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Erie jury rules against Hamot in record \$21.6 million verdict

A jury on Wednesday returned the largest verdict in Erie County history -- a \$21.6 million award against the former Hamot Medical Center over the botched delivery of a boy in November 2006.

Ja'Kareon Graham, now 41/2 years old, suffered lack of oxygen during a delivery in which he shifted to the breech position, his mother claimed at trial.

The obstetrician and midwife performed an emergency cesarean section, and Ja'Kareon was born with cerebral palsy, according to court records.

The jury found Hamot -- now known as UPMC Hamot -- 100 percent negligent, and attributed no negligence to the other defendants, Mark E. Townsend, M.D., and midwife Christine Hornstein.

The jury -- in a verdict nearly five times as high as what had been the county's largest jury award in a civil case -- determined Hamot's nursing staff was at fault for failing to properly monitor fetal heart rates and other vital signs, according to court records.

As a result, Hamot failed to deliver Ja'Kareon soon enough and he did not get enough oxygen through his umbilical cord, claimed his mother, Tina Graham.

Townsend and Hornstein were "completely unprepared for delivery," Tina Graham's lawyers said in court records, and "all defendants completely failed to timely recognize and react to non-reassuring signs."

Hamot said its staff acted appropriately, and that the "hospital met all applicable standards of care," Hamot's lawyer said in court records, which included a report from the hospital's medical expert. That expert cited Tina Graham's weight -- 322 pounds, according to the report -- as causing monitoring difficulties during the labor and delivery, and the expert said Hamot's staff "prepared for Ms. Graham's cesarean in a timely fashion.

Tina Graham sued in 2008 individually and on behalf of Ja'Kareon, who was born with his twin sister, who was delivered first and was unharmed. Their birth, on Nov. 13, 2006, and the filing of the suit in 2008 preceded Hamot's affiliation with UPMC earlier this year.

The jury deliberated four hours and eight minutes before returning the verdict at 3:18 p.m. on Wednesday in the courtroom of Erie County President Judge Ernest J. DiSantis Jr. Testimony in the trial started April 11.

The jury's award totaled \$21,573,993.10. Most -- \$19,588,217 -- is to provide for Ja'Kareon's future medical expenses, through 2081, in amounts ranging from \$465,998 to \$117,705 a year, according to the verdict slip.

The rest of the award covers his past medical expenses, or \$1,424,314.10, and lost earning capacity, or \$561,462. The jury awarded no damages for Ja'Kareon's past and future pain and suffering and loss of enjoyment of life.

Ja'Kareon is fed through a tube, cannot utter intelligible words and needs skilled nursing care, his lawyers said in court records. Ja'Kareon was present during the trial and sat on the lap of his mother, who works as a nurses' aide and was 26 when she gave birth to the twins.

Ja'Kareon "remains completely dependent on others for basic activities of daily living and mobility," the Grahams' lawyers said in court records.

Before Wednesday, the largest jury verdict in Erie County history came in December 2002, in a medical-malpractice case in which an infant died during delivery, court records show.

That jury awarded the infant's parents \$4.2 million, with the delivering physician the lone defendant. The award was later reduced to \$1.2 million.

The verdict in the Graham case also dwarfs what is believed to be one of the county's largest civil settlements, which, because they are often sealed, are harder to track than jury awards.

In 2003, Hamot and a group of physicians agreed to pay a Lake City couple and their lawyers \$6.5 million to settle a claim that a flawed delivery left the couple's son disabled.

The plaintiff's law firm in that case was Kline & Specter, of Philadelphia -- the same firm that won the verdict in the Graham case. The lead lawyer for Tina Graham and her son was Shanin Specter, son of former U.S. Sen. Arlen Specter.

The lawyer for Hamot was David R. Johnson, of Pittsburgh. He declined to comment after the verdict. The lawyers for Townsend and Hornstein, the other defendants, were Steven Forry and Shannon Poliziani, of Pittsburgh.

In his pretrial statement, Johnson defended Hamot's handling of Ja'Kareon's birth, arguing that "credible evidence at trial will establish that the hospital is not responsible in any manner whatsoever for the conditions that developed in Ja'Kareon Graham."

On behalf of Hamot, Johnson also questioned the amount of money Tina Graham demanded in damages.

"The evidence will establish that the damages being sought by the plaintiff are excessive, as is the projection of Ja'Kareon's life expectancy," Johnson said in the pretrial statement. "Unfortunately, due to Ja'Kareon's multiple morbidities, his anticipated life is quite short."

The Grahams' lawyers, in their pretrial memorandum, said Ja'Kareon has "a near normal life expectancy with continued good care."

The lawyers said Hamot and the other defendants never offered to settle the case. The lawyers also focused on Ja'Kareon's injuries in their pretrial memorandum, in which they said:

"There is no minimizing the extent of Ja'Kareon Graham's loss of enjoyment of life and loss of life's pleasures. He will never be a 'normal' little boy. He will never play Little League or read a book.

"He will never have a girlfriend, go to a prom or graduate from high school. He will never walk or run. His brain will never allow him to process visual images in a way that allows him to make sense.

"In short, Ja'Kareon Graham's intangible damages are very significant and, alone, could merit an eight-figure jury award."