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\$2.25 Million Verdict - Birth Injury

- **Date:** Summer 2004
- **Attorney:** [Dennis Donnelly](#)
- **Settlement:** \$2.25 Million
- **Practice Areas:** Medical Malpractice

Blume Donnelly partner, Dennis Donnelly, won a 2.25 million dollar verdict on behalf of a year old boy born with Erb's Palsy. The plaintiff's mother was a 35 year old woman who had two prior miscarriages and became pregnant late in 1997 by in vitro fertilization. This pregnancy was complicated by severe gestational diabetes and the risk of preeclampsia. Therefore, she was referred to a high risk perinatologist who practices in a group of regular OB-GYNs. Dr. David Hollander was the perinatologist, an obstetrician with additional training in high risk pregnancies, who skillfully and carefully managed Diana's first full term pregnancy. At 17 weeks, he took a baseline ultrasound that showed normal growth, with the baby's head and stomach showing equal symmetrical growth. After that, in January, he and his group managed the mom's diabetes, which went out of control, requiring a one month hospitalization and thereafter IV insulin for better control. Although he did not recall it, the target defendant, Dr. Theodore Cohen, who was the group covering doctor who delivered her baby when her membranes ruptured early at 36 weeks on March 13, 1998, had seen Diana once during her diabetes hospitalization. Therefore, he was aware of her diabetic status.

Thereafter, in February and early March of 1998, one other member of the group and the primary managing perinatologist, Dr. Hollander, noticed the beginning of disproportionate growth of the baby. They carefully documented in an ultrasound report and ultrasound polaroids capturing measurements of the head (head circumference) and the stomach (abdominal circumference), the disproportionate growth of the baby's trunk in comparison to it's head. Such disproportionate

growth is a recognized risk of diabetes and insulin treatment of the mom during pregnancy. When it occurs, there is a substantially increased risk of injury during delivery to nerves in the the baby's shoulder and neck which allow normal, full use of the hand on that side. That injury, commonly known as [Erb's Palsy](#), is caused by traction and tearing if nerves as the delivering doctor exerts force to free the stuck shoulder and pull the baby's trunk out after the mother has delivered the head . Shoulder Dystocia, a shoulder impacted and stuck behind the mom's symphysis pubis can occur with smaller, proportionally grown babies, for unknown reasons, and in those cases the primary issue is whether the obstetrician used excessive force or panicked in the emergency created when the shoulders couldn't be delivered naturally, and caused the injury that way. However, here, the primary issue was the covering doctor's failure to appreciate the advanced warning of this risk and deliver the baby by c-section.

The plaintiff maintained that Dr. Cohen allowed her to first sit in the hospital for 10 hours after she experienced PROM, premature rupture of the membranes, and then talked her into a trial of labor for 14-16 hours the next day on March 14, and that he did that without ever reviewing her prenatal chart and appreciating all the ultrasound and clinical evidence of an enormous disproportion in the growth of the baby's trunk which substantially increased the risk that did materialize in this delivery: Shoulder Dystocia and an Erb's Palsy when he forced the baby's upper trunk out of the pelvis after it had been stuck at the shoulders.

The infant plaintiff has undergone 3 major surgeries at the three most prominent centers for surgical attempts to improve arm function despite or after an Erb's Palsy birth injury. At approximately age 1 he underwent extensive nerve transfer surgery at the Children's Hospital in Miami by Dr. Grossman. At age 2½ he underwent extensive muscle transfer in Texas from Dr. Nath. Thereafter at age 4 he underwent extensive bone repair of the misalignment of his humerus and shoulder joint, which was a natural progression of his birth injury, performed by Dr. Waters in Boston.