Summary of Damages

Donna L. Pavlick
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I. ATTORNEY LIST

A. Plaintiffs

Plaintiffs: Donna and Tony Sabia as parents of Little Tony Sabia, and Donna Sabia as an individual\(^1\)

Firm for Plaintiffs: Koskoff, Koskoff & Bieder

Attorneys: Michael Koskoff (primary mediation & trial attorney)  
Joel Lichtenstein (initial meeting and determination to take the case)  
Karen Koskoff (did pretrial work until she developed breast cancer)  
Christopher Bernard (assumed file from Karen, assisted Michael Koskoff)

B. Defendants

Defendants: Dr. Maryellen Humes and Norwalk Hospital

Attorneys for Humes: Arnold Bai (continued to be Humes' personal attorney but was removed from the actual case)  
Madonna Sacco (associate)

Humes' Insurance Company: St. Paul Fire & Marine Insurance Co. (the District Manager for St. Paul, Mike Kaufman, referred the case to Monstream & May to defend)

Firm for St. Paul: Monstream & May  
Phil Chabot (a consulting attorney on "big" cases for St. Paul)

Attorneys: Bob Monstream  
April Haskell (associate who becomes partner & takes the case from Monstream)

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* Donna L. Pavlick is an Assistant Dean at the University of Missouri-Columbia School of Law. LL.M., University of Missouri-Columbia, 2000; J.D., University of Pittsburgh, 1985; M.A., University of Northern Colorado, 1979; B.S., University of Pittsburgh, 1974. This summary was written while Dean Pavlick was a student in the University of Missouri-Columbia’s LL.M. Program in Dispute Resolution.

1. The following timeline is based on the story of the Sabias as told in BARRY WERTH, DAMAGES: ONE FAMILY’S LEGAL STRUGGLES IN THE WORLD OF MEDICINE (1998).
Attorneys for Norwalk Hospital: Pat Ryan  
Donna Zito (associate)  
Beverly Hunt (associate)  
Margaret Gaffney (associate)

Insurance Company for Norwalk Hospital: Travelers Insurance Co.

Firm for Travelers: Williams, Cooney & Sheehy

New Firm for Norwalk: Wiggin & Dana (Director of Travelers’ strategic claims unit was William O’Donnell. Vice-President for medical liability at Travelers was Brian Casey. Casey eventually replaced Pat Ryan with the Wiggin & Dana Law Firm.)

Attorneys: Bill Doyle  
Beverly Hunt (formerly with Ryan)

II. TIMELINE

1983

02/23/83: Donna Fitzgerald met Tony Sabia.

05/04/83: Donna and Tony married.

09/83: Donna was pregnant. She had no health insurance and sought care at Norwalk Hospital Clinic. Donna was assigned to the low risk clinic (known as the Wednesday clinic).

12/05/83: An ultrasound showed that Donna was going to have twins. Twin A was larger than twin B and there was excess amniotic fluid. She was monitored with subsequent ultrasounds and assigned to the high risk clinic (known as the Friday clinic).

1984

01/05/84: Second ultrasound revealed that twin A was eighteen percent larger than twin B.

3. Id. at 13-14.
4. Id. at 14.
01/21/84: Donna was put on a new schedule to see an M.D. and a nurse practitioner (Barbara McManamy) on alternating visits.  

01/27/84: Donna’s ultrasound looked normal. Donna was to have follow-up ultrasounds only if clinically indicated.  

03/01/84: Donna was thirty-four weeks pregnant and the birth of the twins could have been induced if indicated.  

03/30/84: Donna was examined by McManamy and was fine at thirty-eight weeks pregnant.  

03/30/84: Donna and Tony fought and Tony pushed Donna against a wall.  

