

# Catastrophic Brain Injury

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## **Douglas Birch, a minor, by and through his next friend, parent and natural guardian, Donna Birch, and Donna Birch, individually, and Basil Birch, individually, v. Miguel A. Albert, M.D., Miguel A. Albert, M.D., P.A. and Hialeah Hospital, Inc.**

**Jury Verdict: \$18,376,250.00**

Donna Birch was an obstetrical patient of Dr. Miguel Albert. Donna Birch ruptured her membranes after thirty-two weeks gestation and was admitted to Hialeah Hospital for observation. She went into premature labor four days later and her baby was delivered by the nurses at the hospital. There was no obstetrical physician available at the delivery. Plaintiffs alleged that the defendant obstetrician, Dr. Albert, was negligent in failing to attend the delivery of Donna and Douglas Birch who were high risk patients, and further, claimed that the nurses at Hialeah Hospital were negligent because they failed to obtain an obstetrical physician to attend the high risk delivery. As a result of a mismanaged delivery, Douglas Birch unfortunately sustained extensive brain damage and has been diagnosed as suffering from cerebral palsy and has a seizure disorder. Douglas today is totally dependent on his family and healthcare providers for all of his activities of daily living, and is 100% disabled. This trial lasted one week and a half after plaintiffs settled with the hospital. The jury returned a verdict in the amount of \$15,924,000 and \$1,500,000.00 each for his parents, Donna Birch and Basil Birch. Plaintiff had entered into a prior settlement with Hialeah Hospital, the amount of which is confidential. Manuel Epelbaum and Robert J. Dickman were the trial attorneys in this case.

## **Laura Lynn Loftin, an incapacitated adult, by and through her court appointed guardian, Lynda White, v. Southern Guaranty Insurance Company**

**Judgment: \$7,500,000.00**

Laura Loftin was a college student in Tallahassee attending Florida State University and was on her way to school when a vehicle coming in the opposite direction crashed into her. As a result of the accident, Laura suffered significant brain injury resulting in alteration of mental status and required prolonged hospitalizations in Gainesville, Florida and Atlanta, Georgia. Although Laura made significant progress and was able to return to an independent life, she suffered permanent brain injuries. Manuel Epelbaum who represented the plaintiff in this case was able to obtain a consent judgment against the defendants, which resulted in a bad faith lawsuit against the insurance company and further recovery on behalf of the plaintiff beyond the policy limits of \$1,000,000.00.

## **John Doe v. Mount Sinai Hospital**

**Settlement: \$6,500,000.00**

This case involved nursing negligence by staff at Mount Sinai Hospital. The plaintiff was in the well baby nursery within the first day of birth and nursing staff failed to detect that the baby was having apnea spells and by the time she was found, she had gone into full arrest. Plaintiffs were able to prove that the nursing staff in the well baby nursery at Mount Sinai Hospital did not follow their own protocols and properly attend to and properly resuscitate the baby. As a result, the baby suffered severe hypoxia to the brain resulting in permanent brain injury and cerebral palsy. This case was litigated by Robert J. Dickman and Manuel Epelbaum and was settled at mediation shortly before trial.

## **Valerie Campbell v. Carnival Cruise Lines, et al**

**Settlement: \$6,300,000.00**

Valerie Campbell was a black jack dealer on a Carnival cruise ship and became ill with flu-like symptoms on a cruise. She was treated by the ship's doctors and eventually airlifted to Mount Sinai Hospital in Miami Beach, Florida, at which time she was diagnosed with a virus in her brain. Due to the delay in getting Valerie to a proper healthcare facility, and due to delays in diagnosis and treatment for her condition, Valerie suffered extensive brain injury resulting in quadriplegia. This case was litigated by Robert J. Dickman and Manuel Epelbaum.

## **Dr. John Doe v. XYZ Corporation**

**Settlement: \$5,000,000.00**

Plaintiff was a well known ophthalmologist who was struck by a truck while driving in Miami Beach resulting in severe injuries and treatment at Jackson Memorial Hospital. Plaintiff suffered closed head injuries and change of mental status resulting in loss of the ability to continue as a physician. Plaintiffs were successful in establishing vicarious liability for the driver of the truck and sued a major bread wholesaler. Plaintiff has made a significant recovery and is now living an independent life, but he can no longer pursue his medical career. This case was litigated by Robert J. Dickman and Manuel Epelbaum.

