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UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

CATHERINE B. LAAG, a minor, by her  
Parent and Natural Guardian, JOHN LAAG,  
And JOHN LAAG Individually and in his  
Own right, plaintiffs  
423 Stokes Road  
Shamong, New Jersey 08066

CASE NO. 04-1306

JURY TRIAL DEMANDED

vs.

EDWARD J. CULLEN, JR., D.O.  
Alfred I. DuPont Hospital For Children  
1600 Rockland Road  
Wilmington, Delaware 19803

and

JAMES HERTZOG, M.D.  
Alfred I. DuPont Hospital For Children  
1600 Rockland Road  
Wilmington, Delaware 19803

and

ALFRED I. DUPONT HOSPITAL FOR  
CHILDREN  
1600 Rockland Road  
Wilmington, Delaware 19803

**I. PARTIES**

1. Plaintiff, Catherine B. Laag, a minor, is a resident and citizen of the State of New Jersey currently residing at the Voorhees Pediatric Facility, a long-term care facility located in Voorhees, New Jersey.

2. Plaintiff, John Laag is an adult individual who resides in and is a citizen of the State of New Jersey

3. Defendant, Edward J. Cullen, Jr., D.O., is a physician, specializing in pediatric critical care medicine and a resident and citizen of the State of Delaware.

4. Defendant, James Hertzog, M.D., is a physician, specializing in pediatric critical care medicine and a resident and citizen of the State of Delaware.

5. Defendant, Alfred I. DuPont Hospital for Children is a hospital and medical center with a principle place of business located at 1600 Rockland Road, Wilmington, Delaware 19803.

6. At all times material hereto, defendants Edward J. Cullen, Jr., D.O. and James Hertzog, M.D. were the agents, servants, employees and ostensible agents of defendant, Alfred I. DuPont Hospital for Children acting within the course and scope of their employment.

7. At all times material hereto, defendant Edward J. Cullen, Jr., D.O. acted through his agents, servants, employees and ostensible agents whose names have not been disclosed to plaintiff but work as residents, fellows, physicians, nurses and technicians at Alfred I. DuPont Hospital for Children.

8. At all times material hereto, defendant James Hertzog, M.D. acted through his agents, servants, employees and ostensible agents whose names have not been disclosed to plaintiff but work as residents, fellows, physicians, nurses and technicians at Alfred I. DuPont Hospital for Children.

9. At all times material hereto, defendant Alfred I. DuPont Hospital for Children acted through its agents, servants, employees and ostensible agents, whose names have not been disclosed to plaintiff but work as residents, fellows, physicians, nurses and technicians at the hospital.

## **II. JURISDICTION AND VENUE**

10. Jurisdiction is conferred upon this Court by virtue of the parties' diversity of citizenship pursuant to 28 U.S.C. §1332.

11. The amount in controversy is in excess of Seventy-Five Thousand Dollars (\$75,000.00) exclusive of interest and cost.

12. Venue is properly placed in the District of Delaware pursuant to 28 U.S.C. §1391 because the claim arose within the district.

## **III. STATEMENT OF THE CASE**

13. On or about August 27, 2003, plaintiff Catherine B. Laag was admitted to Alfred I. DuPont Hospital for Children suffering from bilateral pneumonia.

14. On or about August 27, 2003, plaintiff came under the professional care of defendant, Edward J. Cullen, Jr., D.O.

15. On or about August 27, 2003, plaintiff came under the professional care of defendant, James Hertzog, M.D.

16. On or about August 29, 2003, plaintiff was intubated and placed on high frequency oscillating ventilation ("HFOV").

17. In the days following the intubation, plaintiff's arterial blood gasses were monitored and bilateral chest x-rays were routinely taken.

