



Suit: Fraud, surgical errors led to transplant recipient's death

Type: Settlement

Amount: \$19,900,000

State: Ohio

Venue: Cuyahoga County

Court: Cuyahoga County, Court of Common Pleas, OH

Injury Type(s):

- *other* - death
- *cardiac* - heart
- *mental/psychological* - emotional distress

Case Type:

- *Wrongful Death*
- *Fraud* - Misrepresentation
- *Intentional Torts* - Battery; Intentional Infliction of Emotional Distress
- *Medical Malpractice* - Misdiagnosis; Anesthesiology; Surgical Error; Cardiac Surgery; Informed Consent; Failure to Detect

Case Name: Plaintiffs v. University Hospitals Health System, Inc. and University Hospitals Cleveland Medical Center and University Hospitals Medical Group, Inc. and Benjamin Medalion, M.D. and Basar Sareyyupoglu, M.D. and Soon Park, M.D. and Edwin Avery, M.D. and Guilherme Oliveira M.D. and John Does 1-50, No. CV-18-891112

Date: October 22, 2019

Plaintiff Attorney(s):

- Charles I. Kampinski; Kampinski & Roberts, LPA; Cleveland OH for Plaintiffs
- Kristin Roberts; Kampinski & Roberts, LPA; Cleveland OH for Plaintiffs

Plaintiff Expert(s):

- John F. Burke Jr., Ph.D.; Economics; Cleveland, OH called by: Charles I. Kampinski, Kristin Roberts
- John P. Conomy M.D.; Neurology; Beachwood, OH called by: Charles I. Kampinski, Kristin Roberts
- Hillel Laks M.D.; Transplant Surgery; Los Angeles, CA called by: Charles I. Kampinski, Kristin Roberts
- Robert A. Ertner M.D.; Anesthesiology; Chico, CA called by: Charles I. Kampinski, Kristin Roberts
- Anthony Lemaire M.D.; Cardiothoracic Surgery; New Brunswick, NJ called by: Charles I. Kampinski, Kristin Roberts
- Raymond Pollak M.D.; Transplant Surgery; Skokie, IL called by: Charles I. Kampinski, Kristin Roberts

Defendant(s):

- Soon Park
- Edwin Avery
- Benjamin Medalion
- Basar Sareyyupoglu
- Guilherme Oliveira
- University Hospitals Health System Inc.
- University Hospitals Medical Group Inc.
- University Hospitals Cleveland Medical Center

Defense Attorney(s):

- William A. Meadows; Reminger Co., LPA; Cleveland, OH for University Hospitals Health System Inc., University Hospitals Cleveland Medical Center, University Hospitals Medical Group Inc., Benjamin Medalion, Basar Sareyyupoglu, Soon Park, Edwin Avery, Guilherme Oliveira

Defendant Expert(s):

- J. Eduardo Rame M.D.; Cardiology; Philadelphia, PA called by: for William A. Meadows
- John Gutowski FACHE; Health Care Administration; Denver, CO called by: for William A. Meadows
- James M. Anton M.D.; Anesthesiology; Houston, TX called by: for William A. Meadows
- James M. Gebel M.D.; Neurology; Akron, OH called by: for William A. Meadows
- Eugene Grossi M.D.; Cardiothoracic Surgery; New York, NY called by: for William A. Meadows

Facts:

On Aug. 25, 2016, plaintiff's decedent, 59, a carpenter, underwent heart-transplant surgery at University Hospitals Cleveland Medical Center. During the surgery, doctors notified Plaintiff's family that he had become brain dead and thus would not receive a transplant on that date or in the future. After hearing this information, his family decided to have him removed from the hospital machines so he could die peacefully. He died later that day.

Decedent's widow, acting individually and in behalf of her husband's estate, sued the hospital and various related entities. She also sued Drs. Soon Park and Guilherme Oliviera, the hospital's heart-transplant chiefs, along with several doctors involved in the transplant surgery, including surgeons Basar Sareyyupoglu and Benjamin Medalion, and anesthesiologist Edwin Avery. The lawsuit included claims for medical

malpractice, lack of informed consent, battery, fraudulent misrepresentations and omissions, intentional infliction of emotional distress, and wrongful death.

A year prior to his death, decedent had contracted a virus that spread to and destroyed much of his heart. At that time, he entered the transplant program at UHCMC.

In June 2016, the United Network for Organ Sharing, which oversees America's transplant system, put UHCMC on probation. As a result, the hospital had to send a notification letter to patients, including Plaintiffs, informing them of the probation. A short time later, Plaintiffs received the letter, which was dated June 27, 2016. The letter said that the hospital "agreed" to go on UNOS' probation due to the "low patient volume" in the heart-transplant program. The letter also claimed that the hospital had completed 14 heart transplants between June 2015 and June 2016. The letter asserted that the one-year patient survival rate of those transplant recipients was 93 percent, which was higher than the national average. The letter was signed by Park and Oliviera. Plaintiffs continued treatment with UHCMC through the date of his transplant.

