



Adoptive Parents Claimed Health History Not Given

Type: Settlement

Amount: \$700,000

Actual Award: \$700,000

State: California

Venue: Los Angeles County

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

Case Type:

- *Fraud*
- *Domestic Relations - Adoption*

Case Name: Roy Byrnes, M.D. and Ilse Byrnes v. Children's Home Society of California, No. BC 207 751

Date: March 27, 2003

Plaintiff(s):

- Ilse Byrnes (Female)
- Roy Byrnes, M.D. (Male)

Plaintiff Attorney(s):

- Thomas F. Borchert; Jacobs, Jacobs & Rosenberg; Los Angeles CA for Ilse Byrnes, Roy Byrnes, M.D.
- Stanley K. Jacobs; Jacobs, Jacobs & Rosenberg; Los Angeles CA for Ilse Byrnes, Roy Byrnes, M.D.

Plaintiff Expert(s):

- Jan Roughan; Life Care Planning; Arcadia, CA called by: Thomas F. Borchert, Stanley K. Jacobs
- Peter Formuzis; Economics; Santa Ana, CA called by: Thomas F. Borchert, Stanley K. Jacobs
- Reuben Pannor M.S.W., L.C.S.W.; Social Work; Los Angeles, CA called by: Thomas F. Borchert, Stanley K. Jacobs
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: Thomas F. Borchert, Stanley K. Jacobs
- Lawrence S. Miller; Physical Medicine; Burbank, CA called by: Thomas F. Borchert, Stanley K. Jacobs

Defendant(s):

- Children's Home Society of California

Defense Attorney(s):

- Fred R. Puglisi; Sheppard, Mullin, Richter & Hampton; Los Angeles, CA for Children's Home Society of California
- Sascha Von Mende; Sheppard, Mullin, Richter & Hampton; Los Angeles, CA for Children's Home Society of California

Defendant Expert(s):

- E. Wayne Carp Ph.D.; Domestic & Family Issues; Tacoma, WA called by: for Fred R. Puglisi, Sascha Von Mende
- Gene Bruno; Life Care Planning; Santa Monica, CA called by: for Fred R. Puglisi, Sascha Von Mende
- Edwin Amos M.D.; Neurology; Santa Monica, CA called by: for Fred R. Puglisi, Sascha Von Mende
- George M. Brinton Ph.D.; Economics; Los Angeles, CA called by: for Fred R. Puglisi, Sascha Von Mende
- Thomas L. Hedge; Physical Medicine; Northridge, CA called by: for Fred R. Puglisi, Sascha Von Mende

Facts:

On June 9, 1964, plaintiffs Roy Byrnes, M.D., and his wife, Ilse, adopted Kim Byrnes, an infant born on April 21, 1964, through defendant Children's Home Society of California (CHS), a licensed adoption agency and non-profit corporation in Los Angeles.

During the adoption process, the Byrneses claimed they informed CHS that they wanted to know the non-identifying health history of the birth parents and the history of the gestation period and birthing event. They claimed that they were advised that the health history of the birth parents was unremarkable and that the infant was a well baby delivered by C-section at full term. Kim was accepted by the Byrneses and in June 1965, the adoption was finalized by the court.

Although Kim was a very agile child, he didn't speak. Speech therapy failed and it eventually became clear that Kim suffered from some sort of brain damage. The Regional Center diagnosis was mental retardation although the Byrneses claimed during the litigation that Kim was cogentially aphasic in expressive and perceptive communication. Kim has never spoken a word and understands only simple communications.

The Byrneses, who had two biological children before they adopted Kim, adopted a second child (a girl) from CHS in 1966, who is healthy. They never institutionalized Kim and kept him at home in a rural setting because he like animals, sent him to special

schools and arranged for him to be in a sheltered workshop program for the disabled for a half day, five days a week. Eventually, they became concerned that they would not be able to take care of Kim much longer and did not wish to burden their other, now adult children, who have lives of their own. Kim is now 39 years old and his parents are in their seventies.

In late 1997, Roy Byrneses wrote CHS on behalf of Kim and requested non-identifying information regarding Kim after he became aware of changes in the law allowing for such discovery. In a letter dated April 15, 1998, CHS advised that Kim was born by elective C-section due to his birth mother's medical condition. Among other things, the letter described that the birth mother was 17 at the time of Kim's birth. She had impaired eyesight, speech and mobility, which confined her to a wheelchair. At age 15 1/2, she began developing a staggering gait, the family noticed her displaying hostility toward them and she did not seem concerned about her hygiene. The letter also described that the birth mother's doctors suspected that she had either multiple sclerosis or a brain stem tumor. The birth mother's doctors did not believe her condition was hereditary in nature.

Within one year of receiving this letter, the Byrneses filed their lawsuit against CHS, alleging fraud, negligence, breach of contract and intentional infliction of emotional distress. CHS demurred on statute of limitations grounds and Judge Fumiko Wasserman sustained the demurrer without leave to amend. The Appellate Court then reversed and held that the statute of limitations was a question of fact.

The Byrneses contended that the custom and practice, as well as the standards of care in agency adoptions in 1964, was that all known non-identifying health history and background of the birth parents were shared with the adopting parents. Further, the Byrneses maintained that they specifically asked for all such information and were told the birth mother's health was normal.

CHS contended that the custom and practice and standard of care in 1964 was that the agency should avoid revealing negative background information unless it could assist in caring for the child. CHS contended that at that time, adoption agencies were taught to avoid revealing information that would negatively stigmatize the child. CHS further maintained (and the Byrneses did not dispute) that there was no connection between the birth mother's condition and Kim's condition. CHS further disputed whether the Byrneses had in fact asked for all information relating to the health of the birth parents and also disputed the Bryneses' recollection of what CHS represented to them.

Injury:

The Byrnes claimed emotional distress, punitive damages and the extraordinary expenses to care for Kim when they no longer could. They also claimed that within ten years Kim would need full time attendant care, living alone with his caretaker.

CHS claimed that group living was all that was necessary.

Result: The Byrneses settled their claim for \$700,000, plus \$6,708 in costs based upon CHS accepting the CCP 998 offer to compromise.

The Byrneses' counsel reported that all employees of CHS, except for one social worker, were either dead or unavailable at the time of the litigation. The social worker, who is now 84-years-old, testified that she had no memory of the adoption, that she was trained by CHS to only reveal health information of the birth mother that was hereditary in nature, but if asked about such information, CHS would not lie. She contradicted this testimony by also testifying that the health information of the birth mother contained in the April 15, 1998 letter from CHS to the Byrneses was pertinent information that would be shared with the adopting parents.

Ilse Byrnes

\$700,000 Personal Injury: settlement

Trial Information:

Judge: Morris B. Jones

Demand: \$500,000 at mediation (rejected), raised to \$700,000 CCP 998 (accepted) (per plaintiffs' counsel); Plaintiffs never made an actual demand at the mediation but plaintiffs' counsel stated they would settle for the "middle six figures" (per defense counsel)

Offer: Initially \$50,000 (per plaintiffs' counsel); \$225,000 at the mediation (per defense counsel)

Writer Randy Stewart

Distressed Twin Suffered Asphyxia During Delivery

Type: Settlement

Amount: \$3,487,000

Actual Award: \$3,487,000

State: California

Venue: Los Angeles County

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

Injury Type(s):

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

Case Type:

- *Medical Malpractice - Childbirth*

Case Name: Doe Twin v. Roe Doctor and Roe Hospital, No. Confidential

Date: December 06, 2002

Plaintiff(s):

- Doe Twin

Plaintiff Attorney(s):

- Russell S. Kussman; Kussman & Whitehill; Los Angeles CA for Doe Twin

Plaintiff Expert(s):

- Donna M. Barras M.D.; Pediatric Rehabilitation; Buena Park, CA called by: Russell S. Kussman
- Vicki Twitchell; Obstetrics Nursing; West Los Angeles, CA called by: Russell S. Kussman
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: Russell S. Kussman
- Jeffrey Phelan; Obstetrics; Pomona, CA called by: Russell S. Kussman
- Raymond G. Schultz; Economics; Pasadena, CA called by: Russell S. Kussman

Defendant(s):

- Roe Doctor
- Roe Hospital

Defense Attorney(s):

- Attorney Confidential for Roe Doctor, Roe Hospital

Defendant Expert(s):

- Gil Martin M.D.; Neonatology; Covina, CA called by: for Attorney Confidential
- Ted Vavoulis; Economics; Pasadena, CA called by: for Attorney Confidential
- Anne Taylor R.N., B.S.N.; Labor & Delivery; San Diego, CA called by: for Attorney Confidential
- Jean Lake; Pediatric Neurology; Long Beach, CA called by: for Attorney Confidential
- Paul Weber; Obstetrics; Long Beach, CA called by: for Attorney Confidential
- Doreen Casuto; Life Care Planning; San Diego, CA called by: for Attorney Confidential

Facts:

The plaintiff's mother was pregnant with twins and went to the defendant hospital for induction of labor on May 14, 1999. Near the end of labor, "twin B" (the upper twin) began to show signs of fetal distress. The healthcare team, including the obstetrician and nurses, apparently became confused as to which twin was which, and expedited the delivery of "twin A," the one not in distress. After delivery of the healthy twin, the nurses allegedly continued the infusion of pitocin, which increased the distress to twin B and led to perinatal asphyxia.

The plaintiff claimed that the obstetrician and the hospital labor and delivery nurses negligently monitored the labor, failed to recognize fetal distress in twin B and failed to promptly deliver the distressed twin, instead continuing the infusion of Pitocin and making the distress worse.

The defendant obstetrician and hospital claimed that there was no significant delay in the recognition of fetal distress and the response to it was timely. They believed that the nurses did shut off the Pitocin, but simply failed to document that in the chart.

The hospital claimed that since the obstetrician was present the entire time, the nurses were reasonable in following his orders and his management decisions.

Injury:

Twin B, now 3-1/2 years-old, suffers from cerebral palsy, developmental delay, mental retardation and spastic quadriparesis.

Economic damages of \$3 million and non-economic damages of \$500,000 (per MICRA) were sought.

Result:

The parties settled the case for \$3,487,000 total.

The hospital paid \$2,532,000; the doctor paid \$955,000 (policy limits).

Trial Information:

Judge: Judge Confidential

Writer Mari Pham

Twin in Fetal Distress Is Delivered Second, Suffers Asphyxia

Type: Settlement

Amount: \$955,386

State: California

Venue: Los Angeles County

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

Injury Type(s):

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

Case Type:

- *Medical Malpractice* - Childbirth

Case Name: Confidential Twin, Confidential Guardian As Litem v. Confidential Hospital and Confidential Obstetrician, No. Confidential

Date: April 01, 2002

Plaintiff(s):

- Confidential (0 Years)

Plaintiff Attorney(s):

- Russell S. Kussman; Kussman & Whitehill; Los Angeles CA for Confidential

Plaintiff Expert (s):

- Donna M. Barras M.D.; Physical Medicine; Downey, CA called by: Russell S. Kussman
- Vicki Twitchell; Obstetrics Nursing; Sylmar, CA called by: Russell S. Kussman
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: Russell S. Kussman
- Jeffrey Phelan; Obstetrics; Pasadena, CA called by: Russell S. Kussman
- Raymond G. Schultz; Economics; Pasadena, CA called by: Russell S. Kussman

Defendant(s):

- Confidential Hospital
- Confidential Obstetrician

Defense Attorney(s): • Confidential; Confidential for Confidential Hospital, Confidential Obstetrician

Defendant Expert(s): • Jean Lake; Pediatric Neurology; Long Beach, CA called by: for Confidential
• Davis W, Baldwin M.D.; Obstetrics; Palo Alto, CA called by: for Confidential

Insurers: • Confidential

Facts: A 43-year-old mother, as guardian ad litem for her injured child, sued the obstetrician and hospital for malpractice when one of her twins, known to be in fetal distress, was mistakenly delivered second. The defendant obstetrician settled for \$955,386 and litigation continued against the hospital.

The mother entered the defendant hospital for a vaginal birth of her pregnancy of twins. The defendant obstetrician and nurses monitored the mother's labor electronically, but became confused as to which twin was which. One of the twins developed fetal distress, and the healthcare team mistakenly expedited the delivery of the non-distressed twin. The plaintiff, distressed twin, suffered asphyxia. After the delivery of the healthy twin, delivery of the plaintiff was further delayed while the nurses maintained infusion of Pitocin, which increased the distress to the hypoxic twin.

The guardian ad litem contended that the defendant hospital personnel (nurses and residents) and the private obstetrician negligently monitored her labor. She further contended that after the non-distressed twin was born, the defendants failed to promptly deliver the distressed twin. The guardian ad litem argued that the staff negligently continued the Pitocin infusion, a drug used to increase uterine contractions and known to decrease uterine blood flow and oxygen to the baby.

The defendant obstetrician contended that there was no significant delay in recognition of the fetal distress, and that the response to it was timely. He further contended that the delivery of the twins was within the standard of care in the community.

Injury: The guardian ad litem claimed that the plaintiff suffered brain damage, spastic quadriplegia, cerebral palsy with developmental delay and mental retardation. Medical costs and future living expenses of unspecified amounts were claimed.

Result: The defendant physician settled with the plaintiffs for a \$955,386 cash settlement (the full amount remaining on doctor's insurance policy to settle doctor's portion of the case.) The case against the hospital is still pending.

Demand Policy limits

Offer None

Trial Information:

Judge: Confidential

Trial Length: 0

**Trial
Deliberations:** 0

Writer N Taylor

Improper Barricading on Highway Costs Company \$44.7M

Type: Verdict-Plaintiff

Amount: \$44,732,000

State: Texas

Venue: Jim Wells County

Court: Jim Wells County District Court, 79th, TX

Injury Type(s): • *paralysis/quadriplegia* - quadriplegia

Case Type:

- *Negligence*
- *Torts - Bystander*
- *Damages - Bystander*
- *Premises Liability*

Case Name: Randy and Rebecca Ramos, Individually and as Next Friends of Erika Ramos, a Minor, and Randy Ramos, a Minor v. Bay Inc. v. Melinda Garcia, No. 98-02-36425

Date: December 13, 2001

Plaintiff(s):

- Erika Ramos (Female, 18 Years)
- Rebecca Ramos (Female, 22 Years)
- Randy Ramos Jr. (Male, 3 Years)
- Randy Ramos Sr. (Male, 21 Years)

Plaintiff Attorney(s):

- Steve T. Hastings; Huerta & Hastings; Corpus Christi TX for Randy Ramos Sr., Rebecca Ramos, Erika Ramos, Randy Ramos Jr.
- Rebecca E. Hamilton; Sumner, Schick & Hamilton; Dallas TX for Randy Ramos Sr., Rebecca Ramos, Erika Ramos, Randy Ramos Jr.
- Wallace W. Canales; Law Office of Wallace Canales; Alice TX for Randy Ramos Sr., Rebecca Ramos, Erika Ramos, Randy Ramos Jr.
- Robert J. Patterson; Patterson & Associates; Corpus Christi TX for Erika Ramos, Randy Ramos Jr.

**Plaintiff Expert
(s):**

- Paul Kayfetz; Photography; Bolinas, CA called by: Steve T. Hastings, Rebecca E. Hamilton, Wallace W. Canales, Robert J. Patterson
- David C. Steitle P.E.; Traffic; San Antonio, TX called by: Steve T. Hastings, Rebecca E. Hamilton, Wallace W. Canales, Robert J. Patterson
- Eugene Farber; Ergonomics/Human Factors; Beverly Hills, MI called by: Steve T. Hastings, Rebecca E. Hamilton, Wallace W. Canales, Robert J. Patterson
- Robert Vooght Ph.D.; Life care planning; Virginia Beach, VA called by: Steve T. Hastings, Rebecca E. Hamilton, Wallace W. Canales, Robert J. Patterson
- Ronald S. Gabriel; Pediatric neurology; Los Angeles, CA called by: Steve T. Hastings, Rebecca E. Hamilton, Wallace W. Canales, Robert J. Patterson
- Dr. Everett G. Dillman; Economics; El Paso, TX called by: Steve T. Hastings, Rebecca E. Hamilton, Wallace W. Canales, Robert J. Patterson
- Richard Cale; Meteorology; Riverside, CA called by: Steve T. Hastings, Rebecca E. Hamilton, Wallace W. Canales, Robert J. Patterson

Defendant(s):

- Bay Inc.
- Melinda Garcia

**Defense
Attorney(s):**

- Darrell L. Barger; Barger, Hermansen, McKibben & Villareal; Corpus Christi, TX for Bay Inc.
- Baldemar F. Gutierrez; Law Offices of Baldemar Gutierrez; Alice, TX for Bay Inc.
- Ronald G. Hole; Hole & Alvarez; McAllen, TX for Melinda Garcia
- Tom Hermansen; Barger, Hermansen, McKibben & Villareal; Corpus Christi, TX for Bay Inc.
- Joe Frank Garza; Falfurrias, TX for Bay Inc.

**Defendant
Expert(s):**

- Ed Martinez; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; College Station, TX called by: for Darrell L. Barger, Baldemar F. Gutierrez, Tom Hermansen, Joe Frank Garza
- John R. Seals M.D.; Pediatric neurology; San Antonio, TX called by: for Darrell L. Barger, Baldemar F. Gutierrez, Tom Hermansen, Joe Frank Garza

Insurers:

- AIG/Chartis
- Charter General Mutual Insurance Co.

Facts:

A Jim Wells County District Court jury awarded \$44.7 million to the family of an 18-month child who was left quadriplegic and with severe brain damage as a result of an accident caused by faulty barricading along a highway in Alice. Plaintiffs successfully argued that the defendant company that made the barricade created a blind intersection by placing concrete traffic barriers too close to an intersecting road. The family would have settled the case for \$8 million before trial.

Rebecca Ramos was driving her Suzuki in a construction zone on Hwy. 281 in Alice on Sept. 27, 1997, when a Toyota driven by Melinda Garcia, 19, pulled out in front of her. Ramos hit the left front side of Garcia's car at an estimated 29 mph. The accident happened at about 9 p.m.; weather was not a factor. Randy Ramos Sr. was not in the car. Erika Ramos, 18 months old at the time, and Randy Ramos Jr., her 3-year-old brother, were seat belted in the front seat. Erika was rendered a quadriplegic and suffered severe, permanent brain damage as a result of the collision.

The plaintiffs alleged that part of Bay Inc.'s contract with the State of Texas for the construction project on Hwy. 281 involved traffic handling through the construction zone. It was their contention was that defendant negligently created a blind intersection, particularly at night, by placing concrete traffic barriers too close to an intersecting road. Because of the construction, Garcia could not see plaintiffs' approaching vehicle and pulled out in front of them causing the collision.

There was another, very similar, accident after the one in question. Steve Hastings, one of the attorneys representing the plaintiffs, said that because a Bay corporate representative disputed the feasibility of a safety change, he was allowed to offer into evidence the fact that after the barricades were replaced by barrels following the second accident, there were no more collisions at that location.

Bay asserted it did the job exactly the way it was instructed to by the state and couldn't change safety measures without the state's consent. It also argued that Rebecca was negligent for placing her children in the front seat of her car. The defendant filed a third-party action against Garcia contending she was the proximate cause of Erika's injuries for failing to keep a proper lookout. Garcia denied any negligence and counterclaimed against Bay seeking damages for her mental anguish as a result of the collision.