04/01/84: Donna was spotting. She arrived at the Norwalk Hospital at 8:30 a.m. and was admitted by Mollie Fortuna, a nurse. Humes was called at 10:00 a.m. (Humes was the on-call M.D. and had never seen Donna before). Humes was told Donna was having twins and that one was in the breech position. Humes arrived at 10:30 a.m. and was met by McManamy. No fetal monitoring was done. Humes met Donna and noted her extreme agitation. Around 11:00 a.m., Humes was called to discharge patients. She tried to avoid leaving but was pressured to do so and did. She told McManamy to page her when Donna went into delivery. Donna went into delivery at 11:30 a.m. Baby A was born with an Apgar score, which rates newborn vitality, of one out of ten (with zero being death). Baby A was sent to NICU. Baby B was stillborn. Humes talked with the Sabias and showed them the stillborn child. Fortuna entered the delivery suite inquiring about a yellow discharge that she had seen earlier that morning.  

04/02/84: Humes went to talk with the nursing supervisor about Fortuna. Fortuna was suspended for five days and later fired.  

04/27/84: Little Tony (Baby A) was discharged. He was scheduled for follow-up clinic visits and therapy.  

1985  

03/85: Little Tony was referred to an infant development program, STAR.
07/85: Little Tony was admitted to Norwalk Hospital after a clinic visit. The Sabias said that they still had no diagnosis or prognosis for Little Tony. The hospital records noted a failure to thrive, microencephaly, a developmental delay, spastic quadriplegia, cerebral palsy, and seizure disorders.14

12/85: A neurologist confirmed with the Sabias that Little Tony was severely brain damaged. Donna told the clinic social worker about her fight with Tony the night before the delivery.15

1986

04/86: Donna terminated her relationship with the clinic.16

05/86: The ob-gyn peer review committee at Norwalk Hospital asked Humes to review the what happened with the Sabias’ twins. Her response was due June 1, 1986.

08/86: Donna met Mary Gay. Gay had a handicapped child and was suing Humes. Gay introduced Donna to the Koskoff Law Firm.17

10/86: Humes was compelled to complete the peer review process.

11/86: Humes and Gay settled their case.

1987

02/87: Humes passed the peer review and moved to Stamford Hospital. Little Tony had hip surgery. Donna was eight months pregnant.

03/02/87: Lichtenstein filed Sabia v. Norwalk Hospital & Dr. Maryellen Humes in Bridgeport Superior Court.18

03/87: Karen Koskoff assumed control of the case.19

03/28/87: Donna delivered Tony and Donna’s second child, Heather Rose.

04/20/87: Little Tony was hospitalized.

04/23/87: Little Tony stopped eating.

14. Id. at 32.
15. Id. at 33.
16. Id.
17. Id. at 37-41.
18. Id. at 65.
19. Id. at 79.
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04/87: Attorneys exchanged the first set of interrogatories.  

05/15/87: A feeding tube was inserted into Little Tony.

06/01/87: Monstream filed a motion to narrow the case against Humes. The court ruled in his favor.

07/30/87: Karen Koskoff answered Monstream’s interrogatories from April 1987.

1988

09/30/88: Karen Koskoff moved for summary judgment against Humes to force Monstream to answer her interrogatories.

11/88: Monstream objected to the motion. He then made a motion to have the case against Humes dismissed for failure to revise the complaint as ordered by the court in June 1987.

11/88: Karen filed an amended complaint. Monstream responded to the revised complaint and filed a motion to dismiss the case for violating the two-year statute of limitations.

Next day: A Superior Court judge ruled in favor of one of Monstream’s earlier motions and gave Karen four months to comply.

12/88: Monstream filed a motion to dismiss because the Sabias missed their seventh deposition, scheduled for December 12, 1988.

1989

01/20/89: The Sabias were deposed.

03/07/89: Karen Koskoff deposed Humes.

08/21/89: Little Tony was examined, at the request of Travelers, for genetic problems.

20. Id. at 80.
21. Id. at 81.
22. Id.
23. Id. at 82.
24. Id. at 83.
25. Id.
26. Id.
27. Id. at 84.
28. Id. at 113.
29. Id. at 126.
10/89: Beverly Hunt contacted Koskoff to discuss settlement.  

