

\$20 Million Med Mal Verdict Awarded in Montgomery County

Asher Hawkins
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A Montgomery County jury has awarded \$20 million to a blind 6-year-old boy whose infant-care doctors allegedly failed to properly treat an easily curable retinal condition common in premature babies.

Nearly \$17.7 million of the unanimous jury's verdict in Egan v. Koller was for non-economic damages. Thomas C. Egan is the guardian ad litem for Emmitt Lee, the minor plaintiff in the case.

Ninety-five percent of the liability found by the jury was apportioned to Abington Memorial Hospital and the staff neonatologist who treated the boy when he was born.

Attorneys involved in the case said they believe the award is among the highest ever returned by a Montgomery County jury in a personal injury action.

Statistics maintained by the Pennsylvania Supreme Court show that between January 2000 and the end of last year, no Montgomery County jury awarded a medical malpractice plaintiff more than \$5 million. In 2005, all med mal cases tried in that common pleas system resulted in defense verdicts.

Richard Kolb of White & Williams in Philadelphia, who was lead counsel for the hospital and neonatologist-defendant Ara Moomjian, said that he plans to raise "some strong appellate issues" in impending post-trial motions. Kolb declined to explain what those issues are.

According to lead plaintiff attorney Shanin Specter of Kline & Specter in Philadelphia, the \$15 million demand in Egan had been met with an ultimately rejected global settlement offer for \$5 million from the matter's four groups of defendants.

Specter tried the case with fellow firm members Donald Matusow and Jennifer Russell.

According to court papers, Emmitt was a highly premature infant, weighing less than 2 pounds upon his June 2000 birth. His condition put him at risk for "retinopathy of prematurity," an immaturity of the retina that can result in blindness if left untreated but is otherwise typically curable.

Lee's family claimed in court papers that while his retinopathy was known to Moomjian and treating pediatric ophthalmologist Harold Koller - also named as a defendant in the action - Emmitt was discharged before hospital staff scheduled a follow-up appointment with his parents, allegedly violating standard pediatric guidelines.

In addition to the hospital, Moomjian and Koller, also named as defendants in Egan were Koller's practice group, Huntingdon Valley Eye Care Consultants Inc.; and treating pediatricians Erik Lamberth and Thomas Kennedy.

The hospital and Moomjian wrote in court papers that before Emmitt and his parents left the hospital, Moomjian had stressed to Emmitt's parents the importance of seeking an eye-care follow-up visit soon after they were discharged.

The pediatrician-defendants, represented by William Pugh IV of Kane Pugh Knoell Troy & Kramer in Norristown, stressed in court papers that the responsibility for ensuring that Emmitt and his family did the eye-care follow-ups lay with the hospital's neonatology department.

Huntingdon Valley Eye Care, which was defended by T. Kevin FitzPatrick of Marshall Dennehey Warner Coleman & Goggin in King of Prussia, claimed in court papers that it had no way of tracking Emmitt's status, as he was not officially a patient upon discharge from Abington Memorial.

And Koller, represented individually by George Young of Young & McGilvery in Philadelphia, called attention in court papers to the brevity of his contact with Emmitt's family prior to discharge.

"There really was no medical defense to" the plaintiffs' claims, Young said in an interview Friday. "Of necessity, the defendants had to be in conflict with each other. It was sort of like a perfect storm."

Ultimately, the attorneys said, the Egan jury concluded that Koller and Lamberth had not been negligent.

With respect to the other defendants, they said, liability for Abington Memorial was apportioned at 60 percent; for Moomjian, at 35 percent; for Huntingdon Valley Eye Care, at 4 percent; and for pediatrician Kennedy, at 1 percent.

Besides the non-economic damages, the award included \$1 million in future lost earnings and \$1.325 million in future life care costs.

FitzPatrick said Huntingdon Valley Eye Care is "relieved that Dr. Koller was found not negligent." He declined to comment further on the verdict.

Pugh said that "if there's an upside for the defense, it's that this boy will be taken care of."

The trial started on Oct. 16 before Montgomery County Common Pleas Judge Thomas C. Branca.

On Oct. 26, according to the attorneys, Moomjian fell ill and needed emergency surgery. Defense attorney Kolb said that over his objection, Branca allowed an out-of-town expert witness to testify while Moomjian was away from the courtroom.

The trial then went on a break beginning Oct. 27 and lasting through the week of Oct. 30, the attorneys said, and resumed on Nov. 6.

"This break was something unique," said Pugh, who added that Egan marked his last trial after a 44-year career. "I had never seen a trial interrupted for six days and then resume."

Before closing arguments on Nov. 8, the lawyers said, counsel for the hospital and Moomjian stood up in open court, with the jury present, and admitted their clients' liability.

"The feeling [with that strategy] is that the jury will look more favorably on a party that accepts responsibility," Kolb said.

"It was a very strong case against Abington [Memorial] and Dr. Moomjian," plaintiffs' attorney Specter said. "I thought they might admit liability before the trial started. It was a little surprising that they admitted liability at the end of the trial, but I guess they felt the trial hadn't gone well."

The Egan jurors deliberated for roughly seven hours last Thursday before returning their unanimous verdict. The lawyers said they did not have a chance to speak with the jurors following the trial.

According to the attorneys, Branca decided to charge the jurors before the closing arguments were delivered.

"I've done it a couple times, and it's much better," Specter said of that arrangement. "The lawyer doesn't have to guess what the judge is going to say."

"I think in a lot of cases it makes some sense," Kolb said. "Giving the charge [before closings] gives the jurors a framework for hearing the closings."

Kolb did caution that if the judge is expected to comment on the evidence during his charge, a pre-closings charge might not be appropriate.

Young said that a pre-closing charge allows the jurors to "know what the law is before [the lawyers] get up and close - I liked it."

Specter said that a key part of the plaintiffs' case was Emmitt's appearance on the witness stand.

He said that partner Matusow, who has been Emmitt's lawyer for the past five years, knew once the case was filed that there was a chance Emmitt would have to go through the uncomfortable process of being examined in open court without being able to see whom he was talking to.

As Emmitt grew up, Specter said, Matusow visited the boy regularly, taking him on trips to the zoo and other outings. When Matusow examined Emmitt during the trial, Specter said, it was "like an uncle talking to his nephew."

Emmitt lives in Richland Township in Bucks County, according to Specter; his mother is a cook and his father is a stonemason. Having completed kindergarten at his local public school, his school district will pay for him to attend a special school for the blind.

"Given the track record in medical malpractice cases tried in the suburbs over the last several years, I think there has developed a sense that health care providers have a virtual immunity in suburban Philadelphia," Specter said. "I think that this verdict was an important first step in pushing back the pendulum so that people who are injured from bad care will have a right to recover."

Defense attorney Young said he believes the trial in Egan was emotionally draining for both the attorneys and the jurors.

"How do you value sight?" he asked. "A 6-year-old boy's going to be blind for the rest of his life. That's what was so difficult about this case."