



Copyright 2002 Jury Verdict Review Publications, Inc.
Pennsylvania Jury Verdict Review & Analysis

Gerlisch vs. Urology Care Center, et al.

Case No. 99-05-3379

2001 PA Jury Verdicts Review LEXIS 963

Verdict Date: October 21, 2001;

Publication Date: January, 2002

Topic: MEDICAL MALPRACTICE - NEGLIGENT INTERPRETATION OF PATHOLOGY SLIDES - INCORRECT DIAGNOSIS OF PROSTATE CANCER - UNNECESSARY ADMINISTRATION OF RADIATION THERAPY - RECURRENCE OF PREEXISTING ULCERATIVE COLITIS - FECAL INCONTINENCE - DAMAGES ONLY

Result: \$ 5,000,000 Verdict

State: Pennsylvania

County: Philadelphia County

Judge: Judge Flora Barth Wolf

Plaintiff Attorney: Plaintiff's attorneys: Howell Rosenberg, Paul Riley, David Halpern and Steven Coopersmith of **Brookman, Rosenberg**, Brown & Sandler in Philadelphia

Defendant Attorney: Attorney for defendant University of Pennsylvania Hospital and pathologist: James A. Young of Christie, Pabarue, Mortenson & Young in Philadelphia
Attorney for defendant Mercy Fitzgerald Hospital, Urology Care Center and defendant urologist: Edward J. David of Mylotte, David & Fitzpatrick in Philadelphia

Facts: This was a survival action brought by the estate of the 76-year-old decedent against the defendants Fitzgerald Mercy Hospital, a pathologist employed by Fitzgerald Mercy, the University of Pennsylvania Hospital, its urology care center and a urologist who worked at the urology care center. The plaintiff claimed that the decedent was misdiagnosed with prostate cancer and endured 35 unnecessary radiation treatments. The defendants admitted negligence and agreed to split liability on a 50/50 basis between the two defendant hospitals.

The evidence showed that the defendant pathologist at Fitzgerald Mercy Hospital read the decedent's pathology slides as indicating prostate cancer. The decedent then saw the defendant urologist at the urology care center of the University of Pennsylvania Hospital and brought his pathology slides with him. The urologist had agreed that radiation therapy should be administered before the decedent's slides were examined by the hospital's laboratory. A week after the radiation therapy had begun, the University of Pennsylvania Hospital lab reportedly contacted the defendant urologist and opined that the decedent's slides did not show cancer. However, the message did not reach the decedent. The laboratory also indicated that it wanted additional tissue samples. The additional samples were taken and confirmed that there was no cancer present. Again, the decedent was not informed of that finding and continued radiation therapy. The decedent underwent a total of 35 unnecessary radiation treatments.

Approximately two months after the radiation therapy was completed, the defendant University of Pennsylvania Hospital returned the tissue samples and reports to the defendant Fitzgerald Mercy Hospital indicating no cancer. The diagnosis was confirmed at another hospital prior to informing the decedent that he was cancer-free.

The plaintiff claimed that the decedent suffered the typical side effects of the radiation treatment, including diarrhea and fecal incontinence. In addition, the plaintiff claimed that the radiation caused a recurrence of ulcerative colitis, which the decedent had suffered 25 years earlier. The decedent suffered from ulcerative colitis until his death from a stroke 18 months later. The decedent required the constant care of a gastroenterologist, was subjected to numerous invasive test procedures and was fecally incontinent for the last four months of his life, according to testimony offered.

The defense took the position that the physical injuries sustained by the decedent as a result of the radiation treatments were minimal.

The jury found for the plaintiff in the amount of \$ 5,000,000.

Commentary: This action involved the jury's financial assessment of the pain and suffering suffered by the decedent from unnecessary radiation treatments for a period of approximately two years. The decedent died from a stroke two years after receiving radiation treatment for prostate cancer which he did not have. The plaintiff did not attempt to establish that the decedent's death from a stroke was causally linked to the radiation. Although there was some testimony regarding the decedent's fear and anxiety associated with the misdiagnosis of prostate cancer, the focus of the case centered on the physical consequences of the radiation therapy. Testimony established that the decedent endured many invasive procedures, including colonoscopies, and developed recurrence of preexisting ulcerative colitis, which rendered him fecally incontinent for the last four months of his life. The defense urged reasonableness on the part of the jury, asking that it render a fair and realistic figure as compensatory damages for the decedent's ordeal. However, the jury apparently believed that the misdiagnosis of cancer and administration of unnecessary radiation treatment so damaged the quality of the decedent's final years of life as to warrant this significant award of \$ 5,000,000.

Issue: Published in Volume 20, Issue 2