

Phila Jury Awards \$15M to Plaintiff who Suffered Stroke

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When, after two and one-half hours, a 12-person jury returned from the deliberation room early yesterday afternoon with a question rather than a verdict, the parties may have breathed a momentary sigh of relief in a Philadelphia City Hall courtroom.

But moments later, those sighs may have turned to gasps when the jury foreperson, a university administrator, asked Judge Joseph D. O'Keefe the panel's question.

"Is there a maximum amount of monetary compensation that we may assign?" she asked.

"No," O'Keefe answered tersely. "There is no maximum."

Less than 10 minutes later, plaintiff's attorney Andrew Stern recounted yesterday, the 12-person jury returned a verdict of \$ 15 million in favor of a 57-year-old woman who suffered brain damage and severe deficits on the right side of her body as the result of a post-operative stroke.

The jury's verdict was the largest in a medical malpractice case in Philadelphia County reported to The Legal in the last four years. It is the largest reported from any Pennsylvania court since 1994, when a Lackawanna County jury handed down a \$ 15 million verdict in a medical malpractice case.

The jury entered the award against surgeon Bud Mildenberg, cardiologist William Haaz and Holy Redeemer Hospital, where plaintiff Barbara Dupon was treated in 1993 for removal of plaque from the carotid artery.

Mildenberg was held 70 percent responsible, the hospital 20 percent responsible and Haaz 10 percent responsible for injuries sustained by Dupon and for loss of consortium of her husband.

Stern said that the jury entered a \$ 12 million award for Dupon and \$ 3 million for the loss of consortium claim.

The award to Barbara Dupon, Stern said, was entirely for intangibles pain and suffering, emotional distress, the loss of enjoyment of life and disfigurement.

The plaintiffs' attorney said that he wanted the jurors to focus on the big picture of his clients' losses, and presented no evidence on medical costs or lost wages.

"I felt that rather than have the jury focus on all of her physical and mental limitations [in isolation]," the jury should focus on the overall effect on Dupon, Stern said.

"The award was a proper one for what she has been through and is going through," Stern said. "She is significantly impaired, and there was no issue taken with that."

Defense lawyers indicated that they would seek reduction of the award, as well as attack it on appeal.

"The award was clearly excessive," said Kathleen M. Kramer of Marshall Dennehey Warner Coleman & Goggin, defense counsel for Holy Redeemer, in a statement.

According to Stern, the surgeon tendered the limit of his primary insurance policy \$ 200,000 during pretrial settlement talks. But the state Medical Catastrophe Loss Fund refused to place any money on the claim, saying that the case was defensible.

The CAT fund did not talk settlement with Stern, even as other defense lawyers explored resolving the case during the six days of trial.

Defense lawyer Richard R. Galli of Galli Reilly & Stellato, whose cardiologist client was held 10 percent liable by the jury, said that one of O'Keefe's decisions would likely become grounds for appeal.

"We thought it was proper to permit expert testimony from a neurologist on the roles and responsibilities of various physicians in the management of the stroke," Galli said. "But the judge refused to permit that testimony."

Galli said that expert testimony would have established that the cardiologist's role in decision-making would have been clarified to the jury if they had been able to hear the neurologist expert.

Hospital defense lawyers said that plaintiffs' theories of liability, including ostensible agency, did not apply to Holy Redeemer.

"We believe that the matter will be reversed on appeal, because there is no liability as a matter of law, as to the hospital," Kramer said.

Attorney Michael E. McGilvery of Wright Young & McGilvery, the lawyer whose client sustained the highest burden of responsibility, immediately began another trial in Montgomery County yesterday afternoon, and was unavailable for comment, according to staff at the Blue Bell firm.

Dupon was in Holy Redeemer Hospital for a procedure to remove plaque from her carotid artery in May 1993, Stern said. After the surgery was completed, there is a risk of stroke, and the

standard of care, according to plaintiffs' counsel, was for a person having a stroke to be rushed to an operating room to clear out any obstructions at the site of the surgery.

Dupon was discovered to have suffered a non-bleeding stroke less than five hours after she emerged from the carotid artery procedure, Stern said.

Stern said that Dupon did not receive proper monitoring and could have been discovered having suffered the stroke earlier.

"From the onset of a stroke, there is a three-hour window in which the doctors could have reversed substantially all of the neurological deficits," Stern said. "And they did not act."

Counsel for the hospital said that nurses were checking on Dupon every 15 minutes for complications.

The plaintiff then was not taken to the operating room, but was given a CAT scan, and doctors conferred for an hour or so with a neurologist to assess Dupon's condition, according to Stern.

"But no one talked about taking her back to the operating room," Stern said. "Nowhere in the medical records is there any mention of taking her back."

Defense experts testified that a "shower of emboli" caused the stroke, and once emboli are released into the bloodstream, nothing could be done to mitigate the damage suffered by Dupon.

Because of the emboli, the risks of reopening Dupon for surgery outweighed the potential benefit, according to the defense.

But plaintiffs' expert said there was an obstruction near the operation site, and the jury chose to believe the plaintiffs.

Dupon has suffered permanent neurological damage, severe brain damage, total loss of movement in the right (dominant) hand, and a lack of full movement of the right arm, Stern said. She also cannot speak properly and has a difficult time walking.

"She has been stripped of her self-esteem and [the defendants] have crippled her for life," Stern said, calling his clients' losses "catastrophic and devastating."

Delay damages in the case may amount to \$ 1.75 million, he said.

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