

Delco Jury Awards \$2.9M for Death of Physician

By Jennifer Batchelor
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A Philadelphia attorney has secured a \$2.9 million verdict in Delaware County for the widow and estate of a physician who died after being treated for Hodgkin's disease at Crozer Chester Medical Center, where he had been a member of the medical staff for approximately 20 years.

The decedent, Marc S. Ebel, had served as chief of Crozer Chester's gastroenterology division before his death.

Thomas Kline of Kline & Specter, who represented Maureen A. Ebel, said the jury's verdict shows that juries throughout the state, including the suburbs, will recognize a meritorious claim.

Hodgkin's disease is a form of cancer affecting the lymphatic system, which includes the lymph nodes, spleen and bone marrow, among other tissues, and accounts for less than 1 percent of all cancer cases in the United States.

Ebel was 53 years old when he was diagnosed with Hodgkin's disease in 2000, according to a trial memorandum. In June of that year, he was not feeling well and was admitted to Crozer Chester by Dr. Michael Soojian, Kline said.

According to the plaintiff's trial memorandum, the decedent underwent a lymph node biopsy on the morning of July 3, 2000. To biopsy a lymph node located beneath Ebel's liver, Kline explained, it was necessary to go through the liver with a long needle. Kline said subsequent bleeding is a known complication of the procedure. Approximately one hour after completion of the biopsy, the attorney said, Ebel experienced a drop in blood pressure.

After consultation with Soojian, Dr. John F. Hiehle, the defendant physician who performed the biopsy, performed a CAT scan, Kline stated. And, Kline further indicated, the results showed bleeding in the patient's liver and abdomen.

Ebel was then transferred to the intensive care unit, Kline said. By this time, the attorney noted, defendant physician Leonard B. Berkowitz was also treating Ebel. Kline said the men and their wives were all friends, and that Berkowitz, Crozer Chester's ICU chief, was Ebel's former tennis partner.

Late in the afternoon, Ebel went into shock, Kline said. He exhibited rapid heart and respiration, as well as ashen coloring and low blood pressure.

"The doctors decided on a plan which the jury clearly found to have been the wrong plan," Kline said.

The lawyer indicated that Soojian believed Ebel's bleeding was restricted to his liver, and thus would stop by itself. Accordingly, Kline said, Soojian and Berkowitz ordered a series of transfusions.

But according to Kline, Hiehle, whom the jury did not deem responsible for Ebel's death, recommended an embolization. In other words, Hiehle wanted to identify and "glue off" the bleeding artery.

One issue at trial, Kline said, was whether there was a miscommunication between Hiehle, a radiologist, and the clinical physicians.

Daniel Sherry of Marshall Dennehey Warner Coleman & Goggin in Newtown Square said he argued that Hiehle, whom he represented, had adequately communicated with the other doctors caring for Ebel. The attorney noted that his client was not involved in the decedent's clinical care.

An embolization was not performed on July 3, and Soojian left the hospital by 8:30 p.m. on that day, signing out to his partner, Dr. James Lebedda, Kline said. Berkowitz, on the other hand, remained at the hospital until 1 a.m. July 4, Kline indicated.

The decedent was not seen by an attending physician until between 6 and 6:30 a.m., Kline said. Earlier that morning, the plaintiff requested that defendant doctor Thomas O'Dea, M.D., a general surgery associate, see the decedent.

According to Kline, O'Dea determined that an immediate CAT scan and platelet infusion were required because Ebel was experiencing renal, liver and other organ failure. The CAT scan was performed at 11:22 a.m. July 4 and was followed by a 1 p.m. embolization. The plaintiff's attorney said Ebel coded at midnight on July 5 and died approximately one hour later. An autopsy revealed about 3 liters of blood in his abdominal cavity, court papers state.

Sherry noted that though the plaintiff asserted that Hiehle should have performed the July 4 CAT scan earlier that morning, the contention was disproved at trial.

At trial, the plaintiff argued that Ebel's condition should have been managed by performing an embolization, and that there were multiple windows of opportunity to have performed the procedure.

The plaintiff also alleged that even through the early morning hours of July 4, Ebel could have been saved.

The defendants, on the other hand, and with the exception of Berkowitz, contended that the standard of care had been met in this case, and that they had elected to pursue conservative treatment consisting of blood replacement therapy as opposed to more aggressive means, Kline said.

The trial memorandum of defendants Soojian and Lebedda states that shock prevented effective blood and coagulation replacements, and that Ebel's condition was further aggravated by not only Hodgkin's disease, but also by widespread Gaucher's disease.

Gaucher's disease is an inherited disorder that affects the spleen, liver, lungs, bone marrow and sometimes the brain. Harmful quantities of a fatty substance accumulate in these organs and may cause enlargement of the liver and spleen and, depending on severity, neurological deficiencies.

Unlike his colleagues, Berkowitz, whom the jury also found liable for Ebel's death, proceeded on the theory that the decedent's abdominal bleeding did not cause his demise. Rather, the doctor argued in his pretrial memorandum that "Ebel's bone marrow was completely replaced by Gaucher's cells, and his liver was 75 percent replaced."

The above autopsy findings "were consistent with the series of events that caused Ebel's death, as noted in [the defense expert's report,]" Berkowitz asserted in the document.

Kline said that while the jury found O'Dea negligent, its members determined that his negligence was not a causal factor in Ebel's death.

The plaintiff's attorney also noted that Soojian's partner and Ebel's treating physician for the Hodgkin's - Dr. Alan Keogh - testified at deposition that Ebel had a 60 percent chance of "event-free" five-year survival, or in other words, a 60 percent cure rate. Maureen Ebel therefore asserted that the decedent more likely than not would have reached his normal life expectancy and worked up to that point, Kline said.

According to the verdict slip, 11 members of the 12-member jury found only Berkowitz, Soojian and O'Dea negligent. Hiehle and Lebedda, with Crozer Chester general surgery associate A. Scott Harad and Crozer Chester medical residents, were deemed not liable for Ebel's death.

While the slip indicates that O'Dea's negligence was not a substantial factor, the jurors held Berkowitz 30 percent causally negligent and Soojian 70 percent causally negligent.

The plaintiff was awarded \$882,000 under the Wrongful Death Act and \$2,058,000 pursuant to the Survival Act. Additionally, the jury found that Berkowitz was the ostensible agent of Crozer Chester.

Mark Hoffman of Kline & Specter served as co-counsel in the matter.

Frederick DeRosa of McDonald & DeRosa in Philadelphia represented Berkowitz and his corporation, Pulmonary Consultants Inc. The attorney said the case was a very emotional one and that Berkowitz did not feel he had done anything wrong. Berkowitz has not yet determined whether he will appeal.

James Kilcoyne of Kilcoyne & Associates in Plymouth Meeting was counsel for Soojian and Lebedda. He declined to comment since Soojian is still considering post-trial motion and appeal options.

Michael McGilvery of Young & McGilvery represented O'Dea and Harad. Kenneth Powell of Rawle & Henderson served as counsel for Crozer Chester.

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