

Boy's parents awarded millions

By AMANDA GARRETT and EBONY REED
PLAIN DEALER REPORTERS

The first doctor told Johnny Higgins' parents that their little boy's cough was nothing but the flu.

Three days later, another doctor said Johnny had appendicitis.

And three days after that, the 8-year-old Berea boy was dead — from pneumonia that no one diagnosed until it was too late.

Yesterday, a Cuyahoga County jury found the radiologist who made the appendicitis diagnosis, Dr. Laurance Grossman, liable for Johnny's death and awarded the boy's parents \$4.5 million.

Johnny's mother, Kathleen Higgins, said the family will donate money to their church and start a scholarship at St. Mary Church in Berea.

"I couldn't live with myself if someone lost their child like I did," Higgins said. "I would do anything to be with our little boy again."

Neither Grossman nor his attorney could be reached for comment.

Higgins said she and her husband, Timothy, hadn't intended to sue until they were pressured to pay medical bills. The couple, who now live in Michigan because of a job transfer, have three other children: Virginia, 15, Katie, 14, and Patrick, 12.

teleone, the Higgins' lawyer, Johnny's medical saga unfolded this way:

Johnny's parents first took him to Southwest General Hospital in Middleburg Heights on Jan. 17, 1998, because he had a bad cough and a high fever. A doctor there said Johnny had the flu and sent him home to rest.

But Johnny didn't get better.

On Jan. 20, his parents took him to the family doctor, who immediately referred Johnny to the emergency room at Southwest General.

There, he received stomach X-rays, and Grossman determined that Johnny had appendicitis. Emergency surgery later revealed that wasn't the case. Johnny's appendix was healthy.

It was a nurse who finally suspected the boy might have pneumonia. When she removed Johnny's breathing tube after surgery, she noticed mucus on it, a symptom of pneumonia. Tests would soon reveal she was right.

But it was already too late. Two days later, on Jan. 23, Johnny died.

The saddest part about the story, Monteleone said, is that Johnny had a 95 percent chance of survival if he had been accurately diagnosed from the start.

Johnny's parents sued the hospital but later dropped it from the lawsuit after Monteleone determined the hospital was not at fault.

They also sued six doctors involved in their son's care. Four settled out of court for \$925,000 — an amount that will be subtracted from the judgment against Grossman. The jury found another doctor was not liable.

Teen hurt in crash wins settlements

CLEVELAND — In June 1989, when a Chevrolet Blazer carrying four teen-age girls spun out of control and flipped over on a road in Gates Mills, two of the girls were wearing seat belts and escaped with barely a scratch. But the other two passengers were ejected and badly injured. They weren't wearing seat belts — not because they didn't want to, but because the seat belts were stuck inside the mechanisms, according to a lawsuit settled this week in Cuyahoga County Common Pleas Court.

The most seriously injured girl, Alison Mann, who was 15 and a junior at Orange High, was paralyzed in the accident. Now 19 and a sophomore at Dartmouth College, the woman won a \$2.2 million settlement from the driver's insurance company, plus "substantial" damage awards from General Motors Corp. and TRW Inc. for allegedly providing defective seat belts in the vehicle. The GM and TRW damage awards were kept confidential as a provision of the settlement, said Mann's lawyer, J. Michael Monteleone.

"If there is one other little girl who can be saved from being paralyzed, that's what we hope to have accomplished," Monteleone said.

OHIO LAWYERS WEEKLY

December 3, 2001

Victim Of Delayed Detection Of Cancer Settles For \$6.5M



MONTELEONE

Car crash victim wins \$7 million before trial starts

By JAMES EWINGER
PLAIN DEALER REPORTER

Barbara Blair has won more than \$7 million, but she paid for it with her health, her job, and very nearly, her life.

The money was an out-of-court settlement for injuries she suffered in a car-truck collision in Buffalo in 1996. She and her lawyer, Michael Monteleone, worked out the agreement Feb. 18, as the case was about to go to trial in Cuyahoga County Common Pleas Court.

Here is what she lost:

Blair, formerly of Twinsburg, was a promising 34-year-old computer analyst earning \$130,000 a year. She will never work again.