## **Gaiqui v. Ronald C. Dudan, M.D.**

**Jury Verdict: \$3,900,000.00**

Robert J. Dickman and Manuel Epelbaum tried this case and were successful in proving that the defendant obstetrician failed to properly manage the labor and delivery resulting in delayed vaginal delivery of the baby. As a result of the delay in delivery, the baby suffered significant brain injury resulting in cerebral palsy. As a result of the verdict, plaintiff successfully proceeded to recover monies in excess of the policy limits in a bad faith lawsuit. Plaintiffs settled with the defendant hospital for a confidential amount.

## **Moller v. Evans Tires & Treads, Inc.**

**Jury Verdict: \$3,700,000.00**

Manuel Epelbaum co-counseled this case through trial and obtained a verdict on behalf of a husband and father who was killed as a result of failure to properly seed a tire rim on a tire resulting in an explosion leading to Mr. Moller's death. Mr. Moller was in the process of branding a tire when an improper fitting of rim spun off the tire striking him in the head resulting in blunt head trauma. Mr. Moller died a few days after the injury. Plaintiff went to trial and was successful in recovering a large verdict on behalf of the surviving wife and two children. This case was litigated by Manuel Epelbaum.

## **Tirado v. Belcher Oil Company**

**Jury Verdict: \$3,500,000.00**

Steven Tirado was a deck hand on a tug boat, Mary Belcher, when the captain of the tug boat backed his boat into a large container vessel and due to the tug boat captain's negligence, the tug boat line became entangled in the propellers of the tug boat striking Steven Tirado on the leg and resulting in his hitting the floor and striking his head on the steel deck. Steven Tirado suffered significant brain injuries requiring two brain surgeries resulting in permanent brain injury and hemiplegia. Plaintiff successfully sued the container vessel as well as the tug boat company alleging maritime negligence and unseaworthiness. This case was tried before a jury by Robert J. Dickman and Manuel Epelbaum.

## **Burley v. XYZ Hospital**

**Settlement: \$3,000,000.00**

Christian Burley was born on July 12, 1998 in Atlanta, Georgia and today suffers from severe cerebral palsy as a result of problems, which developed during labor or immediately after birth. Plaintiff sued the hospital alleging that the nursing staff failed to properly evaluate non-reassuring fetal heart monitor tracings during labor. As a result of the failure to properly evaluate the fetal heart monitor tracings, the baby was delivered vaginally suffering from hypoxia and its sequelae. Plaintiff alleged that the failure to perform cesarean section timely resulted in injuries to the child. This case was litigated by Robert J. Dickman.

## **Jabs v. Manatee Memorial Hospital and United States of America**

**Settlement: \$2,700,000.00**

Sarah Jabs went into premature labor at thirty weeks while visiting family in Florida. Ultrasounds showed that the baby was in a transverse position which meant that the baby was lying perpendicular to the mother, which mandated a cesarean section delivery. Only a vertex or vertically aligned fetus can deliver vaginally. Plaintiffs alleged that the obstetricians in this case utilized the wrong incision when they made a transverse incision, eventually requiring a second and third incision delivering the baby. During this process, the child unfortunately suffered extensive trauma which resulted in permanent neurological injuries. The baby's traumatic birth resulted in an ischemic injury to his brain, which has rendered him totally disabled today. This case was settled at mediation shortly before trial. This case was litigated by Robert J. Dickman and Manuel Epelbaum.

## **Tice v. XYZ Obstetricians**

**Settlement: \$2,550,000.00**

Mrs. Tice underwent an amniosentesis for suspected intrauterine growth retardation as a result of a negligently performed sonogram. Following the amniosentesis, the mother became infected with staph infection and went into premature labor at thirty seven weeks. Further injury was caused by a delay in a cesarean section resulting in permanent injury to the baby. This case was litigated by Robert J. Dickman and Manuel Epelbaum.

