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Sherman Oaks Lawyer Wins Verdict

By Catherine Ho

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Sherman Oaks attorney James Fox won a \$15 million verdict in a medical malpractice case against prominent Harvard physicians at Children's Hospital Boston, who allegedly botched treatment for a 20-month-old boy with a heart defect.

The six-week trial ended Friday when a jury in Suffolk County, Mass., found the doctors' negligence contributed to the boy's death. They awarded the family \$5 million for conscious pain and suffering, \$5 million for loss of parental consortium, and \$5 million for wrongful death.

The boy's family will receive less than \$15 million because of an agreement reached by plaintiffs and defense counsel before the verdict. Fox and defense lawyers, led by William Dailey Jr. of the Boston law firm Sloane & Walsh, negotiated an agreement that would guarantee the plaintiffs a minimum amount of damages in exchange for a cap on potential damages, regardless of the jury verdict. Neither Fox nor Dailey would say how much the family will receive.

The boy, Jason Fox, was born with a heart defect and had undergone eight catheterizations and open-heart surgery before he turned two. In April 2003, at the behest of Jason's doctors in Philadelphia, the Foxes sought treatment at Children's Hospital Boston. Jason died a year and a half later.

Fox took on the case for his cousin Brian Fox, Jason's father.

The suit alleged that while performing a cardiac catheterization, Dr. James Lock, a renown pediatric interventionist and former chief physician at Children's, gave Jason more than twice the dose limits of contrast dye, which is used so doctors can better see the contours of the vessels. So much contrast dye was used that it circulated through Jason's bloodstream to his brain, and caused him to have subsequent seizures, Fox said.

After the procedure, another high-ranking physician, anesthesiologist Dr. James DiNardo, gave Jason propofol to sedate him before taking an MRI. During the scan, Fox said, the MRI detected a metal object; an autopsy later found that it was part of a metal instrument left behind by a previous procedure that became lodged in a blood vessel in the brain. At that time, Jason began waking up and the doctor administered more propofol, after which Jason stopped breathing and his heart rate dropped, prompting DiNardo to rush in to resuscitate him. During the trial, Fox argued DiNardo failed to turn off the propofol infusion pump, so that during resuscitation efforts, Jason was still being pumped with the sedative. The lack of oxygen resulted in permanent brain damage.

"He never recovered," said Fox, of the Sherman Oaks firm Fox & Fox. "They botched the resuscitation."

The fellow who had prepared the anesthesia record testified that she wrote it at the request of the doctors, even though she wasn't present at the time the propofol was being administered, Fox said.

Dailey, who represented the doctors, said "nothing was doctored up at any time in the care of the child," and that he was disappointed with the verdict.

"The doctors at Boston Children's attempted to intercede and help," he said. "A complication occurred despite the best of ethics."

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