

# The Legal Intelligencer

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## **\$11.2 Mil. Awarded to Single Mother Over Brain Tumor**

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By Gina Passarella

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A Philadelphia jury yesterday awarded a now-24-year-old single mother \$11.16 million for injuries she suffered from a brain infarction after three different doctors allegedly failed to detect a brain tumor in three consecutive trips to the emergency room.

A 12-member jury before Philadelphia Common Pleas Court Judge Nitza I. Quinones Alejandro voted 11-to-1 against the three doctors, awarding damages for past and future medical expenses, wage loss and past and future pain and suffering.

In *Montanez v. Temple University Health System*, Yanira Montanez went to the emergency room at Episcopal Hospital March 23, 2004, about four months after giving birth, complaining of headaches, nausea and numbness in her arm. She was sent home after a routine neurological exam found no problems, according to her attorney, Kenneth Rothweiler of Eisenberg Rothweiler Winkler Eisenberg & Jeck in Philadelphia.

She returned to the emergency room at Northeastern Hospital the following day complaining of increased numbness in her lips, arms and legs and a continuation of the headaches. After a routine pregnancy test that showed she might be pregnant, she was sent away again, Rothweiler said. On the third day's visit, another pregnancy test showed that she might not have a viable pregnancy, and she was again sent home, he said.

On the following day, March 26, 2004, Montanez fainted at home and fell down a flight of stairs, Rothweiler said. She was taken to the emergency room where a CT scan was done, and a brain tumor was found. According to Rothweiler, Montanez suffered a brain infarction, similar to a stroke, that he argued could have been prevented if a CT scan was done during any of her previous emergency room visits. She is now paralyzed, blind, incontinent and has suffered brain damage, Rothweiler said.

She cannot care for her 4-year-old child, cannot walk and needs help eating, according to court documents.

His theory of the case was that a basic neurological exam doesn't rule out a brain tumor, and it therefore fell below the standard of care to fail to do a CT scan. Rothweiler said a CT scan would have found the brain tumor, which could have been immediately operated on, and the infarction would have been prevented.

Paul Wright, the associate counsel for Temple University Health System, said the system is disappointed with the verdict and felt its doctors acted appropriately.

"We feel like their case was really based upon a medical lie and that is that every patient that comes in with a headache should have a CT scan of the brain," Wright said.

Montanez clearly has a sympathetic situation and although the hospitals and doctors feel bad for her, he said they looked at the case from a medical standpoint.

The case was brought against Temple University Health System Inc. and two hospitals and three doctors that worked under the system. The hospitals were Episcopal Hospital and Northeastern Hospital. The jury found Sean Lenahan of Episcopal Hospital 35 percent negligent, Walter Bell of Northeastern Hospital 38 percent negligent and Robert Davies of Northeastern Hospital 27 percent negligent, Rothweiler said.

He said the verdict award will trigger the insurance coverage of the three doctors and the two hospitals. Montanez stipulated from the beginning that the doctors were ostensible agents of the two hospitals, Rothweiler said.

Montanez's brain tumor was found March 26 and she had surgery to remove it March 27. She was diagnosed with choriocarcinoma, a gynecologic cancer that spreads rapidly. It had metastasized to her brain, but, according to court documents, it is one of the few metastatic cancers that is completely curable if found in time.

Montanez, who was 20 at the time of the surgery, has been cancer-free for the past four years, according to the plaintiff's pretrial memo.

Wright said the plaintiff's attorneys suggested at trial that the hospitals provided a substandard level of care because of Montanez's ethnic and insurance status, which he said was "absolutely outrageous." He said the majority of patients treated at the two hospitals look like Montanez and have a similar insurance status.

Wright also pointed out that she received "world-class care" at Temple University Hospital where her brain tumor was removed, and she was cured of her cancer. Rothweiler, who said his client was on welfare at the time, said it is his belief that there was "economic discrimination going on in the emergency room."

Wright said the health system and its attorney, Charles A. Fitzpatrick III of Rawle & Henderson, have not yet decided whether they would appeal the verdict.

According to court documents, Montanez's demand prior to trial was \$20 million. Rothweiler said they were offered \$3 million at the close of trial, but that was rejected. He said he anticipates filing for delay damages of about \$500,000.

The jury was selected Aug. 1, and the case began Aug. 4. The jurors started deliberating at about 10:30 a.m. Friday and came back with a verdict at about 2 p.m. yesterday. Rothweiler said the jurors asked for five different medical records throughout the course of the day on Friday and their sixth question was for a calculator.

He said he has been doing this long enough to know that meant he was looking at a win. The plaintiffs experts were Theodore Schwartz, a neurosurgeon from New York Presbyterian Hospital; Peter Paige, head of four emergency rooms for UMass Memorial Medical Center; and James Abrahams, a neuroradiologist from Yale University.

The defense called as expert witnesses Richard Close, a neurosurgeon from Reading Hospital; Michael Brooks, a neuroradiologist from Fitzgerald Mercy Hospital; and Edward Dickinson, an emergency room expert from the University of Pennsylvania. •