#4

Plaintiff says specialist should have been used

Non-reassuring non-stress test was ignored by OB, mother contends

$4.875 million

In a confidential lawsuit, plaintiff next friend of plaintiff twin minor sought damages from defendant hospitals, defendant OB and defendant neonatologist for medical malpractice and birth trauma.

This case involved twin-to-twin transfusion syndrome (TTTS), which causes one twin to receive too much blood, while the other receives too little, and the complication can be fatal to either twin. The condition

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LARGEST SETTLEMENTS

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should be suspected when there is "discordant growth" of the two fetuses, i.e., one is larger than the other.

Despite the fact that the twins' estimated weights were discordant, plaintiff contended that the defendant OB repeatedly noted there was "good symmetrical growth" and failed to refer the mother to a high-risk specialist. Moreover, it was asserted, the OB ignored a non-reassuring non-stress test (NST), and recommended that the mother return in a few days for further monitoring.

At that follow-up appointment, signs of fetal distress were immediately apparent on the fetal heart monitor strips. The mother was rushed to a nearby high-risk hospital, where cesarean delivery soon followed. The first twin was clearly asphyxiated, with Apgar scores of 1, 5 and 10. Initial arterial blood gasses, which would provide evidence hypoxia ischemia (a lack of blood to the brain), were "lost." The twin initially did well, but at approximately 13 days post-birth, he developed an umbilical artery clot due to a catheter.

Defendant neonatologist ordered a thrombolytic drug (TPA) to dissolve the clot. Plaintiff asserted that use of TPA on a premature infant was an experimental intervention that posed an unnecessary high risk of intracranial bleeding. The infant did in fact develop a severe intracranial bleed that resulted in severe cerebral palsy and mental retardation.

Defendant OB contended that there was no indication for an earlier delivery and that the cause of the brain damage was related to the subsequent intracranial bleed. However, plaintiff asserted that, had the OB delivered the infant in a timely manner, the baby would not have need an umbilical artery catheter for a prolonged period and thus the clot and subsequent TPA induced bleed would have been avoided.

The first defendants' primary defense was that the child's neurological deficits were solely caused by the subsequent injury, which occurred at the second hospital. Plaintiffs retained a highly qualified neuroradiologist to review the child's cranial ultrasounds, which showed brain swelling, consistent with an injury before birth that was exacerbated by the subsequent bleed.

The second defendant contended that the clot in the artery was a life-threatening emergency, and, thus, a thrombolytic drug was indicated. It was asserted that the parents gave a verbal consent via telephone, which plaintiff refuted by contending that an ultrasound study showed good flow through the artery, and that Heparin and watchful waiting were indicated and a safer alternative than TPA.

A portion of this case was resolved after a settlement with a hospital that negligently provided follow-up care to the same child. The first hospital paid $2.5 million and the second paid $2.375 million, bringing the total compensation to $4.875 million.

Type of action: Medical malpractice, birth trauma

Type of injuries: Cerebral palsy, catastrophic motor and cognitive deficits due to asphyxia causing hypoxic-ischemic encephalopathy

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; July 26, 2010

McKeen

#7

Man suffers ruptured aneurysm after CT scan

Plaintiff asserts signs were apparent two weeks prior; case settles

$4 million

In a confidential medical malpractice lawsuit, plaintiff patient sought damages against defendant primary care physician, defendant radiologist and defendant hospital after an aneurysm was undiagnosed via CT scan.

In January 2007, the patient, a middle-aged man, went to his primary care physician complaining of an intense headache. The physician referred the patient to the radiologist, and did not include "cerebral aneurysm" in his differential diagnosis upon referring him.

The CT scan, however, demonstrated two aneurysms, and was misread by the diagnostic radiologist as normal. The aneurysm ruptured, resulting in severe neurological complications and disability.

Plaintiff asserted that the signs of aneurysm should have been diagnosed and treated, and that aneurysms were apparent two weeks before rupture.

Defense did not offer argument.

The case settled for $4 million at facilitation.