## **Jane Doe v. XYZ Hospital**

**Settlement: \$2,500,000.00**

Plaintiff was born uneventfully by vaginal delivery and approximately six hours after birth was found by a nurse to be blue and unresponsive. A code was called and the baby was resuscitated and eventually transferred to Miami Children's Hospital for several months. Unfortunately, this baby suffered severe and extensive brain injury and is today totally disabled. Plaintiffs alleged that during the time period that the baby was in the well baby nursery, the nurse either dropped the baby or allowed blunt trauma to occur to the baby's head as evidenced by subsequent x-rays showing soft tissue injury. In addition, Plaintiff suffered an extensive brain bleed in the area where the soft tissue injury was visible on plain films. Defendants denied that any blunt trauma was suffered by this baby and defended this case vigorously and retained twelve experts against the Plaintiff. Despite the fact that there was no direct evidence of blunt trauma to the baby's head and the nurses adamantly denied that any incident or injury had occurred to the baby, Plaintiffs were able to settle this case immediately before trial. This case was litigated by Robert J. Dickman and Manuel Epelbaum.

## **Wims v. Dr. Kronstadt**

**Jury Verdict: \$2,500,000.00**

Plaintiff was born premature by vaginal delivery. At the time of the delivery, while the mother was having severe contractions, the baby was delivered explosively and fell through the obstetrician's hands landing on the hospital floor. Plaintiffs were able to show the Defendant doctor attempted to hide the fact that the baby was dropped on the floor and had charged hospital. A jury returned a verdict on behalf of the mother and father for the injuries suffered by this baby, which tragically, led to his death approximately one year after birth. This case was litigated and tried by Robert J. Dickman and Manuel Epelbaum.

## **McDaniel v. XYZ Hospital**

**Settlement During Trial: \$2,500,000.00**

The McDaniel case was settled after one week in trial. Robert Dickman cross-examined the Defendant doctor in this case and Defendants immediately sought to settle the case for Plaintiffs' demands. The case involved the improper use of pitocin resulting in the mother suffering titanic contractions leading to the baby's suffering anoxia in utero. The improper use of pitocin and the failure to timely notify the physician of the titanic contractions and ominous fetal heart monitor tracings resulted in delayed delivery of the baby resulting in permanent injuries to the baby. This case was tried in Atlanta, Georgia and was vigorously defended by the defense. In fact, several appeals were taken during the trial. The McDaniel decision, in fact, resulted in the appellate courts in Georgia redefining what "standard of care" of a physician is and how it is to be proven in the court of law. The decision was favorable to Plaintiffs and reversed an earlier granting of summary judgment against the Plaintiffs in this case. As a result of the McDaniel decision, it is much easier for a plaintiff to prove that a physician departed from the appropriate standard of care under Georgia law. This case reflects that in many situations, a specific case can result in a rewriting of the law that is more favorable to the plaintiff and/or the writing of guidelines, policies and procedures in hospitals to protect patients. This case was litigated by Robert J. Dickman.

## **Martin v. XYZ Hospital**

**Settlement: \$2,200,000.00**

This is an obstetrical malpractice case wherein a timely cesarean section was not done resulting in permanent brain injury to the child. This case settled during trial. This case was litigated by Robert J. Dickman and Manuel Epelbaum.

## **Williamson v. Defendant OBGYNs**

**Settlement: \$2,000,000.00**

This case was settled after two days of trial. The Plaintiff in this case, Kristen Williamson, suffered a brain injury resulting in loss of motor use and rendered quadriparetic. The child did not suffer any brain injury affecting her cognitive abilities and is today thriving and is a collage student. The settlement in this case provided sufficient monies to assist Kristen for the remainder of her life in light of her handicap. This case was litigated by Robert J. Dickman.

## **Campos v. Baptist Hospital**

**Settlement: \$2,000,000.00**

This case involved a young man who was having no logical symptoms, including loss of balance, change of mentation and was diagnosed with a brain tumor. Unfortunately, the treating neurosurgeon operated on the wrong side of the brain and removed healthy tissue and never got to the area that was diagnosed previously as a tumor. In fact, the Plaintiff never had a tumor, but was suffering from a brain infection, which was treated with medications. A settlement was entered on behalf of the Plaintiff, which provided benefits for the remainder of his life. This case was litigated by Robert J. Dickman and Manuel Epelbaum.