The plaintiffs called the one eyewitness to the collision, a truck driver waiting for traffic to clear before making a wide right turn. He supported the plaintiffs' version of events. Hastings said the plaintiffs also called two individuals who testified they had complained to Bay about safety at the intersection. Two other persons testified they had driven through the barricaded intersection and it was not safe. Bay denied any knowledge of a dangerous condition.

Hastings noted the case was tried to verdict two years ago but a mistrial was declared. (The mistrial was because the first jury awarded the baby \$0 for all of losses. They set damages at about \$4.5 million but it was only for past medical and future medical before age 18.) He said that in the second trial, new experts were retained for human factors, traffic control, life expectancy/mental capacity, photographic engineering and meteorology. The plaintiffs also contested admissibility of the defense's prepared accident reconstruction animation and visibility demonstration. All were either withdrawn or excluded by the court.

Injury:

Erika Ramos suffered a broken neck at C2-C3 resulting in C1-C2 quadriplegia; she is ventilator-dependant. She also suffered severe brain damage as a result of her injuries and will require 24-hour nursing care for the rest of her life. Rebecca cares for her daughter nine hours a day; outside help is required for the remaining 15 hours. Hastings said Erika's parents contended their daughter has some understanding of what is going on around her even though she can't communicate; Bay argued that the child is in a permanent vegetative state. Erika had \$1,950,000 in past medical; future medical is estimated at \$18 million.

Result:

The jury of seven women and five men placed 100% of the negligence on Bay Inc. and none on Melinda Garcia. There was an issue as to Rebecca's negligence for positioning her children in the front seat; the jury did not find any negligence on her part.

Hastings expects that the final judgment, with prejudgment interest, will be in the \$61.7 million range.

The plaintiffs asked the jury for \$60 million in actual damages, they awarded a total of \$44,732,000.

Erika Ramos \$1,000,000 for past physical pain and mental anguish

\$ 6,000,000 future physical pain and mental anguish

\$ 2,000,000 past disfigurement and physical impairment

\$12,000,000 future disfigurement and physical impairment

\$ 800,000 loss of earning capacity after age 18

\$ 9,000,000 medical care after age 18

Randy Ramos Sr. \$1,000,000 loss of companionship and society

Rebecca Ramos \$1,000,000 loss of companionship and society

\$ 1,000,000 mental anguish as a result of witnessing the accident

Rebecca and Randy Ramos Sr. \$1,900,000 Erika's past medical care

\$9,000,000 medical care until Erika reaches age 18

Randy Ramos Jr. \$25,000 past and future mental anguish

Garcia Ramos \$7,000 mental anguish

Demand \$8 million

Offer \$4 million

Trial Information:

Judge: Stanton Pemberton

Trial Length: 9 days

**Trial
Deliberations:** 3.5 hours

Post Trial: In March 2004, The Fourth Court of Appeals, San Antonio, Texas, reversed the \$62 million judgment rendered in favor of plaintiffs. The court of appeals also remanded the cause for new trial. The file number for the appeal was 04-02-00196-CV

Writer Gary Hardin

Doctor Found Not Negligent for Child's Brain Injuries During Birth

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Los Angeles County

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

Case Type:

- *Medical Malpractice*

Case Name: Doe Child v. John Doe, M.D., No. BC 184 556

Date: November 07, 2001

Plaintiff(s):

- Doe Child (Male, 12 Years)

Plaintiff Attorney(s):

- Michael J. Piuze; Law Offices of Michael J. Piuze; for Doe Child

Plaintiff Expert (s):

- Joel S. Rosen; Physical Medicine; Northridge, CA called by: Michael J. Piuze
- Peter Formuzis; Economics; Santa Ana, CA called by: Michael J. Piuze
- Sarah Guentz; Rehabilitation Counseling; Long Beach, CA called by: Michael J. Piuze
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: Michael J. Piuze
- Michael Katz M.D.; Perinatology; San Francisco, CA called by: Michael J. Piuze

Defendant(s):

- John Doe, M.D.

Defense Attorney(s):

- Michael A. O'Flaherty; O'Flaherty, Cross, Martinez & Ovando for John Doe, M.D.

Defendant Expert(s):

- Ted Vavoulis; Economics; Pasadena, CA called by: for Michael A. O'Flaherty
- Gene Bruno; Vocational Rehabilitation; Los Angeles, CA called by: for Michael A. O'Flaherty
- Jean Lake; Pediatric Neurology; Long Beach, CA called by: for Michael A. O'Flaherty
- Manuel Porto MD; Perinatology; Irvine, CA called by: for Michael A. O'Flaherty

Insurers:

- Farmers Insurance Exchange

Facts:

A Los Angeles County jury returned a verdict in favor of a defendant doctor who was alleged to have been negligent in the delivery of a plaintiff child.

On Oct. 31, 1989, at 1 a.m., the plaintiff child's mother, an HMO patient, arrived at Cedars-Sinai Medical Center in full-term labor. The defendant doctor, an OB/GYN, who had finished his residency in obstetrics about three months earlier, was moonlighting as a contract doctor for the HMO to handle deliveries for their patients. He obtained from the mother a history of two prior C-sections and elected to do another C-section. The defendant claimed that it took about three hours to assemble an operating room crew. The defendant commenced surgery a little after 4 a.m. and encountered a low anterior placenta, which began to bleed when he cut into the uterus. The defendant states he then tried to deliver the baby but the baby's head was stuck in the birth canal. The defendant doctor went through a series of maneuvers including having his assistant surgeon, a first-year family practice resident, push on the baby's head through the vagina. When all these efforts failed, the defendant doctor pulled the placenta out manually and delivered the child by breech birth. By the time of the delivery, the child had lost 2/3 of his blood supply and suffered massive brain damage.

The plaintiff, through his guardian ad litem, asserted that the defendant doctor fell below the standard of care. The plaintiff claimed that the doctor was inexperienced and slow in dealing with this problem that could have been easily resolved. Had he instructed his assistant surgeon to push on the baby's head at a different angle, the baby would have been delivered, the plaintiff asserted.

The defendant doctor maintained that he met the standard of care. He stated that this was a highly unusual situation involving a combination of a bleeding placenta and the baby's head being stuck in the birth canal. The defendant claimed that he followed the correct maneuvers in the correct sequence, and that there was no negligence.

Injury:

The plaintiff child, who is now 12-years-old, suffered brain damage and spastic triplegia. He underwent both physical and vocational rehabilitation but he continues to have diminished intelligence, incontinence and a diminished life span.

Result: The jury returned a 12-0 defense verdict. The defendant's counsel reported that Cedars Sinai, the anesthesiologist and various residents were named as defendants in the case but they either received summary judgments or were dismissed before trial. No settlement funds were paid.

Demand \$4,750,000

Offer \$250,000 either cash or partly cash and structured

Trial Information:

Judge: Victor H. Pearson

Trial Length: 15 days

**Trial
Deliberations:** 1.75 hours

Writer

Mother Triumphs in Unattended Birth Claim

Type: Verdict-Plaintiff

Amount: \$22,600,000

State: Michigan

Venue: Washtenaw County

Court: Washtenaw County, Circuit Court, Ann Arbor, MI

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

Case Name: Sierra Goll, a minor, by her next friend Dawn Goll, v. Dr. Marvin Schrock, No. 99-5226-NH

Date: May 22, 2001

Plaintiff(s): • Dawn Goll (Female, 0 Years)
• Sierra Goll (Female, 6 Years)

Plaintiff Attorney(s): • Howard J. Victor; Worsham, Victor & Ahmad; Southfield MI for Sierra Goll, Dawn Goll

Plaintiff Expert (s): • Ronald Zack M.D.; Obstetrics; Lathrop Village, MI called by: , Howard J. Victor
• Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: , Howard J. Victor
• Michael Berke M.D.; Obstetrics; Detroit, MI called by: , Howard J. Victor

Defendant(s): • Dr. Marvin Schrock

Defense Attorney(s): • James E. Brazeau; Robison, Curphey & O'Connell; Toledo, OH for Dr. Marvin Schrock
• Jean M. O'Brien; Robison, Curphey & O'Connell; Toledo, OH for Dr. Marvin Schrock

**Defendant
Expert(s):**

- Curtis Struyk M.D.; Obstetrics; Grand Rapids, MI called by: for
- Howard Stein M.D.; Pediatric Neurology; Toledo, OH called by: for
- Robert Hyashi M.D.; Obstetrics; Ann Arbor, MI called by: for
- Steven Leber M.D.; Pediatric Neurology; Ann Arbor, MI called by: for

Insurers:

- Pro National

Facts:

On May 22, 2001, a Washtenaw County, Mich., jury awarded a mother and daughter \$22 million in a medical malpractice case involving an unattended birth.

The suit charged a Michigan doctor, Marvin Schrock, with negligence in connection with the birthing incident that, six years later, left the mother's daughter exhibiting symptoms of brain injury. Specifically, Goll claimed that Schrock failed to be present during the birth of the child, forcing her to deliver the child alone and resulting in the injuries to the child.

Schrock countered that he did not deviate from the acceptable standard of care.

Injury:

Sierra Goll suffered brain damage from a lack of medical attention at birth.

Result:

The jury awarded Dawn Goll and her daughter, Sierra, \$22.6 million.

James E. Brazeau, counsel for Schrock, said an undisclosed settlement was reached in the fall of 2001. Schrock is now retired, he said.

Trial Information:

Judge:

David S. Swartz

Trial Length:

0

**Trial
Deliberations:**

0

Writer

Failure To Diagnose Aneurysm

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Los Angeles County

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

Case Type:

- *Medical Malpractice*

Case Name: Athena Bizoumis, a minor, by and through her Guardian ad Litem, Leah Bizoumis v. Children's Hospital of Los Angeles, The Estate of David Belzer, M.D., Morris Asch, M.D., William G. Bradley, M.D., Robert Jacobs, M.D., Gordon McComb, M.D., Marvin Nelson, M.D., Frank Brow, M.D. and Gerald Sloan, M.D., No. BC 203 667

Date: May 17, 2001

Plaintiff(s):

- Leah Bizoumis (Female, 0 Years)
- Althena Bizoumis (Female, 0 Years)

Plaintiff Attorney(s):

- Paul A. DeMontesquiou; Walsh & DeMontesquiou; Calabasas CA for Althena Bizoumis, Leah Bizoumis

Plaintiff Expert (s):

- Gary Duckwiler M.D.; Interventional Radiology; Los Angeles, CA called by: Paul A. DeMontesquiou
- Gene Bruno; Vocational Rehabilitation; Los Angeles, CA called by: Paul A. DeMontesquiou
- Allan Nutkiewicz M.D.; Neurosurgery; Calabasas, CA called by: Paul A. DeMontesquiou
- Howard Krause M.D.; Ophthalmology; Los Angeles, CA called by: Paul A. DeMontesquiou
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: Paul A. DeMontesquiou
- Bradley A. Jabour M.D.; Neuroradiology; Santa Monica, CA called by: Paul A. DeMontesquiou

Defendant(s):

- Frank Brow, M.D.
- Morris Asch, M.D.
- Gerald Sloan, M.D.
- Gordon McComb, M.D.
- Marvin Nelson, M.D.
- Robert Jacobs, M.D.
- William G. Bradley, M.D.
- Estate of David Belzer, M.D.
- Children's Hospital of Los Angeles

**Defense
Attorney(s):**

- Marshall Silberberg; La Fallotte, Johnson, DeHaas, Fesler, Silberberg & Ames for Children's Hospital of Los Angeles, Gordon McComb, M.D., Marvin Nelson, M.D., Gerald Sloan, M.D.
- David J. Weiss; Law Office of David J. Weiss; Los Angeles, CA for Robert Jacobs, M.D.
- Mark V. Franzen; Carroll, Kelly, Trotter, Franzen & McKenna; Long Beach, CA for William G. Bradley, M.D.
- Susan L. Schmid; Schmid & Voiles; Los Angeles, CA for Estate of David Belzer, M.D., Morris Asch, M.D., Frank Brow, M.D.

**Defendant
Expert(s):**

- John Graham M.D.; Genetics; Los Angeles, CA called by: for Marshall Silberberg
- John Harry Samson; Pediatrics; Los Angeles, CA called by: for Mark V. Franzen
- David McClone M.D.; Pediatric Neurology; Chicago, CA called by: for Mark V. Franzen
- Charles Kerber M.D.; Interventional Radiology; San Diego, CA called by: for Susan L. Schmid
- Michael N. Brant-Zawadzki M.D., F.A.C.R.; Pediatric Ophthalmology; Los Angeles, CA called by: for Susan L. Schmid

Insurers:

- CNA
- Truck Insurance Exchange
- CAP/MPT

Facts:

January 1993, the plaintiff was born with hemangiomas (vascular growths) on her face and neck. At three months of age, defendant Dr. Morris Asch, a pediatrician, ordered an MRI that was interpreted by defendant Dr. William G. Bradley, a neuroradiologist, as revealing a two-centimeter "pool of blood" in the brain potentially consistent with a hemangioma. A referral was then made to defendant Dr. G. Gordon McComb, a pediatric neurosurgeon at defendant Children's Hospital of Los Angeles (CHLA). Because the infant was asymptomatic and defendant Dr. Marvin Nelson, a neuroradiologist, had also reviewed the films, no further studies were ordered. On May 7, 1993, a further MRI was done, which again showed the presence of the "pool of blood" near the tentorium. The study, interpreted again by Dr. Bradley, was said to be consistent with a hemangioma but a cerebral angiogram could give more definition "if clinically necessary." The child continued to follow with her general pediatricians, defendant Dr. Morris Asch and defendant Dr. Frank Brow. She was also seen by defendant Dr. Robert Jacobs, a pediatrician at CHLA, defendant Dr. David Belzer, a pediatrician (now deceased) and defendant Dr. Gerald Sloan, a plastic surgeon at CHLA. The child began to evidence symptomology, including ocular disorders and fainting spells, but no further radiology studies of the head were ordered. In November 1993, the child became unconscious and was taken to CHLA. A MRI revealed a greatly enlarged superior sagittal sinus (top of the head) consistent with an arterial venous fistula of the dura. Immediate embolization (therapeutic introduction of various substances into the circulation to occlude vessels) was performed by Dr. Gary Duckwiler, an interventional radiologist. Over the next two years, Dr. Duckwiler performed three additional embolizations. The infant was left with profound speech and learning disabilities, hearing loss, and neurological deficits.

Plaintiffs contended the defendants fell below the standard of care. A cerebral angiogram should have been performed immediately since the initial films evidenced "flow voids" and showed dilated vessels markedly enlarged for a pediatric brain. The enlarged vessels and flow voids were caused by shunting of blood from the fistula.

Defendants contended they met the standard of care. The development of the arterial venous fistula was in a completely different area than the "pool of blood" noted by Dr. Bradley to have been consistent with a hemangioma. The "pool of blood" disappeared at the time the fistula was diagnosed in November 1993. The symptomology evidenced by the plaintiff was not caused by the fistula. Any resulting damages were attributable to the interventional embolization procedures done by Dr. Duckwiler after the initial diagnosis was made.

Injury:

Injuries: Arteriovenous fistula (abnormal communication between an artery and a vein resulting in the formation of an arteriovenous aneurysm).

Treatment: Three embolizations, neurological evaluations.

Residual: Speech and learning disabilities, hearing loss, neurological deficits.

Specials:

Medical to date (paid by a collateral source. Future medical \$10,000,000+ (present cash value).

Result:

Settlement talks:

Demand \$1,000,000 CCP 998 to each defendant. Offer None.

Result: DEFENSE VERDICT for all defendants. 12-0

Note: Defense reports the plaintiff filed a motion for new trial.

Trial Information:**Judge:**

James R. Dunn

Trial Length:

32 days

Trial

2 days

Deliberations:**Writer**

Fetal Distress During Delivery

Type: Arbitration

Amount: \$10,000

State: California

Venue: Los Angeles County

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

Case Type:

- *Medical Malpractice*

Case Name: Jane Doe, individually, and as Guardian ad Litem for Baby Doe, a minor v. John Roe, M.D., No. 45-37-12

Date: May 11, 2001

Plaintiff(s):

- Baby Doe (0 Years)
- Jane Doe (Female, 32 Years)

Plaintiff Attorney(s):

- Russell S. Kussman; Kussman & Whitehill; Los Angeles CA for Jane Doe, Baby Doe

Plaintiff Expert (s):

- Barry Schifrin M.D.; Obstetrics; Glendale, CA called by: Russell S. Kussman
- Donna M. Barras M.D.; Rehabilitation Counseling; Buena Park, CA called by: Russell S. Kussman
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: Russell S. Kussman
- Raymond G. Schultz; Economics; Pasadena, CA called by: Russell S. Kussman
- William A. Frumovitz; Obstetrics; Santa Monica, CA called by: Russell S. Kussman

Defendant(s):

- John Roe, M.D.

Defense Attorney(s):

- Robert B. Packer; La Follette, Johnson, DeHaas, Fesler, Silberberg & Ames; Los Angeles, CA for John Roe, M.D.

**Defendant
Expert(s):**

- Ted Vavoulis; Economics; Pasadena, CA called by: for Robert B. Packer
- Gene Bruno; Rehabilitation Counseling; Los Angeles, CA called by: for Robert B. Packer
- Glenn Fowler; Pediatric Neurology; Orange, CA called by: for Robert B. Packer
- Martin Feldman M.D.; Obstetrics; Orange, CA called by: for Robert B. Packer
- Michael P. Nageotte M.D.; Obstetrics; Long Beach, CA called by: for Robert B. Packer

Facts:

In 1998, the claimant mother, a 24-year-old clerical worker, moved to California. She was 32-weeks pregnant. She went to respondent doctor, an OB/GYN, for pre-natal care. It was agreed that she would attempt a vaginal delivery, even though her first baby had been born by C-section. On November 4, 1998, the mother went into labor. The delivery went well at first but the baby developed fetal distress. During the delivery, the baby suffered hypoxia and mechanical trauma due to a difficult delivery from an occiput (back of skull)-posterior position.

Claimants contended that the respondent doctor fell below the standard of care. He failed to recognize fetal distress. He then allowed the baby to suffer mechanical trauma due to frequent, unremitting uterine contractions in the setting of an occiput-posterior position.

Respondent contended he met the standard of care. There was not sufficient fetal distress on the monitor, and the contraction patter was acceptable. Therefore, no intervention was required.

Injury:

Injuries: Baby Doe: Brain damage, mild cerebral palsy. Jane Doe: Emotional distress.

Treatment: Baby Doe: Physical, occupational and speech therapy.

Residual: Baby Doe: Developmental delays, seizure disorder.

Specials:

Medical to date \$40,000 Medi-Cal lien. Future medical \$650,000. Future wage loss \$550,000.

Result:

Settlement talks:

Demand \$1,000,000 (policy limits). Offer None.

Result: \$1,460,000 total binding arbitration award; \$1,200,000 economic, \$250,000 noneconomic for Baby Doe; \$10,000 noneconomic for Jane Doe. 2-1

Note: The claimants report that they settled with the respondent for a confidential amount after the binding arbitration. The claimants' case against the hospital is still pending.

