

Missouri Lawyers

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WEEKLY

Jury awards \$2.58 million in medical malpractice suit

Patient developed staph infection after installation of pacemaker



Mary Coffey



Genevieve Nichols

Sedona, Ariz., when Klotz became violently ill. He was diagnosed with methicillin resistant staph aureus. This led doctors to remove Klotz's pacemaker. During the operation they found golf-ball-sized infected masses on the pacemaker and wires in his heart, which led to sepsis.

Klotz was in the hospital in Phoenix for 10 weeks and had to be on antibiotics for six weeks to eliminate the infection. He had several operations both to remove his leg and to correct brain bleeds that occurred due to sepsis, said Mary Coffey, the plaintiff's attorney from Coffey & Nichols. Klotz also underwent multiple weeks of physical therapy to learn to walk with a prosthesis.

"In total James was in the hospital for 90 days, he underwent 15 surgeries and had 137 doctors' visits," Coffey said.

The plaintiffs argue that it was during his stay at St. Anthony's that Klotz contracted the staph infection. Coffey alleged that the infection came from the IV that the paramedics installed and St. Anthony's had failed to remove within 48 hours.

"There wasn't any documentation saying that [the hospital] had removed the IV, and they are supposed to do that within 48 hours," Coffey said. "A few days later Klotz's wrist was red, warm, swollen and painful near the IV site, which are classic signs of infection."

The hospital argued that nurses had changed the IV.

"The IV was actually changed within 12 hours," said James Hennelly, St. Anthony's attorney from Hazelwood & Weber. "The nurses testified that many times they will change an IV and might not write it down on the chart if they didn't have time. We have notes that the paramedics' IV was an 18-gauge catheter and next morning a nurse charted that there was a 20-gauge catheter in the patient. It was changed sometime during the night."

Coffey alleged that Shapiro shouldn't have installed the pacemaker when there were signs of infection on Klotz's wrist. The installation served as a medium for the infection to spread. She provided expert testimony from Dr. Michael Siegal that Shapiro should have waited to install the pacemaker and if he couldn't wait, should have given Klotz additional antibiotics beyond what is normally given after surgery.

J. Thaddeus Eckenrode from Eckenrode-Maupin, Shapiro's attorney, disagreed. He believed the redness on Klotz's wrist was only an inflammation.

"We also argued that Dr. Shapiro

provided a necessary and urgent life-saving procedure that could not and should not have waited for a localized skin inflammation on his wrist to clear up. It was not an infection and would not have contraindicated such a procedure," he said.

The defense also argued there was a lack of causation in the case. Because of the extreme nature of the MSRA infection, Klotz would have exhibited symptoms sooner after his stay in the hospital.

"Our experts argued that it was almost medically impossible for this gentleman to have an MRSA infection in his bloodstream for five weeks without any symptoms and then explode virtually overnight while he was on vacation in Arizona," Eckenrode said.

The plaintiff's experts gave a different scenario. Dr. Lawrence Gelb, who treated Klotz in Phoenix, was adamant that Klotz had contracted the disease while in St. Anthony's and said 75 percent of MRSA comes from hospitals.

The jury determined Shapiro and the Metro Heart Group of St. Louis to be 67 percent responsible and St. Anthony's Medical Center to be 33 percent responsible.

Coffey thought that the hospital was assigned less liability because it might not have been a 100 percent clear to the jury that the IV was or was not changed.

The defendants will be appealing the jury's verdict on the grounds that

the jury should have been instructed to reduce future damages to present value and the value of the past medical expenses should only be the amount the plaintiff or his insurance paid. The court during pre-trial motions allowed for the full amount of the bills to come in as evidence, Eckenrode said.

The defense also argues that the non-economic damages should be reduced to the \$350,000 cap under the tort reform law.

Coffey is ready attack the tort reform law. She said the lawsuit was filed before tort reform took effect, and it was later dismissed and then refilled.

"I have the argument that tort reform is unconstitutional, and I believe the caps are unfair to people who are the victims," she said.

"Since it was originally filed before tort reform, there should be no caps."

Hennelly thinks that Coffey's arguments do not apply in this situation.

"We believe that a new cause of action was filed in tort reform," he said. "That new cause of action applies to all the defendants, and [St. Anthony's] is one of them."

— Angela Riley

■ \$2.58 million jury verdict

MEDICAL MALPRACTICE

- **Court:** St. Louis County Circuit Court
- **Case Number/ Date:** 2106CC-04826/ July 30, 2008
- **Judge:** Judge Barbara W. Wallace
- **Plaintiff's Experts:** Dr. Robert Clark, Phoenix (infectious disease); Dr. Michael Siegal, New York (cardiologist); Dr. Norbert Belz, Branson (life care planner)
- **Defendant's Experts:** Dr. Lawrence Gelb, St. Louis (infectious diseases); Dr. John Beshai, Chicago (cardiac electrophysiology); Dr. George Stacy, Louisville, Ky. (cardiology); Theresa Halloran, St. Louis (RN); Edward Septimus, Houston (infectious disease)
- **Allocation of Fault:** The jury found Dr. Michael Shapiro and Metro Heart Group of St. Louis to be 67 percent responsible and St. Anthony's Medical Center to be 33 percent responsible
- **Special Damages:** \$1.58 million in economic damages
- **Last Pretrial Demand:** Offered a high-low of \$1.5 million and \$750,000 to St. Anthony's Medical Center
- **Last Pretrial Offer:** \$650,000 from St. Anthony's Medical Center. There was no offer from Dr. Shapiro and Metro Heart Group
- **Insurer:** Medical Assurance Insurance for Dr. Michael Shapiro and Metro Heart Group, St. Anthony's Medical Center is self-insured.
- **Caption:** James Klotz et al v. St. Anthony's Medical Center

- **Plaintiff's Attorneys:** Mary Coffey and Genevieve Nichols, Coffey & Nichols, St. Louis
- **Defendant's Attorneys:** J. Thaddeus Eckenrode, Eckenrode-Maupin, Clayton; James Hennelly, Hazelwood & Weber, St. Louis