

18th Annual Advanced Forum on

# OBSTETRIC MALPRACTICE CLAIMS

June 26–27, 2019  
The Union League, Philadelphia, PA

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**NEW!** Tuesday, June 25, 2019

### PRE-CONFERENCE WORKING GROUPS ON:

**A** Interpretations of Fetal Heart  
Rate Monitoring Strip Readings

**B** Expert and Fact Witness  
Selection and Preparation

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## Medical Insights From:



**Carol B. Benson, MD**  
Professor of Radiology  
**Harvard Medical School**  
Director of Ultrasound and Co-Director  
of High Risk Obstetrical Ultrasound  
**Brigham and Women's Hospital**



**Jonathan M. Fanaroff,**  
M.D., J.D., FAAP  
Professor of Pediatrics  
**Case Western Reserve University  
School of Medicine**  
Director, Rainbow Center for Pediatric  
Ethics  
**Rainbow Babies & Children's  
Hospital, Division of Neonatology**



**Emily Hamilton, MD CM**  
SVP, Clinical Research  
**PeriGen**  
Adjunct Professor of Obstetrics  
and Gynecology  
**McGill University**



**Warren Rosenfeld, MD**  
Chair, Pediatrics  
**South Nassau Communities Hospital**



**Michael G. Ross, MD MPH**  
Distinguished Professor of Obstetrics  
and Gynecology and Public Health  
**UCLA School of Medicine**



**Carolyn M Salafia MD MS**  
Head, Placental Modulation Laboratory  
**Institute for Basic Research**  
Director of Development  
**Placental Analytics, LLC**

## Insurance Industry Insights From:



**Michael D. Anderson**  
Supervisor, Patient Safety &  
Risk Management  
**Medical Insurance Exchange  
of California**



**Jeffrey M. Coyle**  
Vice President, US Healthcare Claims  
Director  
**Sompo International**



**Cheryl M. De Kleine**  
Senior Director, Claims & Litigation  
**Ascension Care Management**



**Richard T. Henderson**  
Senior Vice President  
**TransRe**



**John S. Moore**  
Director, Strategic Claim Unit,  
Specialty Claim  
**CNA**

# Obstetric malpractice claims are among the most expensive within the medical malpractice arena.

Jury verdicts can quickly and easily reach hundreds of millions of dollars. Constantly evolving advances in medical technology lead to new standards of care. As a result, it is essential that all those who are part of the obstetric malpractice continuum—**medical professionals, risk managers, insurance professionals, plaintiffs' and defense attorneys**—stay current on the latest developments and claims impacting this area of practice.

During this one of a kind event, our unparalleled faculty of claims specialists, risk managers, medical experts—as well as **an outstanding array of plaintiff and defense attorneys**—will share their insights and practical guidelines for addressing some of the most complex medical challenges as well as litigation hurdles facing obstetric malpractice practitioners.

Some of this year's highlighted sessions, include:

- Reducing Obstetrics Malpractice Claims: Addressing Ways of Reducing Maternal Morbidity/Mortality and Preventable Medical Errors
- Exploring the Best Use of Mediation Process to More Effectively Resolve Claims
- Examining Opioid-Related Injuries During Pregnancy
- Before, During or After Birth: Determining When an Injury Occurred
- Examining the Current State of the Cranial Compression Ischemic Encephalopathy Argument
- Effective Strategies for Evaluating a Patient's Damages and Ways of Finding a Common Ground with Respect to Life Care Plans

Additionally, **NEW** for this year, we have developed two Working Groups:

#### A: Interpretations of Fetal Heart Rate Monitoring Strip Readings:

Our expert faculty will examine best practices for interpreting and managing fetal heart rate monitoring strips so that attorneys practicing in the obstetrics malpractice area have a working knowledge of this ever-evolving technology and understand how it will impact their cases.

#### B: Selection and Preparation of Expert/Fact Witnesses for Testimony and the Implications of the ARRIVE Trial

In this working group, we will focus on the strategies to employ when selecting and preparing experts. Our speakers will also identify critical mistakes defense and plaintiff's attorneys make in the preparation process.