Trial Information:

Judge:

Dion Morrow (N), Lyle Greenberg (C), Alan Rushfelt (R)

Trial Length: 12 days

**Trial
Deliberations:** 0

Writer JV Temp1

Child Falls from Second Story Building

Type: Settlement

Amount: \$875,000

State: California

Venue: Los Angeles County

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

Case Type:

- *Premises Liability*

Case Name: Isabella Calliva, a minor, by and through her Guardian ad Litem, Antonio Calliva, and Jeanette Calliva v. John Doe, John Roe, Jane Doe, ABC Inc. and XYZ Inc., No. BC 225 014

Date: April 06, 2001

Plaintiff(s):

- Antonio Calliva (Male, 0 Years)
- Isabella Calliva (Female, 5 Years)
- Jeanette Calliva (Female, 0 Years)

Plaintiff Attorney(s):

- Stephen L. Kaplan; ; for Isabella Calliva, Antonio Calliva, Jeanette Calliva

Plaintiff Expert (s):

- L. Peter Petrovsky; Engineering; Pasadena, CA called by:
- Ross A. Crowe; Real Estate; Pasadena, CA called by:
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by:
- Barbara Moyer; Pediatric Psychology; Long Beach, CA called by:
- Stephen P. Grifka M.D.; Plastic & Reconstructive Surgery; Culver City, CA called by:
- Allesandro F. Anfuso MJS, CVE; Vocational Rehabilitation/Counseling; Pasadena, CA called by:

Defendant(s):

- Peter Kui
- Susan Kui
- Shuk-Fong Kui
- Lisa Barbuscia
- East Mission 8 Investment, Inc.
- Kotai Management & Investment, Inc.

**Defense
Attorney(s):**

- Nicole Whyte for Shuk-Fong Kui, Peter Kui, Susan Kui
- David A. Mans for East Mission 8 Investment, Inc., Kotai Management & Investment, Inc.
- Jay Statman for Lisa Barbuscia

**Defendant
Expert(s):**

- Leo Morgenstein; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Fountain Valley, CA called by: for
- Muriel Savikas; Pediatric Psychology; Manhattan Beach, CA called by: for
- Robert S. Griswold; Real Estate; San Diego, CA called by: for
- Rodney L. DuBois; Construction; Mission Viejo, CA called by: for
- Harriet Cokeley M.D.; Pediatric Neurology; Santa Monica, CA called by: for
- Jeffrey L. Rosenberg; Plastic & Reconstructive Surgery; Los Angeles, CA called by: for
- Richard W. Rauseo; Engineering; San Dimas, CA called by: for
- Richard M. Hardwerger; Ophthalmology; Los Angeles, CA called by: for
- C. Finley Beven; Real Estate; Pasadena, CA called by: for

Insurers:

- Truck Insurance Exchange

Facts:

January 21, 2000, Plaintiff, a 5-year-old citizen and resident of London, England, fell from a second story dining room window while visiting her godmother, Lisa Barbuscia, who is a prominent actress/model in Los Angeles.

Defendants Shuk-Fong Kui, Peter Kui and Susan Kui owned the apartment building that Plaintiff fell from. Defendants East Mission 8 Investment, Inc. and Kotai Management & Investment, Inc. managed the apartment building.

Plaintiff Contention: The metal safety bars on the dining room windows were not properly bolted. Defendants knew or should have known that the safety bars were not properly bolted and that they constituted a dangerous condition, particularly for children.

Defendant Contention: Defendants denied any liability and cross-complained against Plaintiff's mother and godmother for negligent supervision and also claimed that Plaintiff fully recovered from her injuries.

Injury: Fractured skull, trauma to the left frontal lobe of brain. Dillon v. Legg emotional distress for mother.

Treatment: Skull reconstruction with titanium plates.

Residuals: Good recovery, returned to school with above average grades.

Medical Costs: \$85,000 past.

Loss of Earnings: None.

Result: 1st Demand: \$1,000,000 policy limits.

1st Offer: Structured settlement of an undisclosed amount.

Settlement: \$875,000

Trial Information:

Judge: James C. Chalfant

Trial Length: 0

**Trial
Deliberations:** 0

Writer S Domer

Failure To Perform C-Section In A Timely Manner

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Los Angeles County

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

Case Type:

- *Medical Malpractice*

Case Name: Angel Rivas and Olga Gutierrez v. Margaret Juarez, M.D., No. BC 212 616

Date: March 09, 2001

Plaintiff(s):

- Angel Rivas (Male, 0 Years)
- Olga Gutierrez (Female, 42 Years)

Plaintiff Attorney(s):

- Gerald L. Friend; Aprihamian & Friend; Los Angeles CA for Angel Rivas, Olga Gutierrez

Plaintiff Expert (s):

- John Marshall; Obstetrics; Rolling Hills Estates, CA called by: Gerald L. Friend
- Arturo E. Mendoza M.D.; Pathology; San Diego, CA called by: Gerald L. Friend
- Ronald S. Gabriel; Pediatric Neurology; W. Los Angeles, CA called by: Gerald L. Friend
- Raymond G. Schultz; Economics; San Marino, called by: Gerald L. Friend
- Houchang Modenlou M.D.; Neonatology; Irvine, called by: Gerald L. Friend

Defendant(s):

- Margaret Juarez, M.D.

Defense Attorney(s):

- Michael D. Gonzalez; Kern & Gonzalez for Margaret Juarez, M.D.

**Defendant
Expert(s):**

- Ted Vavoulis; Economics; Pasadena, CA called by: for Michael D. Gonzalez
- Gene Bruno; Vocational Rehabilitation; Los Angeles, CA called by: for Michael D. Gonzalez
- Joel Schwartz M.D.; Neonatology; Torrance, called by: for Michael D. Gonzalez
- Dr. Juan Carlo Felix; Pathology; Los Angeles, CA called by: for Michael D. Gonzalez
- Craig V. Towers M.D.; Perinatology; Huntington Beach, called by: for Michael D. Gonzalez
- Marvin Nelson, Jr. M.D.; Pediatric Neurology; Los Angeles, called by: for Michael D. Gonzalez
- Harriet Cokeley M.D.; Pediatric Neurology; Santa Monica, CA called by: for Michael D. Gonzalez

Insurers:

- Northwest Mutual

Facts:

June 1998, plaintiff Olga Gutierrez, a 42-year-old travel agent, was pregnant with her second child. On June 22, 1998, she went to her prenatal clinic, South Central Family Health Clinic, complaining of the lack of fetal movement for one week and being one week beyond her delivery date. She was sent by the clinic to California Hospital Medical Center and was told to return the following day for further testing (it is disputed as to whether or not the plaintiff returned the following day, June 23, 1998). On June 24, 1998, an ultrasound revealed markedly decreased amniotic fluid and she was sent to OB triage for evaluation and nonstress testing. The nonstress test revealed a non-reassuring fetal heart pattern. The plaintiff was then evaluated by Dr. Francesca Taylor, a family practitioner, who determined that the child needed to be delivered by C-section and contacted the on-call physician, defendant Dr. Margaret Juarez, an OB/GYN (Dr. Juarez testified that she was told of the decreasing movement, the decreased amniotic fluid and decelerations noted on the fetal heart tracing at 3:30 p.m.). She told the hospital that she would be in a few hours. At 4:30 p.m., Dr. Juarez was contacted again and she confirmed that she would be at the hospital that afternoon to perform a C-section. Dr. Juarez arrived at the hospital at 5:18 p.m., reviewed the strips and determined that the baby needed to be delivered by C-section. The plaintiff mother was taken to the operating room and the child, plaintiff Angel Rivas, was delivered at 6:08 p.m. The baby, who weighed approximately eight pounds, was found to be heavily stained with meconium and the umbilical cord wrapped around its neck four times. The APGAR scores were one at one minute, six at five minutes and nine at ten minutes. The baby remained in the NICU for 25 days and was discharged to the care of his mother. He is currently blind, microcephalic (abnormally small head), tube-fed and requires supplemental oxygen. He has little if no interaction with his environment.

Plaintiffs contended that Dr. Juarez fell below the standard of care. She was negligent in not ascertaining the true nature of the fetal distress at 3:30 p.m. Further, Dr. Juarez was negligent in arriving to the hospital 1 hour and 45 minutes after the call. She was further negligent in waiting 50 minutes after her arrival at the hospital to deliver the baby. Plaintiffs' experts opined that all of the baby's neurological damages occurred during Dr. Juarez' acceptance of responsibility to deliver the child. Plaintiff expert, Dr. Ron Gabriel, testified that the child would live to his fifth decade of life.

Defendant contended that she fully complied with the standard of care. Any neurological damage occurred 3-5 hours prior to delivery based upon presentation of the baby at the delivery, placental pathology and the fetal heart tracing. Defense experts testified that the child would in all likelihood survive no longer than ten years.

Injury:

Injuries: Angel Rivas: Blind, microcephalic, no control over bowel or bladder, fed through a G tube, requires supplemental oxygen and anti-seizure medication. Olga Gutierrez: Emotional distress.

Specials:

Medical to date \$175,000. Future medical \$81,000,000 life care plan (\$18,000,000 present value). Future wage loss \$12,000,000 (\$3,500,000 present value).

Result:

Settlement talks:

Demand \$300,000. Offer None with \$25,000 possible.

Result: DEFENSE VERDICT. 9-3 no negligence.

Note: Defense reports the plaintiffs settled with co-defendants California Hospital Medical Center, Dr. Francesca Taylor and South Central Family Clinic for an undisclosed amount. Defense has filed a memorandum of costs of \$27,000. Plaintiffs have filed a motion to tax costs.

Trial Information:**Judge:**

James R. Dunn

Trial Length:

11 days

**Trial
Deliberations:**

2 days

Writer

Child Injured on Playground

Type: Settlement

Amount: \$1,000,000

State: California

Venue: Los Angeles County

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

Case Type:

- *School* - Negligent Supervision

Case Name: Doe v. Roe Headstart Program and Roe Playground, No. 101-05-08

Date: January 26, 2001

Plaintiff(s):

- Doe (Male, 3 Years)

Plaintiff Attorney(s):

- Matthew B.F. Biren; Biren & Katzman; Brentwood CA for Doe
- Marc J. Katzman; Biren & Katzman; Bel Air CA for Doe

Plaintiff Expert (s):

- Gene Bruno; Vocational Rehabilitation; Los Angeles, CA called by:
- Craig Cunningham; Playgrounds; Van Nuys, CA called by:
- Roger V. Bertoldi; Epilepsy; Culver City, CA called by:
- Carlos Saucedo; Neurology; Los Angeles, CA called by:
- Robert W. Johnson; Economics; Los Altos, CA called by:
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by:
- Herbert Samue Gross; Neurology; Culver City, CA called by:

Defendant(s):

- Roe Playground
- Roe Headstart Program

**Defense
Attorney(s):**

- Richard S. Conn; Musick, Peeler & Garrett; Los Angeles, CA for Roe Headstart Program
- Manuel Saldana; Lewis, D'Amato, Brisbois & Bisgaard; Los Angeles, CA for Roe Playground

**Defendant
Expert(s):**

- Jay Beckwith; Playgrounds; Forestville, CA called by: for
- John H Menkes; Neurology; Beverly Hills, CA called by: for
- David F. Meaney Ph.D.; Biomechanical; Media, PN called by: for
- Robert F. Asarnow; Neurology; Los Angeles, CA called by: for
- Samuel DeFlippo, III; Playgrounds; Albuquerque, NM called by: for
- Malcolm C. Robbins; Playgrounds; San Diego, CA called by: for
- Franklin G. Moser M.D.; Neurology; Los Angeles, CA called by: for

Insurers:

- National Union Fire Insurance Company
- United Educators

Facts:

December 3, 1997, Plaintiff, a 3-year-old boy, was injured while a student at Defendant Headstart Program. Plaintiff fell or was pushed off a plastic modular jungle gym apparatus manufactured by Defendant Roe Playground Co.

Plaintiff Contention: At the time of the accident, there was inadequate supervision, resulting in Plaintiff not being supervised while standing on a platform over a vertical climber component of the modular plastic jungle gym, from which he either was pushed or fell, striking his head on the equipment and/or landing on the ground. Plaintiff claimed there were inadequate warnings provided with the equipment.

Defendant Contention: There was adequate supervision (2 teachers for 19 students). It was not negligent for one of the teachers to temporarily leave the playground to get water from inside the building for the children. It is not possible to prevent all accidents in a playground setting. Defendant Roe Headstart contended that Plaintiff had pre-existing cognitive deficits, as evidenced by his having scored in the one percentile on a preschool inventory test. Roe Headstart further contended that Plaintiff either does not have a seizure disorder, or if he does, it is unrelated to the accident.

Injury:

Injuries: Non-displaced broken neck, which was treated with a halo brace for several months and resolved relatively uneventfully. Seizure disorder as a result of injuries sustained in the accident and brain damage resulting in cognitive deficits.

Treatment: Treated with a halo brace for several months.

Residuals: Cognitive deficits.

Medical Costs: \$28,827.

Loss of Earnings: \$2,500,000 - \$3,000,000.

Result: 1st Demand: \$1,000,000 (policy limits).

1st Offer: \$400,000.

Settlement: \$6,344,425 total, \$1,000,000 present value; Includes projected structured payout; \$3,301,357 guaranteed structured pay out; present day cost \$1,000,000 - policy limits of Roe Headstart.

Note: Roe Playground Co. was dismissed for waiver of costs.

Trial Information:

Trial Length: 0

**Trial
Deliberations:** 0

Writer S Domer

Violation of Consumers Legal Remedies Act

Type:	Verdict-Defendant
Amount:	\$0
State:	California
Venue:	Los Angeles County
Court:	Superior Court of Los Angeles County, Central, CA
Case Type:	<ul style="list-style-type: none">• <i>Insurance - Bad Faith</i>
Case Name:	Adrian Broughton, Jr., a minor, by and through his Guardian ad Litem, Keya Johnson, and Keya Johnson, individually v. CIGNA Healthplans of California, CIGNA HealthCare and CIGNA, Inc., No. BC 117 680
Date:	September 18, 2000
Plaintiff(s):	<ul style="list-style-type: none">• Keya Johnson (Female, 25 Years)• Adrian Broughton, Jr. (Female, 0 Years)
Plaintiff Attorney(s):	<ul style="list-style-type: none">• Christopher Angelo; Mazursky, Schwartz & Angleo; Los Angeles CA for Adrian Broughton, Jr., Keya Johnson
Plaintiff Expert (s):	<ul style="list-style-type: none">• Paul K. Bronston; Emergency Medicine; Marina del Rey, CA called by: Christopher Angelo• James Henry Frudinfeld; Obstetrics; Inglewood, CA called by: Christopher Angelo
Defendant(s):	<ul style="list-style-type: none">• CIGNA, Inc.• CIGNA Healthcare• CIGNA Healthplans of California
Defense Attorney(s):	<ul style="list-style-type: none">• Kenneth R. Zuetel, Jr.; Zuetel & Torigian; Pasadena, CA for CIGNA Healthplans of California, CIGNA Healthcare, CIGNA, Inc.

Defendant Expert(s):

- Bruce McLucas M.D.; Obstetrics; Los Angeles, CA called by: for Kenneth R. Zuetel, Jr.
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: for Kenneth R. Zuetel, Jr.

Facts:

1991, plaintiff, Keya Johnson, a 25-year-old female, was a member of Medi-Cal. In June 1991, she converted her medical health plan from Medi-Cal to CIGNA Health Care. In 1993, the plaintiff gave birth to plaintiff Adrian Broughton, Jr., at Long Beach Community Hospital. The birth was performed vaginally instead of by C-section, and the delivery was difficult. The baby was born with brain damage and Erbs' palsy. The plaintiffs then brought suit against the defendants for medical malpractice and violation of the Consumers Legal Remedies Act (CLRA).

Plaintiffs contended that CIGNA violated the CLRA (Civil Code section 1750 et seq.) when it solicited Keya Johnson to convert her Medi-Cal coverage to CIGNA Health Care. As a result of CIGNA's false and deceptive acts in violation of the CLRA, she made the conversion and thereafter received inferior care that resulted in the traumatic birth of her child and the child's significant injuries.

Defendant contended the health care given to the plaintiffs met the standard of care. The defendants' advertising regarding their health care plan was neither false nor deceptive.

Injury:

Injuries: Adrian: Brain damage and Erbs' palsy. Keya: Emotional distress.

Damages: Injunctive relief under CLRA.

Specials:

Medical to date (paid by a collateral source). Future medical None in evidence.

Result:

Bench Trial.

Settlement talks:

Demand Not Firm. Offer None.

Result: DEFENSE JUDGMENT.

Note: The defense reports that the Court held there was no violation of the CLRA by CIGNA, and the plaintiffs failed to timely file her CLRA action. Plaintiffs' second cause of action for violation of the CLRA was dismissed. This case was filed in 1994 and was appealed in 1995 to the Second District Court of Appeal after the Trial Court refused to order the plaintiffs' CLRA cause of action into binding arbitration along with the plaintiffs' medical malpractice action. The case was eventually decided by the California Supreme Court in 1999, which held the entire matter, including the CLRA claim, had to be arbitrated except for the plaintiffs' claim for injunctive relief under section 1780(a), which the Court was to determine.

Trial Information:

Judge: Ronald E. Cappai

Trial Length: 1 days

**Trial
Deliberations:** 0

Writer

Newborn Deprived of Oxygen during Birth

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, San Fernando, CA

Case Type:

- *Medical Malpractice*

Case Name: Jesus Garcia Moya, Martha Garcia, individually, and as Guardian ad Litem for Gerardo Garcia, a minor v. County of Los Angeles dba Olive View UCLA Medical Center, No. PC 015 599W

Date: July 12, 2000

Plaintiff(s):

- Martha Garcia (Female, 32 Years)
- Gerardo Garcia (Male, 0 Years)
- Jesus Garcia Moya (Male, 0 Years)

Plaintiff Attorney(s):

- Gerard L. Friend; Aprahamian & Friend; Los Angeles CA for Jesus Garcia Moya, Martha Garcia, Gerardo Garcia
- Raymond L. Turchin; Aprahamian & Friend; Los Angeles CA for Jesus Garcia Moya, Martha Garcia, Gerardo Garcia

Plaintiff Expert (s):

- Edward L. Bennett; Physical Rehabilitation; Los Angeles, CA called by: Gerard L. Friend, Raymond L. Turchin
- Maclyn Wade; Obstetrics; Beverly Hills, CA called by: Gerard L. Friend, Raymond L. Turchin
- Marcel O. Ponton Ph.D.; Neuropsychology; Pasadena, CA called by: Gerard L. Friend, Raymond L. Turchin
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: Gerard L. Friend, Raymond L. Turchin
- Raymond G. Schultz; Economics; San Marino, CA called by: Gerard L. Friend, Raymond L. Turchin

Defendant(s):

- County of Los Angeles
- Olive View UCLA Medical Center

Defense Attorney(s):

- Michael Zellers; Arter & Hadden; Los Angeles, CA for County of Los Angeles, Olive View UCLA Medical Center
- Paul F. Arentz; Arter & Hadden; Los Angeles, CA for County of Los Angeles, Olive View UCLA Medical Center

Defendant Expert(s):

- Craig V. Towers M.D.; Perinatology; Long Beach, CA called by: for Michael Zellers, Paul F. Arentz
- Roger Kenneth Light PhD; Neuropsychology; Los Angeles, CA called by: for Michael Zellers, Paul F. Arentz
- Donald Shields M.D.; Pediatric Neurology; Los Angeles, CA called by: for Michael Zellers, Paul F. Arentz
- Barbara Bennett M.D.; Pediatrics; San Francisco, CA called by: for Michael Zellers, Paul F. Arentz
- Franklin G. Moser M.D.; Neuroradiology; Los Angeles, CA called by: for Michael Zellers, Paul F. Arentz

Insurers:

- self-insured (\$5 million)

Facts:

March 2, 1995, at 6:10 a.m., plaintiff Martha Garica, a 32-year-old homemaker, was admitted to Olive View UCLA Medical Center, which is owned and operated by defendant County of Los Angeles, for labor and delivery. At 7:05 a.m., she was seen by Dr. Eileen Chen, an obstetrician, and was diagnosed with preeclampsia and given magnesium sulfate. Pitocin was started and was increased at regular intervals between 8:00 a.m. and 10:00 a.m. At 12:15 p.m., active rupture of the membranes revealed 4+ meconium. An internal fetal scalp electrode was placed. The baseline heartrate was 120 to 130 with mild periodic changes and minimal long-term or short-term variability. At 8:20 p.m., Dr. Chen met with the plaintiff and discussed the plan to deliver the baby vaginally. At 8:30 p.m., the plaintiff was transferred to labor and delivery. At 9:26 p.m., when Dr. Chen arrived at the delivery room, the fetal heart rate was noted to have decelerations down to the 60's and was not responsive to scalp stimulation. Vaginal delivery of the infant was accomplished after two attempts of maternal pushing and a mid-line episiotomy. At 9:38 p.m., delivery was completed and the newborn weighed 6-7 pounds. At the time of delivery, the infant had a heart rate of less than 100, exhibited no or slowed respiration, blue color and flaccid tone. Apgars were 3 and 5 and thick meconium was suctioned from below the vocal cords. The infant was resuscitated by intubation and placed on partial pressure ventilation for 30-40 seconds resulting in spontaneous respiration. On March 5, 1995, a CT scan showed a left occipital parenchymal hemorrhage and localized edema. On March 9, 1995, the infant was discharged with diagnoses of neonatal depression, transient pulmonary hypertension and a left intraparenchymal hemorrhage.

