

Maryland Lawyer

News and analysis of legal matters in Maryland

PG jury awards \$20.9M in med mal case

BY STEVE LASH

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A Prince George's County Circuit Court jury last week awarded \$20.9 million — including \$20 million for pain and suffering — to the family of a 6-year-old boy who suffered permanent paralysis in his left arm when the obstetrician pulled on his head during delivery.

But the award to Tyler Arnett and his parents, Athea and Franklin, was reduced to \$1.5 million because of Maryland's statutory cap on non-economic damages in medical malpractice cases. The cap was \$650,000 at the time of Tyler's injury in November 2005.

George S. Tolley III, the Arnetts' attorney, characterized the cap as an unjust limitation on what the jury deemed as appropriate compensation.

"It's not just pain and suffering," said Tolley of **Dugan, Babij & Tolley LLC** in Timonium.

Tyler has "an arm that is smaller, that is not functional in a normal way and that leaves him exposed to disparate treatment by his peers, not just in his adolescence but as an adult trying to compete for employment."

The boy has sustained "so profound a loss for such a long period of time," Tolley added, noting the many years Tyler hopefully has ahead of him.

Athea Franklin said her son "has difficulty doing everyday life things" like tying his shoes and washing his hands.

"He gets frustrated a lot when he can't do certain things," she added. "The kids make fun of him, and he is really hurt by that."

The obstetrician's lawyer said he will ask Judge Toni E. Clarke for a new trial based on what he characterized as the jury's failure to abide by the court's instructions to compensate the family for Tyler's injuries and not punish the doctor with an excessive damages award for pain and suffering.

ARNETT ET AL. V. VINAYAKOM ET AL.

Court: Prince George's County Circuit Court

Case No.: CAL10-02954

Judge: Toni E. Clarke

Outcome: Jury verdict for plaintiff (\$20.9 million, reduced to \$1.5 million due to statutory cap)

Dates:

Event: Nov. 15, 2005

Suit filed: Jan. 28, 2010

Trial: June 4, 2012-June 12, 2012

Verdict: June 12, 2012

Plaintiffs' Attorneys: George S. Tolley III and Bruce J. Babij of Dugan, Babij & Tolley LLC in Timonium.

Defendants' Attorney: David A. Roling and Tiffany D. Randolph of Wharton, Levin, Ehrmantraut & Klein PA in Annapolis.

Plaintiffs' Experts: Frank Bottiglieri, obstetrician/gynecologist; Stephen Levis, obstetrician/gynecologist; Daniel Adler, pediatric neurologist; Nancy Bond, life care planner; Mark Lieberman, vocational rehabilitation; and Richard Lurito, economist.

Defendants' Experts: Elizabeth Garreau, obstetrician/gynecologist; Robert Gherman, obstetrician/gynecologist; Michael Johnston, pediatric neurologist; David Zak, vocational rehabilitation and life care planner; and Thomas Grogan, economist.

Count: Negligence

"To put it mildly, we were very shocked at the \$20 million verdict," said attorney David A. Roling. The amount "floored everybody in the courtroom."

A \$20 million award in noneconomic damages is generally reserved for cases when a child has sustained severe and permanent neurological damage, not paralysis that limits the youngster's ability to compete in physical activity and find employment, said Roling, of **Wharton, Levin, Ehrmantraut & Klein PA** in Annapolis.

The jury was "not utilizing the analytical process that the court instructed [and] went into the punitive realm," he added in previewing post-trial motions he plans to file with the court this week. "We are going to have to rely on the judge to look at this and ask, 'Did the defendant get a fair trial from this jury?'"

The six-day trial amounted to a battle of medical experts for the Arnetts and the defendants: Subalaxmi Vinayakom, a Germantown obstetrician/gynecologist, and her medical practice, **Abdullah and Vinayakom, M.D. LLC**.

Each side presented testimony from two OB/GYN specialists and a pediatric neurologist as to whether Vinayakom's delivery of Tyler deviated from the medical standard of care.

According to the Arnetts' lawsuit, Athea Arnett reported to **Washington Adventist Hospital** in Greenbelt for induction of labor on Nov. 14, 2005. At about 5:10 the next morning, Vinayakom arrived to perform the delivery.

During the procedure, Tyler's head emerged from the birth canal but a shoulder got caught on the mother's pelvic bone, a condition called shoulder dystocia.

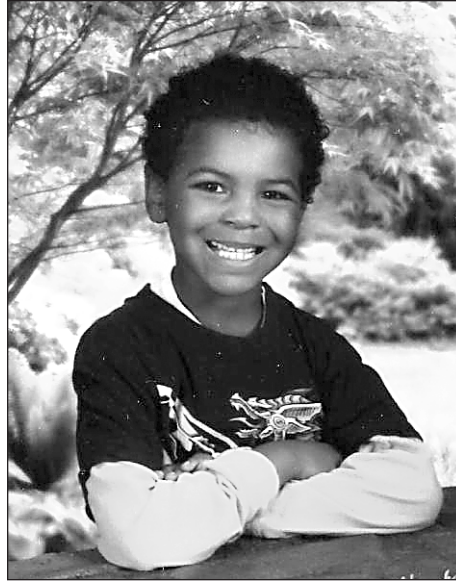
Vinayakom pulled down “forcefully” on Tyler’s head, according to the complaint filed Jan. 28, 2010.

Tyler, who weighed in at 8 pounds, 6 ounces, was diagnosed with left obstetrical brachial plexus palsy, an injury to the nerves that extends from the neck to the fingers, according to the complaint, which said the condition rendered the boy paralyzed in his left arm.

The plaintiffs’ experts said the standard of medical care required Vinayakom to take a more gentle approach to achieve delivery.

The defense experts countered that Vinayakom’s actions were not as aggressive as the plaintiffs alleged and did not deviate from the standard of care.

Roling, Vinayakom’s attorney, said the doctor made sure Tyler’s shoulder was not impacted before she proceeded with the delivery. Roling noted his client



SUBMITTED PHOTO

Tyler Arnett, 6, suffered permanent paralysis in his left arm.

had 24 years’ experience delivering babies.

“She knew what to do,” Roling said. “Why would she pull on this boy’s head?”

After deliberating for about two hours, the six-member jury found the doctor and her practice liable and awarded the family \$20,881,082.17 in damages. The award included \$582,999 in future medical expenses; \$244,363 in lost earning capacity; and \$53,720.17 in past medical expenses, as well as the \$20 million for pain and suffering.

The total award was reduced to \$1,531,082.17, when the pain and suffering award was cut to \$650,000 under the statutory cap.

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