

Third Operation is No Charm as Hospital is hit for \$15M

By Dave Racher
Staff Writer
JUNE 14, 1999



CASE TYPE: medical malpractice

CASE: Sears v. Children's Hospital of Philadelphia, May Term 1995, No. 1248 (Ct. Common Pleas, Philadelphia)

PLAINTIFF'S ATTORNEYS: Thomas R. Kline of Philadelphia's Kline & Specter P.C.

DEFENSE ATTORNEYS: Allan H. Starr, of Philadelphia's White & Williams; Kenwynn Dougherty, of Philadelphia's Post & Schell; and, for Dr. David R. Jobs, Peter Hoffman, of Philadelphia's McKissick & Hoffman

JURY VERDICT: \$15.23 million; defense verdict for Dr. Jobs

ALEC SEARS was born in April 1992 with congenital heart defect that, if left uncorrected, would have led to his death in infancy, said plaintiff's attorney Thomas R. Kline. Corrective surgery for Alec's heart consisted of a series of three operations, Mr. Kline said. Alec received the first of these operations at Children's Hospital of Philadelphia in April 1992 and the second in October 1992. Each was successful, leaving Alec healthy enough to reach the standard development milestones, Mr. Kline added.

The third surgery, however, was "catastrophic," he said. The surgery required that Alec be put under deep hypothermic arrest, a process in which the body is cooled down to about 63 degrees to stop the heart so that the open-heart operation can be performed. This cooling process, said Mr. Kline, "should take at least 20 minutes. In this case, they did it in nine minutes. As a result, while the baby's heart condition was corrected, when he woke up, he had sustained severe brain damage."

Alec, now 7, cannot walk, talk, see, or sit up, and he has to be fed with a bottle.

"He is totally dependent," Mr. Kline added, and will require lifetime care. On his behalf, Alec's parents sued Children's Hospital, the surgeon, Dr. Marshall Jacobs, and the anesthesiologist, Dr. David Jobs, charging that their negligence caused Alec's brain damage.

The hospital personnel and Dr. Marshall, Mr. Kline said, deviated from the proper standard of care in cooling Alec down so quickly. This quick cooling meant that Alec's brain was "unevenly cooled," Mr. Kline said, and caused "watershed infarcts," a stroke-like condition, in his brain.

The defendants contended that the quick cooling was an acceptable standard of care and that Alec's neurological problems were not linked to cooling.

But on May 21, a Philadelphia jury awarded Alec \$15 million and his parents \$225,000. The jury found Dr. Jacobs 60% and the hospital 40% liable. The jury also found Dr. Jobs negligent but determined that his negligence did not cause the injury and awarded no damages.

An additional \$4.24 million in delay damages will be added to the verdict, Mr. Kline said.