Plaintiff contended the defendant fell below the standard of care in the following respects: 1) an attending physician was not involved in the plaintiff's care on admission, or at the time of delivery; 2) an adequate informed consent was not given to the plaintiff concerning the option of a cesarean delivery on admission, or at 12:15 p.m. when the meconium was encountered; 3) the plaintiff was not given an informed consent regarding the Pitocin induction; 4) the nurses failed to chart the plaintiff's blood pressures and fetal

heart rate tracings after 8:40 p.m. and the plaintiff became hypovolemic; 5) the plaintiff was hyperstimulated by the Pitocin and the Pitocin should have been turned off; 6) a cesarean section delivery should have been performed at 9:26 p.m. instead of a vacuum delivery; and 7) the vacuum delivery was not correctly performed due to mispositioning of the fetal head and an attending was not there to supervise the vacuum delivery.

Defendant contended that the standard of care for the plaintiff and her child were met at all times. Under the best circumstances, it would have taken 10-15 minutes, or perhaps longer, to do a c-section. Thus, a vaginal delivery was the quickest method of delivery and in fact, the child was vaginally delivered at 9:38 p.m. The standard of care did not require informing the patient of the option of a cesarean delivery prior to 9:26 p.m., because it was not an indicated procedure. The plaintiff, by her own testimony, admitted she was given an informed consent regarding Pitocin. She never became hypovolemic between 8:40 p.m. and 9:26 p.m. because her vital signs, including her heart rate, were always stable. While the nurses did not constantly chart the fetal heart rate and blood pressures, they were with her constantly and always watching the monitors. Hyperstimulation did not occur and there was no indication to turn off the Pitocin. The intraparenchymal hemorrhage was of unknown origin, but was not caused by perinatal asphyxia, excessive intrauterine pressure, or the vacuum extractor. The hemorrhage was not the result of a contra-coup injury because that was medically impossible. The hemorrhage was not directly opposite from a right cephalohematoma on the scalp, which indicated where the vacuum might have been placed. Dr. Moser testified that the CT films did not show any abnormalities, other than the evidence of the hemorrhage.

Injury:

Injuries: Gerardo: Brain damage caused by lack of oxygen, intraparenchymal hemorrhage. Martha and Jesus: Emotional distress.

Treatment: Speech therapy.

Residuals: Cognitive difficulties such as speech and memory.

Specials:

Medical to date None (paid by a collateral source). Future medical Gerardo: \$815,000 (present value). Future wage loss Gerardo: \$369,678-\$572,630 (present value).

Result:

Settlement talks:

Demand \$375,000 reduced to \$100,000 before trial. Offer \$30,000.

Result: DEFENSE VERDICT. 9-1 with two undecided jurors.

Note: Defense reports that Jesus Garcia Moya's claim was dismissed after defendant's motion for nonsuit was granted.

Trial Information:

Judge:

Howard J. Schwab

Trial Length: 18 days

**Trial
Deliberations:** 2 days

Writer

Unborn Child Injured by Prolapsed Umbilical Cord

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Los Angeles County

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

Case Type:

- *Medical Malpractice*

Case Name: Stephen Jimenez, by his Guardian ad Litem, Isabel Montes v. Jose De La Rosa, M.D., Wilson Morales, M.D. and Santo Tomas Clinic, No. VC 026 967

Date: May 16, 2000

Plaintiff(s):

- Isabel Montes (Female, 18 Years)
- Stephen Jimenez (0 Years)

Plaintiff Attorney(s):

- Gerald L. Friend; Aprahamian & Friend; Los Angeles CA for Stephen Jimenez, Isabel Montes

Plaintiff Expert (s):

- Edward L. Bennett; Physical Rehabilitation; Los Angeles, CA called by: Gerald L. Friend
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: Gerald L. Friend
- Gary D. Blake OBG; Perinatology; San Diego, CA called by: Gerald L. Friend
- Raymond G. Schultz; Economics; San Marino, CA called by: Gerald L. Friend

Defendant(s):

- Santo Thomas Clinic
- Jose De La Rosa, M.D.
- Wilson Morales, M.D.

**Defense
Attorney(s):**

- Michael A. O'Flaherty; O'Flaherty, Cross, Martinez, Ovando & Hatton; Woodland Hills, CA for Jose De La Rosa, M.D.
- Hebert Davis; Los Angeles, CA for Wilson Morales, M.D.
- William H. Ginsburg; Cotkin, Collins & Ginsburg; Los Angeles, CA for Santo Thomas Clinic

**Defendant
Expert(s):**

- Ted Vavoulis; Economics; Pasadena, CA called by: for Michael A. O'Flaherty, Hebert Davis, William H. Ginsburg
- Bruce Flamm M.D.; Obstetrics; Riverside, CA called by: for Michael A. O'Flaherty, Hebert Davis, William H. Ginsburg
- Bruce McLucas M.D.; Obstetrics; Santa Maria, CA called by: for Michael A. O'Flaherty, Hebert Davis, William H. Ginsburg

Insurers:

- Farmers Insurance Exchange
- SCPIE

Facts:

June 13, 1997, plaintiff Isabel Montes, an 18-year-old unemployed female, was seen at term by defendant Dr. Wilson Morales, an obstetrician, at defendant Santo Tomas Clinic. Late in the evening, she checked into Bellflower Community Hospital with ruptured membranes and she was in early labor. Defendant Dr. Jose De La Rosa, an obstetrician, was on call for Dr. Morales. On June 14, 1997, he ordered pitocin to commence at 6 a.m. At 8 a.m., a prolapsed umbilical cord occurred, reducing the blood flow to the unborn child. By the time a C-section was performed, the minor plaintiff was severely brain damaged due to the blood flow loss.

Plaintiff contended that Dr. Morales failed to determine that the baby was in breech presentation during his examination. Dr. De La Rosa should have done a vaginal exam before pitocin was begun. Had he done so, he would have detected the breech presentation, would not have given pitocin, and would have done a C-section before the prolapsed cord occurred. Dr. Morales was the ostensible agent of Santo Tomas Clinic.

Defendant Dr. Morales contended that he did check the baby's presentation during the office visit and the baby was vertex (head first), even though not charted.

Defendant Santo Tomas contended that Dr. Morales was not its ostensible agent. Defendant Dr. De La Rosa Clinic contended he acted within the standard of care.

Injury:

Injuries: Prolapsed umbilical cord depriving unborn child of blood, severe brain damage.

Residuals: Quadriplegia and mental retardation.

Specials:

Medical to date \$86,000. Future medical \$7,000,000 - \$10,000,000. Future wage loss \$400,000 - \$500,000.

Result:

Settlement talks:

Demand \$1,200,000 CCP 998 as to Dr. De La Rosa. Offer None.

Result: DEFENSE VERDICT for all three defendants.

Various polls.

Note: Defendant De La Rosa reports that the plaintiff settled with Bellflower Community Hospital on the eve of trial for \$1,200,000.

Trial Information:**Judge:**

Chris R. Conway

Trial Length:

13 days

**Trial
Deliberations:**

3 days

Writer

S Domer

Delayed C-Section

Type: Settlement

Amount: \$1,300,000

State: California

Venue: San Diego County

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

Case Type:

- *Medical Malpractice*

Case Name: Confidential (S01-01-12), No. S01-01-12

Date: March 27, 2000

Plaintiff(s):

- Confidential (0 Years)

Plaintiff Attorney(s):

- Robert F. Vaage; Law Offices of Robert Vaage; San Diego CA for Confidential

Plaintiff Expert (s):

- Dean Dellis Ph.D.; Neuropsychology; San Diego, CA called by:
- Barry D. Pressman; Neuroradiology; Los Angeles, CA called by:
- Donna M. Barras M.D.; Pediatrics; Buena Park, CA called by:
- James Henry Frudenberg; Expert Testimony; Inglewood, CA called by:
- Vicki Twitchell R.N.; Expert Testimony; Woodland Hills, CA called by:
- Robert B. Hall; Expert Testimony; La Mesa, CA called by:
- Ronald S. Gabriel; Pediatrics; Los Angeles, CA called by:

Defense Attorney(s):

- Jeffrey B. Barton; Lewis, D'Amato, Brisbois & Bisgaard; San Diego, CA for
- Douglas W. Lewis; Lewis, D'Amato, Brisbois & Bisgaard; San Diego, CA for
- William M. Low; Higgs, Fletcher & Mack; San Diego, CA for

**Defendant
Expert(s):**

- Cary Mack; Accounting; San Diego, CA called by: for
- Gene Bruno; Rehabilitation Counseling; Los Angeles, CA called by: for
- Homer G. Chin M.D.; Expert Testimony; San Diego, CA called by: for
- Perry Lubens; Pediatric Neurology; Long Beach, CA called by: for
- Daniel E. Zehler Psy.D.; Neuropsychiatry; Long Beach, CA called by: for
- Harvey D Segall; Neuroradiology; San Marino, CA called by: for
- Robert Wallace; Economics; San Diego, CA called by: for
- Steven Clark M.D.; Perinatology; Salt Lake City, UT called by: for
- Kimberly BeDell M.D.; Physical Medicine; Long Beach, CA called by: for

Facts:

February 4, 1996, Plaintiff Mother, presented in labor at Defendant Zoe Hospital early in the morning with an approximately 37-week gestation pregnancy. Defendant Dr. Roe was on call for her primary obstetrician, and assumed care of plaintiff mother and her unborn child, minor plaintiff Baby Doe. After approximately nine and a half hours of labor, Dr. Roe attempted forceps delivery with Keilland rotation, but no further descent occurred. Luikart-McLane forceps and traction were applied, which was also unsuccessful. Dr. Roe made three attempts with the forceps before moving to perform a Cesarean section, almost one hour later.

Baby Doe was delivered with an APGAR score of 0, a tight nuchal cord times two that was dry of blood, and marked molding of the head. Resuscitation efforts were begun, and Baby Doe eventually established a pulse and was placed on a ventilator.

Plaintiff contended defendant doctor was negligent in failing to promptly deliver Baby Doe with indications of fetal distress. Defendant doctor was negligent in the forceps extractions, both in the attempts and in the manner in which he used the forceps.

Defendant hospital's nursing staff violated the standard of care in failing to recognize that their data collection was improper, i.e., distinguishing between heart rates coming from the mother versus the fetus in the second stage of labor; in failing to follow their own hospital policies, and place an internal monitor in a high-risk situation. Also they failed to discuss with the physician the station of the fetus before he attempted a mid- to high-forceps delivery.

Defendant doctor alleged that he complied with the standard of care at all times.

Defendant hospital alleged that any and all damages sustained by the minor Plaintiff were solely the result of negligence on behalf of defendant doctor.

Injury:

Injuries: The minor Plaintiff tests a full scale IQ of 58. At the age of 4, he is still unable to walk independently; exhibits severe cognitive deficits, extreme hyperactivity, and gross motor deficits consistent with diffuse brain damage.

Specials: \$3,296,872 (present value) total economic damages.

Result: Negotiations: 1st Demand: \$1,000,000 to defendant Dr. Roe; \$700,000 to defendant Zoe Hospital. 1st Offer: Unknown.

Settlement: \$1,300,000 total.

\$1,000,000 from Doctor. \$200,00 paid to Mrs. Doe for her emotional distress claim. \$250,000 to Baby Doe towards his general damage claim. The remainder was applied to the minor's claim for special damages.

\$300,000 from Hospital.

Trial Information:

Judge: William C. Pate

Trial Length: 0

**Trial
Deliberations:** 0

Writer JV Temp1

Misuse of Phenobarbital

Type: Verdict-Plaintiff

Amount: \$2,008,640

State: California

Venue: Los Angeles County

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

Case Type:

- *Medical Malpractice*

Case Name: James Banks v. Friendly Hills Medical Center, No. BC 186 608

Date: February 22, 2000

Plaintiff(s):

- James Banks (Male, 4 Years)

Plaintiff Attorney(s):

- Adam D.H. Grant; Christa & Jackson; Los Angeles CA for James Banks

Plaintiff Expert (s):

- David A. Kulber M.D.; Plastic & Reconstructive Surgery; Beverly Hills, CA called by: Adam D.H. Grant
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: Adam D.H. Grant
- Thomas Mintz M.D.; Psychiatry; Santa Monica, CA called by: Adam D.H. Grant
- Marianne Inouye M.B.A.; Economics; San Marino, CA called by: Adam D.H. Grant

Defendant(s):

- Friendly Hills Medical Center

Defense Attorney(s):

- David J. Weiss; Law Offices of David J. Weiss; Santa Monica, CA for Friendly Hills Medical Center

**Defendant
Expert(s):**

- Ted Vavoulis; Economics; Pasadena, CA called by: for David J. Weiss
- Joel Widelitz; Pediatrics; Long Beach, CA called by: for David J. Weiss
- Lean Ellenberg Ph.D.; Neuropsychology; Beverly Hills, CA called by: for David J. Weiss
- Perry Lubens; Pediatric Neurology; Long Beach, CA called by: for David J. Weiss

Insurers:

- The Doctors' Company

Facts:

March 3, 1997, plaintiff, a 4 ½ year-old boy, was brought to defendant Friendly Hills Medical Center, with a history of afebrile seizures. He was not seen by his primary care physician, but by another pediatrician available for the walk-in visit. After a phone consultation with a pediatric neurologist, the pediatrician prescribed Phenobarbital to control the seizures. An appointment for the plaintiff to be fully evaluated was set for two months from the date of the examination. On March 12, 1997, the plaintiff's primary care physician ordered a blood level check of the Phenobarbital. However, Friendly Hills Medical Center had lost the records, and no follow-up on the results of the test was ever done. On March 16, 1997, the boy was brought to the Urgent Care facility at Friendly Hills Medical Center with a low-grade fever and hives over a significant portion of his body. A physician assistant assessed the situation, walked 40 feet to the plaintiff's primary care physician (who was in another room), and questioned whether the hives were from the medication. However, the plaintiff was sent home with Calamine and Benadryl and without having any tests done. The physician assistant told the plaintiff's mother to bring the child back in 48 hours if the hives persisted or got worse. The mother returned to the regular facility two days later and was told the hives were measles and to continue giving the Phenobarbital and the other medication. On March 22, 1997, the plaintiff was rushed to the Urgent Care facility of defendant Friendly Hills Medical Center via ambulance with a 105-degree fever and with his skin falling off. He was transferred to Cedars Sinai Hospital, where he was treated for Stevens Johnson Syndrome.

Plaintiff contended the defendant fell below the standard of care when it prescribed the Phenobarbital. It failed to follow up on the effects of the medication, and it sent the plaintiff home after he presented with hives. Defendant did not permit a doctor to see the plaintiff when he was brought to the Urgent Care facility on March 16, 1997.

Defendant contended that it did not breach the standard of care.

Injury:

Injuries: Stevens Johnson Syndrome from the Phenobarbital prescription. Ninety-five percent of skin suffered burn-like injuries and sloughed off.

Treatment: Four operations to debride skin and replaced with cadaver skin to permit new skin to grow.

Residuals: Future skin revision to keloid scars, skin bleaching to treat hypopigmentation over extremities and trunk, psychiatric treatment to handle emotional trauma. Plaintiff does not have any tear ducts and has skin sensitivities. Plaintiff will need eye drops and lotion for missing tear ducts and skin for the rest of his life.

Specials:

Medical to date/future \$1,200,000. Future wage loss \$500,000.

Result:

Settlement talks:

Demand \$350,000. Offer \$50,000.

Result: \$5,758,640 gross, \$2,008,640 net; \$1,758,640 economic, \$4,000,000 non-economic (reduced to \$250,000 per MICRA).

11-1

Defendant's motions for new trial and JNOV are pending.

Trial Information:**Judge:**

Madeleine I. Flier

Trial Length:

15 days

**Trial
Deliberations:**

5 days

Writer

S Domer

Childbirth

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, San Fernando, CA

Case Type:

- *Medical Malpractice*

Case Name: Jasmine Haddad, a minor, by and through her Guardian ad Litem, April Haddad v. Northridge Hospital Medical Center, No. PC 018 661

Date: November 29, 1999

Plaintiff(s):

- April Haddad (Female, 0 Years)
- Jasmine Haddad (Female, 0 Years)

Plaintiff Attorney(s):

- Edmund W. Cox; Stark, Rasak & Clarke; Torrance CA for Jasmine Haddad, April Haddad

Plaintiff Expert (s):

- Vicki Twitchell; Obstetrics Nursing; West Los Angeles, CA called by: Edmund W. Cox
- George Iskander M.D.; Obstetrics; Northridge, CA called by: Edmund W. Cox
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: Edmund W. Cox
- Sharon Kawai; Pediatrics; Fullerton, CA called by: Edmund W. Cox
- Raymond G. Schultz; Economics; San Marino, CA called by: Edmund W. Cox

Defendant(s):

- Northridge Hospital Medical Center

**Defense
Attorney(s):**

- Robert B. Packer; La Follette, Johnson, De Haas, Fesler & Ames; Los Angeles, CA for Northridge Hospital Medical Center
- Arezou Khonsari; La Follette, Johnson, De Haas, Fesler & Ames; Los Angeles, CA for Northridge Hospital Medical Center

**Defendant
Expert(s):**

- Ted Vavoulis; Economics; Pasadena, CA called by: for Robert B. Packer, Arezou Khonsari
- Gene Bruno; Rehabilitation Counseling; Los Angeles, CA called by: for Robert B. Packer, Arezou Khonsari
- Perry Lubens; Pediatric Neurology; Long Beach, CA called by: for Robert B. Packer, Arezou Khonsari
- Martin Feldman M.D.; Obstetrics; Orange, CA called by: for Robert B. Packer, Arezou Khonsari

Insurers:

- AIG/Chartis

Facts:

December 21, 1993, plaintiff's mother was admitted to Northridge Hospital. At 12:55 a.m., the fetal heart tracing was 140. At 1:30 a.m., the fetal heart beat slowed to 90, and a vaginal bleed was noted. Dr. Iskander ordered a "stat" c-section. He also ordered the hospital to alert pediatrician Milton Kolchins, and anesthesiologist Carole Turek be present for the c-section. At 2:07 a.m., the fetal heartbeat was 190. At 2:22 a.m., a second vaginal bleed was noted. At 2:42 a.m., the c-section began, and at 2:47 a.m., the baby had an apgar reading of 0 at one minute and 0 at delivery. Dr. Iskander told the father the baby was "dead." However, the little girl was resuscitated and is now a spastic quadraplegic.

