

Mobley, M.D., used a vacuum extraction method to aid in the delivery. Plaintiff's injuries were not documented in the labor and delivery notes, but were first described by a pediatrician who examined her eight hours after delivery. The pediatrician diagnosed plaintiff with Erb's Palsy, a condition caused by the tearing of the nerves leading from the cervical spine.

Plaintiff alleged that the defendant improperly used a vacuum extractor at a time when plaintiff was too high in the birth canal at the mid-pelvic level. According to plaintiff, this caused the lacerations to plaintiff's scalp and the tearing of the nerves leading from the cervical spine. Plaintiff's experts, two unidentified obstetricians, a pediatric neurologist and the surgeon who operated on plaintiff after delivery, testified that plaintiff's Erb's Palsy was caused by the defendant applying excessive traction to plaintiff's head and neck in the birth canal. Plaintiff underwent two surgical procedures shortly after birth but claimed permanent damage to her left arm. According to plaintiff, she can not raise her arm above her head and has difficulty with balance and with everyday tasks such as buttoning a shirt.

Defendant denied negligence and contended that the natural explosive forces of labor caused the child's injuries in utero prior to delivery. Defendant argued that the delivery itself was not difficult and pointed to a labor and delivery note written after the birth that described the delivery as "spontaneous and uneventful."

The jury deliberated for two hours before returning the verdict. The total verdict with interest was \$7,200,000. However, the verdict was expected to be reduced to the statutory cap of \$1,000,000.

**Plaintiff Profile:** Plaintiff was a female newborn infant.

**Alleged Injury:** Erb's Palsy resulting in permanent limited use of left arm and difficulty with balance and performance of everyday tasks. The plaintiff underwent two surgeries to treat her injuries. The first took 15 hours and required the surgeon to harvest nerves from plaintiff's calves and graft them to her brachial plexus. The second surgery took eight hours and required four incisions to the back, shoulder and forearm in an attempt to stabilize the scapula. Plaintiff claimed undisclosed damages for past and future medical expenses, pain and suffering and loss of function.

**Jury Deliberations:** 2 hours

**Case Number:** L00-1272

**Editor's Notes:** All of the circuit judges in Portsmouth recused themselves from this case because the defendant obstetrician was married to the Portsmouth Commonwealth's Attorney. Retired Circuit Judge Walter Ford was appointed to preside over the case by the Supreme Court of Virginia.

## Portsmouth County, VA

### Circuit Court

## Jury Awards \$4 Million in Erb's Palsy Case

#### Case Caption:

Brittany Ricks, by her mother and next friend v. Cynthia H. Mobley, M.D.

**Verdict:** \$4,000,000 plus pre-judgment interest of \$3,200,000 for a total judgment of \$7,200,000. The verdict was expected to be reduced to the statutory cap of \$1,000,000.

**Judge:** Walter Ford (Ret.)

**Date of Verdict:** 9/2003

#### Attorneys:

**Plaintiff:** William E. Artz, Arlington

**Defendant:** Withheld

**Facts:** A Portsmouth jury awarded a nine-year old female \$4 million dollars for permanent injuries suffered as a result of the inappropriate use of a vacuum extractor during her birth in 1994.

Plaintiff Brittany Ricks was born with lacerations on her scalp and no movement in her left arm. Defendant OB/GYN, Cynthia H.