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## WHO YOU WILL MEET and WHY THEY ATTEND:

- **PLAINTIFF'S and DEFENSE ATTORNEYS**, who litigate medical malpractice cases attend in order to get a solid grounding on the latest medical issues upon which cases are based.
- **Insurance professionals**, attend in order to obtain valuable insights and strategies for assessing professional negligence claims and to better understand litigation strategies and hospital risk management techniques.
- **Doctors, nurses and hospital risk/quality assurance managers**, attend in order to benchmark their current practices and procedures and develop a deeper understanding of the current state of obstetric malpractice litigation.



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Senior Counsel  
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(King of Prussia, PA)



**Daryl L. Zaslow**  
Shareholder  
**Eichen Crutchlow Zaslow, LLP**  
(Edison, NJ)

## SPEAKERS



**Michael D. Anderson**  
Supervisor, Patient Safety &  
Risk Management  
**Medical Insurance Exchange of  
California (MIEC)** (Oakland, CA)



**Jack Beam**  
Managing Partner  
**Beam Legal Team L.L.C.** (Chicago, IL)



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Professor of Radiology  
**Harvard Medical School**  
Director of Ultrasound and Co-Director  
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**Brigham and Women's Hospital**  
(Boston, MA)



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**Ross Feller Casey, LLP**  
(Philadelphia, PA)



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**Clore Law Group, LLC**  
(Charleston, SC)



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**Grossman Roth Yaffa Cohen**  
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**Combs & Company**  
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Vice President, US  
Healthcare Claims Director  
**Sompo International**  
(New York, NY)



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Senior Director, Claims & Litigation  
**Ascension Care Management**  
(St. Louis, MI)



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& Mackauf** (New York, NY)



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Co-Founder and Managing Partner  
**Haliczer, James Solomon**  
(Fort Lauderdale, FL)



**Emily Hamilton, MD CM**  
SVP, Clinical Research  
**PeriGen (Cary, NC)**  
Adjunct Professor of Obstetrics and  
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**McGill University** (Westmount, QC)



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**Hall Booth Smith, P.C.** (Atlanta, GA)



**Amy Hathaway**  
Facilitator  
**Amy Hathaway, PLC** (Southfield, MI)



**Richard T. Henderson**  
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**TransRe** (New York, NY)



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**Huff, Powell & Bailey, LLC**  
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Partner  
**Janet, Janet & Suggs, LLC**  
(Columbia, SC)



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Partner  
**Kaufman Borgeest & Ryan LLP**  
(New York, NY)



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**Norris Keplinger Hicks & Welder, LLC**  
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Senior Partner  
**Kjar, McKenna & Stockalper, LLP**  
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Director, Strategic Claim Unit,  
Specialty Claim  
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**MacNeill, O'Neill & Riveles, LLC**  
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Director of Development  
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(New Rochelle, NY)



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CEO  
**PeriGen (Cary, NC)**



**Jack M. Stein**  
President  
**Trial Exhibits, Inc.** (Philadelphia, PA)



**Andrew J. Stern**  
Partner  
**Kline & Specter, P.C.**  
(Philadelphia, PA)



**Eric Stockman**  
Partner  
**Stockman O'Connor PLLC**  
(Bridgeport, CT)



**Norman D. Tucker**  
Of Counsel  
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(Southfield, MI)

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# Pre-Conference Working Groups

Tuesday, June 25, 2019

**A 9:00am – 12:00pm (Registration starts at 8:30am)**

## Interpretations of Fetal Heart Rate Monitoring Strip Readings

Interpretation of the fetal heart rate monitoring strip readings is one of the most complex activities that nurses and doctors need to contend with and one that can easily turn into a potential malpractice claim. Our experts will examine best strategies for interpreting and managing fetal heart rate monitoring strips as well as explain what it all ultimately means for attorneys practicing in this area.