Plaintiff contended that the hospital failed to alert the c-section surgical team within 30 minutes of the Iskander order for a "stat" c-section at 1:30 a.m. Dr. Lubens testified that if the baby could have been delivered by 2:11 a.m., it probably would have been normal.

Defendants contended that all the hospital care was within the standard nursing practice. The delay was caused by Dr. Kolchins falling back asleep after being called. The brain damage occurred after the first vaginal bleed at 1:30 a.m.

Injury:

Injuries: Moderate to severe spastic quadriplegia primarily affecting her lower extremities, with some mental retardation.

Specials:

Future medical \$10,000,000. Future wage loss \$1,700,000.

Result:

Settlement talks:

Demand \$1,299,999 CCP 998 reduced to \$1,200,000. Offer \$100,000 CCP 998 raised to \$350,000.

Result: DEFENSE VERDICT.

10-2 negligence against defendant

11-1 causation

Note: In June, 1998, plaintiff settled with Dr. Iskander and Dr. Kolchins for a total of \$900,000. One week prior to trial, plaintiff settled with Dr. Turek for \$60,000.

Plaintiff has filed an appeal.

Trial Information:**Judge:**

John P. Farrell

Trial Length:

11 days

**Trial
Deliberations:**

3.5 hours

Writer

S Domer

Medical Malpractice: Delayed C-Section Delivery

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Santa Clara County

Court: Superior Court of Santa Clara County, San Jose, CA

Case Type:

- *Medical Malpractice*

Case Name: Lynard Tanjoco, a Minor, by and through his Guardian ad Litem, Magdalena Tanjoco v. Richard W. Warren, M.D., No. CV 777-683

Date: November 10, 1999

Plaintiff(s):

- Lynard Tanjoco (Male, 1 Years)
- Magdalena Tanjoco (Female, 35 Years)

Plaintiff Attorney(s):

- Michael Borgiono; Grassini & Wrinkle; Woodland Hills CA for Lynard Tanjoco, Magdalena Tanjoco

Plaintiff Expert (s):

- James Henry Frudinfeld; Obstetrics; Inglewood, CA called by: Michael Borgiono
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: Michael Borgiono
- Margaret De Villiers M.D.; Pediatrics; San Jose, CA called by: Michael Borgiono

Defendant(s):

- Richard W. Warren, M.D.

Defense Attorney(s):

- Barry C. Marsh; Hinshaw, Winkler, Draa, Marsh & Still; San Jose, CA for Richard W. Warren, M.D.

**Defendant
Expert(s):**

- Julian Parer M.D.; Obstetrics; San Francisco, CA called by: for Barry C. Marsh
- Rowens Korobkin M.D.; Neurology; San Francisco, CA called by: for Barry C. Marsh
- William Benitz; Neonatology; Palo Alto, CA called by: for Barry C. Marsh

Insurers:

- Norcal Mutual

Facts:

November 26, 1995, plaintiff's mother, a 35-year-old woman, presented to Dr. Warren for a vaginal birth after C-section. During the second stage of labor, plaintiff experienced at least three decelerations with exaggerated variability, including one at 8:20 a.m. The decelerations were treated by discontinuing Pitocin and changing the maternal position. After a deceleration at 9:20 a.m., a labor and delivery nurse contacted Dr. Warren and asked him to come to plaintiff's mother's bedside. Dr. Warren then observed a deceleration and ordered a C-section.

At 9:25 a.m., anesthesia commenced. Due to abdominal adhesions from a prior C-section, an incision into the uterus was not made until 10:13 a.m. Because the fetal head was wedged into the pelvis, extraction of the child was difficult, with delivery occurring at 10:17 a.m. At delivery, plaintiff did not have spontaneous respiration or heartbeat for 28 minutes. The placenta was lacerated at the time of uterine incision, and plaintiff was born anemic and hypotensive.

Plaintiff contended that Dr. Warren failed to order a C-section based upon a deceleration at 8:20 a.m.; that given the failure to progress at the time of the first C-section, the presence of chorioamnionitis, and the presence of other decelerations, the standard of care required that a C-section be ordered at 8:20 a.m.; that the cerebral palsy and severe spastic quadriplegia would have been avoided had delivery occurred prior to 9:20 a.m.; and that plaintiff's brain damage resulted from hypoxic ischemia.

Defendant contended that the decelerations represented mild hypoxic stress; that there was no evidence of hypoxia, acidemia, or decompensation of the fetus in utero; that the fetal heart strip demonstrated good variability; that when the maternal position was changed and Pitocin was discontinued, the fetal heart rate returned to baseline; that it was reasonable to conclude that the decelerations were related to prolonged contractions; and that there was no evidence of an acute hypoxic ischemic event.

Plaintiff attorney asked the jury to award \$7,800,000.

Injury:

Injuries: Plaintiff's doctors testified that he suffered severe spastic quadriplegia, moderate mental retardation, and a life expectancy of 46 years, and that plaintiff is unable to walk, incontinent, and require feeding through a gastrostomy tube.

Specials: \$7,200,000 cost of attendant care. \$600,000 loss of earning capacity.

Result: Settlement talks: Demand \$5,000,000 policy limits reduced to \$2,500,000, further reduced to \$1,500,000, further reduced to \$680,000. Offer \$137,500.

DEFENSE VERDICT. 9-3

Motion for new trial not made. November 10, 1999

Trial Information:

Judge: Read Ambler

Trial Length: 8 days

**Trial
Deliberations:** 2.5 hours

Writer JV Temp1

Childbirth

Type: Settlement

Amount: \$1,000,000

State: California

Venue: Ventura County

Court: Superior Court of Ventura County, Ventura, CA

Case Type:

- *Medical Malpractice*

Case Name: Confidential (S00-02-06), No. S00-02-06

Date: October 07, 1999

Plaintiff(s):

- Confidential (0 Years)

Plaintiff Attorney(s):

- Earl S. Schurmer; Schurmer & Drane; Oxnard CA for Confidential

Plaintiff Expert (s):

- John E. Nordstrand; Economics; Santa Barbara, CA called by:
- Judy Halle; Expert Testimony; Whittier, CA called by:
- Duncan Turner; Expert Testimony; Santa Barbara, CA called by:
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by:
- Sharon Kawai; Physical Rehabilitation; Fullerton, CA called by:
- William Goldie; Pediatric Neurology; Ventura, CA called by:
- William Hummer; Expert Testimony; Santa Monica, CA called by:

Defendant(s):

- Confidential

Defense Attorney(s):

- Confidential for Confidential

Facts:

1/17/98 - 1/21/98: Plaintiff, a 36-year-old mother, is a Gravida 5, Prima 4 insulin-dependant diabetic. She went to Defendant facility with post spontaneous rupture of membrane desiring a vaginal birth after prior Cesarean sections. Plaintiff was initially seen by a family practice resident who performed an ultrasound at bedside that revealed the fetus was in a transverse presentation. Later that morning the attending obstetrician confirmed the head was way out of the pelvis. A portable x-ray of the abdomen was interpreted as showing a single fetus in a transverse presentation with the body extending off the film to the maternal right. Defendants decided to await the spontaneous onset of labor. No further x-rays or ultrasound were done prior to delivery. Three days later in the early morning hours, another family practice resident confirmed Plaintiff was in labor and noted that she was three centimeters dilated, 90% effaced and "minus 2 floating." It was ordered that Plaintiff be moved to an active labor room with "routine labor management." Plaintiff was not examined for slightly over three hours at which time a nurse performed a vaginal examination noting a malpresentation with either an arm or leg as the presenting part. Plaintiff was seen emergently by attending physicians and a footling breach was diagnosed. Plaintiff spontaneously delivered a leg at which time vaginal delivery was performed. After delivering both legs and arms it was noted that the cervix was not completely dilated and the head could not be delivered. The child's head was stuck in the cervix between five to ten minutes. The child was born depressed with low apgars. The child was intubated and transferred to NICU.

Plaintiff claimed upon presentation at the hospital, Plaintiff had a number of risk factors and should have undergone Cesarean section. Additionally, Defendants completely failed to diagnose a breech presentation at time of labor and failed to perform a Cesarean section at that time.

Defendant argued they complied with the applicable standard of care, and the child made a remarkable recovery with very little if any residual injury. There were no fine or gross skill delays and although the child was very young to provide a definitive diagnosis, that any learning disabilities he might have, if any, would be extremely minimal.

Injury:

Injuries: Hypoxil ischemic insult to brain. **Residuals:** Developmental delays as to gross and fine motor skills with diminishing functioning and learning disabilities.

Medical Costs: \$6,000,000 approximately future

Loss of Earnings: \$600,000 - \$1,000,000 lost earning capacity

Result:

Settlement: \$1,000,000 which was used to purchase an annuity at the Second Mandatory Settlement Conference.

Trial Information:**Judge:**

Not given

Trial Length:

0

Trial 0
Deliberations:

Writer JV Temp1

Complications During Pregnancy Lead to Brachial Plexus Injury

Type: Settlement

Amount: \$375,000

State: California

Venue: Los Angeles County

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

Case Type:

- *Medical Malpractice*

Case Name: King v. Doe OB-GYN, Doe Nursing Staff and Doe Hospital, No. S00-08-15

Date: August 31, 1999

Plaintiff(s):

- King (1 Years)

Plaintiff Attorney(s):

- Christopher P. Yuhl; Yuhl, Rhames, Yuhl & St. Clair; Santa Monica CA for King
- Eric F. Yuhl; Yuhl, Rhames, Yuhl & St. Clair; Santa Monica CA for King

Plaintiff Expert (s):

- Ted Vavoulis; Economics; Pasadena, CA called by:
- Gene Bruno; Vocational Rehabilitation; Glendale, CA called by:
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by:
- William Hummer; Obstetrics; Santa Monica, CA called by:

Defendant(s):

- Doe OB-GYN
- Doe Hospital
- Doe Nursing Staff

Defense Attorney(s):

- Confidential; Confidential for Doe OB-GYN, Doe Nursing Staff, Doe Hospital

Facts:

2/9/92: Minor Plaintiff suffered a moderate to severe brachial plexus injury during delivery when shoulder dystocia was encountered by Defendant's OB/GYN and nursing staff. Claimant mother witnessed the complications during the delivery and pursued a Dillon v. Legg emotional distress claim.

Plaintiff claimed Defendant hospital, and in particular, Defendant OB/GYN failed to perform a pre-delivery ultrasound and C-section when it was apparent that minor Plaintiff was a large baby from an insulin dependent mother. The strong indicators for shoulder dystocia were recognized by the treating OB/GYN who was not called to the hospital, despite repeated requests by Plaintiff mother. Plaintiff mother experienced prolonged second stage labor without significant dilation of the cervix and was advised that a C-section was going to be performed as soon as the attending physician signed the order. Subsequent to a change of shifts in the hospital staff, the on-call OB/GYN elected a vaginal delivery. In the labor and delivery room, a nurse straddled Plaintiff's chest on the delivery table to apply fundal pressure inappropriately, thereby causing the nerve damage to minor Plaintiff's right upper extremity.

Defendant argued there was no negligence and when the shoulder dystocia was encountered, the appropriate traction and fetus manipulation techniques were employed. Any future economic loss based on the minor Plaintiff's physical injury alone was speculative, particularly in light of today's widespread access to occupational therapy and computer skills training, as well as assistive devices which would eliminate any impact of the physical injury on earning capacity.

Injury:

Injuries: Right upper extremity brachial plexus injury. **Treatment:** 2 subsequent surgeries including muscle transplant surgery. **Residuals:** Little or no use of the arm.

Loss of Earnings: Future diminished earning capacity based on the right upper extremity subject to proof based on the history of both parents having only high school education with the mother employed as a stock clerk at a grocery store and the father a tow truck driver. Given the likelihood that minor Plaintiff would enter the work force in some aspect of manual labor, Plaintiff's future earning capacity would be diminished by \$200,000, present value, after offset for other anticipated earnings.

Result:

Negotiations:

1st Offer: \$150,000 **1st Demand:** \$450,000

Settlement:

\$1,775,000 (\$375,000 present value)

Note:

The case, subject to binding arbitration, settled approximately two and one half years after the claim was filed and litigation commenced with the assistance of mediator Mr. Troy Roe of Judicate West. Settlement resulted in a lump sum payment to the mother of \$75,000 and \$300,00 to the minor Plaintiff to fund the purchase of an annuity contract with a guaranteed pay-out of \$1,700,000. Defendant hospital also agreed to provide on-going medical care to minor Plaintiff at its expense.

Trial Information:

Judge: Troy D. Roe

Trial Length: 0

**Trial
Deliberations:** 0

Writer JV Temp6

Newborn Shoulder Injured During Childbirth

Type: Settlement

Amount: \$375,000

State: California

Venue: Los Angeles County

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

Case Type:

- *Medical Malpractice*

Case Name: King v. Doe OB/GYN, Doe Nursing Staff, and Doe Hospital, No. S99-12-15

Date: August 23, 1999

Plaintiff(s):

- King (1 Years)

Plaintiff Attorney(s):

- Christopher P. Yuhl; Yuhl, Rhames, Yuhl & St. Clair; Santa Monica CA for King
- Eric F. Yuhl; Yuhl, Rhames, Yuhl & St. Clair; Santa Monica CA for King

Plaintiff Expert (s):

- Ted Vavoulis; Economics; Pasadena, CA called by:
- Gene Bruno; Vocational Rehabilitation; Glendale, CA called by:
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by:
- William Hummer; Obstetrics; Santa Monica, CA called by:

Defendant(s):

- Doe OB/GYN
- Doe Hospital
- Doe Nursing Staff

Defense Attorney(s):

- Confidential Confidential; Confidential for Doe OB/GYN, Doe Nursing Staff, Doe Hospital

Facts:

2/9/92: Plaintiff, an infant, suffered a moderate to severe brachial plexus injury during delivery when shoulder dystocia was encountered by Defendant's Ob-Gyn and nursing staff. Plaintiff mother witnessed the complications during the delivery.

Plaintiff claimed Defendants failed to perform a predelivery ultrasound and C-section when it was apparent that minor Plaintiff was a large baby from an insulin-dependent mother. The strong indicators for shoulder dystocia were recognized by the treating Ob-Gyn, who was not called to the hospital, despite repeated requests by Plaintiff mother. Plaintiff mother experienced prolonged second-stage labor without significant dilation of the cervix and was advised that a C-section was going to be performed as soon as the attending physician signed the order. Subsequent to a change of shifts in the hospital staff, the on-call Ob-Gyn elected to perform a vaginal delivery. In the labor and delivery room, a nurse straddled Plaintiff's chest on the delivery table to apply fundal pressure, thereby causing the nerve damage to minor Plaintiff's right arm.

Defendant argued there was no negligence. When shoulder dystocia was encountered, the appropriate traction and fetus manipulation techniques were employed. Any future economic loss based on the minor Plaintiff's physical injury was speculative.

Injury:

Injuries: Infant: Right arm brachial plexus injury. Mother: Emotional distress.

Treatment: Infant: Two surgeries, including a muscle transplant. **Residuals:** Limited range of motion of right hand and arm, and diminished grip strength.

Loss of Earnings: \$200,000 diminished earning capacity

Result:

Negotiations: **1st Offer:** \$150,000

1st Demand: \$450,000, MICRA cap for minor Plaintiff (in addition to \$200,000 in economic loss)

Settlement:

\$1,775,000 structured (lump sum payment to the mother of \$75,000 and \$300,000 to the minor Plaintiff to fund the purchase of an annuity contract with a guaranteed pay-out of \$1,700,000. Defendant hospital also agreed to provide future medical care to minor Plaintiff at its expense.)

Note: Past and future medical care paid by Defendant hospital.

The case, subject to binding arbitration, settled two and one-half years after the claim was filed.

Trial Information:**Judge:**

Troy D. Roe

Trial Length:

0

Trial 0
Deliberations:

Writer S Domer

Medical Malpractice

Type: Verdict-Plaintiff

Amount: \$4,455,000

State: California

Venue: Los Angeles County

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

Case Type:

- *Medical Malpractice*

Case Name: Stacy Shure; Peter Shure, a minor, by and through his guardian as Litem, Stan Shure and Stan Shure v. Joseph Milstein, M.D.; Cedars-Sanai Medical Center and Christine Collins, M.D., No. BC 104-106

Date: March 19, 1999

Plaintiff(s):

- Stan Shure (Male, 0 Years)
- Stan Shure (Male, 0 Years)
- Peter Shure (Male, 1 Years)
- Stacy Shure (Female, 0 Years)

Plaintiff Attorney(s):

- James E. Fox; Fox & Fox; Sherman Oaks CA for Stacy Shure, Peter Shure, Stan Shure, Stan Shure

Plaintiff Expert (s):

- Ted Vavoulis; Economics; Pasadena, CA called by: James E. Fox
- Gene Bruno; Physical Rehabilitation; Los Angeles, CA called by: James E. Fox
- Claire Kopp Ph.D.; Psychology Trauma; Claremont, CA called by: James E. Fox
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: James E. Fox
- Russell K. Laros M.D.; Obstetrics; San Francisco, CA called by: James E. Fox
- Lawrence H.A. Gold M.D.; Radiology; Westlake Village, CA called by: James E. Fox

Defendant(s):

- Joseph Milstein, M.D.
- Christine Collins, M.D.
- Cedars-Sanai Medical Center

**Defense
Attorney(s):**

- Mike Martinez; O'Flaherty, Cross, Martinez, Ovando & Hatton; Woodland Hills, CA for Cedars-Sanai Medical Center, Christine Collins, M.D.
- Richard D. Carroll; Carroll, Kelly & Trotter; Long Beach, CA for Joseph Milstein, M.D.

**Defendant
Expert(s):**

- Dr. Harry J. Bonnell; Pathology; San Diego, CA called by: for Mike Martinez
- Arnold Mearis; Fetal Medicine; Rancho Palos Verdes, CA called by: for Richard D. Carroll
- William Goldie; Pediatric Neurology; Ventura, CA called by: for Richard D. Carroll

Insurers:

- self-insured (\$5 million)
- The Doctors' Company

Facts:

September 9, 1993, plaintiff minor suffered a head/brain injury during a C-section childbirth at defendant hospital. The pregnancy was uncomplicated. The incision went into plaintiff minor's head, and he was born with an open skull fracture with bone fragments pushed into his brain.

The head wound was initially thought to be superficial, and was not recognized as a skull fracture for several hours. Thereafter, plaintiff minor underwent several hours of neurosurgery to remove the bone fragments and close the dura.

The chief surgeon was defendant Dr. Milstein, a private attending obstetrician. The incision in the wound was performed by defendant Dr. Collins, a second-year resident. Defendant hospital stipulated that the resident was an agent of the hospital.

