetes, high blood pressure, proteinuria and preeclampsia. Upon arrival at the hospital, a decision was made to induce labor if Cassandra did not begin labor on her own within a short period of time. Defendant Katherine Lin, M.D., an OB/GYN, was plaintiff's attending physician during labor and delivery, and supervised various personnel, who were required to monitor Cassandra's care. Labor was induced on February 24 by vaginally administering misoprostol, which is marketed under the name Cytotec. The induced labor continued into the early morning hours of February 25. Cassandra's uterus ruptured around 4:30 a.m., and a fetal scalp monitor placed at 4:49 a.m. reportedly showed the fetus was in trouble. Dr. Lin attempted an unsuccessful vacuum extraction, following which an emergency C-section was performed. The infant was diagnosed with hypoxia, asphyxia, seizures and encephalopathy. He died three weeks later. As a result of the uterine rupture and a significant loss of blood, Cassandra required a hysterectomy.

Plaintiffs alleged that Cytotec was not approved for cervical ripening or the induction of labor and that it had known side effects that included uterine rupture, maternal or fetal death, and severe vaginal bleeding and shock. In fact, plaintiffs argued that the manufacturer had expressly warned that Cytotec was contraindicated for use during pregnancy and amended its labeling in 2002 to specifically warn of dangers associated with the off-label use of Cytotec to induce labor. Plaintiffs alleged that defendants administered Cytotec without properly advising the mother of the potential side effects or giving her the option of receiving an approved agent to induce labor. Plaintiffs also claimed that Cassandra should have been given the option of a C-section instead. Plaintiffs further argued that the hospital's nurses failed to appropriately monitor the fetus and/or identify signs of fetal hypoxia and developing acidosis, nor did they timely summon a doctor in response to non-reassuring fetal heart rate patterns, which led to a delay in performing the C-section.

Defendants contended standard of care treatment was provided and the mother was provided with informed consent regarding all medications and medical treatment. Defendants additionally argued that the pregnancy was high risk at the time of admission, appropriate monitoring was provided and a timely C-section was performed. Defendants denied that anything they did or failed to do contributed to the mother's injuries, or the death of the infant.

Plaintiff Cassandra Floyd was a 30-year-old female. Her son, Lamont Paul Dion Lane, died shortly after his birth.

**Injury:** Death of newborn male, as a result of hypoxia, asphyxia, seizures, and encephalopathy. He was survived by his parents. His mother, Cassandra, sought damages for loss of society and companionship, and for personal injuries as she suffered a significant amount of blood loss during delivery of her baby, due to a severe drop in her blood pressure. She required an emergency hysterectomy.

**Result:** Defense verdict

**Trial Information:**

**Judge:** Mary Katherine Huffman

**Writer**

## Medical Malpractice - Childbirth - Birth Defects/Death

**Type:** Verdict-Defendant

**Amount:** \$280,000

**State:** South Carolina

**Venue:** Charleston County

**Court:** Charleston County, Court of Common Pleas, Charleston, SC

**Case Type:**

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

**Case Name:** Serena Thigpen, Individually and as Representative of the Estate of Trevor S. Beltz v. Nancy B. Stroud, M.D. and Trident Medical Center, LLC, et al., No. 2007CP103632

**Date:** November 18, 2011

**Plaintiff(s):**

- Serena Thigpen
- Trevor S. Beltz (Male, 0 Years)

**Plaintiff Attorney(s):**

- Christopher J. McCool; ; Charleston SC for Trevor S. Beltz
- Melissa A. Fried; ; Charleston SC for Trevor S. Beltz

**Plaintiff Expert (s):**

- Edmund Rhett M.D.; Gynecology; Mt Pleasant, SC called by:
- Heather Wooten R.N.; Nursing; Atlanta, GA called by:

**Defendant(s):**

- Nancy B. Stroud, M.D. and Trident Medical Center, LLC, et al.

**Defense Attorney(s):**

- Molly H. Craig; Charleston, SC for Nancy B. Stroud, M.D. and Trident Medical Center, LLC, et al.
- Chilton G. Simmons; Charleston, SC for Nancy B. Stroud, M.D. and Trident Medical Center, LLC, et al.
- Monteith P. Todd; Columbia, SC for Nancy B. Stroud, M.D. and Trident Medical Center, LLC, et al.



**Defendant Expert(s):**

- Laura Mahlmeister R.N. Ph.D.; Obstetrics Nursing; San Francisco, CA called by: for
- Paula Orr M.D.; Gynecology; Charleston, SC called by: for
- Michael Duchowny M.D.; Pediatric Neurology; Miami, FL called by: for
- Richard Schroer M.D.; Genetics; Charleston, SC called by: for

**Facts:**

A newborn who was diagnosed with birth defects died less than two years after his birth. The boy's mother alleged that the child's injuries and death were due to improper care provided during labor and delivery, which was disputed by the defendants. The case was argued before a Charleston County jury, who found in favor of the defendant OB/GYN. The hospital had previously settled for \$280,000.

Plaintiff Serena Thigpen, age 16, whose pregnancy was full-term, was scheduled for induction of labor on February 25, 2004. Two days prior to the scheduled induction, her membranes ruptured. She presented to Trident Medical Center at 9:00 a.m. on February 23, where she was admitted and monitored by hospital staff and Defendant Nancy B. Stroud, M.D. throughout the day. At approximately 2:42 a.m. the following morning, Thigpen gave birth to a son, Trevor S. Beltz. The infant's APGAR scores were extremely low at birth and went up only slightly over a 10-minute period. He was diagnosed with multiple birth defects and injuries. He died from respiratory distress on February 1, 2006.

Plaintiff alleged that Defendant Stroud was negligent and reckless in failing to properly manage the labor and delivery. Plaintiff also asserted that Stroud was negligent in failing to timely communicate with other health care providers, which led to a delay in delivery. Plaintiff argued that her son's injuries, birth defects and subsequent death were due to defendants' negligence.

Defendants denied any wrongdoing and contended that they acted within the standard of care. Defendants maintained that the child's injuries and death were not related to anything they did or failed to do.

Plaintiff's decedent was a newborn male infant at the time of injury. He died less than 2 years later.

**Injury:**

Failure to properly monitor and manage labor and delivery, resulting in multiple birth defects and death.

**Result:**

Defense verdict for Defendant Stroud. Defendant Trident Medical Center had previously settled for \$280,000.

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

Roger M. Young

**Editor's Comment:**

Information for this summary was obtained through court records.

**Writer**

## Parents: Delayed C-section caused infant's brain damage

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** California

**Venue:** Los Angeles County

**Court:** Superior Court of Los Angeles County, Los Angeles, CA

**Injury Type(s):**

- *brain* - brain damage; encephalopathy
- *other* - hypotonia
- *paralysis/quadriplegia* - quadriplegia

**Case Type:**

- *Medical Malpractice* - Birth Injury; Delayed Treatment

**Case Name:** Mikhail Zimbalist, a minor by and through his guardian ad litem, Mumtaz Zimbalist, Mumtaz Zimbalist and Efrem Zimbalist, IV v. Saint John's Health Center, formerly known as St. John's Hospital; Bayside Anesthesia Medical Group; Cornelia Daly, M.D.; Frumovitz, Matsunaga, Daly, Ross, Thordarson, Vogel and Klevens, M.D.'s; Erna Kwong, M.D.; and Klara Vogel, M.D., No. SC102873

**Date:** October 06, 2011

**Plaintiff(s):**

- Mumtaz Zimbalist (Female)
- Mikhail Zimbalist (Male)
- Efrem Zimbalist, IV (Male)

**Plaintiff Attorney(s):**

- Jeffrey A. Milman; Hodes Milman, L.L.P.; Irvine CA for Mikhail Zimbalist, Mumtaz Zimbalist, Efrem Zimbalist, IV
- Thomas E. Rockett, III; Law Offices of Thomas E. Rockett, III; Brea CA for Mikhail Zimbalist, Mumtaz Zimbalist, Efrem Zimbalist, IV

**Plaintiff Expert  
(s):**

- Liz Holakiewicz R.N.; Life Care Planning; San Diego, CA called by: Jeffrey A. Milman, Thomas E. Rockett, III
- Laura R. Mahlmeister Ph.D., R.N.; Labor & Delivery; Belmont, CA called by: Jeffrey A. Milman, Thomas E. Rockett, III
- Arthur S. Shorr; Hospital Administration & Procedures; Woodland Hills, CA called by: Jeffrey A. Milman, Thomas E. Rockett, III
- George S. Romansky M.D.; Pediatric Pathology; Long Beach, CA called by: Jeffrey A. Milman, Thomas E. Rockett, III
- Michael Katz M.D.; Perinatology; San Francisco, CA called by: Jeffrey A. Milman, Thomas E. Rockett, III
- Wallace Peck M.D.; Pediatric Neurology; Newport Beach, CA called by: Jeffrey A. Milman, Thomas E. Rockett, III
- Catherine M. Graves M.B.A.; Economics; Fullerton, CA called by: Jeffrey A. Milman, Thomas E. Rockett, III

**Defendant(s):**

- Erna Kwong, M.D.
- Klara Vogel, M.D.
- Cornelia Daly, M.D.
- Bayside Anesthesia Medical Group
- Saint John's Health Center, formerly known as St. John's Hospital
- Frumovitz, Matsunaga, Daly, Ross, Thordarson, Vogel and Klevens, M.D.'s

**Defense  
Attorney(s):**

- Michael A. O'Flaherty; Fonda & Fraser, L.L.P.; Glendale, CA for Saint John's Health Center, formerly known as St. John's Hospital
- None reported for Bayside Anesthesia Medical Group, Cornelia Daly, M.D., Frumovitz, Matsunaga, Daly, Ross, Thordarson, Vogel and Klevens, M.D.'s, Erna Kwong, M.D., Klara Vogel, M.D.

**Defendant  
Expert(s):**

- Anne Taylor R.N.; Nursing; San Diego, CA called by: for Michael A. O'Flaherty
- Juan C. Felix M.D.; Placental Pathology; San Marino, CA called by: for Michael A. O'Flaherty
- David Weiner M.B.A., A.M.; Economics; Los Angeles, CA called by: for Michael A. O'Flaherty
- Linda K. Olzack R.N.; Life Care Planning; Atwater, CA called by: for Michael A. O'Flaherty
- Kimberly BeDell M.D.; Life Expectancy & Mortality; Long Beach, CA called by: for Michael A. O'Flaherty

**Facts:**

On Feb. 9, 2008, plaintiff Mikhail Zimbalist was born at Saint John's Health Center in Santa Monica.

Mikhail's mother, plaintiff Mumtaz Zimbalist, was admitted to the hospital earlier that morning, and a nurse admitted her to the Labor & Delivery unit, reviewed her fetal heart strip and reported telephonically to the on-call obstetrician, Dr. Klara Vogel. Another nurse then took over at 3 a.m. and spoke to Vogel at about 3:30 a.m., during which the physician ordered the preparation for a Cesarean section. However, the anesthesiologist assigned to Labor & Delivery, Dr. Erna Kwong, was doing another C-section at that time. As a result, the first incision was not performed until 4:39 a.m. by Dr. Cornelia Daly. Mikhail was ultimately born severely depressed and had to be resuscitated before being transferred to the neonatal intensive care unit.

Mrs. Zimbalist, acting individually and as Mikhail's guardian ad litem, and the child's father, Efrem Zimbalist IV, sued Saint John's Health Center; Vogel; Daly; their medical group, Frumovitz, Matsunaga, Daly, Ross, Thordarson, Vogel and Klevens, M.D.'s; Kwong; and her medical office; Bayside Anesthesia Medical Group. Mr. and Mrs. Zimbalist alleged that the defendants failed to timely perform the C-section, constituting medical malpractice.

Vogel and her medical office agreed to settle prior to trial. Daly, Kwong and Kwong's office were dismissed prior to trial for a waiver of costs. Thus, the matter proceeded to trial against Saint John's Health Center only.

Plaintiffs' counsel contended Mikhail was suffering from fetal distress prior to delivery as a result of a progressively worsening placental abruption. They argued that the hospital's nursing staff was negligent for not summoning a back-up anesthesiologist, as Kwong was doing another C-section. Counsel argued that as a result of the prolonged fetal distress due to the C-section delay, Mikhail suffered permanent neurologic injuries. They asserted that the hospital violated the 30-minute decision-to-incision rule, and that Mikhail would not have suffered any defects if he was born 30 to 45 minutes sooner.

Plaintiffs' counsel noted that Vogel, before resolving her case, gave a deposition where she was highly critical of the nurses and that, at trial, the physician was again very critical of the nurses. The plaintiffs' nursing expert also testified to a long list of criticisms of the hospital's nursing staff. (However, defense counsel noted that the plaintiffs' hospital administration expert was permitted to testify over the objections of the hospital's counsel, as the expert had no license as a nurse or a medical doctor.)

Counsel for Saint John's Health Center contended that Vogel arrived at 3:46 a.m. and chose to wait for her partner, Daly, to show up to do the C-section. Thus, counsel argued that the hospital's nursing staff was not negligent and did not cause a delayed delivery. In addition, defense counsel argued that the placental abruption occurred before Zimbalist was admitted to the hospital.

**Injury:** Mikhail was suffered fetal distress, resulting in hypoxic encephalopathy, or cerebral hypoxia, in which not enough oxygen was getting to the brain. He was born severely depressed and subsequently had to be resuscitated before being transferred to the neonatal intensive care unit.

Mikhail, who was 3.5 at the time of trial, suffers from quadriplegia and hypotonia, or low muscle tone, as a result of his injuries prior to birth. His parents claim that their child requires assistance with all aspects of daily living. The plaintiffs' expert opined that Mikhail's life expectancy is only 50 to 60 years. However, the defense's expert opined that Mikhail's life expectancy was 20 to 25 years.

Mikhail's parents sought recovery of approximately \$180,000 for their claimed past out-of-pocket expenses and \$4.5 million to \$12 million for their future out-of-pocket expenses depending on Mikhail's life expectancy. They also claimed a loss of earning capacity for Mikhail of \$1.2 million to \$1.7 million. There were also three noneconomic \$250,000 MICRA caps.

"Obamacare" was ruled inadmissible by the trial court judge as speculative due to a constitutional challenge.

**Result:** The jury rendered a defense verdict. It found that Saint John's Health Center was not negligent.

### **Trial Information:**

**Judge:** Linda K. Lefkowitz

**Demand:** \$3.5 million for St. John's Health Center

**Offer:** \$1.7 million from St. John's Health Center

**Trial Length:** 5 weeks

**Trial Deliberations:** 3 days

**Jury Vote:** 10-2

**Editor's Comment:** This report is based on information that was provided by counsel for Saint John's Health Center. Plaintiffs' counsel declined to contribute and the remaining defense counsel were not asked to contribute.

**Writer** Priya Idiculla

## Lack of oxygen during delivery resulted in cerebral palsy

**Type:** Settlement

**Amount:** \$9,500,000

**State:** Illinois

**Venue:** Cook County

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

**Injury Type(s):**

- *brain - cerebral palsy*
- *paralysis/quadriplegia - quadriplegia*

**Case Type:**

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

**Case Name:** The Private Bank, as Guardian of the Estate of Patrick Ryan O'Come, a minor v. Sherman Health Systems d/b/a Sherman Hospital, a corporation; Mary Traub, R.N., C.N.M., W.S.K., S.C., a corporation; Fox Valley Women's Healthcare, S.C., a corporation; Jae Eun Han, M.D.; Brad L. Epstein, M.D.; Brad L. Epstein, M.D., a corporation; and Suburban Women's Health Specialists Ltd., a corporation, No. 04 L 5058

**Date:** April 15, 2010

**Plaintiff(s):**

- Patrick O'Come (Male, 1 Years)

**Plaintiff Attorney(s):**

- Barry R. Chafetz; Corboy & Demetrio, P.C.; Chicago IL for , , Patrick O'Come
- Shawn S. Kasserman; Corboy & Demetrio, P.C.; Chicago IL for , , Patrick O'Come
- Margaret M. Power; Pretzel & Stouffer, Chtd.; Chicago IL for , , Patrick O'Come

**Plaintiff Expert  
(s):**

- Alan Hill M.D.; Pediatric Neurology; , called by: Barry R. Chafetz, Shawn S. Kasserman, Margaret M. Power
- Frank Bottiglieri M.D.; Gynecology; Towson, MD called by: Barry R. Chafetz, Shawn S. Kasserman, Margaret M. Power
- Henry Brennan Jr. MS, SLP; Life Care Planning; Westchester, IL called by: Barry R. Chafetz, Shawn S. Kasserman, Margaret M. Power
- Laura R. Mahlmeister Ph.D., R.N.; Obstetrics Nursing; Belmont, CA called by: Barry R. Chafetz, Shawn S. Kasserman, Margaret M. Power
- Howard Stein M.D.; Neonatology; Toledo, OH called by: Barry R. Chafetz, Shawn S. Kasserman, Margaret M. Power
- Pamela Kelly R.N., CNM; Obstetrics Nursing; Tampa, FL called by: Barry R. Chafetz, Shawn S. Kasserman, Margaret M. Power
- Robert A. Zimmerman M.D.; Pediatric Neurology; Philadelphia, PA called by: Barry R. Chafetz, Shawn S. Kasserman, Margaret M. Power
- Catalin S. Buhimschi M.D.; Fetal Medicine; New Haven, CT called by: Barry R. Chafetz, Shawn S. Kasserman, Margaret M. Power
- Charles M. Linke Ph.D.; Life Care Planning; Champaign, IL called by: Barry R. Chafetz, Shawn S. Kasserman, Margaret M. Power
- Richard Paul Bonfiglio M.D.; Physical Medicine; Murrysville, PA called by: Barry R. Chafetz, Shawn S. Kasserman, Margaret M. Power

**Defendant(s):**

- W.S.K., S.C
- Mary Traub, R.N.
- Jae Eun Han, M.D.
- Brad L. Epstein, M.D
- Brad L. Epstein, M.D, a corporation
- Fox Valley Women's Healthcare, S.C.
- Suburban Women's Health Specialists Ltd.
- Sherman Health Systems d/b/a Sherman Hospital

**Defense  
Attorney(s):**

- Jennifer A. Lowis; Lowis & Gellen; Chicago, IL for Sherman Health Systems d/b/a Sherman Hospital
- Michael R. Slovis; Cunningham, Meyer & Vedrine; Chicago, IL for Brad L. Epstein, M.D, Brad L. Epstein, M.D, a corporation, Suburban Women's Health Specialists Ltd.
- Edward H. Nielsen; Pretzel & Stouffer, Chartered; Chicago, IL for Fox Valley Women's Healthcare, S.C., Jae Eun Han, M.D., W.S.K., S.C

**Defendant  
Expert(s):**

- John E. Scarbrough Ph.D.; Economics; Ridgefield, CT called by: for Jennifer A. Lowis
- James Smith M.D.; Obstetrics; Arlington Heights, IL called by: for Michael R. Slovis
- Andrew Morgan M.D.; Pediatrics; Peoria, IL called by: for Jennifer A. Lowis, Michael R. Slovis, Edward H. Nielsen
- Bonnie F. Chez R.N.; Obstetrics Nursing; Tampa, FL called by: for Jennifer A. Lowis
- Marcia Patterson R.N.; Obstetrics Nursing; Naperville, IL called by: for Jennifer A. Lowis
- Anthony Sciscione D.O., M.F.; Fetal Medicine; Westchester, PA called by: for Jennifer A. Lowis, Michael R. Slovis, Edward H. Nielsen
- Cathlin Vinett R.N.; Life Care Planning; Brentwood, TN called by: for Jennifer A. Lowis
- Stephen Glass M.D.; Pediatric Neurology; Woodinville, WA called by: for Jennifer A. Lowis
- Geoffrey Machin M.D.; Placental Pathology; , called by: for Jennifer A. Lowis
- Elisabeth D. Howard Ph.D., CNM; Labor & Delivery; Providence, RI called by: for Edward H. Nielsen,
- Frederick Harlass M.D.; Fetal Medicine; El Paso, TX called by: for Edward H. Nielsen,

**Facts:**

On Oct. 28, 1996, plaintiff Patrick O'Come was delivered to mother Helen O'Come at Sherman Hospital in Elgin. The mother was nine months pregnant and in labor when she was admitted at around 2:10 a.m. At 2:15 a.m., Mary Traub, a nurse midwife, was notified of her admission. Nurse Judith Crawford noticed decreases in the fetal heart rate at 7:14 a.m. and 7:56 a.m., caused by umbilical cord compression. Traub reported to the hospital and initially performed a sterile vaginal examination at 8:06 a.m. Around that time, Traub spoke by telephone to Dr. Brad L. Epstein, who was substituting for Dr. Jae Eun Han., and was told that Han would not be readily available should an obstetrician be required because he was in Korea. Han was Traub's sponsoring physician. A nurse midwife works under the supervision of an obstetrician.

At 9:20 a.m., when the cervix was completely dilated, the mother was instructed to push with her contractions. At that time, a continuous tracing of the fetal heart rate was lost. Fourteen minutes later, Traub noticed a drop in the fetal heart rate caused by umbilical cord compression. Traub decided to apply fundal pressure to the mother's abdomen to vaginally deliver the baby. Compression of the umbilical cord restricted the flow of oxygen to the fetus during the final 15 minutes of labor. The lack of oxygen resulted in cerebral palsy.

As manager of Patrick's estate, the Private Bank sued Sherman Health Systems, operating as Sherman Hospital; Traub; W.S.K., S.C.(Han's corporation); Fox Valley Women's Healthcare, S.C., Traub's employer; Han; Epstein; Brad L. Epstein, M.D., a corporation; and Suburban Women's Health Specialists Ltd. (Epstein's corporation), for medical malpractice.

Plaintiff's counsel argued that in response to a drop in the fetal heart rate, Traub mismanaged Patrick's delivery by applying fundal pressure. Traub should have had the mother stop pushing, and then should have initiated intrauterine resuscitation while an obstetrician was summoned. The labor and delivery room nurse also should have applied



intrauterine resuscitation.

Traub should have consulted with an obstetrician when she identified the drop in fetal heart rate, but an obstetrician was not readily available at the hospital, plaintiff's counsel argued. Han, Traub's sponsoring physician, was out of the country. Plaintiff's counsel argued that Sherman Hospital was negligent for its failure to have adequate policies and procedures in place to provide a physician for midwife support. The plaintiff also claimed the hospital was liable for the actions of its labor and delivery nurses.

Experts in defense of Han, Fox Valley Women's Healthcare and Traub opined that Traub met the standard of care. They claimed that even though there were periodic decelerations of the fetal heart rate, the tracing was overall reassuring until the end, when there was a 10- to 12-minute decrease in the heart rate. They justified Traub's use of fundal pressure to deliver the baby within 15 minutes as a faster method than having to perform an emergency C-section.

Epstein's defense was that he was only notified around 8 a.m. that the mother was in labor. He stated had he been called when the 10- to 12-minute drop in the fetal heart rate occurred, he would have instructed Traub to have the mother stop pushing and institute intrauterine resuscitation. Epstein believed at the time of day, during the week, an obstetrician would have been readily available.

