

City Agrees to Pay \$3.5 Mil. Settlement

Money to Go to Man Who Attempted Suicide in Phila. Jail



By Shannon P. Duffy
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In a settlement struck just minutes after the plaintiff's lawyer had delivered his closing argument, the city of Philadelphia agreed yesterday to pay \$3.5 million to a 27-year-old man who was severely brain damaged in a failed attempt to commit suicide in a city jail.

In his closing speech, plaintiff's attorney Jonathan M. Cohen of Kline & Specter told the jury that Christopher Foster's July 1999 suicide attempt could have been prevented if the city had properly trained police about how to recognize and deal with potentially suicidal detainees.

Testimony in the six-day trial before U.S. Eastern District Judge Legrome D. Davis showed that Foster told police soon after his arrest that he had attempted suicide before, and that he was initially placed in a Plexiglas cell at a precinct jail where he was to be closely monitored.

Police records also showed that Foster said "yes" when asked if he was having suicidal thoughts that night. But that point was disputed at trial because the officer who conducted the questioning testified that the "yes" answer typed on the form was incorrect.

Cohen and his co-counsel, [Dominic C. Guerrini](#), argued that even if Foster hadn't claimed to be suicidal that night, he should have been placed on suicide watch because his history included a suicide attempt.

But police records showed that after Foster was transferred to police headquarters, he was placed in a standard cell with open bars and no special supervision.

Soon after, Foster tied his shirt to the open bars of the door of his detention cell and hung himself while his cellmate slept. He was cut down when his cellmate awoke and alerted the jailers, according to court papers.

But by that point, Foster's brain had been deprived of oxygen for so long that he suffered extensive brain damage. As a result, he cannot move or speak, but a doctor testifying for the plaintiff said he can experience pain.

Cohen said Foster was wheeled into the courtroom on a stretcher so that the jury could see him in his current condition.

Assistant City Solicitor Edward D. Chew Jr. defended the police handling of Foster's case, and said the police department's policies and training on the issue of suicide prevention were up to national standards. Chew also presented an expert witness who testified that Foster is unable to feel any pain.

But Chew's boss, Deputy City Solicitor Carlton Johnson, began attending the trial late last week and set out to settle the case before it went to verdict.

Cohen said Johnson attended the trial on Thursday and Friday, and approached Davis yesterday morning immediately after Cohen had finished his closing argument.

The jury never heard Chew's closing argument because the case settled 40 minutes later, Cohen said.

For the city, the settlement avoids the possibility of a much larger verdict.

An economist called by the plaintiff had testified that Foster's nursing home care over the next 20 years will cost more than \$9 million.

But Cohen said Foster's court-appointed guardian, Ann S. Maxwell, decided to accept the city's \$3.5 million offer to avoid the risk that the jury might exonerate the city completely.

Cohen said that he was confident that the plaintiff's case was a strong one, but that the standard in civil rights cases is especially high, requiring proof that the city and its police acted with "deliberate indifference."

If the jury found that the city was merely negligent, Cohen said, it would have awarded nothing to Foster.

In briefs filed last week, Chew asked for a directed verdict for the city, arguing that there was no evidence that the city's policies on suicide prevention were faulty, or that police were not being trained properly.

But Cohen and Guerrini insisted in their brief that the evidence against the city was strong.

The plaintiff's brief said correctional officers "do not receive training, nor is there a policy that instructs them that a history of suicide, standing alone, requires the officers to take special precautions." The evidence at trial, they said, showed that the training of the city's guards was "grossly insufficient when compared to the requirements set forth in the relevant national standards."

The brief cited the testimony of two high-ranking members of the Philadelphia Police Department who both said that a prior attempt to commit suicide, standing alone, warranted placement in a suicide-prevention cell.

"Both of these officers also indicated that the need for such a policy was 'obvious.' Yet neither was able to point to any such training or instruction . . . or any other policy adopted by the city of Philadelphia," the plaintiff's brief said.

The brief also noted that the plaintiff had presented testimony from Dr. Robert Fosen, an expert in the management of prisons, jails and lock-up facilities, who faulted the city's policy for failing to train officers to automatically place detainees in a suicide-prevention cell whenever the detainee acknowledged a prior suicide attempt.

Fosen testified that police in New York City and San Francisco are trained to take such action, and opined that Philadelphia's failure to institute a similar policy and training "fell far below the national standard of care in the detection and prevention of detainee suicide risks," the brief said.