

Delco Jury Returns \$8.5 Million in Wrongful Death Case

Doctor Found Liable for Med Mal in Treating his Brother

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FEBRUARY 8, 1999



A Delaware County jury returned an \$8.25 million verdict Friday for medical malpractice for a failure to diagnose colon cancer that allegedly led to the patient's death.

The case was far from the normal medical malpractice dispute between a doctor and patient, since the plaintiff's decedent was the brother of the defendant doctor who treated him.

The facts were straightforward enough.

Roberta Labricciosa, 33, went to his older brother, osteopath Joseph Labricciosa, complaining that for six months, he had been experiencing rectal bleeding.

In December 1993, a rectal examination and hemocult revealed blood in Robert's stool. Joseph diagnosed hemorrhoids - the Labricciosas had a family history of that condition - and treated the hemorrhoids.

By August 1994, Roberts's hemorrhoids had cleaned up, and he visited his brother to treat a cold. A month later in September 1994, there was bloody mucous in Robert's stool and he was referred to a gastroenterologist, who discovered colon cancer.

The cancer had spread to his lungs by the time of diagnosis. Despite radiation and chemotherapy and a surgical resection of the colon, Robert died in January 1996.

Robert's widow and executrix filed suit against her late husband's brother and physician in August 1996.

The verdict was handed down at the end of a week-long trial before Judge George Pagano. The jury deliberated over five and one-half hours over two days, said plaintiff's attorney Derek Layser of Kline & Specter.

Defense counsel Kevin Wright of Wright Young & McGilvery said that post-verdict motions would be prepared in the case.

Key issues in the case were whether Dr. Labricciosa breached the standard of care in not ordering a colonoscopy and a sigmoidoscopy to rule out sources of bleeding aside from hemorrhoids, and whether the delayed diagnosis made Robert's disease less treatable to the degree that it could be viewed as leading to his death.

"Our theory was that had (colon cancer) been diagnosed in December, (Robert) would not have had pulmonary metastasis and he would have had an excellent chance for survival and a cure," Layser said.

Layser also said that the standard of care in dealing with rectal bleeding is to order up studies to explore the possibility of cancer.

But a defense expert said that it was not outside the standard of care not to suspect colon cancer in a 33-year-old.

Wright pointed out that Dr. Labricciosa did successfully diagnose and treat Robert's hemorrhoid condition, and stopped the rectal bleeding until late summer 1994.

Furthermore, Robert did not schedule a follow-up visit that was recommended for three-to-four weeks after the hemorrhoid treatment.

The source of the rectal bleeding in December 1993, Wright said, was not the colon cancer. Moreover, Wright said that oncology experts said that the size of the tumor in Robert's colon indicated that it had been there for five years, and that nine months of greater delay did not significantly contribute to his death.

Most of the trial was focused on the cause of Robert's death, Layser said. Layser said that a plaintiff's expert testified that, based on the size of the lung cancer when found in October 1994, the metastasis, if found in December, could have responded to chemotherapy and the decedent might have still survived.

Wright said that the evidence showed that Robert's cancer was last-stage in December and that there would have been no significant difference in his prognosis had it been discovered at that time.

"The plaintiff said that (Robert's) cancer could have been cured," Wright said. "But the medical literature says that is wrong."

"The truth of the matter is that experts admitted that the tumor had been growing a minimum of five years prior to his visit" to Dr. Labricciosa, the defense lawyer said.

Defense experts also opined that the lung cancer would have been present in December, and the development of pulmonary metastasis was therefore not a result of the late diagnosis.

The familial relationships were strained by the lawsuit, both attorneys agreed.

"It was a very hard decision for her to make," Layser said of the woman's decision to file suit. Robert's widow recovered \$5.5 million on her survival claim. The estate recovered \$2.75 million under the Wrongful Death Act.

Bernadine Labricciosa first suspected the failure to make a proper diagnosis a few months after her husband's death.

"The reason she even investigated filing suit was because she had become a nursing student to better help her handicapped child ... and in nursing school, she learned that rectal bleeding is a sign of colon cancer."

Wright called the case a "family tragedy," and also said the relationships among the parties affected the litigation.

"This is a real tragedy for the parents of both Dr. Labricciosa and Robert Labricciosa," Wright said. "They have lost one son, and basically, this jury is telling them that the other son caused that death. It is a very tragic and very emotional case."

While the two attorneys had different views of its effect, neither lawyer could deny that the emotions evoked by the facts had an impact on the jury verdict.

Wright said that the jurors "felt sorry for a young widow," but "didn't have the whole story."

Two of the circumstances of the "whole story" could not legally be divulged to the jury - the Bernadine has remarried and is not a single mother as the jury may have surmised, and that Robert's life was insured by a \$2.2 million policy - Wright said.

He also said that he attempted to bring in evidence of some of the family strain between Bernadine Labricciosa and her former in-laws, but that Pagano barred the evidence. He said he wanted to present evidence relevant to the survival claim on Bernadine's actions after her husband's death.

"I attempted to question her on a trip (she took shortly after Robert's death) but was not permitted to do so at trial," Wright said.

Layser said that he believed the nine-woman, three-man jury identified with what happened to the descendent and to Bernadine Labricciosa.

"There were many jurors in her age group, who could identify with her losing her husband and having two children to care for," Layser said.

Layser also said that the jury was affected by what he termed an "almost indefensible" breach of the standard of care.

In other coincidence, Layser practiced with Wright at Wright Young & McGilverly and at LaBrum & Doak from 1988 through 1995.

"I don't know where he went wrong," Wright joked when asked about their professional link.

Both attorneys said that knowing each other's styles so well had little effect on the trial.

I knew going in that Kevin is a very good lawyer, and he does very well for the defense side," Layser said. "But my job was to stay focused on my case and not worry about him."

Wright said he took the same approach.

"I try all cases the same way," he said. "I don't change depending on whom the other lawyer is."

There were no offers to settle the case, and no attempt to mediate, both lawyers said.

If the post-trial motions fail, an appeal is likely to be filed in Superior Court, Wright said.

"I have a great deal of respect for Judge Pagano, but we believe there were errors concerning evidentiary matters," he said.

Layser said, "it was a very clean trial" and did not expect that the verdict will be upset.

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