Type of action: Medical malpractice

Type of injuries: Ruptured aneurysm, hemiplegia, residual cognitive, neurological damages

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; June 2010

Tried before: Facilitation

Name of facilitator: Richard C. Kaufman

Settlement amount: $4 million

Attorneys for plaintiff: John S. Hone, Brian McKeen

Attorney(s) for defendant: Withheld

#7

Hemorrhage causes man's paralysis

Experts say scan distinctly revealed two aneurysms in patient's brain

$4 million

In a confidential medical-malpractice lawsuit, plaintiff patient sought damages from defendant primary care physician and defendant radiology group for failure to recognize and respond to a subarachnoid hemorrhage.

In December 2006, the plaintiff, 52, contacted his primary care physician twice over two days, complaining of the "worst headache ever" that "brought him to his knees." He also was noted to have photophobia and a stiff neck.

Plaintiff asserted that this was a classical presentation of subarachnoid hemorrhage (SAH). It also was contended that a fundamental tenet of medicine, and a common medical board exam question, is when subarachnoid hemorrhage is suspected, the patient should receive a stat CT scan of the brain without contrast — which, if negative, should be followed up with a lumbar puncture (LP) to look for blood in the spinal fluid.

The primary care physician instructed the patient to report to the hospital for a CT with and without contrast a few days later. The physician did not order a lumbar puncture after the negative CT scan. The radiologist who read the CT scan reported findings as "unremarkable unenhanced and enhanced cranial CT[s]." Plaintiffs' experts testified that the initial CT scan distinctly revealed two aneurysms in the patient's brain.

Days later, the patient was found unresponsive in a bathroom while visiting his family. He was rushed to the ER, and diagnosed with subarachnoid hemorrhage, specifically a ruptured right middle cerebral artery (MCA) trifurcation aneurysm and an unruptured left MCA bifurcation aneurysm.

It was contended that the failure to timely and properly render care in this case resulted in the patient suffering significant neurological injuries, rendering him permanently paralyzed and depriving him of all of his wage-earning capacity

Plaintiff's experts testified that, had the aneurysms been treated upon his initial call to his primary physician after his CT scan, plaintiff's injury would have been avoided.

Defendants contended that there was no pre-existing SAH, and that a LP would have been normal. It also was asserted that a poor outcome can occur following a ruptured aneurysm even under the best of circumstances.

The matter settled for $4 million.

Type of action: Medical malpractice

Type of injuries: Failure to diagnose and respond to subarachnoid hemorrhage, causing paralysis resulting in loss of quality of life and complete loss of earnings capacity

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; March 2, 2010

Settlement amount: $4 million

Attorneys for plaintiff: Brian J. McKeen, Teresa E. Kasel

Attorney(s) for defendant: Withheld

#9

Stroke causes mental, physical impairments

Decision to treat patient's aneurysm via coiling leaves her vegetative

$3.5 million

In a confidential medical-malpractice lawsuit, plaintiff conservator for patient incapacitated individual sought damages from defendant hospitals for a severe stroke causing catastrophic mental and physical impairments, which left the patient in a near-persistent vegetative state.

In mid-June 2006, plaintiff, a 40-year-old married mother of two, went to her family physician complaining of severe headache and an increased heart rate. The physician referred her to a southeast Michigan hospital. There, in the ER, she gave the same complaints, as well as pain radiating to the neck, which is a sign of subarachnoid hemorrhage (SAH).

She was given IV Heparin for atria fibrillation (an anticoagulant), and a head CT was ordered. However, administration of Heparin prior to a CT is a gross violation of the standard of care. Although CT scan was negative for subarachnoid hemorrhage, the hospital failed to do a lumbar puncture; whereas the standard of care requires that a lumbar puncture be performed in order to completely rule it out.

The patient then was admitted and complained of a severe headache for more than two days. During this time, no diagnostic tests were performed to determine the etiology of the severe headache.

On the third day, the patient was found screaming and experiencing seizures in her room. Shortly thereafter, CT results revealed SAH and possible aneurysm rupture. Protamine, a synthesized protein used to stop the effects of anticoagulants, had to be administered to reverse the effect of the Heparin.

