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Complications From Child's Surgery Lead to \$12.5M Settlement in Essex

An Essex County Superior Court judge has approved a \$12.5 million settlement in *Ocasio v. Yeh*, a medical malpractice suit on behalf of a child whose...

By Charles Toutant and P.J. D'Annunzio | May 29, 2020



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An Essex County Superior Court judge has approved a \$12.5 million settlement in *Ocasio v. Yeh*, a medical malpractice suit on behalf of a child whose right leg had to be amputated due to complications from a tonsillectomy.

Presiding Civil Judge **Thomas Moore** approved the settlement March 11 on behalf of the injured child, known as N.O., now 10.

The suit claims that N.O., who was five when he was hospitalized for removal of his tonsils and adenoids, had to have his right leg amputated because doctors and nurses failed to promptly diagnose and treat a case of acute compartment syndrome, in which blood clots cut off the blood supply to a limb.

N.O. and his parents were represented by **David Mazie** and **Beth Baldinger** of **Mazie Slater Katz & Freeman** in Roseland.

N.O. was admitted to St. Barnabas Medical Center in Livingston on April 27, 2015. During surgery, the child experienced complications that required emergent resuscitative measures, including making multiple punctures in both femoral arteries in an attempt to establish an arterial line, according to court documents. After surgery he was placed on a ventilator, sedated and moved to a pediatric intensive care unit at 9 a.m. There, he came under the care of defendants Timothy Yeh, a physician, and Karendeep Kandola, a registered nurse. Later, N.O. was placed under the care of physician Phoung Nghi and registered nurse Jennifer Aranda.

According to the suit, the doctors and nurses knew that the punctures that were made to N.O.'s femoral arteries presented a risk that blood clots could develop and hamper circulation. Accordingly, the nurses were instructed to monitor N.O.'s circulation every hour, according to court papers. At 2 p.m., Aranda called Yeh because she detected a decrease in pulse in N.O.'s lower extremities, and his right leg was cooler than the left. At 4 p.m., Aranda noticed another decrease in lower extremity pulse but failed to notify the physician on duty, according to court papers. Over the next 12 hours, the nurses saw no improvement in the child's circulation, but failed to notify Yeh or Nghi, the suit claimed.

N.O.'s parents, who were at their son's side, noticed that his feet and legs were unusually cool and that the right was cooler than the left, with a bluish discoloration, like a bruise, on the top of the foot, according to court papers. The boy's mother, Amanda Ocasio, brought the cold right foot and discoloration to the attention of doctors and nurses, but they dismissed her concerns, the plaintiffs claimed.

That evening, N.O., who was heavily sedated, began waking up, crying and indicating he felt pain in his right leg. The boy's mother reported that development to Aranda, who gave him morphine without telling Nghi. At 11 p.m., Aranda called in Nghi to report that N.O. was agitated and pulling out his breathing tube. Ocasio told the doctor she was concerned that his right foot was now even colder and the discoloration had grown darker and larger. Nghi responded that there was no reason to be concerned, according to a court document.

At 2 a.m., there was no detectable pulse in his lower right leg. At 7 a.m., N.O. underwent emergency surgery, but the vascular surgeon later told Ocasio and her husband, Richard, that the surgery came too late, and N.O. would likely lose his right leg.

The following day, N.O. was taken by helicopter to Children's Hospital of Philadelphia, where the family had to wait several weeks for gangrene to stop spreading before the amputation could be performed, according to court papers. On June 4, 2015, doctors amputated the right leg and his great left toe. On June 11, N.O. underwent more surgery for skin grafts and wound closure. He was released on July 17 of that year.

According to the suit, the defendant doctors and nurses failed to recognize the signs of acute compartment syndrome, where the risk of loss of limb increases as time passes without treatment, the suit said. N.O. experienced ACS for 12 hours before it was detected, according to court documents.

Since the amputation, N.O. uses a prosthesis and sometimes requires a wheelchair when use of the prosthetic causes irritations and wounds, court documents said. A child psychiatrist has diagnosed N.O. with post-traumatic stress disorder and separation anxiety, which the family claims has impacted his social and educational functioning. The child's parents filed a medical malpractice suit against physicians Yeh and Nghi, nurses Kandola and Aranda, and St. Barnabas Medical Center.

The defendants maintained that there were no signs of acute compartment syndrome, and that they acted swiftly in response to changes in the patient's condition, according to Mazie.

The settlement was reached in January, following mediation with **Dennis Carey III**, a retired Superior Court judge with **Tompkins, McGuire, Wachenfeld & Barry** in Roseland, and involvement by Moore, said Mazie.

The settlement provides \$10 million to N.O., \$1.5 million for the *Portee* claim by Amanda Ocasio and \$1 million for the *Portee* claim by Richard Ocasio.

Mazie Slater was awarded \$380,380 in expenses plus 25% of the net recovery in excess of \$3 million. Lexington Insurance paid \$7 million on behalf St. Barnabas, both doctors and both nurses; Continental Casualty, doing business as AIG, paid \$5 million on behalf of St. Barnabas, both doctors and both nurses; and CNA Insurance paid \$500,000 on behalf of Kandola. The defendants made payment in late April, according to Mazie.

Joseph Garrubbo of **Garrubbo & Capece** in Union represented Yeh, along with **Douglas Ammerman** of **Hall Booth Smith** in Atlanta.

Julia Klubenspies of **Marshall Dennehey Warner Coleman & Goggin** in Roseland represented St. Barnabas and Kandola.

Lauren Strollo of **Vasios, Kelly & Strollo** in Union represented Nghi, and **Lauren O'Neill** of **MacNeill, O'Neill & Riveles** in Cedar Knolls represented Aranda.

The defense lawyers did not respond to requests for comment about the case.

— *Charles Toutant*

\$500K in Monmouth Slip and Fall

Ansell v. PNC Bank: A man who slipped on ice and fell outside of a PNC Bank branch in Red Bank has settled his Monmouth County lawsuit with the bank and snow and ice removal company for \$500,000, the law firm representing him said.

Plaintiff Stephen Ansell reached a settlement with the defendants during a pretrial conference with assistance from a mediator, according to a statement released by Ansell's counsel, **Michael Hanus** of Middletown firm **Hanus & Parsons**.

Thomas Coffey of **Donnelly Minter & Kelley** represented DeFazio Landscaping, and **Patrick Coyne** of **Terkowitz & Hermesmann** represented PNC. Neither responded to requests for comment.

According to Hanus & Parsons, Ansell, then 53, was walking to the train and slipped on a patch of ice walking down the sidewalk along Reckless Place in Red bank in front of a PNC branch on Feb. 2, 2016.

A week prior, there had been 18 inches of snowfall, and the parking lot of the PNC was filled with snow piles from plowing, the firm said. Temperatures varied throughout the week, causing snow to melt and water to freeze subsequently when the temperature fell again.

Ansell alleged that there was no salt or ice melting agents on the sidewalk at the time of his fall, also claiming that the defendants knew or should have known of the dangerous conditions present.

Ansell sustained fractures in his left lower leg and ankle, and required surgery. Screws were surgically inserted, but two later had to be removed. Ansell underwent physical therapy afterward, according to the lawyers.

The firm said Ansell worked in the IT field and suffered lost wages as a result of his injury. He also incurred \$53,000 in medical bills, paid by insurance, for which a lien was asserted, the firm said.

The firm added that the plaintiff, who is a father of two, was a cycling and soccer enthusiast, but can no longer participate in those activities.

The case was presided over by Monmouth County Superior Court Judge **Owen McCarthy**. The county mediator was **Marie Accardi**.

— *P.J. D'Annunzio*

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