

Suburban Pa. Jury Awards \$7.7M in Birth Injury Case Against OBGYN

One of the largest drivers of the compensatory damages award was evidence that the child will likely face significant lifelong speech and communication difficulties, the plaintiffs' attorney said.

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L-R: Benjamin Present, Aaron Dunbar, and Marni Berger of Kline & Specter. Courtesy photos

A Chester County jury returned a \$7.7 million verdict to the parents of a boy who was initially pronounced dead following a difficult birth and whose resulting injuries have significantly impaired his speech.

On Tuesday, following a 14-day trial in front of Chester County Common Pleas Judge Nicole R. Forzato, the jury awarded \$7,712,002 in favor of Christine Soring and Andrew Bailey, on behalf of their son, G.B.

Benjamin O. Present, Aaron L. Dunbar and Marni S. Berger, of Kline and Specter, represented the family at trial, while Ben Post and Chloë Mannings from Post and Post represented the three obstetrician-gynecologist physician defendants, including Dr. Jared Tepper.

According to Present, the unanimous verdict was returned against Tepper in its entirety, awarding \$1.5 million for future lost wages, \$6 million for future noneconomic damages, and the balance for future medical costs. Present shared that the verdict will be molded against the practice group, Regional Women's Health Group, which operates nationally as Axia Women's Health. With the addition of delay damages, the award will likely exceed \$9.5 million, he said.

The case centered on allegations that the mother's prolonged labor should have prompted an earlier cesarean section.

The plaintiffs alleged negligent obstetrical and neonatal care caused G.B.'s neurological injuries, as well as emotional distress for the parents. Specifically, the plaintiffs alleged that G.B.'s mother, who had gestational hypertension and a unicornuate uterus, should have undergone a cesarean section earlier but instead endured an attempted vaginal delivery that lasted nearly eight hours in the second stage of labor.

In court documents, the plaintiffs claimed that the delays left G.B. without a detectable heartbeat and led to 23 minutes of resuscitation efforts, allegedly resulting in hypoxic ischemic encephalopathy (HIE), a brain injury associated with oxygen deprivation during birth, and other injuries.

At trial, Present said they produced evidence, including competing expert testimony regarding fetal heart monitoring strips and nursing records.

While the jury did not find the additional defendants, Dr. Jennifer Akins and Dr. Richard Mansfield, were negligent, it found liability against Tepper, the physician who managed most of the second stage of labor and ultimately performed the procedure.

According to Present, one of the largest drivers of the compensatory damages award was evidence that the child will likely face significant lifelong speech and communication difficulties.

"[W]hat really drove that, we believe, is we were able to establish with the jury very clearly that he is going to have significant speech issues, expressive speech, as a result of his brain injury," Present said. "One of our themes in trial was that communication is foundational to everything we do. From our education to our social lives to our family lives to our work."

Present said the plaintiffs' team showed a recent video of the child having a conversation with his mother, which allowed the jury to see how far behind he was in terms of speech development.

Further, he said, the team also relied on testimony from expert witnesses, including a pediatric neurologist who testified regarding the child's injuries and how they affect him now, as well as in the future.

"[T]hrough expert testimony and through the family, we were able to establish that, as life gets more complicated and academic and social pressures increase, these injuries are only going to be more apparent," Present said.

Present described the trial as a "battle of the experts." He said the defense's central argument was that the child would ultimately be fine, while the plaintiffs' experts testified that the injuries were permanent and serious. Present said they focused on demonstrating that their experts' opinions were consistent with both the medical records and the child's current condition, while challenging the credibility and conclusions of the defense experts through cross-examination.

Regarding the verdict, Post, who represented the defendants, shared that they respect the judge and the jury's time and service, but they disagree with the result.

"We do not believe that there was sufficient evidence that there was a breach of the standard of care that caused harm. We believe that there are significant legal and factual issues that warrant further review, and we are evaluating all available post-trial and appellate options," Post said in an emailed statement.

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