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AWARD COMPENSATES 5-YEAR-OLD FOR INJURIES AFTER BIRTH



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Oct. 23, 2000

When Don and Wendy Vlasny adopted a special-needs child in the spring of 1998, they didn't even know that a court-appointed guardian ad litem was pursuing a medical malpractice action on her behalf. Now they're the parents of a multi-millionaire.

Five-year-old Alys Vlasny was awarded \$100 million Friday by a Philadelphia Common Pleas Court jury that found two hospitals and four doctors responsible for a series of injuries that left her brain-damaged and missing an arm.

Her lawyer, [Andrew J. Stern](#) ... said the money is intended to compensate the girl for pain and suffering, emotional distress, disfigurement, loss of the enjoyment of life's pleasures, loss of future earnings and life care costs.

Stern said that expert witnesses at the trial had calculated the lifetime cost of care for the five-year-old at as much as \$47 million. As a result of her injuries, she is unable to speak, must be fed through a tube five times a day, and can walk only short distances.

The award was split into two sums -- \$90 million for Alys' brain injury, against Dr. Nicholas Cavarocchi, Cavarocchi's professional corporation and St. Luke's hospital in Bethlehem, Pa.; and \$10 million to compensate her for the loss of her arm, against St. Christopher's Hospital for Children and neonatologists S. David Rubenstein, Eileen Tyralla and Leonard Goldsmith.

Judge Frederica Massiah-Jackson presided over the trial of Vlasny v. Cavarocchi, which lasted 3 1/2 weeks, Stern said.

On Sept. 4, 1995, Alys was delivered prematurely, at a gestational age of 26 weeks, at St. Luke's. Despite her low birth weight and premature birth, Stern said, she was doing very well -- unlike many premature babies, she was breathing on her own with nasal CPAT assistance, but no ventilator.

But, Stern said, she had a problem that is not unusual for a premature baby: patent ductus arteriosus. PDA occurs when an arterial duct that bypasses the lungs during gestation -- when a fetus receives oxygen through the placenta -- fails to close at birth.

The bypass duct wasn't completely open, Stern said, so the baby's blood could get oxygen, but the breathing process was inefficient, so surgery to close the duct was indicated.

According to Stern, the surgery was not an emergency procedure, so the infant could have been transferred to another hospital where there was a specialist in neonatal surgery. Instead, she underwent the operation at St. Luke's on Sept. 26.

The surgery was performed by Cavarocchi, a cardiothoracic surgeon who, according to Stern, generally operated on adults and children, but rarely on infants. The last time he had done a PDA ligation before attempting the surgery on Alys was six years earlier, Stern said.

When Cavarocchi performed surgery, he opened the baby up but could not find the duct, Stern said. He called the pediatric cardiologist who had diagnosed it with the aid of imaging technology and asked to be guided to the duct; he was told that it was in "the classic location," said Stern. He called his partner, who came to the operating room and looked over his shoulder.

Although he looked for two hours, he never found the duct -- but he did manage to damage the baby's phrenic nerve, Stern said.

The phrenic nerve controls one of the diaphragms that enable breathing, Stern said, so after surgery, Alys was no longer able to breathe on her own and had to be assisted by a ventilator.

According to Stern, the injury to the phrenic nerve and the baby's placement on a ventilator ultimately caused her brain injury. Ventilators injure the lungs of very small babies, he said, because of the pressure they exert. Eventually, the lungs develop scars, which prevents the flow of oxygen to the brain, resulting, he said, in brain damage to his client.

Cavarocchi was defended by Gary Samms of Obermayer Rebmann Maxwell & Hippel; his professional corporation retained Randy Mariano of Naulty Scaricamazza & McDevitt, and St. Luke's was defended by David Griffith of Harvey Pennington Cabot Griffith & Renneisen and Paul Laughlin of Stevens & Johnson. Mariano said he couldn't comment on the litigation. The other defense attorneys could not be reached for comment late Friday afternoon.

According to Stern, the defense presented at trial by the St. Luke's defendants focused on causation: they argued that the baby's premature birth and low birth weight were signs that the brain damage would have occurred regardless of the phrenic-nerve damage.

On Oct. 3, Alys was transferred to St. Christopher's, where Dr. Barsala, a pediatric cardiothoracic surgeon, made a second, successful attempt to close the duct on Oct. 5.

According to Stern, Barsala had no trouble ligating the duct and was never named as a defendant in the suit. The problem at St. Christopher's, Stern said, actually started the day before the surgery, when a nurse inserted an arterial line into the baby's arm so that her blood gases could be monitored.

The nurse was supposed to insert the line into the radial artery, Stern said, but she put it in the ulnar artery instead. What's more, she left the catheter in the arm -- a procedure that only a doctor is authorized to do, Stern said.

The line remained in the baby's arm for 10 days, and vacuum pressure was used to draw blood from the arm, Stern said, as many as three times for each reading. That put the baby's tiny arteries at risk of spasm, he said.

On Oct. 13, a nurse noted "slightly difficult blood drain," and the next day, signs of ischemia, or lack of oxygen to the limb, were noted.

According to Stern, the standard of care for an ischemic arm is to call in plastic surgeons and administer drugs -- vasodilators to fight spasm and open the blood vessels and thrombolytics to combat clots.

Ultimately, that's what happened, Stern said, but Rubenstein, Tyrala and Goldsmith waited until Oct. 18 to pursue this course of action. By that time, he said, it was too late. Although Alys' arm showed some improvement, it could not be saved. It was amputated a week later.

According to Stern, the neonatologists defended the late administration of the drugs, saying that they put the baby, who had already had two operations in her short life, at risk of intracranial bleeding. But Stern argued that the risk was still there four days later when the drugs were finally administered, and if the procedure was risky, it would actually have been more justified earlier, when it might have done some good.

St. Christopher's was defended by Charles Roessing of White & Williams. Charles A. Fitzpatrick III of Mylotte David & Fitzpatrick represented Rubenstein and Tyrala; Lawrence M. Silverman of Silverman Bernheim & Vogel represented Goldsmith.

Stern said that he was offered a settlement package of about \$7 million, but he declined it because a structured-settlement expert and a trust-investment analyst he had retained told him that the bare minimum Alys needed to pay for lifelong care was \$9.2 million.

He made a counter-offer of \$9.2 million that stayed open through most of the trial, he said, but the defendants never rose to that figure.

According to Stern, Alys is doing remarkably well, given her problems. The Vlasnys were told when they adopted her that she would spend the rest of her life in a vegetative state, but with the help of therapy, she has learned to walk for short distances and to communicate through sign language, Stern said. She is far more responsive than doctors expected her to be, and she knows how to laugh and smile, he said.

Stern said Alys' parents are not parties to the litigation -- it was initiated by Alys' birth mother, who was 17 when Alys was born and gave up her parental rights to Alys in the fall of 1997, he said.

The Vlasnys have one natural child but are unable to have more, he said. Before they met Alys, they had adopted a special-needs child who later died, he said, and they decided to find another baby who needed special care.

When they committed to adopting Alys, they were not aware that the suit was pending, but when they found out, they were relieved that a guardian had been appointed because they were not prepared to invest the time and energy needed to be plaintiffs in the case.

But the couple has been enormously generous to Alys, Stern said, providing her with the therapy and affection she needed to overcome the difficult obstacles life has placed in her path.

Stern said that invaluable assistance in developing his theories in the case had been provided by James Beasley Jr.

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