

# Mother tests positive for G. vaginalis, baby blinded

## Plaintiff asserts follow-up care wasn't provided before child was born

### \$7.53 million

In a confidential lawsuit filed in Wayne County Circuit Court, plaintiffs minor and next friend sought compensatory damages from defendant physicians and defendant hospital after the minor was permanently blinded.

Six months prior to minor's birth, her mother tested positive for G. vaginalis bacteria in a cervical culture. The mother, however, would not be cultured again until her membranes prematurely ruptured three months later, when she was diagnosed with G. vaginalis, staphylococcus and E. coli. The mother spent two weeks at defendant hospital before returning home.

On April 8, 1993, the mother returned to defendant hospital with a fever and foul-smelling, purulent vaginal discharge. Due to the infection (chorioamnionitis) and the fact that the fetus was in the breech position, the baby was delivered via C-section, and immediately transferred to the neonatal intensive care unit.

On May 12, 1993, the baby received an ophthalmology consultation to rule out retinopathy of prematurity (ROP). She was diagnosed with ROP in both eyes, and a plan of care was made, but no follow-up care was provided.

At another appointment on May 31, 1993, it was noted that the baby had ROP, and a follow-up consultation was recommended. After two diagnoses of ROP, the infant received no follow-up care, and was discharged June 8, 1993.

Appropriate care was not administered until Nov. 2, 1993. By that time, she was diagnosed with stage 5 ROP, and it was too late to save her sight.

Plaintiff asserted that, because the minor is completely blinded in one eye and her other eye is worse than legally blind, she will never be able to drive a car, walk down a city street unassisted or live independently, and will require significant follow-up care.

Defendants contended that there was no proximate cause because there was nothing that could be done to save the child's eyesight.

The case settled for \$7.53 million.

**Type of action:** Medical malpractice

**Type of injuries:** Permanent blindness

**Name of case:** Confidential

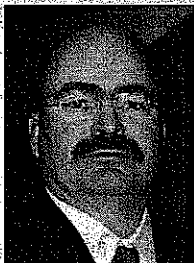
**Court/Case no./Date:** Wayne County Circuit Court; confidential; Jan. 26, 2009

**Settlement amount:** \$7.53 million

**Attorneys for plaintiff:** Brian J. McKeen, Kevin J. Cox

**Attorney(s) for defendant:** Withheld

**Keys to winning:** Persistent focus on defendants' concessions as to liability, impeachment of defense liability experts



MCKEEN



COX

# Premature child's oxygen loss causes brain damage

## Surfactant therapy should have been given, say experts, defendants

### \$3 million

In a confidential lawsuit filed in Oakland County Circuit Court, plaintiff next friend asserted defendant hospital and defendant physicians were negligent when plaintiff minor suffered birth trauma, leaving her permanently disabled by cerebral palsy and global developmental delays, including mental retardation.

In late December 2004, plaintiff minor was born prematurely at defendant hospital. Upon admission to the neonatal intensive care unit (NICU), the child was noted to have tachypnea, grunting, intercostal retractions and desats without oxygen. The admit note indicated that the child should be under close observation for respiratory distress.

During her admission to the NICU, the child's oxygen saturation and condition steadily decreased. At one point, three hours elapsed without any nursing notes being made as to the child's oxygen saturation. Eventually, despite the fact that she was receiving 100 percent oxygen, her blood oxygen continued to desaturate.

Evaluation revealed that she had respiratory distress syndrome, and had suffered a respiratory collapse stemming from air leaking into her chest from her lungs, a condition known to occur in premature infants.

Plaintiff's expert witnesses testified that the simple use of surfactant therapy would have prevented the child's massive brain injuries. Further, it was asserted, if surfactant therapy (which improves the level of oxygen saturation and keeps a baby's lungs inflated by preventing them from sticking together) was used instead, the child's lungs would have worked better and injury would have been avoided.

Defendant physicians admitted that surfactant therapy is commonly used to expand a baby's lungs and improve oxygenation, and that any NICU physician should consider surfactant therapy when a baby's oxygen needs are not being met.

Because of the deprivation of oxygen to her brain, the child suffered from hypoxic ischemic encephalopathy, which caused massive brain damage. Subsequent evaluation revealed that her IQ was in the 66th percentile, and she would perform, at best, in the mildly mentally impaired range. It also was noted that plaintiff minor will require full-time support throughout her life.

Defendants contended that brain imaging after the injured indicated that the child's decreased capacity was not the result of the negligent respiratory collapse.

The matter settled for \$3 million.

**Type of action:** Medical malpractice

**Type of injuries:** Hypoxic ischemic encephalopathy causing cerebral palsy and mental retardation

**Name of case:** Confidential

**Court/Case no./Date:** Oakland County Circuit Court; confidential; January 2009

**Highest offer:** \$2.1 million

**Settlement amount:** \$3 million

**Attorneys for plaintiff:** Brian J. McKeen, Kevin J. Cox

**Attorney(s) for defendant:** Withheld

**Key to winning:** Persistent focus on defendants' concessions as to liability