She had earned bachelor's and master's in business administration degrees, but now, at 36, can remember little beyond her second year of undergraduate work

more than 15 years ago, her lawyer said.

Her job took her around the country, but now, her memory and physical problems mean that she cannot travel far from home.

She currently lives at a rehabilitation center in Pittsburgh to acclimate her to independent living. But she will need some form of managed care for the rest of her life, and that will cost up to \$4 million, Monteleone said.

On Dec. 16, 1996, she was the passenger in a car that turned in front of an oncoming tractor-trailer so quickly the truck could not stop, Monteleone said.

The impact gave Blair permanent brain damage that includes impairment of the ability to think, reason and process information, numerous fractures of the skull, right arm and right leg, and partial paralysis of the right side.

Monteleone characterized the settlement as unusually large, and speculated that defense lawyers were willing to deal because a jury could have awarded \$10 million or more. Blair's stated claim before trial was \$15 million, he said.

Monteleone said that when the collision occurred, Blair had been living in Twinsburg, but was staying at a motel in Buffalo while she worked to integrate the computer systems of the Finast and Tops supermarket chains, which were



Barbara Blair

in the process of merging. Tops is based in a Buffalo suburb.

The car was driven by Michael Rowe, an employee of the supermarket chains who was her nominal supervisor on the computer project. They had just left a party given by the supermarket companies. Blair sued Tops, Finast and Rowe.

Sean Allan, Rowe's lawyer, described his client as a good friend of Blair's who "lost a friend in this. We're glad we could get together with the other lawyers to resolve it." Rowe, formerly of Hudson, now lives in New York.

Monteleone said the suit was filed because Finast had headquarters in Cleveland at the time and Rowe lived in the area.

Lawyers for the supermarkets and for Rowe did not respond to requests for interviews.

Doctor to fight \$1 million award in amputation

The \$1,075,000 in damages awarded by a Common Pleas Court medical malpractice arbitration panel to a Cleveland man for the alleged negligent amputation of his right leg will be appealed and the lawsuit will go to trial.

The panel, which returned its finding last week, found Dr. Moses Leeb, an orthopedic surgeon at Mount Sinai Medical Center, 75% responsible and assessed him \$806,250. The panel ruled the rest of the award was owed by Mount Sinai.

Leeb's lawyer, Michael C. Zellers, said this week that the finding would be appealed. Leslie J. Spisak, lawyer for Mount Sinai, said no decision had been made on an appeal by the hospital.

Under medical arbitration rules, if either side files a motion of non-acceptance, the case is set for trial. The suit has been assigned to Judge Frank J. Gorman.

The plaintiff, David Vincell, 25, of Fulton Rd., said his leg was fractured in three places May 2, 1983, when high winds hurled a piece of metal into him at Bedford Auto Wrecking, where he worked as a cutter.

Vincell's lawyer, J. Michael Monteleone, said Vincell was taken to Community Hospital of Bedford and then transferred to Mount Sinai, where an orthopedic surgeon performed surgery.

Monteleone contended that during the surgery, a damaged artery was overlooked and not repaired and that subsequently Vincell's leg became gangrenous and had to be amputated above the right knee.

Vincell, divorced and the father of a boy, 4, said he would have been happy with the panel's finding and probably would have used the money to buy a home. He added, "I'd rather have my leg back."

THE PLAIN DEALER, SUNDAY, JULY 6, 1996

Parking firm settles suit over slaying

By JAMES EWINGER
PLAIN DEALER REPORTER

CLEVELAND — Lawyers for a woman killed during an abduction in 1991 said her memory would live on through a pair of charitable foundations underwritten by an out-of-court settlement.

Amy Perkins' estate settled with the former Systems Parking Inc. for \$1 million, said lawyers J. Michael Monteleone and Joycelyn Brogley.

Her husband David Perkins filed suit early last year, alleging that an attendant at a Systems parking lot could have called police and saved Amy Perkins' life.

She was abducted from a lot on the site of what is now Jacobs Field. Wiley Davis, 33, of Cleveland Heights, grabbed Perkins, 32, as she was getting into her

car. He drove her to the East Side, robbed her of her purse and jewelry, and forced her to undress before shooting her in the head and hurling her body from the car.