Points of discussion will include:

- Understanding the significance of fetal heart rate tracing
- Managing Category II fetal heart rate tracings
  - » Examining techniques for how a doctor can determine when a fetal heart monitoring strip has deteriorated to such an extent that medical intervention is necessary
  - » How often should an obstetrician see a patient as opposed to a nurse alone?
- Determining the amount of time that an obstetrician should be monitoring the strip for a low-risk versus a high-risk patient
- Interpreting contraction patterns and their impact on fetal heart rate
- Examining current scientific and technological advances that eliminate at least some of the subjectivity with FHR monitoring strips interpretations
- Devising techniques for presenting FHR tracings interpretations to the juries so that it is engaging and understandable

**B 1:30pm – 4:30pm (Registration starts at 1:00pm)**

## Selection and Preparation of Expert/Fact Witnesses for Testimony and the Implications of the ARRIVE Trial



**Stephen Brzezinski**  
Principal  
**Kitch Drutchas Wagner**  
**Valitutti & Sherbrook**  
(Detroit, MI)



**Gerald D. Jowers, Jr.**  
Partner  
**Janet & Suggs, LLC**  
(Columbia, SC)

In this working group, our expert faculty will examine the best strategies to employ when preparing fact witnesses and for selecting and preparing experts. They will address the implications of elective inductions and the ARRIVE trial to highlight the importance of preparation of fact witnesses and expert selection. In addition, they will also identify critical mistakes defense and plaintiff's attorneys make in the preparation process.

Topics of discussion will include:

- Examining the ARRIVE trial and its implications from both a medical and a medical-legal perspective
- Identifying knowledge deficits of fact witnesses and experts with respect to definitions, policies, procedures and protocols
- Identifying and selecting the right expert for an obstetric case and suggested ways of arriving at that decision
  - » What is the recommended experience for an expert?
  - » What they should or should not rely upon in testifying?
  - » What are the bases for their opinions?
  - » What to look for in an expert during the selection process?
- Exploring the preparation process
  - » Letters/meetings-what, when and for how long?
  - » Best strategies for addressing difficult parts of the case with experts/fact witnesses

- » Addressing key questions and answers
- » Best strategies to employ on a redirect-benefits/detriments
- » Benefits of knowing your opponent's techniques and strategies
- Identifying major problems with plaintiff/defendant expert witness' preparation
- Dealing with experts who don't want to be prepped as they are "experts" at being expert witnesses
- Assessing expert opinions and the "reasonable degree of probability or medical certainty" tests
  - » How is reasonable degree of probability or medical certainty defined?
  - » What are the best ways for experts to support their opinions?
  - » Identifying consequences and concerns when experts fail to follow legal principles/strategy
  - » How to prepare one's expert for cross examination if state law is unclear as to admissibility?

## Main Conference Day One

Wednesday, June 26, 2019

**7:15 | Registration and Continental Breakfast**

**8:15**

### Co-Chairs' Welcoming Remarks



**Stephen A. Ryan**  
Senior Counsel, Chair, Birth and Catastrophic Injury  
Litigation Practice Group  
**Marshall Dennehey Warner Coleman & Goggin, P.C.**  
(King of Prussia, PA)



**Daryl L. Zaslow**  
Shareholder  
**Eichen Crutchlow Zaslow, LLP (Edison, NJ)**

**8:30**

### State of the Union in the Obstetric Malpractice Claims



**Michael D. Anderson**  
Supervisor, Patient  
Safety & Risk  
Management  
**Medical Insurance**  
**Exchange of**  
**California (MIEC)**  
(Oakland, CA)



**Cheryl M. De Kleine**  
Senior Director, Claims  
& Litigation  
**Ascension Care**  
**Management**  
(St. Louis, MI)



**John E. Hall, Jr.**  
Partner  
**Hall Booth Smith, P.C.**  
(Atlanta, GA)



**Jeffrey M. Coyle**  
Vice President, US  
Healthcare Claims  
Director  
**Sompo International**  
(New York, NY)



**Richard T. Henderson**  
Senior Vice President  
**TransRe**  
(New York, NY)

- Addressing changes in the market
  - » Why are we seeing a rise in severity of claims?
  - » Exploring potential causes of a tightening market
- Evaluating recent claims developments and insurance coverage implications
- Exploring developments with captive insurance
- Examining the latest trend of smaller physician groups being absorbed into larger physician groups
- Evaluating recent case patterns and settlements

