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dealings with Fair, and Golon's negligence was a factor in causing Elijah's death.

Elijah's estate and the Straws were determined to receive \$32 million. (Following the verdict, the Straws withdrew their punitive claim without prejudice to advance the claim in future litigation.)

Post Trial:

Golon Masonry Restoration filed motions seeking a new trial and alleging multiple trial-court errors.

Editor's Comment:

This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

MEDICAL MALPRACTICE

Patient claimed surgery caused blindness, permanent back pain

Amount: \$21,861,179

Type: Verdict-Mixed

Venue: Delaware County Court of Common Pleas

Case Type: Medical Malpractice - Nurse, Hospital, Neurosurgeon, Neurosurgery, Anesthesiology, Surgical Error, Failure to Detect, Failure to Monitor, Negligent Treatment, Failure to Communicate

Case Name: Bruce Drainer v. Hagop L. DerKrikorian, M.D., Hagop L. DerKrikorian, M.D. P.C., Jennifer Smith, M.D., Jennifer Caroulis, C.R.N.A., Judith Boudwin, C.R.N.A., Faith Lauser, C.R.N.A., Society Hill Anesthesia Consultants P.C., Riddle Memorial Hospital, and Main Line Health Inc., No. 12-010718

Date: January 27, 2015

Plaintiff Attorneys:

- David J. Caputo and Garabet M. Zakeosian Kline & Specter, P.C.; Philadelphia, PA, for Bruce Drainer

Defense Attorney(s):

- Nancy K. Raynor; Raynor & Associates, P.C.; Malvern, PA, for Hagop L. DerKrikorian, M.D., Hagop L. DerKrikorian, M.D. P.C.
- Amalia V. Romanowicz and Barri Alison Orlow, Post & Schell, P.C.; Philadelphia, PA, for Jennifer Smith, M.D., Faith Lauser, C.R.N.A., Judith Boudwin, C.R.N.A., Jennifer Caroulis, C.R.N.A., Society Hill Anesthesia Consultants P.C.
- Judith Boudwin, C.R.N.A., Jennifer Caroulis, C.R.N.A., Society Hill Anesthesia Consultants P.C.
- Peter J. Hoffman; Eckert Seamans Cherin & Mellott, LLC; Philadelphia, PA, for Main Line Health Inc., Riddle Memorial Hospital

Facts:

On Jan. 20, 2012, plaintiff Bruce Drainer, in his early 50s, underwent a two-level lumbar laminectomy to decompress spinal nerve roots, performed by neurosurgeon Hagop DerKrikorian at Riddle Memorial Hospital, in Media.

Prior to surgery, Drainer was evaluated by anesthesiologist Jennifer Smith, who oversaw a team of nurse anesthetists comprised of Jennifer Caroulis (whose surname later became McGinley), Judith Boudwin, and Faith Lauser.

Drainer claimed that the surgical consent form did not mention any associated risk of perioperative visual loss or permanent blindness. According to Drainer, the anesthesia plan was for general endotracheal anesthesia with a non-invasive blood-pressure monitor using a blood-pressure cuff, a continuous electrocardiogram, pulse oximetry,

capnometry, temperature measurement, and measurement of urine output with a catheter.

At 8:18 a.m., Drainer was taken into the operating room. General anesthesia was induced and he was turned onto a prone position with his arms abducted to the sides and flexed at the elbows.

At about 8:40 a.m., Drainer developed arterial hypotension (low blood pressure); as a result, he was administered 200 micrograms of phenylephrine (a decongestant) to increase his blood pressure.

From 8:45 a.m. to 11:25 a.m., Drainer received 13 doses of phenylephrine, totaling 2,400 micrograms, in addition to 30 milligrams of ephedrine, a similar drug. Surgery was completed by 4:42 p.m.

According to Drainer, his urine output was 440 cc over the course of surgery, of which 300 milliliters had been collected by 8:40 a.m. The remaining 140 milliliters was produced from 8:40 to 3 pm.