A consultation was sought by a larger southeast Michigan hospital's neurosurgeon, who recommended that the patient be transferred. On admission, the patient was semiconscious. A cerebral angiogram revealed a ruptured aneurysm in the anterior communicating artery. At this point, interventional radiology was consulted, and it was decided to treat the aneurysm with endovascular coiling. However, the coiling procedure was not a success.

The neuroradiologist's attempts to remove the coil were unsuccessful, and the coil lodged in the carotid artery. Multiple attempts to remove it failed.

The interventional radiology defendant had to admit that when a coil is left extended in the carotid artery, it can cause a stroke and catastrophic damage to the brain, which is what happened to the patient. Plaintiff asserted that the interventional radiologist should have been able to place the coil and restore flow to the carotid artery.

The patient then was sent to the ICU, where a neurocheck soon revealed changes in her right pupil, as sign of damage to the brain. A STAT CT revealed internal ischemic damage, due to the stroke in the area fed by the right internal carotid artery. Two interventional neurosurgeries were required to attempt to minimize the damage caused by the coil. The patient was left in a severely impaired state with severe cognitive deficits.

Defendant first hospital contended the patient's symptoms were inconsistent with an acute SAH, and thus, there was no need to perform the appropriate work-up. The interventional radiology defendant attempted to claim that the procedure itself comes with a high risk of morbidity and mortality, and that it was impossible to remove the coil once it became stuck.

The matter settled for $3.5 million.

Type of action: Medical malpractice

Type of injuries: Severe stroke causing catastrophic mental and physical impairments leaving patient in a near-persistent vegetative state

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Oct. 22, 2010

Settlement amount: $3.5 million

Attorneys for plaintiff: Brian J. McKeen, Teresa E. Kasel, Derek J. Brackon

Attorney(s) for defendant: Withheld

#13

Mother not suspected of being in labor

Plaintiff: Cord compression, other factors should have been noted

$2.75 million

In a confidential medical-malpractice and birth-trauma lawsuit, plaintiff next friend of plaintiff minor sought damages from defendant hospital for cerebral palsy, catastrophic motor and cognitive deficits due to asphyxia in a severely preterm baby causing hypoxic-ischemic encephalopathy following birth.

In late 2004, the mother presented to the regional hospital at eight weeks gestation with complaints consistent with active labor for a twin pregnancy. It was clear that this patient was a high-risk mother. Despite the fact that she arrived in pre-term labor at 7:30 a.m., defendants did not suspect her to be in labor until 3:30 p.m.

Despite the mother being at high risk, the attending OB did not arrive at the mother's bedside until 5:25 p.m., two hours after labor was suspected. The mother developed a fever due to infection in the amniotic fluid. The first twin, the plaintiff minor in this case, was delivered vaginally with low Apgar scores of 3, 3 and 6. The child now suffers from cerebral palsy, bronchopulmonary dysplasia and apnea, and is permanently impaired both physically and mentally.

Plaintiff's experts testified that the mother should have been transferred to a hospital with a neonatal intensive care unit and that the mother should have been informed of her options, including C-section. Plaintiff's experts further contended that the attending obstetricians should have recognized cord compression, chorioamnionitis and non-reassuring fetal heart tones, opting to perform a C-section far earlier.

Defendant contended that the baby's brain damage was secondary to prematurity and choiroamnionitis that could have resulted in a bad outcome regardless of the timing of delivery.

The matter settled for $2.75 million.

Type of action: Medical malpractice, birth trauma

Type of injuries: Cerebral palsy, catastrophic motor and cognitive deficits due to asphyxia in a severely preterm baby causing hypoxic-ischemic encephalopathy

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Nov. 12, 2010

Settlement amount: $2.75 million

Attorneys for plaintiff: Brian J. McKeen, Teresa E. Kasel, Derek J. Brackon

Attorney(s) for defendant: Withheld

#16

Plaintiff: Mother should have known of options

It's asserted risks of GBS were not explained, went against standard

$2.6 million

In a confidential medical-malpractice and birth-trauma lawsuit, plaintiff next friend of plaintiff minor sought damages from defendant hospital for cerebral palsy, catastrophic motor and cognitive deficits due to asphyxia causing hypoxic-ischemic encephalopathy following birth.

