

INSURER(S) AIG for ValueOptions Inc. and VO of Arizona Inc.
Farmers Insurance Co. of Arizona for Liu

TRIAL DETAILS Trial Length: 4 weeks
Trial Deliberations: 1 day
Jury Vote: 7-1 on apportionment of liability; 8-0 on damages

PLAINTIFF EXPERT(S) Alan Flory, clinical psychology, St. Louis, MO
Mark I. Levy, M.D., psychiatry, Mill Valley, CA
Bernadine Merker, M.D., social work, Denver, CO
Larry Stokes, Ph.D., economics, Phoenix, AZ

DEFENSE EXPERT(S) Harold J. Bursztajn, M.D., forensic psychiatry, Cambridge, MA

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel, counsel for the state and counsel for Liu. Counsel for the ValueOptions defendants did not respond to the reporter's phone calls.

—Joshua Couzens

FIFTY-NINE

MEDICAL MALPRACTICE

Nurse — Childbirth

Air pocket via IV line caused infant's brain damage: family

VERDICT \$35,314,585

CASE Zachariah Bartowitz, a minor, by his guardian ad litem, Michael End, Terry Bartowitz and Tammy Bartowitz, and Jostens Inc., involuntary plaintiff v. Waukesha Memorial Hospital Inc., The Medical Protective Company and the Wisconsin Patients Compensation Fund, No. 05CV00217
COURT JUDGE Walworth County Circuit Court, WI Robert Kennedy
DATE 1/18/2008

PLAINTIFF ATTORNEY(S) Patrick O. Dunphy (lead), Cannon & Dunphy, S.C., Brookfield, WI
Edward Robinson, Cannon & Dunphy, S.C., Brookfield, WI

DEFENSE ATTORNEY(S) James R. Gutglass, Gutglass, Erickson, Bonville & Larson, S.C., Milwaukee, WI (Waukesha Memorial Hospital Inc.)
None reported (The Medical Protective Company, Wisconsin Patients Compensation Fund)

FACTS & ALLEGATIONS On Jan. 13, 2004, plaintiff Zachariah Bartowitz, a 2-week-old boy, was diagnosed with a permanent brain injury at Waukesha Memorial Hospital where he was delivered prematurely. His family alleged that a nurse made an error in administering an intravenous line that day that caused his brain damage.

Zachariah's parents sued Waukesha Memorial Hospital and its two insurers, The Medical Protective Co. and the Wisconsin Patients Compensation Fund, alleging that the nurse's negligence constituted medical malpractice. Plaintiffs' counsel contended that the nurse allowed a pocket of air to enter the IV line while Zachariah was receiving a blood transfusion. The family claimed that the air emboli traveled through Zachariah's lungs and into his brain, causing permanent and irreversible brain damage as well as cardiac arrest. Zachariah was resuscitated by hospital staff after the heart attack.

Defense counsel for the hospital argued that Zachariah already had the permanent brain injury when he was born and it was a result of an in utero incident rather than any air pocket in the IV line.

Plaintiffs' counsel countered that Zachariah wasn't born with any brain problems, asserting that his brain damage was only apparent after the nurse's error on Jan. 13.

INJURIES/DAMAGES *brain damage; emotional distress*

Plaintiffs' counsel contended that Zachariah would have permanent brain damage which would prevent him from surpassing the cognitive level of a 2-year-old child for the remainder of his life.

The parties stipulated to Zachariah's past medical bills of \$641,585. However, plaintiffs' counsel sought between \$11.5 million and \$19.2 million for Zachariah's future life care costs, asserting the child would live to about 45 or 50 years old and require 24-hour attendant care for his entire life. Counsel also asserted that Zachariah's parents were entitled to recover past and future damages for caring for Zachariah while they waited for trial; counsel valued the cost of the care Zachariah's mother provided at \$1.2 million. Plaintiffs' counsel sought between \$1.2 million and \$1.52 million for Zachariah's future lost earnings.

Regarding the general damages the family suffered, plaintiffs' counsel argued that Zachariah was entitled to between \$5 million and \$7 million in damages for his loss of enjoyment of life

and his parents were entitled to between \$3 million and \$5 million for loss of society damages.

Defense counsel argued that Zachariah's future life care needs could be met for \$3.4 million to \$3.6 million, based on the likelihood that Zachariah would only live to the age of 45. Counsel also asserted that Zachariah only sustained \$525,000 in future wage loss damages.

RESULT The jury found Waukesha Memorial Hospital fully liable for Zachariah's injury and awarded the Bartowitzes \$35,314,585.

TAMMY

BARTOWITZ \$3,000,000 loss of society
\$1,200,000 past nursing care
 \$4,200,000

TERRY

BARTOWITZ \$3,000,000 loss of society
\$500,000 past nursing care
 \$3,500,000

ZACHARIAH BARTOWITZ

\$641,584 past medical cost
 \$20,000,000 future medical cost
 \$1,500,000 future lost earnings
 \$500,000 past pain and suffering
\$5,000,000 future pain and suffering
 \$27,641,584

DEMAND OFFER

\$9,000,000
 \$5,000,000

TRIAL DETAILS

Trial Length: 10 days
 Trial Deliberations: 2 hours
 Jury Vote: 12-0
 Jury Composition: 10 male, 2 female

PLAINTIFF EXPERT(S)

LuRae Ahrendt, life care planning,
 Atlanta, GA
 Rona Alexander, Ph.D., physical
 rehabilitation, Thiensville, WI
 John Baumgart, M.S., vocational
 rehabilitation, Mequon, WI
 Marvin DeVries, Ph.D., economics,
 Fort Myers, FL
 Amy K. Heffelfinger, Ph.D., pediatric
 psychology, Milwaukee, WI
 Harris Jacobs, M.D., neonatology,
 Bridgeport, CT
 Edward Kovnar, M.D., pediatric
 neurology, Milwaukee, WI
 Elizabeth A. Moberg-Wolff, M.D.,
 pediatric rehabilitation, Milwaukee, WI

P. Sasidharan, M.D., neonatology,
 Milwaukee, WI
 Merrill S. Wise, pediatric neurology,
 Bellaire, TX
 Robert A. Zimmerman, M.D.,
 neuroradiology, Philadelphia, PA

DEFENSE EXPERT(S)

Mara Coyle, M.D., neonatology,
 Seekonk, MA
 Susan Farrell, M.D., pediatric neurology,
 Greensboro, NC
 Stephen Glass, M.D., pediatric neurology,
 Woodinville, WA
 David Dehaven Jones, Ph.D., economics,
 St. Paul, MN
 Drucilla Roberts, M.D., pathology,
 Boston, MA
 Gordan Sze, M.D., neuroradiology,
 New Haven, CT

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—Joshua Couzens

SIXTY

MEDICAL MALPRACTICE

Birth Injury — OB-GYN — Delayed Treatment

Delayed delivery resulted in hypoxic brain injury, family pled

VERDICT **\$35,206,000**

CASE

Darian Lavar Brown, a minor, by and through his mother, Denise Gordon Brown, and his father, David Anthony Brown, and Denise Gordon Brown, as mother of Darian Lavar Brown and David Anthony Brown, as father of Darian Lavar Brown v. North Broward Hospital, d/b/a Broward General Medical Center, No. CACE03002892

COURT JUDGE DATE

Broward County Circuit Court, FL
 Jeffrey E. Streitfeld
 6/13/2008