

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES

ALM

Jury Awards Woman \$5 Million in Tubal Ligation Case

BY GINA PASSARELLA
Of the Legal Staff

A Philadelphia Court of Common Pleas jury awarded a woman \$5 million for injuries suffered during a routine laparoscopic tubal ligation at Temple University Hospital, according to court papers.

The award included damages for past and future medical costs, past and future lost wages, past and future pain and suffering, and deprivation of enjoyment of life, plaintiff's attorney Harry J. Oxman of Oxman Goodstadt Krevitz & Kuritz in Philadelphia said.

There were no offers throughout the week-long case, nor was there any discussion of a high-low agreement, Oxman said. The highest demand by the plaintiff noted in court documents was \$2.5 million. The jury deliberated for a period of about four-and-a-half hours during two days, Oxman said.

Oxman said he plans to submit a petition for delay damages that he expects will amount to \$392,000.

Jacqueline Griffin underwent the procedure, which closes fallopian tubes to prevent pregnancy, on July 19, 2001, at Temple University Hospital under the care of Ozgur Harmanli, according to court papers.

The surgery seemed to go without complications, until two days later when Griffin developed blood in her urine, abdominal pain and vomiting, according to court papers.

She was evaluated in Temple's emergency room and admitted when it was found that her bladder was perforated. After two days in the hospital, seemingly improving, Griffin suffered from severe respiratory distress and was placed in intensive care where an exploratory laparotomy — a procedure to examine abdominal organs — was performed, according to court papers.

The procedure revealed a perforation of the bladder that led to necrotizing, or dying, of the surrounding tissue, which caused an infection, according to court documents. The infection caused the respiratory distress. Griffin spent two weeks unconscious in the intensive care unit, Oxman said.

According to Oxman, Griffin was given a 30- to 40-percent chance of survival. Griffin did recover and was released from the hospital on Aug. 10, 2001, according to court documents.

She was out of work for a few months following that date, Oxman said.

This suit followed, and was based on the allegation that Harmanli provided a below-standard level of care because he improperly used the second trocar, a tool used in the process of singeing the fallopian tube, which ultimately perforated the bladder, Oxman said.

Griffin's expert witness, Marlan Schwartz, an OB/GYN from Piscataway, N.J., said the second trocar, which is typically inserted in an upward angle toward the fallopian tubes, was instead inserted downward toward the bladder, Oxman said.

The plaintiff argued that Griffin was likely to need further surgeries and develop internal abdominal adhesions, according to Oxman. That is why Griffin was ultimately awarded future lost wages, Oxman said, not because she is unable to work at the current time.

The defense, according to Oxman, conceded that the second trocar was the cause of the perforation, and that Griffin suffered from necrotitis due to that perforation.

It argued, however, that Griffin's bladder was in an anatomically unexpected position, which was the cause of the perforation, not substandard care.

According to the defense's pretrial memorandum, its expert witness, Mark Woodland of Philadelphia, said the bladder perforation and necrotizing of tissue were caused by an infection that resulted in necrotizing fasciitis, commonly known as flesh-eating bacteria.

"Necrotizing fasciitis has been reported as a rare complication of surgical procedures and has been reported after GYN laparoscopic procedures," the memorandum said. "Such infections are not caused by negligence or malpractice."

Before undergoing the surgery, Griffin signed a consent form which outlined possible risks to the bladder and bowels from this procedure, according to court papers.

The defense argued that Harmanli and



OXMAN

Temple had no obligation for injuries suffered during the tubal ligation because Griffin was made aware of the risks and signed a consent form, Oxman said.

He said the defense was trying to argue that "every time you sign one of these forms you not only acknowledge that you were told, but you give up your right to sue."

Another argument proposed by Griffin was that the perforation could have been done at the hand of a resident, Oxman said. Temple University Hospital is a teaching school, and Harmanli said there were two residents present during the procedure, Oxman said.

Harmanli took responsibility, however, as the attending physician and said regardless of who actually performed the procedure, he was in charge, Oxman said.

The two residents were originally named on the complaint, but later dismissed by the plaintiff before trial with no settlement, Oxman said.

Judge Esther R. Sylvester presided over the trial, *Jacqueline Griffin v. Temple University Hospital*.

According to Oxman, the jury was not unanimous, voting 10-2. He was not sure on what questions, if not all, the jurors were split.

The jury found that Harmanli was professionally negligent, which caused Griffin's injury, and that Harmanli was an agent of Temple University Hospital, according to the verdict sheet.

Infectious disease expert Mark Ingerman of Wynnewood, Pa., also testified for the defense.

The attorney for the defendants, Mary Ellen Reilly of Goldfein & Joseph in Philadelphia, could not be reached for comment.

Oxman said he expects the defense will file a motion for a new trial and seek a remittitur as the demand was only half of the award.

The Griffin jury's verdict includes one of relatively few multimillion-dollar awards handed down by a Philadelphia panel this year.

As of the end of September, Philadelphia juries had arrived at 10 verdicts involving awards for more than \$1 million and four for more than \$4 million, according to *The Legal's* analysis of Philadelphia Common Pleas data.

In comparison, 2003 saw 12 \$4 million-plus jury awards, while there were 16 in 2004. *

REPRINTED WITH PERMISSION OF THE LEGAL INTELLIGENCER