In February of 1998, defendant Dr. Milstein settled for \$1 million, his policy limit, on the condition that he continues to participate as a defendant and present a complete defense. In the event of a plaintiff's verdict apportioned against him of less than \$1 million, his liability carrier, The Doctors' Company would be reimbursed up to \$100,000 from sums collected from defendant hospital. This was approved as a good faith settlement.

Plaintiff contended that both the attending, Dr Milstein, and the resident, Dr. Collins, were legally responsible for plaintiff minor's injuries, that Dr. Collins made the incision in the wound and cut into plaintiff minor's scalp and skull and "opened the door", that this initial incision also transected a major uterine vessel, thereby causing the operative field to fill with blood, and that thereafter, Dr. Milstein caused additional head and brain damage as he used blunt instruments to deliver plaintiff minor in a bloody operative field.

Defendant Dr. Milstein contended that following the incision by Dr. Collins, he was "up to the ceiling" in blood, that the procedure was "blind", and that he had no explanation for the injury.

Defendant Dr. Collins contended that she "only scored" the surface of the uterus, and played no part in the head or brain injury.

Injury:

Plaintiff minor's doctors testified that he suffered a head/brain injury, requiring neurosurgery to remove bone fragments.

Residual mild left hemiparesis, mild mental retardation, and organic behavior syndrome.

Plaintiff mother suffered emotional distress.

Specials: Medical to date \$283,000. Future medical \$1.7 to \$3.5 million. Wage loss \$700,000 to \$1.2 million.

Result:

Settlement talks: Demand \$999,999 C.C.P. 998, reduced to \$250,000 C.C.P. 30 days before trial. No offer.

\$4,455,000 TOTAL AWARD, with the jury apportioning liability 50% to defendant Dr. Milstein and 50% to Dr. Collins/Cedars-Sinai Hospital. After MICRA and settlement reductions, the net judgment against defendant Cedars-Sinai Hospital was approximately \$2 million. Various Polls

Motion for new trial made by defendants-pending as of publication date. March 19, 1999

Trial Information:

Judge: James E. Satt

Trial Length: 14 days

**Trial
Deliberations:** 7 days

Writer

Driver Loses Control Crossing RR Track

- Type:** Settlement
- Amount:** \$1,000,000
- State:** California
- Venue:** San Bernardino County
- Court:** Superior Court of San Bernardino County, Rancho Cucamonga, CA
- Case Type:**
- *Motor Vehicle - Passenger; Road Defect*
- Case Name:** Conservatorship of Estate of Tammy Johnson v. Union Pacific Railroad, City of Ontario, et al., No. RCV 22457
- Date:** January 29, 1999
- Plaintiff(s):**
- Conservatorship of Estate of Tammy Johnson (0 Years)
- Plaintiff Attorney(s):**
- Kenneth Meyer; Wylie, Heath, Spoeri & Mendoza; Los Angeles CA for Conservatorship of Estate of Tammy Johnson
 - Thomas McGreal; Bentley & McGreal; San Marino CA for Conservatorship of Estate of Tammy Johnson
- Plaintiff Expert (s):**
- Don Rodrigues; Landscaping; Ventura, CA called by:
 - Lupe Vallejo; Railroads; Walnut Creek, CA called by:
 - Arnold D. Purisch; Neuropsychology; Irvine, CA called by:
 - Edward L. Bennett; Vocational Rehabilitation; Los Angeles, CA called by:
 - Randon Garver; Landscaping; Ojai, CA called by:
 - Robert W. Crommelin; Engineering; Palm Desert, CA called by:
 - Ronald Siegel; Alcohol/Drugs; Los Angeles, CA called by:
 - Stephen A. Blewett P.E.; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Altadena, CA called by:
- Defendant(s):**
- Union Pacific Railroad
 - City of Ontario, et al.

**Defense
Attorney(s):**

- Joseph Arias; Lewis, D'Amato, Brisbois & Bisgaard; San Bernardino, CA for Union Pacific Railroad
- Stephen Harber; Lynberg & Watkins for City of Ontario, et al.

**Defendant
Expert(s):**

- Ed Ruzak; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Fountain Valley, CA called by: for
- Tom Dorsey M.D.; Orthopedics; Hesperia, CA called by: for
- Gene Bruno; Vocational Rehabilitation; Los Angeles, CA called by: for
- Dr. Lester M. Zackler; Neuropsychiatry; Sherman Oaks, CA called by: for
- Robert W. Peck; Economics; Tustin, CA called by: for
- Ronald S. Gabriel; Neurology; Los Angeles, CA called by: for
- Anthony C. Stein; Alcohol/Drugs; Los Angeles, CA called by: for
- Kenneth Jones; Automotive; Los Angeles, CA called by: for
- William Sommers Ph.D.; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Ontario, CA called by: for
- Lawrence S. Miller; Physical Medicine; Glendale, CA called by: for

Insurers:

- Confidential

Facts:

7/12/95: Plaintiff, a 17-year-old student, was a passenger in a 1979 Datsun 260Z. Defendant driver Jose Aguilar was driving Plaintiff home at 55 mph in a 50 mph speed zone on Mission Boulevard near Monterey in the City of Ontario. While traversing a railroad grade crossing, which was about eight inches below grade and creating a dip, driver Aguilar lost control of the vehicle, crossed into the center median and struck two trees. Plaintiff's head crashed into the windshield.

Contentions:

Plaintiff claimed that Defendant railroad was negligent in failing to repair the railroad grade crossing and bringing it up to street grade. Defendant City had contracted with the railroad three years before the accident to bring the crossing up to the same level as the street and had paid the railroad but the railroad refused to fix the crossing because it claimed it did not have enough manpower. Plaintiff claimed punitive damages against the railroad. Defendant City had written the railroad over a year before this accident saying that the crossing was causing its citizens to complain. The City was "concerned about the safety of its citizens." However, Defendant City failed to warn of the danger, even though it had sent the letter. The trees in the center median were too large, according to Caltrans specifications. The City, in renovating the street, had lowered the median curb so that it was only about two inches high and angled towards the trees.

Defendants argued that the driver was the sole cause of the accident. He was on methamphetamine at the time of the accident and was going in excess of 62 mph at the time. The City did warn of the dip. The trees were not covered by Caltrans specifications and there were no previous accidents in the history of the crossing with over two million cars using it in the last ten years.

Injury: **Injuries:** 7 mm subdural hematoma; coma for 30 days; fractured pelvis, femur, clavicle; multiple internal injuries.

Treatment: In rehabilitation hospital for eight weeks.

Residuals: Posttraumatic concussive disorder; aphasic speech; permanent limp with some foot drop in one leg; psychological disorders.

Medical Costs: \$175,000.

Result: **Negotiations: 1st Offer:** \$59,000 from each Defendant. **1st Demand:** \$6,000,000.

Settlement: \$1,000,000 total; \$325,000 from City of Ontario, \$575,000 from Union Pacific, and \$100,000 policy limits from mother's uninsured motorist policy.

Note: Case filed 1/1/96. Dennis Madigan of JAMS/Endispute, Los Angeles, was mediator for session over 12 hours.

Trial Information:

Judge: Barry L. Plotkin

Trial Length: 0

**Trial
Deliberations:** 0

Writer JV Temp6

Medical Malpractice (Negligent Delivery)

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Los Angeles County

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

Case Type:

- *Medical Malpractice*

Case Name: Khiobon Maso-Soto, a minor v. Cedars-Sinai Medical Center, No. BC 167-892

Date: January 12, 1999

Plaintiff(s):

- Khiobon Maso-Soto (Male, 0 Years)

Plaintiff Attorney(s):

- Steven C. Glickman; Glickman & Glickman; Beverly Hills CA for Khiobon Maso-Soto

Plaintiff Expert (s):

- Darryl R. Zengler; Economics; Pasadena, CA called by: Steven C. Glickman
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: Steven C. Glickman
- Sandra Schneider; Physical Rehabilitation; Los Angeles, CA called by: Steven C. Glickman
- William Hummer; Obstetrics; Santa Monica, CA called by: Steven C. Glickman

Defendant(s):

- Cedars-Sinai Medical Center

Defense Attorney(s):

- Mike Martinez; O'Flaherty, Cross, Martinez, Ovando & Hatton; Woodland Hills, CA for Cedars-Sinai Medical Center

Defendant Expert(s):

- Alfred D. Chichester; Physical Rehabilitation; Mentone Beach, CA called by: for Mike Martinez
- Jeffrey S. Greenspoon M.D.; Obstetrics; Beverly Hills, CA called by: for Mike Martinez
- Michael P. Nageotte M.D.; Obstetrics; Long Beach, CA called by: for Mike Martinez

Insurers:

- self-insured (\$5 million)

Facts:

In 1995, plaintiff's mother presented to defendant medical center in labor. Upon examination, two residents discovered that plaintiff's mother possessed two herpes lesions in the vaginal area. There was concern that vertical transmission of the virus from the mother to plaintiff could occur at the time of delivery, which could cause blindness, mental retardation, or death.

An attending physician and a staff perinatologist were then called to evaluate the herpes lesions. During this second stage of the evaluation process, a telephone call was made to the laboratory to determine the culture results of the lesions. While the attending physicians were advised that the tests were negative, after delivery, it was discovered that the tests were actually positive.

All the physicians cleared plaintiff's mother for vaginal delivery, and ruled out the need for a C-section based on the erroneous culture results and their belief that the lesions were inactive. At the time of delivery, there was a shoulder dystocia, resulting in severe Erb's palsy of the left upper extremity. The case was brought under allegations of medical negligence as to all of the health care providers who participated in the pre-delivery decision making.

Plaintiff contended that the standard of care dictated that a C-section must be performed in the presence of herpes lesions; and that had a C-section been performed, the shoulder dystocia would not have occurred.

Defendant contended that the herpes lesions were healing and carried little risk of infecting the newborn; that leading institutions followed the protocol of ordering a C-section only if the lesions were active; and that there was no causation, because plaintiff did not contract the herpes virus.

Injury:

Injuries: Plaintiff's doctors testified that he suffered severe Erb's Palsy.

Specials: Future wage loss \$300,000.

Result:

Settlement talks: Demand \$124,999.99 C.C.P. 998. No offer.

Result: DEFENSE VERDICT. 12-0

Motion for new trial not made. January 12, 1999

Trial Information:

Judge: Kenneth R. Freeman

Trial Length: 8 days

**Trial
Deliberations:** 4 hours

Writer S Domer

Child Falls From Balcony

Type:	Settlement
Amount:	\$1,000,000
State:	California
Venue:	Los Angeles County
Court:	Superior Court of Los Angeles County, Torrance, CA
Case Type:	<ul style="list-style-type: none">• <i>Premises Liability</i>
Case Name:	Maya Okasisi vs. Dominique Apartments, Ltd., No. YC 022 023
Date:	November 30, 1998
Plaintiff(s):	<ul style="list-style-type: none">• Maya Okasisi (Female, 21 Years)
Plaintiff Attorney(s):	<ul style="list-style-type: none">• Michael J. Piuze; Law Offices of Michael J. Piuze; Los Angeles CA for Maya Okasisi
Plaintiff Expert(s):	<ul style="list-style-type: none">• Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by:• Charles E. Turnbow; Engineering; Apple Valley, CA called by:
Defendant(s):	<ul style="list-style-type: none">• Dominique Apartments, Ltd.
Defense Attorney(s):	<ul style="list-style-type: none">• Mark Kelegian; Kelegian & Thomas; Beverly Hills, CA for Dominique Apartments, Ltd.
Defendant Expert(s):	<ul style="list-style-type: none">• T. Paige Eskridge; Engineering; Tustin, CA called by: for• Jean Lake; Pediatric Neurology; Long Beach, CA called by: for• Jean Schiltz M.D.; Neuropsychology; Thousand Oaks, CA called by: for

Insurers: • Farmers Insurance

Facts: 6/21/92: Plaintiff, a 21-month-old girl, slipped on the outside balcony of her mother's apartment in Los Angeles. She fell and slid under the guardrail, falling two stories to the ground.

Contentions:

Plaintiff claimed the apartment building was dangerous. Plaintiff could fit between the bottom of the guardrail and the floor. Plaintiff may have some neuropsychological problems as an adult as a result of this accident.

Defendant argued the building was not dangerous. It met all building code requirements. Plaintiff's mother was negligent for not properly watching and/or supervising her. No neuropsychological problems are anticipated.

Injury: **Injuries:** Fractured skull.

Residuals: Hemiparesis, motor coordination and neurological deficits, attention deficit disorder, and learning disability.

Medical Costs: \$24,606

Result: **Negotiations:**

1st Offer: \$150,000

1st Demand: \$1,000,000

Settlement: \$1,000,000 policy limits

Trial Information:

Judge: Jean H. Matusinka

Trial Length: 0

**Trial
Deliberations:** 0

Writer JV Temp6

Delayed Delivery

Type: Arbitration

Amount: \$2,929,000

State: California

Court: None, CA

Case Type: • *Medical Malpractice*

Case Name: Confidential (A99-01-29), No. (A99-01-29)

Date: November 25, 1998

Plaintiff(s): • Confidential (0 Years)

Plaintiff Attorney(s): • Russell S. Kussman; Kussman & Whitehill; Los Angeles CA for Confidential

Plaintiff Expert(s): • Donna M. Barras M.D.; Physical Rehabilitation; Buena Park, CA called by:
• Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by:
• Raymond G. Schultz; Economics; Pasadena, CA called by:

Defendant(s): • Confidential

Defense Attorney(s): • Louis DeHaas; LaFollette, Johnson, DeHaas, Fesler & Ames; Los Angeles, CA for Confidential

Defendant Expert(s): • Ted Vavoulis; Economics; Pasadena, CA called by: for
• Gene Bruno; Physical Rehabilitation; Los Angeles, CA called by: for
• Perry Lubens; Pediatric Neurology; Long Beach, CA called by: for

Insurers: • None

Facts: 8/4/96: Plaintiff's mother went into labor at Defendant hospital. She was under the care of Defendant obstetrician. Late in labor, the baby developed distress. The doctor attempted a vacuum extraction, which failed, leading to further delay and distress. Finally, a C-section was performed after a prolonged period of fetal compromise.

Contentions:

Plaintiff claimed Defendant obstetrician was below the standard of care in his repeated vacuum attempts. The delay in delivery resulted in brain damage from lack of oxygen.

Defendants argued their care was reasonable under the circumstances.

Injury: **Injuries:** Cerebral palsy, spastic quadriparesis, and developmental delay.

Result: **Negotiations: 1st Offer:** \$981,000. **1st Demand:** \$1,000,000

Arbitration: \$2,929,000 binding arbitration award total; \$2,279,000 economic, \$650,000 noneconomic

Trial Information:

Judge: George Dell

Trial Length: 0

Trial Deliberations: 0

Writer JV Temp6

Medical Malpractice: Dispute Who Should Follow Infant After It Leaves Hospital

Type:	Settlement
Amount:	\$1,000,000
State:	California
Venue:	Los Angeles County
Court:	Superior Court of Los Angeles County, Central, CA
Case Type:	<ul style="list-style-type: none">• <i>Medical Malpractice</i>
Case Name:	Charitha Ekanayake, a Minor by and through her Guardian ad Litem, Ananda Ekanayake v. Children's Hospital Los Angeles and Mullikin Medical Center, No. BC 184 838
Date:	November 04, 1998
Plaintiff(s):	<ul style="list-style-type: none">• Ananda Ekanayake (Female, 0 Years)• Charitha Ekanayake (Female, 0 Years)
Plaintiff Attorney(s):	<ul style="list-style-type: none">• James E. Fox; Fox & Fox; Sherman Oaks CA for Charitha Ekanayake, Ananda Ekanayake
Plaintiff Expert (s):	<ul style="list-style-type: none">• Ted Vavoulis; Economics; Pasadena, CA called by:• Donna M. Barras M.D.; Rehabilitation Counseling; Buena Park, CA called by:• Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by:• Bertram Lubin M.D.; Pediatric Hematology; Berkeley, CA called by:• Victoria I. Paterno; Pediatrics; Santa Monica, CA called by:
Defendant(s):	<ul style="list-style-type: none">• Mullikin Medical Center• Children's Hospital Los Angeles
Defense Attorney(s):	<ul style="list-style-type: none">• Kenneth Drake; Rushfeldt, Shelley & Drake; Sherman Oaks, CA for Children's Hospital Los Angeles, Mullikin Medical Center
Insurers:	<ul style="list-style-type: none">• Truck Insurance Exchange

Facts: 5/29/93: Plaintiff was born of Sri Lankan parents with a congenitally shortened intestine and suspected Protein C deficiency. She was placed on Coumadin, a blood thinner, after a central line clotted. The Coumadin caused the clotting times to increase, resulting in a severe hypocoagulation state. The hospital's hematologist and child's pediatrician disputed whose duty it was to monitor the child as an outpatient. The pediatrician (an unsettled Defendant) thought the hospital hematologist was watching the clotting times; the hospital hematologist thought the pediatrician was watching them.

Plaintiff claimed Defendant failed to adequately monitor the baby's coagulation state and thereby failed to prevent the bleed and stroke. Between the Children's Hospital hematologist and the outside pediatrician, the doctors "dropped the ball."

Defendant hospital argued that all care complied with the community standard of care.

Injury: **Injuries:** Right-side brain injury/stroke and left hemiparesis. **Residuals:** Developmental delays, mental retardation, seizures, and need for lifetime attendant care.

Medical Costs: \$1,250,000

Result: Negotiations: **1st Offer:** None **1st Demand:** \$1,250,000 CCP 998 to hospital

Settlement: \$1,000,000 total; \$541,396 lump sum plus annuity of \$2,500/month for life, guaranteed for 20 years from Children's Hospital/hematologist

The case against the pediatrician and her HMO employer is set for trial June 21, 1999.

Note:

Case filed 1/26/98.

Trial Information:

Judge: Joseph R. Kalin

Trial Length: 0

Trial Deliberations: 0

Writer

Medical Malpractice: Malpositioned Breathing Tube

Type: Verdict-Plaintiff

Amount: \$15,168,218

State: California

Venue: Los Angeles County

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

Case Type:

- *Medical Malpractice*

Case Name: Kyan Tucker vs. County of Los Angeles, No. BC 082 952

Date: November 02, 1998

Plaintiff(s):

- Kyan Tucker (Male, 22 Years)

Plaintiff Attorney(s):

- Michael J. Piuze; Law Offices of Michael J. Piuze; Los Angeles CA for Kyan Tucker

Plaintiff Expert (s):

- Peter Formuzis; Economics; Santa Ana, CA called by:
- Sarah Guentz; Nursing; Long Beach, CA called by:
- Judith E. Brill M.D.; Pediatrics; Los Angeles, CA called by:
- Michel F. Brones; Burn Medicine; Los Angeles, CA called by:
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by:
- Susanne R. Hays; Nursing; Albuquerque, NM called by:
- Melville Singer M.D.; Pediatric Cardiology; Los Angeles, CA called by:

Defendant(s):

- County of Los Angeles

**Defense
Attorney(s):**

- David J. Weiss; Law Offices of David Weiss; Santa Monica, CA for County of Los Angeles
- Gary Miller; Office of County Counsel; Los Angeles, CA for County of Los Angeles

**Defendant
Expert(s):**

- J. Carlos Maggi; Pediatrics; Long Beach, CA called by: for
- Ted Vavoulis; Economics; Los Angeles, CA called by: for
- Gene Bruno; Life Care Planning; Los Angeles, CA called by: for
- Jean Lake; Pediatric Neurology; Long Beach, CA called by: for
- Richard Adams; Physical Rehabilitation; Long Beach, CA called by: for
- William Dougherty; Burn Medicine; Los Angeles, CA called by: for

Insurers:

- self-insured (\$5 million)

Facts:

10/17/92: Plaintiff, a 22-month-old child, suffered severe burns and smoke inhalation injuries after being trapped in a burning car for five to ten minutes. He was hospitalized at the County of Los Angeles USC Medical Center. He was put on a ventilator and pharmacologically paralyzed to facilitate ventilator treatment of smoke inhalation injuries. The paralysis made it impossible for Plaintiff to breathe on his own. During the next two weeks, Plaintiff remained in the intensive care unit of the burn ward. He developed heart arrhythmias during that time. On October 31 his heart rate slowed dramatically and he then stopped breathing. A Code Blue was called. Plaintiff flat lined several times, but was resuscitated after an hour.

