



Pa. Justices Won't Review \$10M Infant Meningitis Verdict

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Law360, Los Angeles (October 10, 2017, 8:42 PM EDT) -- The Pennsylvania Supreme Court on Tuesday declined to take up a case that ended in a \$10.1 million jury verdict in favor of a woman who sued a Philadelphia hospital over her infant's delayed bacterial meningitis diagnosis, putting an end to a nearly two-year appeals process.

The state's highest court denied Children's Hospital of Philadelphia's bid for certiorari, after an intermediate appeals court had rejected the hospital's claim that plaintiff Shantice Tillery's expert medical witnesses provided speculative testimony. The jury had found in 2015 that the hospital was liable for the baby's brain damage, deafness and other serious injuries caused by doctors' late meningitis diagnosis.

An attorney for Tillery, **Andy Stern** of Kline & Specter PC, told Law360 they were satisfied with the high court's rejection of the case, noting that the hospital will be on the hook for approximately \$12.4 million after accounting for delay damages and post-judgment interest.

"We are very pleased that the courts of this commonwealth have confirmed the jury's verdict that CHOP is responsible for Shamir Tillery's profound deafness and brain injury, and that efforts to delay payment on this verdict have finally come to an end," Stern said in a statement. "We are hopeful that this outcome will help Shamir Tillery to better face the serious challenges he will endure for the rest of his life."

Representatives for the hospital did not immediately respond to requests for comment on Tuesday.

In February, a Pennsylvania Superior Court panel affirmed the jury's verdict, rejecting the hospital's argument that testimony provided by Tillery's expert witnesses was inadmissible because it was based on their own experience, rather than scientific or empirical evidence.

The appellate court issued a 28-page published opinion saying Tillery's experts provided testimony "with a reasonable degree of certainty" that the hospital and treating physician Dr. Monika Goyal failed to use proper testing methods, which prevented the timely treatment of the meningitis. One such expert, Dr. Ron Waldrop, testified that had Goyal ordered blood work to be done on the infant, she would have

discovered abnormal results prompting further action, including admission, observation and intervention.

The panel noted that Waldrop formed his opinion by relying on the baby's hospital records, a peer review journal and a relevant chapter he wrote in a standard pediatric textbook discussing how to look for risk factors in children who have bacteria in their blood when the source isn't clear. In addition, two other expert opinions provided by Tillery were backed by decades of experience and supported by medical literature, the court said.

"Appellants' claim that the opinions were speculative, based solely on their personal conjecture and expertise, and not on science or empirical evidence, is belied by the record," the panel said in denying the hospital's motion for judgment notwithstanding the verdict.

The Superior Court panel also turned aside the hospital's argument that the trial judge erred by not reducing the \$7.5 million earmarked for compensatory damages for past and future pain and suffering, saying the award was justified given expert opinions that the case was a "worst-case scenario" due to the infant sustaining the injuries at only 11 months old.

"We agree with the trial court that the verdict was not 'so grossly excessive as to shock our sense of justice,'" the court said.

The intermediate appeals court also rejected in April the hospital's bid for a rehearing.

Tillery is represented by Andrew J. Stern and Elizabeth A. Crawford of Kline & Specter PC.

The hospital is represented by Maureen M. McBride and James C. Sargent Jr. of Lamb McErlane PC and Nancy L. Winkelman of Schnader Harrison Segal & Lewis LLP.

The case is Shantice Tillery et al. v. The Children's Hospital of Philadelphia et al., case number 227 EAL 2017, in the Supreme Court of Pennsylvania, Eastern District.

--Additional reporting by Dan Packel. Editing by Nicole Bleier.