18. On or about September 9, 2003, plaintiff was extubated by and/or at the direction of defendants.

19. As a result of the extubation, plaintiff suffered severe respiratory distress and anoxic/hypoxic encephalopathy.

20. Plaintiff was reintubated and placed on mechanical ventilation.

**COUNT I**  
**PLAINTIFF VS. EDWARD J. CULLEN, JR., D.O.**  
**AND ALFRED I. DUPONT HOSPITAL FOR CHILDREN**

21. Plaintiff incorporates by reference the averments set forth in paragraphs 1 through 20, inclusive.

22. The negligence of defendant Edward J. Cullen, Jr., D.O. includes, but is not limited to, the following:

- a) Extubating the plaintiff from mechanical ventilation on September 9, 2003;
- b) Failing to properly consider plaintiff's medical condition at the time of extubation;
- c) Failure to properly consider plaintiff's chest x-rays at the time of the extubation;
- d) Failure to properly consider plaintiff's arterial blood gasses at the time of the extubation;
- e) Failure to properly assess the risk of respiratory distress and failure at the time of extubation;
- f) Extubating plaintiff in a careless manner;
- g) Failure to properly monitor plaintiff's condition immediately following extubation;
- h) Failure to properly and timely reintubate the plaintiff following extubation.

23. Defendant Alfred I. DuPont Hospital for Children is vicariously liable for the negligence of defendant Edward J. Cullen, Jr., D.O.

24. As a result of defendants' negligence, plaintiff has suffered a permanent anoxic brain injury.

25. As a result of defendants' negligence, defendants have (a) caused harm to plaintiff; b) increased the risk of harm to plaintiff; and c) caused plaintiff a substantial chance of avoiding harm.

26. As a result of defendants' negligence, plaintiff has in the past and will in the future suffer:

- a) anoxic brain injury;
- b) physical pain, suffering and inconvenience;
- c) mental anguish, suffering and inconvenience;
- d) loss of life's pleasures and the ability to attend to daily activities;
- e) disfigurement and humiliation;
- f) extended hospital admissions and medical treatment which otherwise would have been avoided;
- g) substantial medical bills and other costs for the treatment of her condition which otherwise would have been avoided;
- h) loss of earning capacity

27. As a result of defendants' negligence, plaintiff's ability to function has been permanently impaired.

WHEREFORE, plaintiff demands judgment in her favor and against defendants, joint and severally, in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) plus interest and costs of suit.

**COUNT II**  
**PLAINTIFF VS. JAMES HERTZOG, M.D. AND**  
**ALFRED I. DUPONT HOSPITAL FOR CHILDREN**

28. Plaintiff incorporates by reference the averments set forth in paragraphs 1 through 27, inclusive.
29. The negligence of defendant James Hertzog, M.D. includes, but is not limited to, the following:
- a) Extubating the plaintiff from mechanical ventilation on September 9, 2003;
  - b) Failing to properly consider plaintiff's medical condition at the time of extubation;
  - c) Failure to properly consider plaintiff's chest x-rays at the time of the extubation;
  - d) Failure to properly consider plaintiff's arterial blood gasses at the time of the extubation;
  - e) Failure to properly assess the risk of respiratory distress and failure at the time of extubation;
  - f) Extubating plaintiff in a careless manner;
  - g) Failure to properly monitor plaintiff's condition immediately following extubation;
  - h) Failure to properly and timely reintubate the plaintiff following extubation.
30. Defendant Alfred I. DuPont Hospital for Children is vicariously liable for the negligence of defendant James Hertzog, M.D.
31. As a result of defendants' negligence, plaintiff has suffered a permanent anoxic brain injury.

32. As a result of defendants' negligence, defendants have (a) caused harm to plaintiff; b) increased the risk of harm to plaintiff; and c) caused plaintiff a substantial chance of avoiding harm.

33. As a result of defendants' negligence, plaintiff has in the past and will in the future suffer:

- a) anoxic brain injury;
- b) physical pain, suffering and inconvenience;
- c) mental anguish, suffering and inconvenience;
- d) loss of life's pleasures and the ability to attend to daily activities;
- e) disfigurement and humiliation;
- f) extended hospital admissions and medical treatment which otherwise would have been avoided;
- g) substantial medical bills and other costs for the treatment of her condition which otherwise would have been avoided;
- h) loss of earning capacity

34. As a result of defendants' negligence, plaintiff's ability to function has been permanently impaired.

WHEREFORE, plaintiff demands judgment in her favor and against defendants, joint and severally, in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) plus interest and costs of suit.