This case involved catastrophic neurological injury of a newborn baby stemming from the failure to administer intrapartum antibiotics due to the Group Beta Streptoccus (GBS) sepsis, the No. 1 infectious killer of newborn babies.

Currently, the standard of care requires that all pregnant mothers must be screened for GBS. At the time of the pregnancy at issue (1998), the standard was in transition, and there were two schools of thought, either of which were admittedly considered within the standard of care: a screening approach, where all women were screened antenatally for Group B strep and those who were positive received intrapartum antibiotics or a risk-factor approach where no women were screened antenatally, but if women had risk factors for intrapartum Group B strep sepsis, then they would receive intrapartum antiotics.

At the time, the American College of Obstetricians and Gynecologists (ACOG) indicated that either a screening-based approach or a risk-factor approach was acceptable. Defendants contended that they subscribed to the risk-factor approach, and because there were two schools of thought, there was no deviation from the standard of care, and the mother did not require antibiotics.

Plaintiff asserted that the patient deserved the right to know of the two schools of thought and her option to be screened. ACOG noted that it was likely that most patients would elect to be screened for GBS, if they were fully informed, and that such requests should be honored. All experts agreed that, if the mother had been screened, she would have been given antibiotics that would have prevented the baby's injuries.

In this case, the mother was not informed of the risks of GBS, as required by the standard of care. The defendant physician who provided prenatal care testified that she informed the mother by providing her with a 180-page book entitled "A Doctor Discusses Pregnancy," a promotional text distributed by a surgical company that manufactures fetal heart rate monitors. Plaintiff's counsel, after an extensive search of used bookshops throughout the U.S., obtained a copy of this book from the year in question, and it contained no reference to GBS.

McKeen

Toutant

As well, plaintiff's counsel used an ACOG publication to argue that, if the mother had been informed of her options, she would have requested to have been screened, resulting in treatment that would have prevented her son's GBS sepsis and resulting brain damage.

It was further asserted that negligent uterine hyperstimulation with the labor-inducing drug pitocin further contributed to the child's significant neurological injuries.

The case settled for $2.6 million.

Type of action: Medical malpractice, birth trauma

Type of injuries: Cerebral palsy, catastrophic motor and cognitive deficits due to asphyxia causing hypoxic-ischemic encephalopathy

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Oct. 24, 2010

Settlement amount: $2.6 million

Attorneys for plaintiff: Brian J. McKeen, Phillip B. Toutant

Attorney(s) for defendant: Withheld

#26

Patient's low sodium leads to complications

Plaintiff's Daubert motion OK'd, defense causation is dropped

$1.8 million

In a confidential lawsuit, plaintiff personal representative estate for plaintiff decedent, sought damages from defendant physicians for wrongful death stemming from medical procedures following an auto accident.

Plaintiff's decedent, a 40-year-old father of two, was involved in a serious car crash, and was subsequently hospitalized in a local hospital. Decedent had serious skull fractures and brain bleeding. He developed low sodium (hyponatremia) just prior to transfer to the second hospital. He was stable at transfer, but then his sodium dropped even further. He also developed cerebral edema from his hyponatremia.

He was transferred to a second hospital, which eventually treated the hyponatremia, but the cerebral edema worsened, and he developed brain herniation and died.

Defendants contended that the hyponatremia was properly treated, and denied the existence of cerebral edema. It also was asserted that the patient died because of vasospasm secondary to traumatic subarachnoid hemorrhage.

Plaintiff's major hurdle was to overcome the defense of vasospasm and the argument that the car crash led to a closed-head injury that would have prevented decedent from providing for his family in the future.

The case involved experts in trauma surgery, neurosurgery, nephrology, neuropathology, and neuroradiology.

It was noted that the trial judge granted plaintiff's Daubert motion and struck the defendants' expert's causation testimony. The court ruled that the evidence clearly showed a brain stem hematoma because of inward intracranial pressure rather than because of a brain stem infarct secondary to vasospasm, which the defendants had postulated.

After case evaluation and completion of all experts' depositions, the case settled for $1.8 million.