The estate's counsel claimed that the June 2016 letter that the hospital sent to Plaintiffs included fraudulent statements. Per counsel, the letter omitted the real reason the hospital was put on probation. Counsel asserted that UNOS had stated in a general release that it had placed the hospital on probation because UHCMC "performed low volume of transplants and encountered early-term recipient deaths." The release also stated, "Peer review of the hospital heart transplant program revealed concerns with its quality management protocols." The estate's counsel further noted that the letter to Plaintiffs made no mention of the quality management issues or the early-term recipient deaths discovered by UNOS.

The estate's counsel asserted that the letter sent to Plaintiffs made it sound as if the hospital voluntarily chose to go on probation, when that was not the case. Counsel also questioned the letter's assertion that UHCMC's recent transplant recipients had a 93 percent one-year survival rate and noted that most of the transplant recipients between June 2015 and June 2016 were less than one year removed from their surgery when the letter was sent.

The estate's counsel alleged that, if Plaintiff had known the truth about UHCMC's probation, he would have transferred to another hospital, with counsel noting that there was a well-respected hospital near UHCMC. Per counsel, he could have transferred to that other hospital without losing his place on the heart transplant list.

The estate's counsel also alleged that the doctors were negligent during the transplant surgery. The lawsuit alleged that one of the surgeons, Medalion, incorrectly inserted a tube carrying blood and, as a result, this cannula was directed toward the patient's heart rather than the brain. The aorta below the cannula was then supposed to be clamped to isolate the heart. Counsel alleged that Medalion instead clamped the cannula twice and also allegedly cut a graft from an assistive device, which drained approximately half of the blood from decedent's body.

The estate's counsel further alleged that Avery, the lead anesthesiologist at the hospital, left the surgery room during the procedure, leaving an inexperienced colleague in charge. Per counsel, the inexperienced anesthesiologist did not appreciate that the cerebral oximetry monitor showed a reduction of the oxygen levels in the brain following the

improper clamping. Counsel also contended that the defendants failed to notify decedent's family about the surgical errors. The cannula was eventually unclamped and placed in the proper position. The aorta was then clamped, as well, and blood flow was restored to his brain. However, his brain had been without oxygen for 10 to 12 minutes.

Doctors subsequently told the family's relatives that he was brain dead, leading to their decision to let him die. However, the estate's counsel disputed whether Plaintiff had sustained brain damage and presented the testimony of a heart-transplant expert that there was an 85 to 90 percent chance that he did not suffer brain damage during the surgery. The estate's counsel asserted that he thus should have received the transplant he was scheduled to get on that date. Counsel alleged that the defendants opted to declare him brain dead and not give him the heart so they would not have to report another early-recipient death. Per counsel, reporting Plaintiff's decedent as an early-recipient death may have forced UHCMC to shut down the transplant program.

The estate's neurology expert agreed that the defendants should not have declared decedent brain dead during the operation. The expert opined that proper protocol would have been to wait three days and then perform tests to see if the patient had sustained brain damage.

For the emotional distress claim, the estate's counsel alleged that the hospital continued to use Plaintiff to promote its cardiac department after he died. Per counsel, the hospital published photos and videos of him, along with his testimonials about the facility. The lawsuit alleged that the hospital did not remove most of these promotional materials after decedent's death.

The estate's counsel also noted that a third surgeon had to be called into the surgery to fix the problems caused by Sareyyupoglu and Medalion. Per counsel, Plaintiff's insurance did not cover the costs associated with the third surgeon, and the hospital subsequently hounded his widow to collect on the payments she owed.

The defense contended that the hospital did not intend to mislead patients with its June 2016 letter. The defense noted that the hospital notified patients that it was put on probation, which is all that was required. The defense further claimed that the cannula tube mistake can happen during a surgery, and Medalion testified that he had inserted the cannula the same way he always did.

Defense counsel also maintained that the doctors truly thought Plaintiff became brain dead during the surgery. The defense's neurology expert opined that there was reason to believe he had sustained brain damage.

Injury: Plaintiff's decedent died on Aug. 25, 2016, after his family chose to have him removed from the heart-lung machine during the surgery. He left behind a wife, two grown children and a grandchild.

The estate's counsel noted that many heart-transplant recipients have gone on to live for decades. Counsel further noted that the heart he was to receive came from a 28-year-old man, so it should have lasted a long time. Counsel thus maintained that Plaintiff could have lived at least another 10 years if not for the alleged negligence of the defendants. Counsel also claimed that he could have returned to work within a year of his transplant surgery.

The plaintiffs sought recovery of compensatory and punitive damages. The compensatory damages claim included lost wages, lost services, funeral expenses, and damages for the anguish and emotional distress of decedent's family.

Result: The parties negotiated a pretrial settlement of \$19.9 million. The self-insured University Hospitals Cleveland Medical Center agreed to pay the settlement on behalf of all the defendants.

Trial Information:

Editor's Comment: This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents. Defense counsel indicated that the report contains inaccuracies, but he declined to elaborate.