

Verdicts & Settlements

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Air base medical staff missed son's diagnosis, plaintiff claimed

This case involved allegations of medical malpractice against the medical staff at Eglin Air Force Base for failure to diagnose and treat hydrocephalus in a child.

The child was born Feb. 17, 2005. His father was in the Air Force at the time.

From birth until his father's honorable discharge in May 2005, the child was under the care and treatment of the medical staff at Eglin Air Force Base in Fort Walton Beach, Fla. This care and treatment included "well-baby" visits on March 1, 2005, and April 29, 2005.

After his father left the service, it was discovered that the child had hydrocephalus. He was seen in Charlotte by a pediatrician on Aug. 3, 2005, who immediately referred the child for a CT Scan. He was diagnosed with hydrocephalus and underwent immediate surgery for shunt placement by a neurosurgeon.

Since that time, the child has been under regular treatment, including shunt revisions, eye surgery, speech therapy, occupational therapy, physical therapy and neurology.

The plaintiff contended that the medical staff at Eglin Air Force Base failed to diagnose the child's hydrocephalus in a timely fashion. Although the child's head size was not "off the chart" based on head circumference charts, it was near the top of the chart.

In addition, the plaintiff contended that the presence of strabismus (consistently crossed eyes) and a failure to reach developmental milestones should have alerted the caretakers of the possibility of hydrocephalus and led to further diagnostic tests.

The plaintiff contended that the medical staff at Eglin Air Force Base did not evaluate developmental milestones as required by standard protocol, and reassured the child's parents that the strabismus was not a concern.

The defendant contended that it was not a breach of the standard of care to fail to diagnose the child's hydrocephalus because his head size was not "off the chart."

The defendant further contended that standard protocol was followed, that the family did not complain of strabismus, and the family failed to obtain timely follow-up after separating from the military.

Finally, the defendant contended that the child would have had the same cognitive deficits he currently has even if his hydrocephalus had been diagnosed sooner, based on the theory that he had a congenital condition known as Dandy Walker Syndrome.

The defendant petitioned the court for an MRI under general anesthesia in order to determine whether the child had Dandy Walker Syndrome. The plaintiff resisted this effort, arguing that an MRI would not necessarily diagnose Dandy Walker Syndrome; that numerous less-invasive scans were already available, and that the treating and expert physicians in the case had opined that the child's deficits were caused by hydrocephalus, not any other condition.

The defendant's motion for the MRI was denied by Magistrate Judge David S. Cayer in *Whitaker v. United States*, 2009 U.S. Dist. LEXIS 56735 (June 30, 2009).

Two of the plaintiff's treating doctors, Dr. Charles Scott McLanahan (neurosurgeon, Charlotte) and Andrew Gunter (pediatrician, Charlotte) gave testimony that was helpful in establishing the cause and extent of the child's deficits, as well as in resisting the defendants' motion for the MRI.

Of the \$1.5 million recovered, \$1 million has been placed in trust to pay for the child's care and treatment.



McGee



Jackson

Type of action: Medical malpractice — Federal Tort Claims Act

Injuries alleged: Permanent brain injury due to undiagnosed hydrocephalus

Case name: *Whitaker v. United States*

Case number: No. 3:08-cv-202

Court: U.S. District Court for the Western District of North Carolina

Judge: Judge Robert J. Conrad Jr. and Magistrate Judge David S. Cayer

Verdict or settlement: Settlement

Date: Dec. 15, 2009 (final approval)

Amount: \$1.5 Million

Plaintiff's experts: Daniel Rauch, M.D., FAAP, pediatrician, New York University School of Medicine (New York); Harvey E. Cantor, M.D., pediatric neurologist, St. Louis University School of Medicine (St. Louis, Mo.); John R. Seals, M.D., pediatric neurologist (San Antonio); Julie Sawyer Little, MS, CTR/L, life care planner, Sawyer & Associates (Floyd, Va.); Oliver G. Wood Jr., economist (Columbia, S.C.)

Plaintiff's attorneys: Sam McGee and Gary W. Jackson of Jackson & McGee (Charlotte); Jeffrey C. Anderson of Law Offices of Jeffrey C. Anderson (San Antonio)

Editor's note: The information in Lawyers Weekly's verdicts and settlements reports was submitted by the counsel for the prevailing party and represents the attorney's characterization of the case.



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