

# Jury Awards \$5.2 Mil. to Victim of Massive Stroke

*Docs Did Not Grasp Significance of Tests Indicating Constricted Artery*

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A Philadelphia jury last week handed up an award of \$5.2 million to a 76-year-old stroke victim whose lawyer argued at trial that her current condition could have been prevented had her doctors paid closer attention to test results showing a constricted artery in her neck.

After nine days of trial, the 12-member jury took two and a half hours to unanimously decide Wednesday that two doctors, Robert T. Smith and Harold J. Gauthier, were each 50 percent liable in causing plaintiff Caroline Monaghan's injuries.

The Philadelphia woman who smoked cigarettes much of her life, now lived in a nursing home on Roosevelt Boulevard where she requires help with walking, eating and other daily activities.

Gauthier, the emergency room doctor who treated Monaghan in June 2001, settled for \$1.2 million in the spring, said William H. Pugh V. lawyer for another defendant doctor in the new case.

Lawyers for Gauthier and the plaintiff, Richard R. Galli and Matthew Casey respectively, refused to confirm or deny the settlement amount.

The settlement released Gauthier and his employer, Frankford Hospital and other Frankford entities, from the claims against them, according to the joint tortfeasor release.

Monaghan is limited to collections \$800,000 from Smith the radiologist accused of misreading her MRI/MRA imaging tests, and Diagnostic Imaging, Inc., Smith's employer. Each had policies limited \$400,000 of coverage with ProNational Insurance Co.

Casey of Kline & Specter said he plans to file for delay damages for the portion of the verdict for which ProNational Insurance would be responsive.

Common Pleas Judge Gregory E. Smith presided over the trial in *Monaghan v. Frankford Hospital*.

During a routine physical in May 2001, Monaghan's family doctor performed an ultrasound study and detected a constriction in one of the main arteries in the neck supplying blood to the head. The study showed a 70-percent constriction of the artery - which can be critical if accompanied by certain symptoms, according to court documents.

Monaghan's family doctor sent her to a vascular surgeon, who ordered an MRI of the brain and an MRA of the neck region. On June 20, 2001, Smith interpreted the MRI and MRA studies, compared them to the ultrasound results and concluded that the artery constriction was 50 percent, which is considered low grade, according to court documents.

Monaghan's lawsuit alleged that Smith's reading of the MRI and MRA results was inaccurate and unsupported by what the films showed. Her lawyers claimed the images actually showed a critical constriction of 70 percent or greater, according to the complaint.

Because of the discrepancy between the ultrasound and MRI/MRA results, Smith recommended that a third test be given to confirm the severity of the artery constriction according to court documents.

Three days later, Monaghan became weak and had trouble with her coordination while playing bingo.

She was rushed to the emergency room at Frankford Hospital, where she was evaluated by Gauthier. He diagnosed a transient ischemic attack, or minor stroke.

Gauthier ordered some tests and requested that the previous week's MRI and MRA studies be obtained. But it is unclear whether the emergency room doctor ever saw those studies, according to court documents.

Gauthier testified at trial that he seen the studies showing the high-grade constriction, he would have admitted Monaghan instead of discharging her, Casey said.

While at home later that night, Monaghan suffered a massive stroke.

Casey argued at trial that Smith's misreading of Monaghan's MRI and MRA studies caused confusion and delay in her treatment, and that Gauthier should have done more to investigate whether his patient had a high-grade artery constriction before discharging her from the hospital.

In the opinion of George C. Newman, a neurologist at the University of Wisconsin School of Medicine who testified for the plaintiff, Smith's deficient reading of the MRI and MRA studies delayed surgery that could have helped her situation before she became symptomatic.

Newman also believed that Monaghan should have admitted Monaghan to the hospital when she first came to the ER, considering her history and the results of her prior tests, according to court documents.

Robert G. Peyster, a neuroradiologist at Stony Brook University in Stony Brook, N.Y., observed in his expert report that Smith had misinterpreted the MRI and MRA results and that the reading lead to a delay in Monaghan's treatment, according to court documents.

Gauthier's lawyer, Galli and David C. Corujo of Goldfein & Joseph, did not present any evidence at trial. Gauthier did testify via videotape at the request of Casey, Galli said.

Lawyers for Smith and Diagnostic Imaging said both plan to file post-trial motions.

In Smith's defense, Pugh argued that his client had correctly read the MRI and MRA studies but that no matter what the test results showed, Gauthier should have admitted Monaghan when she came to the hospital with her neurological symptoms.

"Dr. Smith told me he would not have read those X-rays any differently today than back when he did on Jan. 10, 2001," said Pugh in Norristown.

Attorney Gary M. Samms noted that there was no finding by the jury against his client, Diagnostic Imaging.

He emphasized that a doctor's treatment of an asymptomatic patient is different than treatment of a symptomatic one.

Smith's "correct reading of the MRI/MRA along with the recommendation to perform follow-up testing was the standard of care and still is the standard of care," said Samms of Obermayer Rebmann Maxwell & Hippel. "Unfortunately, the jury arrived at a verdict inconsistent with the evidence, perhaps due to sympathy for the family."

Casey said his law firm took the case to trial because that's what ProNational, the insurance carrier for Smith and Diagnostic Imaging. "Challenged us to do."

"Our practice is that we will not walk away when a defendant simply refuses, through his carrier, to negotiate," Casey said. "We will try those cases."

Samms said that the insurance company didn't put an offer on the table because the policy had a provision preventing it from negotiating a settlement without first having the consent of the defendant doctor.

Smith didn't consent, Samms explained.

"They wouldn't have [settled] probably anyway because it's a defensible case, and it was good medicine," he said.

Casey said he was never told there was an issue of Smith not consenting to settle the case.

"It was made clear to ProNational that the case could be settled within the available policy limits prior to the case going to the jury, and they did nothing," Casey said.

When asked whether his firm has considered filing a bad faith claim against ProNational, Casey said, "We are keeping all options open at this point."