Plaintiff claimed that his heart rate slowed because his breathing tube became malpositioned from his trachea to his esophagus, cutting off the flow of oxygen to his lungs. Two ICU nurses and two resident doctors did not appreciate the fact that the tube had become malpositioned. They delayed the initiation of the Code Blue. Other doctors who responded to the Code also failed to appreciate that the tube was malpositioned. Attending physicians (professors) were late in responding to the Code Blue. The lack of oxygen caused profound brain damage. Although Plaintiff had extensive third-degree burns over his face, hands, and upper body, he was a candidate for reconstructive surgery, and would have been employable, even though badly scarred. Although Plaintiff had smoke inhalation injuries, no permanent damage had been done to his heart or brain by the toxic fumes that he inhaled. Plaintiff's life expectancy is 30-50 years.

Defendant argued the Plaintiff inhaled toxic carbon monoxide and cyanide fumes while trapped in the car. These fumes caused severe heart and brain damage. His prognosis was always grim. The heart arrhythmias he experienced during his hospitalization were caused by the toxic fumes. His heart eventually stopped beating as a result of the toxic fumes that he had inhaled. If the breathing tube became dislodged at all (which was unknown), it occurred when CPR was performed. Plaintiff's life expectancy is 5-10 years. Plaintiff was so badly burned that he was not a candidate for successful reconstructive surgery. He would not have been employable and would have always been horribly scarred. Plaintiff originally suffered brain damage while trapped in the smoke-filled car. This injury would have also prevented him from employment, and possibly from being self-sufficient. Although Plaintiff did sustain some brain damage during the Code Blue, much of the brain damage preexisted it. **November 2, 1998**

Injury:

Injuries: Persistent vegetative state.

Residuals: Requires around-the-clock care for life.

Medical Costs: \$160,000 (institutional), \$300,000 (home care) per year for life. Defense agreed that \$160,000 per year for life was appropriate for future medical expenses, but that it all would be paid by collateral source payments

Loss of Earnings: \$1,000,000 per Plaintiff, \$550,000 per Defendant, based on present cash value

Result:**Settlement:****Offer:** \$1,400,000**Demand:** \$3,750,000**Verdict:** \$15,168,218 gross, \$6,688,066 net after MICRA reductions**Jury Poll:** 9-3**Note:** This was a retrial. The first trial ended with a hung jury in November 1996 in the courtroom of Judge Alban Niles.**Trial Information:****Judge:** Richard Hubbel**Trial Length:** 3 weeks**Trial
Deliberations:** 3 days**Writer**

Delayed Delivery

Type: Settlement

Amount: \$981,000

State: California

Venue: Los Angeles County

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

Case Type:

- *Medical Malpractice*

Case Name: Confidential v. Confidential, No. S98-10-09

Date: August 04, 1998

Plaintiff(s):

- Confidential (Female, 38 Years)

Plaintiff Attorney(s):

- Russell S. Kussman; Kussman & Whitehill; Los Angeles CA for Confidential

Plaintiff Expert (s):

- Donna M. Barras M.D.; Physical Rehabilitation; Buena Park, CA called by:
- Haans Haeslien M.D.; Obstetrics; Sacramento, CA called by:
- Vicki Twitchell; Obstetrics; Los Angeles, CA called by:
- Arthur Strauss M.D.; Neonatology; Long Beach, CA called by:
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by:
- Raymond G. Schultz; Economics; Pasadena, CA called by:

Defendant(s):

- Confidential

Defense Attorney(s):

- Louis DeHaas; LaFollette, Johnson, DeHass, Fesler, & Ames; Los Angeles, CA for Confidential

Defendant Expert(s):

- Barry Schifrin M.D.; Obstetrics; Tarzana, CA called by: for
- Perry Lubens; Pediatric Neurology; Long Beach, CA called by: for

Insurers:

- Cooperative of American Physicians

Facts:

8/4/98: Plaintiff, a 38-year-old woman, went into labor at the Defendant hospital. She came under the care of the Defendant obstetrician. Late in labor, the baby developed distress. The doctor attempted a vacuum extraction. This failed, and led to further delay and distress. A C-section was performed after a prolonged period of fetal distress.

Plaintiff claimed the Defendant obstetrician performed below the standard of care. The repeated vacuum attempts and delay in delivery resulted in the Plaintiff's brain damage from lack of oxygen.

Defendants argued the care administered was reasonable under the circumstances.

Injury:

Injuries: Brain damage and cerebral palsy. **Residuals:** Need for lifetime care.

Medical Costs: \$2,500,000 future

Loss of Earnings: \$600,000 future

Result:

Negotiations:

1st Offer: \$981,000 **1st Demand:** \$1,000,000

Settlement:

\$981,000, which was the amount remaining on Defendant doctor's \$1,000,000 medical malpractice insurance policy after defense costs

Trial Information:

Judge:

Haley J. Fromholz

Trial Length:

0

Trial Deliberations:

0

Writer

S Domer

Incorrect Dosage of Phenobarbital

Type: Verdict-Plaintiff

Amount: \$4,700,000

State: California

Venue: Orange County

Court: Superior Court of Orange County, Santa Ana, CA

Case Type:

- *Professional Negligence - Pharmacy*

Case Name: Bryn Cabanillas, a minor, by and through her Guardian Ad Litem Jill Cabanillas vs. Thrifty Payless, Inc., No. 78 07 49

Date: July 15, 1998

Plaintiff(s):

- Bryn Cabanillas (Female, 6 Years)
- Jill Cabanillas (Female, 0 Years)

Plaintiff Attorney(s):

- Malena LeClair; Horton, Barbaro & Reilly; Santa Ana CA for Bryn Cabanillas, Jill Cabanillas

**Plaintiff Expert
(s):**

- W. Donald Shields; Pediatrics; , called by:
- Fred Nowroozi; Physiology; , called by:
- John F. Thompson; Pharmacology; , called by:
- Lois Stebbins; Education Planning; , called by:
- Lori Beglau; Occupational Medicine; , called by:
- David Steenblock; Medical Care; , called by:
- Doris Tunney; Pediatrics; , called by:
- Wayne Lancaster; Economics; Fullerton, CA called by:
- Lauren Beeler; Physical Therapy; , called by:
- Ronald S. Gabriel; Neurology; , called by:
- Samuel Rosenfeld; Pediatric Orthopedics; , called by:
- Shelia Ponzio; Pediatrics; , called by:
- Jeffery Levin; Neurology; , called by:
- Richard Mungo; Dental; , called by:
- Stephen Prepas; Ophthalmology; , called by:
- Margaret Ayers; Biodynamical; , called by:
- Elizabeth Holakiewicz R.N.; Nursing; , called by:

Defendant(s):

- Thrifty Payless, Inc.

**Defense
Attorney(s):**

- Robert Curotto; Curotto Law Offices; Oakland, CA for Thrifty Payless, Inc.

**Defendant
Expert(s):**

- John H Menkes; Neurology; Beverly Hills, CA called by: for
- Roberta Brinton; Pharmacology; , called by: for

Insurers:

- AIG/Chartis

Facts: Admitted Liability

6/24/94: Plaintiff, a 6-year-old girl, had cerebral palsy. She suffered a respiratory infection in 1994, causing her to have seizures. Her doctors prescribed phenobarbital in 15 mg doses to control the seizures. Thrifty Payless' pharmacy filled the prescription with 100 mg tablets. When Plaintiff was administered the first dose of the drug, she became lethargic. Her speech was slurred and her balance was disturbed. After additional doses, Plaintiff could not be woken up. Her parents twice took her to a local hospital emergency room. Doctors discovered that although the prescription bottle was labeled 15 mg, the tablets were actually 100 mg.

Medical Costs: \$303,483 past; \$20,700,000 future

Loss of Earnings: \$4,623,622

Plaintiff claimed the toxic overdose of medication caused a loss of control of the underlying seizure disorder. This resulted in epileptic seizures, culminating on August 23, 1994, when Plaintiff suffered a major seizure episode, which resulted in permanent brain injury and total disability.

Defendant argued that although the phenobarbital prescription was incorrectly filled on June 23, 1994, the prescription did not cause or contribute to Plaintiff's seizure two months later.

Settlement: **Offer:** \$150,000 CCP 998 **Demand:** \$750,000 CCP 998

Note: The case settled for a confidential amount after the verdict.

Injury: **Injuries:** Toxic overdose, seizures, and brain damage. **Treatment:** Three months' hospitalization, with years of physical therapy and rehabilitation. **Residuals:** Continuing seizures, permanent brain damage, mental capacity of a 12- to 18-month-old, inability to speak, walk, or communicate, incontinence, and in diapers.

Result: Verdict: \$30,627,105 gross, \$4,700,000 net (present value and MICRA adjustments); \$3,000,000 past pain and suffer, \$2,000,000 future Pain and suffering, \$20,700,000 future medical, \$304,000 for past medicals, \$464,000 (present value) of lost earnings.

Jury Poll: 12-0 causation, 11-1 and 10-2 damages

Trial Information:

Judge: Robert J. Polis

Trial Length: 3 weeks

Trial Deliberations: 1 days

Writer

Delayed Diagnosis of Placenta Abruption

Type: Settlement

Amount: \$1,900,000

State: California

Venue: Los Angeles County

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

Case Type:

- *Medical Malpractice*

Case Name: Confidential v. Confidential, No. S98-10-05

Date: May 01, 1998

Plaintiff(s):

- Confidential (Female, 0 Years)

Plaintiff Attorney(s):

- Russell S. Kussman; Kussmam & Whitehill; Los Angeles CA for Confidential

Plaintiff Expert (s):

- Ian Ross Donald; Obstetrics; Sun Valley, ID called by:
- Donna M. Barras M.D.; Physical Rehabilitation; Buena Park, CA called by:
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by:
- Raymond G. Schultz; Economics; Pasadena, CA called by:

Defendant(s):

- Confidential

Defense Attorney(s):

- Alan Rushfeldt; Rushfeldt, Shelly & Drake; Sherman Oaks, CA for Confidential

**Defendant
Expert(s):**

- Gene Bruno; Physical Rehabilitation; Los Angeles, CA called by: for
- Joel Schwartz M.D.; Neonatology; Torrance, CA called by: for
- Harriet Cokeley M.D.; Pediatric Neurology; Santa Monica, CA called by: for
- Leonard A. Blonder; Economics; Los Angeles, CA called by: for
- Michael E. Ross M.D.; Obstetrics; Torrance, CA called by: for
- William Scott Mowrey, Jr.; Economics; Encino, CA called by: for
- Marshall Morgan M.D.; Emergency Medicine; Westwood, CA called by: for

Facts:

10/13/95: Plaintiff's mother was 37 weeks pregnant when she was in a motor vehicle accident. She went to Defendant hospital's emergency room, where she was evaluated for a ruptured spleen. Although her spleen was not ruptured, the liver and the placenta were damaged (placenta abruption). By the time the placenta abruption was recognized, the Plaintiff suffered asphyxia and brain damage.

Plaintiff claimed hospital personnel, specifically a labor and delivery nurse, failed to recognize and respond appropriately to signs of fetal compromise and uterine irritability. There was a delay in calling in the obstetrician and performing a C-section. This delay caused the Plaintiff's permanent brain damage.

Defendant argued the evaluation in the emergency room was within the standard of care. It did not cause injury to the baby.

Injury:

Injuries: Brain damage and cerebral palsy.

Medical Costs: \$2,000,000 future (present cash value)

Loss of Earnings: \$600,000 future (present cash value)

Result:

Negotiations: **1st Offer:** \$1,500,000 **1st Demand:** \$2,000,000

Settlement: \$1,900,000

Trial Information:

Trial Length: 0

**Trial
Deliberations:** 0

Writer S Domer

Medical Malpractice: Brain Damage Following Childbirth

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Van Nuys, CA

Case Type:

- *Medical Malpractice*

Case Name: Cynthia Vides, a minor by and through her guardian Ad Litem, Elizabeth Vides and Elizabeth Vides, individually vs. County of Los Angeles, No. PC 013 242 Y

Date: March 11, 1998

Plaintiff(s):

- Cynthia Vides (Female, 5 Years)
- Elizabeth Vides (Female, 0 Years)

Plaintiff Attorney(s):

- Steven Fondiler; Steve Fondiler; Woodland Hills CA for Cynthia Vides, Elizabeth Vides

Plaintiff Expert (s):

- John Marshall; Obstetrics; Rolling Hills Estates, CA called by:
- Donna M. Barras M.D.; Physical Rehabilitation; Buena Park, CA called by:
- Joyce Pickersgill; Economics; Santa Ana, CA called by:
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by:

Defendant(s):

- County of Los Angeles

Defense Attorney(s):

- Michael Thomas; Thomas & Price; Glendale, CA for County of Los Angeles

**Defendant
Expert(s):**

- Ted Vavoulis; Economics; Pasadena, CA called by: for
- Hugh McDonald M.D.; Neonatology; Los Angeles, CA called by: for
- Joan Edelstein Ph.D.; Health Care Administration; San Jose, CA called by: for
- Steven Clark M.D.; Neonatology; Salt Lake City, UT called by: for
- Harriet Cokeley M.D.; Pediatric Neurology; Santa Monica, CA called by: for

Facts:

Facts: 8/15/93: Plaintiff, now 4 ½ years old, was born full-term at Olive View Medical Center. She was delivered by C-Section following labor of two hours due to a deep deceleration and following several variable decelerations over an hour, which could not be corrected. Twenty minutes earlier, the mother's membranes had been ruptured to insert a fetal electrode and an intrauterine catheter for amnioinfusion. The amniotic fluid released in this process was heavily stained with meconium. The resident in charge of the patient ordered a C-Section, which was accomplished within nine minutes of incision. The baby was born severely depressed, but resuscitated well in the first ten minutes with a final Apgar score of 7. Cord blood gases revealed an arterial pH of 6.99. She was placed in neonatal ICU for 18 hours but could not be oxygenated on a ventilator due to persistent fetal circulation complicated by meconium aspiration syndrome. She was transferred to Children's Hospital of Los Angeles, where she was placed on ECMO (extracorporeal membrane oxygenation) for seven days. Her lungs recovered and became self-sufficient, but the ECMO caused infarcts to the brain. The mother sued for emotional distress under a Burgess theory.

Contentions: Plaintiff claimed the prenatal care was inadequate. The suspected intrauterine growth retardation and a size-dates discrepancy should have alerted Defendant to refer the patient to the hospital's high risk clinic. This would have put the mother under the care of perinatology specialists. Instead, upon admission in labor, she was assigned to a second-year obstetric/gynecology resident who failed to appreciate the need for earlier intervention by C-section. The brain damage was caused by a fifteen-minute period of asphyxia before delivery.

Defendant argued the evidence established conclusively that there was no intrauterine growth retardation (baby born at 6 lbs and 6 oz.). The size-dates discrepancy was due to a mistake in representing or recording the last menstrual period and was corrected by ultrasounds. There was no reason to refer the patient to the high risk clinic. The intralabor care could not have been improved upon even with a perinatologist. At no time was the mother left alone. The resident obstetrician was brought in with the first variable deceleration, responded promptly, did all appropriate tests and procedures and delivered the infant within nine minutes of a properly-timed decision to perform a C-section. There was no negligence. There was no new injury during the last trimester of pregnancy due to placental insufficiency, intrauterine infection, cord accident or a combination thereof.

Injury:

Injuries: Cynthia: Moderate to severe mental retardation with a life expectancy into the mid-60s. Elizabeth: Emotional distress.

Medical Costs: Approximately \$73,000 past, Approximately \$2,500,000 future

Loss of Earnings: \$750,000 future

Result: Settlement talks: Offer: None Demand: \$500,000

Verdict: **Defense 11-0**

Note: One juror became truant and was excused. A stipulation was reached which allowed the remaining 11 jurors to decide the case. March 11, 1998

Trial Information:

Judge: John P. Farrell

Trial Length: 14 days

**Trial
Deliberations:** 2 hours

Writer JV Temp6

Medical Malpractice - Pending Stroke Diagnosis

Type: Verdict-Plaintiff

Amount: \$7,200,000

State: Michigan

Venue: Wayne County

Court: Wayne County, Circuit Court, Detroit, MI

Case Type:

- *Medical Malpractice - Hospital*

Case Name: Dennis Dickmann, et al v. Children's Hospital of MI, No. 94-408965-NH

Date: December 19, 1997

Plaintiff(s):

- Dennis Dickmann, et al (Male, 12 Years)

Plaintiff Attorney(s):

- Geoffrey N. Fieger; ; Southfield MI for Dennis Dickmann, et al
- William J. McHenry; ; Southfield MI for Dennis Dickmann, et al

Plaintiff Expert (s):

- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by:

Defendant(s):

- Children's Hospital of MI

Defense Attorney(s):

- Ronald E. Wagner; Detroit, MI for Children's Hospital of MI

Facts: Plaintiff, a 12 year old boy, was suspected of having a brain tumor due to "staring spells" and an alleged misreading of an MRI. He presented to Defendant Children's Hospital for a cerebral angiogram with contrast. Following the angiogram plaintiff developed a severe headache and right-sided numbness. He was discharged, but returned to defendant hospital the following morning with complaints of a severe headache, photophobia and other signs of an impending stroke. Plaintiff was examined in the emergency room, given fluids and sent home. Two days later, plaintiff returned to the ER suffering from a stroke and hydrocephalus.

Plaintiff alleged that defendants were negligent in failing to fully inform him of the risks of the angiogram and in failing to diagnose an impending stroke and that he suffered cognitive deficits, tremors and left-sided weakness due to defendants' negligence.

Defendants contended that: (1) plaintiff's parents were fully informed of the risks; and (2) plaintiff had preexisting learning disabilities.

Injury: Occlusion of left posterior inferior cerebellar artery resulting in stroke and hydrocephalus. Plaintiff's injuries required external ventricular drain of the brain and brain surgery for permanent installation of shunt and resulted in left-sided weakness, behavioral and emotional problems and seizures. Plaintiff claimed \$40,000 past medicals; \$3,000,000 future medicals; and \$2,000,000 future wage loss.

Result: \$7,200,000 reduced to present value yielded a net verdict of \$2,600,000 against Children's Hospital.

Trial Information:

Judge: Louis F. Simmons Jr.

