

How To Build A Catastrophically Injured Infant Case

by Paul M. Mann

In the medical malpractice field there are certain cases that often seem to be "overwhelming", "impossible" and "devastatingly difficult, both financially and psychologically" for the lawyer to handle.

The catastrophically injured case arising out of a birthing incident is one of those cases.

This paper is only intended to give a broad overview of a generalized picture as to how to properly build a case that is to be taken to trial.

The first rule of thumb in doing any of these cases is to ensure that the theme and your perception of the case is "the client always comes first". Having that in mind, the overwhelming disbursements that you will then incur in building the case, in reviewing the case, in making up your mind as to whether there is a case, whether there is liability, causation, and damages, and in what amount the damages will be, will then pale in comparison to the satisfaction that you will get out of doing a very fine job for very grateful parents and the child.

The first interview is often a tremendous waste of time, but is a necessity. This is the time when you have an opportunity, at first blush, to get the details down as specifically as you can by taking a very thorough clinical history of the mother, the father, whether or not there was any history in the family of cerebral palsy, genetic

abnormality, infectious diseases, timing, whether the woman has had problems with respect to giving birth or getting pregnant previously, whether the woman is allergic to any medications, whether the husband is allergic to any medications, whether any of the other members of the family have ever had children who have suffered the same fate, albeit not by negligence, etc.

This interview probably takes about 2.5 hours at which time of course you advise your clients that you don't know what the answer is and that it is a fact-finding mission. You advise them of the limitation period, and of your need to know every doctor, pediatrician, nurse, and any other health care professionals that have been in their lives to this point in time (usually the child is about 2 years of age or more when they first attend at your office).

This office asks for a written memorandum that is to be prepared by the parents over a one-month period of time, independently of each other to be faxed to this office as working papers from which we can "get off the mark" and write the treating physicians, hospitals, physiotherapists, occupational therapists, attending nurses, surgeons, doctors, hospitals, etc.

In the first interview, however, we have the authorizations pre-signed so that once the memoranda are done and sent in to us in a month, we can obtain

the paperwork immediately because they will include the name, address, telephone, fax number and email address of all of these people.

I have found that it is in the best interests of the clients to get them involved in the case not only financially (my retainer is usually about \$10,000.00), but also emotionally. They should know that they have to provide me with answers - very basic answers - as to what happened, when it happened, what they think went wrong and who their "target" is.

When I get a set of parents who come in and indicate "we want to sue them all" I have to advise them that in all likelihood it is not "all of them" who are negligent; that the negligence probably occurred over a very short duration and probably was the fault of only one or two individuals or the hospital for failing to have proper policies, protocols, procedures or guidelines.

During the first interview I also give them the law in layman's terms, i.e. what is substandard care, what is causation and what are damages. They all want to know "how much money are we going to get". I advise them that I do not know how much money they're going to get and that is the last stage that I will be developing in their case because the first and most difficult stage is causation.

Unlike other aspects of civil