The hospital's defense was that the labor and delivery nurses were under no duty to supervise or review the care given by Traub. In accordance with American Congress of Obstetricians and Gynecologists guidelines, the certified nurse midwife criteria required that the sponsoring physician or his/her physician designee be readily available to care for his or her certified nurse midwife's patient in the event of an emergency. It was the responsibility of the certified nurse midwife and the sponsoring physician to know and have an obstetrician readily available. The certified nurse midwife criteria required Traub to collaborate with the backup physician, not the labor and delivery nurses.

**Injury:** Patrick is intellectually intact, but is a quadriplegic and cannot verbally communicate. He needs assistance in all activities of daily living. He will require a 24-hour attendant and speech therapy to assist with his use of a communication device.

The defendants did not contest that Patrick sustained a permanent brain injury during the last 15 minutes of labor and delivery.

**Result:** Prior to trial, the parties reached a \$9.5 million settlement agreement. Fox Valley Women's Healthcare paid \$1 million, Han paid \$1 million and Sherman Hospital paid \$7.5 million.

### **Trial Information:**

**Judge:** Jennifer Duncan Brice, Daniel Locall

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

**Writer**

Shannon Green

## Child's brain deprived of oxygen during uterine rupture

**Type:** Verdict-Mixed

**Amount:** \$30,953,181

**State:** Ohio

**Venue:** Montgomery County

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

**Injury Type(s):**

- *brain* - brain damage; cerebral palsy; brain abnormalities
- *other* - ischemia; loss of society; seizure disorder; loss of consortium
- *neurological* - neurological impairment
- *sensory/speech* - speech/language, impairment of
- *arterial/vascular* - acidosis
- *mental/psychological* - birth defect; mental retardation; neuropsychological; cognition, impairment
- *pulmonary/respiratory* - hypoxia; respiratory

**Case Type:**

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

**Case Name:** Renetha and Douglas Stanziano, individually and as parents, natural guardians and custodians of Leondo Stanziano, a minor v. Miami Valley Hospital, Kedrin Van Steenwyk, D.O. and Contemporary Obstetrics and Gynecology, No. 2006CV5798

**Date:** July 06, 2009

**Plaintiff(s):**

- Doug Stanziano (Male, 30 Years)
- Angelo Stanziano (Male)
- Leondo Stanziano (Male, 1 Years)
- Victor Stanziano (Male)
- Renetha Stanziano (Female, 38 Years)

**Plaintiff Attorney(s):**

- Patrick J. Beirne; The Lawrence Firm, PSC; Covington KY for Doug Stanziano, Renetha Stanziano, Leondo Stanziano
- Richard D. Lawrence; The Lawrence Firm, PSC; Covington OH for Doug Stanziano, Renetha Stanziano, Leondo Stanziano
- Kenneth M. Sigelman; Kenneth M. Sigelman & Associates; San Diego CA for Doug Stanziano, Renetha Stanziano, Leondo Stanziano

**Plaintiff Expert(s):**

- Mary K. Edwards-Brown M.D.; Neuroradiology; Indianapolis, IN called by: Patrick J. Beirne, Richard D. Lawrence, Kenneth M. Sigelman
- Paul Gatewood M.D.; Obstetrics; Canfield, OH called by: Patrick J. Beirne, Richard D. Lawrence, Kenneth M. Sigelman
- Laura R. Mahlmeister Ph.D., R.N.; Labor & Delivery; San Francisco, CA called by: Patrick J. Beirne, Richard D. Lawrence, Kenneth M. Sigelman
- Terry Winkler M.D.; Physical Medicine; Springfield, MO called by: Patrick J. Beirne, Richard D. Lawrence, Kenneth M. Sigelman
- Harvey S. Rosen Ph.D.; Economics; Cleveland, OH called by: Patrick J. Beirne, Richard D. Lawrence, Kenneth M. Sigelman
- Kenneth F. Swaiman M.D.; Pediatric Neurology; Minneapolis, MN called by: Patrick J. Beirne, Richard D. Lawrence, Kenneth M. Sigelman
- Russell Jelsima M.D.; Fetal Medicine; Grand Rapids, MI called by: Patrick J. Beirne, Richard D. Lawrence, Kenneth M. Sigelman
- Lawrence Borow M.D.; Obstetrics; Bala Cynwyd, PA called by: Patrick J. Beirne, Richard D. Lawrence, Kenneth M. Sigelman

**Defendant(s):**

- Miami Valley Hospital
- Kedrin Van Steenwyk, D.O.
- Contemporary Obstetrics and Gynecology

**Defense Attorney(s):**

- Neil F. Freund; Freund Freeze & Arnold; Dayton, OH for Miami Valley Hospital
- Julia A. Turner; Freund Freeze & Arnold; Dayton, OH for Miami Valley Hospital, Contemporary Obstetrics and Gynecology
- Susan Blasik-Miller; Freund Freeze & Arnold; Dayton, OH for Kedrin Van Steenwyk, D.O.
- Adam C. Armstrong; Freund Freeze & Arnold; Dayton, OH for Contemporary Obstetrics and Gynecology, Kedrin Van Steenwyk, D.O.

**Defendant Expert(s):**

- Baha Sabai M.D.; Fetal Medicine; Cincinnati, OH called by: for Neil F. Freund, Julia A. Turner, Susan Blasik-Miller, Adam C. Armstrong
- Gary D. Hankins M.D.; Fetal Medicine; Galveston, TX called by: for Neil F. Freund, Julia A. Turner, Susan Blasik-Miller, Adam C. Armstrong
- Mark Scher M.D.; Pediatric Neurology; Cleveland, OH called by: for Neil F. Freund, Julia A. Turner, Susan Blasik-Miller, Adam C. Armstrong
- Paul D. Gatewood M.D.; Obstetrics; Oberlin, OH called by: for Neil F. Freund, Julia A. Turner, Susan Blasik-Miller, Adam C. Armstrong
- Stephen J. Devoe M.D.; Fetal Medicine; Columbus, OH called by: for Neil F. Freund, Julia A. Turner, Susan Blasik-Miller, Adam C. Armstrong

**Facts:**

On the evening of Dec. 10, 2000, plaintiff Renetha Stanziano, 38, a secretary, was full term in her pregnancy with her third child, Leondo, when she was admitted to Miami Valley Hospital in Dayton, for scheduled labor induction. Stanziano delivered her first child vaginally and her second child via Caesarian section. After her discussions with her obstetrician at Contemporary Obstetrics and Gynecology in Dayton, she agreed to attempt a vaginal birth after Caesarian section (VBAC).

On Dec. 11 shortly after midnight, Stanziano was given cervical gel. At 4:14 a.m., she was administered Pitocin, which gradually increased to six milliunits and maintained at that level until the infusion ended, to augment her uterine contractions. Over the next

several hours, the fetal heart monitor indicated that the frequency of uterine contractions was more than five per 10 minutes for the majority of the time.

Shortly after 7 a.m., within minutes of the nursing shift change, Stanziano became four centimeters dilated, and LuAnn Slusher, the labor and delivery nurse, called Kedrin Van Steenwyk (the on-call OB/GYN for Contemporary Obstetrics and Gynecology), who was making rounds at a nearby hospital, and told the physician that Stanziano was in active labor and was fine.

Stanziano alleged that the nurse failed to communicate to Van Steenwyk that she had hyperstimulated throughout the evening, and that from 7 a.m. to 9 a.m. that morning she continued to hyperstimulate, having had no 10-minute period in which there was no less than five contractions. The nursing staff continued to read the electronic fetal monitoring strips as normal.

The fetal heart rate remained reassuring until approximately 8:50 a.m., at which time there were decelerations from a baseline of 140 beats per minute down to 90. The fetal heart rate returned to a baseline of 140 until approximately 9 a.m., at which time it descended over approximately two minutes to 70, and then became undetectable on the monitor tracing at approximately 9:02 a.m. Slusher examined Stanziano shortly thereafter and was unable to feel the baby's presentation (in this case, the baby's head, since he was in a vertex position). She asked another labor and delivery nurse, Collette Zollars, to do an assessment, and Zollars's findings were the same as Slusher's. The Pitocin was turned off at 9:13 a.m. and at 9:16 a.m., Slusher paged the resident on duty and, one minute later, paged Van Steenwyk.

By 9:20, the resident obstetrician performed an ultrasound and observed the fetus extruded and outside the uterus and in the mother's upper abdomen. The resident called for an immediate Caesarian section, and Leondo was delivered at 9:33 a.m. with a severe combined metabolic/respiratory acidosis, poor muscle tone, poor reflexes and no respiratory effort. After Leondo was born, it was noted that the placenta was completely abrupted, meaning his oxygen supply had been entirely cut off at some point prior to his ultimate delivery. Van Steenwyk arrived at the hospital shortly after the child's birth.

Stanziano and her husband, on behalf of Leondo, sued the hospital, Van Steenwyk, and her practice for medical malpractice. Plaintiffs' counsel argued that the definition of uterine hyperstimulation, as defined in the hospital's own documents, is more than five contractions within a 10-minute period, regardless of whether there are also fetal heart rate changes. Under this protocol, the nurses had a further duty to stop or reduce the Pitocin infusion and to contact the attending physician immediately.

According to the plaintiffs' labor and delivery nurse expert, the hospital's nursing staff breached the standard of care by continuing to administer Pitocin in light of Stanziano's abnormal contraction patterns throughout the labor; the additional contractions put additional stress on the uterus and the prior incisional scar. The nurses violated the physician's order and hospital policies by failing to turn down and/or off the Pitocin in the face of Stanziano's hyperstimulation; they were negligent for failing to communicate and keep Van Steenwyk apprised of the plaintiff's condition; the nursing staff failed to understand and appreciate the presence of the hyperstimulated uterus on the fetal heart monitor; and they were negligent in waiting 15 to 20 minutes before calling an obstetrical code when presented with signs of uterine rupture with associated loss of fetal heart rate.

Plaintiffs' counsel contended that, if the Pitocin had been timely discontinued, the uterine rupture would not have occurred; also, if a physician had timely assessed Stanziano once the fetal heart rate dropped, a crash C-section would have been performed quickly enough for any permanent neurologic injury to have been avoided. These theories were supported by the plaintiffs' maternal fetal medicine, obstetrical and pediatric neurology experts.

Counsel further argued that Van Steenwyk, as the attending physician, should have come to the hospital and been in closer contact with the labor and delivery nurse than the one telephone conversation that she had at approximately 7 a.m.

The defendants denied the allegations. Both defendants disputed the plaintiffs' definition of hyperstimulation, arguing that it isn't the number of contractions but whether the fetal heart changes become non-reassuring. Therefore, since Leondo's fetal heart did not become non-reassuring, no hyperstimulation occurred, the defendants argued, adding that Stanziano had given informed consent to the VBAC procedure and had suffered a recognized complication. The defense maintained that uterine ruptures can occur with or without cervical ripening agents such as Prostin, and with or without Pitocin.

The hospital's experts testified that the subject nurses closely monitored the fetal heart monitor throughout the labor and said that there was no hyperstimulation, as the fetus appeared to be doing well and there was no need to intervene. Stanziano's uterine rupture was a sudden, catastrophic event that could not have been prevented, according to the experts, who said that the hospital properly assessed the situation and delivered the child as soon as reasonably possible.

Counsel for Van Steenwyk argued that the obstetrician met the standard of care, and that she was not required to be personally present at the hospital during the labor because the resident physician of obstetrics was present who could perform an emergency Caesarian section upon demand, which the physician successfully did.

**Injury:**

Leondo suffered hypoxic-ischemic encephalopathy and was later diagnosed with cerebral palsy. He was intubated shortly after his birth and then taken to the neonatal care unit. Since discharge, the child has required constant supervision.

The plaintiffs' experts all agreed that within 15 to 18 minutes of the uterine rupture, it is more probable than not that Leondo would have been born without significant morbidity, and that he likely went 10 to 15 minutes without oxygen. According to the plaintiffs' pediatric neurologist, Leondo primarily suffered an anoxic brain injury of an acute profound nature; however, despite his severe impairment, Leondo was able to recognize his family and interact with them in a very limited extent. The Stanzianos sought a little over \$100,000 for past medical expenses.

Unable to use his extremities and barely able to speak, the minor, who suffers regular seizures, relies on nutrition through a feeding tube in his stomach (the tube needs to be changed at least once a day) and is confined to a motorized wheelchair. Leondo, who was 8.5 years old at the time of trial, is able to attend a public school's special needs classroom, where he spends half of the day (the other half is spent receiving treatment by a licensed practical nurse).

With an estimated life expectancy of 70 years (as testified by the plaintiffs' physiatrist and life care planner), the Stanzianos sought \$2.5 million for future lost earnings and a \$25.9-million health and life care plan that includes feeding-tube changes, part-time and later full-time nurse care, anti-seizure medication, periodical neurological assessments and evaluations, wheelchair replacements and handicap modifications to the home.

The Stanzianos both talked about their son's disability and how the family, which consists of two other sons, has adapted to Leondo and how they are limited in what they can do as a whole (i.e., going out to eat as a family). Renetha Stanziano said that she had to quit her job as a secretary as well as a bachelor's degree she was pursuing - she is three credit hours shy from earning the degree - to take care of her son full time. She talked about changing Leondo's feeding tube and how she and her husband have never had a night as a couple since his birth. Doug, who adjusted his working hours for his son, testified that Leondo's condition devastated their once relatively normal lives - financially, professionally and personally.

The defense pediatric neurologist opined that Leondo would only live to his 20s; Therefore, since medical expenses for the first 8.5 years of his life totaled approximately \$60,000, the reasonable cost of caring for him for the rest of his life was approximately \$7,000 per year.

**Result:**

The jury found the hospital negligent, but Van Steenwyk and her practice, Contemporary Obstetrics and Gynecology, were not negligent. It awarded the plaintiffs \$30,953,181.

**Angelo Stanziano**

\$75,000 Personal Injury: loss of consortium

**Doug Stanziano**

\$300,000 Personal Injury: loss of consortium

**Leondo Stanziano**

\$25,983,217 Personal Injury: Future Medical Cost

\$200,000 Personal Injury: Future Loss Enjoyment Of Life

\$2,019,964 Personal Injury: FutureLostEarningsCapability

\$2,000,000 Personal Injury: pain and suffering

**Renetha Stanziano**

\$300,000 Personal Injury: loss of consortium

**Victor Stanziano**

\$75,000 Personal Injury: loss of consortium

**Trial Information:**

**Judge:** Magistrate Timothy N. O'Connell

**Demand:** \$8,000,000

**Offer:** \$3,000,000

**Trial Length:** 16 days

**Trial Deliberations:** 1 days

**Jury Vote:** 7 to 1



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

**Post Trial:** The parties settled confidentially after negotiating a high-low agreement during jury deliberation.

**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 - Brain Damage

**Type:** Settlement

**Amount:** \$975,000

**State:** Michigan

**Venue:** Wayne County

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

**Case Type:**

- *Domestic Relations*
- *Medical Malpractice*

**Case Name:** I.W., a minor by his Next Friend and Mother, Nicole Robinson v. Bohdan Danysh, M.D., Oakwood Healthcare, Inc., a Michigan nonprofit corporation, assumed names: Oakwood Hospital and Medical Center, Oakwood Healthcare Center - Mercury Drive, Oakwood Healthc, No. 07-707921-NH

**Date:** November 14, 2008

**Plaintiff(s):**

- I.W., a minor (Male, 0 Years)
- Nicole Robinson

**Plaintiff Attorney(s):**

- Jesse M. Reiter; ; Bloomfield Hills MI for I.W., a minor
- James R. McCullen; ; Bloomfield Hills MI for I.W., a minor
- Juliana B. Sabatini; ; Bloomfield Hills MI for I.W., a minor

**Plaintiff Expert(s):**

- Paul Gatewood M.D.; Gynecology; Akron, OH called by:
- Laura Kling R.N.; Life Care Planning; Southfield, MI called by:
- Laura Mahlmeister Ph.D.; Obstetrics Nursing; San Francisco, CA called by:
- Nitin Paranjpe Ph.D.; Economics; Bloomfield Hills, MI called by:
- Robert Cullen M.D.; Pediatric Neurology; Miami, FL called by:
- Ronald Zack M.D.; Gynecology; Bloomfield Hills, MI called by:

**Defendant(s):**

- Bohdan Danysh, M.D., Oakwood Healthcare, Inc., a Michigan nonprofit corporation, assumed names: Oakwood Hospital and Medical Center, Oakwood Healthcare Center - Mercury Drive, Oakwood Healthcare Center - Westland individually, jointly & severally

**Defense  
Attorney(s):**

- David R. Nauts; Detroit, MI for Bohdan Danysh, M.D., Oakwood Healthcare, Inc., a Michigan nonprofit corporation, assumed names: Oakwood Hospital and Medical Center, Oakwood Healthcare Center - Mercury Drive, Oakwood Healthcare Center - Westland individually, jointly & severally
- Elisabeth A. McIntyre; Detroit, MI for Bohdan Danysh, M.D., Oakwood Healthcare, Inc., a Michigan nonprofit corporation, assumed names: Oakwood Hospital and Medical Center, Oakwood Healthcare Center - Mercury Drive, Oakwood Healthcare Center - Westland individually, jointly & severally

**Defendant  
Expert(s):**

- Harry Chugani M.D.; Pediatric Neurology; Detroit, MI called by: for
- Jeffrey Obron M.D.; Gynecology; W. Bloomfield, MI called by: for
- Catherine Cochell R.N.; Nursing; St. Clair Shores, MI called by: for

**Facts:**

A newborn suffered significant brain damage allegedly as a result of a delayed C-section. Defendants denied liability, but agreed to settle the claims for \$975,000 prior to trial.

Plaintiff Nicole Robinson received prenatal treatment for her pregnancy from Defendant Oakwood Healthcare and defendant OB/GYN, Bohdan Danysh, M.D., from July through December 2001. Plaintiff I.W. was born via C-section with signs of hypoxia, ischemia and anoxia, which plaintiffs claimed resulted in cerebral palsy, mental retardation, developmental delays and brain damage.

Plaintiffs alleged that Defendants Danysh and Oakwood Healthcare failed to properly determine plaintiff mother's last menstrual period and assess the gestational age of the fetus. Further, plaintiffs maintained that defendants failed to determine intrauterine growth restriction, diagnose amniotic fluid volume prenatally or timely perform a C-section.

Defendants denied all allegations. Defendants argued that the mother did not seek prenatal care until she was approximately four months pregnant and failed to follow the advice of her treaters with regard to appointments and testing.

Plaintiff I.W. was a newborn male.

**Injury:**

Hypoxia, ischemia, anoxia, cerebral palsy, mental retardation, developmental delays and brain damage as a result of delayed C-section delivery. Plaintiff I.W. required permanent 24/7 supervisory care and would be unable to engage in household chores and personal needs. Plaintiffs also claimed I.W. would be unable to pursue the normal activities of life and would have a reduced earning capacity.

**Result:**

\$975,000, including \$532,620 to a trust for I.W.

**Trial Information:**

**Judge:**

Prentis Edwards

**Editor's  
Comment:**

Information for this summary was obtained from another published source.

**Writer**

## Inexperienced nurse, absent OB-GYN to blame, mother alleged

**Type:** Verdict-Plaintiff

**Amount:** \$4,248,208

**State:** Washington

**Venue:** King County

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

**Injury Type(s):**

- *brain - cerebral palsy*
- *paralysis/quadriplegia - spastic quadriplegia*

**Case Type:**

- *Medical Malpractice - Nurse; Hospital; Birth Injury*

**Case Name:** Sharla Tavares v. Evergreen Hospital, No. 06-2-17528-0SEA

**Date:** October 09, 2008

**Plaintiff(s):**

- Miriam Tavares (Female, 1 Years)
- Sharla Tavares (Female, 35 Years)

**Plaintiff Attorney(s):**

- John Budlong; Law Offices of John Budlong; Edmonds WA for Sharla Tavares
- Faye J. Wong; Law Offices of John Budlong; Edmonds WA for Sharla Tavares
- Ronald Scott Bemis; Stafford Frey Cooper PC; Seattle WA for Sharla Tavares

**Plaintiff Expert  
(s):**

- Laura R. Mahlmeister Ph.D., R.N.; Nurse Practitioner; San Francisco, CA called by: John Budlong, Faye J. Wong, Ronald Scott Bemis
- Donald Taylor MD; Standard of Care; Chicago, IL called by: John Budlong, Faye J. Wong, Ronald Scott Bemis
- Lowell R. Bassett Ph.D.; Economics; Seattle, WA called by: John Budlong, Faye J. Wong, Ronald Scott Bemis
- Steven Glass MD; Pediatric Neurology; Woodenville, WA called by: John Budlong, Faye J. Wong, Ronald Scott Bemis
- Anthony Choppa MA; Life Care Planning; Bothell, WA called by: John Budlong, Faye J. Wong, Ronald Scott Bemis
- Patrick M.D. Barnes; Pediatric Neurology; Palo Alto, CA called by: John Budlong, Faye J. Wong, Ronald Scott Bemis
- William Rodgers MD, PhD; Placental Pathology; New York, NY called by: John Budlong, Faye J. Wong, Ronald Scott Bemis

**Defendant(s):**

- Evergreen Hospital

**Defense  
Attorney(s):**

- Ralph F. Valitutti Jr.; Detroit, MI for Evergreen Hospital
- Mary K McIntyre; McIntyre & Barns; Seattle, WA for Evergreen Hospital

**Defendant  
Expert(s):**

- Gary Spector MD; Pediatrics; Seattle, WA called by: for Ralph F. Valitutti Jr., Mary K McIntyre
- David Luthy MD; Standard of Care; Seattle, WA called by: for Ralph F. Valitutti Jr., Mary K McIntyre
- Linda Chagnon RN; Standard of Care; Seattle, WA called by: for Ralph F. Valitutti Jr., Mary K McIntyre
- Robert A. Zimmerman M.D.; Neuroradiology; Philadelphia, PA called by: for Ralph F. Valitutti Jr., Mary K McIntyre
- Thomas Garite MD; Standard of Care; Steamboat Springs, CO called by: for Ralph F. Valitutti Jr., Mary K McIntyre
- Michael Painter MD; Pediatric Neurology; Pittsburgh, PA called by: for Ralph F. Valitutti Jr., Mary K McIntyre

**Insurers:**

- Lexington Insurance

**Facts:**

On May 30, 2003, plaintiff Miriam Tavares was delivered via Caesarean section by Dr. Shaunie Keys at Evergreen Hospital to mother plaintiff Sharla Tavares, 30, who was in her 42nd week. The birth occurred the day before the scheduled delivery. Tavares was a patient of Dr. Debra Stemmerman. Her pregnancy was considered high risk because she had suffered a placental abruption during the birth of her son seven years prior. She also had a blood-clotting disorder that predisposed her to a repeat abruption. A placental abruption occurred in Miriam's birth, which deprived her of oxygen for 20 to 25 minutes, resulting in significant birth defects. She was diagnosed with cerebral palsy and spastic quadriplegia.

Stemmerman had seen the mother earlier in the day of the birth and told her to call the hospital if she went into active labor. About two hours after seeing Stemmerman, Tavares called the hospital and told them she was having painful cramping and contractions. The hospital labor and delivery charge nurse told Tavares to come to the hospital for a labor evaluation.

Keys, who is Stemmerman's partner, was on call in the labor and delivery unit that night. The nurses let her go home to have dinner rather than telling her that Tavares was expected to deliver. About five minutes after the abruption occurred, the nurses called Keys. She arrived at the hospital in about 13 minutes and delivered the baby within about seven minutes.