Type of action: Medical malpractice

Type of injuries: Wrongful death

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; July 2010

Settlement amount: $1.8 million

Attorneys for plaintiff: Brian J. McKeen, Terrance J. Cirocco, Phillip B. Toutant

Attorney(s) for defendant: Withheld

#27

Patient says birth injuries were apparent

Defendant: Cognitive deficits in child were from genetic abnormality

$1.75 million

In a confidential medical-malpractice and birth-trauma lawsuit, plaintiff next friend of plaintiff minor sought damages from defendant hospital for motor and cognitive deficits due to asphyxia causing hypoxic-ischemic encephalopathy following birth.

The case was complicated by an atypical presentation of interpartum hypoxic-ischemic encephalopathy, namely the absence of spacticity or cerebral palsy. The defendants argued that the child's injuries were caused by a genetic abnormality or "other unpreventable etiology."

However, plaintiffs asserted, there was strong evidence of birth asphyxia and global injury to the child's brain. Chiefly, plaintiff's counsel used the charting of the treating neonatologists, who diagnosed the child with hypoxic-ischemic encephalopathy.

Moreover, it was contended, the labor and delivery summary stated that the child was delivered due to "non-reassuring fetal heart tones/fetal distress." As a result of the failure to perform an earlier cesarean section, the minor child suffers from motor and significant cognitive impairments.

The matter settled for $1.75 million.

Type of action: Medical malpractice, birth trauma

Type of injuries: Motor and cognitive deficits due to asphyxia causing hypoxic-ischemic encephalopathy

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; July 30, 2010

Settlement amount: $1.75 million

Attorney for plaintiff: Brian J. McKeen

Attorney(s) for defendant: Withheld

McKeen

Child suffers brain, developmental injuries

It's argued that signs of placental abruption on monitor were ignored

$1.65 million

In a confidential medical-malpractice and birth-trauma lawsuit, plaintiff next friend of plaintiff minor sought damages from defendant medical organization for permanent brain injury to the newborn child, and mild learning disabilities/developmental delays following birth.

Mother presented at term with onset of labor approximately one hour prior to arrival. Initial strip was nonreassuring. Membranes were ruptured by the medical staff and internal leads placed. Fetal monitor strips showed evidence of tachysystole (contractions coming too close together) and elevated resting tones from the onset of the placement of internal leads.

Attending physician did not appear for more than two hours after the mother presented to the hospital. There was a factual dispute as to whether the attending physician was notified of the abnormalities on the strip prior to arrival at the hospital.

When attending physician arrived, an emergency C-section immediately ordered. A significant concealed abruption was found. Child had classic presentation of acute profound HIE, with low Apgar scores, acute profound metabolic acidosis, seizures, and classic radiographic presentation of acute profound injury.

Plaintiff contended that the residents and nursing staff failed to appreciate the signs of placental abruption evident on the fetal monitor strips after placement of the internal leads and failed to so notify the attending. (There was no documentation that they appreciated the abnormalities on the strip or mother's complaints of unusual abdominal pain.)

It also was asserted that the damage was because of acute and profound hypoxia within the last 30 minutes prior to delivery. In addition, it was contended, had the signs of abruption been appreciated by the staff in a timely fashion, an emergency C-Section would have been performed in sufficient time to avoid the permanent brain injury.

Defense contended that, because there was no vaginal bleeding and no documentation of unusual complaints of pain from the mother, it was appropriate for the staff to watch the mother, even in the presence of tachysystole and elevated resting tones until such time as the fetal monitor strip began to show signs of fetal decomposition.

As well, it was asserted that the child's injuries were mild and were not related to the hypoxic event. Even if was related, it was added, the child's future would not be impacted.

Experts in OB/GYN, maternal fetal medicine, pediatric neurology, child psychology, neuropsychology, life care planning, and economics were offered by both sides.

The matter settled for $1.65 million.

