

Jury Awards \$18.5 Mil. in Transplant Case

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A 12-year-old girl who by age 21 will have only a 50 percent chance of survival has secured an \$18 million award from a Philadelphia jury after successfully claiming that two doctors could have prevented the heart transplant she underwent at age 6.

An additional \$499,000 was awarded to plaintiff Kelsey Keen's parents in the suit against St. Christopher's Hospital for Children and two of its physicians, attorneys Thomas Kline and Robert Ross of Kline & Specter said.

According to Kline and Ross, Friday's substantial verdict from a unanimous 12-member jury was likely attributable to Keen's future medical costs, which the attorneys said could reach eight figures.

In court papers, the plaintiffs alleged that defendants Sabina Yum, M.D., and Mary C. Sokoloski, M.D., failed to timely consult a pediatric cardiac surgeon and failed to perform surgery on two benign tumors in Keen's heart.

The plaintiffs' pretrial memorandum states that on Sept. 17, 1997, Keen presented to her pediatrician with a sudden onset of stroke symptoms. Kline and Ross said that in the middle of the night on Sept. 16, the then-6-year-old woke her parents because she had right-sided weakness that included facial drooping and a dragging leg.

Keen's parents took her to their pediatrician in the early-morning hours of the 17th, and the doctor recognized stroke symptoms and sent the child to St. Christopher's, the attorneys said.

From the hospital emergency room, Keen was admitted to neurology, where she was treated by Yum, the memorandum states. Ross said Yum consulted with Sokoloski, a cardiologist, because Yum believed Keen had suffered a stroke and wanted to determine its cause.

The next day, an invasive diagnostic test revealed a floppy mass of tissue - that is, a tumor - in Keen's heart, the memorandum states. The tumor was located in the child's mitral valve and extended into the left atrium, the document states.

Ross said that neither doctor at the time discovered a second tumor in Keen's left ventricle. The doctors had decided that a piece of the mitral valve tumor broke free and traveled to Keen's brain, causing the stroke, Ross said.

He told The Legal that when the doctors diagnosed a rogue piece of tumor, they agreed that Keen would need surgery to remove the mitral valve growth.

But Ross said the physicians believed Keen had not recovered sufficiently from her stroke to undergo surgery at that point in time. In addition, he said the doctors had not consulted with a cardiac surgeon in making this assessment.

On Sept. 24, a diagnostic test revealed that the left atrial mass had increased in size and shifted in position to the outflow tract of Keen's left ventricle, the plaintiffs' pretrial memorandum states. This test also showed an existing left ventricular mass, the document states.

"Neither Dr. Yum nor Dr. Sokoloski obtained a consultation by a cardiothoracic surgeon, nor did they schedule Kelsey for surgery to remove the tumors," the plaintiffs alleged in the memorandum.

Ross and Kline said that the movement of the atrial mass was discovered on a Wednesday night, and that the physicians recommended surgery on either the following Sunday or Monday to address the tumors.

But Keen's parents decided to transfer their daughter to the Children's Hospital of Philadelphia, where she was admitted to the intensive care unit on Sept. 26, the memorandum states.

Ross said upon arrival at the Children's Hospital, a surgeon evaluated Keen and determined that a diagnostic test was required. However, because the child had a full stomach, the test would have to wait until the 27th, Ross said.

According to the memorandum, on the morning of Sept. 27, Keen had a seizure that was followed by cardiac arrest and stroke. A cardiac catheterization showed zero motion in her left ventricle, the document states.

During a subsequent emergency surgery, two tumors were removed from Keen's left coronary artery, which is the artery that moves blood throughout the body, Ross said. The plaintiffs' pretrial memorandum states that the mitral valve mass was also removed during this surgery.

After surgery, Keen's heart did not work on its own, Ross said. Machines did the work for the child's heart until she received a donor heart on Oct. 7, 1997, the pretrial memorandum states.

Kline said Keen would require anti-rejection medication each day and hospitalization and diagnostic testing on a yearly basis for the remainder of her life. The attorney said that, statistically, the child's 10-year survival rate is 60 percent, and that her chances of living would decrease two percent each year thereafter.

Additionally, Kline said Keen suffers significant neurological deficits that make both gross and fine motor skills difficult for her.

"However, Keen is not a catastrophically brain-injured child like you see in a lot of these cases," Kline said. "She testified on the stand . . . about the things that she can and cannot do, and how she manages her own medications on a daily basis and lives and wants to succeed as a normal child."

But the attorney emphasized that Keen is not a normal child. He said she cannot drink from a glass with regular ice cubes, or drink tap water, or pet a cat because of the potential for infection and subsequent rejection of her heart.

Kline said the defense took the position that surgery was not emergent at any time during Keen's hospitalization at St. Christopher's. But he said a pivotal point at trial came when he confronted the defense's cardiac surgery expert with a 2002 pediatric cardiology journal article written by a St. Christopher's cardiology fellow.

The article - which was about Keen's case - indicated that in that doctor's estimation, emergency surgery was required when diagnostic testing showed that the mitral valve tumor had moved into the left ventricle, and the left ventricle mass was discovered, Kline said.

Kline said the jury simply did not buy the defense's argument after learning about the cardiology fellow's article.

The defense also contended at trial that they had in fact planned to perform surgery, and that they were told that Keen's parents intended to move her to the Children's Hospital, Kline said.

According to Kline, the damages included \$18 million for Keen's future medical costs, pain and suffering; disfigurement and loss of life's pleasures. The \$499,000 was awarded to her parents for medical costs that had already been incurred.

But Ross and Kline said that charges for Keen's medical care to date have topped \$4 million. They explained that because only \$499,000 has actually been paid thus far, that was the amount the attorneys were permitted to put into evidence.

Judge Mark I. Bernstein presided over the two-week trial. The jury deliberated for two days before returning with its verdict on Friday afternoon.

Kline said the CAT Fund had offered \$1 million at the beginning of the trial, and that the offer did not increase after that time. Three layers of CAT Fund coverage are available and a recovery from a large excess insurance policy is likely, he said.

Defense attorney Ernest Bernabei III of Harvey Pennington Cabot Griffith & Renneisen said he could not comment except to say that he represented two fine physicians, and that the defendants had not yet decided whether they would file post-trial motions.

The case is captioned Keen v. St. Christopher's Hospital for Children.

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