Davis was convicted in 1992 and sentenced to death. He is one of 37 men from Cuyahoga County awaiting execution.

David Perkins was an on-air personality for WGAR FM at the time, and the couple were a week away from moving back to their native Texas, Monteleone said.

David Perkins had acquired part-ownership of a radio station in Odessa, where he now lives, Brogley said. Amy Perkins was working as a temporary secretary for an advertising agency, and had just completed her last day on the job when she was slain.

The couple had been married a year and three weeks at the time.

"David always held two parties responsible," Brogley said. "Wiley Davis, who actually killed her, and Systems Parking, who failed to protect her."

Monteleone said Perkins had parked in an unattended honor lot, but that an employee who was there collecting receipts could have hailed police.

"No one asked this man to be a hero. All he had to do was pick up a phone," Monteleone said.

A woman who was raped in a Systems-owned parking lot won a \$2 million judgment in Cuyahoga County Common Pleas Court in January.

Systems Parking no longer exists. The parking operations were sold to another parking-lot operator in Cleveland, and the rest of the company became a California-based real estate development company, according to

spokesmen for the two successor companies.

Stanley Keller, the lawyer hired by the insurance company to represent the former Systems Parking Inc. in the Perkins case said: "There is nothing really to comment on. A settlement is just what it means: Both sides compromise."

The original suit sought \$3.5 million in damages.

Monteleone said some of the money would go to a foundation, established in the name of Amy Perkins with the non-denominational Dallas Seminary, to provide scholarships.

Another foundation that will receive money has been established in Texas for young people to study the fine arts. Amy Perkins was active in community theater when the couple lived in Cleveland, Brogley said.

Man who lost leg gets \$890,000

A Cleveland man's malpractice suit for the loss of his right leg was settled yesterday for \$890,000 just before going to trial.

J. Michael Monteleone, lawyer for the plaintiff, David Vincell, 26, of Fulton Rd., said that Dr. Moses Leeb, an orthopedic surgeon at Mount Sinai Medical Center, agreed to pay Vincell \$500,000. The hospital would pay the remaining \$390,000.

Monteleone said Vincell's right leg was injured May 2, 1983, when high winds hurled a piece of metal into him while he was employed as a cutter at Bedford Auto Wrecking.

Monteleone said Vincell underwent surgery at Mount Sinai, but a damaged artery was overlooked. Because it was left unrepaired, Vincell's leg became gangrenous and had to be amputated above the right knee. Monteleone said the hospital and doctor were covered by insurance.

Jury awards \$2.2 million to man injured in surgery

A U.S. District Court jury in Akron awarded \$2.2 million in compensatory damages Thursday to a Trumbull County man who lost most of the use of his arms and legs because of damage to his spinal cord incurred during surgery for a broken neck.

But Judge Sam Bell has agreed to reduce that award by the amount of workers' compensation and Social Security benefits that Ralph Morris, 50, of Cortland, is expected

to receive, said Jerome Kalur, lawyer for Dr. John A. Savoy. Kalur said the final judgment would be about \$750,000.

During the three-day trial, Morris' lawyer, J. Michael Monteleone, contended the damage occurred during surgery Savoy performed at Mansfield General Hospital May 12, 1987. He said Savoy damaged the spinal column with wires used to stabilize the fracture. Savoy now practices in Vermont.

THE LARGEST VERDICTS & SETTLEMENTS OF 1997

6.
\$5.6 million (verdict)

Estate of Fairchild, et al. v. Byers, et al.
Mahoning County Common Pleas Court
Medical malpractice (death of pregnant woman)
Date of verdict: Oct. 31, 1997
Plaintiff's attorneys: J. Michael Monteleone and M. Jane Rua, Cleveland



MONTELEONE

Heart Syndrome Kills Boy In His Sleep

Mother Complained For Years That Son Was Misdiagnosed

\$3 Million Settlement



MONTELEONE



RUA

After complaining about chest pain, racing heart and being out of breath, a 13-year-old boy died after doctors misinterpreted tests that showed the boy had a heart condition five years earlier.