10/16/89: Koskoff declined.  

12/06/89: Koskoff deposed McManamy.  

1990  

02/90: Karen Koskoff developed breast cancer. She was taken off the case and it was given to Christopher Bernard. The Koskoff firm was still not sure what really happened to Little Tony.  

04/90: April Haskell was named partner and took over the case from Monstream. She started to seek medical experts.  

05/90: Donna gave birth to Tony and Donna’s third child, Dayna.  

06/90: Haskell and Hunt discussed a combined strategy to avoid torpedoing each other.  

08/90: Bernard, Lichtenstein, and Koskoff discussed their lack of theory of causation to implicate the hospital. Expert Larry Forman’s report revealed life-time costs for Little Tony that ranged between $6 (basic) and $10.5 (best care) million.  

08/90: Koskoff spoke with specialist, Dr. Murray (plaintiff’s expert on the ob-gyn standard of care serial ultrasounds). He unified his theory that the hospital failed to do routine monitoring of Donna, leading to the death of one child and the damage of Little Tony.  

08/17/90: Haskell wanted genetic testing of Donna.  

10/22/90: The Koskoff firm asked for additional time to disclose medical experts because of Karen Koskoff’s illness. (Fact-finding should have ended November 1989).
01/25/91: The Koskoff firm again moved to extend deadlines for disclosing experts.\textsuperscript{41}

03/11/91: Bernard disclosed plaintiffs’ medical experts.\textsuperscript{42}

03/12/91 through 03/13/91: Bernard filed two separate offers of judgment at the Bridgeport Superior Court. The offers stated that the Koskoffs’ would need $15 million to drop the case against the hospital and $2 million to drop the case against Humes.\textsuperscript{43}

03/18/91: Haskell mailed an offer of judgment against Humes to St. Paul.\textsuperscript{44}

04/01/91: Bai sent a “bad faith” letter to St. Paul discussing the settlement. He threatened to sue them if a judgment against Humes was entered that was greater than the policy limits and put her at personal financial risk.\textsuperscript{45}

04/05/91: Hunt told Haskell that the hospital wanted to settle.\textsuperscript{46}

04/11/91: Haskell talked with Bernard during a break in another case they were trying. Bernard wanted a total of $15 million to settle.\textsuperscript{47}

04/12/91: Haskell and Bernard talked by phone and confirmed the $15 million total—less from Humes if there was more from the hospital.\textsuperscript{48}

04/13/91: Haskell wrote to St. Paul (Marlene Smethurst, claims representative) requesting a settlement. She wanted to be out before the medical experts were deposed.\textsuperscript{49}

Summer 1991: Medical malpractice and health care reform were becoming hot political issues.\textsuperscript{50}

08/01/91: Haskell wrote to Smethurst at St. Paul to answer the objections to settlement that were raised by her superiors. Haskell suggested a face-to-face meeting to convince them.\textsuperscript{51}

\textsuperscript{41} Id. at 168.
\textsuperscript{42} Id. at 176.
\textsuperscript{43} Id. at 178.
\textsuperscript{44} Id. at 181.
\textsuperscript{45} Id. at 184.
\textsuperscript{46} Id.
\textsuperscript{47} Id. at 186.
\textsuperscript{48} Id. at 187.
\textsuperscript{49} Id. at 188.
\textsuperscript{50} Id. at 191.
\textsuperscript{51} Id. at 199.
9/91: Smethurst called Bernard to see if he would consider $1 million to settle Sabia case and release Humes from all claims.\textsuperscript{52}

1992

02/28/92: The Sabias sign papers to settle with Humes for $1.35 million. The Sabias receive $853,000.\textsuperscript{53}

03/13/92: Dr. Benirschke was deposed (plaintiffs’ cytogenetics expert on the death of baby Michael).\textsuperscript{54}

03/92: Dr. Schifrin was deposed (plaintiffs’ perinatologist expert on the hospital’s negligence).\textsuperscript{55}