Tavares, on behalf of her daughter, sued Evergreen Hospital and Stemmerman, alleging that their negligence constituted medical malpractice. The mother claimed that Stemmerman should not have allowed the pregnancy to continue beyond 40 weeks. Stemmerman settled prior to trial.

Against the hospital, plaintiffs' counsel claimed that the hospital nurses did not read her prenatal record and did not know she was high risk for an abruption. Plaintiffs' counsel asserted that Tavares was assigned to an inexperienced nurse who did not recognize the warning signs on the fetal monitor of an imminent abruption.

Plaintiffs' counsel noted that a state Department of Health regulation requires an obstetrician to be present in a hospital obstetrics unit 24 hours a day. There was no obstetrician in the hospital at a time when Miriam should have been delivered via C-section.

Evergreen Hospital argued that it wasn't required to have a doctor in-house and the nurses were not negligent. Defense counsel contended that the injuries occurred before the mother arrived at the hospital.

**Injury:**

Miriam Tavares has profound cerebral palsy and spastic quadriplegia. Plaintiffs' counsel asked the jury for approximately \$22 million. The parents claimed loss of consortium.

**Result:**

The jury found that the hospital was negligent and proximately caused the child's injuries. The jury denied the claims for loss of consortium. It awarded \$4,248,208.

## **Miriam Tavares**

\$2,500,000 Personal Injury: future economic damages

\$1,400,000 Personal Injury: Injury/general damages

\$348,208 Personal Injury: past medical expenses

### **Trial Information:**

**Judge:** Steven Gonzalez

**Demand:** \$20,000,000

**Trial Length:** 5 weeks

**Trial  
Deliberations:** 3.5 days

**Jury Vote:** 11-1

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

**Post Trial:** Plaintiffs' counsel will move to establish that under the law, since parents' claims are solely derivative of the child's injuries the court has to direct a verdict in favor of the parents and then a new trial will take place on damages for the parents.

**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** Lois Elfman



## Medical Malpractice - Childbirth - Cerebral Palsy

**Type:** Settlement

**Amount:** \$1,100,000

**State:** Michigan

**Venue:** Wayne County

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

**Case Type:**

- *Domestic Relations*
- *Medical Malpractice*

**Case Name:** B.G., a minor by his next friend and mother, Nnenna Okey, and Nnenna Okey individually v. Harper-Hutzel Hospital d/b/a Hospital Partnership, Susan Berman, M.D. and Mark Redman, M.D., No. 06-603775-NH

**Date:** June 26, 2008

**Plaintiff(s):**

- Nnenna Okey
- B.G., a minor (Male, 0 Years)

**Plaintiff Attorney(s):**

- Jesse M. Reiter; ; Bloomfield Hills MI for B.G., a minor
- James R. McCullen; ; Bloomfield Hills MI for B.G., a minor

**Plaintiff Expert(s):**

- Jon Hazen M.D.; Gynecology; Las Vegas, NV called by:
- Helen Woodard M.A.; Life Care Planning; Lakewood, CO called by:
- Laura Mahlmeister Ph.D.; Obstetrics Nursing; San Francisco, CA called by:
- Nitin Paranjpe Ph.D.; Economics; Bloomfield Hills, MI called by:
- Robert Cullen M.D.; Pediatric Neurology; Miami, FL called by:
- Ronald Zack M.D.; Gynecology; Walled Lake, MI called by:
- William Topper M.D.; Pediatrics; Kansas City, MO called by:
- Lawrence Borow M.D.; Gynecology; Villanova, PA called by:

**Defendant(s):**

- Harper-Hutzel Hospital d/b/a Hospital Partnership, Susan Berman, M.D. and Mark Redman, M.D.

**Defense  
Attorney(s):**

- Jenna Paunovich Wright; Detroit, MI for Harper-Hutzel Hospital d/b/a Hospital Partnership, Susan Berman, M.D. and Mark Redman, M.D.
- Beth A. Wittmann; Detroit, MI for Harper-Hutzel Hospital d/b/a Hospital Partnership, Susan Berman, M.D. and Mark Redman, M.D.
- Laura L. Witty; Detroit, MI for Harper-Hutzel Hospital d/b/a Hospital Partnership, Susan Berman, M.D. and Mark Redman, M.D.
- Jill M. LaValette; Detroit, MI for Harper-Hutzel Hospital d/b/a Hospital Partnership, Susan Berman, M.D. and Mark Redman, M.D.
- Susan Healy Zitterman; Detroit, MI for Harper-Hutzel Hospital d/b/a Hospital Partnership, Susan Berman, M.D. and Mark Redman, M.D.
- Charles W. Fisher; Detroit, MI for Harper-Hutzel Hospital d/b/a Hospital Partnership, Susan Berman, M.D. and Mark Redman, M.D.
- Michael E. Geraghty; Detroit, MI for Harper-Hutzel Hospital d/b/a Hospital Partnership, Susan Berman, M.D. and Mark Redman, M.D.
- Beth R. Wickwire; Detroit, MI for Harper-Hutzel Hospital d/b/a Hospital Partnership, Susan Berman, M.D. and Mark Redman, M.D.

**Defendant  
Expert(s):**

- Harry Farb M.D.; Obstetrics; Minneapolis, MN called by: for
- Linda DePasquale R.N. M.S.N.; Neonatal Nursing; Akron, OH called by: for
- Renee Lajiness-O'Neill Ph.D.; Psychology/Counseling; Saline, MI called by: for
- Robert Long M.D.; Gynecology; Troy, MI called by: for

**Facts:**

A \$1,100,000 settlement was reached in a medical malpractice lawsuit alleging that doctors failed to properly manage a woman's labor and delivery, which plaintiffs said resulted in birth-related injuries. The defendants denied liability.

In 2002, Plaintiff Nnenna Okey was provided prenatal treatment by Defendants Susan Berman, M.D. and Mark Redman, M.D., both OB/GYNs with Defendant Harper-Hutzel Hospital. Prenatal ultrasounds allegedly revealed that Okey had a shortened cervix, a subchorionic hematoma (blood clot between the placenta and uterus), and a choroid plexus cyst (cyst in the middle of the fetal brain, usually temporary and gone by the 32nd week of pregnancy). Defendants induced labor at 41 weeks, followed by an emergency C-section. The baby allegedly suffered birth asphyxia, thrombocytopenia (the presence of relatively few platelets in the blood), hypocalcemia (the presence of low serum calcium levels in the blood) and cerebral palsy with permanent neurological/cognitive deficits.

Plaintiffs alleged that defendants failed to recognize the significance of the mother's condition and should have induced labor prior to 39 weeks gestation. Plaintiffs also argued that defendants failed to timely perform a C-section in light of non-reassuring fetal heart tones. Defendants denied all allegations and argued that they provided standard of care treatment.

Plaintiff B.G. was a newborn male.

**Injury:**

Cerebral palsy and neurological/cognitive deficits due to birth asphyxia, thrombocytopenia, and hypocalcemia. Plaintiffs claimed lifelong household care was necessary, as well as assistance with personal needs. Plaintiff mother sought damages for loss of consortium and services. Plaintiff B.G. was six years old at the date of settlement.

**Result:** \$1,100,000

**Trial Information:**

**Judge:** John A. Murphy

**Editor's Comment:** Information for this summary was obtained from another published source.

**Writer**

## Mother died from blood loss after childbirth

**Type:** Settlement

**Amount:** \$450,000

**State:** California

**Venue:** San Bernardino County

**Court:** Superior Court of San Bernardino County, Rancho Cucamonga, CA

**Case Type:**

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

**Case Name:** Doe Family v. Unnamed Hospital and Unnamed Doctor, No.

**Date:** June 06, 2007

**Plaintiff(s):**

- Doe Family

**Plaintiff Attorney(s):**

- Richard A. Cohn; Aitken, Aitken & Cohn; Santa Ana CA for Doe Family

**Plaintiff Expert (s):**

- Mark Zakowski M.D.; Anesthesiology; Los Angeles, CA called by: Richard A. Cohn
- James D. Leo M.D.; Internal Medicine; Long Beach, CA called by: Richard A. Cohn
- Laura R. Mahlmeister Ph.d RN; Nurse Practitioner; Belmont, CA called by: Richard A. Cohn
- Donald F. Mills M.D.; Anesthesiology; Newport Beach, CA called by: Richard A. Cohn
- Howard C. Mandel M.D.; Obstetrics; Los Angeles, CA called by: Richard A. Cohn
- Catherine M. Graves M.B.A.; Economics; Fullerton, CA called by: Richard A. Cohn

**Defendant(s):**

- Unnamed Doctor
- Unnamed Hospital

**Defense  
Attorney(s):**

- Counsel not disclosed for Unnamed Hospital, Unnamed Doctor

**Facts:**

On Aug. 12, 2003, plaintiff's decedent, 40, gave birth to her sixth child at a hospital. The child was healthy but the mother continued to bleed after the delivery. Upon the mother's admission to the hospital, the staff had drawn blood from her for purposes of typing and cross-matching and they did so again after she gave birth, but they either failed to send the blood to the lab stat or lost the blood sample. Eventually, they were able to type and cross-match the blood and the doctor ordered a transfusion. By the time the patient received the transfusion, however, she was suffering from irreversible blood loss and could not be saved.

The decedent's husband, 43, and six children, ranging in age from newborn to 20 years of age, alleged that the hospitals and individual doctor failed to ensure that the decedent received blood transfusions in a timely manner.

The defendants contended that the patient had stopped bleeding, and, therefore, they did not monitor or act to replace blood as promptly as they otherwise would have done. When the bleeding began "again," it was not stoppable due to D.I.C. (disseminated intravascular coagulation).

**Injury:**

The plaintiffs sought \$9,191 in past medical costs and \$525,000 in future loss of household services.

**Result:**

The parties settled for \$450,000.

**Trial Information:**

**Judge:**

None Assigned

**Editor's  
Comment:**

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**Writer**

Pam Villanueva

## Delayed notification resulted in baby brain damage: pltf

**Type:** Mediated Settlement

**Amount:** \$2,500,000

**State:** California

**Venue:** Riverside County

**Court:** Superior Court of Riverside County, Riverside, CA

**Case Type:**

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

**Case Name:** Ethan Wert, a minor, and Michelle Larson v. Doe Hospital, No. RIC405676

**Date:** February 09, 2007

**Plaintiff(s):**

- Ethan Wert
- Michelle Larson

**Plaintiff Attorney(s):**

- Thomas E. Rockett III; The Law Offices Thomas Edward Rockett III; Irvine CA for Ethan Wert, Michelle Larson

**Plaintiff Expert (s):**

- Liz Holakiewicz RN; Life Care Planning; Carlsbad, CA called by: Thomas E. Rockett III
- John H. Menkes; Pediatric Neurology; Beverly Hills, CA called by: Thomas E. Rockett III,
- Barry D. Pressman M.D.; Radiology; Los Angeles, CA called by: Thomas E. Rockett III
- Laura R. Mahlmeister Ph.d RN; Nurse Practitioner; San Francisco, CA called by: Thomas E. Rockett III
- Wayne H. Lancaster Ph.D.; Economics; Fullerton, CA called by: Thomas E. Rockett III
- Albert J. Phillips M.D.; Gynecology; Santa Monica, CA called by: Thomas E. Rockett III
- Robert Thrush Ph.d; Vocational Rehabilitation; La Mesa, CA called by: Thomas E. Rockett III
- Jeffery J. Pomerance; Neonatology; Pasadena, CA called by: Thomas E. Rockett III

**Defendant(s):**

- Doe Hospital

**Defense Attorney(s):**

- attorney Unknown for Doe Hospital

**Defendant Expert(s):**

- Gary D. Blake M.D.; OB-GYN -- See also Gynecology; San Diego, CA called by: for attorney Unknown
- Diana K. Faugno; Nurse Practitioner; , called by: for attorney Unknown
- Glenn W. Fowler; Pediatric Neurology; Orange, CA called by: for attorney Unknown
- Karen M. Harmon R.N., M.S.N., C.N.S.; Nursing; San Diego, CA called by: for attorney Unknown
- Linda D. Olzack M.D.; Life Care Planning; Napa, CA called by: for attorney Unknown
- Dennis Coleman; Health Care Administration; Granada Hills, CA called by: for attorney Unknown
- Gilbert Martin M.D.; Neonatology; West Covina, CA called by: for attorney Unknown
- Stephen Romanski M.D.; Pediatric Pathology; Fountain Valley, CA called by: for attorney Unknown
- Kimberly KayBeDell M.D.; Pediatric Rehabilitation; Long Beach, CA called by: for attorney Unknown

**Facts:**

On July 20, 2000, Michelle Larson arrived at Doe Hospital's labor and delivery department to prepare for the birth of, plaintiff, Ethan Wert. At the time of her admission the fetal heart rate monitored showed normal vital signs indicating a healthy baby.

/CENTER When Dr. Doe attended to his patient he ruptured some of her membranes, the fetal vital signs remained normal at this time.

From 2:05 p.m. repetitive late heart rate decelerations began occurring after each contraction. At 2:20 late decelerations occurred after each contraction and long term variability diminished. These fetal signs were persistent and nurses on staff did not attempt to notify Doe, who had left the hospital and returned to his office

At 2:40 the late decelerations persisted and the fetal heart rate rose from 145 to 150. By 2:43 p.m. the baby had severe variable deceleration, which was followed by a prolonged deceleration with approximately 60 to 100 beats per minute for a seven minutes.

During this time Larson's uterus became hypertonic with contractions lasting five minutes. Plaintiff's claimed that the nursing staff did not notify the doctor to return to the hospital quick enough, nor did they make any other preparation for a probable C-Section.

It was not until 2:44 when nurses attempted to call Larson's doctor. Nurses relaying the information to Doe failed to give him accurate facts regarding the fetal heart rate, or request that he return to the hospital promptly. Nor was Doe called after the baby began experiencing episodes of moderate to severe variable decelerations believed to be caused by cord compression.

Doe was not called to return to the hospital until approximately 3:19 p.m. after the fetal heart rate levels dropped to 60 beats per minute. Doe did not arrive at the hospital until 3:34 and the baby was delivered at 3:39 p.m. at the operating room.

Wert needed to be intubated and resuscitation after being born. Neither a pediatrician nor a neonatologist was present during the first eight minutes of the Wert's life. During this time a nurse improperly placed an endotracheal tube into the baby's stomach, which prevented proper oxygenation. The tube was removed and a bag mask ventilation was used until Wert could be transported by helicopter to a neonatal intensive care unit.

Plaintiff's counsel argued that the nurses violated the standard of care by failing to recognize warning signs demonstrated by the fetal status and the staff additional failure in communicating those signs to Doe. Plaintiff's counsel additionally argued that these lapses resulted in poor preparation needed to deliver the baby properly deliver the baby through emergency C-Section.

Plaintiff's counsel additionally argued that Wert's life was jeopardized by the improper incubation.

Defense counsel contended the nursing staff did not violate the standard of care at any time and that there was no negligent behavior on their behalf that resulted in harm to baby.

Defense counsel additionally argued that Wert's condition was so severe that he had a very low life expectancy and as a result would suffer only minimal future economic losses.

**Injury:**

As a result of the defendant's actions Wert suffered a severe anoxic brain injury with consequent cerebral palsy, mental retardation and spastic quadriplegic.

Plaintiff's life care planner and economist estimated a future economic loss of \$11 million if Wert lived to his full life expectancy.

**Result:**

The case was settled in mediation with Doe Hospital agreeing to pay a \$2.25 million cash settlement to Ethan Wert and a \$250,000 cash settlement to Michelle Larson in exchange for her releasing any future wrongful death claim.



**Trial Information:**

**Judge:** Jay Horton

**Editor's Comment:** This report contains information that was gleaned from an article that was published by the Daily Journal.

**Writer:** Matthew Rabin

## Doc, nurses blamed for not doing C-section much earlier

**Type:** Mediated Settlement

**Amount:** \$2,500,000

**State:** California

**Venue:** Los Angeles County

**Court:** Superior Court of Los Angeles County, Lancaster, CA

**Injury Type(s):**

- *brain - cerebral palsy*

**Case Type:**

- *Medical Malpractice - Nurse; OB-GYN; Hospital; Childbirth; Birth Injury; Cerebral Palsy; Failure to Treat; Delayed Treatment; Failure to Diagnose; Prescription and Medication*

**Case Name:** Jane Doe, a Minor, Through Her Guardian Ad Litem, Jane Doe II v. Unnamed Hospital, Unnamed OB-GYN doctor and Unnamed Nurses, No. Not disclosed

**Date:** April 11, 2006

**Plaintiff(s):**

- Jane Doe (Female, 1 Years)

**Plaintiff Attorney(s):**

- Daniel M. Hodes; Lopez Hodes Restaino Milman & Skikos LC; Newport Beach CA for Jane Doe
- Jason Ochs; Lopez Hodes Restaino Milman & Skikos LC; Newport Beach CA for Jane Doe

**Plaintiff Expert(s):**

- Laura Mahlmeister R.N., Ph.D.; Labor & Delivery; San Francisco, CA called by: Daniel M. Hodes, Jason Ochs
- Darryl R. Zengler M.A.; Economics; Pasadena, CA called by: Daniel M. Hodes, Jason Ochs
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: Daniel M. Hodes, Jason Ochs
- Sharon K. Kawai; Life Care Planning; Fullerton, CA called by: Daniel M. Hodes, Jason Ochs
- Michael E. Ross M.D.; Perinatology; Torrance, CA called by: Daniel M. Hodes, Jason Ochs
- Wallace Walter Peck; Pediatric Neurology; Newport Beach, CA called by: Daniel M. Hodes, Jason Ochs

**Defendant(s):**

- Roe Nurses
- Roe OB-GYN
- Roe Hospital

**Defense Attorney(s):**

- John C. Kelly; Carroll, Kelly, Trotter, Franzen & McKenna; Long Beach, CA for Roe Hospital, Roe Nurses
- George E. Clause; Ropers, Majeski, Kohn & Bentley; San Jose, CA for Roe OB-GYN

**Defendant Expert(s):**

- Terry Lubens; Life Care Planning; Los Angeles, CA called by: for John C. Kelly, George E. Clause
- Jeffrey Phelan M.D.; Obstetrics; Los Angeles, CA called by: for John C. Kelly, George E. Clause

**Facts:**

On Sept. 25, 1999, the plaintiff, a female infant, was born to a 19-year-old woman at a Los Angeles County hospital (name not disclosed). Two days earlier, the mother was admitted to induced labor. She was experiencing a complicated third trimester due to maternal hypertension. An OB-GYN doctor prescribed the patient up to 25 milliunits of Pitocin an hour, and contractions began three hours later.

On Sept. 24, the patient's Pitocin dosage was increased to 28 miliunits a minute. At 3 p.m., uterine contractions were occurring every 90 seconds, and the patient's blood pressure was borderline hypertensive. She developed a maternal fever. At 7 p.m., a nurse trainee assumed nursing care of the patient. In the nursing flow sheet, the trainee charted uterine contractions every 90 seconds over the next few hours. She also charted a decrease in long-term and short-term variability. The trainee called the OB-GYN twice, but never reported the patient's uterine hyperstimulation or decreased long-term or short-term variability.

On Sept. 25 at 1:30 a.m., the patient began to push. At 2 a.m., the OB-GYN arrived, and at 3:14 a.m., the baby was delivered with APGAR scores of one at one minute, three at five minutes, and four at 10 minutes. The first blood gas showed significant metabolic acidosis with a pH level of 7.16 and a base excess of minus 20. Seizures were noted in the neo-natal ICU, and the baby was diagnosed with cerebral palsy.

The infant, through her grandmother as guardian ad litem, sued the hospital, the OB-GYN and the nurses for medical malpractice. Her attorney asserted that the fetus was

asphyxiating in utero and she should have been taken out via caesarean section hours before the natural birth.

Plaintiff's labor and delivery expert, Laura Mahlmeister, opined that the nurses violated the Pitocin dosage order by giving more than was prescribed. Mahlmeister also opined that the nurses violated the hospital's protocol by not responding appropriately to the patient who was experiencing uterine hyperstimulation. Hospital protocol required the discontinuation of Pitocin and notification of the physician

Plaintiff's counsel also claimed that there was inadequate supervision of the nurse trainee on Sept. 24 and 25.

The infant's lawyer noted that the fetal monitoring strips were missing during the pregnancy. The hospital's chief of medical records testified that they were last seen and accounted for the day after the birth.

The plaintiff's perinatology expert, Michael Ross asserted that the uterine stimulation, coupled with maternal hypertension and maternal fever, caused fetal distress and hypoxic ischemic encephalopathy. The lawyer alleged that the treaters failed to appreciate the fetal distress and failed to perform an early C-section. Plaintiff's pediatric neurology expert Ronald Gabriel supported Ross' claims, adding that the baby probably would not have gotten cerebral palsy if a prompt C-section had been performed.

The defense argued that the baby was born with cerebral palsy due to complications that happened during the pregnancy's first trimester.

Defense obstetrics expert Jeffrey Phelan opined that the nursing care and treatment were up to the standard of care at all times. He added that there was never any convincing evidence of maternal hyperstimulation or fetal distress.

The defense also argued that nurses have implied discretion over Picotin levels, and that they are allowed to change dosage levels as per their instinct and experience.

**Injury:**

The baby was born with cerebral palsy, lacking control of her motor function, muscle control and coordination.

Plaintiff's life care planning expert, Sharon K. Kawai, estimated that the baby will live 45 years and will need 16 hours of home care every day. As part of an unspecified demand, plaintiff's counsel calculated a life care plan that would include an annuity of \$2.5 million.

Defense counsel disputed the damages, and defense life care planner Terry Lubens predicted that the baby's life expectancy was a maximum of 14 years. The defense calculated a life care plan that would include an annuity of \$1.8 million.

**Result:**

The case settled for \$2.5 million, all of which will be paid by the hospital as the OB-GYN was dismissed without prejudice. Plaintiff's counsel informed that some of the recovery will be put into annuities that will pay out over time.

**Jane Doe**

\$2,500,000 Personal Injury:

**Trial Information:**

**Judge:** Jay Horton (mediator)

**Editor's Comment:** It is believed that some of the information in this report was based on an article in the Daily Journal.

**Writer** Rob MacKay

## Poor supervision of nurse trainee blamed for birth injury

**Type:** Settlement

**Amount:** \$2,500,000

**State:** California

**Venue:** Los Angeles County

**Court:** Superior Court of Los Angeles County, CA

**Injury Type(s):** • *brain - cerebral palsy*

**Case Type:** • *Medical Malpractice - Nurse; Hospital; Childbirth; Birth Injury*

**Case Name:** John Doe, as guardian ad litem for infant Jane Doe, v. Unnamed Hospital and John Roe, M.D., No.

**Date:** April 11, 2006

**Plaintiff(s):** • John Doe (Male)  
• Jane Doe (injured party) (6 Years)

**Plaintiff Attorney(s):** • Daniel M. Hodes; Lopez Hodes Restaino Milman & Skikos; Newport Beach CA for Jane Doe (injured party), John Doe

**Plaintiff Expert (s):** • Laura Mahlmeister R.N., Ph.D.; Labor & Delivery; San Francisco, CA called by: Daniel M. Hodes  
• Darryl R. Zengler M.A.; Economics; Pasadena, CA called by: Daniel M. Hodes  
• Ronald Gabriel M.D.; Pediatric Neurology; Los Angeles, CA called by: Daniel M. Hodes  
• Sharon Kawai M.D.; Life Care Planning; Fullerton, CA called by: Daniel M. Hodes  
• Michael Ross M.D.; Perinatology; Los Angeles, CA called by: Daniel M. Hodes  
• Wallace Peck M.D.; Pediatric Neurology; Newport Beach, CA called by: Daniel M. Hodes

**Defendant(s):**

- John Roe M.D.
- Unnamed Hospital

**Defense Attorney(s):**

- John C. Kelly; Carroll, Kelly, Trotter, Franzen & McKenna; Long Beach, CA for Unnamed Hospital
- George E. Clause; Ropers, Majeski, Kohn & Bentley; San Jose, CA for John Roe M.D.