The decedent's mother took her son to the defendant hospital when he was 8-years-old, complaining of chest pain and breathing problems. His mother, a retired R.N., took him to his pediatrician who re-

ferred him to a pediatric cardiologist for an EKG. The pediatric cardiologist reviewed the EKG, and said it was normal.

The complaints continued for eight to nine months, and the mother persuaded the cardiologist who read the EKG earlier to consult with another cardiologist. After the visit, the mother then decided there was nothing wrong with the boy based upon representations and instructions of the pediatric cardiologist. Five years later, the boy died in his sleep while visiting a friend during the Christmas holiday.

The coroner asked the parents to obtain the name of the physician who read the EKG five years earlier. The EKG was reviewed again by other cardiologists, and it showed that the boy had a condition know as Long QT Syndrome. This condition, often treatable, can result in sudden cardiac arrhythmia.

Type of Action: Medical Malpractice - Wrongful Death

Type of Injuries: Death of 13-year-old
Court/Case Number/Date: Cuyahoga County Common Pleas Court/June 27, 2001

Caption: Doe v. XYZ Medical Group

Judge, Jury or ADR: NA

Name of Judge: N/A

Verdict or Settlement: Settlement

Allocation of Fault: N/A

Last Offer: N/A

Last Demand: N/A

Attorneys for Plaintiff: J. Michael Monteleone and M. Jane Rua, Cleveland

Insurance Carrier: Big Deal Insurance Company

Plaintiff's Experts: Timothy Knilians, M.D., Cincinnati

Defendant's Experts: None

Jury awards \$1.1 million in patient's death

The family of a 63-year-old Cleveland woman who died after she was given a drug overdose following surgery for a detached retina will receive \$1.1 million from doctors and the hospital.

A jury in Cuyahoga County Common Pleas Court yesterday found Dr. Mauro Tuason liable for the death of Irene Duplaga. It awarded \$1,142,812 in compensatory damages, of which Tuason is responsible for \$767,812.

Three other doctors and Lutheran Medical Center previously agreed to pay \$375,000, said J. Michael Monteleone, who represented Duplaga's family.

Monteleone said testimony before Judge James Carroll showed Duplaga, who worked in the title

bureau in the county clerk of courts office, had surgery Dec. 13, 1984, for a detached retina. During the surgery she was given mannitol, a drug that reduces fluid, to ease pressure behind the eye so a doctor could reattach the retina.

Testimony showed administration of the drug should have been discontinued after surgery, but for some reason four to five times the manufacturer's recommended dosage was given to Duplaga afterward, Monteleone said.

If Tuason, the on-call anesthesiologist, had discontinued the drug, Duplaga would not have suffered a heart attack seven hours after surgery, the lawyer contended.

She suffered brain and kidney damage. She died 18 days later.

Widow awarded \$602,827 in suit against surgeon

A Cuyahoga County Common Pleas jury has awarded \$602,827 to the widow of a Mantua man in a wrongful death suit against a surgeon at Robinson Memorial Hospital in Ravenna.

J. Michael Monteleone, a lawyer for the late Melvin Lewis' family, said Lewis went to the hospital in August 1986 with a broken rib. He said four medical experts testified that Lewis' lung was infected when Dr. Badr Ghumrawi performed a bronchoscopy to check for damage to the lung.

On Sept. 7, his wife took him back to the hospital with a high fever, Monteleone said, and Ghumrawi administered an antibiotic that was ineffective and Lewis' condition worsened.

The jury found that Ghumrawi deviated from acceptable standards

of medical care by not performing two tests during the September visit that would have identified the infection. Lewis died Oct. 31.

Mrs. Lewis said she used to tell her husband he was "disgustingly healthy."

"He was never sick a day in his life," she said. "He loved to play golf, bowl and hunt deer every November. I wish I could trade the money to get him back."

She said she was going to spend part of the award to install chimes in the chapel of the Huntington, W.Va., cemetery where her husband is buried.

Ghumrawi's lawyer, John Jackson, could not be reached for comment. Ghumrawi said he had no comment other than Jackson told him "it (the suit) is not over yet."