## **Theodore v. XYZ Hospital**

**Settlement: \$2,000,000.00**

Plaintiff was in the seventh month of pregnancy and had been previously diagnosed with pregnancy induced hypertension. She attended a high risk clinic at the defendant hospital and was seen a few days before admission to the hospital with an abnormally high blood pressure. Rather than being admitted and placed on bed rest and medication, the Plaintiff was allowed to go home. One day later, the Plaintiff returned to the hospital and during the process of admission, suffered respiratory failure resulting in an emergency cesarean section being performed on the floor of the labor and delivery suite. Unfortunately, Ms. Theodore suffered severe anoxic brain injury and became quadriparetic. Her baby survived and suffered minimal injury and no residual effects of the emergency cesarean section. This case settled at mediation. This case was litigated by Manuel Epelbaum.

## **Louis Pare v. North Miami General Hospital**

**Settlement: \$2,000,000.00**

Plaintiff was involved in a car accident and went to the emergency room at North Miami General Hospital complaining of neck pain and dizziness. He was diagnosed with having a whiplash. Rather than remaining in the hospital, he signed out AMA. Several days later, he passed out and suffered a blunt trauma to his head resulting in a brain bleed. Plaintiffs sued the emergency room alleging that they failed to diagnose a neck fracture at the time that the Plaintiff was in the emergency room, which would have resulted in his admission diagnosis and would have resulted in his not suffering blunt trauma to the brain. This case was settled during trial by Manuel Epelbaum and Robert J. Dickman.

## **John Doe v. XYZ Hospital**

**Settlement: \$1,750,000.00**

Plaintiff was twenty-six weeks pregnant when she presented to the emergency room with severe abdominal pain and lab work showing abnormal liver values. Rather than admit the patient or send her to a tertiary facility such as XYZ Hospital to obtain immediate care, the Plaintiff was discharged. Two days later, Plaintiff was admitted to XYZ Hospital suffering from pregnancy induced hypertension and preeclampsia. Emergency vaginal delivery was performed resulting in injury to the baby. The child today suffers hemiplegia and brain injury. This case settled with the hospital and obstetrician and is pending against the emergency room physician. This case was litigated by Manuel Epelbaum.

## **Adams v. XYZ Hospital**

**Settlement: \$1,600,000.00**

This is an obstetrical malpractice case alleging failure to assess fetal heart monitor tracings, improper use of pitocin and failure to do a timely cesarean section. Plaintiff suffered brain injury resulting in an epileptic disorder. Plaintiff suffered permanent brain injury for the rest of his life. The case settled immediately before trial. This case was litigated by Robert J. Dickman and Manuel Epelbaum.

## **Pierre v. XYZ Hospital**

**Settlement: \$1,400,000.00**

Plaintiff presented to the emergency room with high blood pressure and signs of an impending heart attack and was improperly treated in the emergency room. While in the emergency room, the hospital suffered a power outage and hospital personnel did not have the adequate policy and procedures and adequate equipment to properly attend to a respiratory and cardiac failure which the Plaintiff underwent. The Plaintiff suffered brain injury, which led to her death. This case was litigated by Robert J. Dickman and Manuel Epelbaum.



## **Sternberg v. XYZ Law Firm**

**Settlement: \$1,000,000.00**

Plaintiff sued his attorneys for failing to properly resolve a medical malpractice case. Plaintiff's law firm was an out-of-town firm and failed to timely prosecute Plaintiff's claims for their child's brain injury. In order to win this case, Plaintiff had to prove the underlying medical malpractice case as well as the legal malpractice case. The case settled immediately before trial. This case was litigated by Robert J. Dickman.

## **Martin v. XYZ Hospital & OB GYNs**

**Settlement During Trial: \$1,000,000.00**

This case involved improper use of pitocin and the failure to do a timely cesarean section resulting in permanent brain injury to the child. Anthony Martin has defied all the odds and although the defense physician examiners in this case felt that the child only had a life expectancy of two to three years, Anthony is now twenty-six years of age and thanks to the settlement in this case, lives a full life. This case was settled after two weeks of trial. This case was litigated by Robert J. Dickman.