

Suit over baby's injuries settles after mediation

Mother alleged lack of oxygen caused brain damage

A woman obtained a \$4.75 million settlement in a lawsuit she filed after her child was born with a severe brain injury.

On Aug. 19, 2007, the then-27-year-old woman went to the hospital for the delivery of her first child. Upon admission, she was under the care of doctor and nurse, later defendants in the lawsuit. They decided to induce labor.

To monitor the health of the baby during labor, the defendants used an electronic fetal monitor to create a telemetric strip that allows health care providers to observe the baby's heart rate in relation to the contractions of the mother.

Careful monitoring of a baby's heart rate can show health care providers whether the baby is receiving an adequate amount of oxygen and assists in determining when an emergency cesarean section is warranted, said plaintiff's attorney Kip Robertson of Bartimus, Frickleton, Robertson & Gorny.

The plaintiff said the fetal monitoring strips showed dangerous patterns for hours

prior to delivery, indicating that the baby was not receiving sufficient oxygen and was at risk for developing a severe and debilitating brain injury. The plaintiffs also alleged that despite the ominous signs, the defendants proceeded as if everything was normal.

The baby was not delivered by cesarean section.

"The failure to appreciate the baby's distress and deliver it by cesarean section in a timely fashion caused the baby to sustain injuries that have left him severely brain damaged and in need of 24-hours-a-day care for the remainder of his life," Robertson said.

The woman filed a lawsuit against the obstetrician and obstetrical nurse that managed the labor and delivery, in addition to the hospital where the baby was delivered.

The plaintiff's experts were prepared to testify that the defendants deviated from acceptable standards of care in not appreciating the dangerous signs on the fetal

■ \$4.75 million settlement

MEDICAL NEGLIGENCE

■ **Case Number/Date:** Confidential/ February 2010

■ **Court:** Jackson County Circuit Court

■ **Mediator:** Ron Mitchell

■ **Plaintiff's Experts:** Dr. Larry Batty, Shawnee Mission, Kan. (obstetrics); Dr. John Mantovani, St. Louis (pediatric neurology); Dr. Gene Tenorio, Springfield (pediatric neurology); Dr. Mary Edwards-Brown, Indianapolis, Ind. (neuropathology); Dr. Terry Winkler, Willard (life care planning); Sue Mahley, Kansas City (nursing)

■ **Insurer:** Confidential

■ **Caption:** Confidential v. confidential



■ **Plaintiff's Attorneys:** Aaron W. Smith, The A.W. Smith Law Firm, Columbia; James P. Frickleton and Edward (Kip) Robertson III, Bartimus, Frickleton, Robertson & Gorny, Leawood, Kan.

■ **Defendants' Attorneys:** Confidential

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monitoring strip and in failing to deliver the baby by emergency C-section when it became clear that the baby was being deprived of oxygen.

The plaintiff's experts also were prepared to testify that the standard of care deviations were the sole cause of the baby's

injuries.

The parties participated in mediation and settled the case shortly after mediation had concluded, Robertson said.

The defense attorneys did not comment due to confidentiality.

— Cathy Kinglsey