

Despite Downs Syndrome, Jury Awards Brain-Damaged Child \$15 Million

By April White
Of the Legal Staff
PHILADELPHIA, NOVEMBER 22, 1999

The Legal Intelligencer

Joey Borkowski, who was born with Downs syndrome and injured by an incorrectly performed heart surgery has a right to recover for the loss of his life's pleasures, despite his already limited horizons, a Philadelphia Court of Common Pleas jury decided Friday.



KLINE: THIRD BIG VERDICT THIS YEAR

The jury returned a \$15 million medical malpractice verdict against Dr. Pierreantonio Russo, a former surgeon at St. Christopher's Hospital for Children who now holds a teaching position at Thomas Jefferson University.

"Despite [Borkowski's] limited horizons in life, the jury in this case understood that the loss of life's pleasures is equally important to a child with Down's syndrome as it would be to a child with a 150 IQ," plaintiff's attorney [Thomas R. Kline](#) of Kline Specter said.

Borkowski was born with Down's syndrome, a congenital mental deficiency, Feb. 24, 1992. As a result of the syndrome, Borkowski suffered from a correctable heart defect. Three small holes in the wall of his heart—an atrial septal defect (ASD), a ventricular septal defect (VSD) and a patent ductus arteriosus (PDA)—needed to be closed surgically.

On Sept. 22, 1992, at the age of seven months, Borkowski underwent surgery at St. Christopher's Hospital for Children to have his heart repaired.

According to Kline, the evidence clearly showed that one of the holes, ASD, remained open after the surgery.

Russo's surgical notes did not include a description of the third closure, Kline said.

Four days after the surgery, during an attempt to remove two right atrial lines inserted into the heart as part of the procedure, the remaining hole caused an embolus to form.

When the embolus reached Borkowski's brain, his blood pressure plummeted, his heart rate slowed, and the percent of oxygen in his blood dropped from 100 percent to a dangerously low 88 percent, Kline said.

Within 24 hours, the child's neurologic status completely changed, Kline said. Borkowski developed seizures and the fixed stare known as doll's eyes. The lack of oxygen rendered him permanently brain-injured; he now suffers from cerebral palsy and blindness.

"Today, he cannot see, he cannot walk, he cannot talk and...unlike Downs syndrome children and adults who are functioning members of society, [Borkowski] is a completely dependent brain-injured child," Kline said.

The jury deliberated for three-and-a-half hours before returning the \$15 million verdict late in the afternoon.

"The jury was impressed, I believe that the hole was present on a pre-operative test—a cardiac catheterization—and the surgeon himself noted that the hole was present. And on a post-operative echocardiogram, the hole was still there," Kline said.

Russo's attorney, Richard Galli of Galli, Reilly & Stellato, could not be reached for comment late Friday afternoon.

According to Kline, the defense called a series of medical experts including a cardiac surgeon, a pediatric cardiac surgeon, a pediatric neurologist, a pediatric neuroradiologist and a pediatric anesthesiologist, who put forward the theory that the injury occurred during the second trimester of pregnancy.

The defense also relied on the testimony of John Murphy, a pediatric cardiologist, who told the jury that the echocardiogram taken following surgery showed evidence of a suture knot near the still-open ASD.

Judge Norman Ackerman, who presided over the case, allowed Murphy's testimony over Kline's *Frye*-based objection.

On cross-examination, Kline said, Murphy admitted that it has not been established in medical literature that it is possible to identify a suture stitch on an echocardiogram.

For Kline, the case, his third eight-figure personal-injury verdict this year and the second to involve a pediatric cardiac heart surgery, was a special challenge.

"I have a deep belief that persons who already have existing handicaps have the same rights to recovery as those who were healthy before the injury," he said.

* This article is republished with permission from American Lawyer Media, Inc. Copyright 1999. ALM PROPERTIES, Inc. All Rights Reserved. Further Duplication Without Permission is Prohibited.