

Missouri Lawyers

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WEEKLY

DEFENSE VERDICT

Hospital prevails in suit over woman's induction, delayed C-section

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Mandy J. Kamykowski

A 16-day jury trial in Jefferson County over a child's alleged injuries stemming from birth ended in a defense verdict for Mercy Hospital Jefferson, one of its doctors and an OB-GYN practice.

The plaintiffs in the case, 8-year-old Carter Nobles and his mother, Latisha Dow, sought \$20,583,084 in damages in their suit against the hospital, Dr. Luis Mertins and Excel Care OB-GYN, Inc., according to information submitted by defense attorney Mandy Kamykowski of Kamykowski, Gavin



Ryan J. Gavin

& Smith in St. Louis.

The breakdown of damages sought by the plaintiffs was \$1,495,539 for future lost wages, \$7,087,545 for future medical and attendant care and \$12 million for past and future non-economic damages.

Nobles was born at Mercy Hospital Jefferson in November 2008. When he was born, he was floppy, blue and not breathing, according to Kamykowski.

The plaintiffs alleged he suffered hypoxic-ischemic encephalopathy at or near birth, resulting in developmental and cognitive delays and behavioral problems.

MEDICAL MALPRACTICE

■ **Venue:** Jefferson County Circuit Court

■ **Case Number/Date:** 10JE-CC00992/Sept. 6, 2017

■ **Judge:** Joseph Walsh III

■ **Plaintiffs' Experts:** Eric Swisher, Roanoke, Virginia (OB-GYN); Yolanda Beck, Florissant (nursing); Stewart B. Ater, Houston, Texas (pediatric neurology); Susan Caudle, Houston, Texas (pediatric neuropsychology); Jill Hunter, Houston, Texas (pediatric neuroradiology); Jeffrey Kahn, Plano, Texas (pediatric infectious disease); Michael Kaufman, Evanston, Illinois (pathology); Jan Klosterman, Ballwin (life care planning); Wilbur Swearingin, Springfield (vocational); Karen Tabek, St. Louis (accounting, damages, finances)

■ **Defendants' Experts:** John Calkins, Kansas City (OB-GYN); Michael Radetsky, Albuquerque, New Mexico (pediatric infectious disease); David A. Schwartz, Atlanta, Georgia (placental pathology); Richard Towbin, Scottsdale, Arizona (pediatric neuroradiology); Harry F. Farb, Minneapolis, Minnesota (OB-GYN); Michael Noetzel, St. Louis (pediatric neurology); Michele L. Wright, Columbia

(nursing)

■ **Last Pretrial Demand:** \$2 million

■ **Last Pretrial Offer:** \$1.1 million

■ **Insurers:** Missouri Professionals Mutual – Physicians Professional Indemnity Association (for Mertins and Excel Care OB-GYN, Inc.); Medical Liability Alliance (Mercy Hospital Jefferson)

■ **Caption:** Carter Nobles, a Minor, by and through his Next Friend, Latisha Dow v. Mercy Hospital Jefferson, f/k/a Jefferson Memorial Hospital, Luis Mertins, M.D., Excel Care OB-GYN, Inc.

■ **Plaintiffs' Attorneys:** Mark Bronson, Marc Wallis, Stephen Bronson and Lauren Bronson, Newman, Bronson & Wallis, St. Louis

■ **Defendants' Attorneys:** Mandy J. Kamykowski and Ryan J. Gavin, Kamykowski, Gavin & Smith, St. Louis (for Mertins and Excel Care OB-GYN, Inc.); Kenneth C. Brostron and Mark Feldhaus, Lashly & Baer, St. Louis (for Mercy Hospital Jefferson)

The plaintiffs claimed hospital nursing staff under the supervision of Mertins violated hospital policy in their administration of induction-drug Pitocin to Dow and Mertins delayed Nobles' cesarean section birth.

Under Mertins' orders, nurses administered Pitocin to stimulate contractions beginning a day before the birth. At trial, a plaintiffs' expert testified there were too many contractions, also known as tachysystole, requiring the nurses to turn down or turn off the drug.

The defense argued there was never tachysystole, and also that there was insufficient evidence for a plaintiff's expert to claim tachysystole causes perinatal hypoxic ischemic injuries.

They also countered the plaintiffs' arguments that Nobles was unable to get enough oxygen in utero, using electronic

fetal monitoring tracing. They alleged plaintiffs' expert testimony was tainted before viewing monitoring strips.

The defense argued Nobles suffered an intrauterine infection at least 24 hours prior to his birth.

Kamykowski said all experts agreed there was evidence of acute infection in the fetal membranes and placenta and acute inflammation of the connective tissue in the umbilical cord.

She said the defense pointed to laboratory and radiology findings, including evidence of significant swelling of the brain on a head CT taken 9.5 hours after Nobles was born, which supported their argument.

Mark Bronson, lead attorney for the plaintiffs, declined to comment but said the plaintiffs are planning to file a motion for a new trial. **MC**