

\$500,000 POLICY LIMITS RECOVERY - MEDICAL MALPRACTICE OBSTETRICS - USE OF EXCESSIVE LATERAL TRACTION AFTER SHOULDER DYSTOCIA WAS ENCOUNTERED - ERB'S PALSY - INFANT PLAINTIFF AGE 17 AND SIX FEET SEVEN INCHES TALL AT TIME OF RECOVERY

Cumberland County

This was a medical malpractice action in which the plaintiff contended that the defendant ob/gyn negligently used excessive traction after encountering shoulder dystocia during the delivery of the infant plaintiff. The plaintiff contended that as a result, the child suffered Erb's palsy. The infant plaintiff, born in 1985, was age 17 and six feet seven inches tall at the time of the recovery. There was no claim that the defendant should have anticipated that a c-section was required.

The plaintiff established that during a difficult delivery, the defendant encountered shoulder dystocia. The plaintiff maintained that the records only reflected that the McRobert's maneuver was used. The plaintiff pointed out that such a maneuver involves the flexing of the mother's knees and that only gentle traction can be properly used during this maneuver. The plaintiff contended that if such a maneuver was not successful, the defendant should have attempted alternative methods such as the Woods corkscrew maneuver. The plaintiff would have argued that in the absence of any mention of such an attempt at alternative maneuvers, it was highly likely that excessive traction was placed on the infant during the McRobert's maneuver, causing the brachial plexus injury.

The plaintiff would have further argued that in view of the absence of any mention of alternative maneuvers being attempted, the chances of the brachial plexus injury being related to an in- utero complication or other cause not

associated with the delivery were extremely remote, notwithstanding the question of whether studies purporting to establish the validity of such alternative causes are accepted in general. Plaintiff's counsel relates that in his deposition, the defendant conceded that excessive traction was the most likely cause of the injury

At the time of the settlement, the infant plaintiff's arm length discrepancy was very pronounced because of the size of the child. The plaintiff would have argued that the jury should consider that the infant plaintiff has yet to complete growing.

The infant plaintiff testified that he was subjected to extensive taunting when he was younger and maintained that although the taunting had essentially ceased once the infant plaintiff reached a certain size, the severe emotional consequences of the injury have nonetheless continued and will continue for the remainder of his life. The plaintiff maintained that the injury has also created educational impediments, which although not as severe as feared at the time shortly after birth, have resulted in his being kept back a year.

The case settled prior to trial for the \$500,000 policy limits.

SUMMARIES WITH TRIAL ANALYSIS

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REFERENCE

Plaintiff's expert ob/gyn: Michael Kreitzer from Summit.
Plaintiff's neurologist: J. Robert Bowen of duPont Rehabilitation, Delaware. Plaintiff's life care planning expert: Robert Voogt from Virginia Beach, Va.

Plt: Kenslowe. Judge Michael Brooke Fisher, 6-2-03.

Attorney for plaintiff: Louis J. DeVoto of Ferrara Rossetti & DeVoto in Cherry Hill.

COMMENTARY:

The plaintiff emphasized that the defendant's records only reflected the use of the McRobert's maneuver and made no mention of any alternative maneuvers being used, such as the Woods corkscrew maneuver, and the plaintiff took the position that in the absence of evidence that such alternatives were attempted, the most probable cause of the brachial plexus injury was the use of excessive lateral traction during the McRobert's maneuver. The plaintiff would have countered anticipated defense evidence that studies supported the

proposition that in-utero complications or other factors not related to the delivery are known to result in a brachial plexus injury, by arguing that even if the validity of such studies in general are accepted, the chances of such a complication being involved in this case, in which there was an absence of documentation reflecting that commonly utilized techniques to successfully resolve a shoulder dystocia were used, would be extremely remote. Additionally, this case is thought to have special interest because of the fact that at the time of the resolution of the case, the infant plaintiff was 17 years of age and was extremely tall. In this regard, the dynamics of this type of case, which generally involve children of very tender years who are facing a very uncertain future because of a brachial plexus injury, were fundamentally altered because of the age and size of the infant plaintiff. It is felt that had the case been tried, this factor could well have constituted a "double edged sword." □