9:45

## Before, During or After Birth: Determining When an Injury Occurred



**Mark D. Clore**  
Clore Law Group, LLC (Charleston, SC)



**Jonathan M. Fanaroff, M.D., J.D., FAAP**  
Professor of Pediatrics  
Case Western Reserve University School of Medicine  
Director, Rainbow Center for Pediatric Ethics  
Rainbow Babies & Children's Hospital  
Division of Neonatology (Cleveland, OH)



**Andrew S. Kaufman**  
Partner  
Kaufman Borgeest & Ryan LLP (New York, NY)

- Developing best practices for determining when an injury occurred
  - » How to time and prove HIE injury
  - » Determining which type of experts you need to make your case: placental pathologists, pediatric neuro-radiologist, pediatric neurologist, geneticist, etc.?
- Addressing the challenge of proving that an injury occurred before labor
  - » Preexisting injuries and abnormal heart rate tracing
- Assessing the length of labor: How long is too long?
  - » Suggested protocols for addressing this potential cause of common injuries in babies
  - » Addressing plaintiff attorneys' claims that a mother was in labor for too long
- Evaluating in utero infection as a potential cause of injury
  - » How does infection cause an injury? Is it diagnosable? Is it preventable?
  - » Suggested ways of proving that infection occurred before labor
- Analyzing the use of post-birth CT scans and MRIs to determine when an injury occurred

10:45 Morning Coffee Break

11:00

## Examining the Use of Placental Pathology to Decipher Adverse Pregnancy Outcomes



**Carolyn M Salafia MD MS**  
Head, Placental Modulation Laboratory  
Institute for Basic Research  
Director of Development  
Placental Analytics, LLC (New Rochelle, NY)



**Andrew J. Stern**  
Partner  
Kline & Specter, P.C (Philadelphia, PA)

- Exploring recent advances in research regarding the forensics of prenatal as well as short and long-term postnatal adverse outcomes through the use of placental pathology
- Understanding how this pathology evidence is interpreted and utilized in litigation to support and dispute claims
- Examining how a placental pathologist determines when an injury occurred and whether it was a hypoxic injury

12:00 | Networking Luncheon

1:15

## New Technologies in Fetal Heart Monitoring: Developing Strategies for Proper Interpretations of Readings



**Emily Hamilton, MD CM**  
SVP, Clinical Research  
PeriGen (Cary, NC)  
Adjunct Professor of Obstetrics and Gynecology  
McGill University (Westmount, QC)



**Bruce Keplinger**  
Norris Keplinger Hicks & Welder, LLC (Overland Park, KS)



**Matthew Sappern**  
CEO  
PeriGen (Cary, NC)

- Examining recent technological developments in fetal heart monitoring
  - » Evaluating the availability and use of these new technologies
- Safeguarding against incorrect readings and medical staff responses
- Identifying the types of tracings that should be seen to have a strong case that a baby should have been delivered earlier
  - » When is there sufficient indication to make a call that something else is happening that needs to be addressed?
- Addressing claims involving insufficient training of nurses in reading and handling monitoring strips
  - » Examining disputes between doctors and nurses when a strip is misread
- Exploring preexisting injuries
  - » Addressing defense strategies for matters associated with neuro damage which developed before labor
- Assessing the impact of the current technologies implemented in delivery rooms across the country
  - » How reliable is the current technology being used?
  - » Discussing the use of technology and raising the standard of care
- Examining emerging technologies that can assist with evaluations and interpretations of fetal heart rate patterns

2:15

## Understanding If and How Cooling Has Changed Birth Injury Litigation



**Gary L. Riveles**  
Senior Partner  
MacNeill, O'Neill & Riveles, LLC (Cedar Knolls, NJ)



**Warren Rosenfeld, MD**  
Chair, Pediatrics  
South Nassau Communities Hospital (Oceanside, N.Y.)

- Determining whether cooling is an admission of HIE with far fewer and less severe criteria than ACOG
- How does cooling affect plaintiff's attorneys early filing of a suit as damages may not be accurately evaluated until age 7 or later?
- What is the significance of a negative MRI following cooling and will it change with time if there was HIE?
- Determining the effect of cooling on motor and intellectual function