**COUNT III**  
**PLAINTIFF VS. ALFRED I. DUPONT HOSPITAL FOR CHILDREN**

35. Plaintiff incorporates by reference the averments set forth in paragraphs 1 through 34, inclusive.

36. The negligence of defendant Alfred I. DuPont Hospital for Children includes, but is not limited to, the following:

- a) Extubating the plaintiff from mechanical ventilation on September 9, 2003;
- b) Failing to properly consider plaintiff's medical condition at the time of extubation;
- c) Failure to properly consider plaintiff's chest x-rays at the time of the extubation;
- d) Failure to properly consider plaintiff's arterial blood gasses at the time of the extubation;
- e) Failure to properly assess the risk of respiratory distress and failure at the time of extubation;
- f) Extubating plaintiff in a careless manner;
- g) Failure to properly monitor plaintiff's condition immediately following extubation;
- h) Failure to properly and timely reintubate the plaintiff following extubation;
- i) Failure to properly oversee, control, supervise and monitor physicians, fellows, residents and technicians who participated in the care of plaintiff during her August 27, 2003 hospitalization;
- j) Failure to select and retain competent physicians, nurses, orderlies and technicians with respect to the delivery of services to plaintiff during her August 27, 2003 admission;
- k) Failure to formulate, adopt and/or enforce rules and policies to ensure quality care of plaintiff and specifically, but without limitation, rules, policies and protocols governing the extubation of

patients, the criteria for extubating patients and the criteria for the performance of diagnostic studies and tests in connection with the extubation of patients;

- l) Failure to use reasonable care in the maintenance of safe and adequate facilities and equipment utilized in the care and treatment of plaintiff during her August 27, 2003 admission.

37. As a result of defendants' negligence, plaintiff has suffered a permanent anoxic brain injury.

38. As a result of defendants' negligence, defendants have (a) caused harm to plaintiff; b) increased the risk of harm to plaintiff; and c) caused plaintiff a substantial chance of avoiding harm.

39. As a result of defendants' negligence, plaintiff has in the past and will in the future suffer:

- a) anoxic brain injury;
- b) physical pain, suffering and inconvenience;
- c) mental anguish, suffering and inconvenience;
- d) loss of life's pleasures and the ability to attend to daily activities;
- e) disfigurement and humiliation;
- f) extended hospital admissions and medical treatment which otherwise would have been avoided;
- g) substantial medical bills and other costs for the treatment of her condition which otherwise would have been avoided;
- h) loss of earning capacity

40. As a result of defendants' negligence, plaintiff's ability to function has been permanently impaired.

WHEREFORE, plaintiff demands judgment in her favor and against defendants, joint and severally, in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) plus interest and costs of suit.

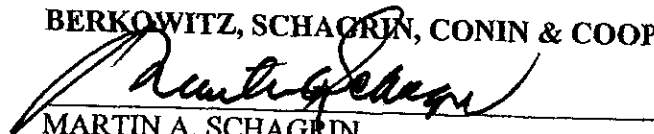
**COUNT IV**  
**JOHN LAAG VS. EDWARD J. CULLEN, JR., D.O., JAMES HERTZOG, M.D.**  
**AND ALFRED I. DUPONT HOSPITAL FOR CHILDREN**

41. Plaintiff incorporates by reference the averments set forth in paragraphs 1 through 39, inclusive.

42. As a result of the defendants' negligence, John Laag, the parent and natural guardian of Catherine B. Laag, has in the past and will in the future incur costs and expenses and a loss of his child's services.

WHEREFORE, plaintiff demands judgment in his favor and against defendants, joint and severally, in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) plus interest and costs of suit.

**BERKOWITZ, SCHAGRIN, CONIN & COOPER, P.A.**



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