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COMMENTARY

Plaintiff's counsel was able to withstand several pre-trial attacks upon plaintiff's experts, the preclusion of which would have been tantamount to summary judgment in favor of the defendant in this dental malpractice action. The defense argued that the standard of care testimony from the plaintiff's oral surgery expert (that the extractions should have been halted) should not be admissible because it was not supported by medical literature and was, in fact, contradicted by an authoritative dental textbook. Similarly, the defense maintained that the plaintiff's causation expert, a treating neurologist, was unable to determine the cause of the plaintiff's debilitating stroke and his opinion should also be precluded. However, the court held that the plaintiff opinion of the plaintiff's experts were reliable and would be admissible. At trial, the defense relied on a "Two Schools of Thought" defense, contending that may oral surgeons would have continued the extractions and that dental schools do not teach students to stop oral surgery based on a drop in blood pressure. Much of the plaintiff's case hinged on the argument that the plaintiff should have been placed under observation and not allowed to simply walk out of the dental office and drive home. Experts on both sides agreed that there is post-stroke therapy available to help mitigate stroke damage if administered immediately. In this case, sadly the plaintiff was not discovered in his vehicle until several hours after the stroke occurred. The defendant has filed a motion seeking leave for the government to purchase an annuity to cover the cost of the plaintiff's future medical expenses.

**\$800,000 VERDICT AGAINST HOSPITAL ONLY -
MEDICAL MALPRACTICE - HOSPITAL NEGLIGENCE -
FAILURE TO TIMELY DIAGNOSE AND TREAT FUNGAL
PNEUMONIA - WRONGFUL DEATH OF 44-YEAR-OLD
FEMALE.**

Philadelphia County, PA

The estate of the 44-year-old female decedent brought this action against the hospital where the decedent died of fungal pneumonia, as well a family practice group and a number of individual doctors who treated the decedent. The plaintiff alleged that the defendants failed to timely diagnose and treat the fungal pneumonia which caused the decedent's death. The defendants maintained that fungal pneumonia is extremely rare and, in light of the decedent's presentation, the standard of care was met in treating her with antibiotics for standard bacterial pneumonia.

The decedent suffered from mild lupus and had been under the treatment of a non-party rheumatologist for several years. In November of 2006, due to a flair-up of her lupus symptoms, the plaintiff's rheumatologist prescribed steroids. The plaintiff argued that steroids suppress the immune system and create a known risk for opportunistic infections such as fungal pneumonia.

Shortly after receiving the steroid medication, the decedent presented to the defendant family medical group several times with symptoms including coughing, elevated temperature and shortness of breath. When her symptoms worsened, the decedent presented to the emergency room at the defendant hospital where she was diagnosed with bacterial pneumonia and treated with antibiotics.

Approximately a week later, the decedent returned to the defendant family practice group with persisting symptoms and was advised to go to the hospital. The physicians believed that there had been a break in the decedent's oral antibiotic treatment, due to vomiting. The decedent was admitted to the hospital and IV antibiotics were started. On the third day of her admission, the decedent's condition worsened severely and she died the following day. Autopsy confirmed fungal pneumonia as the cause of death.

The plaintiff argued that the defendants deviated from the required standard of care in not determining that the decedent suffered from fungal rather than bacterial pneumonia. The plaintiff's experts testified that fungal pneumonia is treated with antifungal medication, not antibiotics. The defendants argued that it was reasonably assumed, due to vomiting, that there had been a break in the decedent's oral antibiotics. The defense contended that the decedent responded favorably to IV antibiotics after her hospital admission, reassuring the doctors that she suffered from standard bacterial pneumonia.

As soon as the decedent's condition worsened, the defendants argued that they initiated a workup and called for a consultation for fungal pneumonia. However, by that point, the decedent's medical course could not be altered, according to the defense. The defense also argued that, even if antifungal medication had been administered, the decedent's pneumonia was at such an advanced stage that she would not have survived. The defendant's experts testified that fungal pneumonia is extremely rare and that the defendant doctors reasonably treated the decedent with antibiotics, given that her presentation was consistent with standard bacterial pneumonia.

The decedent was employed as a clerk in a nursing home. She was single and survived by two adult children. Her estate was represented by her sister. The plaintiff's economist estimated the decedent's maximum loss of future earnings to be approximately \$650,000.

The jury found the defendant hospital 100% negligent and awarded the plaintiff \$800,000 in damages. The individual doctors named and the defendant family practice group were found not negligent.

DEFENDANT'S VERDICT – MEDICAL MALPRACTICE – SURGERY – ALLEGED NEGLIGENT PLACEMENT OF VENTRICULO-PERITONEAL SHUNT – LACK OF DRAINAGE FOR CEREBRAL FLUID – BRAIN STEM HERNIATION – WRONGFUL DEATH OF 17-YEAR-OLD FEMALE.

Lehigh County, PA

This medical malpractice action involved the death of a 17-year-old girl, four days after surgery was performed to revise a ventriculo-peritoneal shunt. The plaintiff alleged that the distal end of the shunt was improperly placed, causing it to fail and resulting in the decedent's death. The plaintiff also claimed that the decedent's mother was negligently advised to increase her daughter's pain medication, rather than seek immediate medical treatment, when the girl voiced post-surgical headaches. The defendants included the neurosurgeon who performed the surgery, a general surgeon who assisted and a physician's assistant who fielded the phone call from the decedent's mother. In addition, the doctor's respective employers were also named as defendants including, a neurological association

REFERENCE

Plaintiff's economic expert: Royal Bunin from Wynnewood, PA. Plaintiff's rheumatology expert: Howard Belmonte from New York, NY.

Shepherd vs. Russell, et al. Case no. 09-01-03552; Judge John M. Younge, 06-28-11.

Attorney for plaintiff: Brian C. Hall of Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, P.C. in Philadelphia, PA.

COMMENTARY

This medical malpractice action was somewhat complicated in that the decedent saw several of the defendant family physicians on both an out-patient and in-patient basis at the defendant hospital. A number of doctors treated the decedent at different times; some of the doctor's names appeared in the medical charts, others did not. The jury ultimately attributed 100% negligence against the defendant hospital, apparently on the basis that the doctors they felt were negligent were not individually-named defendants in the case.

The medical nuisances, between fungal pneumonia, which caused the decedent's death, and standard bacterial pneumonia were extremely subtle. The defense took the position that pneumonia, regard of its source, presents the same way and that the decedent's symptoms appeared to be related to classic community-involved pneumonia (contracted from another person). The defense stressed that the decedent worked in a nursing home where she was exposed to a greater number of sick contacts, making standard bacterial pneumonia far more likely than the rare fungal pneumonia. However, plaintiff's counsel successfully convinced the jury that the decedent's treatment was failing, thereby requiring the defendants to consider the less common causes for her symptoms.

The case was tried over the course of a week, before the jury returned the \$800,000 damage award against the defendant hospital only.

for the defendant neurosurgeon and physician's assistant and the Trustees of the University of Pennsylvania for the defendant general surgeon. The defendants argued that the shunt was properly placed, but the young decedent unfortunately suffered a known complication of the procedure.

The 17-year-old decedent suffered meningitis in early childhood which left her with microcephaly and hydrocephalus (a buildup of fluid inside the skull leading to brain swelling). At age six-weeks, she underwent installation of a ventriculo-peritoneal shunt designed to drain fluid from the brain into the abdomen. The plaintiff's experts explained that the shunt required periodic replacement and was revised at age four months, two years and four years.