3:15 | Afternoon Coffee Break



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3:30

## Examining Opioid-Related Injuries During Pregnancy



**Brant E. Poling**  
*President*  
**POLING**  
(Columbus, OH)



**Jack M. Stein**  
*President*  
**Trial Exhibits, Inc.**  
(Philadelphia, PA)

- Exploring current developments with the use of opioids during pregnancy
- What legal standard of care should an OB/GYN practitioner follow when it comes administering opioids during pregnancy
- Addressing the challenges that obstetricians and neonatologists' encounter when not recognizing that a mother has an opioid problem
- Examining potential liabilities associated with babies injured as a result of ingesting opioids from a mother
  - » Examining opioid use as a potential cause of injury that a plaintiff's attorney hasn't thought about, but should
  - » How the defense side can combat such a potential claim
- Exploring challenges with defending medical professionals who are either:
  - » Administering opioids during pregnancy, or
  - » Are struggling with the decision to prescribe to pregnant women who may need opioids

4:15

## Reducing Obstetrics Malpractice Claims: Addressing Ways of Reducing Maternal Morbidity/Mortality and Preventable Medical Errors



**Joseph A. Farchione**  
*Partner*  
**Wheeler Trigg O'Donnell LLP**  
(Denver, CO)



**Gary D. Fox**  
*Founding Partner*  
**Stewart Tilghman Fox Bianchi & Cain P.A.**  
(Miami, FL)



**Eric Stockman**  
*Partner*  
**Stockman O'Connor PLLC (Bridgeport, CT)**

- Addressing potential causes for alarming rates of maternal morbidity/mortality and attendant liability implications
- Exploring potential ways to prevent these errors
- Identifying safety initiatives being introduced in hospitals and other facilities performing deliveries
- Understanding how current reform efforts may shift the standard of care
- Are reform efforts factoring into settlements in a given case?

5:15 | Conference Adjourns to Day Two

*The seminar offered a wide variety of very relevant topics and speakers, fostering a diverse discussion among attendees about varying views on the topics presented.*

**JOSEPH PICCHI, MANAGING ATTORNEY  
GALLOWAY, LUCCHESI, EVERSON & PICCHI**

## Main Conference Day Two

Thursday, June 27, 2019

7:45 Continental Breakfast

8:15

## Co-Chairs' Remarks and Recap of Day One

8:30

## Examining the Current State of the Cranial Compression Ischemic Encephalopathy Argument



**Jack Beam**  
*Managing Partner*  
**Beam Legal Team L.L.C. (Chicago, IL)**



**Daniel J. Huff**  
*Partner*  
**Huff, Powell & Bailey, LLC (Atlanta, GA)**



**Michael G. Ross, MD MPH**  
*Distinguished Professor of Obstetrics and Gynecology and Public Health*  
**UCLA School of Medicine (Los Angeles, CA)**

- Evaluating the viability of cranial compression encephalopathy argument: pros and cons
- Examining the current standard of care with respect to CCIE
- Addressing the plaintiffs' argument that doctors are not recognizing the compression soon enough and can prevent it
- Exploring the defense's argument that doctors have no control over this and cannot be held responsible

9:30

## Shoulder Dystocia: Examining the Latest Claims and Management of Key Risk Factors



**Carol B. Benson, MD**  
*Professor of Radiology*  
**Harvard Medical School**  
*Director of Ultrasound and Co-Director of High Risk Obstetrical Ultrasound*  
**Brigham and Women's Hospital (Boston, MA)**



**Christopher J. Donadio**  
*Partner*  
**Gair, Gair, Conason, Rubinowitz, Bloom, Hershenhorn, Steigman & Mackauf (New York, NY)**



**Catherine J. Flynn**  
*Partner*  
**Decotiis, Fitzpatrick, Cole & Giblin, LLP (Teaneck, NJ)**

- Examining latest claims being brought involving shoulder dystocia
- Exploring signals for identifying susceptible patients
- Assessing potential new evidence-based research or ideas that would assist in defending these types of claims
- Addressing a plaintiff's argument that no matter what happened during birth, a doctor should have known this injury may occur as a result of prenatal care