Cancer victim's husband wins malpractice suit

ELYRIA — A Lorain County Common Pleas Court jury has awarded \$640,000 to a Lorain man who lost his wife to cancer in a malpractice case against two Lorain physicians.

The eight-member jury returned the verdict Thursday afternoon after deliberating the case since Wednesday.

William K. Clark, husband of the late Kathy Clark, had filed suit in 1985 against Dr. Liwanag A. Asuncion and Dr. H.C. Ling.

Asuncion had treated his wife in 1982 for what was believed to be an ovarian cyst, and Ling supervised and interpreted the results of a sonogram the woman received the same year.

It was later discovered Mrs. Clark had cancer, but the disease went undiagnosed for 20 months before it spread to her

lungs and liver. She died April 28, 1984.

The jury found Ling approximately 41% negligent in the case for making a wrong interpretation of the sonogram.

Asuncion was found approximately 22% negligent for failing to catch the mistake and for treating Mrs. Clark for arthritis rather than cancer.

Mrs. Clark was found 37% negligent for failing to pursue follow-up treatment for her illness. That reduced the jury's base award of \$1.86 million down to about \$640,000.

The case went to trial on the appeal of an arbitration hearing in which an arbitrator for the plaintiff awarded \$657,000 and the defendant's arbitrator awarded about \$330,000.

argued lack of supervision and no notice. The parties settled the matter for \$116,000 prior to trial.

In 1998, plaintiff was diagnosed with lead poisoning while living in the greater Cleveland area at his mother's apartment, which was owned by defendant landlord. As a result of the poisoning, plaintiff had several chelation procedures and required follow-up treatment with psychologists. Plaintiff was 10 years old at the date of settlement.

Plaintiff alleged defendant landlord of the Section 8 housing complex was responsible for plaintiff's injury. Plaintiff claimed defendant was given notice of the lead hazards in the buildings several years before plaintiff was injured, but defendant did nothing to eliminate the lead hazard. Plaintiff claimed he suffered from attention deficit disorder (ADD), hypertension and sleep deprivation because of the lead poisoning.

Defendant contended plaintiff's mother was negligent in supervising the child and allowed him to ingest the lead. Defendant argued it had no notice of the problem.

Plaintiff Profile: Plaintiff was a 2 year old male.

Alleged Injury: Lead poisoning that required chelation procedures. Plaintiff suffered from attention deficit disorder, hypertension and sleep deprivation. He sought \$6,943 in medicals.

Expert(s):

Plaintiff: Michael B. Leach, Ph.D.
Psychologist – Beachwood, OH

Defendant: None

Case Number: WITHHELD

Editor's Notes: Per plaintiff's counsel, the outcome was impacted by proof of notice to defendant landlord of the lead problems within its section 8 housing complex.

Cuyahoga County

Court of Common Pleas — Cleveland

Patient Suffers Brain Injury from Allergic Reaction

Case Caption:

John Doe v. ABC Hospital

Settlement: \$7,500,000. Breakdown: \$5,000,000 for the personal injury claim and \$2,500,000 for the future wrongful death claim.

Judge: N/A
Settlement Date: 3/2006

Attorneys:
Plaintiff: J. Michael Monteleone, Cleveland
M. Jane Rua, Cleveland
Bradford D. Zelasko, Cleveland

Defendant: Withheld

Facts: A 46 year old man was left in a persistent vegetative state following administration of a medication to which he told the defendant hospital's staff he was allergic. The parties settled the medical malpractice suit for \$7,500,000 prior to trial, which included \$2,500,000 for a future wrongful death claim.

Plaintiff presented to defendant hospital for a routine hernia repair surgery. Prior to the procedure, he advised defendant's staff of his multiple medication allergies. All of the medications listed by plaintiff were to be removed from the operative area. Upon completion of the hernia repair, the surgeon irrigated the wound with bacitracin, the medication handed to him by a surgical nurse. Bacitracin was one of the medications to which plaintiff advised he was allergic. He went into anaphylactic shock and was without oxygen to his brain for 15 minutes. He suffered a debilitating brain injury and was left in a persistent vegetative state.

Plaintiff alleged defendant was negligent in failing to remove from the operating room the medication to which plaintiff was allergic. Plaintiff claimed defendant's actions breached the standard of care.

