

**MEDICAL MALPRACTICE****Childbirth — OB-GYN****Mother claimed failure to perform C-section injured child****VERDICT (P)** **\$6,000,000,00**

CASE Adena Ajayi, Individually, & as Mother and Natural Guardian of Tolani Ajayi v. Maimonides Medical Center, Brooklyn OB/GYN Associates, L.L.P.; Steven A. Farber M.D., P.C.; and Steven A. Farber, M.D., No. 16829/00

COURT Kings Supreme
JUDGE Jules L. Spodek
DATE 3/23/2004

PLAINTIFF
ATTORNEY(S) Stephen E. Erickson, Pegalis & Erickson LLC, Lake Success, NY

FACTS & ALLEGATIONS On May 9, 1999, plaintiff Adena Ajayi presented to Maimonides Medical Center in Brooklyn. Ajayi, who was in labor, was in her 40th week of pregnancy. Dr. Steven Farber, an obstetrician and Ajayi's private attending physician, was present at the hospital that day.

Ajayi was admitted to the hospital at approximately 9 a.m., and at 9:55 a.m., she was administered Pitocin, a drug used to increase the frequency and intensity of contractions. The Pitocin was continued throughout the day and was increased at regular intervals, despite what Ajayi claimed was the hyperstimulation of her uterus, with contractions occurring as frequently as six or seven within 10-minute time frames. Despite what Ajayi claimed were abnormally frequent contractions, there was no descent of the fetal head into the birth canal between 10 a.m. and 6:45 p.m., and Ajayi alleged that there was only minimal descent thereafter.

At 9:15 p.m., Farber determined that a Caesarean delivery was indicated, and it was his opinion that it would be safer for the baby to be delivered by C-section than via vaginal delivery because of the abnormal labor progress.

At the time, the Labor and Delivery Department at Maimonides had two rooms available for C-sections, in addition to two rooms that were kept locked and reserved for gynecological surgeries. Farber requested that the nurses ready a room for the C-section, and he was told by hospital personnel that one of

the C-section rooms was in use and that the other room had to be kept vacant in case of severe obstetrical emergencies. Farber claimed that he continued to check on the availability of a C-section room, complained to the charge nurse that he needed a room, insisted that hospital personnel help him obtain a room for the C-section, but was told that no C-section room would be available for the delivery of the infant.

The hospital contended that there were many rooms available that could be utilized for C-sections, and the charge nurse on duty that evening denied that Farber ever advised her about the need for a room for a C-section.

At 10:03 p.m., Farber used a vacuum extractor in an attempt to deliver the baby. Following the delivery of the fetal head, the fetal shoulders became stuck in the birth canal. Farber maintained that only one shoulder was stuck and that he gently rotated the baby and easily delivered the child.

The infant's father, who was a resident in pediatrics at the hospital, testified that after the baby's head was delivered, Farber began pulling on the head while other hospital personnel were pushing on Ajayi's abdomen in an attempt to deliver the baby because the baby's shoulders were stuck. The father claimed that as Farber continued to pull on the baby's head, there was eventually a "pop" and the baby was delivered.

A post-birth evaluation of the infant, Tolani Ajayi, revealed that she had sustained extensive damage to the brachial-plexus nerves, which the hospital's neonatologist described in deposition testimony (read at trial) as the worst case of Erb's palsy he had ever seen. The infant also suffered a fractured clavicle, while its mother suffered a fourth degree laceration on her vagina in the delivery.

Adena Ajayi sued Maimonides Medical Center; Farber; his private practice; and his shared practice, Brooklyn OB/GYN Associates L.L.P.

INJURIES/DAMAGES *brachial-plexus traction injury; Erb's palsy; nerve damage*

Tolani, who was 4 years old at the time of the trial, sustained a severe brachial-plexus injury, which was accompanied by permanent destruction of the nerves at the C5 and C6 levels, and nerve-function impairment at the C7 level. She has a significant

limitation of the use of her left arm; atrophy, weakness, and contractures of the arm; and stunted growth in the arm, which is 4 centimeters shorter than her right arm.

Ajayi contended that Tolani's injuries will progressively worsen over time and that the discrepancy in the length of her arms will increase as her right arm grows normally but the affected left arm does not.

Tolani has undergone two surgeries in an attempt to improve the functioning of her arm, and a third surgery may be necessary.

Ajayi asked the jury to award \$1 million for past pain and suffering and \$3 million for future pain and suffering.

The defendants did not call their respective examining pediatric neurologists and conceded that the infant's injuries were permanent.

RESULT The jury found that Maimonides Medical Center was 30% liable for Tolani's injuries, and that Farber and his shared practice were 70% liable. It awarded Tolani \$6 million.

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| TOLANI AJAYI | \$1,000,000 past pain and suffering |
| | <u>\$5,000,000 future pain and suffering (30 years)</u> |
| | \$6,000,000 |

EDITOR'S NOTE The counsel for Maimonides Medical Center did not respond to a faxed draft of this report and a phone call.