**Facts:**

On Sept. 25, 1999, the plaintiff, an female infant, was delivered and then diagnosed with severe spastic quadriplegic syndrome, a symptom of cerebral palsy.

The infant's mother experienced complications in the third trimester of her pregnancy due to maternal hypertension. She was admitted to a Los Angeles hospital on Sept. 23 to induce labor. The obstetrician ordered Pitocin at a dosage of 25 mh an hour, and contractions began three hours later at 11 p.m. On Sept. 24, the Pitocin was administered at dosages of up to 28 mu/min. By 3 p.m., contractions were coming every 1.5 minutes. Also, the mother's blood pressure was borderline hypertensive and she developed a fever late in the day. A nurse trainee who assumed care of the mother at 7 p.m. charted the contractions at one to 1.5 minutes over several hours, and charted in the flow sheet a decrease in long-term and short-term variability. She did not mention this condition or the uterine hyperstimulation during her phone calls to the obstetrician.

At 1:30 a.m. on Sept. 25, the mother began to push. The obstetrician arrived at 2 a.m.. The baby was delivered at 3:14 a.m. with APGAR scores of 1 at one minute, 2 at five minutes, and 4 at 10 minutes. Cord blood was not drawn, but the first blood gas showed significant metabolic acidosis with a ph level of 7.16 and a base excess of -20. The baby was placed in the natal intensive care unit. Later that day, the infant experienced seizures before she was diagnosed with severe spastic quadriplegic syndrome.

The infant's grandfather, as guardian ad litem, sued the hospital and the obstetrician--names not disclosed--for medical malpractice. Her lawyer argued that the uterine hyperstimulation, combined with maternal hypertension and maternal fever, caused fetal distress and hypoxic ischemic encephalopathy. Her lawyer argued that all this was likely reflected on the fetal monitoring strips, but could not prove this because the hospital claimed it lost them.

The infant's lawyer alleged that the nurse violated the Pitocin order and further violated the hospital's protocol by not appreciating that the mother was experiencing uterine hyperstimulation. The hospital protocol required the discontinuation of Pitocin and that the obstetrician be notified in the face of uterine hyperstimulation. Her lawyer contended that there was inadequate supervision of the nurse trainee on the evening of Sept. 24 and early morning of Sept. 25.

The defense claimed that the nursing care and treatment was at all times within accepted standards of care. They asserted that it was discretionary to take the Pitocin up to 30 mu/min, and denied that there was ever any convincing evidence of maternal hyperstimulation or any evidence of fetal distress. The hospital could offer no explanation for the missing fetal monitoring strips.

**Injury:** The infant was born with cerebral palsy. Her life expectancy is about 45 years and she'll need CNA care, 16 hours a day, for the rest of her life. The annuity costs to provide future care was \$2.7 million. The family did not seek recovery for the cost of past care, such as care provided by the baby's mother and grandmother.

The defense estimated the child will only live to until she's 12 to 14 years old, and calculated the annuity cost of future care to be no more than \$1.8 million.

**Result:** After two mediation sessions, the defense settled for \$2.5 million, with the hospital paying the entire amount. The obstetrician made no contribution to the settlement and received a dismissal with prejudice.

**Trial Information:**

**Judge:** Jay Horton

**Writer:** Lisa Braunstein



## Plaintiff claimed prenatal bleeding called for C-section

**Type:** Settlement

**Amount:** \$5,000,000

**State:** Illinois

**Venue:** Cook County

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

**Injury Type(s):**

- *brain - cerebral palsy*
- *sensory/speech - vision, impairment; cortical blindness*
- *paralysis/quadriplegia - spastic quadriplegia*

**Case Type:**

- *Medical Malpractice - OB-GYN; Childbirth; Cerebral Palsy*

**Case Name:** LaSalle Bank, as Co-Guardian of the Estate of Ben Isaakov, a Minor v. Evanston Northwestern Healthcare Corporation and Evanston Hospital, No. 01 L 07091

**Date:** April 06, 2006

**Plaintiff(s):**

- Ben Isaakov (Male, 1 Years)

**Plaintiff Attorney(s):**

- Barry R. Chafetz; Corboy & Demetrio; Chicago IL for Ben Isaakov
- Margaret M. Power; Corboy & Demetrio; Chicago IL for Ben Isaakov
- Michelle M. Kohut; Corboy & Demetrio; Chicago IL for Ben Isaakov

**Plaintiff Expert  
(s):**

- Gary Yarkony M.D.; Physical Therapy; Chicago, IL called by: Barry R. Chafetz, Margaret M. Power, Michelle M. Kohut
- Lynn Montgomery M.D.; Obstetrics; Missoula, MT called by: Barry R. Chafetz, Margaret M. Power, Michelle M. Kohut
- Boris Lelchuk M.D.; Pediatrics; Wheeling, IL called by: Barry R. Chafetz, Margaret M. Power, Michelle M. Kohut
- David Mittelman M.D.; Ophthalmology; Park Ridge, IL called by: Barry R. Chafetz, Margaret M. Power, Michelle M. Kohut
- Laura Mahlmeister Ph.D.; Obstetrics Nursing; San Francisco, CA called by: Barry R. Chafetz, Margaret M. Power, Michelle M. Kohut
- Scott Hunter Ph.D.; Neuropsychology; Chicago, IL called by: Barry R. Chafetz, Margaret M. Power, Michelle M. Kohut
- Robert Vannucci; Pediatric Neurology; Hershey, PA called by: Barry R. Chafetz, Margaret M. Power, Michelle M. Kohut
- Charles Linke Ph.D.; Economics; Champaign, IL called by: Barry R. Chafetz, Margaret M. Power, Michelle M. Kohut
- Nishant Shah M.D.; Pediatric Neurology; Glenview, IL called by: Barry R. Chafetz, Margaret M. Power, Michelle M. Kohut
- Patrick Barnes M.D.; Neuroradiology; Palo Alto, CA called by: Barry R. Chafetz, Margaret M. Power, Michelle M. Kohut
- Samajit Jaglan M.D.; Orthopedic Surgery; , called by: Barry R. Chafetz, Margaret M. Power, Michelle M. Kohut

**Defendant(s):**

- Evanston Hospital
- Evanston Northwestern Healthcare Corp.

**Defense  
Attorney(s):**

- Brian C. Fetzer; Johnson & Bell; Chicago, IL for Evanston Northwestern Healthcare Corp., Evanston Hospital
- Lynn Reid; Johnson & Bell; Chicago, IL for Evanston Northwestern Healthcare Corp., Evanston Hospital

**Defendant  
Expert(s):**

- Carl Weiner M.D.; Obstetrics; Ruxton, MD called by: for Brian C. Fetzer, Lynn Reid
- Mark Scher M.D.; Pediatric Neurology; Cleveland, OH called by: for Brian C. Fetzer, Lynn Reid
- Mary Edwards-Brown MD; Pediatric Neurology; Indianapolis, IN called by: for Brian C. Fetzer, Lynn Reid
- Julian Parer M.D.; Perinatology; San Francisco, CA called by: for Brian C. Fetzer, Lynn Reid
- Kathleen Rice Simpson R.N., Ph.D.; Obstetrics Nursing; St. Louis, MO called by: for Brian C. Fetzer, Lynn Reid

**Insurers:**

- St. Paul Fire & Marine

**Facts:**

On July 4, 1999, the mother of infant plaintiff Ben Isaakov, presented to Evanston Hospital in her 38th week of pregnancy with complaints of unexplained bleeding and abdominal pain. There had been one previous complaint of bleeding. At that time, an ultrasound was performed which reflected a low-lying placenta. She was released and told to return for another prenatal appointment.

On July 13, the plaintiff's mother again presented to Evanston Hospital with continued complaints of bleeding. She was admitted at 1 p.m., in labor. When labor failed to progress, it was induced at about 4:30 p.m., at which time there was persistent bleeding. Subsequently, blood was found in the amniotic fluid, but it was not until 11:10 p.m. when the fetal monitor strips reflected severe bradycardia that the infant was delivered with forceps. After delivery, the baby sustained brain damage due to substantial blood loss and lack of oxygen to the brain. Ben was later diagnosed with cerebral palsy.

LaSalle Bank as Co-Guardian of the Estate of Ben Isaakov brought suit against Evanston Northwestern Healthcare Corporation and Evanston Hospital for medical malpractice and negligent childbirth.

Plaintiff's counsel contended that Ben should have been delivered on July 4, when his mother presented to the hospital at term with signs of bleeding and an abnormal placenta location. The plaintiff contended that if Ben had been born on July 4 he would have suffered no injuries.

Plaintiff's counsel also argued that Ben should have at least been delivered by Cesarean section earlier on July 13, due to his mother's persistent bleeding.

Plaintiff's counsel argued that as a result of the hospital's negligence, Ben suffered a severe, permanent brain injury due to loss of one-third of his blood volume, which led to an inadequate flow of oxygen to the brain.

The hospital took the position that the fetal monitoring strips were reassuring up until just before they delivered Ben with forceps. The defense also disputed the causation of the injury, which they said could have occurred at any time either in July or prior, and was most likely inevitable, regardless of the handling of the birth. However, the defendants denied that the doctors or hospital ever departed from the standard of care.

**Injury:**

Ben, who was 6 at the time of trial, suffers from cerebral palsy, specifically cortical blindness and spastic quadriplegia. He is non-verbal, permanently wheelchair-bound and requires 24-hour care. He is cared for by his parents. He has two healthy older brothers.

The plaintiff claimed medical specials of \$400,000 and unspecified damages for pain and suffering.

The defense did not dispute damages.

**Result:**

After two days of trial, the parties settled for \$5 million and the dismissal of all related claims by the plaintiff against the hospital and hospital corporation.

The individual doctors were dismissed prior to settlement.

**Trial Information:**

**Judge:** Thomas J. Chiola

**Writer:** Amy Bourne

## Medical Malpractice - Childbirth - Cerebral Palsy

- Type:** Settlement
- Amount:** \$1,500,000
- State:** Michigan
- Venue:** Oakland County
- Court:** Oakland County, Circuit Court, MI
- Case Type:**
- *Domestic Relations*
  - *Medical Malpractice - Hospital*
- Case Name:** Anonymous Male v. Anonymous OB/GYN and Anonymous Hospital, No. WITHHELD
- Date:** September 07, 2005
- Plaintiff(s):**
- Anonymous Male (Male, 0 Years)
- Plaintiff Attorney(s):**
- Frank T. Aiello; ; Southfield MI for Anonymous Male
- Plaintiff Expert (s):**
- Jon Hazen M.D.; Gynecology; Las Vegas, NV called by:
  - Mary Brown M.D.; Neuroradiology; Indianapolis, IN called by:
  - Laura Mahlmeister Ph.D.; Obstetrics Nursing; San Francisco, CA called by:
  - Robert Ancell Ph.D.; Vocational Rehabilitation; Southfield, MI called by:
  - Robert Cullen M.D.; Neurology; Miami, FL called by:
  - Carolyn Crawford M.D.; Pediatrics; Atlantic City, NJ called by:
  - Michael Thompson Ph.D.; Economics; Southfield, MI called by:
  - Richard Ringel M.D.; Pediatric Cardiology; Baltimore, MD called by:
- Defendant(s):**
- Anonymous OB/GYN and Anonymous Hospital

**Facts:** This case involved a childbirth injury claim that fetal distress went unrecognized by defendant OB/GYN resident, leading to a delayed C-section and profound disability. Defendants disputed any causal connection between the labor and the infant's deficits, but settled this matter for \$1,500,000 prior to trial.

Plaintiff's mother anticipated a VBAC (vaginal birth after Caesarian) when she presented to defendant hospital in labor after a normal prenatal course. During labor, defendant attending OB/GYN left the mother in the care of defendant resident, who was four months into an OB/GYN rotation. The fetal heart monitor began showing signs of fetal distress that was allegedly not recognized or understood by the resident. Thirty-five minutes after the first signs of distress, the fetus went into terminal bradycardia. At that point, the resident contacted defendant OB/GYN, who recognized the problem and performed an immediate C-section. The infant developed cerebral palsy, mental retardation and seizures. He was 6 years old at the date of settlement.

Plaintiff alleged defendant resident failed to timely recognize the signs and symptoms of distress on the fetal heart monitor. Plaintiff argued that defendant attending OB/GYN was responsible for the delivery and should have monitored the patient better and performed an emergency C-section prior to the child going into terminal bradycardia. Plaintiff asserted that defendant hospital's nurses also failed to recognize the signs of fetal distress on the heart monitor. Plaintiff's experts opined that a congenital heart condition had nothing to do with the resulting cerebral palsy, mental retardation or seizures.

Defendants contended the baby's condition was caused by an underlying heart condition, hypoplastic left heart syndrome, for which he required several surgical corrections. Defendants argued that nothing they did or failed to do caused the child's post-birth difficulties.

Plaintiff was a newborn male.

**Injury:** Birth trauma resulting in profound cerebral palsy, mental retardation and seizures. Plaintiff was unable to walk or talk and required permanent 24 hours/day care.

**Result:** \$1,500,000

### **Trial Information:**

**Editor's Comment:** Due to a confidentiality agreement, the court location was not disclosed. For the purpose of publication, the county in which plaintiff's attorney is located was used as the court location.

**Writer**

## Delayed C-section caused child's death, mother claimed

**Type:** Settlement

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

**Actual Award:** \$4,000,000

**State:** Illinois

**Venue:** Cook County

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

**Injury Type(s):**

- *other* - death
- *gynecological* - hysterectomy

**Case Type:**

- *Wrongful Death*
- *Medical Malpractice* - Childbirth; Delayed Treatment; Failure to Monitor

**Case Name:** Uzma Hashmi, Individually, and as Special Administrator of the Estate of Asfa Khan, Deceased v. Swedish Covenant Hospital, a corporation; Margot O'Campo, M.D.; Shaheen Humayun, M.D.; Chong Soo Rim, M.D.; and Chong Soo Rim, M.D., Ltd., a corporation, No. 00-L-13251

**Date:** November 02, 2004

**Plaintiff(s):**

- Uzma Hashmi (Female, 1 Years)
- Estate of Asfa Khan (Female, 1 Years)

**Plaintiff Attorney(s):**

- Kevin G. Burke; Burke, Mahoney & Wise; Chicago IL for Uzma Hashmi, Estate of Asfa Khan

**Plaintiff Expert (s):**

- John Elliott M.D.; OB-GYN -- See also Gynecology; Phoenix, AZ called by: Kevin G. Burke
- Laura Mahlmeister Ph.D.; Obstetrics Nursing; San Francisco, CA called by: Kevin G. Burke

**Defendant(s):**

- Chong Soo Rim
- Margot O'Campo
- Shaheen Humayun
- Chong Soo Rim M.D. Ltd.
- Swedish Covenant Hospital

**Defense Attorney(s):**

- John V. Smith II; Pretzel & Stouffer, Chartered; Chicago, IL for Chong Soo Rim, Chong Soo Rim M.D. Ltd.
- Lawrence R. Stolberg; Pretzel & Stouffer, Chartered; Chicago, IL for Chong Soo Rim, Chong Soo Rim M.D. Ltd.
- Brian T. Levin; Lewis & Gellen; Chicago, IL for Swedish Covenant Hospital, Margot O'Campo
- John M. McGarry; Dykema Gossett Rooks Pitts; Chicago, IL for Shaheen Humayun

**Defendant Expert(s):**

- Elia Chalhub M.D.; Pediatric Neurology; Mobile, AL called by: for Brian T. Levin
- Dr. David Zbaraz; OB-GYN -- See also Gynecology; Chicago, IL called by: for John V. Smith II, Lawrence R. Stolberg
- Harry Farb M.D.; Fetal Medicine; Minneapolis, MN called by: for Brian T. Levin

**Insurers:**

- Chicago Hospital Risk Pooling Program
- ISMIE Mutual Insurance Co.

**Facts:**

In summer 1999, plaintiff Uzma Hashmi, a woman in her 20s, became pregnant. Her first child was born in December 1994, via a Caesarean delivery.

Hashmi's prenatal care was administered by Dr. Margot O'Campo, a family practice physician. O'Campo was assisted by another family practice physician, Dr. Shaheen Humayun, who was an employee of Swedish Covenant Hospital in Chicago.

Hashmi developed gestational diabetes, but the condition remained under control, her ultrasounds and non-stress tests produced normal results, and there were no indications of any problems.

On March 13, 2000, one day after Hashmi's scheduled delivery date, she presented to Swedish Covenant Hospital. According to the hospital's policies and procedures, Hashmi's pregnancy was deemed high-risk, based on the fact that it was a vaginal delivery that followed a C-section.

Labor was induced via Cervidil<sub>g</sub>, a vaginal insert that ripens the cervix. The procedure was discontinued because it caused uterine hyperstimulation--five or more contractions during a 10-minute period. These episodes increased the stress on Hashmi's uterus and the uterine scar created by her first delivery. As such, a Pitocin<sub>g</sub> drip was substituted.

During the early morning hours of March 14, Hashmi experienced several additional episodes of hyperstimulation. At 2:10 a.m., she entered the second stage of labor. She had been fitted with an in-dwelling intravenous catheter, but her urine output stopped after midnight.

At 6:30 a.m., doctors began to observe decelerations on the fetal heart monitor. By 7 a.m., the decelerations were being deemed late decelerations, a sign of uteroplacental



insufficiency, which could have stemmed from damage to, or a rupture of, Hashmi's uterine scar.

By 8:50 a.m., the fetal heart-rate pattern was marked by consistent decelerations and a rising baseline rate.

O'Campo paged obstetrician Dr. Chong Soo Rim. The hospital's records indicate that the two doctors consulted, but Rim later denied that a consultation occurred.

At 9:14 a.m., doctors perceived an abrupt improvement and normalization of the fetal heart-rate pattern. At 9:23 a.m., Rim read the fetal heart-rate strips. He did not review any of the earlier readings, and he recommended continuation toward a vaginal delivery. Humayun also arrived at this time and evaluated Hashmi.

The doctors continued to perceive a normal fetal heart rate. At 10:15 a.m., Hashmi reported that she was experiencing pain in her right shoulder. At 10:45 a.m., her blood pressure dropped markedly, thus indicating a significant loss of blood. At 10:58 a.m., she began to vomit. Humayun sensed a problem and ordered a rush C-section. The delivery was performed at 11:20 a.m., but the infant, Asfa, a girl, was dead.

During performance of the C-section, Hashmi's doctors determined that Hashmi had sustained a uterine rupture that caused the placenta to completely detach from the wall of her uterus. The rupture was so severe that the doctors performed an immediate hysterectomy, during which they discovered a bladder injury, which they also repaired.

Hashmi's doctors subsequently determined that the fetal heart monitor's 9:14 a.m. normalization was actually a false reading and that, in reality, it had begun to measure Hashmi's heart rate at that time. They also determined that her subsequent shoulder pain stemmed from bleeding caused by the uterine rupture.

Hashmi, acting individually and as administrator of Asfa's estate, commenced a medical malpractice suit against the hospital, Humayun, O'Campo, Rim and Rim's practice.

Hashmi alleged that Humayun and O'Campo failed to recognize hyperstimulation that occurred during the morning of March 14, that they failed to detect that her urine output's suspension was an indicator of a uterine rupture, that they failed to recognize that late decelerations actually began at 6:30 a.m. on March 14, and that they failed to detect that the fetal heart monitor was monitoring her heartbeat--not the fetus' heartbeat. She also alleged that they failed to obtain obstetrical consults at the time of her admission and prior to 8 a.m. on March 14--when performance of a C-section could have saved her daughter.

Hashmi alleged that Rim may have been notified of the delivery on March 13--prior to the page request during the morning of March 14. If Rim had such notice and failed to attend the delivery, his actions constituted a departure from the standard of care, Hashmi claimed. Rim had testified that he would have evaluated Hashmi and ordered a C-section, based on the hyperstimulation, her low urine output and the fetal heart-rate decelerations--if he had been present on March 13.

Hashmi also claimed that Rim failed to recognize the signs of her uterine rupture and the presence of fetal distress. She added that he failed to detect that the fetal heart monitor was monitoring her heartbeat--not the fetus' heartbeat--and that he should have ordered a

C-section at that time.

Hashmi further alleged that the hospital was liable for the actions of O'Campo and its nurses. She contended that one attending nurse had been hired less than one month earlier, and that she was unable to adequately read fetal heart-monitor strips or recognize hyperstimulation or heart-monitor decelerations. She also claimed that the nurse should have noted the worsening fetal heart-rate pattern and reported it to O'Campo.

**Injury:** Asfa died during delivery. Her estate sought recovery of damages for her wrongful death.

Hashmi underwent a hysterectomy that was necessitated by a uterine rupture. She sought recovery of damages for her emotional distress and pain and suffering.

**Result:** The parties agreed to a \$4 million settlement. The hospital contributed \$2 million, Humayun contributed \$1 million and Rim contributed \$1 million.

**Trial Information:**

**Judge:** Donald Devlin

**Editor's Comment:** Defense counsel not respond to faxed drafts of this report or phone calls

**Writer** Dave Venino

## Decision to go with vaginal delivery led to brain damage

**Type:** Verdict-Plaintiff

**Amount:** \$32,036,787

**Actual Award:** \$34,000,000

**State:** Illinois

**Venue:** Cook County

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

**Injury Type(s):**

- *back* - scoliosis
- *neck* - scoliosis
- *brain* - brain damage; cerebral palsy; encephalopathy
- *other* - spasticity; seizure disorder
- *sensory/speech* - vision, impairment; cortical blindness
- *mental/psychological* - cognition, impairment

**Case Type:**

- *Medical Malpractice* - Childbirth; Failure to Treat; Failure to Communicate

**Case Name:** Misty Campbell, Individually, and as Mother and Next Friend of Tairay Sewell, a minor v. Rush-Prudential HMO, Inc., a corporation, Mary Ann Dean-Onayemi, M.D., and SSM Health Care Corporation, a/k/a St. Francis Hospital & Health Center, a corporation, No. 99-L-8730

**Date:** October 21, 2004

**Plaintiff(s):**

- Tairay Sewell (Male, 1 Years)
- Misty Campbell (Female, 20 Years)

**Plaintiff Attorney(s):**

- Kevin G. Burke; Burke, Mahoney & Wise; Chicago IL for Misty Campbell, Tairay Sewell

**Plaintiff Expert(s):**

- Adre DuPlessis M.D.; Pediatric Neurology; Boston, MA called by: Kevin G. Burke
- Gary Yarkony M.D.; Life Care Planning; Elgin, IL called by: Kevin G. Burke
- Neil Kochenour M.D.; OB-GYN -- See also Gynecology; Salt Lake City, UT called by: Kevin G. Burke
- Laura Mahlmeister Ph.D.; Obstetrics Nursing; San Francisco, CA called by: Kevin G. Burke
- Thomas Naidrich MD; Neuroradiology; New York, NY called by: Kevin G. Burke
- Charles Linke Ph.D.; Economics; Champaign, IL called by: Kevin G. Burke

**Defendant(s):**

- Mary Ann Dean-Onayemi
- SSM Health Care Corp.
- Rush-Prudential HMO Inc.