The anesthesia record indicated that DerKrikorian was notified by the anesthesia team at 4:42 p.m. that Drainer had decreased urine output, and he was given 10 milligrams of a diuretic. Another 10 milligrams was later given. Drainer produced only 30 milliliters of urine for the remainder of the surgery.

Drainer claimed that his intraoperative blood loss was estimated at 200 milliliters, and that he received 5,200 milliliters of a lactated solution as his sole intravenous fluid therapy.

Upon awakening following surgery, Drainer was unable to see. An ophthalmology consultation was obtained, and he was diagnosed with posterior ischemic optic neuropathy (PION), a damage of the optic nerve from lack of blood flow.

Drainer sued DerKrikorian, Riddle Memorial Hospital, and Smith, Caroulis, Boudwin, Lauser, and their employer, Society Hill

Anesthesia Consultants P.C., on claims of medical malpractice.

Drainer and DerKrikorian settled for a confidential amount, prior to trial. DerKrikorian did not appear at trial, nor did his counsel put on a defense; however, DerKrikorian remained on the verdict slip.

Boudwin and Lauser were dismissed by stipulation, prior to trial.

Drainer's counsel asserted that the unnecessarily prolonged surgery increased the risk of his suffering perioperative visual loss and was the cause of his blindness. The failure to adequately decompress his spinal nerve roots caused him to later endure two additional back surgeries and worsening symptoms of pain and lower extremity numbness and weakness.

In his report, Drainer's expert in ophthalmology detailed that the risk factors (e.g., diabetes, male gender, obesity) associated with developing PION following back surgery were present with Drainer pre-operatively, since he was diabetic and obese. According to the expert, the factors related to Drainer's intra-operative care that increased the risk of his suffering PION and blindness during his spinal surgery included prolonged back surgery, prone positioning, venous stasis, hypotension, excessive crystalloid administration, and lack of colloid administration to maintain his intravascular volume.

Drainer's expert in anesthesiology, in his report, faulted Smith and Caroulis for failing to appreciate the extent of the planned surgery and for failing to modify the anesthetic-care plan when the surgery lasted longer than expected. According to the expert, Smith and Caroulis failed to appreciate Drainer's risk of perioperative visual loss; failed to communicate with DerKrikorian any concerns

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regarding the length of surgery and the risk for perioperative visual loss; failed to monitor Drainer's blood pressure with an arterial line; failed to appreciate that Drainer was intravascularly volume-depleted; failed to use colloid solutions to replete Drainer's intravascular volume; failed to maintain adequate systemic perfusion; failed to measure arterial blood gas via blood-gas analysis; and administered excessive amounts of crystalloid solution.

The defense counsel noted that Drainer had a history of obesity, diabetes, anxiety, panic disorder, depression, severe degenerative joint disease with chronic lower back pain, and suspected sleep apnea.

According to the defense, Drainer was more susceptible to ischemic neuropathy because of his underlying diabetes which was not well controlled per the records. Drainer's condition actually improved after the operation, until a "sudden" development of increased pain occurred, asserted the defense.

The defense for Society Hill maintained that Smith and Caroulis' treatment of Drainer met the standard of care and that all the proper precautions had been taken with regard to anesthesia procedures.

In court papers, Riddle Memorial asserted that "based on the available evidence at the time of surgery, Drainer did not have risk factors that have been identified as independent variables that would predispose him to post-operative vision loss."

Injury:

Drainer was treated with corticosteroid and erythropoietin hormones and received hyperbaric-oxygen therapy, all of which was unsuccessful in restoring his vision. On Jan. 25, he was transferred to a rehabilitation facility.

On April 18, he underwent emergent lumbar surgery due to cauda equina syndrome (compression of the nerves at the lower spine) with severe central canal stenosis at intervertebral disc L2-3. He received an L2-3 re-exploration, a laminectomy, a left L2-3 microdiscectomy, and removal of a retained disc fragment. On May 4, Drainer underwent a lumbar fusion due to recurrent pain.

