

Record \$49 Million Med-Mal Verdict

The Legal Intelligencer

Only \$24 Mil Collectible Due to Pre-Trial Settlement

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Specter: Achieves record verdict for brain-damaged client.

In what the plaintiff's lawyer believes to be the largest medical malpractice verdict in Pennsylvania history, a Philadelphia jury yesterday found four staff members of a defunct Port Richmond medical facility liable for more than \$49 million in connection with their failure to properly treat a now brain-damaged and quadriplegic 23-year-old man.

David Caruso of Port Richmond was awarded the record sum three years after a tracheal tube became dislodged from his throat for more than six minutes, cutting off the oxygen supply to his brain and leaving him permanently brain damaged and paralyzed, according to his attorney, [Shanin Specter](#) of Kline & Specter.

However, while the jury awarded Caruso \$49,594,684, the plaintiff will receive only \$24,797,342 of the verdict. That's because a year ago, Specter settled with Neumann Medical Center, a 40-bed community hospital, and Melba Gonzaga, the nurse accused of not responding quickly enough when the tube became dislodged. Specter would not disclose the amount of that settlement, which he described as substantial, but nothing close to the 50 percent liability the jury assigned to her in the verdict. The three other defendants found negligent, two critical care specialists and a radiologist, were found jointly responsible for the remaining half. Specter said he is also seeking \$3,391,384 in delay damages.

"Neumann was basically destitute at that point so we knew we would not be able to get significantly more than [its] insurance coverage limit," Specter said of the decision to settle with the facility and nurse.

GUILLAIN-BARRE SYNDROME

Caruso was admitted to the Neumann facility in March 1997 after suffering symptoms from Guillain -Barre Syndrome, a rare neurological disorder that leaves its victims temporarily paralyzed from the neck down but is almost always curable.

During Caruso's treatment, doctors inserted a tracheal tube into Caruso's throat to assist with his breathing. But the tube was inserted too high in the trachea, Specter said, leaving it susceptible to dislodgement. On March 31, 1997, Specter said, the tube did become dislodged, and Gonzaga did not respond to alarms for six minutes, during which Caruso's brain was deprived of oxygen.

Caruso, who at the time was a record-store clerk with plans to get married, now requires around-the-clock nursing care. Specter said Caruso is in a minimally conscious state, in which he can feel pain but cannot walk, talk or move any of his extremities. Specter estimated that Caruso's medical costs are \$400,000 a year.

Specter, who was assisted by colleague Diane Hockstein, argued two major points during the 2 1/2 week trial before Philadelphia Common Pleas Court Judge Alfred J. DiBona Jr. First, he believed the Neumann facility was ill-equipped to deal with Guillian-Barre and should have transferred Caruso to one of the seven tertiary-care facilities within a 12-mile radius. The lawyers' second argument claimed that Neumann's staff improperly inserted the tracheal tube and failed to respond quickly when it became dislodged.

"The radiologist failed to recognize the existence of the tube altogether in his report, much less that it was too high," Specter said. "And the two clinical care specialists failed to recognize from reviewing the x-rays that the tube was [placed] too high. So you basically had a ticking time bomb in the intensive care unit."

"While that was going on, his doctors [at Neumann] received a couple of recommendations [from two infectious disease specialists] to transfer David to a facility with specialists that could handle his condition. That was not communicated to the family."

Gonzaga was found 50 percent negligent. William Antonelli and Edward Hamaty, the two critical care specialists responsible for Caruso's treatment at Neumann, were found 20 and 25 percent negligent, respectively. And radiologist Steven Greensweig was found 5 percent negligent. Two other defendants were dismissed from the case before the trial began on Aug. 4, and four other staffers were found not liable. The jury needed only 3 1/2 hours to reach its decision.

Specter called all five defendants, which he said resulted in finger pointing among them. He also called Caruso's parents and current doctors to discuss what life is like now for him. He said the defense also called Gonzaga, along with its own host of experts, arguing that the tube did not become dislodged. However, the defense offered no alternative explanation for the oxygen loss, Specter said.

Lawrence M. Silverman of Silverman Frimmer Bernheim & McDonnell represented Neumann and Gonzaga. David J. Griffith of Harvey Pennington Cabot Griffith & Renneisen represented Antonelli and Hamaty and Francis McDevitt of Naulty Scaricamazza & McDevitt represented Greensweig. None of the defense attorneys could be reached for comment late yesterday afternoon.

Ironically, the verdict eclipses the previous record for a medical malpractice verdict, which was held by Specter's partner. In October 1998, [Thomas Kline](#) was awarded a \$33.1 million verdict on behalf of his client—a dying woman whose breast cancer went undiagnosed for eight months after a technician misdirected her mammogram results to a pile for routine screening tests rather than a pile for diagnostic tests.

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