

The 2026 Guide to Birth Injury Litigation in New York

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Birth Injuries • Cerebral Palsy • HIE • Erb's Palsy • Wrongful Death • Hospital Negligence

INTRODUCTION

Bringing a child into the world should be a joyous occasion. When medical negligence during pregnancy, labor, or delivery causes harm to a newborn — or to the mother — the consequences can last a lifetime. This guide explains what New York birth injury litigation actually looks like: the legal process, your rights, realistic timelines, and what experienced attorneys can do to help your family.

This is not legal advice. Every case is different. But if you suspect that a preventable medical error harmed your child, understanding the legal framework is the first step toward making an informed decision about next steps.

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1. WHAT IS A BIRTH INJURY LAWSUIT?

A birth injury lawsuit in New York is a legal claim filed against healthcare providers when negligence during pregnancy, labor, or delivery causes harm to an infant or the mother. Liability often involves doctors, nurses, hospitals, and other medical professionals involved in the birthing process.

New York law allows families — parents or legal guardians — to seek compensation for medical expenses, ongoing care needs, pain and suffering, and lost earnings potential. These cases fall under New York State's medical malpractice laws and require proving that the healthcare provider deviated from accepted medical standards, directly causing the injury.

TYPES OF BIRTH INJURY CLAIMS

Medical Malpractice Lawsuits

The most common type. Parents must demonstrate that healthcare providers failed to meet the accepted standard of care. This might involve:

- Improper use of delivery tools (forceps, vacuum extractor)
- Failure to monitor or respond to fetal distress signals
- Delayed decision to perform an emergency C-section
- Inadequate treatment of maternal conditions such as preeclampsia or infection

These cases commonly result in conditions including cerebral palsy, brachial plexus injuries (Erb's Palsy), hypoxic-ischemic encephalopathy (HIE), or developmental delays.

Wrongful Death Lawsuits

When birth injuries prove fatal — resulting in stillbirth, infant death, or maternal death — New York law allows families to pursue wrongful death claims. These address not only the emotional trauma but also medical expenses and funeral costs.

2. HOW ATTORNEYS EVALUATE A BIRTH INJURY CASE

Handling a birth injury lawsuit requires analyzing medical records, identifying specific deviations from the standard of care, and proving causation. Below are the key elements an experienced New York birth injury lawyer will assess.

Medical Records & Evidence

A thorough case evaluation begins with obtaining and analyzing key medical records, including:

- **Prenatal records:** identifying high-risk pregnancy factors such as preeclampsia, gestational diabetes, and incompetent cervix.

- **Intrapartum and delivery records:** documenting complications and medical interventions during labor and birth.
- **Fetal heart monitoring strips:** assessing whether medical providers correctly interpreted signs of fetal distress.
- **Umbilical cord blood gases and newborn records:** determining oxygen deprivation and potential neurological injuries.
- **Diagnostic imaging and placental pathology reports:** confirming medical conditions that support the claim.

These records help establish a connection between substandard obstetrical care and conditions such as hypoxic-ischemic encephalopathy (HIE) or cerebral palsy.

Prenatal Risk Factors

- **Gestational age and premature birth:** evaluating whether early delivery was due to natural causes or medical negligence.
- **Maternal health and lifestyle factors:** investigating conditions such as hypertension, smoking, nutrition, and genetic predispositions.
- **Preeclampsia:** a serious pregnancy complication characterized by high blood pressure and organ damage, typically occurring after 20 weeks of pregnancy.
- **Prenatal testing failures:** non-stress tests and biophysical profile tests provide early indicators of fetal distress; failure to act on abnormal results may constitute malpractice.

Labor & Delivery Procedures

- **Fetal heart monitoring issues:** misinterpretation of fetal distress patterns, such as late or variable decelerations, can lead to delayed interventions.
- **Prolonged or arrested labor:** increases the risk of oxygen deprivation and birth trauma.
- **Misuse of labor-augmenting drugs (e.g., Pitocin):** can lead to excessive contractions and fetal distress.
- **Delayed emergency C-section:** failure to perform a timely cesarean when medically necessary can result in severe injuries.
- **Vacuum delivery errors:** incorrect use of vacuum extractors can cause scalp lacerations, skull fractures, and intracranial hemorrhages.

Did a Medical Error Harm Your Child?

Our attorneys review birth injury cases for free, with no obligation. Call (212) 869-3500 or visit www.fuchsberg.com to get started.