**Defense Attorney(s):**

- D. Scott Rendleman; Pretzel & Stouffer; Chicago, IL for Rush-Prudential HMO Inc., Mary Ann Dean-Onayemi
- Susan E. Seiwert Conner; Cassidy, Schade & Gloor; Chicago, IL for SSM Health Care Corp.
- Brian T. Henry; Pretzel & Stouffer; Chicago, IL for Rush-Prudential HMO Inc., Mary Ann Dean-Onayemi

**Defendant Expert(s):**

- Kaitlin Vinnett R.N.; Life Care Planning; Memphis, TN called by: for D. Scott Rendleman, Brian T. Henry
- Stephen Day Ph.D.; Life Expectancy & Mortality; San Francisco, CA called by: for D. Scott Rendleman, Brian T. Henry
- Katherine Cavanaugh R.N.; Obstetrics Nursing; Oak Lawn, IL called by: for Susan E. Seiwert Conner

**Insurers:**

- Employers Reinsurance Corp.
- self-insured
- American International Group Inc.

**Facts:**

On the morning of Aug. 8, 1997, plaintiff Misty Campbell, 20, went to St. Francis Hospital & Health Center in Blue Island. In the late stages of her first pregnancy, Campbell was experiencing uterine contractions. She had experienced no prior prenatal problems.

Doctors hooked her up to an external fetal heart monitor and the monitor strips produced reassuring, reactive results- indicating a healthy baby. After eight hours, Campbell's contractions were still not consistent, and there was no evidence of cervical change, so she was discharged.

At approximately 7:30 p.m., Campbell returned to the hospital. Her contractions were now consistent, and she was entering the early stage of labor. Pitocin was administered to move things along.

At 2:10 a.m., Campbell's blood pressure began to increase dramatically. For the next five hours, her blood pressure was recorded every half hour. Her readings all exceeded 140/90- an abnormally high maternal blood pressure. Her nurses recorded the readings.

Campbell began to experience uterine hyperstimulation-five or more contractions during a

10-minute period. Between 3 a.m. and 7:30 a.m., she experienced eight separate episodes of hyperstimulation.

At 7:30 a.m., Campbell's prenatal-care physician, Dr. Mary Ann Dean-Onayemi, arrived. At 7:45 a.m., the delivery process was initiated and Campbell began pushing. Hyperstimulation continued, but Dean-Onayemi and the nurses did not reduce the administration of Pitocin.

At 8 a.m., Dean-Onayemi removed the intrauterine-pressure catheter. Consequently, she could no longer electronically time the onset, peak and end of Campbell's contractions. The fetal heart monitor now began to indicate repetitive, continuous heart-rate decelerations, which continued until 9:47 a.m., when the infant was born. Pitocin administration was never reduced.

The newborn, Tairay Sewell, exhibited low Apgar scores indicating poor physical condition. His venous-cord blood gas' pH measured 6.99-well below the normal range of 7.28 to 7.35. His base excess measured minus-17, which is far outside the normal range of minus-2 to positive-2. Both readings were indicative of hypoxia-induced acidosis. He was intubated.

On his first day, Tairay experienced seizures. The condition could not be controlled by anticonvulsant medications. During his 23rd hour, a CT scan revealed evidence of edema and an injury to his brain's thalami, which relay sensory information. During his 72nd hour, he underwent an ultrasound, which revealed bilateral, diffuse edemas, which had led to compression of his brain ventricles. There was also evidence of a frontal lobe injury and deep thalami injuries. Tairay's condition eventually stabilized, but he suffers from severe brain damage.

Campbell, acting individually and on Tairay's behalf, commenced a medical malpractice suit against the hospital's operating entity, SSM Health Care Corp.; Dean-Onayemi; and Dean-Onayemi's health-maintenance organization, Rush-Prudential HMO Inc.

Campbell alleged that the hospital's nurses were aware that her blood pressure was abnormally high between 2:10 a.m. and 7 a.m. on Aug. 9, and that she experienced eight occurrences of hyperstimulation, yet that the information was never relayed to Dean-Onayemi. She also contended that the nurses should have decreased the Pitocin during the hyperstimulation episodes that occurred between 3 a.m. and 7:10 a.m. and from 7:30 a.m. and 8 a.m. She argued that she made no urine output between 2:10 a.m. and 9:47 a.m., yet the nurses failed to investigate the condition.

Campbell alleged that Dean-Onayemi failed to respond to her hyperstimulation episodes and elevated blood pressure, failed to recognize non-reassuring fetal heart-monitor strips, and failed to decrease Pitocin administration during the hyperstimulation episode that began at 7:30 a.m.

Campbell also alleged that the period spanning 7:30 a.m. and 8 a.m. was marked by fetal heart-monitor readings that indicated variable and late decelerations, reduced variability, and a prolonged deceleration that lasted eight minutes. She contended that Dean-Onayemi took no steps in response to these changes. She claimed that Dean-Onayemi should have ordered a Caesarean delivery during that time or, alternatively, during the period spanning 8 a.m. and 8:15 a.m., when fetal distress also occurred. She added that Dean-Onayemi

failed to properly remove the intrauterine pressure catheter, and that she improperly opted to allow a vaginal delivery.

Dean-Onayemi contended that Campbell's nurses did not reveal that her blood pressure was elevated or that she had experienced hyperstimulation episodes. As such, she contended that she could not respond to those conditions. She contended that she would have reduced the Pitocin administration. She also contended that Campbell's elevated blood pressure could have stemmed from her pre-eclampsia, a condition that developed during the pregnancy.

Dean-Onayemi noted Campbell's claim that the period spanning 7:30 a.m. and 8 a.m. was marked by fetal heart-monitor readings that indicated variable and late decelerations. In response, she noted that Campbell began pushing at 7:45 a.m. Thus, she contended that delivery could have been imminent at that time, and, as such, that she justifiably opted to wait for a vaginal delivery, rather than ordering a C-section.

The hospital and nurses claimed that Dean-Onayemi was informed of Campbell's elevated blood pressure and hyperstimulation episodes, but that she ordered no change in Campbell's management. There were no records to verify those claims, but the nurses contended that customary practice did not entail such note-keeping.

The hospital noted that Dean-Onayemi arrived at 7:30 a.m. It argued that she was responsible for all subsequent interpretation of fetal heart-monitor readings, Pitocin management, care intervention and decisions regarding performance of a C-section.

**Injury:**

Tairay, now 7, sustained hypoxic ischemic encephalopathy that resulted in severe brain damage. He suffers from cognitive deficits, seizure disorder, cortical blindness, spasticity, cerebral palsy and scoliosis. He cannot walk, talk or feed himself.

The plaintiffs' life-care planning expert estimated that Tairay's future medical and home-care expenses would total \$11,838,947 to \$16,108,567. The plaintiffs' expert economist estimated that Tairay's lost wages would total \$2,658,558 to \$3,938,014.

Campbell presented a derivative claim. The plaintiffs asked the jury to award a total of \$55 million.

**Result:**

The jury rendered a plaintiffs' verdict. It found that the defendants were jointly and severally liable for Tairay's injuries. The plaintiffs were awarded a total of \$32,036,787, but they received a total of \$34 million according to the terms of two high/low agreements that were reached during deliberations. Pursuant to those agreements, Dean-Onayemi and Rush Prudential HMO will pay a total of \$22 million, and the hospital will pay \$12 million. Thus, the net award is \$34 million.

**Trial Information:**

**Judge:** James McCarthy

**Demand:** \$60,000,000

**Offer:** None

**Trial Length:** 3 weeks

**Trial  
Deliberations:** 4 hours

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

**Editor's  
Comment:** Defense counsel not respond to faxed drafts of this report or phone calls.

**Writer** Dave Venino

## Placental fragment allegedly caused post partum bleeding

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** California

**Venue:** Alameda County

**Court:** Superior Court of Alameda County, Oakland, CA

**Injury Type(s):**

- *other - septicemia*
- *mental/psychological - emotional distress*

**Case Type:**

- *Medical Malpractice - OB-GYN; Failure to Detect*

**Case Name:** Marie I. Meadows v. Marilyn M. Honegger, M.D., James Sakamoto, M.D., Berkeley Orinda Women's Health Inc. and Alta Bates Medical Center, No. 8418777

**Date:** March 10, 2004

**Plaintiff(s):**

- Marie I. Meadows (Female, 36 Years)

**Plaintiff Attorney(s):**

- John F. Meadows; Jedekin, Meadows & Schneider; San Francisco CA for Marie I. Meadows
- Nancy A. Aptekar; Law Offices of Nancy A. Aptekar; San Francisco CA for Marie I. Meadows

**Plaintiff Expert (s):**

- Anne Foster-Rosales M.D.; OB-GYN -- See also Gynecology; San Francisco, CA called by: John F. Meadows, Nancy A. Aptekar
- Laura Mahlmeister Ph.D.; Obstetrics Nursing; Belmont, CA called by: John F. Meadows, Nancy A. Aptekar

**Defendant(s):**

- James Sakamoto, M.D.
- Alta Bates Medical Center
- Marilyn M. Honegger, M.D.
- Berekley Orinda Women's Health Inc.



**Defense  
Attorney(s):**

- Ralph J. Smith; Donnelly & Nelson; Walnut Creek, CA for Marilyn M. Honegger, M.D.
- G. Patrick Galloway; Galloway, Lucchese & Everson; Walnut Creek, CA for James Sakamoto, M.D., Berkeley Orinda Women's Health Inc.
- Thomas E. Pfalzer; McNamara, Dodge, Ney, Beatty, Slattery & Pfalzer; Walnut Creek, CA for Alta Bates Medical Center

**Defendant  
Expert(s):**

- Pat Joseph M.D.; Infectious Diseases; San Ramon, CA called by: for Ralph J. Smith, G. Patrick Galloway, Thomas E. Pfalzer
- Carol Kelly R.N., M.S.N.; Nursing; Walnut Creek, CA called by: for Ralph J. Smith, G. Patrick Galloway, Thomas E. Pfalzer
- Leonard John Klay M.D.; OB-GYN -- See also Gynecology; Ukiah, CA called by: for Ralph J. Smith, G. Patrick Galloway, Thomas E. Pfalzer
- Rosanne Oyer M.D.; OB-GYN -- See also Gynecology; Berkeley, CA called by: for Ralph J. Smith, G. Patrick Galloway, Thomas E. Pfalzer

**Facts:**

On March 14, 2000, plaintiff Marie Meadows, 36, a claims specialist, gave birth at Alta Bates Medical Center in Berkeley. Marilyn Honegger was the OB-GYN who delivered the baby. According to Meadows, Honegger noted in her operative report that Meadows had suffered a postpartum hemorrhage. After the birth and while still in the recovery room, Meadows continued bleeding vaginally, as well as evidencing other symptoms of blood loss, such as a high pulse, low blood pressure and weakness. Meadows claimed that these conditions were not treated nor did the recovery nurse report them to Honegger. (According to Meadows' OB-GYN expert, Anne Foster-Rosales, a postpartum hemorrhage is a symptom of a retained placenta fragment). Meadows was eventually discharged home.

On March 27, Meadows saw OB-GYN James Sakamoto, Honegger's fellow employee in their medical group, Berkeley Orinda Women's Health Inc., because she claimed that she had again begun bleeding profusely. She was sent home but the bleeding worsened and she had to be taken to the hospital on March 28. There it was discovered that a placental fragment had been retained and that this was the cause of the hemorrhaging. Meadows underwent a dilation and curettage (D&C) where her endometrium was scraped with a curette. Ultimately, she developed a strep A septicemia, which was successfully treated with antibiotics. She was in the hospital for three days.

Meadows sued Honegger, Sakamoto, their medical group and Alta Bates Medical Center, alleging medical malpractice. Meadows contended that the defendant physicians were negligent for failing to detect the retained placental fragment. Meadows also asserted that the hospital was negligent for failing to treat her condition and for failing to notify Honegger of the bleeding. Meadows argued that this negligence caused her profuse bleeding, which necessitated undergoing a D&C, further hospitalization and ultimately caused her to develop septicemia.

The defendants contended that they met the standard of care. The defense asserted that Meadows' bleeding was caused by a delayed postpartum hemorrhage and not the retained placental fragment.

**Injury:** Meadows claimed she developed strep A septicemia due to the defendants' negligence. Meadows also claimed she suffered emotional distress. No specials were placed into evidence.

**Result:** After the plaintiff's case-in-chief, all of the defendants filed motions for nonsuit. Judge Patrick Zika granted the motion as to Sakamoto only. The jury then found for Honegger, Berkeley Orinda Women's Health Inc. and Alta Bates Medical Center.

**Trial Information:**

**Judge:** Patrick J. Zika

**Demand:** \$10,000 to Honneger; \$10,000 to Sakamoto, \$35,000 to Alta Bates Medical Center

**Offer:** None

**Trial Length:** 16 days

**Trial  
Deliberations:** 2 hours

**Jury Vote:** 11-1 for Honneger and Berkeley Orinda Women's Health Inc.; 10-2 for Alta Bates Medical Center

**Post Trial:** Meadows' motion for new trial is pending.

**Editor's  
Comment:** Counsel for defendants Marilyn Honegger, James Sakamoto and Berkeley Orinda Women's Health Inc. did not respond to a faxed draft of this report and a phone call.

**Writer** Randy Stewart

## **Fetus only partially treated for strep-B, meningitis resulted**

**Type:** Verdict-Plaintiff

**Amount:** \$35,910,000

**Actual Award:** \$7,100,000

**State:** New York

**Venue:** New York County

**Court:** New York Supreme, NY

**Injury Type(s):**

- *brain* - brain damage; encephalopathy
- *other* - seizure disorder
- *sensory/speech* - vision, impairment; cortical blindness
- *mental/psychological* - mental retardation
- *paralysis/quadriplegia* - hemiparesis

**Case Type:**

- *Medical Malpractice* - OB-GYN; Failure to Treat
- *Premises Liability* - Hospital

**Case Name:** Jamie Frank, an Infant, by her Mother and Natural Guardian, Amy Frank, and Amy Frank, Individually v. Lenox Hill Hospital; Ob/Gyn Associates, P.C.; Michael J. Strongin, M.D.; Michael J. Strongin, M.D., P.C.; Paul Grunfeld, M.D.; and Paul Grunfeld, M.D., P.C., No. 120083/99

**Date:** July 03, 2003

**Plaintiff(s):**

- Amy Frank (Female, 34 Years)
- Jamie Frank (Female, 1 Years)

**Plaintiff Attorney(s):**

- Susan M. Karten; Castro & Karten; New York NY for Jamie Frank, Amy Frank
- Denise M. Dunleavy; Kramer & Dunleavy; New York NY for Jamie Frank, Amy Frank

**Plaintiff Expert(s):**

- Alan M. Leiken Ph.D.; Economic Analysis; East Setauket, NY called by: Susan M. Karten, Denise M. Dunleavy
- Carl Battista; Pediatrics; Englewood, NJ called by: Susan M. Karten, Denise M. Dunleavy
- Luis Bello-Espinosa; Pediatric Neurology; San Francisco, CA called by: Susan M. Karten, Denise M. Dunleavy
- David Bacha; Pediatrics; Englewood, NJ called by: Susan M. Karten, Denise M. Dunleavy
- Laura Mahlmeister Ph.D.; Obstetrics Nursing; San Francisco, CA called by: Susan M. Karten, Denise M. Dunleavy
- Eugene DiBlasio; Pediatrics; Bayside, NY called by: Susan M. Karten, Denise M. Dunleavy
- Michael Miller; Pediatric Immunology; Chicago, IL called by: Susan M. Karten
- Richard Field M.D.; Gynecology; Southfield, MI called by: Susan M. Karten, Denise M. Dunleavy
- Sanders Davis M.D.; Physical Rehabilitation; Morristown, NJ called by: Susan M. Karten, Denise M. Dunleavy

**Defendant(s):**

- Paul Grunfeld
- Lenox Hill Hospital
- Michael J. Strongin
- Ob/Gyn Associates P.C.
- Paul Grunfeld M.D. P.C.
- Michael J. Strongin M.D. P.C.

**Defense Attorney(s):**

- John L.A. Lyddane; Martin, Clearwater & Bell; New York, NY for Lenox Hill Hospital
- Jesse J. Graham II; Rivkin, Radler & Kremer, L.L.P.; New York, NY for Paul Grunfeld, Paul Grunfeld M.D. P.C.
- Jay A. Rappaport; Aaronson & Rappaport, Esqs.; New York, NY for Michael J. Strongin, Michael J. Strongin M.D. P.C.

**Defendant Expert(s):**

- Wendy Wasserman; Neonatology; New York, NY called by: for John L.A. Lyddane
- Ronald Gibbs; Obstetrics; Denver, CO called by: for Jay A. Rappaport
- Michael Guiliano; Pediatrics; New York, NY called by: for John L.A. Lyddane
- Phyllis Wiener; Pediatrics; Jamaica, NY called by: for Jesse J. Graham II
- Margaret R. Hammerschlag; Infectious Diseases; Brooklyn, NY called by: for John L.A. Lyddane

**Insurers:**

- Medical Liability Mutual Insurance Co.

**Facts:**

In September 1997, plaintiff Amy Frank, 34, a homemaker pregnant with her second child, came under the care of Dr. Michael J. Strongin, an obstetrician. Frank had an uneventful, healthy pregnancy and was scheduled to give birth on Jan. 23, 1998, at Lenox Hill Hospital in New York.

On Dec. 29, 1997, at 36 weeks, Frank, in accordance with protocols promulgated in 1996 by the Centers for Disease Control and Prevention and the American College of Obstetrics and Gynecology, had a group-B streptococcus culture performed at Strongin's office

because timely testing and timely antibiotic treatment of the mother prior to delivery can prevent Group-B strep infections from being passed on to newborns

The recommended treatment included, at the very least, an offer to administer large amounts of intravenous penicillin every four hours during labor. If the woman receives fewer than two doses, the CDC recommends observation of the baby for 48 hours, and possible testing if any symptoms are noted.

Strongin told Frank that he would let her know the results of her culture when they returned from the lab. Although the results allegedly arrived at Strongin's office on Jan. 2, 1998, Frank claimed that she was never notified of the results, and that there was no note of the results in her treatment records, despite the fact that she had been to the office on Jan. 5 and 6, 1998.

On the afternoon of Jan. 6, 1998, Frank was found to be somewhat dilated. She was instructed to present to Lenox Hill Hospital. She arrived at Lenox Hill at approximately 3:30 p.m. and was admitted to the labor and delivery floor at about 4 p.m. Strongin arrived approximately 15 minutes later. He immediately performed an amniotomy and ordered Pitocin to accelerate the delivery.

Frank contended that Strongin did not mention her culture results until approximately 5 p.m., when Frank asked a nurse about the results while she was being hooked up to the Pitocin. Frank was advised that the results were positive for group-B Strep, but a nurse assured her that she would receive penicillin and that her child would not be harmed.

The Franks, who resided in New Jersey, had arranged with Strongin to call on an attending pediatrician at the hospital, Dr. Paul Grunfeld, to help out with the delivery. Neither Grunfeld nor any other pediatrician attended at the delivery. Frank delivered Jamie at 7:45 p.m. She had received only one dose of antibiotic therapy, approximately two hours prior thereto.

Frank's hospital discharge sheets indicated that Jamie was normal and needed only routine care. She advised the hospital in writing as to the identity and address of her treating pediatricians so that her child's medical records could be forwarded, and specifically requested that her infant's chart be forwarded at the point of her discharge. The chart was never sent, nor were her treating pediatricians ever advised of the group-B strep.

Frank was concerned about Jamie's irritability during the first weeks at home, but all subtle symptoms of infection were attributed to minor stomach problems. Jamie was seen three times by her pediatricians; the last visit occurred on Feb. 3, 1998. The defendants noted that on each visit, the doctors found the baby to be healthy.

On Feb. 5, 1998, her husband found the baby in respiratory distress and immediately drove the infant to the hospital, where she was admitted, given antibiotics, and diagnosed with group-B strep meningitis.

Amy Frank, individually and on behalf of her daughter, sued Grunfeld, Strongin and Lenox Hill Hospital. The suit also named Grunfeld and Strongin's respective business identities.

Frank alleged that the amniotomy and Strongin's order and administration of Pitocin

effectively deprived her of the full opportunity of a four-hour labor which would have enabled her to have more than one dose of penicillin. She claimed that the delivery was accelerated by the rupture of the membranes and the administration of Pitocin, and that there were no medical complications that would apparently warrant the use of Pitocin.

She contended that the partial dose of penicillin that she received masked her daughter's infection for 30 days. She also contended that Grunfeld was negligent for failing to inform her of her treatment during labor, and what her diagnosis meant for her baby.

She further contended that Lenox Hill Hospital had no protocol in effect with regard to the treatment of mothers who had tested positive for group-B strep.

Frank presented her daughter's pediatricians, both of whom contended that they would have started the child on antibiotics on Feb. 4, 1998, had they been aware of the mother's inadequate penicillin dosage. They contended that the child's prognosis might have been better if treatment had commenced only hours earlier.

The defendants argued that Frank's contention that the partial dose of penicillin had masked her daughter's infection was a novel and unproven medical theory. They argued that the infant suffered from late-onset group-B Strep, which could not have been prevented and could have been acquired from sources other than its mother.

The defendants requested a Frye hearing on all theories of causation. Judge Abdus-Salaam noted that the CDC's protocols only applied to early onset group-B strep. Thus, she found that Frank could not argue that her daughter's late-onset group-B strep was the result of improper treatment. However, she also found that Frank could not be precluded from presenting the theory that early onset group-B Strep was suppressed by partial antibiotic dosing, and that no Frye hearing was warranted.

Strongin argued that he told Frank that she was positive for group-B Strep at a visit prior to her delivery, and that one dose of penicillin prior to delivery was adequate.

Grunfeld maintained that he did not have to test the newborn because testing was merely a suggestion of the American Academy of Pediatrics. He also contended that testing was inappropriate because the child showed no symptoms in the first 48 hours after its birth. He maintained that the warnings for an infant at risk for group-B strep are the same as those for any newborn. He admitted that the child was still at risk for early or late-onset group-B strep when it was discharged from the hospital.

Grunfeld admitted that he had known that Frank had tested positive for group-B strep, and that she had received only one dose of penicillin because of the short duration of the labor.

Lenox Hill Hospital argued that it was not required to have a protocol for the treatment of mothers and children positive for group-B strep, and that such decisions are left to attending physicians.

## **Injury:**

Jamie sustained irreparable brain damage, which resulted in severe mental retardation with severe encephalopathy, seizures, right hemiparesis, cortical blindness and bilateral optic atrophy. Her mother claimed that her daughter's condition necessitated lifelong custodial care.

**Result:** The jury found that Jamie suffered from early onset group-B Strep. Strongin was assigned 60% liability, Lenox Hill Hospital was assigned 30% liability, and Grunfeld was assigned 10% liability. Frank was awarded \$35,910,000.

