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# DAILY REPORT

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## \$3M verdict in problem birth

**FULTON JURY FINDS** against two of seven defendants for birth delay that resulted in girl's brain injury

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A FULTON COUNTY JURY awarded \$3 million to parents who claimed medical malpractice during the birth of their daughter caused the girl's severe brain injury.

One of the plaintiffs' attorneys said the nine-day trial was one of the toughest he's experienced.

"This is the best group of lawyers I've been up against," said J. Marc Howard, who, along with Pope & Howard partner Geoffrey Pope, garnered plaintiffs' verdicts against two of seven defendants.

They were represented by three teams of lawyers, including Hall Booth Smith partners John Hall and Heather Ware; Huff Powell Bailey partner Daniel Huff and associate Michael Frankson; and Peters & Monyak partner Robert Monyak and associate Alison Dobes.

"This was a real challenge for us," said Howard. "There's two of us, six of them, and they're all real good."

The case began in May 2007 when Alice Sodjago was due to deliver her baby. Her obstetrician advised Sodjago against continuing the pregnancy into its 41st week and scheduled her for an induction at



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**Geoffrey Pope, left, and J. Marc Howard** represented the girl's parents. Howard called the trial, in which they faced seven attorneys for the defendants, one of his toughest.

what was then Henry Medical Center a few days later, according to the pretrial order. (The hospital was later bought by Piedmont Healthcare, and Piedmont Henry Hospital was substituted as a name

defendant during the litigation.)

A couple of hours after the induction began, midwife Marcia Harmon decided Sodjago wasn't making much progress and consulted with obstetrician Jef-

frey Lovinger, who suggested an ultrasound test, which showed the baby in very good shape. He approved Sodjago for discharge, recommending that she return in four days unless her contractions increased significantly, according to the pretrial order.

The next day Sodjago's contractions grew more frequent, and she returned to the hospital, where nurse Janice Daniels Tinsley determined that "the baby was in great distress with one of the worst fetal strips I've seen in a long time," the plaintiffs' portion of the pretrial order said. Sodjago's cervix was dilated only two centimeters, and it "was obvious that an emergency C-section was needed. Nurse Tinsley called midwife Harmon to explain the situation and was under the impression that midwife Harmon was immediately calling Dr. Lovinger," it said.

Harmon, said the plaintiffs' portion of the order, "denies this account and claims she was not provided information needed to inform her that an emergency C-section was needed."

In any case, it said, Lovinger was not called for another 30 minutes, and when he arrived "he waited an additional 19 minutes to start the C-section."

Joanna Sodjago was born "in severe distress" with a very slow pulse, no respiratory effort ... non-responsive and appeared a pale blue color," the plaintiffs' account said.

A neonatal resuscitation team was able to restore the infant's heart rate to near-normal within 10 minutes. Two neonatologists, Michael Dwyer and Neal Guttenberg, used a variety of treatments, including umbilical catheterization and a ventilator, and were able to eventually raise Joanna's blood oxygen level. But she was diagnosed with persistent pulmonary hypertension—a condition in which the blood vessels from the heart to the lungs fail to open enough to adequately oxygenate the blood. The girl was soon treated with nitric oxide to help open the vessels to her lungs.

According to the plaintiffs' account and Howard, the oxygen deprivation left Joanna with cortical blindness, impaired motor skills and cognitive impairment.

"When you first see her, you wouldn't

think anything was wrong," Howard said. "She's a beautiful child; funny, vivacious."

But she is also legally blind and suffers from attention deficit disorder and other issues that "are going to make it very challenging for her," he added, noting that she will never drive and is unlikely to ever be able to find employment.

In September 2012 Howard and Atlanta solo Erik Olson filed a medical negligence complaint in Fulton County State Court on behalf of Joanna and her parents, Komivi and Alice Sodjago. (Olson was involved in the initial filing and took some of the early fact depositions, Howard said, but he was not involved in the trial.)

The plaintiffs sued Dwyer and Guttenberg and their employer, Pediatrix Medical Group of Georgia; Harmon and Lovinger and their employer, Eagles Landing OB-GYN Associates; and Piedmont Henry Hospital and its employees, nurses Tinsley and Patricia Mulder and respiratory therapist Vashone Rawls.

There was never any mediation or offers to settle, Howard said.

"We made some policy-limit demands, but everyone was in a different ballpark," he said.

During the trial that began Aug. 18 before Fulton State Court Judge Susan Edlein, key plaintiffs' allegations included a "hotly contested" charge that Joanna's fetal distress prior to birth should have spurred quicker action by the nurse and midwife to call for an emergency C-section. Howard said.

"We alleged there were also delivery room delays, and that after birth the resuscitation team did a great job getting the baby back up to speed, but we said the neonatology team didn't act as quickly as they should have" to treat the hypertension with nitric oxide, he said.

The defense presented a united front, Howard said, and the assorted teams of lawyers called numerous experts.

Because the suit was filed more than two years after Joanna was born, Howard said they were barred from putting up any evidence of medical expenses. An economist presented a life-care plan estimating that Joanna would need \$6 million to \$15 million, he said.

The plaintiffs acknowledged during

closing statements that the jury could reduce damages because the mother was already in fetal distress when she came to the hospital the second time, said Howard. "Apparently that's what they did," he said.

On Aug. 28, Howard said the jury took between three and four hours to award \$3 million, allocating 60 percent of the liability (\$1.8 million) to Harmon, the midwife, and her employer, Eagles Landing. The doctor, Lovinger, was deemed not liable.

The jury apportioned 40 percent of the liability to nurse Tinsley and the hospital. The other Piedmont Henry defendants were cleared of liability, as were Pediatrix and its neonatologists.

"We never thought the case against the neonatologists was supported by the literature, and the jury thought the same—rather quickly, based on what they told us," said Hall, who represented the Pediatrix defendants.

Hall said he thought all seven defendants had met the standard of care. "We all believed there were other causation issues," he said.

Monyak, who represented Eagles Landing, was unavailable for comment.

Huff, who represented Piedmont Henry Hospital, said he was unable to comment as his clients were still considering their options.

Howard said that he, too, was told that the jury quickly cleared the Pediatrix defendants.

"What I understand is that they decided quickly on the neonatologists, which was the most complex part of the case," he said. "Of the seven actors in the case, the jury found against the delivery nurse and the midwife. The clear message was that they thought everything that happened was put in motion by the failure to get the doctor there in time."

The case is *Sodjago v. Pediatrix Medical Group of Georgia*, No. 12EV015750. 