10:30 | Morning Coffee Break

11:00

## Evaluating the Pros and Cons of Mother and Child Genetic Testing – Defense and Plaintiff Perspective



**Stephen A. Ryan**  
Senior Counsel, Chair, Birth and Catastrophic Injury  
Litigation Practice Group  
**Marshall Dennehey Warner Coleman & Goggin, P.C**  
(King of Prussia, PA)



**Daryl L. Zaslow**  
Shareholder  
**Eichen Crutchlow Zaslow, LLP (Edison, NJ)**

- Examining criteria for when should genetic testing be performed?
  - » What type of tests should be performed?
- Exploring potential consequences of failure to diagnose genetic condition in utero
- Analyzing the increasing amount of scientific literature suggesting that genetics may play a much larger role in abnormalities at birth than previously thought
  - » How do plaintiff-side attorneys view this development?

12:00 | Networking Luncheon

1:00

## The Defense and Plaintiff's Perspective on Early Settlement of Birth Injury Cases



**James Solomon Haliczzer**  
Co-Founder and  
Managing Partner  
**Haliczer, James Solomon (Fort Lauderdale, FL)**



**Joseph S. Picchi**  
Shareholder  
**Galloway Lucchese  
Everson & Picchi**  
(Pleasant Hill, CA)



**Norman D. Tucker**  
Of Counsel  
**Sommers Schwartz  
PC (Southfield, MI)**



**James Kjar**  
Senior Partner  
**Kjar, McKenna &  
Stockalper, LLP**  
(El Segundo, CA)

- Developing an effective pre-suit process to resolve birth injury liabilities
- Examining hospital training and policies for a real pre-suit approach to early settlement
- Addressing the internal hospital structure and staff required
- Exploring cost savings and lower settlement numbers
- Analyzing the role of candor conferences and saying that one is sorry

2:00

## Exploring the Best Use of Mediation Process to More Effectively Resolve Claims



**Gary M. Cohen**  
Partner  
**Grossman Roth  
Yaffa Cohen**  
(Boca Raton, Florida)



**Walter J. Price, III**  
Partner  
**Clark, May, Price,  
Lawley, Duncan  
& Paul, LLC**  
(Birmingham, AL)



**John S. Moore**  
Director, Strategic Claim  
Unit, Specialty Claim  
**CNA (Richmond, VA)**



**Amy Hathaway**  
Facilitator  
**Amy Hathaway, PLC**  
(Southfield, MI)

Given that birth injuries are among the most expensive claims in the medical malpractice arena, effective management and resolution of these claims is of crucial importance to both sides. During this session, our mediation experts will examine various strategies for mediating birth injury cases, including hurdles that appear along the way as well as what each side could be doing better to more effectively resolve claims.

3:00

## Effective Strategies for Evaluating a Patient's Damages and Finding Common Ground for Life Care Plans



**Ryan P. Chase**  
Partner  
**Ross Feller Casey,  
LLP (Philadelphia, PA)**



**Thomas Geroulo**  
Partner  
**Bardsley, Benedict  
+ Cholden, LLP**  
(Scranton, PA)



**Susan L. Combs**  
**Combs & Company (New York, NY)**

- Exploring ways of resolving differences on damages
  - » From a plaintiff's attorney perspective, how is a damage assessment built?
  - » From a defense counsel's perspective, how to evaluate it?
- Evaluating factors that go into a reasonable life care plan directed at a therapy, treatment, or an accommodation which the injured party may truly need
- Identifying common challenges with life care plans presented by plaintiffs
- Exploring ways of finding a compromise
- The plaintiff and defense debate on the collateral source rule

4:00 Conference Ends

## → 3 Ways to Register



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# OBSTETRIC MALPRACTICE CLAIMS

June 26–27, 2019

The Union League, Philadelphia, PA

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*See details on page 4*



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- › Reducing Obstetrics Malpractice Claims
- › Examining the Current State of the Cranial Compression Ischemic Encephalopathy Argument
- › Evaluating the Pros and Cons of Mother and Child Genetic Testing
- › Exploring the Best Use of Mediation Process
- › Evaluating Damages and Coming to Accord in Life Care Plans