

Birth Injury Results in \$20 Million Settlement

November 10, 2003

After almost three weeks of trial, before Cook County Circuit Court Judge Donald M. Devlin, an order was entered today approving a \$20 million medical negligence settlement.

The child of a suburban couple was delivered at Evanston Hospital on June 8, 1998. During her delivery, she suffered permanent brachial plexus nerve injuries. The baby also suffered a tear in her phrenic nerve resulting in paralysis of her right diaphragm. As a result of these injuries, she has permanent limitation in the use of both her right and left arm and needs ventilatory support as needed while asleep as a result of the paralysis of her right diaphragm.

During trial, her attorneys, Thomas A. Demetrio, Barry R. Chafetz and Margaret M. Power of Corboy & Demetrio, presented evidence that the baby was delivered in a frank breech presentation, meaning that her delivery was buttocks first followed by her arms, abdomen and lastly her head. However, evidence established that the mother's cervix was not completely dilated and that her head was larger than her buttocks.

Accordingly, her head became entrapped by the cervix. Demetrio said that evidence also established that the maternal and fetal medicine physician delivering the baby applied excessive traction or pulling prior to delivery resulting in the brachial plexus and phrenic nerve damage that she suffered. Two months after her delivery, she was transferred to Children's Hospital in Texas where she came under the care of the Texas Brachial Plexus Clinic, considered the best in the world, Chafetz said. Two physicians who cared for her from this clinic testified by video deposition that her injuries were, indeed, due to the use of excessive traction or pulling.

Chafetz said that in 1998, there was a controversy in the obstetrical community regarding the route of delivery for a frank breech presentation. The majority of obstetricians were performing

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c-sections with a frank breech delivery. However, a significant minority were performing vaginal deliveries of frank breech presentations if certain criteria were met. The maternal and fetal medicine physicians at Evanston, as well as Northwestern, were part of this minority view. The criteria used by these physicians to perform a vaginal delivery of a breech presentation was an estimated fetal weight between 1500 and 3500 grams, stable condition of mom and fetus, reassuring fetal monitor tracings and adequate head alignment.

Demetrio and Chafetz were able to show the jury that on May 11, 1998, the physicians obtained an ultrasound reflecting an estimated fetal weight of 1583 grams but did not continue to monitor the fetal weight by ultrasounds. Demetrio and Chafetz were able to attack all elements of the criteria used by the defendant. While an ultrasound on May 11th reflected an estimated fetal weight of 1583 grams, no follow-up monitoring was performed.

Approximately an hour and 15 minutes prior to delivery, there was a period of five to eight minutes of bradycardia (low heart rate) with prolonged decelerations on the fetal monitor strip and pursuant to an x-ray performed on the date of delivery, the baby's head was in a 90 degree position which was borderline for the performance of a vaginal delivery. As a result of these facts, Demetrio argued to the jury that a Cesarean section should have been performed rather than a vaginal delivery.

Demetrio and Chafetz were also able to show the jury that while the mother was found to be completely dilated at 3:30 p.m., the baby's head became entrapped in the cervix because the mother's cervix was, in fact, not completely dilated. The cause of the baby's head entrapment was the fact that the head was larger and more rigid than the body. While the buttocks was able to be delivered spontaneously and the arms with assistance, the head became entrapped in the cervix. This could have been determined by serial monitoring of the baby's estimated weight. Demetrio noted that once it was determined that the baby's head was entrapped on the cervix, plaintiffs' expert testified that a Dührssen's incision should have been performed with scissors or scalpel on the cervix at the 10:00 and 2:00 level. In fact, the delivering physician handed a forceps to a first-year resident assisting him requesting her to attempt the placement of the forceps. Due to the fact that the cervix was not completely dilated, this attempt was unsuccessful by the resident, as well as unsuccessful by the delivering physician. The physician next engaged in manual attempts to deliver the fetus resulting in excessive traction and the injuries suffered by the baby. Plaintiffs' expert testified that the Dührssen's incisions should have been applied immediately. After the failed manual efforts, the delivering physician applied the Dührssen's incisions, and the baby was delivered.

Demetrio and Chafetz also argued that a Cesarean section should have been performed which would have totally prevented all of the injuries. Likewise, if the Dührssen's incisions were performed prior to the manual attempts to deliver the baby, all injuries would have been prevented.

Demetrio further argued that the parents were not properly informed of the risks to their baby from a vaginal delivery of a frank breech. The prime risk to a fetus is trauma and entrapment of the head due to the difference in the size between the buttocks, the body and the after-coming head in a frank breech

presentation. Plaintiffs' expert testified that these risks to a fetus far outweighed the risks to the mom from a c-section. The parents testified that while they were advised of the risks of a c-section, they were not advised of the risks of a vaginal delivery to the fetus.

Numerous therapists and nurses testified that the child is in need of physical, occupational and speech therapy, as well as attendant care.

Demetrio stated that the child is now five years old and started preschool this year, and that her settlement will provide her the ability to maximize her capabilities and attend college.