

# NEW MEXICO INJURY ATTORNEY BLOG

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## **The Myth of the Medical Malpractice Crisis Lives On While Insurance Companies Earn Record Profits**

There was a recent New Jersey jury verdict of \$18.5 million for a birth injury. The medical malpractice award was reported in The Star Ledger. Essentially, the jury issued the verdict after finding that a delay in a c-section delivery resulted in the child's cerebral palsy.

It is not uncommon to see very large verdicts in birth injury cases. The damages in these cases are significant. The child and the family could face a lifetime of medical expenses, assisted living, rehabilitation and so on. This is not cheap. In addition, the child will one day become an adult with absolutely no possibility of earning income. A lifetime of lost earnings will typically make up a big part of the damages award. Then of course there are damages for pain and suffering. Despite what many believe, these are often a small percentage of the overall award.

Again, the verdict itself is not that surprising in light of the damages. In reading the comments on the article, I was struck by the success of the tort reform movement in programming the public's response. In fact, most jurors come to the jury box with these same prejudices including a strong bias toward protecting the medical profession.

One comment suggested that "Life is never fair. Nothing guarantees a perfect life or entrance into it." Another suggested that these awards are the reason for high health insurance costs. Another suggested that patients buy their own insurance to protect against medical malpractice. Even the one that agreed with the verdict expressed horror that the attorney would be paid a percentage of the recovery.

Yes, life is not fair. But life should not be made dangerous by the acts of others, especially those entrusted with your care. And those that do cause harm should bear responsibility for their actions. Lawsuits are not the reason insurance is so high, insurance companies are the reason insurance is so high. The medical malpractice crisis is a myth. Medical malpractice claims have dropped dramatically over the last 10 years. A study by the Institute of Medicine, a part of the National Academy of Sciences, estimates that up to 98,000 people die each year as a result of medical negligence. The fact is far fewer lawsuits are brought than realistically should be to protect the public against these risks.

Main Office:  
400 Gold Ave. SW  
Suite 500  
Albuquerque, NM 87102  
(505) 242-5958

<http://www.newmexicoinjuryattorneyblog.com/>

Numerous health insurance companies made record or near record profits in 2009. At the same time, many are raising premiums across the board. Think about that. They made record profits during the worst recession since the Great Depression and yet they are still raising rates. Is it really lawsuits that are driving insurance costs? Could it not be corporate greed?

And what about those greedy lawyers? Look again at the actual numbers on medical malpractice claims. There are very few medical malpractice lawsuits being filed just in relation to [wrongful deaths](#) associated with medical negligence. This does not even begin to address medical negligence that results in non-fatal injuries and illness, often permanent, caused by medical negligence. The fact is these are extremely hard cases for attorneys. They are extremely expensive to litigate. This is true even in clear cases of negligence where it is often the policy of insurance companies to deny every claim. In addition, these cases are lost at trial more often than they are won due to the benefit of the doubt given doctors. Attorneys that take these cases take on enormous risks. Without the fee in the end, nobody would take these cases. And injured patients and society would be forced to bear the costs of these errors.

To some, as indicated by the comments to the report of the verdict, it is far better for society to allow insurance companies to charge outrageous premiums to protect against a [fictitious wave of medical malpractice lawsuits](#) while having the patient bear all the risks. It is far better still that society and taxpayers should bear the costs of a lifetime of care for injured patients through Medicaid, Medicare and Social Security than for insurance companies to cover the losses for which they are paid to cover. The insurance companies after all are the true victims here. We should protect their margins.

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