

# OF COUNSEL

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## *Hospital's Use of Life Threatening Drug Results in Brain Damage for Newborn*

In December 1999, Tracie and Ulysses Jackson were anxiously awaiting the birth of their second child, a little girl. For the Jacksons, this would be the completion of their family – they already had a ten-year-old son, Jacquan, and they were excited about their new addition. On December 7, 1999, Tracie was admitted to Hospital X for the birth of her child. Tracie had delivered Jacquan via cesarean section, but planned to deliver this baby by “VBAC” (vaginal birth after cesarean).



*Baby Jacqueline*

Once she was admitted to the hospital, Tracie's doctors decided that they needed to induce her labor. To induce labor, Hospital X allowed its doctors to use a drug called Cytotec (known also as misoprostol), despite the fact that it was not FDA-approved for induction of labor. Cytotec is a strong drug ***Continued on page twelve.***

Chris Searcy and Chris Speed recently resolved a medical negligence claim on behalf of Helene Wilkinson against University Medical Center and the Florida Board of Regents for the sum of \$6.15 million.

Helene Wilkinson, 44-year-old wife and mother of four, suffered significant and irreversible brain damage on May 5, 1997, while a patient at University Medical Center in Jacksonville, Florida. Hospital personnel failed to recognize an impending disaster in Mrs. Wilkinson, which deprived her brain of oxygen and caused her to suffer a cardiac arrest. Her story is a tragic example of how the inattentiveness of medical personnel can result in devastating injuries.

In March and April of 1997, Helene Wilkinson had begun to experience symptoms of an ongoing infective process. She was initially examined at Orange Park Hospital, though a definitive diagnosis could not be made there. After several weeks as an in-patient in that facility, she was transferred in mid-April to University Medical Center. She remained there as a patient for the next three weeks under the care of an internal medicine team and by various infectious disease specialists. Again, no definitive cause of her fever and infection was determined, though several tests were run during her hospitalization. A decision was eventually made to discharge her, on May 1, with home nursing to be provided to monitor the ongoing administration of antibiotics. ***Continued on page ten.***

## Hospital's Use of Life Threatening Drug Results in Brain Damage for Newborn

*(Continued from page one.)*

that is only FDA-approved for treating ulcers. Cytotec's dangerous side effects include violent and rapid contractions, bleeding, uterine rupture, infertility, severe brain damage, and maternal or fetal death. Because of the dangerous and potentially life-threatening side effects, the manufacturer of Cytotec issued warnings prohibiting the drug's use during deliveries.

Despite this clear warning, Hospital X allowed its doctors to use Cytotec to induce labor, without their patients' knowledge or permission. Doctors at Hospital X preferred Cytotec over the standard induction drugs because it caused strong, fast contractions and accelerated the birthing process. Women were delivering babies faster than ever. However, in 1998, medical researchers studying Cytotec's effects discovered that women undergoing VBACs were more likely to suffer uterine ruptures, resulting in severe brain damage and even death, than those who had not had previous cesarean sections. As a result, the researchers concluded that VBAC patients were at even higher risk for untoward outcomes when Cytotec was used to induce labor. Finally, the researchers demanded that their colleagues in the medical profession discontinue the use of Cytotec in VBAC patients. In 1999, both the manufacturer of Cytotec and the American College of Obstetrics and Gynecology (ACOG) issued written warnings prohibiting Cytotec's use in VBAC patients.

On December 7, 1999, ignoring all the warnings, Hospital X continued to allow the use of Cytotec on its pregnant patients. Tracie's doctor used the drug to induce her labor, without her knowledge or consent and without any explanation of the risks associated with the drug. Due to violent contractions caused by the drug, Tracie suffered a ruptured uterus, and her baby girl was forced into her abdominal cavity. Doctors took over an hour to respond to emergency calls from the nurses while the baby suffered severe oxygen deprivation. The Jacksons' little girl, Jacqueline Simone, suffered severe brain damage as a result. She will never be able to walk or talk and she will require 24-hour care for the rest of her life.

The Jacksons hired attorney Sia Baker to investigate the events surrounding the birth of their daughter. In turn, Ms. Baker sought the assistance of partners Chris Searcy and Darryl Lewis, and the team undertook an extensive

investigation of Baby Jacqueline's birth. It was only by virtue of that thorough investigation that the Jacksons learned the true story about what happened to their daughter.

Once the investigation was complete, attorneys Searcy, Lewis, and Baker placed Hospital X and the doctors on notice of their intent to pursue legal action for the tragic injury suffered by Baby Jacqueline. Hospital X and the doctors, however, argued that they were immune from suit under NICA, the Birth-Related Neurological Injury Compensation Act passed by the Florida Legislature. The Act prohibits patients from filing lawsuits against physicians and hospitals participating in the plan, providing instead limited compensation to those suffering from birth-related neurological injuries. Under the plan, Baby Jacqueline's recovery would be limited to the payment of NICA-approved medical expenses, and her parents' recovery would be limited to \$100,000 for pain and suffering.

The Jacksons' attorneys vehemently opposed the NICA classification in this case. They argued that this horrific event that severely injured Baby Jacqueline and changed the lives of their family forever, fell within a narrow exception to NICA immunity. The exception prevents hospitals and physicians from hiding behind the shield of NICA immunity when they engage in conduct that is willful, wanton, and in total disregard of the human safety of their patients. The legal team was able to mount a strong argument that the conduct displayed by Hospital X, in ignoring warnings about the drug Cytotec and allowing its physicians to use it on VBAC patients without their knowledge or consent, fell outside the scope of NICA and therefore constituted willful and wanton disregard of the safety of their patients.

After months of arduous debate regarding the Hospital's claim of NICA immunity, Mr. Searcy, Mr. Lewis, and Ms. Baker effectuated a settlement with Hospital X for \$6 million. The doctors, however, continue to claim NICA immunity. Litigation against them is ongoing. For now, the partial settlement has enabled the Jacksons to address Baby Jacqueline's immediate medical needs.

