

# The Legal Intelligencer

By Asher Hawkins

June 3, 2004

Three Philadelphia lawyers obtained the largest medical malpractice verdict in Allegheny County history Tuesday on behalf of a 4-year-old boy suffering from cerebral palsy.

The jury in *Briggs v. University of Pittsburgh Medical Center Shadyside Hospital* awarded the \$7.8 million verdict to a Westmoreland County child whose cerebral palsy was allegedly caused by negligence on the part of doctors present at his birth, according to plaintiff's attorney [Shanin Specter](#) of Kline & Specter in Philadelphia.

The Allegheny common pleas prothonotary's office confirmed that the verdict was the largest med mal award ever returned by a jury in that county.

In *Briggs*, the parents of plaintiff Ryan Briggs alleged that improper administration of neonatal resuscitation by doctors present during Ryan's birth led to his cerebral palsy, court papers state.

When Ryan was born, he was not breathing and his heart was not beating, according to Specter, who was assisted in the case by [Andrew Youman](#) and [Lisa Dagostino](#), also of Kline & Specter.

After other resuscitation techniques had failed, Specter said, doctor defendants Feyisitan Adebajo and Daniel Lapp failed to give Ryan epinephrine - the standard medical procedure in such a situation.

Specter said that Adebajo and Lapp, both family practice physicians, testified during trial that they had not read hospital policies that require administration of epinephrine after initial neonatal resuscitation methods are not fruitful.

"They were unprepared for the situation," Specter said of the two doctor defendants, adding that Ryan's heart did not start beating until nine minutes after he was born.

Because of his cerebral palsy, Ryan cannot walk, crawl or roll over, according to his pretrial statement. Additionally, he lacks control of his bowels and bladder, cannot speak and has to be fed through a tube.

For past and future medical expenses, including 24-hour-a-day nursing care, Ryan's family asked in their pretrial statement for more than \$25 million in economic damages.

Specter, who declined to comment on any pretrial settlement negotiations in the case, said that he expects to file for delay damages of roughly \$646,000.

Youman, Specter's co-counsel, said that the 12-member jury reached its verdict after three weeks and one day of trial. The case was bifurcated between liability and damages, he said, with the jury determining the defendants' liability on May 26 after eight hours of deliberations and deciding as to damages Tuesday after roughly one hour of deliberations.

According to the jury's liability-phase verdict slip, Lapp, Adebajo and the hospital were all found negligent, with their negligence determined to be a substantial factor in causing harm to Ryan. The jury attributed 39 percent of the causal negligence to Lapp, 37 percent to Adebajo and 24 percent to the hospital.

In its damages-phase verdict slip, dated June 1, the jury awarded Ryan \$7.8 million in damages without breaking that figure down into separate categories.

Specter said that Ryan's experts at trial included registered nurse Patricia Costantini, a life-care planner with Costantini Rehab Inc. in Pittsburgh, and Robert McDowell Jr., a pediatrician at Children's National Medical Center in Washington, D.C.

Attorney Richard Federowicz of Dickey McCamey & Chilcote in Pittsburgh, who represented all the defendants, did not immediately respond to a call seeking comment.

According to the defendants' pretrial statement, Ryan's resuscitation met the standard of care and defense experts determined that Ryan's brain damage was likely caused by a strep infection found in his mother's placenta during her pregnancy.

According to Eric Feder, chief deputy prothonotary for Allegheny common pleas, the county's largest med mal verdict had previously been an October 1998 award of \$6.4 million.

A report on medical malpractice jury verdicts released by the Administrative Office of Pennsylvania Courts in March indicates that plaintiff's verdicts in med mal cases are much harder to come by in Allegheny County than in Philadelphia: Of the 147 med mal cases tried in Allegheny County from January 2000 to July 2003, 81 percent resulted in defense verdicts.

Of those cases, according to Feder, only one, a May 2000 award for just under \$5.3 million, involved damages of more than \$5 million.

Out of 407 med mal cases tried in Philadelphia during the same period, the AOPC report states, roughly 59 percent ended in defense verdicts.

Things in Allegheny County may be changing, however.

In addition to the unusually large award in Briggs on Tuesday, Feder said, an Allegheny County jury returned a \$5.5 million med mal verdict last month.