

VIRGINIA LAWYERS WEEKLY

VERDICTS & SETTLEMENTS

Forceps delivery results in brain injury - \$2,100,000 Settlement

By Virginia Lawyers Weekly
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In 2003 the plaintiff's mother finished an uncomplicated prenatal course and went into labor with her first child. The pregnancy was full term. The course of labor was essentially uneventful with the exception of the position of the fetus. There was no emergent indication for the use of operative instruments such as non-reassuring fetal heart rate patterns. The plaintiff alleged the standard of care required that the patient be clearly informed of the risks of forceps rotation versus cesarean section (both maternal and fetal risks).

There were two parts to this claim. One was that when manual rotation of the fetus was unsuccessful, the first choice should have been a cesarean section as being safer for the baby. This should have been clearly explained to the mother, particularly since one of the defendants had no experience with the particular rotational forceps, which she had never used before this delivery and has not used since. It was claimed that it was not merely enough to inform the patient that another physician more experienced in the use of the particular forceps was going to be in attendance, but needed to clearly explain that the defendant would be the physician rotating the fetal head with the rotational forceps.

The second requirement was that the mother needed to be informed of the risks to the fetus with the use of rotational forceps, including potential skull fracture and brain injury and that there was relatively no risk to the fetus in performing a cesarean section. During the rotation maneuver, the defendant became uncomfortable with rotation and temporarily stopped the procedure. The standard of care required that the procedure be abandoned and proceed immediately to cesarean section at the time. Finally, the defendant applied excessive force to the fetal skull in the utilization of the forceps.

It was the opinion of both plaintiffs' expert obstetrician and pediatric neurologist that the child suffered a brain injury from excessive force of the forceps.

Plaintiff's pediatric neurologist expert indicated that the skull fracture seen on imaging was evidence of the amount of force, but that the mechanism of the brain injury was caused by bilateral and diffuse edema which in turn caused infarcts and diffuse damage to the brain. The pattern of neurologic injuries was consistent with this mechanism of injury in that the child was relatively normal at birth. Once edema affected the brain cells, which takes time, the child developed neurological symptoms including seizures.

The infant suffered and will continue to suffer permanent cognitive and motor deficits, all of which will substantially interfere with activities of daily living for life. When the child becomes an adult, he will continue to require assistance with dressing and supervision for safety, meals and finances. The opinion is that he will never be a fully independent adult and will need to be in a group home setting.

Type of Action: Medical malpractice

Injuries: Traumatic brain injury from application of forceps at birth

Name of case: Confidential

Court: Richmond Circuit Court

Verdict/Settlement: Settlement

Special Damages: Medical: \$94,574.38; future life care plan: \$5,276,222.91

Amount: \$2,100,000 (\$1,350,000 for the infant, \$750,000 for the mother for emotional distress)

Plaintiffs' Attorneys: Charles J. Zauzig III, Woodbridge; Stephen W. Bricker and Melissa G. Ray, Richmond
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