

Hospital liability: Obstetrics: Improper handling of shoulder dystocia: Erb's palsy: Settlement: Verdict.

Muñiz v. Rovira-Martinó, U.S. Dist. Ct., D.P.R., No. 3:02-cv-01180, Aug. 2006.

Crespo delivered her baby at a hospital. During the delivery, shoulder dystocia was encountered, and the attending physician allegedly applied traction to the child's head. As a result, the child suffered a brachial plexus injury. Now 6, he has been diagnosed as having Erb's palsy, which causes him to suffer restricted range of motion in his upper left extremity—which is atrophied and shorter than his right—and other problems.

Crespo and her husband, on behalf of their son, sued the hospital and the physician, alleging improper handling of the shoulder dystocia. Among other things, plaintiffs charged that the physician violated the standard of care by applying traction and that the child—who was macrosomic—should have been delivered by cesarean section.

The hospital asserted that the standard of care had been met and that there was a lack of legal causation. Plaintiffs settled with the hospital before trial for \$210,000. The jury awarded \$2 million, and judgment was entered against the physician for \$1.79 million.

The judgment was appealed on the merits, and the First Circuit Court of Appeals affirmed, 373 F.3d 1 (1st Cir. 2004). Defendant moved to set aside the judgment based on subsequent surveillance conducted on the child, and the First Circuit again affirmed.

Plaintiffs' experts were Bernard N. Nathanson, obstetrics and gynecology, New York, N.Y.; and Allan Hausknecht, neurology and psychiatry, Hewlett, N.Y.

Defendants' expert was Antonio Alvarez, neurology, San Juan, P.R.

Plaintiffs' Counsel

David Efron, San Juan, P.R.

Alberto J. Pérez-Hernández, San Juan, P.R.