

The Legal Intelligencer

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A \$6.2 million settlement has been reached in a Lehigh County case brought by the family of a 9-year-old Allentown boy who allegedly suffered extensive and permanent brain damage after an August 2005 surgery to remove his tonsils and adenoids.

According to court papers in *Bates v. Sacred Heart Hospital*, Jahmir Bates can no longer walk, talk, see, eat or control his limbs as a result of his injuries.

The Bateses alleged that Sacred Heart staff failed to make note of Jahmir's severe sleep apnea when prepping him for surgery. They claimed that while in the operating room, Jahmir began to experience breathing difficulties and soon began to go into respiratory failure, a chain of events that his doctors did not immediately diagnose, according to court papers.

According to plaintiffs' lawyer [Thomas Kline](#) of Kline & Specter in Philadelphia, the global settlement as to the matter's five sets of defendants includes all the applicable insurance coverages related to the case, plus a \$200,000 cash contribution from the hospital's parent company.

Kline, who was assisted in the matter by [Amy Guth](#), said that the hospital - which, according to various financial reports, had a roughly \$10 million operating loss as of this fall - lacked excess liability coverage at the time of Jahmir's surgery.

Kline said that in addition to its monetary contributions to the settlement, the hospital has also agreed to changes to its policies on anesthesiology and pediatric emergencies that the Bateses feel could help prevent future injuries to patients like Jahmir.

But Kline said that due to the relatively limited amount of applicable insurance coverage, his client, who needs round-the-clock care and lives with his unemployed grandmother, faces an uncertain financial future.

"I think that the financial guardian is going to have to make prudent and careful choices to ensure that [Jahmir's] money is invested in a fashion that will provide for some reasonable measure of care," Kline said.

According to court papers, the Bateses claimed that Jahmir's treating ear-nose-throat surgeon, defendant Robert Dedio, and anesthesiologist, defendant Pamela Durning, began operating on Jahmir without first examining him and learning of his history of sleep apnea.

Also named as defendants in Bates were David Kohan, who treated Jahmir post-surgery and allegedly failed to immediately realize that the boy was suffering from pulmonary edema; and Teresa Chamberlin, the registered nurse involved in his post-surgery care.

In court papers, the individual defendants generally denied liability. The hospital noted that although Durning was an independent physician temporarily employed at Sacred Heart in August 2005 while the hospital searched for permanent anesthesiologists, Durning was fully qualified and experienced in anesthetizing children.

The trial was to have started Monday before Lehigh County Common Pleas Judge Alan M. Black.

Kline and Dedio's attorney, Gregory Nesbitt of Kilcoyne & Nesbitt in Plymouth Meeting, said that the exact amounts contributed to the settlement by each defense group will remain confidential.

Both acknowledged that Black had been instrumental in the parties' settlement talks.

Kline said that Black "pressed the various defendants and their insurers to understand that anything less than the tenderings of the full coverages in the case was untenable."

Durning's attorney in the matter, James Prahl of Margolis Edelstein in Philadelphia, declined to comment on the settlement. So did Candy Barr Heimbach of Marshall Dennehey Warner Coleman & Goggin in Bethlehem, lead defense counsel for Sacred Heart in Bates.

Chamberlin's attorney, Dean Murtagh of German Gallagher & Murtagh in Philadelphia, did not immediately respond to a call seeking comment. Nor did Kevin Wright of Kevin H. Wright & Associates in Blue Bell, who defended Kohan.

Kline said that several of the physician-defendants also hired personal counsel, in addition to the attorneys provided them through their insurance carriers.

He said that Dedio was personally represented by Thomas Wallitsch, the former Lehigh County common pleas judge, while Chamberlin retained for her personal representation Howard Stevens of Stevens & Johnson in Allentown.

The settlement negotiations also involved extensive discussions between plaintiffs' attorneys, Heimbach and Sacred Heart general counsel Stephen Lanshe, according to Kline.

"Everyone who worked [on this litigation] understood that the case was underinsured for the injury and that the hospital had a serious financial situation which made it impossible for it to contribute any significant funds to the settlement," he said.

He said that published financial reports concerning Sacred Heart's bond ratings shed light on the hospital's monetary troubles.

Among the policy changes the hospital has agreed to are increased training for relevant staff on how to handle pediatric emergencies and a promise to have a permanent, full-time anesthesiology staff in place at Sacred Heart within the next year.

"The policies and procedures go to the heart of what went wrong in this case," Kline said.