

## San Francisco Jury Awards Boy \$70.9M

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A San Francisco jury has awarded a 9-year-old boy \$70.9 million in compensatory damages after finding a hospital and a medical clinic negligent for failing to diagnose his metabolic disease.

The award could be among the biggest in the state this year. In 2002, the top 10 jury awards were about \$70 million or more, while the top 25 cut off at about \$14 million, according to a survey by *The National Law Journal* and VerdictSearch.

Plaintiff Michael Cook was born at a Stanford University hospital in 1994 and diagnosed in 2000 with the metabolic disorder phenylketonuria, or PKU, court papers say. The boy's mother, Cara Cook, sued Stanford Health Services and the Palo Alto Medical Clinic on the boy's behalf, arguing he could have avoided brain damage and developed normally if doctors had diagnosed his condition earlier.

The verdict in *Cook v. Stanford Health Services*, 324905, includes \$56.3 million for future medical and attendant services, special education and rehabilitative care, and \$14.1 million for the loss of future earnings. The jury gave those amounts a present cash value of \$6.3 million and \$1.8 million, which represents how much money would have to be invested now to pay the total verdict over Cook's lifetime.

Cook can only collect half of the \$500,000 the jury awarded in non-economic damages for disability and impairment under California's Medical Injury Compensation Reform Act, which caps non-economic damages at \$250,000, said his attorney, David Baum of San Francisco's Baum & Blake.

Baum, who originally asked for about \$87 million, argued that the hospital took Cook's blood specimen when he was 4 hours old, too early to get accurate results when performing a required screening test for metabolic disorders. The lawyer asserted that a doctor at the medical clinic who saw Cook for two years failed to order more metabolic testing when the baby started missing milestones of development, such as crawling and speaking.

The lawyer defending Stanford Health Services, David Sheuerman, of Sheuerman, Martini & Tabari in San Jose, argued that the state didn't come out with a guideline saying the tests should be done after a baby's first 12 hours until 1995, the year after Cook was born.

Sheuerman said 88,000 infants in California between zero and 12 hours of age were tested in 1994. "Stanford did their screening program the same way every other hospital in the (San Francisco) Bay Area did it."

Baum said he countered Sheuerman's argument by putting a state official on the stand who testified that the 1995 guideline made a previously well-known standard explicit.

The attorney who defended the Palo Alto Medical Clinic could not be reached for comment by deadline.

The jury came out 10-to-2 against Stanford Health Services and 11-to-1 against the

medical clinic on the primary question posed: whether the defendants were negligent in diagnosing or caring for Cook. The jurors then found the medical clinic 65 percent responsible for the damages and Stanford Health Services 35 percent responsible, court documents show.

The actual cost to the defendants will be much less than the gross \$70.9 million verdict because defendants in medical malpractice cases are entitled to fund verdict judgments with an annuity, Sheuerman said, estimating that the actual cost to his client would end up around \$2 million.

Superior Court Judge Robert Dondero, who presided over the trial, will decide on a payment schedule, and a hearing has been set for Oct. 16, Baum said.

Cook and a third defendant in the case, the Regents of the University of California, reached a \$500,000 settlement after the trial began, Baum said. Opening statements began Sept. 2.

The verdict came two years to the day after the case was filed.