Prior to losing his sight, Drainer enjoyed an active lifestyle that consisted of various social activities with friends, spending time with his two sons, fishing, and watching and following sports. Due to his blindness, he has to rely on others for basic necessities of life. He allegedly will need assistance in many of his activities of daily living, including being able to properly take his prescribed medications.

Drainer is dependent on insulin for treatment of diabetes and is unable to properly monitor his blood sugar. He has suffered humiliation, anxiety, and depression from his condition.

Drainer, who is single, sought over \$3 million in future medical costs (which is primarily for his blindness) and damages for past and future pain and suffering.

Result:

The jury found that DerKrikorian was 100 percent liable. There was no question posed to the jury as to Riddle Memorial Hospital's liability.

No liability was found against Smith and McGinley (Caroulis). Drainer was determined to receive \$21,861,179.

Editor's Comment:

This report is based on information that was provided by counsel for DerKrikorian, Lauser, Caroulis, Smith, Boudwin, and Society Hill Anesthesia Consultants P.C. Plaintiff's

counsel declined to contribute, citing confidentiality provisions. Counsel for Riddle Memorial Hospital did not respond to the reporter's phone calls. Additional information was gleaned from court documents and The Legal Intelligencer.

REAL PROPERTY

Developer pledged to build homes, country club claimed

Amount: \$20,000,000

Type: Verdict-Plaintiff

Venue: Chester County Court of Common Pleas

Case Type: Real Property, Contracts, Breach of Contract

Case Name: Applecross Club Operations LLC v. Pulte Homes of PA LP, Pulte Home Corp. of Delaware Valley, and PH 50 LLC, No. 2012-09804

Date: September 28, 2015

Plaintiff Attorney(s):

- Stewart J. Greenleaf Jr., Timothy T. Myers, Marvin L. Wilenzik and Michelle E. Costa; Elliott Greenleaf; Blue Bell, PA, for Applecross Club Operations LLC

Defense Attorney(s):

- J. Bradford McIlvain and Justin W. Oravetz; Archer & Greiner P.C.; Philadelphia, PA, for PH 50 LLC, Pulte Homes of PA LP, Pulte Home Corp. of Delaware Valley

Defendant Expert(s):

- Frank Pina; Accounting; Princeton, NJ called by: J. Bradford McIlvain, Justin W. Oravetz Shaun Henry; Golf Courses; Harrisburg, PA called by: J. Bradford McIlvain, Justin W. Oravetz Andrew Rau;

Land Use Planning; West Chester, PA called by: J. Bradford McIlvain, Justin W. Oravetz

Facts:

In January 2006, plaintiff Applecross Club Operations and developer Pulte Homes of PA entered into an agreement for Applecross to purchase and operate golf and country club facilities for a community that Pulte was building, in East Brandywine and West Brandywine townships.

Pulte Homes had purchased split parcels in East Brandywine and West Brandywine, in 2001 and 2003, respectively. Applecross claimed that Pulte had agreed to build more than 1,000 properties on the parcels. The West Brandywine portion was to include about 375 age-restricted units. Applecross pushed for and received promises and agreements that the age-restricted units would be part of the development.

With closing scheduled for mid-2010, Pulte allegedly changed its plans regarding the number and type of units it was building in the East Brandywine property. After Applecross discovered the plans had changed for East Brandywine, it demanded a written amendment to the agreement, providing assurances that Pulte would build the West Brandywine portion. The agreement also would obligate Pulte Homes to compensate Applecross \$6,000 for each unit less than 653 homes in the East Brandywine portion.

Applecross alleged that Pulte reneged on the agreement to buy the West Brandywine property. By the spring of 2012, Pulte had allegedly dropped plans for building the age-restricted units in West Brandywine, and Applecross learned that Pulte had also dropped its total unit count to 574, or about 56 percent of the units originally promised.

Applecross sued Pulte (and related entity

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