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Jury Awards \$42.9 Mil. in Premature Birth Case

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A Philadelphia jury has handed up a \$42.9 million award in a medical malpractice case stemming from the premature birth of a child who suffered multiple physical and cognitive impairments as a result.

The verdict in *Harris v. Chestnut Hill Hospital* was handed up in Judge Mark I. Bernstein's courtroom in the Philadelphia Court of Common Pleas on Friday. The verdict was awarded for the future medical expenses of Phinees Fortson, who was born in 2007 at nearly 25 weeks' gestation.

According to the plaintiffs' court papers, doctors treating the child's mother failed to admit her to the hospital in a timely fashion and failed to administer IV steroids that would have protected her baby's brain and respiratory development.

The defendants in the case included Dr. Doris Chou, Dr. Kwandaa Roberts, Chestnut Hill Hospital and the Hospital of the University of Pennsylvania (HUP).

The jury found Chou, an employee of HUP who saw the mother while working in Chestnut Hill

Hospital's department of maternal fetal medicine, 100 percent negligent.

The jury found Roberts not negligent.

The plaintiffs were represented by Thomas R. Kline, Regan Safier and Christine Clarke of Kline and Specter in Philadelphia.

The medical malpractice suit was initiated by Ebony Harris and Roy Fortson—the parents of Phinees Fortson—who claimed that the complications suffered by their child due to extreme premature birth were the result of negligence on the parts of Chou and Roberts.

According to the plaintiffs' pre-trial memorandum, Phinees Fortson suffers from mental retardation, blindness, spastic quadriplegia, quadriplegia cerebral palsy, gastroesophageal reflux and a complex feeding disorder, among other ailments.

Roberts' attorney, Joseph G. Zack of Post & Post in Berwyn, Pa., said there was a high-low agreement in the case. When asked if there was a high-low agreement in place, Kline said he could not comment.

"While I cannot reveal any terms

of any agreement, it is well known that I would not enter into an agreement in any case like this one that did not take care of this child's lifetime needs. We are very pleased with the jury result and the prospects of no appeal as to Penn," Kline said in an emailed statement.

In March 2007, Harris, who was 27 years old at the time, was pregnant with Phinees Fortson. According to the plaintiffs' papers, Harris went to the Antenatal Testing Unit at Chestnut Hill Hospital for ultrasound examinations and the management of her pregnancy.

Roughly four months later, on July 2, 2007, Harris returned to Chestnut Hill with complaints of pelvic pressure, the plaintiffs' papers said. Harris was seen by Chou, who noted that Harris' cervix had shortened to 1.13 centimeters.

During that ultrasound examination, Chou discovered an "excessive accumulation" of amniotic fluid within the amniotic sac causing uterine distention, according to the plaintiffs' papers, creating a high risk for pre-term birth.

Harris was then monitored by Roberts for three-and-a-half hours

before being discharged home on pelvic rest and modified bed rest. Roberts was the discharging doctor; however, court papers allege that Roberts gave Harris no specific instructions with regard to pelvic or bed rest.

At 10 p.m. July 4, 2007, Harris called her physician reporting frequent contractions. The baby was born July 5, 2007, after an emergency C-section, according to court papers. After birth, Phinees Fortson was diagnosed with seizures and a brain hemorrhage.

According to Chou and HUP's defense papers, there was no finding in Chou's July 2 examination of Harris that delivery was imminent.

Additionally, the defendants argued that the administration of betamethasone, the steroid in question, "does not prevent or inhibit premature labor" and that Phinees Fortson's complications were due in large part to prematurity and low birth weight, according to defense papers.

In terms of not sending Harris to another facility after examination, defense papers said it would have been inappropriate for Chou to arrange a transfer without first sending Harris to the labor and delivery department for further evaluation.

Roberts' defense papers contended that Roberts did not fall below the standard of care in not administering steroids to Harris, echoing Chou's assertions that there was no indication that pre-term delivery was near.

Zack said, "Dr. Roberts was adamant from the outset of this case that her care in this matter was appropriate in all respects. She was unwavering throughout this lengthy, contentious trial, and we

were very gratified that the jury agreed with our position and returned a verdict in her favor."

Chou was represented by Daniel F. Ryan III of O'Brien and Ryan in Plymouth Meeting, Pa.

"I fully support the care that Dr. Chou gave to Ms. Harris in this case," Ryan said. "I do think that Dr. Chou gave excellent care to her patient. I'm just disappointed in the result."

Douglas A. Brockman of Christie Pabarue and Young in Philadelphia represented HUP and did not return a call seeking comment.

Kline said that it is important to set the values of medical malpractice cases through bellwether trials.

"In this case, a jury followed to the letter the most important provision of the MCARE Act—the year-by-year award of future damages totaling \$42 million—in a contested liability case," Kline said. "That is a significant aspect of this verdict, as the jury, once it established liability after two days of deliberations, cared most about the lifetime care needs of a child with cerebral palsy."