Defendant admitted an error in administering the medication, but contested the extent of damages and the life expectancy claim.

Plaintiff Profile: Plaintiff was a 46 year old single male.

Alleged Injury: Administration of medication to which plaintiff was allergic resulting in anaphylactic shock. Plaintiff suffered a brain injury when he was deprived of oxygen for several minutes. He now resides in a nursing facility and requires 24 hour nursing care. He is expected to live for 2 to 10 years.

Insurance Carrier: Self-insured

Case Number: WITHHELD

Editor's Notes: Due to a confidentiality agreement, the court location was not disclosed. For the purpose of publication, the

county in which plaintiff's attorneys are located was used as the court location. Per plaintiff's counsel, plaintiff was the primary caregiver for his 83 year old father prior to the surgery. His father, an Alzheimer's patient, was placed in a nursing home after these events.

Cuyahoga County

Court of Common Pleas — Cleveland

State of Ohio Settles Wrongful Conviction Case

Case Caption:

Clarence Elkins v. State of Ohio

Settlement: \$1,075,000

Judge: N/A

Settlement Date: 4/17/2006

Attorneys:

Plaintiff: Jana L. DeLoach, Akron

Defendant: Sherri B. Walsh, Cincinnati

Facts: A man wrongfully convicted of rape and murder was released from prison after serving more than seven years of his sentence. Plaintiff accepted a \$1,075,000 settlement with the State of Ohio. The Ohio Court of Claims approved the payment.

Plaintiff Clarence Elkins' mother-in-law was beaten, raped and strangled and his 6-year old niece, who was spending the night with her grandmother, was also beaten, raped and left for dead in June 1998. The child regained consciousness around 7:00 a.m. and ran to a neighbor's house for help. The female neighbor made the blood-covered child wait on the porch nearly 10 minutes before driving her home. No one questioned the neighbor regarding her actions or why she did not call the police or ambulance. Although plaintiff claimed to have been 45 minutes away with his wife at the time of the attacks, he was arrested and convicted of the crime. No evidence linked plaintiff to the crime except conflicting statements of the traumatized child who said plaintiff had been there. She later recanted her story. In the Spring of 2004, the Ohio Innocence Project intervened with DNA testing. The results showed no connection between plaintiff and the crime scene, but a motion for a new trial was denied. Further investigation of the neighbor revealed she was living with a man named Earl Mann who was convicted of raping three girls in 2002 and was incarcerated in the same prison as plaintiff. Elkins was able to acquire a

cigarette butt from Mann and provided it to his attorney. DNA testing on the cigarette butt revealed saliva that matched the unidentified DNA found on both crime victims. Plaintiff was released from prison on December 15, 2005 at the request of the Ohio attorney general.

Plaintiff alleged defendants violated his civil rights by wrongfully convicting him of a crime he did not commit and caused him to be wrongfully imprisoned for more than seven years.

Defendants settled the case, but did not acknowledge any misconduct.

Plaintiff Profile: Plaintiff was a 43 year old married white male at the time of his release from prison.

Alleged Injury: Wrongful conviction and imprisonment.

Case Number: CR-98-06041

Cuyahoga County

Court of Common Pleas — Cleveland

Newspaper Employee Claims Back Injury from Auto Crash

Case Caption:

Samuel LaMarca, Jr. v. Tracy A. Keck

Verdict: \$25,525. Breakdown: \$2,325 for past medicals; \$3,200 for past wage loss; and \$20,000 for pain and suffering.

Judge: Mary J. Boyle

Date of Verdict: 4/19/2006

Attorneys:

Plaintiff: Dale P. Zucker, Cleveland

Defendant: Louis R. Moliterno, Twinsburg

Facts: An early morning accident yielded \$25,525 in damages for a 62 year old district supervisor for the Cleveland Plain Dealer.

It was 5:30 a.m. on May 6, 2003 when Plaintiff Samuel LaMarca, Jr. was driving his van in the course and scope of his employment. He was traveling through the intersection of Mayfield Road and Golden Gate Boulevard in Mayfield Heights when he was struck by a vehicle operated by Defendant Tracy A. Keck.