### **Jamie Frank**

\$1,300,000 Personal Injury: Future Medical Cost

\$4,700,000 Personal Injury: FutureLostEarningsCapability

\$4,550,000 Personal Injury: Future Pain And Suffering

\$20,800,000 Personal Injury: Custodial Care

\$1,720,000 Personal Injury: Conscious Pain & Suffering

\$1,040,000 Personal Injury: Future Rehabilitation Services

\$1,800,000 Personal Injury: Transportation, Equipment, etc. for 60 Years

### **Trial Information:**

**Judge:** Alice H. Schlesinger

**Demand:** \$7 million

**Offer:** none

**Trial Length:** 5 weeks

**Trial  
Deliberations:** 1.5 days

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

**Post Trial:** The parties subsequently reached a \$7.1 million settlement, per the terms of a high/low agreement reached during jury deliberations. The amount represents the maximum application of available insurance coverage.

**Editor's  
Comment:** The attorney for Lenox Hill Hospital and Ob/Gyn Associates P.C. did not contribute to this report.

**Writer**

Amy Bourne



## Increased Pitocin use allegedly caused uterine hyperstimulation

**Type:** Mediated Settlement

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

**Actual Award:** \$4,000,000

**State:** California

**Venue:** Orange County

**Court:** Superior Court of Orange County, Orange, CA

**Injury Type(s):**

- *brain* - cerebral palsy
- *other* - loss of consortium
- *mental/psychological* - emotional distress

**Case Type:**

- *Medical Malpractice* - Childbirth

**Case Name:** Doe Child, Doe Mother and Doe Father v. Roe Physician and Roe Hospital, No. Confidential

**Date:** April 17, 2003

**Plaintiff(s):**

- Doe Child (Female, 3 Years)
- Doe Father (Male)
- Doe Mother (Female, 30 Years)

**Plaintiff Attorney(s):**

- Daniel M. Hodes; Lopez, Hodes, Restaino, Milman & Skikos; Newport Beach CA for Doe Mother, Doe Child, Doe Father

**Plaintiff Expert  
(s):**

- Val Catanzarite M.D.; Perinatology; San Diego, CA called by: Daniel M. Hodes
- Glenn Hinchcliffe; Construction; Santa Ana, CA called by: Daniel M. Hodes
- Laura Mahlmeister Ph.D.; Labor & Delivery; San Francisco, CA called by: Daniel M. Hodes
- Naemi So; Speech Pathology; Fountain Valley, CA called by: Daniel M. Hodes
- Arthur Schorr M.D.; Hospital Administration & Procedures; Los Angeles, CA called by: Daniel M. Hodes
- Darryl R. Zengler; Economics; Pasadena, CA called by: Daniel M. Hodes
- Sharon Kawai; Physical Medicine; Fullerton, CA called by: Daniel M. Hodes
- Wallace Walter Peck; Neuroradiology; Orange, CA called by: Daniel M. Hodes

**Defendant(s):**

- Roe Hospital
- Roe Physician

**Defense  
Attorney(s):**

- Confidential Confidential for Roe Hospital, Roe Physician

**Defendant  
Expert(s):**

- Ted Vavoulis; Economics; Pasadena, CA called by: for Confidential Confidential
- Gene Bruno M.S.; Life Care Planning; Los Angeles, CA called by: for Confidential Confidential
- Judy Halle; Labor & Delivery; Buckhannon, WV called by: for Confidential Confidential
- Linda Bradley; Hospital Administration & Procedures; Rancho Santa Fe, CA called by: for Confidential Confidential
- Perry R. Lubens M.D.; Pediatric Neurology; Long Beach, CA called by: for Confidential Confidential
- Michael E. Ross M.D.; Perinatology; Los Angeles, CA called by: for Confidential Confidential

**Facts:**

On April 4, 2000, in the early morning hours, the plaintiff mother, a 30-year-old female pregnant with her first child, was admitted to Roe Hospital in early labor. Roe Physician phoned in orders for Pitocin augmentation, which consisted of a starting dosage of 1 mu/min with increases of 1 mu/min every 30-40 minutes. This was in accord with hospital protocols.

On six occasions over the course of the day, nurses at the hospital increased the Pitocin by 2 mu. At 5:30 p.m., the fetal monitoring strips showed profound fetal bradycardia and a crash C-section was called. At approximately 5:55 p.m., the plaintiff child with Apgars of 0, 3 and 6 and one minute, five minutes and ten minutes. A uterine rupture was repaired at surgery. The newborn was resuscitated but demonstrated early seizure activity. She was transferred to another medical facility the next day, where she remained until May 11. She has been living at home since that time, but has been diagnosed with profound total-body spastic rigid cerebral palsy. The plaintiffs, who included the child, mother and father, sued the hospital and physician alleging medical malpractice.

The plaintiffs contended that the defendant hospital's nurses inappropriately, and in contravention of hospital protocol and physician orders, increased the Pitocin by 2 mu on multiple occasions. They did so in the face of clear evidence of uterine hyperstimulation. Moreover, the plaintiffs maintained that fetal monitoring strips showed evidence of decreased variability and repetitive late decelerations throughout the afternoon of April 4. The plaintiffs further alleged that it was the inappropriate use of Pitocin, which caused the uterine hyperstimulation. The plaintiffs also asserted that the defendant physician, when she performed an AROM (artificial rupture of membranes) at 12:55 p.m. on April 4, failed to appreciate that her Pitocin orders were not being followed. Moreover, the plaintiffs argued that it was incumbent upon the defendant physician to inquire, during a 4 p.m. telephone call, as to the frequency and strength of uterine contractions and the Pitocin dosage.

The defendant physician contended that it was reasonable for her to assume that the hospital nurses would follow her order and the hospital protocol. She further contended that it was incumbent upon the nurses, during the course of the 4 p.m. telephone call, to inform her of any problems or abnormalities.

The defendant hospital argued that there is always some measure of nursing discretion in the administration of Pitocin. The hospital argued that the nurses' exercise of discretion and judgment was reasonable. The hospital further contended that there was no evidence of uterine hyperstimulation, and that any abnormalities in the fetal monitoring strips were temporary, and quickly corrected themselves. As to the uterine rupture, it was contended that it was not as the result of the inappropriate use of Pitocin, but was as a consequence of an inherently weak uterus.

**Injury:**

The plaintiffs contended that the child, who has cerebral palsy, will need 24/7 LVN (licensed vocational nurse) care for the balance of her life expectancy, which was estimated at 62.5 years. Damages also included the child's loss of future earnings. In addition, causes of action were asserted on behalf of the plaintiff mother and father for negligence, loss of consortium and negligent infliction of emotional distress. Damages were also sought for the cost of remodeling their home, the cost of future surrogacy and reimbursement for parental nursing care.

The defense argued that the child's life expectancy is on the order of 5 to 7 years, based on empirical data in the medical literature. They further argued that certified nursing assistant care for 16 hours per day is all that is required.

Per the plaintiffs, assuming a life expectancy of 62.5 years, the present cash value is approximately \$15 million. Per the defense, assuming a life expectancy of five to seven years, it is approximately \$1 million.

**Result:**

After two sessions of mediation with Troy Roe at Judicate West and an all-day final session of mediation with retired Justice John Trotter at JAMS, the case settled for \$4 million (present cash value). An annuity has been purchased, which will pay out the sum of approximately \$38 million, assuming that the plaintiff child's life expectancy is in accord with the plaintiffs' expert testimony.

**Doe Child**

\$4,000,000 Personal Injury: settlement

**Trial Information:**

**Judge:** Confidential Confidential

**Editor's Comment:** Counsel for the defendants did not contribute to this report.

**Writer** Randy Stewart

## Delay in C-Section Allegedly Caused Child's Birth Defects

**Type:** Verdict-Mixed

**Amount:** \$3,867,111

**Actual Award:** \$3,867,111

**State:** California

**Venue:** Los Angeles County

**Court:** Superior Court of Los Angeles County, Central, CA

**Injury Type(s):**

- *brain - cerebral palsy*
- *mental/psychological - mental retardation*

**Case Type:**

- *Medical Malpractice - Childbirth*

**Case Name:** Jamar Nichols, Jr. and Marie Butler v. Mory Nouriani, M.D. and Good Samaritan Hospital, No. BC 243 634

**Date:** March 26, 2003

**Plaintiff(s):**

- Marie Butler (Female)
- Jamar Nichols, Jr. (Male, 3 Years)

**Plaintiff Attorney(s):**

- Bruce G. Fagel; Law Offices of Bruce G. Fagel & Associates; Beverly Hills CA for Jamar Nichols, Jr., Marie Butler

**Plaintiff Expert(s):**

- Bijan Siassi M.D.; Neonatology; Los Angeles, CA called by: Bruce G. Fagel
- Laura Mahlmeister Ph.D.; Obstetrics Nursing; San Francisco, CA called by: Bruce G. Fagel
- Peter Formuzis; Economics; Irvine, CA called by: Bruce G. Fagel
- Sharon Kawai; Physical Medicine; Fullerton, CA called by: Bruce G. Fagel
- Charles Nieson M.D.; Pediatric Neurology; Los Angeles, CA called by: Bruce G. Fagel
- Lawrence Shields M.D.; Obstetrics; Seattle, WA called by: Bruce G. Fagel

**Defendant(s):**

- Mory Nouriani, M.D.
- Good Samaritan Hospital

**Defense****Attorney(s):**

- Michael A. O'Flaherty; Fonda & Fraser for Good Samaritan Hospital
- David J. O'Keefe; Bonne, Bridges, Mueller, O'Keefe & Nichols for Mory Nouriani, M.D.

**Defendant****Expert(s):**

- Ted Vavoulis; Economics; Pasadena, CA called by: for Michael A. O'Flaherty, David J. O'Keefe
- Anne Taylor R.N., B.S.N.; Obstetrics Nursing; San Diego, CA called by: for Michael A. O'Flaherty, David J. O'Keefe
- Gene Parks; Obstetrics; Marina del Rey, CA called by: for Michael A. O'Flaherty, David J. O'Keefe
- Paul Weber; Obstetrics; Long Beach, CA called by: for Michael A. O'Flaherty, David J. O'Keefe

**Facts:**

On Feb. 19, 2003, plaintiff Marie Butler entered Good Samaritan Hospital in Los Angeles for induction of labor at 40 5/7 weeks. On admission, the fetal monitor system (FMS) was suspicious and the amniotic fluid index showed borderline oligohydramnios. Cervidil was inserted to induce labor, but was then removed after several hours due to hyperstimulation of the uterus. Terbutaline was given and then Pitocin was started several hours later. The FMS remained reactive.

On the morning of Feb. 20, Mory Nouriani, M.D., an OB-GYN, came on duty and the Pitocin was decreased from 10mu to 5 mu and then stopped at 4 p.m. The Pitocin was then re-started at 8 p.m and the FMS remained reactive. At midnight, the mother was noted to have a temperature of 102 degrees and she was started on antibiotics for presumed chorioamnionitis.

At around 3:45 a.m. on Feb. 21, the hospital nurses had the mother start pushing but stopped after two pushes due to decelerations in the fetal heart rate (FHR). At the time, Nouriani and the OB resident were in surgery with another patient. At 5:30 a.m., Nouriani then returned to see the mother after being called by the OB resident who noted FHR decelerations after the mother pushed again. Nouriani ordered an amniofusion and the FHR improved. At 6:30 a.m., Nouriani decided to move the mother to the operating room on a non-emergency basis and then attempted a vacuum delivery. After three unsuccessful attempts over ten minutes, he left the OR and looked at the FHR at the nurses' station where he noted a change in the heart rate and then ordered an emergency C-section. The baby, plaintiff Jamar Nichols, Jr., was then delivered within ten minutes of his decision with Apgar scores of 1, 4 and 6. The cord blood gases showed severe metabolic and respiratory acidosis. The baby was then diagnosed with perinatal asphyxia and clinical sepsis. The plaintiffs sued Nouriani and Good Samaritan Hospital for medical malpractice.

The plaintiffs contended that Nouriani fell below the standard of care and negligently failed to deliver the baby earlier by C-section. The plaintiffs asserted that hypoxia was the major cause of the child's injury.

Nouriani contended that he was not negligent, and that the major cause of injury was sepsis and not hypoxia.

Good Samaritan Hospital contended that there was no nursing malpractice nor causation.

**Injury:**

Jamar Nichols, Jr. suffers from severe cerebral palsy and mental retardation. The plaintiffs asserted that there is now the need for 24-hour LVN care over a probable 20 to 30-year life expectancy. The plaintiffs claimed past medical specials of \$54,000 and future medical specials of \$4.6 million to \$6.2 million. The plaintiffs claimed a future loss of earnings of between \$850,000 and \$1.2 million, while the defendants asserted that the future loss of earnings was between \$550,000 and \$650,000.

Nouriani claimed that there was a need for only four to eight hours of CNA care over an eight to 12 year probable life expectancy.

**Result:** The jury found \$867,111 as the present cash value for future loss of earnings (\$13,128,644 total gross amount) and \$3 million as the present cash value for future medical care costs, bringing the total net verdict to \$3,867,111 (present cash value). This amount was against Nouriani only because the jury hung as to Good Samaritan Hospital.

The jury was unable to calculate the total gross amount for future medical care costs. It was then stipulated to between the parties to allow the court to make this finding prior to the entry of judgment. The jury did not award any damages for past medical care costs or non-economic damages.

Good Samaritan Hospital filed a motion for judgment on its behalf because of the failures of proof of causation during trial. On April 21, 2003, Judge David Minning granted the hospital's motion for directed verdict.

### **Jamar Nichols, Jr.**

\$867,111 Personal Injury: future loss of earnings (present cash value)

\$3,000,000 Personal Injury: future medical costs (present cash value)

### **Trial Information:**

**Judge:** David J. Minning

**Demand:** \$1,000,000 CCP 998 to Nouriani; various to Good Samaritan Hospital (never less than \$3,000,000)

**Offer:** \$1,000,000 policy limits from Nouriani (rejected. Prior to trial, the plaintiffs settled with Nouriani's medical group for \$1,000,000). Prior to trial, offer was raised to \$2,000,000 from Nouriani); \$2,000,000 offer from Good Samaritan Hospital (rejected. Offer was withdrawn during the trial.)

**Trial Length:** 5 weeks

**Trial Deliberations:** 14 days

**Jury Vote:** 9-3 on negligence and causation as to Mory Nouriani, M.D.; 7-5 in favor of Good Samaritan Hospital (hung jury); 11-1 on damages

**Post Trial:** The plaintiffs' motion for pre-judgment interest in the amount of \$700,000 plus costs is pending. A post-trial hearing to enter judgment has been set for June 11, 2003. The plaintiffs intend to file a motion for additur after the entry of judgment for noneconomic damages.



**Writer**

Randy Stewart

## Medical Malpractice - Delivery - C-section Delay

**Type:** Settlement

**Amount:** \$7,700,000

**State:** Ohio

**Venue:** Cuyahoga County

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

**Case Type:**

- *Medical Malpractice*

**Case Name:** Anonymous Child v. Anonymous Hospital, No. Withheld

**Date:** March 01, 2003

**Plaintiff(s):**

- Anonymous Child (Female, 2 Years)

**Plaintiff Attorney(s):**

- William S. Jacobson; ; for Anonymous Child
- Richard L. Demsey; ; for Anonymous Child

**Plaintiff Expert (s):**

- John Elliott M.D.; Gynecology; , called by:
- Barry D. Pressman; Pediatric Radiology; , called by:
- Laura Mahlmeister Ph.D.; Obstetrics Nursing; , called by:
- Peter Ph.; Economics; , called by:
- Steven Bates; Pediatric Neurology; , called by:
- Steven Ringer M.D.; Pediatrics; , called by:
- Cynthia Wilhelm Ph.D.; Psychology/Counseling; , called by:

**Defendant(s):**

- Anonymous Hospital

**Defendant  
Expert(s):**

- James Greenberg M.D.; Pediatrics; , called by: for
- Curtis Cetrulo M.D.; Gynecology; , called by: for
- Steven Clark M.D.; Gynecology; , called by: for
- Michael Johnson M.D.; Pediatric Neurology; , called by: for

**Facts:**

As part of the early stages of the induction of labor, plaintiff mother was undergoing a cervical ripening on an antenatal floor at defendant hospital. During the process, the infant began to experience fetal heart rate decelerations and the decision was later made to perform a C-section. It was determined after birth that the infant was suffering from cerebral palsy and mental retardation.

Plaintiffs alleged that defendant hospital's nurse failed to appreciate the severity of the regular heart rate decelerations and the infant's condition. Further, plaintiffs maintained that the failure to transfer plaintiff mother to Labor & Delivery in a prompt fashion had resulted in a 20 minute or more delay in performing the C-section. As a result of the delay, plaintiff contended that plaintiff child suffered brain damage from a lack of oxygen and was left with cerebral palsy and mental retardation. Plaintiffs sought between \$8,000,000 and \$11,000,000 for a life care plan.

Defendants contended that plaintiff mother had experienced an amniotic fluid embolus which was unforeseeable and responsible for the brain damage to plaintiff child. Further, defendants argued that type of embolus had a high mortality and morbidity rate for both mother and child.

Plaintiff was a two year old female at the time of settlement.

**Injury:**

Cerebral palsy and mental retardation. Plaintiffs sought between \$8,000,000 and \$11,000,000 for a life care plan.

**Result:**

\$7,700,000

**Trial Information:**

**Writer**

## Delayed treatment of jaundice caused quadraplegia, palsy

**Type:** Verdict-Plaintiff

**Amount:** \$84,250,000

**Actual Award:** \$84,250,000

**State:** California

**Venue:** Alameda County

**Court:** Superior Court of Alameda County, Hayward, CA

**Injury Type(s):**

- *brain* - brain damage; kernicterus
- *gastrointestinal/digestive* - gastrointestinal complications; hyperbilirubinemia

**Case Type:**

- *Medical Malpractice* - Childbirth

**Case Name:** Andrew Leyvas, a minor, by and and through his Guardian ad Litem, Irma Leyvas v. Norma Paragas, M.D., No. 798868 4OH

**Date:** December 23, 2002

**Plaintiff(s):**

- Andrew Leyvas (Male, 5 Years)

**Plaintiff Attorney(s):**

- William L. Veen; Law Offices of William L. Veen; San Francisco CA for Andrew Leyvas
- Cynthia Bernet-McGuinn; Law Offices Of William L. Veen; San Francisco CA for Andrew Leyvas

**Plaintiff Expert(s):**

- Jan Roughan; Life Care Planning; Calabasas, CA called by: William L. Veen, Cynthia Bernet-McGuinn
- Lean Ellenberg Ph.D.; Neuropsychology; Beverly Hills, CA called by: William L. Veen, Cynthia Bernet-McGuinn
- Lois Johnson-Hammerman M.D.; Pediatrics; Santa Rosa, CA called by: William L. Veen, Cynthia Bernet-McGuinn
- Laura Mahlmeister Ph.D.; Obstetrics Nursing; San Francisco, CA called by: William L. Veen, Cynthia Bernet-McGuinn
- Andrea Morrison; Pediatric Neurology; Tarzana, CA called by: William L. Veen, Cynthia Bernet-McGuinn
- Arthur Schorr M.D.; Hospital Administration & Procedures; Woodland Hills, CA called by: William L. Veen, Cynthia Bernet-McGuinn
- Robert W. Johnson MBA; Economics; Los Altos, CA called by: William L. Veen, Cynthia Bernet-McGuinn
- Yvette Pigeon Gilmore P.T., P.C.S.; Physical Therapy; Costa Mesa, CA called by: William L. Veen, Cynthia Bernet-McGuinn
- Deborah Orel-Bixler O.D.; Optometry; Berkeley, CA called by: William L. Veen, Cynthia Bernet-McGuinn
- Eliezer Nussbaum M.D.; Pediatric Pulmonology; Long Beach, CA called by: William L. Veen, Cynthia Bernet-McGuinn
- Marilyn J. Buzolich Ph.D.; Speech Pathology; San Francisco, CA called by: William L. Veen, Cynthia Bernet-McGuinn
- William V. Good M.D.; Ophthalmology; Kentfield, CA called by: William L. Veen, Cynthia Bernet-McGuinn,

**Defendant(s):**

- Norma Paragas, M.D.

**Defense Attorney(s):**

- Robert M. Slattery; McNamara, Dodge, Ney, Beatty, Slattery & Pfalzer; Walnut Creek, CA for Norma Paragas, M.D.

**Defendant Expert(s):**

- Mark Cohen M.S.; Economics; Berkeley, CA called by: for Robert M. Slattery
- Linda Olzack R.N.; Life Care Planning; Napa, CA called by: for Robert M. Slattery
- Myles B. Abbott M.D.; Pediatrics; Berkeley, CA called by: for Robert M. Slattery
- Joseph T. Capell M.D.; Pediatrics; Fresno, CA called by: for Robert M. Slattery
- Rowens Korobkin M.D.; Pediatric Neurology; San Francisco, CA called by: for Robert M. Slattery
- Herbert J. Grossman M.D.; Pediatric Neurology; Sherman Oaks, CA called by: for Robert M. Slattery
- Richard Wennberg M.D.; Neonatology; Toronto, Ontario, Canada, called by: for Robert M. Slattery
- William Cashore M.D.; Neonatology; Providence, RI called by: for Robert M. Slattery

**Insurers:**

- MIEC

**Facts:**

Andrew Leyvas, now a 5-year-old boy, suffered from jaundice at birth and his parents sought medical help four days later. On June 7, 1997, Andrew's father telephoned defendant Norma Paragas, a pediatrician who was on call for the child's regular doctor, Rhodora Dela Cruz. A second phone call was placed by the Leyvas's mother several hours later. Each parent reported that the baby was yellow and was having feeding difficulties. Paragas did not request to see the baby and failed to recognize that each separate telephone call dealt with the same baby. Twelve hours after speaking with Paragas, Andrew was admitted to Washington Hospital in Fremont on June 8. Medical tests found Andrew to be suffering from hyperbilirubinemia and kernicterus, which are conditions that happen in newborns when their livers are not adequately developed to break down a blood waste called bilirubin, which becomes a potent neurotoxin if allowed to accumulate in the body.

Irma Leyvas, guardian ad litem for Andrew, sued Paragas, claiming the standard of care required that jaundiced (yellow) babies be examined immediately but that proper diagnosis and treatment did not begin until Paragas turned the case over to a neonatal specialist on June 8. Due to the delay in treatment, the plaintiff's brain was poisoned, which left him a quadriplegic and suffering from cerebral palsy.

The plaintiff contended that Paragas fell below the standard of care because she was 1) dismissive of the parents' initial complaints regarding the plaintiff child; 2) inattentive to the child's symptoms when she initially diagnosed the plaintiff; and 3) failed to competently deal with the baby's problems.

Paragas asserted that she met the standard of care at all times. The defendant argued that she reacted appropriately to the information provided by the family and subsequent hospital tests.

**Injury:**

Andrew suffers from cerebral palsy and is a quadriplegic, requiring around-the-clock care, including feeding through a gastrostomy tube and special devices to help him communicate.

**Result:**

The jury found the Paragas 15% negligent, Rhodora Dela Cruz, M.D. 70% negligent, and Washington Hospital 15% negligent. Before trial, Dela Cruz and the hospital settled with the plaintiff for confidential amounts.

