Verdicts, Settlements & Tactics
*A Personal Injury Litigation Reporter*

# Physician Found Liable For Delay In Performing Emergency Cesarean Section

Plaintiff-mother, Bernadette DeSimone, contended that the defendant, Robert Kessler, M.D., negligently failed to timely arrange for and perform an emergency C-Section in a full term pregnancy when she exhibited signs and symptoms of an abruptio placentae. The plaintiff contended that as a result, the C-Section was delayed for approximately one hour, causing a continuation of perinatal hypoxia to the fetus and resulting in cerebral palsy with spastic quadriplegia. The child, Anthony DeSimone, Jr., eventually died at the age of 6.

The mother maintained that on August 9, 1987 at 5:00pm, mild, irregular contractions began that were approximately thirty minutes or more apart. At 8:15pm, she developed a sharp and constant lower back pain that was not similar to any labor pain which she had ever experienced during her prior two pregnancies. The plaintiff-mother contended that she immediately telephoned the defendant's service at 8:15pm and advised him of this unusual pain when he called back approximately ½ hour later at 8:45pm. The defendant instructed the mother to go to the hospital immediately and she arrived at approximately 9:00pm.

The mother was initially seen in the hospital emergency room at 9:00pm for 15 minutes before she was transferred to the labor room at 9:15pm. The records reflected that a fetal heart monitor (FHM) was attached at 9:19pm, which showed fetal bradycardia, a fetal heart rate (FHR) of 80-90, and that the defendant was beeped. Persistent bradycardia (FHR 80-90) existed for five minutes by the time the defendant returned the call to the labor room at 9:24pm. The records documented an additional phone call at 9:33pm, which reflected that the defendant was leaving for the hospital at that time. The defendant arrived at the hospital at 9:55pm, and the child was delivered by C-Section at 10:04pm.

The plaintiff's expert Ob/Gyn contended that when the defendant was advised of sharp back pain which was constant and different from the labor pain experienced by the mother, who had had two prior pregnancies, he should have considered abruptio placentae (separation of the placenta from the uterus) in his differential diagnosis. The expert maintained that such a condition is emergent and usually causes hypoxia. Furthermore, the existence of fetal bradycardia upon admission to the labor room and its persistence thereafter was particularly ominous in nature. The plaintiff's expert Ob/Gyn contended that when the defendant was advised by the mother of the unusual back pain at 8:45pm, he should have advised the hospital of the potentially emergent situation and requested that the mother bypass the emergency room and be directly admitted to the labor room so that a fetal heart rate could be obtained as soon as possible. Had this been done, hypoxia would have been detected at least 15 minutes earlier. The plaintiff's expert maintained that in view of the information obtained by the defendant, a C-Section should have been commenced no later than 9:39pm. If the delivery was commenced by 9:39pm, the child would have had a substantial chance of having a normal life or avoiding significant abnormalities.

The defendant denied that the plaintiff had reported unusual back pain and contended that he acted within the standard of care. The plaintiff-mother countered that the nurse's notes reflected a history of pain which was different than her labor pain, and argued that there was no reason to go immediately to the hospital, but for this unusual back pain. The defendant further contended that it was reasonable to wait 15 minutes after the fetal bradycardia was first noted before opting to prepare for a C-Section. The plaintiff maintained that persistent bradycardia of only 3 to 5 minutes is extremely ominous and that waiting 15 minutes before preparing for a C-Section was a deviation from acceptable standards of care.

The defendant argued that as of the time the mother presented to the hospital, 9:00pm, the child had already suffered hypoxia for approximately 45 minutes and permanent brain damage had already occurred. The plaintiff's expert/subsequent treating pediatric neurologist, however, countered that abrupto placentae is a progressive condition and its associated hypoxia depends on the degree of the placental separation. This expert showed how the FHR progressively declined from 80-90 bpm to 60-70 bpm. He opined that the child would have had a substantial chance to live a normal life if delivered more promptly.

**Injury:** The plaintiff contended that the child was born with clear signs of perinatal asphyxia , including acidosis, seizures and APGAR scores of 0 at one minute and 1 at five minutes. The child was diagnosed as having suffered cerebral palsy with spastic quadriplegia that was secondary to the hypoxic insult during birth. The child eventually died at age six.

**Result:** The jury found for the plaintiff and rendered a gross verdict of $3,500,000. The jury award was molded to reflect prejudgment interest and a reduction of 20% attributable to the preexisting condition of Abruptio Placentae. The net verdict was $3,322,526.00.

**Plaintiff's Attorney:** John W. Baldante of Levy, Angstreich, Finney, Baldante, Rubenstein & Coren, P.C., Cherry Hill, NJ

***DeSimone v. Kessler,*** No. L-877-94 (Gloucester Cty. Super. Ct. N.J. April 1998)