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ICU patient's death leads to \$4.29M deal

Hospital staff ordered emergency heart test that came hours late

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The family of a woman who died after failing to receive a timely heart ultrasound has settled its wrongful-death suit for \$4.29 million.

The series of agreements with defendants came last week, just before a trial was set to begin surrounding the death of patient Keesha Caldwell at MetroSouth Medical Center in Blue Island in March 2010.

Caldwell visited the hospital's emergency room a day before on Feb. 28 complaining of chest pain and feeling unwell. Initial vital-sign testing indicated she had low blood pressure, and physicians narrowed possible diagnoses as either infection- or heart-related.

Caldwell was admitted to stay overnight in the hospital and was eventually placed in its intensive care unit.

After tests ruled infection out, doctors shifted their focus to Caldwell's heart and ordered a CT scan — which revealed she had a moderate accumulation of fluid in her pericardial sac, a tissue that surrounds the heart muscle.

Jordan S. Powell, a partner at Levin & Perconti who represented the Caldwell estate, said people normally have some fluid surrounding their heart. But, he said, too much of it can cause a condition called cardiac tamponade, in which the fluid buildup prevents the heart from sufficiently filling with blood and pumping it back out to the rest of the body.

John J. Perconti, a founding partner of Levin & Perconti who also represented the plaintiffs,

said conducting an echocardiogram is the only way to rule out cardiac tamponade in a patient's diagnosis.

In Caldwell's case, he said, that test was ordered for the morning after she came to the hospital.

But Perconti said Caldwell's condition continued to worsen through the night and into the early morning hours.

Physicians then ordered an immediate echocardiogram at 5:50 a.m., the same morning of her already-scheduled test.

The immediate test was never performed, Perconti said, because of several communication errors that prevented it from ever being administered, interpreted or followed up on.

The hospital's regularly scheduled echo technician arrived to work between 7 and 7:30 that morning, Perconti said, and she promptly noticed the emergency order and headed to conduct the test.

"She immediately grabs her equipment, rushes to the room, and by the time she gets to the room, our client is in cardiac arrest," Perconti said.

Resuscitative efforts were unsuccessful, Perconti said, and what results could come from the echocardiogram performed at the same time revealed that more fluid had accumulated around Caldwell's heart.

Physicians also attempted to alleviate the pressure by conducting a pericardial synthesis — in which a needle is inserted into the heart's surrounding tissue to remove the fluid — but those efforts also failed.

"Our experts have indicated that if she had this pericardial synthesis at any time prior to her arresting at 7:33 a.m., she would have survived, which further magnifies the significance of the delay in getting the echocardiogram," Perconti said.

Tivias Caldwell, the decedent's brother, filed the wrongful-death lawsuit in Cook County Circuit Court as special representative



Jordan S. Powell

and special estate administrator in August 2008.

The complaint named the hospital, doctors Issac Plamoottil, Caldwell's emergency room physician; Richard Harris, who was assigned her case in the emergency room; Robert Lichtenberg, the overnight consulting cardiologist; Mohammed Asgar, who tended to Caldwell and ordered the echo tests; and Zafar Ahmed, who took over Caldwell's care when Asgar's shift ended the morning she died as well as their respective medial centers in which they worked.

The settlement agreement had MetroSouth Medical pay \$2,250,000; Lichtenberg and his employer, Heart Care Centers, pay \$800,000; Plamoottil pay \$740,000; and Harris, Asgar and Ahmed collectively pay \$500,000.

The lawsuit alleged the defendants negligently treated Caldwell when they failed to develop an appropriate differential diagnosis for her low blood pressure, timely administer an emergency echocardiogram or recognize the symptoms of cardiac tamponade.

Perconti said the hospital took no position regarding liability and did not disclose any experts to contest their conduct.

"They basically were conceding that they were negligent in the way that Ms.



John J. Perconti

Caldwell was treated, at least by the hospital staff, and carrying out that echo order," he said.

Some physicians claimed the emergency echocardiogram was not necessary to treat Caldwell, he said, and other defendants took the position that she died from a possible autoimmune condition.

The parties unsuccessfully mediated the case several months ago before former Cook County chief circuit judge Donald P. O'Connell, Perconti said, and O'Connell re-engaged the parties within the last two weeks to attempt a resolution.

Perconti said the case ultimately settled through personal conversations with each defendant's counsel, during which the parties agreed to pay their respective insurance policy limits. The final agreement came Oct. 16, he said. The trial was scheduled to start Wednesday.

"I think what led to the settlement was that we had demanded the policies of insurance for many of the defendants, and many of these defendants took that policy demand very seriously and that they could potentially be exposed to an excess judgment if considerable monies weren't offered from those policies of insurance to resolve the claim," Perconti said.

Powell said Caldwell's family is satisfied with the result because

it can move on from the incident.

“And we have two young daughters who are going to be able to use the money for their continued education,” he said. “And as they go forward with life without their mother, there will be some kind of consolation, at least, that there’s been accept-

ance of fault on behalf of the defendants for what occurred, and I think that’s very rewarding to the clients.”

Susan E. Conner, a partner at Cassidy, Schade LLP who represented the hospital, could not be reached for comment.

Partner Michael J. Charysh

and associate Edwin J. Olson of Charysh & Schroeder Ltd. represented Plamootil. Charysh declined to comment, and Olson could not be reached for comment.

David C. Burtker, principal at Cunningham, Meyer & Vedrine P.C. who represented

Lichtenberg, could not be reached for comment.

Mark C. Fedota, founding partner of Fedota, Childers P.C. who represented Harris, Ahmed and Asgar, declined to comment.

The case is *Tivias Caldwell, et al., v. MSMC Investors LLC, et al.*, 11 L 8238.