

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843 - 2019

PHILADELPHIA, TUESDAY, OCTOBER 15, 2019

VOL 260 • NO. 74 \$5.00 An **ALM** Publication

Montco Jury Awards \$4.7M for Delayed Diagnosis of Infection

BY ZACK NEEDLES

Of the Legal Staff

In what appears to be the largest medical malpractice verdict in Montgomery County in three years, a jury has awarded \$4.7 million to the wife of a 58-year-old man who died after developing a bacterial infection that his primary care doctor failed to diagnose.

After about three hours of deliberation Oct. 11 in Montgomery County Court of Common Pleas Judge Gail Weilheimer's courtroom, a jury unanimously handed down the verdict against a single defendant, Dr. Mary Tobkin, who had been the primary care physician to plaintiff-decedent John Wilson Jr. The jury found Tobkin was 100% causally negligent for Wilson's death from an epidural and paraspinal abscess and meningitis.

According to the verdict sheet, for damages sustained by Wilson himself, the jury awarded \$356,286 in past loss of



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earnings and earning capacity, along with \$60,715 in future loss of earnings and earning capacity. Wilson, a father of two, worked as a carpenter and master stair builder, according to the plaintiffs' pretrial memorandum. The jury also awarded past noneconomic damages in the amount of \$75,000.

For damages sustained by Wilson's wife under the Wrongful Death Act, the jury awarded \$364,286 in past loss of contributions, \$60,715 in future loss of contributions, \$2,220,588 in past noneconomic losses and \$1,544,411 in future noneconomic losses.

According to a review of PaLaw Magazine's list of the top 50 verdicts and settlements, the verdict appears to be the

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largest in a Montgomery County medical malpractice case since 2016.

Counsel for the plaintiffs, Elizabeth Crawford of Kline & Specter in Philadelphia, said the verdict was subject to a high-low agreement under which the floor would have been \$1 million and the ceiling was \$4 million.

Crawford said the defendants made no offers to settle prior to trial, but Tobkin's counsel did make a settlement offer of \$2 million during deliberations, which Crawford rejected before ultimately agreeing to the high-low arrangement.

According to the memorandum, Wilson went to see Tobkin on Nov. 25, 2009, after he began experiencing severe back pain a few days prior. Wilson complained to Tobkin of sweats, shaking chills and back pain that he rated at a 10 out of 10 on the comparative pain scale, the memorandum said. Tobkin prescribed Percocet and ordered a plain film X-ray of Wilson's lumbar spine, but did not order any other imaging studies.

Wilson's wife subsequently spoke with Tobkin about her husband's continued back pain, sweats and chills, along with new symptoms, including headache and memory loss, but Tobkin did not ask Wilson to return to her office and did not order any further testing. Instead, the doctor simply upped the dosage of Percocet over the phone, the plaintiffs alleged in their memorandum.

On Nov. 27, 2009, Wilson went to the emergency room at Abington Memorial Hospital, where a CT scan of his head was taken but not an MRI of his spine, despite lab work that showed an elevated white blood cell count, hyponatremia and hypocalcemia, according to the plaintiffs' memorandum. Following a failed lumbar puncture to Wilson's spine and a CT scan of his abdomen and pelvis, an MRI of the cervical, thoracic and lumbar spine, as well as the brain, were ordered, but were not taken until the following morning.

The results of those MRIs were not formally interpreted until about 1:15 that afternoon and, despite the fact that they revealed a right-sided paraspinal abscess and lumbar epidural abscess, as well as severe meningitis with left frontal epidural abscess, obstructive hydrocephalus, enlarged ventricles, and multiple areas of ischemia, those results were not formally conveyed to health care providers until 4 p.m., the plaintiffs said in their memorandum.

"Consequently, by the time the neurosurgeon, Dr. Jonas Gopez, was first consulted in the late afternoon, Mr. Wilson was already exhibiting decerebrate posturing and had developed severe diabetes insipidus because of the progression of his infection," the plaintiffs' memorandum said. "As a direct result of the delay in diagnosis and treatment, the attending physicians determined that excision and drainage of the abscess was not advisable given Mr. Wilson's unstable condition. Mr. Wilson lost all cerebral function and subsequently died on December 1, 2009."

Wilson's wife, Rebecca Wilson, sued Tobkin and Abington Memorial Hospital, alleging the primary care doctor breached the applicable standard of care by failing to perform a thorough evaluation of John Wilson and refer him either to the ER or to a specialist.

The suit also named Intensive Care Unit physician Dr. Vamsee Mohan Yaganti, hospitalist Dr. Stephen Spencer and neurologist Dr. Larami G. Mackenzie as defendants for allegedly failing to "communicate with other physicians and recognize symptoms of increased intracranial pressure."

In addition, the plaintiffs sued emergency room physician Dr. David Theodorson, alleging he failed to monitor John Wilson's vital signs "with appropriate frequency," and failed to order an MRI of his spine or adequately perform a lumbar puncture.

All of the defendants were represented by Post & Post in Berwyn, except for Theodorson, who were represented by Marshall Dennehey Warner Coleman & Goggin in Philadelphia.

The defendants represented by Post & Post argued in their own pretrial memorandum that they met the appropriate standard of care in treating John Wilson, presenting the opinions of several experts who said there was no indication that Tobkin or the ER doctors should have administered antibiotics based on the patient's complaints at the time they saw him and that, even if they had, it is unlikely that would have saved him.

Dr. Michael Chansky, a standard of care expert put forth by Theodorson and

Abington Emergency Physician Associates, said John Wilson presented to the ER with a very common complaint: back pain. Chansky said the patient did not complain of head or neck pain at the time he was seen by Theodorson and his white blood cell count was normal. It wasn't until later in the day that John Wilson underwent an "abrupt change" in his status, Chansky opined.

Similarly, the other defendants' internal medicine expert, Dr. Eliot Nierman, said John Wilson "experienced a sudden decomposition in the ER."

Ultimately, the jury found that none of the other defendants aside from Tobkin were negligent.

Crawford said the case largely hinged on her client's word against Tobkin's regarding John Wilson's initial visit to his primary care doctor.

While Rebecca Wilson testified that, in addition to back pain, her husband had complained of chills and sweats when he first presented to Tobkin, the doctor testified that she had no recollection of any complaints aside from back pain.

According to Crawford, because back pain is such a common complaint among patients, the question of whether John Wilson also had chills and sweats meant the difference between whether Tobkin met or breached the standard of care when she sent him home with a Percocet prescription, rather than referring him to the ER or to a specialist.

Rebecca Wilson, Crawford said, "ended up being, in the juror's eyes, more credible

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than the physician." That point was all the more noteworthy given that it was a suburban jury with several members who were health care professionals, Crawford added.

According to Crawford, the jurors reached out to her after the trial and said that, while they weren't sure whether John Wilson actually told Tobkin he was having chills and sweats, they were sure that Tobkin failed to ask the proper questions to determine whether the patient was experiencing something more serious than routine back pain.

Crawford said the two takeaways from the trial were “the importance of believing in your client” and “the idea that physicians need to listen to their patients and ask the right questions.”

Counsel for Theodorson, Kathleen Kramer of Marshall Dennehey, declined to comment.

Counsel for Tobkin, Abington Memorial Hospital, Yaganti, Spencer and Mackenzie, Benjamin Post of Post & Post, could not be reached for comment.

Zack Needles can be contacted at 215-557-2373 or zneedles@alm.com. Follow him on Twitter @ZNeedlesTLJ. •