

Mom settles premature-birth lawsuit with EVAC ambulance

Eloísa Ruano González, Orlando Sentinel

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VOLUSIA COUNTY — A woman who sued EVAC for injuries her son received during a premature birth reached a settlement this week with the ambulance service, according to court records. Margarita Chess was six months pregnant in 2003 when she gave birth to her son, Addison, in an ambulance en route to Arnold Palmer Hospital for Children in Orlando. The boy, who has cerebral palsy, survived but suffered brain damage. Todd Falzone, an attorney for the Chess family, did not return calls seeking information on the settlement.

In April, a jury found EVAC negligent for accepting transport and for the care it provided. EVAC argued that paramedics couldn't refuse the emergency-room doctor's order. Chess first arrived at the Bert Fish Medical Center in New Smyrna Beach, where a doctor decided to transfer her because the hospital didn't have the right equipment to handle a premature baby. Halifax Medical Center in Daytona Beach didn't accept the transfer, saying it lacked specialists for extremely premature births. Chess originally sued both hospitals and doctors, but they settled for a total of \$1.4 million.

—Eloisa Ruano González

Huge verdict could change way paramedics react to calls

Ludmilla Lelis, Orlando Sentinel

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After a jury decided that a [Volusia County](#) ambulance service should pay \$10 million for the premature birth of boy in one of its vehicles, paramedics across the nation wondered: Could they too be held liable for their most basic duty of transporting a patient?

"We go wherever we are called. We go without question," said A.J. Heightman, editor in chief at the *Journal of Emergency Services*, a leading national publication for the emergency medical field. "If this verdict stands, every paramedic is going to second-guess themselves: 'Am I going to get caught like EVAC did?'"

That fallout, and the financial liability to EVAC ambulance service and possibly Volusia County, will be key questions as the verdict faces legal challenges. EVAC and the county are asking the trial judge to reconsider the jury's decision. Hearings are scheduled for June and July.

Ultimately, the verdict could affect how other emergency calls are handled, and whether EVAC in particular, can afford to stay in business.

"EMTs and paramedics will go on the call until lawsuits like this break the bank and they can't go anymore," said Ben Hinson, past president of the American Ambulance Association and owner of Mid- Georgia Ambulance

Service. "That is \$10 million that comes out of the ability to provide care, and the community will suffer because of that cost."

Last month, a Volusia jury held EVAC liable for transporting Margarita Chess, six months pregnant when she gave birth to her son in the ambulance en route to [Arnold Palmer Hospital for Children](#) in Orlando. The boy, Addison Chess, survived but suffered brain damage and has cerebral palsy.

In 2003, Chess, who lives in southeast Volusia, had originally come to the emergency room at Bert Fish Medical Center in New Smyrna Beach for premature labor pains. But the doctor there, Dr. John Milton, decided to transfer her elsewhere because his hospital didn't have an obstetrician or the right equipment to handle a premature baby, according to court records,

Milton talked to Dr. Thomas Stavoy, an obstetrician for Halifax Medical Center in Daytona Beach, but he didn't accept the transfer, deciding that Halifax wasn't the right hospital for such an extremely premature baby. EVAC was called to transport Chess to the Orlando hospital.

The original lawsuit was filed against both hospitals and doctors, but the parties settled for a total of \$1.4 million. EVAC faced the jury trial alone.

Chess' attorney, Bob Kelley, said EVAC could have settled with the other parties for the company's insurance policy maximum of \$5 million but did not. EVAC spokesman Mark O'Keefe said he couldn't comment on settlement discussions.

Ultimately, the jury determined that the ambulance service was negligent for accepting the transport, as well as for the medical care on board. Though it was a breech birth and the infant wasn't breathing at first, the paramedic performed CPR to revive him, according to court records.

"This case is just so staggering to us," Hinson said. "Ambulances pick up people in tough situations and try to save their lives, and EVAC has an incredibly strong reputation.

"The fact that they resuscitated a 25-week baby is an amazing medical feat, and for them to be hammered like this, it scares us to death," he said.

Such extremely premature babies have lower survival rates and more serious complications. According to the March of Dimes, fewer than 1 percent of births occur before the 28th week, or seventh month, of pregnancy and about 25 percent of the surviving babies will have serious lasting disabilities.

However, the plaintiff's attorney said the key issue wasn't whether the ambulance could have refused to transport, but whether the paramedic did what was necessary before accepting the patient.

"The paramedic should have evaluated her before they transported her. Otherwise, the ambulance runs as a taxi service," Kelley said.

Still, the verdict could imply extra decision-making that might not be ideal in such emergency situations, said University of Florida law school professor Lyrissa Lidsky.

"It is troubling from the paramedic's standpoint because it forces them to make an independent decision as to whether the doctor made the right call to transport," she said. "They may have to potentially say no to avoid liability.

"As a matter of policy, I don't necessarily think that's the outcome we want," she said. "We want the person with the most knowledge and the most sophisticated medical judgment, presumably the emergency room doctor, to make that decision."

Second-guessing an emergency room doctor ordering a transport isn't something that ambulance services do, Hinson said.

"That is ludicrous," he said. "If the emergency room doctor says I cannot manage this and you have to take this patient, a paramedic cannot disagree."

EVAC hopes the trial judge will allow a new trial or limit the verdict amount.

Meanwhile, Volusia County attorneys are joining the case, asking for the verdict to be capped because EVAC operates as a nonprofit under a county contract and receives taxpayer funds.

County officials are concerned about what could happen if the entire \$10 million verdict stands and if EVAC is financially responsible for covering what the \$5 million insurance policy won't, according to court documents.

Officials are concerned that the liability could ultimately hit Volusia County, which oversees EVAC. They also aren't sure whether the county would have to make up the difference in the verdict amount should EVAC be unable to pay.