

CASE INFORMATION SHEET
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COUNTY and COURT:

Circuit Court Ninth Judicial Circuit in and for Orange County,
Florida

NAME OF CASE:

Anthony J. Santos, a minor, by and through his natural guardians,
Maryann Santos and Richard Santos; Maryann Santos, individually,
and Richard Santos, individually, v. Mark Bielawny, M.D. and
Physician Associates of Florida, P.A.

CASE/DOCKET NO.: 03-CA-4380 **JUDGE:** Donald E. Grincewicz

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL [full names, firm and
city]:

Dan H. Honeywell and
Patricia Doherty
Wooten, Honeywell, et al.
P.O. Box 568188
Orlando, FL 32865-8188

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL [full names, firm and
city]:

Jennings L. Hurt III and
Richard S. Womble
Rissman, Barrett, Hurt,
Donahue & McLain, P.A.
P.O. Box 4940
Orlando, FL 32802-4940

AGE/SEX/OCCUPATION OF PLAINTIFF or DECEDENT [at time of accident or
occurrence]:

Anthony J. Santos, five-years old at trial, was injured during
labor and delivery on February 20, 2001.

DATE, TIME, and PLACE OF ACCIDENT or OCCURRENCE:

February 20, 2001 at Arnold Palmer Hospital (APH) in Orlando,
Florida.

CAUSE OF INJURY [factual description including allegations and defenses on liability]:

Maryann Santos was admitted to APH for labor and delivery. During delivery, Anthony Santos sustained a permanent brachial plexus injury to his right arm. Plaintiff claimed that Dr. Bielawny should have converted to a caesarean section due to a protracted second stage of delivery. Plaintiffs claimed a caesarean section would have avoided the shoulder dystocia that was encountered. Plaintiffs claimed Dr. Bielawny used too much lateral traction in order to deliver the child resulting in damage to the C-5, C-6 and C-7 nerves.

The defense argued the shoulder dystocia was not reasonably foreseeable and that once it occurred Dr. Bielawny employed appropriate maneuvers to deliver the baby expeditiously. The nerve injury may have been due to the effect of maternal contractions, the use of maneuvers to free the shoulder or the use of appropriate traction by Dr. Bielawny.

Anthony Santos was admitted to Miami Children's Hospital by Dr. John Grossman on July 17, 2001 for surgery which consisted of exploration and microsurgical neurolysis of the right brachial plexus at C5, C6 and C7. Additionally, resection of C5 and C6 neuromas was performed, as well as sural nerve graft of several nerve roots.

NATURE OF INJURY:

On January 23, 2001, due to concern that Ms. Santos was preeclamptic and that the fetus was large for gestational age, Dr. Barbara Harris referred Ms. Santos for evaluation by maternal fetal medicine specialists at Arnold Palmer Hospital.

On January 25, 2001, Dr. Timothy O'Leary, a maternal fetal medicine specialist, saw Ms. Santos in consultation. A January 25, 2001 ultrasound estimated the fetal weight to be 2467 grams (5.44 lbs.). Dr. Timothy O'Leary expressed no concern regarding vaginal delivery.

On February 2, 2001, an additional consult was performed by Stephen Carlan, M.D., another perinatologist at Arnold Palmer Hospital. He also made no recommendation for a caesarean section.

On February 19, 2001, Dr. Davila, Dr. Bielawny's partner, sent Ms. Santos to Arnold Palmer Hospital for evaluation. The fetal weight was estimated by ultrasound to be 2617 grams (5.77 lbs.). Gestational age was estimated to be 35 weeks and two days.

Dr. McIlveen, a second-year resident, evaluated Ms. Santos and elected to induce labor with Pitocin. This decision was made under the auspices of Drs. Carlan and O'Leary.

The patient was admitted on February 19, 2001. At 9:10 a.m. on February 20, 2001, Mrs. Santos was completely dilated and began pushing. Dr. Bielawny evaluated the patient on multiple occasions, including at 9:00 a.m., 10:40 a.m., 11:55 a.m., 12:05 p.m. and 12:30 p.m.

At that point, Dr. Bielawny felt that birth was imminent, but due to the length of the second stage of labor, he decided to assist in the delivery by using a vacuum extractor. He explained to the patient that the extractor was used to assist the patient during contractions and hasten the birth. The vacuum extractor was applied during two contractions and progress was made with each application.

Dr. Bielawny then decided to use forceps to deliver the child. However, he was not able to apply the forceps appropriately. Thus, Dr. Bielawny decided not to use the forceps and returned to the vacuum extractor.

At 12:40 p.m. Dr. Bielawny used the vacuum extractor and was able to deliver the head of the child. When that occurred, Dr. Bielawny immediately noticed that the child's progress was halted indicating that a shoulder dystocia (the shoulder was lodged behind the pubic bone preventing further progress and delivery) had occurred.

Dr. Bielawny then decided to utilize accepted maneuvers such as the McRoberts positions and supra pubic pressure to deliver the child. After having used those techniques for a sufficient period of time and realizing that the child was still not delivered, Dr. Bielawny reached into the birth canal and removed the left arm causing a fracture of the arm. As a result of this medically accepted maneuver, the right shoulder was freed under the pubic bone and the child was delivered.

All experts agreed that the two chief factors for risk of shoulder dystocia are a diabetic mother and a fetus estimated to weigh more than 5000 grams (11.02 lbs.). This baby was estimated to weigh between 2467 grams and 2617 grams (5.44 - 5.77 lbs.). The baby's actual weight was 4124 grams (9.09 lbs.). Even if the doctors had known the actual weight of the baby, the baby still would not have been at risk for shoulder dystocia. Further, Ms. Santos was not diabetic. Additionally, Ms. Santos had high blood pressure. Patients with preeclampsia normally deliver smaller children. The baby was born one month prematurely so reason and logic indicated that the baby would be smaller versus larger.

