

# NEW MEXICO INJURY ATTORNEY BLOG

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## Medical Malpractice for Birth Injuries Bring More Large Verdicts

Birth injuries often have permanent and catastrophic consequences for the injured baby and the family. Birth injuries are not always preventable. There are birth injuries that simply cannot be avoided. On the other hand, birth injuries on many occasions result from medical negligence. In these cases, the child and the family are entitled to the recovery of damages caused by the medical malpractice.

Medical malpractice claims are generally very difficult to bring. There is a strong presumption that the doctor or doctors acted in a professional manner. It must be proven that the doctors' care fell below, and generally well below, the established standard of care in the medical community. The doctor is basically held only to a standard of care that could be reasonably expected under the circumstances.

Proving a doctor negligent is much easier said than done. In addition, doctors and hospitals are often very reluctant to admit medical negligence. As a result, the injured plaintiff must typically obtain an expert medical opinion of his or her establishing the medical negligence. A medical malpractice claim can be long, difficult, emotionally stressful and financially expensive, and in the end juries are often extremely sympathetic to doctors giving them every benefit of the doubt.

This makes verdicts like two recent medical malpractice birth injury cases in New York very remarkable. Both cases, as is often the case in birth injury cases, involved oxygen deprivation at delivery. One case involved a 25 year old plaintiff, Tiffany Busone, who suffered cerebral palsy and spastic quadriplegia due to oxygen deprivation. In addition, the doctors failed to resuscitate her or to recognize that the umbilical cord was suffocating her aggravating her injuries. The second case also involved a 3 year old plaintiff, Diego Baizan, who suffered oxygen deprivation during delivery with the baby in oxygen distress during delivery for over an hour before the doctors ordered a Caesarian delivery. Again, the oxygen deprivation caused cerebral palsy which is common result of this type of birth injury.

In both these cases, the plaintiffs were awarded very large jury verdicts. Tiffany Busone was awarded \$43.5 million while Diego Baizan old was awarded \$77 million. In the case of Diego Baizan the \$77 million verdict was against the

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hospital who unlike the doctor in the case refused to settle pretrial. Ms. Busone suffered primarily physical injuries and was functioning at a high intellectual level. Diego Baizan suffered severe brain damage. Each will require a lifetime of medical care and treatment for their injuries.

These cases bring up a couple of interesting legal points. The first regards the statute of limitations. In New Mexico, the statute of limitations is only 3 years for these types of claims. In cases of injuries to children, the statute is tolled until the child reaches 18 so that the suit typically can be brought within one year of the child's 18th birthday. A similar tolling statute was clearly in place in New York.

In addition, the damages awards in each bring up interesting points regarding the calculation of damages. An injured person can recover for a host of damages including permanent injuries, pain and suffering, past and future medical damages, and future lost wages. In cases of serious physical injuries such as cerebral palsy and brain injuries, these damages can be enormous due to the future medical care which might include around the clock nursing care. In addition, these injuries bring with them huge potential lost earnings claims. Even at minimum wages, a lifetime of lost earnings can add up to some huge economic damage awards.

These cases illustrate the preposterous nature of all the tort reform debate and the constant thrashing that opportunistic politicians give trial attorneys. Put yourself in the shoes of these two plaintiffs, and their families, and then argue that suits against doctors and hospitals should be stopped to protect the medical profession. The public, injured patients, and the medical profession itself are all harmed when medical negligence is allowed to go unchecked. In addition, without medical malpractice claims, the public, rather than the responsible medical providers, is left to carry the burden of caring for these unfortunate victims of medical malpractice through Medicaid and Medicare.

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