

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2011

PHILADELPHIA, TUESDAY, FEBRUARY 28, 2017

An **ALM** Publication

Superior Court Upholds \$10M Award Against CHOP

BY Max Mitchell,
Of the Legal staff

The Pennsylvania Superior Court has rejected a bid by the Children's Hospital of Philadelphia to overturn a more than \$10 million verdict over a failure to promptly diagnose an infant's bacterial meningitis.

A unanimous three-judge panel of the court ruled Tuesday in *Tillery v. Children's Hospital of Philadelphia* to uphold the \$10.1 million verdict a Philadelphia jury awarded in 2015. The ruling affirmed a decision from the Philadelphia Court of Common Pleas, which had declined to overturn the verdict.

CHOP, which had been found 60 percent liable for Shamir Tillery's injuries, and Dr. Monika Goyal, who the jury found 40 percent liable, had challenged the lower court's rulings regarding the qualifications and testimony of the plaintiff's experts, but Superior Court Senior Judge William H. Platt, writing for the majority, rejected those arguments.

"Based on the foregoing, as well as our thorough review of the entire substance of appellee's experts' testimony, appellants' claim that

the opinions were speculative, based entirely on their personal conjecture and expertise, and not on science of empirical evidence, is belied by the record," Platt said.

In November 2015, a jury found the hospital and Goyal liable for failing to timely diagnose Tillery's bacterial meningitis despite multiple trips to the hospital. Specifically, they contended that the defendants should have expanded their potential field of diagnoses beyond simply respiratory concerns, and should have ordered blood work and eventually a lumbar puncture after Tillery was brought to the emergency room by ambulance on two consecutive days in 2009.

Kline & Specter attorney Andy Stern, who, along with Elizabeth Crawford, represented the plaintiffs in the case, lauded the opinion as "well-written" and said it established that the plaintiffs presented a "well-documented case of medical malpractice."

Stern said that with delay damages and interest the total award has increased to more than \$12 million.

Attorney Maureen McBride of Lamb McErlane, who handled the case for the defendants, said, "We believe that we have strong legal arguments, and are currently as-

sessing our options for further appeal."

The delayed diagnosis allegedly caused injuries including hearing loss, central language disorder, developmental and learning delays and a loss of balance due to bone growth that affected his vestibular nerve.

The defendants' post-trial arguments focused mostly on the fairness of the expert testimony during trial, contending, among other things, that the testimony was cumulative, or outside the scope of the experts' reports.

Philadelphia Court of Common Pleas Judge Denis P. Cohen had said that the defendants' arguments that the jury should have been given a "two schools of thought" instruction was "little more than a red herring," and Platt said the argument "mischaracterized" the theories in the case. The Superior Court judge determined that the requested instruction would have been inappropriate.

The defendants had also sought to reduce the verdict and medical expenses to present value, but Platt said the award was reasonable, and the request to reduce the future medical expenses went against the way the medical damages are usually calculated.