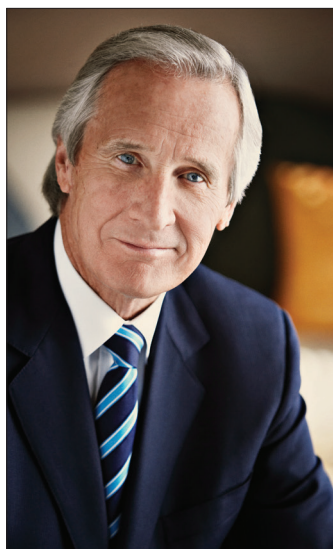


MISSOURI LAWYERS WEEKLY

OB Hit With \$1M Verdict For Injury To Newborn



Donald L. Schlappizzi

BY MO LAWYERS MEDIA STAFF

A “no-negotiation” defense posture is becoming more prevalent in medical malpractice cases, according to an attorney who recently won a \$1.1 million verdict against an obstetrician.

In the St. Louis City case, a mother claimed that her son, now 3 years old, suffered nerve damage to his shoulder during delivery. Her experts said “brachial plexus” injuries happen only when a doctor pulls too hard on the head after the baby’s shoulder becomes stuck in the birth canal.

The doctor admitted the injury, but said it must have occurred before the baby was born.

According to Donald L. Schlappizzi, who represented the plaintiff, “more and more doctors are refusing to negotiate before trial.

“I’m not sure why, but if they bet wrong they expose their personal assets to a judgment that comes in over the coverage,” as happened in this case, he said.

“Here, they hung their hat on the fact that

there was nothing in the records from the childbirth itself related to dystocia or a shoulder injury,” Schlappizzi said. “They said that because it wasn’t in the record, it didn’t happen.”

But he said this was “junk science,” since studies have shown that in most cases doctors do not note shoulder dystocia in medical records. “I told the jury that there’s no way a doctor is going to put in the medical record that he pulled too hard on the baby’s head.”

A report on the Dec. 10 verdict in Wallace, et al. v. Southside Obstetrics & Gynecology, Inc., et al., appears on Page 6. The attorney for the defense was unavailable for comment.

19-Hour Labor

Zane Wallace was born on Jan. 19, 2002. Near the end of a long and difficult labor, which last over 19 hours, the boy’s head emerged from the birth canal. His mother, Sheri Wallace, said the obstetrician pulled on the baby’s head to help bring his body out.

Shortly after delivery, Zane emerged with a limp arm and unusual bruising, Schlappizzi said. After he was taken to the nursery, another doctor noted that the baby appeared to have suffered an injury during childbirth. In addition, a nurse made a note that his left arm was limp and that he appeared to have suffered shoulder dystocia, a condition in which the baby’s shoulder becomes stuck on the mother’s pelvis during delivery.

Later examination revealed that Zane had suffered damage to three of the cervical nerves, two of which had been severed, and one severely stretched, Schlappizzi said. As a result, the boy developed a condition known as Erb’s palsy, a term designating a loss of control over shoulder and arm function as a result of a nerve injury.

An expert from a clinic in Texas that specializes in the treatment of patients with Erb’s palsy testified that the boy would have a permanently slumped shoulder from the condition, and would be unable to perform tasks which require the use of both arms. In addition,

his arms will probably grow to different lengths, the expert said.

Schlappizzi noted that the exact extent of the boy’s impairment remains unknown, and that his condition has improved through treatment.

“But even the defense admitted that he will be permanently disabled from this injury,” he said. “He won’t be able to hold his arm over his head, or bend his arm to put food in his mouth. And he’ll probably develop arthritis in his shoulder and elbow.

“He’ll even be more susceptible to injury in a fall, because he won’t be able to move his arm to protect himself.”

Causation

According to the plaintiff’s experts, the only likely cause for the nerve damage suffered by the boy was excessive traction placed upon his head by the obstetrician during childbirth, Schlappizzi said.

“Our experts, who have dealt with thousands of these cases, said that this could only happen after the baby’s head has emerged, when the doctor can begin to apply force to it,” he said. “And they said that it was impossible for it to happen in the womb or in the birth canal, because there was no way for forces to be applied to the head before it has emerged.”

The underlying cause of the injury was the development of shoulder dystocia during childbirth, which meant that the baby was in effect stuck in the birth canal with his head exposed.

When dystocia develops, the obstetrician is supposed to maneuver the baby’s body to free the shoulder from the mother’s pelvis, Schlappizzi said.

But in this case, the obstetrician failed to recognize that the baby was stuck, and began pulling on the baby’s head, leading to the nerve injury, he said.

Schlappizzi expressed some sympathy for the doctor, who was faced with the challenge of recognizing a relatively rare childbirth

problem at 2:30 a.m. after a long labor.

But he also noted that there had been warning signs as the mother's due date approached that should have alerted him to the possibility that shoulder dystocia could occur.

"This is a condition that occurs most frequently with big babies, and there were hints that this child could be a big baby," he said. "The mother developed gestational diabetes and gained close to 100 pounds. So the obstetrician should have been aware that problems could develop."

The obstetrician denied that shoulder dystocia developed during childbirth, or that the baby's injuries resulted from traction applied to his head.

Instead, the defense experts argued that the injury was the result of unknown events

in utero, Schlappizzi said.

But the plaintiff's experts vigorously disputed the contention that the boy's nerve injury could have been suffered in utero or in the birth canal.

"Their experts said that these injuries just happened to happen, in effect," he said. "But our experts said it was impossible to happen in utero because there was no way in utero for traction to be applied to the baby's head. And in the birth canal, the head is stuck, it can't move laterally."

Combative Attitude

Schlappizzi said the case also offers a cautionary tale to attorneys about the dangers of having an overconfident client, especially in deposition.

"The doctor in this case was a very arrogant guy who thought he knew the law bet-

ter than the lawyers did, and it hurt him," Schlappizzi said.

"He took a very flip, combative attitude in his deposition, maybe not realizing how it was going to sound to the jury when I read it back in trial."

According to Schlappizzi, "I asked him if he had prepared a delivery note, which we had been unable to find, and he said, 'Maybe I did, maybe I didn't.' And when I challenged him for being unresponsive, he said he was 'just trying to stump you.'"

"At trial, I just bored in on him, using his words from the deposition. I asked him, 'Are you here to stump the jury, just like you wanted to stump me?'"

"When I read some portions back, you could see that the jury was visibly stunned. It really hurt him."

\$1.1 Million Verdict

Type of Action: Medical malpractice

Type of Injuries: Erb's palsy — brachial plexus injury

Court/Case No./Date: St. Louis City Circuit Court/032-113/Dec. 10, 2004

Caption: Wallace, et al. v. Southside Obstetrics & Gynecology, Inc., et al.

Judge, Jury or ADR: Jury

Name of Judge: Donald L. McCullin

Special Damages: \$517,338 past and future medical expense

Last Offer: None

Last Demand: \$800,000

Verdict or Settlement: \$1,155,338 verdict

Allocation of Fault: 100 percent to defendants

Attorneys for Plaintiffs: Donald L. Schlappizzi and M. Jane Schweitzer, St. Louis

Insurance Carrier: InterMed Insurance

Plaintiff's Experts: Eric Jensen, Williamsburg, Va. (economist); Jan Klosterman, St. Louis (life care planner); Dr. John Laurent, Houston (pediatric neurosurgeon); Dr. Rahul Nath, Houston (plastic surgeon); Dr. James O'Leary, Naples, Fla. (fetal medicine)

Defendant's Experts: Dr. Bruce Bryan, St. Louis (obstetrician)