3. COMPENSATION IN NEW YORK BIRTH INJURY CASES

New York does not cap damages in medical malpractice cases. Families pursuing a birth injury lawsuit may be entitled to compensation for:

- Past and future medical expenses
- Lifetime care and therapy costs
- Special education and adaptive equipment
- Lost earning capacity of the child
- Home modifications and assistive technology
- Pain and suffering (past and future)
- Loss of enjoyment of life
- Emotional distress
- Parental loss of consortium
- Wrongful death damages (if applicable)

For children with severe, permanent neurological injuries — such as cerebral palsy requiring lifetime care — total compensation can reach into the tens of millions of dollars, reflecting the true lifelong cost of the harm caused.

New York Medical Indemnity Fund (MIF)

For children with severe neurological injuries caused by malpractice, the New York Medical Indemnity Fund (MIF) offers an important option. The MIF provides lifetime benefits covering rehabilitative care, medical equipment, home modifications, and assistive technology — potentially without the need to prove future damages at trial. Navigating the MIF and settlement structures requires experienced legal counsel.

4. STATUTE OF LIMITATIONS — TIME LIMITS IN NEW YORK

Time limits are one of the most critical aspects of birth injury litigation. Missing a deadline can permanently bar your family from recovering compensation, regardless of how strong the case is.

Who	Standard Deadline	Key Notes
Child (injured infant)	By child's 10th birthday	CPLR §214-a + infancy toll
Mother	2.5 years from act of malpractice	Standard med. mal. SOL
Wrongful death (maternal)	2 years from date of death	Under EPTL §5-4.1
Municipal hospital (NYC)	Notice of Claim within 90 days	Public hospital — must serve notice first

Important: Statute of limitations rules are fact-specific and can be affected by fraud, concealment, or delayed discovery of the injury. Do not rely on this table alone — consult a qualified attorney promptly.

5. THE STEP-BY-STEP LITIGATION PROCESS

Birth injury lawsuits in New York follow a structured process. Here is what families can realistically expect:

- 1. Free Case Evaluation.** An attorney reviews the facts, requests medical records, and assesses whether negligence may have occurred. There is no cost and no obligation.
- 2. Medical Record Review & Expert Consultation.** Obstetric and neonatal medical experts review the full record — labor and delivery notes, fetal monitoring strips, nursing notes, operative reports. Expert opinion is required to establish the standard of care in New York.
- 3. Filing the Complaint & Certificate of Merit.** New York requires a Certificate of Merit — a sworn statement that the attorney consulted a qualified medical expert who supports the claim. This is filed with or shortly after the complaint.
- 4. Discovery (12–24 months).** Both sides exchange records, depose treating physicians, nurses, and hospital administrators, and retain expert witnesses. This is the most time-intensive phase of litigation.
- 5. Expert Disclosure & Pre-Trial Motions.** Each side discloses its expert witnesses. The court may hold Frye hearings to determine the admissibility of medical theories or novel scientific evidence.
- 6. Settlement Negotiations or Trial.** Many birth injury cases resolve before trial. When a fair settlement cannot be reached, your attorney presents the case to a jury. New York juries have returned verdicts in major birth injury cases reaching tens of millions of dollars.
- 7. Structured Settlement or Annuity.** When a child is the plaintiff, courts often approve structured settlements providing periodic payments over time to fund lifetime care needs.

6. NOTABLE RESULTS — THE FUCHSBERG FIRM

Our attorneys have secured major birth injury settlements and verdicts in New York, holding healthcare providers accountable:

- **\$7.5M — Delayed C-section:** Attorneys proved delayed delivery caused preventable brain damage. 3D imaging confirmed oxygen deprivation, not infection, as the cause.
- **\$6.395M — Monitoring failure:** A child suffered brain damage due to providers' failure to monitor a high-risk pregnancy, missing signs of placental abruption.
- **\$5M — Wrongful death:** A mother with pre-eclampsia and sickle cell anemia suffered a fatal stroke due to negligence, leaving one surviving twin with brain injuries.

7. QUESTIONS TO ASK A BIRTH INJURY ATTORNEY

- How many birth injury cases have you handled, and what were the outcomes?
- Who are the medical experts you work with, and what are their qualifications?

- Will you personally handle my case, or will it be referred or delegated?
- What is your fee structure? (Most reputable firms work on contingency — no fee unless you win.)
- What is your honest assessment of the strengths and weaknesses of my case?
- How long do you estimate the case will take from filing to resolution?
- Have you obtained results in cases involving my child's specific diagnosis?

Proven Results That Have Changed Lives

Birth injuries have lifelong consequences, but families don't have to face these challenges alone. Our New York birth injury lawyers will fight for your family to receive the necessary support for medical care, therapy, and long-term needs. If you suspect medical negligence caused your child's injury, don't wait — legal deadlines apply.

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