



## MEDICAL MALPRACTICE

### Childbirth

**VERDICT:** \$5,375,000.00

**CASE:** Noreen and Donald Buckhout, indiv. and as p/n/g of Christopher Buckhout, an infant v. Daniel Turner,, No. 20215/90

**VENUE:** Suffolk Supreme, NY

**JUDGE:** Alan D. Oshrin

**DATE:** 05-16-1997

#### PLAINTIFF(S)

**ATTORNEY:** Stephen E. Erickson; Pegalis & Wachsman; Great Neck, NY, for Noreen and Donald Buckhout, indiv. and as p/n/g of

**EXPERT:** Dr. Joseph Carfi; Physical Rehabilitation  
Dr. Herman Davidovicz; Neuropsychology  
Dr. Alan Fleischman; Neonatology  
Dr. Barry Schifrin; Obstetrics  
Brian Sullivan; Economic Analysis

#### DEFENDANT(S)

**ATTORNEY:** Raymond W. Belair; Belair & Evans; Manhattan, NY, for Daniel Turner, M.D.

**EXPERT:** Dr. Harold Fox; Obstetrics  
Dr. Cynthia Kaplan; Pathology  
Dr. Robert Moore; Neurology

**INSURER:** PRI \$1,000,000 primary policy

**FACTS:** The infant Pltf., age 9 at trial, was delivered on 5/21/88 by Caesarean section due to cephalopelvic disproportion and failure to progress in labor. He was born 2 weeks past the due date at Stony Brook University Hospital (nonparty). Pltfs. brought this medical malpractice action against Deft. Turner, the mother's obstetrician through the entire course of the pregnancy, including labor and delivery, for failure to recognize the signs of cephalopelvic disproportion. Testimony indicated that the mother was pushing for over 2 hours during the second stage of labor with evidence of variable decelerations occurring every 1.5 to 2 minutes. Turner subsequently ascertained that the fetal head had not descended through the birth canal, but that there was molding and caput of the fetal head, which Deft. mistook for the descent of the fetal head. A Caesarean section was performed at 9:07 AM on 5/21/88, and the infant was transferred to the new-

born nursery. However, the infant Pltf. exhibited seizures at 22 hours of age and subsequent CAT scans revealed that he had sustained an infarction of the left temporal and parietal lobes in the distribution of the left middle cerebral artery. He has a right hemiparesis and significant learning disabilities that are related to the injury to the left temporal and parietal lobes. He is in a special education class.

Pltfs. claimed that the fetal head was not engaged in the birth canal and that the combination of contractions and pushing on the fetal head resulted in increased intracranial pressure within the fetal head, causing a decrease in blood flow to the brain. The repetitive decelerations shown on the fetal heart monitor indicated repeated episodes of decreased blood flow to the fetus which, combined with the decreased blood flow within the fetal brain, resulted in insufficient blood flow to the left temporal and parietal lobes. This resulted in an infarction or death of the portion of the brain dependent on blood flow from the left middle cerebral artery.

Deft. contended that the labor and delivery were managed properly and that the infant's injury was the result of a stroke that occurred as a result of either an emboli that traveled to the left middle cerebral artery and caused an occlusion of that artery, or was the result of a clotting disorder. Alternatively, Deft. argued that the stroke occurred as a result of a malformation of the vessels in the left middle cerebral artery. Deft.'s pathologist testified that a microscopic examination of the placenta performed 7 years after the birth showed evidence of a clotting disorder. Deft. further contended that the infant's physical injuries and learning disabilities were mild.

**OFFER:** \$350,000

**DEMAND:** \$1,800,000.

**VERDICT INFORMATION:** \$5,375,000 (5/1). Breakdown: \$1,075,000 for past and future pain and suffering; \$300,000 for impairment of earning potential; \$4,000,000 for future medical and custodial expenses. Jury: 3 male, 3 female. The result will be published in a future issue.