

## Family wins \$8-million from Toronto General Hospital almost three decades after 'negligent' staff damaged baby's brain

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Tristin Hopper

Nearly three decades after their baby was brain damaged by negligent staff at Toronto General Hospital, an Israeli family has won more than \$8-million in compensation from the hospital's operators.

On January 10, 1984, recent Canadian immigrant Atalyah Gutbir gave birth to a daughter Zmora. Emerging from the womb blue, silent and in critical condition - her arrival prompted panic in the delivery room. Deprived of oxygen in the womb for more than three hours, Zmora had suffered permanent brain damage.

According to a 2010 jury ruling, Zmora's condition was caused by the failure of hospital staff to monitor the baby's heartbeat during Atalyah's labour. Detection "would have allowed an earlier intervention, (birth of the baby), which could have prevented permanent brain injury."

Last week, an Ontario court dismissed an appeal by the University Health Network, the operators of Toronto General. The Network has been ordered to pay \$5,500,000 in compensation, as well as \$625,000 to each of Zmora's parents.

All the money is to be used to care for the now 28-year-old Zmora who suffers from cerebral palsy. She requires assistance dressing herself, eating and using the bathroom.

"[The money] will have to take care of her for the rest of her life," said the family's lawyer Richard Sommers. Based in Toronto, Mr. Sommers specializes in cases of medical malpractice, particularly babies brain-damaged at birth. He took up the Gutbir's case without pay.

Atalyah and her husband Avraham moved back to Israel three months after the birth, primarily because of the daunting new task of caring for a brain-damaged baby. "They had no relatives in Canada, and they needed a family support system," said Mr. Sommers.

It was not until Zmora's 16th birthday that the family decided to pursue legal recourse. According to Mr. Sommers, Atalyah and Avraham did it to ensure she would receive continuing care after they were gone.

Although the details of Zmora's immediate post-natal condition were preserved by records at the hospital of Sick Children, by the time the Gutbirs mounted their case, all the Toronto General records relating to Zmora's birth had been destroyed. The record-destruction was a breach of the hospital's own criteria, which held that they should have been preserved until at least 2012. Nevertheless, according to court records, there is no evidence that the records were destroyed in order to "influence the litigation."

Ultimately, the entire case hinged on a single transfer note that accompanied the baby as it left the downtown hospital. Tellingly, the transfer note has nothing written in the box labeled "Abnormalities of Labour" or "Signs of Fetal Distress".

"Without that, it's very, very difficult to see how the case would have been successful," said Mr. Sommers.