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From the January 01, 1993 North Carolina Lawyers Weekly.

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Trial Reports

Medical Malpractice

Birth Injury - Brain Damage - Failure to Intervene After Membranes Ruptured Prematurely - Cesarean Section - Fetal Hypoxia

Type of claim: The plaintiffs contended an obstetrician was negligent in failing to assess the fetus's status and perform an early delivery after the wife's membranes prematurely ruptured. The child was brain damaged at birth due to birth trauma (cerebral palsy) and hypoxia prior to birth.

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Principal injuries (in order of severity): Brain damage to infant due to birth trauma and hypoxia prior to birth

Special damages: n/a

Tried or settled: Settled

County where tried or settled:
Mecklenburg County

Case name and number: Auten et al v. Glover et al. (Mecklenburg County Superior Court; Case No. 90 CVS 14951)

Date concluded: October 1992

Name of judge: n/a

Amount: \$1,500,000

Insurance carrier: St. Paul Fire & Marine

Expert witnesses and areas of expertise: n/a

Attorney(s) for plaintiff: Burton Craige, John Edwards, and Don Strickland of Raleigh

Other useful information: The mother received regular prenatal care during her first pregnancy from a Charlotte obstetrician. During the 34th week, her membranes prematurely ruptured. A week later, her doctor determined the fetus was in a breech position, causing more risk. The only steps taken by the doctor were to order the mother to rest in bed in home and take her temperature twice a day.

During the three weeks after rupture, there was no increase in fetal height, suggesting retarded fetal growth. During the 38th week, the mother went into labor the night before she was to be hospitalized for a cesarean delivery. Without using electronic fetal monitoring, the doctor's partner performed an assisted breech extraction, with forceps. After several weeks, the baby was discharged with diagnoses of intracranial hemorrhage, disseminated intravascular coagulation, seizure disorder, respiratory distress and perinatal asphyxia.

Defendants argued early intervention would not have altered the outcome, and that the doctor's "expectant management" was acceptable since there was no consensus in 1983-84 about the management of prematurely ruptured membranes. The plaintiffs' experts said the mother's condition required careful assessment of the baby's status. Serial non-stress tests of the fetal heart would probably have indicated the baby suffered from chronic hypoxia, requiring an early cesarean delivery at 37 weeks.

The baby, now nine-years-old, is profoundly retarded, has cerebral palsy, and will require full-time attendant care for life. Defendant's experts testified the child will not live beyond his mid-teens, but plaintiffs' experts said he may live much longer with appropriate care.

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