

2007 WL 1650210 (N.Y.Sup.)
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Supreme Court, First Judicial District, New York County, New York

Wilson Vasquez Jr., an Infant by His Mother & n/g, Keylam Rodriguez & Keylam Rodriguez, Individually v. Barbara Deli M.D. & The St. Lukes-Roosevelt Hospital Center

No. 109550/04

DATE OF VERDICT/SETTLEMENT: March 05, 2007

TOPIC: MEDICAL MALPRACTICE - CHILDBIRTH - NEGLIGENCE - NEGLIGENT SUPERVISION -
MEDICAL MALPRACTICE - BIRTH INJURY
Baby's Palsy Blamed on Excessive Traction During Delivery

SUMMARY:

RESULT: Verdict-Plaintiff

The jury found that there was not sufficient evidence to determine that Deli was absent during the delivery, but that there was compelling evidence to support a conclusion that excessive traction had been used. Thus, it determined that the defendants were liable for Wilson's injuries. It further determined that Wilson's damages totaled \$1,037,000.

EXPERT WITNESSES:

Plaintiff: Daniel G. Adler, M.D.; Pediatric Neurology; New York, NY Douglas Phillipps; OB-GYN -- See also Gynecology; Merrick, NY

Defendant: Denise Guidetti, M.D.; Obstetrics; New Hyde Park, NY Regina R. DeCarlo, M.D.; Pediatric Neurology; New York, NY

ATTORNEYS:

Plaintiff: Conrad Jordan; trial counsel to Fink & Platz, New York, NY, The Cochran Firm; New York, NY (Keylam Rodriguez, Wilson Vasquez Jr.)

Defendant: Jack Corgan; Schiavetti, Corgan, Soscia, DiEdwards & Nicholson LLP; New York, NY (Deli, St. Lukes)

JUDGE: Alice H. Schlesinger

RANGE AMOUNT: \$1,000,000-1,999,999

STATE: New York

COUNTY: New York

INJURIES: Wilson suffers Erb's palsy of his left arm. Both sides' expert pediatric neurologists examined Wilson and detected some permanent residuals of a brachial plexus injury, indicating that there was some tearing of the nerves emanating from the C5 and C6 nerve roots. Wilson exhibits a 15-to-20-degree elbow contracture, some loss of internal and external shoulder rotation, and mild winging of his left shoulder's scapula. Wilson cannot fully extend his left arm upward or reach behind and touch the small of his back.

Facts:

At about 6:30 a.m. on June 10, 2003, plaintiff Wilson Vasquez Jr. was born. Soon thereafter, doctors determined that Wilson was suffering Erb's palsy-- paralysis of a group of shoulder and upper-arm muscles that also involves the cervical roots of the fifth and sixth spinal nerves. The condition causes the arm to hang limp with the hand rotated inward, and it results in a loss of normal movement.

Late the prior evening, Wilson's mother, plaintiff Keylam Rodriguez, 31, a waitress, was admitted to the birthing center of St. Luke's-Roosevelt Hospital, in Manhattan. Wilson was delivered vaginally, in a vertex presentation. The hospital's records indicate that the delivery was complicated by a shoulder dystocia--entrapment of the infant's shoulder. Rodriguez claimed that a senior resident, Dr. Nicole Jeffrey, exerted excessive downward traction on Wilson's head to relieve the dystocia but that she inflicted a brachial plexus injury that caused Wilson's palsy.

Rodriguez, acting individually and as Wilson's parent and natural guardian, sued the hospital and the delivery's supervising doctor, Barbara Deli. Rodriguez alleged that the defendants failed to properly supervise the delivery and that their failures constituted medical malpractice.

Plaintiffs' counsel claimed that Deli was supposed to supervise the delivery, but that she was not present. Alternatively, he argued that, if Deli was present, she should have prevented Jeffrey's excessive use of traction.

The defendants contended that both doctors were present at the delivery and that no excessive traction was employed. They claimed that Jeffrey attempted appropriate maneuvers to resolve the dystocia and that Deli was able to deliver the baby's posterior arm. They disputed the accounts of the baby's father and aunt, who were present during the delivery and contended that Jeffrey had used excessive traction on Wilson's head.

The defense's expert obstetrician opined that it was appropriate to deliver the baby vaginally and that, given the circumstances, the dystocia was not predictable. He further opined that the maneuvers used during delivery were appropriate and that Erb's Palsy can occur in utero, absent the application of excessive traction.

Shortly after his birth, Wilson began physical therapy that continued twice weekly for about a year and then much less frequently thereafter. He currently undergoes home therapy with his mother. The plaintiffs' expert pediatric neurologist recommended monthly physical therapy with a professional, or alternatively supervised by Rodriguez, until Wilson reaches age 21. The expert opined that surgery for Wilson's elbow and shoulder contractures might become necessary. He further opined that Wilson would never excel in sports and would always have difficulty with activities of daily living, such as dressing himself.

Rodriguez sought recovery of Wilson's past and future medical expenses and damages for Wilson's past and future pain and suffering. She also presented a derivative claim.

Defense counsel disputed that the infant's left arm is more than an inch shorter than his right, but he conceded that

Wilson postures the arm slightly while walking and has some mild atrophy of the left deltoid.

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