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\$2.75M Cash Settlement Reached Against VA Over Leg Amputation

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Of the Legal Staff

Oftentimes when a settlement is reached with the federal government, much of it gets put into a reversionary trust, where the money is pegged directly to medical bills and must be returned if any of it is unused.

That was not the case for a \$2.75 million settlement agreement that was reached after a Veterans Affairs surgeon performed an improper ankle fixation that eventually caused the patient to require a partial leg amputation.

“This was an excellent result for our client, especially since the funds were paid entirely in cash without a reversionary trust which the federal government often insists on when settling [Federal Tort Claims Act] cases,” Kline & Specter attorney Regan Safier said of the accord reached in the case *Gurto v. United States*.

The case was being handled in the U.S. District Court for the Western District of



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Gurto complained of left ankle and midfoot pain. An MRI showed Gurto would need an ankle fusion, which took place in February 2015. In the months following the surgery, Gurto reported that he was unable to place his foot flat on the ground and that the ball of his foot struck the ground before his heel, which caused foot pain and made his knee lock up.

After he was seen again by Scanlan, the doctor noted there was some deformity, and recommended a 1-inch heel lift placed in Gurto's walker, court records said. However, Gurto continued to complain of

Pennsylvania. It was voluntarily dismissed May 21.

According to court records, Dr. Rick Scanlan treated the plaintiff, Darwin Gurto, at the Pittsburgh VA Medical Center.

Settlement continues on 11

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had to undergo a below-the-knee amputation in April 2019.

According to Safier, the fact that Gurto's ankle was initially fused at the wrong angle was uncontested, however the government argued that Scanlan properly recognized the issue and treated it with the heel lift. The government also contended that Gurto had pain problems before the fusion, and the pain he complained of was more likely connected to those prior existing issues than the initial fusion.

Attorneys also sparred over the value of the case, with the government's attorneys arguing that Gurto's insurance could cover some of the claimed damages.

However, Safier said Pennsylvania's Medical Care Availability and Reduction

of Error Fund (MCARE) Act is somewhat unique, and insurance doesn't come into play under the law. Also, she said, the act does not require a plaintiff to agree to put a portion of a settlement into a reversionary fund.

“Here, we were very insistent that that's not Pennsylvania law. That's not what's provided for under MCARE,” Safier said.

Safier said attorneys also had to be persistent with the case in the face of the COVID pandemic. According to Safier, the case had been fully litigated and trial ready when the pandemic struck. Then they were given a trial date in the fall, which attorneys were hopeful would go forward because all cases under the Federal Tort Claims Act are bench trials and don't require a jury. Trial, however,

ended up being postponed, and while those initial settlement talks initially failed, the parties continued discussions, coming to an informal agreement late last year.

In the end, Safier said, persistence throughout the litigation paid off.

“Once everybody got on the same page with regards to what is compensable under the law [the settlement was reached],” Safier said. “It sort of took time to work through that.”

Michael C. Colville of the U.S. Attorney's Office represented the government. He did not return a call seeking comment.

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