Type of action: Medical malpractice, birth trauma

Type of injuries: Permanent brain injury to newborn child, mild learning disabilities/developmental delays

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Sept. 24, 2010

Settlement amount: $1.65 million

Attorneys for plaintiff: Euel W. Kinsey, Brian J. McKeen

Attorney(s) for defendant: Withheld

#33

Flexion causes spinal cord ischemia in teen

Standard of care argued by defense for tracheal resection procedure

$1.375 million

In a confidential lawsuit, plaintiff minor sought damages from defendant hospital for quadriplegia caused by negligent surgical positioning.

Plaintiff was a 16-year-old with lethal cancer of the trachea. He was scheduled for a tracheal resection procedure in 2006. Postoperatively, in order to allow healing of the circumferential trachea resection and anastomosis, the boy's neck was held in a flexed position while medically paralyzed for eight days. At no point postoperatively was the boy's neurological status assessed.

When the paralytic drug was reversed, it was discovered that the patient had suffered a spinal cord injury leading to quadriplegia. Plaintiff asserted that this complication, which was unreported in the world's medical literature, occurred because an excessive degree of flexion was used causing spinal cord ischemia.

Defendants contended that they followed standard protocols for immobilization and the risk was inherent to the surgery, and that damages should be limited due to the boy's cancer.

The matter settled for $1.375 million. Damages were limited due to a dramatically decreased life expectancy because of the lethal cancer.

Type of action: Medical malpractice

Type of injuries: Quadriplegia caused by negligent surgical positioning

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; April 13, 2010

Settlement amount: $1.375 million

Attorney for plaintiff: Brian J. McKeen

Attorney(s) for defendant: Withheld

#34

Hospital accused of not responding to fetal stress

Intervention at birth should have been earlier, assert experts for the plaintiff

$1.35 million

In a confidential lawsuit filed in Macomb County Circuit Court, plaintiff next friend of plaintiff minor sought damages from defendant hospital and defendant obstetrician for negligent failure to timely and properly respond to signs of fetal distress during the labor and delivery process for the minor child.

The mother presented at 40 weeks and three days of pregnancy, and her cervix was found to be 2 centimeters dilated. Membranes were artificially ruptured when the baby was at minus 4 station; this is extremely dangerous and contraindicated, as it can cause acute cord prolapse (pinching off of the umbilical cord when it leaves the uterus before the fetus).

Three hours later, a fetal heart rate monitor began to show repetitive deep variable decelerations of the baby's heart rate. As the labor progressed, nursing staff noted dark red vaginal bleeding, followed by decreasing heart rate variability, another indicator of fetal distress. Despite several hours of decreasing variability, the labor nurse charted the pattern as "reassuring."

For hours, the labor was continued with the labor-inducing drug pitocin, despite continuing late variable decelerations and bleeding consistent with a placental abruption. Delivery was finally achieved vaginally with forceps.

Plaintiffs' experts testified that intervention should have occurred much earlier. Moreover, it was contended, the failure of the obstetrician to respond to the worsening uterine environment was so significant that plaintiffs' nursing expert testified that the nurses in the case were negligent for failing to invoke the "chain of command" and seek intervention from the physician's supervisors. The baby was born floppy, with flaccid tone, poor color, requiring oxygen.

Because of these injuries, it was asserted, the child suffered global neurological injury. He had a decreased full scale IQ, and significant learning disabilities.

Defendants contended that the infant's condition at birth was incompatible with an acute intrapartum asphyxia, specifically that the child went home with the mother two days after birth and the Apgar score and blood gas did not suggest any severe level of hypoxia.

It also was asserted that the cause of the child's one-sided deficits was a stroke in utero, remote from term. Defendants neuroradiology experts opined that the child's injury occurred weeks before delivery.

Plaintiffs contended that there is medical literature that indicates that a leading cause of perinatal stroke is intrapartum hypoxic ischemic encephalopathy. As well, neuroimaging showed global changes rather than a single infarct of one arterial distribution.

The matter settled for $1.35 million.

Type of action: Medical malpractice, birth trauma

Type of injuries: Mild one-sided deficits of fine and gross motor skills

Name of case: Confidential

Court/Case no./Date: Macomb County Circuit Court; confidential; June 15, 2010

Name of judge: Withheld

Settlement amount: $1.35 million

Attorney for plaintiff: Brian J. McKeen

Attorney(s) for defendant: Withheld