Writer

Medical Malpractice: Childbirth

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Orange County

Court: Superior Court of Orange County, Santa Ana, CA

Case Type:

- *Medical Malpractice*

Case Name: Shawn Jerrells v. Irvine Medical Center, Maureen Downes, M.D., B. Sheba Gabrail, M.D. and David Calica, M.D., No. 77 35 23

Date: December 15, 1997

Plaintiff(s):

- Shawn Jerrells (Male, 1 Years)

Plaintiff Attorney(s):

- Douglas L. Applegate; Law Offices of Douglas L. Applegate; Irvine CA for Shawn Jerrells

Plaintiff Expert (s):

- Judy Halle; Nursing; Whittier, CA called by: Douglas L. Applegate
- Wayne Lancaster; Economics; Fullerton, CA called by: Douglas L. Applegate
- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by: Douglas L. Applegate

Defendant(s):

- David Calica, M.D.
- Maureen Downes, M.D.
- Irvine Medical Center
- B. Sheba Gabrail, M.D.

**Defense
Attorney(s):**

- Steven R. Van Sicklen; Baker, Silberberg & Keener; Irvine, CA for Irvine Medical Center, Maureen Downes, M.D., B. Sheba Gabrail, M.D., David Calica, M.D.
- Constance A. Endelicato; Baker, Silberberg & Keener; Irvine, CA for Irvine Medical Center, Maureen Downes, M.D., B. Sheba Gabrail, M.D., David Calica, M.D.

**Defendant
Expert(s):**

- Jean Lake; Pediatric Neurology; Long Beach, CA called by: for Steven R. Van Sicklen, Constance A. Endelicato
- Joel WidELITZ; Pediatrics; Los Alamitos, CA called by: for Steven R. Van Sicklen, Constance A. Endelicato
- Stephen Romansky; Pathology; Fountain Valley, CA called by: for Steven R. Van Sicklen, Constance A. Endelicato

Insurers:

- CNA

Facts:

12/31/95: Plaintiff's mother, a female in her early 20's, was admitted for labor for her first child. The fetal monitor strip was hooked up about 12:33 pm. It indicated some distress. An emergency cesarean section was ordered later by the obstetrician, Dr. Gabrail at about 4:00 pm. When the baby was born at 4:33 pm it was floppy, apneic and blue. The baby had a tight cord around its ankle. The baby then required resuscitation by the pediatrician, Dr. Downes. Within 5 minutes the baby was breathing on its own with the color coming back. The baby was sent to special care nursery for observation and care. At 7:45 pm the nurses noted that the baby had another episode of apnea where it wasn't breathing. The nurses did a test on the baby's blood and found an abnormal bicarbonate level at 8:05 pm. The pediatrician was notified and a neonatologist was called in. The baby started to have seizures.

Plaintiff claimed Dr. Downes, and others, failed to provide proper care and treatment following her birth, which resulted in profound brain damage. The pediatrician should have intubated the newborn and provided positive pressure ventilation and also medicated the child with sodium bicarbonate and albumen following the initial resuscitation efforts at delivery.

Defendant argued the child recovered from the resuscitation efforts and CPR protocol did not call for assisted ventilation as the newborn was breathing spontaneously, with a normal heart rate and blood pressure. Plaintiff crashed 3 ½ hours after delivery due to prolonged distress during the intrauterine and labor and delivery periods.

Injury:

Injuries: Quadriplegia, blind and profound brain damage.

Specials: Medical Costs: \$80,000 past, \$3,600,000 future. Loss of Earnings: \$800,000 future.

Result:

Settlement talks: Offer: None. Demand: 200,000 CCP 998 withdrawn.

DEFENSE VERDICT. 10-2

Dr. B. Sheba Gabrail settled for \$250,000 and Irvine Medical Center for \$50,000 prior to trial. Dr. David Calica was dismissed. December 15, 1997

Trial Information:

Judge: Derek W. Hunt

Trial Length: 5 days

**Trial
Deliberations:** 1 days

Writer JV Temp1

Tractor-Trailer v. Motor Vehicle: Rear-End

Type:	Settlement
Amount:	\$1,500,000
State:	California
Venue:	Los Angeles County
Court:	Superior Court of Los Angeles County, Compton, CA
Case Type:	<ul style="list-style-type: none">• <i>Motor Vehicle - Rear-ender</i>
Case Name:	Tracy R. Birth v. Emigdio Cuanrique, E.C. Trucking Co., Alameda Street Metals Co., Pacific Industrial Metals Corp., Hugo Neu Proler Co., and Does 1 through 40 C/w Isaiah Birth and Jeremiah Birth, minors, by and through their Guardian Ad Litem, Tracy R. Birth v. Emigdio Cuanrique, E.C. Trucking Co., Alameda Street Metals Co., Pacific Industrial Metals Corp., Hugo Neu Proler Co., No. TC 008 268 C/w TC 009 112
Date:	March 27, 1997
Plaintiff(s):	<ul style="list-style-type: none">• Isaiah Birth (Male, 0 Years)• Jeremiah Birth (Male, 0 Years)• Tracy R. Birth (Female, 0 Years)
Plaintiff Attorney(s):	<ul style="list-style-type: none">• Bruce M.D. Brusavich; Agnew & Brusavich; Torrance CA for Tracy R. Birth, Isaiah Birth, Jeremiah Birth• Christopher A. Kall; Agnew & Brusavich; Torrance CA for Tracy R. Birth, Isaiah Birth, Jeremiah Birth
Plaintiff Expert(s):	<ul style="list-style-type: none">• James T. Long; Psychiatry; Santa Monica, CA called by:• Sarah Guentz; Nurse Practitioner; Long Beach, CA called by:• Dr. George K. Henry; Neuropsychology; Los Angeles, CA called by:• Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by:• Jeffrey S. Greenspoon M.D.; Obstetrics; Beverly Hills, CA called by:• Tamorah Hunt; Economics; Santa Ana, CA called by:

Defendant(s):

- Does 1 through 40
- E.C. Trucking Co.
- Emigdio Cuanrique
- Hugo Neu Proler Co
- Alameda Street Metals Co.
- Pacific Industrial Metals Corp.

Defense Attorney(s):

- Scott Schultz; Kirtland & Packard; Los Angeles, CA for Alameda Street Metals Co., Pacific Industrial Metals Corp., Hugo Neu Proler Co
- John Wellcome; Law Offices of James Beal; Glendale, CA for Emigdio Cuanrique, E.C. Trucking Co.

Defendant Expert(s):

- Gil Martin M.D.; Neonatology; Covina, CA called by: for
- Richard C. Hodson; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Corona, CA called by: for

Insurers:

- CAN Insurance

Facts:

6/4/94: Emigdio Cuanrique, dba E.C. Trucking Co., was driving a tractor-trailer rig in the City of Wilmington. During his operation of the tractor-trailer, Cuanrique rear-ended a vehicle in which Tracy Birth was a passenger. At the time of this collision, Ms. Birth was seven months pregnant. Although the collision was minor (\$2,500 in property damage), Ms. Birth went into premature and traumatic labor the next day, delivering twin sons, Isaiah and Jeremiah Birth. Isaiah and Jeremiah Birth sustained permanent injuries as a result of their premature births. The tractor involved in the accident was owned by Cuanrique (by and through E.C. Trucking Company). The trailer involved in the accident was owned by Pacific Industrial Metals Corp. The scrap metal in the trailer at the time of the accident was being hauled from Alameda Street Metals Co. to Hugo Neu Proler Co.

Contentions:

Plaintiff claimed that Emigdio Cuanrique was negligent in his operation of the tractor-trailer, resulting in the collision. Due to this collision, Tracy Birth's placenta was torn, causing premature birth of Isaiah and Jeremiah Birth. Cuanrique, at the time of the accident, was a joint venture with Defendants Alameda Street Metals Co., Pacific Industrial Metals Corp., and Hugo Neu Proler Co., and performing work specifically for the benefit of all Defendants. Thus, the Defendants are vicariously liable. Even if the Defendants were not engaged in a joint venture, the trailer's insurance afforded coverage for this accident under the cases of Mission Insurance Co. v. Hartford Insurance Co. (1984) 155 Cal. App. 3d 1199, and Smith v. The Travelers Indemnity Co. (1973) 32 Cal. App. 3d 1010.

Defendant argued Cuanrique's negligence and the resulting accident did not cause Tracy Birth's premature delivery of Jeremiah and Isaiah Birth.

Alameda Street Metals Co., Pacific Industrial Metals Corp., Hugo Neu Proler Co., argued that Cuanrique was acting as an independent contractor at the time of the accident, and thus no vicarious liability should be imposed.

Injury:

Injuries: Tracy Birth: Tear to the placenta resulting in the premature birth of twins Isaiah and Jeremiah. Soft tissue injuries. Isaiah and Jeremiah Birth: Premature birth (3.5 lbs. And 3.4 lbs. Respectively) and with a 10% abruptio placentae resulting in respiratory compromise.

Treatment: Tracy birth: Hospital

Residuals: Isaiah and Jeremiah Birth: Developmental problems.

Medical Costs: Tracy: \$12,633; Jeremiah: \$212,343; Isaiah: \$105,127

Loss of Earnings: Unknown.

Result:

Negotiations: 1st Offer: \$1,500,000. **1st Demand:** \$1,500,000 per CCP 998.

Settlement: \$1,500,000; Tracy Birth: \$ 161,500 (lump sum); Isaiah Birth: \$ 595,350 with \$ 295,350 placed in a trust and \$ 300,000 placed into a lifetime annuity with a guaranteed pay-out of \$ 512,456; Jeremiah Birth: \$ 727,644.31 with \$ 352,644.31 placed in a trust for his care and upbringing and \$ 375,000 placed into a lifetime annuity with a guaranteed minimum pay-out of \$ 818,040, Lakita Coulter (Driver of car): \$ 15,505.69 (lump sum).

Trial Information:

Judge: None

Trial Length: 0

Trial Deliberations: 0

Writer

Medical Malpractice: Gangrene Appendicitis Surgery

Type: Settlement

Amount: \$0

State: California

Venue: Los Angeles County

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

Case Type: • *Medical Malpractice*

Case Name: Confidential, No. S97-03-39

Date: November 01, 1996

Plaintiff(s): • Confidential (Female, 6 Years)

**Plaintiff
Attorney(s):**

**Plaintiff Expert
(s):** • Karen Haas-Goldberg; Pediatric Emergency Nursing; Los Angeles, CA called by:
• Keith Kimble M.D.; Pediatric Emergency Medicine; Los Angeles, CA called by:
• Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by:

Defendant(s): • Confidential

**Defendant
Expert(s):** • Gary Goodman M.D.; Pediatric Emergency Medicine; San Clemente, CA called by:
for
• Nancy Blake R.N.; Pediatric Emergency Medicine; Los Angeles, CA called by: for

Facts: 2/23/94: Plaintiff, a 6 year-old child, went to the hospital for acute perforated gangrene appendicitis surgery and developed a small bowel obstruction post-operatively. She had to be re-operated on. Post-operatively, she suffered a cardio-pulmonary arrest. Although she was resuscitated, she suffered brain damage.

PLAINTIFF CLAIMED the Defendant hospital, through its residents and fellows, allowed the Plaintiff to become hypovolemic post-operatively. They then gave her intravenous morphine which caused decreased cardiac output, leading to shock and ultimately, an arrest. She suffered brain damage from a lack of oxygen.

DEFENDANT ARGUED the Plaintiff was not significantly hypovolemic but suffered a pulmonary embolus causing the arrest. The administration of morphine was of no consequence.

Injury: INJURY: Brain damage and hypoxic encephalopathy.

SPECIALS: Damages: \$4,000,000 per Plaintiff; \$1,000,000 per Defendant

Result: OFFER: Confidential

DEMAND: \$2,250,000

RESULT: Confidential (settlement)

Hung Jury which was vacated by agreement and a confidential settlement was agreed upon during jury deliberations.

Trial Information:

Trial Length: 5 weeks

Trial Deliberations: 2.5 days

Writer

Medical Malpractice

Type: Verdict-Defendant

Amount: \$0

State: Texas

Venue: Harris County

Court: Harris County District Court, 61st, TX

Case Type:

- *Medical Malpractice*

Case Name: John Zumwalt & Ruth Lockhart, Ind. & a/n/f of John Patrick Zumwalt, Jr., a minor vs. Dr. John Irwin, Dr. Peter Thompson, Harris County Hospital District Baylor College of Medicine, No. UNKNOWN

Date: August 26, 1996

Plaintiff(s):

- John Zumwalt (Female, 28 Years)
- Ruth Lockhart
- John Patrick Zumwalt, Jr.

Plaintiff Attorney(s):

- Jacquelyn C. Gegan; ; Houston TX for John Zumwalt
- Bob Talaska; ; Houston TX for John Zumwalt

Plaintiff Expert (s):

- Robert Cullen PN; Pediatric Neurology; Miami, FL called by:
- Ronald Gabriel PN; Pediatric Neurology; Los Angeles, CA called by:
- Walter Harrell; Neuropsychology; Austin, TX called by:
- Richard Fields OBG; Obstetrics Nursing; , called by:

Defendant(s):

- Dr. John Irwin
- Dr. Peter Thompson
- Harris County Hospital District Baylor College of Medicine

**Defense
Attorney(s):**

- Barbara A. Hilburn; Houston, TX for Dr. John Irwin
- James B. Edwards; Houston, TX for Dr. John Irwin
- Deborah Campbell; Houston, TX for Dr. John Irwin
- Clinton F. Gambill for Dr. John Irwin
- Claude M. McQuarrie III; Houston, TX for Dr. John Irwin

**Defendant
Expert(s):**

- Julie Parke; Pediatrics; Oklahoma City, OK called by: for
- Ferdinand Plavidal OBG; Obstetrics Nursing; Houston, TX called by: for

Facts:

Ruth Lockhart, approx. 28, was having difficulties getting pregnant and went to several doctors for help. Finally, she saw Dr. Irwin. Through his care, she was able to get pregnant. On 7-2-82, 36 weeks into her pregnancy, she developed pre-eclampsia, but, per Defs, refused hospitalization - Plt. denies she refused hospitalization - so was to go home to bed rest and have regular blood pressure checks. On the next day, she went to Women's Hospital where she saw Dr. Thompson. Because of financial reasons, he sent her to Jefferson Davis Hospital. Five days later, on 7-8-82, John Patrick Zumwalt was born at Jefferson Davis Hospital and on the next day he experienced an intra-ventricular hemorrhage and subsequent hydrocephalus which resulted in the child developing mild to moderate mental retardation and cerebral palsy. He has an IQ of about 68, little use of his right arm, and has had several operations on his legs which has enabled him to walk but with a limp. Plt. claims she should have been admitted to Women's Hospital for testing which would have determined the baby needed to be delivered on 7-4-82. Def. claims Plt. agreed to go to Jefferson Davis Hospital and they had no control of her care there. Suit was for lost wages and future care and long term placement in excess of \$9M.

Result:

Baylor College of Medicine settled prior to trial for a confidential amount. Harris County Hospital District settled prior to trial for a confidential amount. Jury found no Defendant negligence. 10 - 2 (21-2 week trial)

Trial Information:

Judge: Shearn Smith

Writer

Medical Malpractice - Fetal Distress - Delay in Delivery

Type: Verdict-Defendant

Amount: \$0

State: Michigan

Venue: Wayne County

Court: Wayne County, Circuit Court, Detroit, MI

Case Type:

- *Medical Malpractice* - Hospital

Case Name: Edward, Reavonor & Remy Martin v. Hutzel Hospital, No. 94-410411-NH

Date: June 06, 1996

Plaintiff(s):

- Remy Martin
- Edward Martin (Female, 1 Years)
- Reavonor Martin

Plaintiff Attorney(s):

- Withheld upon request of the counsel.; ; for Edward Martin

Plaintiff Expert(s):

- Ronald S. Gabriel; Pediatric Neurology; Los Angeles, CA called by:
- Jeffrey Caron M.D.; Emergency Medicine; Orlando, FL called by:

Defendant(s):

- Hutzel Hospital

Defense Attorney(s):

- Ralph F. Valitutti Jr.; Detroit, MI for Hutzel Hospital

Defendant Expert(s):

- Ira Bergman M.D.; Pediatric Neurology; Pittsburgh, PA called by: for
- Frank Boehm M.D.; Gynecology; Nashville, TN called by: for
- Peter Auld M.D.; Pediatrics; New York, NY called by: for
- Kenneth Niswander M.D.; Gynecology; Sacramento, CA called by: for

Facts: Plaintiff mother presented to Defendant Hutzel Hospital for the delivery of her baby at term. The pregnancy had been uneventful. Plaintiff was in labor for 18 hours. Her baby had an Apgar score of zero one minute after birth and a score of six, four minutes thereafter. Neonatal pH readings were low. The child allegedly suffered permanent brain damage and has mild cerebral palsy.

Plaintiff alleged that defendant's residents were negligent in failing to note unreassuring fetal tracings nine hours prior to birth and in failing to perform a C-section in a timely manner, resulting in permanent, irreversible brain damage.

Defendant contended that fetal tracings were normal and that the child's injury did not result from lack of oxygen prior to birth.

Injury: Brain damage resulting in mild cerebral palsy. Plaintiff claimed \$1,200,000 in future lost income.

Result: No cause. See Editor's Note.

Trial Information:

Judge: Paul S. Teranes

**Trial
Deliberations:** 3.5 hours

Writer

Medical Malpractice - Respiratory Distress - Infant

Type: Verdict-Plaintiff

Amount: \$805,000

State: Michigan

Venue: Oakland County

Court: Oakland County, Circuit Court, Pontiac, MI

Case Type:

- *Domestic Relations*
- *Medical Malpractice - Hospital*

Case Name: Timothy Creamer v. Botsford General Hopsital et al, No. 94-473289-NH

Date: December 01, 1995

Plaintiff(s):

- Timothy Creamer (Male, 0 Years)

Plaintiff Attorney(s):

- Geoffrey N. Fieger; ; Southfield MI for Timothy Creamer
- Rebecca S. Eaton; ; Birmingham MI for Timothy Creamer

Plaintiff Expert (s):

- David Abramson M.D.; Pediatrics; Washington, DC called by:
- Robert Lerer M.D.; Pediatrics; Cleveland, OH called by:
- Robert Ancell Ph.D.; Vocational Rehabilitation; Detroit, MI called by:
- Ronald S. Gabriel; Neurology; Los Angeles, CA called by:

Defendant(s):

- Botsford General Hopsital et al

Defense Attorney(s):

- Richard M. O'Connor; Bloomfield Hills, MI for Botsford General Hopsital et al

Defendant Expert(s):

- Robert Schumaker M.D.; Pediatrics; Ann Arbor, MI called by: for

Insurers: • Botsford General Hosp.

Facts: Plaintiff infant was born at Defendant Botsford General Hospital. He allegedly suffered respiratory distress at birth. Three hours post-delivery plaintiff's condition deteriorated and he was placed on extracorporeal life support (a lung machine). The attending physician, a pediatrician who was moonlighting, saw plaintiff twice before he was transferred to Children's Hospital 3 to 4 hours after his birth. At age eight plaintiff had cerebral palsy and developmental delays.

Plaintiff alleged that defendants were negligent in failing to intubate and transfer him immediately following delivery and that he suffered asphyxiation after his delivery due to defendants' negligence, resulting in a brain injury and cerebral palsy.

Defendants contended that: (1) plaintiff's mother's membranes had ruptured several days before the birth; (2) plaintiff had congenital pneumonia; and (3) plaintiff was transferred in a timely manner.

Injury: Cerebral palsy requiring nursing care and education at special school. Plaintiff claimed \$10,000,000 to \$12,000,000 in lost income.

Result: \$4,184,813 reduced to present value yielded a net verdict of \$805,000 against Defendant Hospital only.

Trial Information:

Judge: Steven N. Andrews

**Trial
Deliberations:** 3 days

Writer