No doctor treating Mrs. Santos felt that there was any concern for shoulder dystocia. Neither Dr. Harris, Dr. O'Leary, Dr. Carlan, Dr. McIlveen, Dr. Gerkovich or Dr. Bielawny anticipated a shoulder dystocia nor did any of them recommend a caesarean section. Throughout the delivery, the child was making adequate progress and was never in fetal distress.

The jury was made aware that the incidence of shoulder dystocia at Arnold Palmer Hospital is less than 1%. The incidence of brachial plexus injuries at Arnold Palmer Hospital is 1/15 of 1%. However, 90% of brachial plexus injuries resolve, meaning that the incidence of a "permanent" brachial plexus injury is very remote.

PLAINTIFF'S EXPERT WITNESSES:

Berto Lopez, M.D.
OB/GYN
Palm Beach Gardens, Florida

Dr. Lopez criticized Dr. Bielawny for not performing a caesarean section. He felt that Ms. Santos had certain risk factors (the child was large for gestational age) that should have alerted Dr. Bielawny to the "possibility" of a shoulder dystocia. He believed that Dr. Bielawny applied the vacuum extractor when the child was too high in the birth canal, that Dr. Bielawny inappropriately applied traction with the forceps and that once the dystocia was encountered, Dr. Bielawny used excessive lateral traction on the head of the baby causing the nerve injury as the shoulder was wedged under the pubic bone.

In response, defendants demonstrated that the risk factors for shoulder dystocia are not necessarily predictive. Ms. Santos did not have a protracted second stage of labor mandating conversion to caesarean section. The use of the vacuum extractor was appropriate and progress was made with each application. The forceps were not, in fact, applied since the child would have been delivered had Dr. Bielawny pulled on the baby's head.

Once the head of the child was delivered, Dr. Bielawny appropriately had the patient placed in the McRoberts position and applied appropriate traction to deliver the left shoulder, thus freeing the right shoulder from the pubic bone and then the baby. All experts agreed that it was appropriate to sweep the opposite arm in order to deliver the child. All experts agreed that this type of injury can occur with an appropriate amount of traction being applied to a baby's head.

Mary Jane Minkin, M.D.
(OB/GYN)
West Haven, Connecticut

Dr. Minkin was also critical of Dr. Bielawny, but in a more limited fashion. Dr. Minkin felt that Dr. Bielawny acted appropriately, except that he should have converted to caesarean section in the latter stages of delivery. She agreed that Dr. Bielawny could not have predicted the shoulder dystocia and that once it occurred, Dr. Bielawny acted appropriately in utilizing the maneuvers he employed.

Gerri Pennachio, M.A.
Vocational Rehabilitation
Lakeland, Florida

She testified regarding certain occupations that Anthony Santos could not perform and his loss of earnings.

Gary Yarkony, M.D.
Physical Medicine and Rehabilitation
Elgin, Illinois

He testified regarding Anthony J. Santos' future life care needs.

Frederick Raffa, Ph.D.
Economist
Orlando, Florida

He testified regarding the present value of Anthony J. Santos' future medical expenses and loss of earnings.

Lorna Ramos, OT
Occupational Therapist
Miami, Florida

She testified regarding the therapy she provided to Anthony Santos and his physical limitations.

John Grossman, M.D.
Pediatric Neurosurgery
Miami, Florida

He testified regarding his surgery on Anthony Santos. He also testified adamantly that the brachial plexus injury had definitely been caused by excessive traction at birth.

DEFENDANT'S EXPERT WITNESSES:

William E. Roberts, M.D.
OB/GYN
Allentown, Pennsylvania

Dr. Roberts believed that Dr. Bielawny complied with the standard of care. He advised that most shoulder dystocias are not predictable nor preventable. There was no indication for Dr. Bielawny to suspect a shoulder dystocia and once it occurred he acted expeditiously to deliver the child. Dr. Roberts noted that the purpose of the maneuvers employed when a shoulder dystocia is encountered is to save the baby's life, and not necessarily to avoid injury to the baby.

Dr. Roberts indicated that once a shoulder dystocia is encountered, an obstetrical emergency exists as the umbilical cord is always

compressed thus depriving the baby of oxygen. There is a limited amount of time in which to deliver the baby or the baby will die.

Michael Duchowny, M.D.
Pediatric Neurology
Miami, Florida

Dr. Duchowny testified regarding Anthony Santos' prognosis. He stated that Anthony should be able to engage in most activities, except for those requiring high degrees of athletic skills. Injuries that occur to children are tolerated and accommodated better than any other age group. As Anthony Santos is the child of college educated parents, he felt it was reasonable to assume that Anthony Santos would obtain a white collar job which would not require physical activity that the child would be unable to do.

DATE OF VERDICT/SETTLEMENT:

Defense verdict after five and one half hours of deliberation on December 7, 2006.

DEFENDANT'S OFFER: \$50,000 at mediation

PLAINTIFF'S DEMAND: \$4,000,000 at mediation; \$4,300,000 in economic damages at trial with a request for 2 - 3 times that amount in non-economic damages for a total of \$12,900,000 to \$17,200,000.

ATTORNEY'S COMMENTS:

Submitted By: Jennings L. Hurt III
Richard S. Womble

Date: January 22, 2007

Firm: Rissman, Barrett, Hurt,
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