The jury returned with an award of \$84,750,000, including \$73 million for past/future medical expenses, \$11 million for lost future earnings and \$750,000 for pain and suffering.

The \$750,000 non-economic award was then reduced to \$250,000 per MICRA, thus reducing the total jury award to \$84,250,000. The present value of the award is \$16,840,731).

**Andrew Leyvas**

\$11,000,000 Personal Injury: FutureLostEarningsCapability

\$73,000,000 Personal Injury: past/future medicals

\$750,000 Personal Injury: pain & suffering

**Trial Information:**

**Judge:** Bonnie Lewman Sabraw

**Demand:** \$1 million policy limits CCP 998

**Offer:** \$250,000 raised to \$1 million policy limits during trial (rejected by the plaintiff)

**Trial Length:** 10 weeks

**Trial Deliberations:** 3 days

**Post Trial:** A hearing is scheduled for January 2003 regarding the application of MICRA, offsets for the prior settlements, the present value of the award and the details of the terms of the payment.

**Writer** Randy Stewart

## Doctor Ordered Nurse To Turn Off Fetal Monitor

**Type:** Settlement

**Amount:** \$19,000,000

**State:** Illinois

**Venue:** Cook County

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

**Injury Type(s):** • *brain - cerebral palsy*

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

**Case Name:** Patricia Townsend, individually and as mother and next friend of Damen Townsend, a minor v. Little Company of Mary Hospital and Health Care, a corporation, f/k/a Little company of Mary Hospital, Inc., a corporation, and Joseph Zacharia, M.D., No. 00-L-3555

**Date:** December 03, 2002

**Plaintiff(s):** • Damen Townsend (Male, 1 Years)  
• Patricia Townsend

**Plaintiff Attorney(s):** • Kevin G Burke; Burke, Mahoney & Wise; Chicago IL for Patricia Townsend, Damen Townsend  
• Charles Francis; ; Raleigh NC for Patricia Townsend, Damen Townsend



**Plaintiff Expert  
(s):**

- Al Link; Economics; Greensboro, NC called by: Kevin G Burke
- Jay Goldsmith M.D.; Pediatrics; New Orleans, LA called by: Kevin G Burke
- Adre DuPlessis M.D.; Pediatric Neurology; Boston, MA called by: Kevin G Burke
- Gary Yarkony M.D.; Rehabilitation Counseling; Elgin, IL called by: Kevin G Burke
- Neil Kochenour M.D.; Obstetrics; Salt Lake City, UT called by: Kevin G Burke
- Laura Mahlmeister Ph.D.; Obstetrics Nursing; San Francisco, CA called by: Kevin G Burke
- Robert Zimmerman M.D.; Pediatric Neurology; Philadelphia, PA called by: Kevin G Burke
- Cynthia Wilhelm Ph.D.; Life Care Planning; Chapel Hill, NC called by: Kevin G Burke

**Defendant(s):**

- Joseph Zacharia
- Little Company of Mary Hospital and Health Care

**Defense  
Attorney(s):**

- Edward Melia; Hickey, Melia & Associates; Chicago, IL for Joseph Zacharia
- Marilee Clausing; Anderson Bennett & Partners; Chicago, IL for Little Company of Mary Hospital and Health Care
- Michele Anderson; Anderson Bennett & Partners; Chicago, IL for Little Company of Mary Hospital and Health Care

**Defendant  
Expert(s):**

- Alan D. Bedrick M.D.; Neonatology; Baltimore, MD called by: for Marilee Clausing
- Kathy Cavanaugh R.N.; Nursing; Chicago, IL called by: for Marilee Clausing
- Scott McGregor M.D.; Obstetrics; Evanston, IL called by: for Marilee Clausing
- Robert Shavelle Ph.D.; Life Expectancy & Mortality; San Francisco, CA called by: for Marilee Clausing
- Thomas Naidrich MD; Neuroradiology; New York, NY called by: for Marilee Clausing
- Charles Breeden Ph.D.; Economics; Milwaukee, WI called by: for Marilee Clausing
- Jeffrey Phelan; Obstetrics; Pasadena, CA called by: for Marilee Clausing
- Cathline Vinette; Life Care Planning; Memphis, TN called by: for Marilee Clausing

**Facts:** Plaintiff Patricia Townsend was 12 days past due when she arrived at Little Company of Mary Hospital in Evergreen Park, Ill. in June 1983. After she arrived, a fetal monitor was attached to her and it recorded a drop in her son Damen's fetal heart rate. About four hours after the decline began, Dr. Joseph Zacharia asked a nurse about the fetus' condition. After she assured him he was doing well, the lawsuit alleged, Zacharia instructed her to disconnect the monitor.

The next morning, Zacharia discovered that the fetus' condition was dire and ordered an emergency C-section. By that time, however, a prolonged lack of oxygen had caused severe cerebral palsy in the infant.

Suing individually and on behalf of her son, Townsend alleged that the doctor should never have ordered the disconnection of the monitor and should have examined his fetal condition before taking action.

Plaintiff attorney Kevin Burke said the trial was based solely on the fetal monitoring recordings. "Had we waited another year to file suit, the hospital could have gotten rid of the records and we wouldn't have had a chance." Illinois requires a hospital to maintain records for 18 years.

**Injury:** Damen, now 19, has cerebral palsy, resulting in severe mental retardation and physical handicap. He is confined to a wheelchair and will require full-time nursing care throughout his life. He sought lost earning capacity, medical costs, pain and suffering, and decreased normal life expectancy - a theory of recovery that has only been in Illinois since January.

**Result:** The parties settled while the jury was deliberating. Per a high/low agreement, the hospital will pay \$18 million and Zacharia will pay \$1 million.

The jury verdict would have found Zacharia not liable. The hospital would have paid \$20.25 million - breaking down to \$5 million for future medical expenses, \$250,000 for lost earnings, \$2.25 million for pain and suffering, \$1,875,000 for disability, \$1,875,000 for disfigurement, and \$9 million for decreased life expectancy.

Defense attorney Marilee Clausing said the defense was hindered by the unavailability of witnesses to the incident that occurred nearly 20 years ago. She also said the records kept in 1983 were not as accurate as those of today, and that it was difficult to recreate events.

## **Trial Information:**

**Judge:** Jennifer Duncan-Brice

**Demand:** \$20 million

**Offer:** \$3 million before trial, \$10 million during trial

**Trial Length:** 5 weeks

**Trial  
Deliberations:** 3 hours

**Jury Vote:** 12-0

**Jury  
Composition:** 4 African-American, 6 Caucasian, 2 Hispanic; 8 female, 4 male

**Writer** Dave Venino

## Hospital Denied Need for Internal Fetal Monitor

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** Texas

**Venue:** Harris County

**Court:** Harris County District Court, 125th, TX

**Injury Type(s):** • *brain* - brain damage

**Case Type:** • *Wrongful Death* - Survival Damages  
• *Medical Malpractice* - OB-GYN; Childbirth

**Case Name:** Dorte Equitz and Robert Equitz v. Methodist Health Centers, d/b/a Methodist Health Center Sugar Land, Charles Pehr, M.D., and Southwest Obstetrics/Gynecology Associates, L.L.P., No. 2001-02731

**Date:** November 15, 2002

**Plaintiff(s):** • Dorte Equitz (Female)  
• Robert Equitz (Male)  
• Annika Equitz (estate) (Female, 3 Years)

**Plaintiff Attorney(s):** • Phillip A. Pfeifer; ; Houston TX for Dorte Equitz, Robert Equitz, Annika Equitz (estate)

**Plaintiff Expert(s):** • Ian Butler M.D.; Pediatric Neurology; Houston, TX called by: Phillip A. Pfeifer  
• Jay Goldsmith M.D.; Neonatology; New Orleans, LA called by: Phillip A. Pfeifer  
• Laura Mahlmeister Ph.D.; Labor & Delivery; San Francisco, CA called by: Phillip A. Pfeifer  
• Robert Zimmerman M.D.; Neuroradiology; Philadelphia, PA called by: Phillip A. Pfeifer  
• William Spellacy M.D.; Obstetrics; Tampa, FL called by: Phillip A. Pfeifer

**Defendant(s):**

- Charles Pehr, M.D.
- Methodist Health Centers
- Methodist Health Center Sugar Land
- Southwest Obstetrics/Gynecology Associates L.L.P.

**Defense  
Attorney(s):**

- Suzan K. Cardwell; Franklin, Cardwell & Jones; Houston, TX for Southwest Obstetrics/Gynecology Associates L.L.P., Charles Pehr, M.D.
- Lucille Reiter; Lapin & Landa; Houston, TX for Methodist Health Center Sugar Land, Methodist Health Centers
- John C. Landa Jr.; Lapin & Landa; Houston, TX for Methodist Health Center Sugar Land, Methodist Health Centers

**Defendant  
Expert(s):**

- Gary Clark M.D.; Pediatric Neurology; Houston, TX called by: for Lucille Reiter, John C. Landa Jr.
- John Irwin M.D.; Obstetrics; Houston, TX called by: for Lucille Reiter, John C. Landa Jr.
- Cynthia Clayton R.N., B.S.N.; Labor & Delivery; Houston, TX called by: for Lucille Reiter, John C. Landa Jr.
- Ferdinand Plavidal M.D.; Obstetrics; Houston, TX called by: for Lucille Reiter, John C. Landa Jr.

**Insurers:**

- Methodist Health Centers, self-insured

**Facts:**

The plaintiffs were Robert and Dorte Equitz, for themselves and for the estate of their infant daughter, Annika, who was born with brain damage and died three weeks later as a result. They sued the hospital, Methodist Health Center Sugar Land, and the delivering doctor, Charles Pehr, M.D., and his professional group, Southwest Obstetrics/Gynecology Associates, alleging medical malpractice. Specifically, the nurses allegedly failed to communicate circumstances, including changes in the external fetal-monitor strip, to the doctor, and these circumstances, the Equitzes alleged, should reasonably have led the doctor to apply an internal fetal monitor and to expedite delivery with forceps or via cesarean section.

The hospital contended that the standard of care did not require an internal fetal monitor, that the nurses properly communicated with the doctor, and that the defendants handled the labor and delivery appropriately. In addition, the hospital specifically contended that the standard of care did not require the use of forceps, since by the time the strip was not reassuring, the defendants reasonably believed delivery to be imminent.

Pehr and his professional group were no longer a party by the time of trial; no further details were disclosed.

**Injury:** Annika was born with severe brain damage that resulted in her death three weeks later. The estate claimed medical bills funeral and burial expenses, and the parents claimed mental anguish and loss of companionship and society.

Though not contesting damages as much as liability, the hospital contended that there was insufficient evidence of multi-organ failure to support the theory that Annika suffered an acute brain insult. The hospital further contended that Annika's brain insult predated labor.

**Result:** The jury found no negligence by the doctor or the hospital.

The plaintiffs' attorneys and the attorney for the Pehr defendants declined to comment.

**Trial Information:**

**Judge:** John A. Coselli

**Offer:** None by the hospital

**Trial Length:** 2 weeks

**Trial Deliberations:** 5.5 hours

**Jury Vote:** 10-2

**Writer** John Schneider

## Increasing Pitocin Resulted in Infant's Cerebral Palsy

**Type:** Verdict-Mixed

**Amount:** \$59,317,500

**State:** California

**Venue:** Contra Costa County

**Court:** Superior Court of Contra Costa County, Martinez, CA

**Injury Type(s):**

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

**Case Type:**

- *Medical Malpractice*

**Case Name:** Caitlin Greenwell, a minor, by and through her Guardian ad Litem, Julia Greenwell, Julia Greenwell, individually, and Steven Greenwell v. Alan Kaplan, M.D. and John Muir Hospital Medical Center, No. MSC 00 02889

**Date:** October 02, 2002

**Plaintiff(s):**

- Julia Greenwell (Female, 31 Years)
- Steven Greenwell (Male)
- Caitlin Greenwell (Female, 3 Years)

**Plaintiff Attorney(s):**

- Bruce G. Fagel; Bruce Fagel & Associates; Beverly Hills CA for Caitlin Greenwell, Julia Greenwell, Steven Greenwell

**Plaintiff Expert(s):**

- Henry Bribram M.D.; Neuroradiology; Laguna Beach, CA called by: Bruce G. Fagel
- James G. Tappan; Obstetrics; Redwood City, CA called by: Bruce G. Fagel
- Karen Preston R.N.; Life Care Planning; Sacramento, CA called by: Bruce G. Fagel
- Laura Mahlmeister Ph.D.; Obstetrics Nursing; San Francisco, CA called by: Bruce G. Fagel
- Peter Formuzis; Economics; Irvine, CA called by: Bruce G. Fagel
- Daniel Bluestone M.D.; Pediatric Neurology; Fresno, CA called by: Bruce G. Fagel
- Michael Sherman; Neonatology; Davis, CA called by: Bruce G. Fagel

**Defendant(s):**

- Alan Kaplan M.D.
- John Muir Hospital

**Defense  
Attorney(s):**

- John L. Supple; Gordon & Rees; San Francisco, CA for Alan Kaplan M.D.
- J. Randall Andrada; Andrada & Schanzenbach for John Muir Hospital

**Defendant  
Expert(s):**

- Jay Tureen M.D.; Pediatric Critical Care; San Francisco, CA called by: for John L. Supple, J. Randall Andrada
- Gene Bruno; Life Care Planning; Los Angeles, CA called by: for John L. Supple, J. Randall Andrada
- John Wachtel M.D.; Obstetrics; Palo Alto, CA called by: for John L. Supple, J. Randall Andrada
- Mr. Mark Cohen; Economics; Lafayette, CA called by: for John L. Supple, J. Randall Andrada
- Dennis Hart M.D.; Pediatric Neurology; Davis, CA called by: for John L. Supple, J. Randall Andrada
- Michael Katz M.D.; Perinatology; San Francisco, CA called by: for John L. Supple, J. Randall Andrada
- Maribeth Inturrisi R.N.; Obstetrics Nursing; San Francisco, CA called by: for John L. Supple, J. Randall Andrada

**Insurers:**

- CAP-MPT
- Farmers Insurance

**Facts:**

On Oct. 20, 1999, plaintiff Julia Greenwell, a 31-year-old female, was 41 and 2/7 weeks pregnant and went to John Muir Hospital for induction of labor. At 8 p.m., she was given Cytotec. At 2:30 a.m. on Oct. 21, the nurse noted a blood pressure of 171/104, but did not call the obstetrician, Alan Kaplan, M.D. Greenwell was then given Stadol that reduced the blood pressure and at 5 a.m., the nurse started Pitocin per the Kaplan's order. When Kaplan examined Greenwell at 6:30 a.m., he diagnosed pregnancy-induced hypertension and ordered magnesium sulfate. He then performed an artificial rupture of the membranes to speed up the labor and then went to his office.

At 1:50 p.m., the nurse noted decreased variability and administered oxygen, but the decreased variability continued, so the nurse faxed a copy of the fetal monitor strip to Kaplan at his office. According to the plaintiffs, Mr. and Mrs. Greenwell and their daughter, Caitlin, after reviewing the strip, Kaplan told the nurse to continue the Pitocin, although at trial, the nurse testified that it was her own decision to continue and increase the Pitocin to get a better labor pattern).

Kaplan arrived at 5:15 p.m., about 25 minutes after Greenwell had become completely dilated, and he found Caitlin to be in an occiput posterior position. He attempted to rotate the head without success, and then decided at around 6 p.m. to perform a C-section for a failure to progress. Greenwell was moved to the operating room at around 6:12 p.m., and a fetal monitor was re-attached that showed a fetal heart rate in the 60s. The C-section was then converted to a crash, and Caitlin was delivered at 6:23 p.m. with an Apgars score of 1/3/4. A blood culture at birth showed a Group D strep infection in the baby and the placenta showed acute focal choreoathetosis. At 50 minutes of age, a blood gas on the plaintiff baby showed severe metabolic acidosis. An MRI in April 2000 showed injury to the basal ganglia, and the neurologist then diagnosed cerebral palsy.



The plaintiffs asserted the defendant hospital's nurses were negligent for increasing the Pitocin in the face of a non-reassuring fetal monitor strip, which in combination with pregnancy-induced hypertension, led to an episode of acute asphyxia around 5:50 p.m. when the fetus was no longer able to compensate for decreases in blood flow and oxygen. According to the plaintiff, the defendant Kaplan was also negligent for ordering the increase in Pitocin at 2:45 p.m., and both defendants were negligent for not proceeding to a C-section sooner. As for causation, the plaintiffs maintained that the infection in the fetus was not a substantial cause of injury, and the baby would have been normal if delivered before 5:50 p.m.

The hospital contended that the nurses exercised reasonable clinical judgment throughout the labor. The baby was well oxygenated during the day and the fetal monitor strip was reassuring and showed variability, particularly for a mother with an epidural and on magnesium. The hospital maintained that the Pitocin increases were reasonable and pursuant to the defendant doctor's order. In addition, the Pitocin was necessary because the treatment for pregnancy-induced hypertension is delivery, and this mother had a slow labor pattern throughout the day. According to the hospital, when the Kaplan arrived at 5:15 p.m., he took over the care of the patient and decided to rotate the baby for 14 minutes. The hospital claimed that the plaintiffs' experts conceded that no injury occurred until after Kaplan arrived and attempted the head rotation. The CT scan showed that the baby's brain injury was sudden and abrupt, which indicated acute cord compression. Due to the in utero Group D strep infection, Caitin could not tolerate the abrupt cord compression. The metabolic acidosis indicated the severity of the infection.

Kaplan maintained that all of the care that he rendered to the Greenwell and child was within the normal standard. The fetal monitor strip showed a reassuring pattern with a healthy fetus until after Greenwell was moved to the OR. Kaplan asserted that there was no reason or need to decrease the Pitocin in the face of a slow labor pattern and a reassuring fetal monitor strip. He also alleged that the cause of the baby's cerebral palsy was an undiagnosable infection in utero, in combination with an acute compression of the umbilical cord that was not predictable.

**Injury:**

Caitlin, age 3 at the time of trial, suffers from chorioathetoid cerebral palsy. Both of the plaintiff parents claimed damages for emotional distress. The plaintiffs claimed past medical specials of \$17,500, with all other medical expenses covered by private health insurance. The plaintiffs claimed future medical specials (care costs) of \$73 million (with a \$9.6 million present cash value after off-sets for health insurance) and a future loss of earning capacity of between \$8.7 million and \$10.9 million gross (with a present cash value of between \$915,000 and \$1.1 million).

The defendants asserted that the plaintiff child's future medical specials (care costs) were between \$5 million and \$25 million gross (with a present cash value of \$900,000 to \$2 million). The defendants also claimed that the plaintiff child's future loss of earning capacity was between \$7 million and \$8.7 million gross (with a present cash value of between \$460,000 and \$640,000).

**Result:** The jury returned a gross verdict of \$59,317,500 against the hospital. The jury determined that the present cash value of the verdict was \$7,851,500. The jury returned a defense verdict to Kaplan.

**Offer** \$925,000 from defendant Alan Kaplan, M.D. (after plaintiffs' CCP 998 demand had expired); \$102,500 at third MSC, raised to \$1 million at start of trial from defendant John Muir Hospital

### **Caitlin Greenwell**

\$17,500 Personal Injury: Past Medical Cost

\$49,000,000 Personal Injury: Future Medical Cost

\$9,800,000 Personal Injury: FutureLostEarningsCapability

\$100,000 Personal Injury: noneconomic damages

### **Julia Greenwell**

\$200,000 Personal Injury: noneconomic damages

### **Steven Greenwell**

\$200,000 Personal Injury: noneconomic damages

### **Trial Information:**

**Judge:** James R. Trembath

**Demand:** \$1 million CCP 998 of defendant Alan Kaplan, M.D.; \$3.5 million of defendant John Muir Hospital

**Offer:** \$925,000 from defendant Alan Kaplan, M.D. (after plaintiffs' CCP 998 demand had expired); \$102,500 at third MSC, raised to \$1 million at start of trial from defendant John Muir Hospital

**Trial Length:** 22 days

**Trial Deliberations:** 1.5 days

**Jury Vote:** 11-1 against hospital; 9-3 in favor of doctor

**Post Trial:** The trial judge vacated the verdict and on January 10, 2003, it granted Jon Muir Medical Center's Motion for new trial. According to defense counsel, the court found that the verdict was irreconcilably inconsistent: the jury could not logically find that the nurses were negligent with regard to the administration of Pitocin but the doctor was not. Counsel for plaintiff plans to appeal.

**Writer** Randy Stewart

## Boy Born with Brain Damage

**Type:** Settlement

**Amount:** \$0

**State:** Texas

**Venue:** Tom Green County

**Court:** Tom Green County District Court, 119th, TX

**Injury Type(s):**

- *brain - cerebral palsy*
- *paralysis/quadriplegia - quadriparesis*

**Case Type:**

- *Medical Malpractice*

**Case Name:** Joe Flores and Lana Flores, individually and as next friends of Nathan Flores, a minor v. Shannon Medical Center, Shannon Health System, Shannon Clinic and John Robert Meyer, M.D., No. B-00-0191-C

**Date:** September 20, 2002

**Plaintiff(s):**

- Joe Flores (Male, 0 Years)
- Lana Flores (Female, 0 Years)
- Nathan Flores (Male, 0 Years)

**Plaintiff Attorney(s):**

- Joe L. Lovell; Lovell, Lovell, Newson & Isern; Amarillo TX for Joe Flores, Lana Flores, Nathan Flores
- Robert J. Talaska; The Talaska Law Firm; Houston TX for Joe Flores, Lana Flores, Nathan Flores
- John Sutton; ; San Angelo TX for Nathan Flores

**Plaintiff Expert(s):**

- Dan M. Bagwell; life care planning; San Antonio, TX called by: Joe L. Lovell, Robert J. Talaska
- Lou Anne Papile M.D.; neonatology; Albuquerque, NM called by: Joe L. Lovell, Robert J. Talaska
- Alex Willingham M.D.; life care planning; San Antonio, TX called by: Joe L. Lovell, Robert J. Talaska
- Barry D. Pressman; Neuroradiology; Pacific Palisades, CA called by: Joe L. Lovell, Robert J. Talaska
- Laura Mahlmeister Ph.D.; obstetrics nursing; San Francisco, CA called by: Joe L. Lovell, Robert J. Talaska
- Dr. Everett G. Dillman; economics; El Paso, TX called by: Joe L. Lovell, Robert J. Talaska
- William Spellacy M.D.; obstetrics; Tampa, FL called by: Joe L. Lovell, Robert J. Talaska
- Veronica F. Parker R.N.C., M.S.N.; obstetrics nursing; San Antonio, TX called by: Joe L. Lovell, Robert J. Talaska
- Frank Joseph Battaglia; obstetrics; Houston, TX called by: Joe L. Lovell, Robert J. Talaska

**Defendant(s):**

- Shannon Clinic
- Shannon Health System
- Shannon Medical Center
- John Robert Meyer, M.D.

**Defense Attorney(s):**

- Ken Patterson; Patterson & Wagner; San Antonio, TX for Shannon Medical Center, Shannon Health System
- Charles J. Wittenburg; Davis, Hay, Wittenburg, Davis & Caldwell; San Angelo, TX for Shannon Medical Center, Shannon Health System
- George Finley; Smith, Rose, Finley, Harp & Price; San Angelo, TX for Shannon Clinic, John Robert Meyer, M.D.