04/28/92: The Koskoffs sent a check to the Sabias from the settlement with Humes. Donna left Tony and asked for a divorce.\textsuperscript{56}

09/29/92: Ryan asked Michael Koskoff to talk with Norwalk Hospital executives. The hospital expected the value of the claim to be $15 million based on the offer of judgment. Michael Koskoff instead stated that the claim was valued at $22 million. This meeting abruptly ended.\textsuperscript{57}

10/92: Donna moved back in with Tony.\textsuperscript{58}

10/92: Travelers fired Ryan and hired Bill Doyle—Koskoff’s nemesis.\textsuperscript{59}

1993

01/93: During a pretrial conference in the Sabia case, Koskoff agreed to an extension for Doyle. Doyle hired Beverly Hunt.\textsuperscript{60}

07/20/93: The Probate Court granted temporary guardianship of Shannon (Donna’s oldest daughter) to Donna’s sister.\textsuperscript{61}

07/27/93: Judge Ballen assigned Sabia to trial in early September.\textsuperscript{62}

08/03/93: “A Day in the Life of Little Tony” was filmed.\textsuperscript{63}

\textsuperscript{52} Id. at 205.
\textsuperscript{53} Id. at 211.
\textsuperscript{54} Id. at 214, 218.
\textsuperscript{55} Id. at 227.
\textsuperscript{56} Id. at 234.
\textsuperscript{57} Id. at 243-51.
\textsuperscript{58} Id. at 239.
\textsuperscript{59} Id. at 253.
\textsuperscript{60} Id. at 262.
\textsuperscript{61} Id. at 266.
\textsuperscript{62} Id.
\textsuperscript{63} Id. at 268.
08/12/93: Bernard deposed Dr. Lockwood (hospital’s expert perinatologist on the standard of care for using serial ultrasounds).

08/14/93: Dr. Iffy was deposed (plaintiffs’ expert perinatologist on growth retardation).

08/20/93: Bernard deposed Dr. Farrell (hospital’s expert pediatrician on life expectancy/damages for Little Tony).

09/02/93: Dr. Goldkrand was deposed (plaintiffs’ perinatologist expert on the standard of care for using serial ultrasounds).

09/13/93: One day before trial, Judge Ballen said that no judges were available until October. Koskoff called Doyle to see if he would agree to mediation. Travelers responded by proposing a mediator from Chicago, David Ferguson (a non-lawyer mediator).

09/22/93: Dr. Benirschke was deposed on videotape.

09/29/93: Koskoff met with the Sabias to prepare them for the mediation.

09/30/93: The mediation began.

10/01/93: The mediation ended without a settlement.

10/06/93: Little Tony was re-examined by Dr. Kaplan, Koskoff’s new life expectancy expert. Hunt started to send trial memos to Doyle on cross-examination and depositions.

10/18/93: Doyle filed a motion to strike Donna’s claim for emotional distress. Judge Ballen notified the attorneys the trial would be delayed until January 1994.

10/29/93: Bernard deposed Dr. Grossman (hospital’s expert pediatric neurologist on Little Tony’s life expectancy and damages).
11/10/93: Judge Ballen sent letters to all the parties stating that they needed to be in court December 8, 1993, to pick a new trial date. The attorneys talked and Doyle proposed a second mediation—this time with mediators who were lawyers. Each side chose one mediator. Doyle chose Stanley Jacobs, a personal injury lawyer, and Koskoff chose Tony Fitzgerald, a corporate defense lawyer.

12/07/93: Koskoff deposed Dr. Jones (Doyle’s expert on the standard of care and an ob-gyn).

12/17/93: The second mediation took place and again ended without settlement.


12/24/93: The Sabias met with Koskoff, Bernard, and Lichtenstein to sign the settlement.

76. Id. at 341.
77. Id.
78. Id. at 345.
79. Id. at 256.
80. Id. at 363.
81. Id. at 365.