

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES

Jury Awards \$1.5 Million Over Stress Disorder

BY ELAINE SONG

Of the Legal Staff

A Philadelphia jury yesterday awarded \$1.5 million to a Pep Boys customer who claimed that an injury at the car servicing center precipitated post-traumatic stress disorder in that it reminded her of a similar injury from her childhood.

Marion Myers took her car into Pep Boys for servicing on Nov. 16, 1997. After she got out of her car in the bay area, a power air gun went off and a bolt that was inside of it hit Myers' just over her right eye, said Myers' attorney Harry J. Oxman of Oxman Levitan Goodstadt & Krevitz.

While the injury caused no permanent damage, said Oxman, Myers, 59, began experiencing flashbacks from an injury she experienced as a teenager when she was hit in the left eye with an orange, said Oxman. When she was about 25, she lost most of her sight in that eye, he said.

In addition to flashbacks, Myers experienced depression, anxiety and intrusive thoughts, said Oxman. She could work but experienced a significant change in her demeanor and personality, he said.

Plaintiff expert, Dr. Wolfram Rieger, a psychiatrist at the Hospital of the University of Pennsylvania, testified that Myers suffered chronic post-traumatic stress disorder, Oxman said. Myers' treating psychologist, L. Robert Griffin of

Philadelphia, also testified.

The plaintiff also benefited from the defendant's evidence, according to Oxman. Oxman noted that one factor explaining the amount of the award was that the defense conducted a test on Myers, the Minnesota Multiphasic Personality test, which concluded that Myers suffered depression and anxiety. The test helped establish post-traumatic stress disorder as the source of these symptoms, Oxman said.

Pep Boys Inc., represented by Regina Warren, said Myers had the disorder but that she had recovered, Oxman said. Psychologist Mark Chelder testified for the defense, Oxman said.

Warren could not be reached for comment late yesterday afternoon.

The case was an appeal from arbitration, which resulted in an award of about \$24,000, said Oxman, adding that the expert testimony had not been fully developed by then. Prior to trial, the defense offered

\$20,000, he said. The plaintiff made a settlement demand of \$250,000.

Oxman added that Pep Boys violated its own rules when it directed

Myers to drive her car into the bay area. The suit also alleged that work should have been stopped while she was there, that they failed to give warnings of dangerous conditions and that the workers failed to properly inspect and secure the power air gun.

Although permanent damage did not occur, Oxman said, neither did Myers lose sight immediately after her first experience.

She eventually did lose sight from the first incident after scarring, he said.

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*— Harry J. Oxman
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Med Mal Case Involving Ear Disfigurement, 'Body Image' Brings \$2 Million Verdict

BY JAIME DUFRESNE

Special to the Legal

A jury of the Philadelphia Court of Common Pleas awarded a \$2 million verdict Friday in a medical malpractice case in which a woman's outer ear infection, caused by piercing, resulted in the removal of a portion of the ear and an alleged psychological disorder. A two-day delay in treatment forced removal of ear cartilage, which left the plaintiff disfigured.

The verdict in *Jeanine Saunders v. Crozer Chester Medical Center, et al* was in response to charges of pain and suffering, emotional distress, embarrassment and humiliation, disfigurement, loss of life pleasures and possible future medical expenses.

Delay damages on the verdict against Dr. Patricia Baccash and Dr. Joel H. Sokol, who were employed by Crozer Chester, will exceed \$250,000, said plaintiff attorney Harry J. Oxman of Oxman Goodstadt Krevitz & Kuritz.

Testimony in the trial began July 30 and continued through Thursday. The jury came to a quick decision, Oxman said, deliberating for 45 minutes on Thursday and half an hour on Friday. Indications of the jury's intentions came even sooner than the verdict itself. Friday morning, the jury requested additional information regarding damages from Judge Albert John Snite Jr.

"At that particular point, it was a pretty fair conclusion they had decided in favor of the plaintiff against at least one of the doctors," Oxman said. "I must say, I was surprised they made a decision of liability in about 45 minutes."

Plaintiff Jeanine Saunders went to the emergency room of Crozer Chester Medical Center on May 19, 1997, complaining of tenderness and swelling in her right ear pinna — the visible, outer area of the ear. Saunders, 21 years old at the time, had had her ear pierced about two weeks earlier in the pinna. Saunders was examined by Dr. Richard Bois,

who noted the infection and prescribed the antibiotic Keflex.

Over the next few days, Saunders' condition worsened, and she returned to the hospital on May 25 and was seen by Baccash. Baccash consulted over the phone with plastic surgeon Rebecca S. Witham on the case, who recommended an incision and drainage of the ear. Saunders was discharged by Baccash without the drainage procedure, with instructions to continue the antibiotic and to use warm soaks on the ear.

The next day, Saunders again returned to the hospital and was seen by Sokol, who aspirated the ear with a needle and sent the fluid to a lab for a culture and sensitivity test, which would take 48 hours to complete. He also changed Saunders' medication to a different antibiotic.

Two days later, on May 28, Saunders returned to the hospital and was admitted by Dr. Guy Nardella Jr. The culture and sensitivity test revealed an infection caused by *Pseudomonas aeruginosa*, a bacteria that the previous antibiotics did not treat. Nardella's treatment included the removal of a substantial portion of cartilage from the upper third of the ear, creating a deformity. Saunders' antibiotics were changed, and she was discharged from the hospital on June 2, 1997.

Oxman argued that by failing to follow the advice of plastic surgeon Witham on May 25, Baccash and Sokol delayed the diagnosis of *Pseudomonas aeruginosa*, which led to the disfigurement.

Another alternative, Oxman said, would have been to send the fluid to the lab for a gram stain, which would have revealed the nature of the infection immediately instead of two days later. A gram stain test could have enabled treatment of the ear to begin May 25 or 26 with correct antibiotics, and the cartilage structure of the ear could have been saved, Oxman said.

Testimony on behalf of Saunders indicated that her deformed ear can't be repaired with plastic surgery, as such actions would result in further damage to the ear. In addition, the

plaintiff presented testimony from a psychiatrist that Saunders suffers from an adjustment disorder that is likely to continue as long as she has the deformity.

"I thought the jury was impressed by the nature of the deformity," Oxman said, "but I also felt that they were significantly impressed by the psychological testimony and the mental problems the woman developed as a result of her body image."

Defense attorney Kenwyn Dougherty of Post & Schell argued that it was not necessary to conduct a gram stain test on May 25 or 26 and further, that it was acceptable to do needle aspiration as opposed to incision and drainage of the ear. With reference to damages, the defense countered with testimony that plastic surgery could likely be done to improve the condition of the ear, though the ear would continue to be deformed.

Charges against Bois, Witham and Nardella were dismissed. A stipulation was made prior to trial that a verdict against either or both remaining doctors, Baccash and Sokol, would be molded to be a verdict against Crozer Chester because both doctors were employees of the hospital at the time. The jury found Baccash 70 percent negligent and Sokol 30 percent negligent.

The plaintiff was offered \$200,000 prior to the trial. During the third day of the four-day trial, defendants offered \$250,000, Oxman said.

The 12-member jury was composed of eight women and four men. Oxman said that the psychology involved with body image was important in determining damages and that the gender make-up of the jury wasn't as big a factor as he originally thought.

"I think perhaps women may be a little more sensitive to the concept of body image than men — at least, I used to think this was the case," Oxman said. "Men have developed a proportional concern about body image. The concept of body image is a reflection of the society we live in. Twenty-five years ago, the concept of body image would not have had the effect on a jury that it has today." •

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