**Defendant Expert(s):**

- Cynthia Jo Weiss-Kaffie Ph.D., R.N.; nursing; Lubbock, TX called by: for Ken Patterson, Charles J. Wittenburg
- Stanley Connor M.D.; obstetrics; Houston, TX called by: for George Finley

**Insurers:**

- The Medical Protective Co.

**Facts:**

A hospital and obstetrician reached a confidential settlement with a Monahans couple and their now-4-year-old son; the family was claiming that the doctor's and nurses' negligence during labor and delivery caused injury to the child, who suffers from mental retardation and spastic quadriparetic cerebral palsy, among other conditions.

According to her attorney Joe L. Lovell, Lana Flores' obstetrician was John Robert Meyer, M.D., an employee of Shannon Clinic. Lovell said that Flores was admitted to Shannon Medical Center, in San Angelo, at about 6:45 a.m. on Aug. 18, 1998, after labor began and her water broke; that Meyer was in charge of her care; that the fetal monitor strip began showing late and variable decelerations; that at about 1:15 p.m., an amnioinfusion was performed, which helped, but the nonreassuring signs returned, persisted and worsened; that, shortly after 3 p.m., an LVN - who the hospital's attorneys said was very experienced - suggested a cesarean section, but Meyer said, in essence, "not yet"; that the nonreassuring signs worsened, and the fetus failed to adequately descend; that, at 6:07 p.m., Meyer attempted a forceps delivery, but it failed, and an emergency cesarean section was begun; that, after making the incision, he found that the infant's head was stuck in the pelvis; that a "vaginal hand" failed to dislodge it, and when the child was finally removed, it had a fractured skull; that the child, a term infant, was delivered in a severely depressed, acidotic condition requiring resuscitation and intensive care; and that, over the next 24 hours, the infant suffered from seizures, respiratory failure and other problems.

Lana Flores and her husband, on their own behalf and their son's, alleged that Meyer and the hospital were negligent in how they managed the labor and delivery. Instead of allowing labor to continue, Meyer should have performed a cesarean section earlier than he did, the plaintiffs' experts said. The charge nurse negligently failed to advocate on behalf of the patient or to execute the hospital's chain of authority, the plaintiffs alleged.

The defendants denied breaching the standard of care. The hospital also contended that the medical decisions belonged to the doctor, and that the nurses did not negligently fail to invoke the chain of authority.

Moreover, according to the hospital's attorney Ken Patterson, there was no evidence that calling another doctor would have changed the outcome.

The plaintiffs also alleged that the hospital, the hospital system and Shannon Clinic were a single business entity or joint enterprise. The defendants, on both legal and factual grounds, disputed that claim, said Patterson.

**Injury:**

Nathan Flores suffered a fractured skull and, as a result of hypoxic-ischemic encephalopathy, permanent spastic quadriparetic cerebral palsy, said Lovell. The child, he continued, became microcephalic, is mentally retarded and is not expected to be able to walk, talk, work or care for himself, ever. At trial, said Lovell, the present value of Nathan Flores' life care plan was \$15 million, mostly for full-time nursing after he reaches adulthood; his past medical bills were over \$100,000, and his expected economic loss was \$1.2 million, said Lovell, adding that the experts assumed Nathan would have graduated from college and had a career comparable to that of his father, a coach and schoolteacher. For themselves, Nathan's parents sought damages for medical expenses and parental consortium, Lovell said, and for Nathan, they sought pain and suffering, physical impairment, medical bills and disfigurement.

The couple is in their 20s, and at the time of Nathan's birth, Lana Flores was working as a dental assistant, and she and her husband were finishing their degrees at Angelo State University, said Lovell. He said Lana Flores now cares for Nathan full-time, and that the family lives in Pecos.

**Result:**

In March, trial began, but ended in a mistrial after jury selection, said Lovell. The plaintiffs later settled for a confidential amount, and the prove-up was on Sept. 20.

The plaintiffs reportedly accepted the defendants' offer against their own attorneys' advice.

The hospital and hospital system, which are nonprofit entities, did not have liability insurance, but Meyer and the clinic each had a liability policy, Lovell said.

The plaintiffs initially also sued the charge nurse. The plaintiffs nonsuited her, however, once the hospital stipulated that she was in the course and scope and promised that she would appear at trial, said Lovell.

The attorney for the doctor and the clinic could not be reached for comment on this case.

**Trial Information:**

**Judge:** Tom Gossett

**Trial Length:** 0

**Trial Deliberations:** 0

**Writer**

## Delay in Caesarean Section Caused Baby's Brain Damage

**Type:** Settlement

**Amount:** \$1,500,000

**State:** California

**Venue:** Orange County

**Court:** Superior Court of Orange County, Newport Beach, CA

**Injury Type(s):** • *brain* - brain damage

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

**Case Name:** Mr. Doe, Mrs. Doe and Baby Doe v. Roe Hospital, No. Confidential

**Date:** December 01, 2001

**Plaintiff(s):**

- Mr. Doe (Male, 38 Years)
- Baby Doe (Female, 0 Years)
- Mrs. Doe (Female, 35 Years)

**Plaintiff Attorney(s):**

- Richard A. Cohn; Aitken Aitken & Cohn; for Mr. Doe, Mrs. Doe, Baby Doe

**Plaintiff Expert(s):**

- Phil Young M.D.; Obstetrics; San Diego, CA called by: Richard A. Cohn
- Laura Mahlmeister Ph.D.; Obstetrics Nursing; San Francisco, CA called by: Richard A. Cohn
- Wayne Lancaster; Economics; Fullerton, CA called by: Richard A. Cohn
- Andrea Morrison; Pediatric Neurology; Tarzana, CA called by: Richard A. Cohn

**Defendant(s):**

- Roe Hospital

**Defense Attorney(s):**

- Confidential; Confidential for Roe Hospital



**Defendant  
Expert(s):**

- Peter Lorber; Neurology; Los Angeles, CA called by: for
- Doreen Casuto; Life Care Planning; San Diego, CA called by: for

**Insurers:**

- Confidential

**Facts:**

The parents of an infant born with severe hypoxic brain injury settled with the hospital for \$1,500,000.

Plaintiff Mrs. Doe was a patient in defendant Roe Hospital giving birth to plaintiff Baby Doe, her second child. Mrs. Doe delivered her first baby by caesarean section. Baby Doe was to be delivered vaginally. The plaintiff's treating OB/GYN doctor ordered the administration of pitocin to induce labor. Sometime later Mrs. Doe felt a "pop-type" sensation in her stomach. The fetal monitoring strips immediately began to show signs of hypoxic episode for the child. A caesarean section was performed 33 minutes later. Plaintiff Baby Doe was born with severe hypoxic brain injury.

The plaintiffs contended that the nursing staff of defendant Roe Hospital did not properly keep Mrs. Doe's OB/GYN doctor informed of her progress. They further contended that the nursing staff should have called for an immediate C-section due to clear signs of uterine rupture.

The defendant Hospital Roe contended that the nursing staff acted properly. They asserted that anytime a woman undergoes a vaginal birth after caesarean , there is a known risk of uterine rupture. They maintained that they acted within the community standard of care.

**Injury:**

The plaintiff's claimed severe hypoxic brain injury to the infant. The claimed medical costs for the plaintiff infant were \$112,000 for the past and \$4,221,629 for the future. Future wage loss claimed for the plaintiff infant was \$1,048,278.

**Result:**

A settlement of \$1,500,000 was reached based on the jury finding the hospital was negligent. \$255,000 to the plaintiff parents; \$1,245,000 to plaintiff baby in a structured settlement.

**Demand:** \$4,000,000 pursuant to CCP 998

**Offer:** \$900,000 pursuant to CCP 998

**Trial Information:**

**Trial Length:** 0

**Trial  
Deliberations:** 0

**Writer**

## Medical Malpractice-

**Type:** Settlement

**Amount:** \$0

**State:** Missouri

**Venue:** Greene County

**Court:** Greene County Circuit Court, 31st, MO

**Case Type:**

- *Medical Malpractice*

**Case Name:** Katheryn Wilson, b/n/f Minnie Foster and Keith Wilson vs. St. John's Regional Medical Center, Smith-Glynn-Callaway Clinic, Inc., St. John's Health System, Inc., d/b/a The Springfield Clinic, Juliette, No.

**Date:** May 31, 1999

**Plaintiff(s):**

- Katheryn Wilson, b/n/f Minnie Foster and Keith Wilson (Female)

**Plaintiff Attorney(s):**

- Matthew W. Placzek; Placzek & Francis; Springfield MO for Katheryn Wilson, b/n/f Minnie Foster and Keith Wilson

**Plaintiff Expert(s):**

- Gil Martin M.D.; Neonatology; Covina, CA called by:
- John Haven M.D.; Obstetrics; Las Vegas, NV called by:
- Laura Mahlmeister Ph.D.; Nursing; San Francisco, CA called by:
- Wilbur Swearingen; Life Care Planner; Springfield, MO called by:
- Yitschak Frank; Pediatric Neurology; , called by:

**Defendant(s):**

- St. John's Regional Medical Center, Smith-Glynn-Callaway Clinic, Inc., St. John's Health System, Inc., d/b/a The Springfield Clinic, Juliette A. Vestal, M.D., Patricia Garretson, R.N. and Rebecca Collins, R.N.

**Defense  
Attorney(s):**

- Mike Patton; Turner, Reid, Duncan & Patton; Springfield, MO for St. John's Regional Medical Center, Smith-Glynn-Callaway Clinic, Inc., St. John's Health System, Inc., d/b/a The Springfield Clinic, Juliette A. Vestal, M.D., Patricia Garretson, R.N. and Rebecca Collins, R.N.
- Doug Harpool; Daniel, Clampett, Powell & Cunningham; Springfield, MO for St. John's Regional Medical Center, Smith-Glynn-Callaway Clinic, Inc., St. John's Health System, Inc., d/b/a The Springfield Clinic, Juliette A. Vestal, M.D., Patricia Garretson, R.N. and Rebecca Collins, R.N.

**Injury:**

Plaintiffs Minnie Foster and Keith Wilson are the mother and father of infant Katheryn Wilson. Foster was an 18-year-old unwed mother and Medicaid patient. They sued Defendant hospital and health care professionals after the baby was delivered by a nurse and the absent doctor had repeatedly been contacted by the nurses for hours prior to delivery. Plaintiffs alleged that Defendants Smith Glyn, The Springfield Clinic, and Dr. Vestal were negligent in failing to obtain an ultrasound/biophysical profile at the onset of the pre-term cervical dilation; in failing to screen the mother for potential cephalopelvic disproportion before delivery; for using Brethine (terbutaline) to treat pre-term dilation without contractions; in failing to respond to changes in Plaintiff's condition during labor, in failing to assess the mother for possible placental abruption; in failing to perform a cesarean section; in allowing the second stage of labor to continue for a long period of time with fetal distress present; in ordering the administration of oxytocin to augment labor with fetal distress present; in failing to discontinue the use of oxytocin when fetal distress continued; in failing to perform a scalp PH before allowing labor to continue; in failing to be present during labor with fetal distress present; in failing to examine the mother when late decelerations appeared; in failing to examine the mother once fetal distress was detected; in failing to assess for cord prolapse and cervical dilation following notification of fetal heart rate abnormality; and in failing to come to the hospital to deliver the baby. Plaintiffs alleged Defendants Garretson, Collins, and St. Johns were negligent in failing to insure that the obstetrician was present at Katheryn's birth; in failing to insure that a neonatologist was present at the baby's birth; in failing to report all changes in the child's condition to Defendant doctor; in failing to question the order that oxytocin be given in light of late decelerations; in failing to question the order that the mother be allowed to continue pushing for another hour, in light of late decelerations; in failing to find an obstetrician to care for the mother in person when late decelerations appeared; in failing to question the care that Defendant Vestal was giving to the woman; in failing to report changes in the mothers condition; and in failing to request Defendant Dr. Vestal to come to the hospital. Defendant contended in depositions that all four risk factors of ACOG 163 were not present. Defendants claimed that the mothers past history of marijuana smoking was an issue, though Plaintiffs claimed she never smoked it during pregnancy. Defendants also presented scenarios of possible genetic factors contributing to the baby's health.

Intracerebral, intraventricular and subarchnoid bleeding, seizures, cerebral palsy, extensive brain damage, mental retardation, severe spastic quadriplegia, encephalopathy, microcephaly, significant developmental delay, cortical blindness and scoliosis. Medical specials were described only as phenomenal with the child requiring 24-hour care for the remainder of her life.

**Result:**

Early ADR was unsuccessful, with only the physician willing to pay. Settled two weeks prior to trial for a confidential amount.

**Trial Information:**

**Judge:** J. Miles Sweeney

**Writer**

## Patient Claims Morphine Overdose

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** California

**Venue:** San Francisco County

**Court:** Superior Court of City and County of San Francisco, San Francisco, CA

**Case Type:**

- *Medical Malpractice*

**Case Name:** Rose Sarao v. Seton Medical Center et al., No. 980-275

**Date:** July 19, 1997

**Plaintiff(s):**

- Rose Sarao (Female, 83 Years)

**Plaintiff Attorney(s):**

- Steven B. Stein; ; San Francisco CA for Rose Sarao

**Plaintiff Expert (s):**

- Irwin Shelub M.D.; Pulmonology; Daly City, CA called by:
- Laura Mahlmeister Ph.D.; Nursing; San Francisco, CA called by:
- Charles J. Antonini, Jr. M.D.; Internal Medicine; Daly City, CA called by:

**Defendant(s):**

- Seton Medical Center et al.

**Defense Attorney(s):**

- Cyrus A. Tabari; Sheueman and Martini; San Jose, CA for Seton Medical Center et al.

**Defendant Expert(s):**

- John Luce M.D.; Internal Medicine; San Francisco, CA called by: for
- Neal Benowitz; Cardiology; San Francisco, CA called by: for
- Pamela Nye R.N.; Nursing; San Francisco, CA called by: for

**Insurers:**           • CHW

**Facts:**           November 19, 1995, plaintiff, an 83-year-old resident of San Francisco, underwent a total knee arthroplasty at defendant hospital. Postoperatively she was placed on a patient-controlled morphine pump. The morning of the next day, Dr. Antonini found plaintiff obtunded and in respiratory distress/arrest. He administered two doses of Narcan. Plaintiff vomited, aspirated, and developed Adult Respiratory Distress Syndrome (ARDS). She then spent two months in the intensive care unit.

Plaintiff contended that defendant hospital's nursing staff failed to properly monitor her, and failed to recognize the signs and symptoms of morphine overdose; that before Dr. Antonini arrived, defendant registered nurse, Hortencia Cid, turned off the morphine because she found plaintiff to be sleepy; and that the nurse should have called a doctor.

Defendants contended that the nurses properly monitored plaintiff, who did not receive enough morphine to have experienced an overdose; and that Dr. Antonini overreacted when he ordered the morphine, causing plaintiff's injuries.

Plaintiff attorney asked the jury to award \$700,000+.

**Injury:**           INJURY: Plaintiff suffered from residual pulmonary fibrosis as a result of her ARDS, and experienced a loss of muscle mass, causing a loss of mobility and permanent disability.

Defendant did not challenge plaintiff's injuries.

SPECIALS: Medical to date \$350,000. Future medical approximately \$50,000. Attendant care \$25,000 per year.

**Result:**           SETTLEMENT TALKS: Demand \$125,000. Offer \$75,000.

RESULT: DEFENSE VERDICT.

POLL: 12-0

### **Trial Information:**

**Judge:**           Douglas C. Munson

**Trial Length:**   10 days

**Trial Deliberations:**   2 hours

**Writer**           JV Temp6

## Birth Ends in Birth Defects

**Type:** Verdict-Plaintiff

**Amount:** \$2,460,000

**State:** California

**Venue:** Sacramento County

**Court:** Superior Court of Sacramento County, Sacramento, CA

**Case Type:**

- *Medical Malpractice*

**Case Name:** Rafael Correa, A Minor ET AL. v. Methodist Hospital; and Vance Knoll, M.D. ET AL., No. 95AS05298

**Date:** February 27, 1997

**Plaintiff(s):**

- Rafael Correa (Male, 0 Years)

**Plaintiff Attorney(s):**

- Bruce G. Fagel; Bruce G. Fagel and Associates; Beverly Hills CA for Rafael Correa

**Plaintiff Expert (s):**

- John H Menkes; Pediatrics; Beverly Hills, CA called by:
- John Elliott M.D.; Perinatology; Phoenix, AZ called by:
- Judy Halle; Nursing; Whittier, CA called by:
- Stan Schultz; Economics; Pasadena, CA called by:
- Nikki Duncan R.N.; Home Health Care; Sacramento, CA called by:
- Peter Formuzis; Economics; Santa Ana, CA called by:
- Sharon Kawai; Pediatric Rehabilitation; Fullerton, CA called by:
- Michael Sherman; Neonatology; Houston, TX called by:

**Defendant(s):**

- Methodist Hospital
- Vance Knoll, M.D. ET AL.

**Defense  
Attorney(s):**

- John S. Gilmore; Diepenbrock, Wulfe, Plant and Hannegan; Sacramento, CA for Methodist Hospital
- Thomas Joseph Doyle; Schuering, Zimmerman, Scully and Nolen; Sacramento, CA for Vance Knoll, M.D. ET AL.

**Defendant  
Expert(s):**

- Laura Mahlmeister Ph.D.; Nursing; San Francisco, CA called by: for
- Marvin H. Kamras M.D.; Obstetrics; Carmichael/Sacramento, CA called by: for
- Rowens Korobkin M.D.; Pediatrics; San Francisco, CA called by: for
- Russell K. Laros M.D.; Obstetrics; San Francisco, CA called by: for

**Insurers:**

- Norcal Mutual
- Catholic Health Care West

**Facts:**

March 30, 1995, plaintiff Lorena Correa, a 22-year-old housewife, checked into defendant hospital for delivery of her second child. Her first delivery was by C-section, so she was a candidate for a vaginal birth after cesarean, which had a 1% risk of uterine rupture. Plaintiff consented to a trial of labor and was induced at 7:00 a.m. with artificial rupture of membranes and Pitocin. After 11 hours with no significant progress, defendant doctor recommended a C-section and plaintiff refused. The medical records stated that "patient was offered option of C-section, and decided to continue with trial of labor." Plaintiff denied that any discussion took place. Defendant doctor then went home and had two telephone conversations with the OB nurse over the next six hours. There was still no significant progress and the fetal monitor showed no problems. At midnight on March 31, plaintiff was still in prodromal labor and the doctor gave orders for pain medications and authorized an epidural if needed. At 2:00 a.m., defendant hospital's nurse asked the in-house, on-call anesthesiologist to administer an epidural, which was done without complication. The anesthesiologist left plaintiff's room at 2:30 a.m., and went back to his on-call room in the hospital. At about 2:45 a.m., the fetal monitor strip showed periodic variable decelerations which were mild to moderate in degree. There was still good variability and the OB nurse interpreted a reassuring pattern. At 3:24 a.m., the fetal heart rate dropped below 100 for more than five minutes, and defendant doctor was called at home.

Defendant hospital's nurse testified that she described the deceleration in the heart rate and was told to give terbutaline and call back. Dr. Knoll testified that he was told that there was a variable deceleration that returned to baseline. At trial, Dr. Knoll testified that if he had been told about a prolonged deceleration, he would have ordered a stat C-section and would have come to the hospital immediately. Dr. Knoll was called 17 minutes later and told that the fetal heart rate was in a prolonged deceleration and he was asked to come to the hospital. Dr. Knoll then ordered a stat C-section and drove to the hospital. Although he lived 17 miles away, he arrived in less than 18 minutes and started surgery immediately. He delivered the baby seven minutes later, according to the records, although he testified that it was less than two minutes. At delivery, the baby was found in the abdomen with a complete uterine rupture and an 80% placental abruption. The baby had Apgar scores of 2-2-4 at 1-5-10 minutes, with a cord blood gas ph of 6.57. Plaintiff brought this action against the doctor, the hospital, and the anesthesiologist, based on negligence and medical malpractice theories of recovery. Plaintiff contended that defendant doctor was negligent for allowing plaintiff to continue in labor for more than 18 hours under Pitocin without significant progress; that prolonged use of Pitocin caused the uterine rupture, which began with the periodic variable decelerations at 2:45 a.m.; that defendant hospital's nurse should have called Dr. Knoll, who should have come



immediately, evaluated plaintiff, and performed a C-section; and that delivery up to 15 minutes earlier would have produced a normal outcome. Dr. Knoll contended that when the nurse did call, the report was not accurate; and that therefore, his actions were within the standard of care. Defendant doctor's expert testified that it was within the standard of care to monitor plaintiff at home, but that defendant hospital's nurse should have called earlier and reported the change in the fetal heart monitor strip.

Defendant hospital contended that there was no requirement for any communication before 3:25 a.m. because the monitor strip was reassuring and variable decelerations occur all that time; that once Dr. Knoll was called, it was his decision not to come at the time; that when the doctor did order the C-section at 3:42 a.m., the hospital immediately set up for a timely C-section; and that the time from when the decision was made to the time of incision was less than 30 minutes. Both defendants contended as to causation that the child was severely injured by 3:44 a.m., such that a delivery after that time would not have changed the outcome; and that as a result of the severity of his injury, the child's life expectancy was less than five more years.

**Injury:**

Plaintiff's doctors testified that the child was diagnosed with hypoxic ischemic encephalopathy and now suffers from cerebral palsy and severe development delays.

SPECIALS: Medical lien \$29,285. Future medical \$273,240 per year with least expensive annuity cost of \$2,046,800 (gross payout over 12 years for \$4,349,000). Future loss of earnings \$1,143,000 (present value) and \$11,764,000 (gross value).

**Result:** Demand \$1 million C.C.P. 998 to doctor and \$1.5 million C.C.P. 998 to hospital, raised to \$3 million during trial.

Offer \$800,000 jointly at mandatory settlement conference, raised to \$1.5 million before trial.

Offer \$750,000 by doctor and \$1.2 million by hospital during trial, raised to \$2.3 million jointly before the verdict.

PLAINTIFF VERDICT \$2,460,000 (economic damages) representing the lowest annuity cost of future medical care.

PLAINTIFF VERDICT \$1,143,000 present cash value of "lost years" of future loss of earnings. PLAINTIFF VERDICT \$450,000 (noneconomic damages) reduced to \$250,000 per MICRA.

PLAINTIFF VERDICT \$1,500,000 (emotional distress damages) reduced to \$250,000 per MICRA. PLAINTIFF VERDICT \$50,000 (separate claim for plaintiff's ruptured spleen).

TOTAL AWARD \$5,661,000 plus \$29,285 medical lien, less MICRA reductions for a net recovery of \$4,211,000. (Liability) (Damages) (Apportionment) Comparative liability was apportioned 68% to hospital and 32% to doctor. Plaintiff attorney reports that the court agreed to reduce "lost years" loss of earnings by the "cost of necessities" which the jury found to be 30%. Defendant doctor settled after trial for his \$1,000,000 policy limit. Motions were made to reduce the noneconomic damages pursuant to Civil Code 3333.2 and to add prejudgment interest and expert witnesses costs under C.C.P. 998, with various adjustments being considered. Partial satisfaction of judgment has been made by defendant hospital.

## **Trial Information:**

**Judge:** Michael J. Virga

**Trial Length:** 17 days

**Trial  
Deliberations:** 2 days

**Writer** JV Temp6