Medical Malpractice Case Report: $5.6 Million After Mediation for Failure to Diagnose and Treat Bacterial Meningitis

Summer 2011
News

Reached a $5.6 Million medical malpractice settlement after mediation for a negligent failure to diagnose and treat bacterial meningitis resulting in serious and permanent injuries to our 34 year-old client. Read the following Minnesota Association for Justice (MAJ) *Minnesota Case Report*, Volume 30, No.1, Summer 2011:

Selected Results*

(Excerpts taken with permission from Minnesota Association for Justice (MAJ) "Minnesota Case Reports")

Plaintiff, age 34, presented to the emergency room at 2:00 a.m. with a severe headache, neck stiffness and elevated white blood count. His mental status was fully intact with a Glasgow Coma Scale (GCS) score of 15. The emergency medicine specialist thought that plaintiff likely had a CSF leak headache stemming from recent spinal surgery complicated by a dural leak, but also suspected meningitis. When meningitis is suspected, the standard of care requires an immediate spinal tap to collect and analyze cerebrospinal fluid (CSF) followed by IV administration of steroids and antibiotics.

Because the plaintiff had recently had spinal surgery at the site where the tap would be done, the emergency medicine specialist asked the hospital's neurosurgery service to consult on performance of the tap. The neurosurgery service had a general surgical resident see the plaintiff. The resident had been hired by the hospital to provide nighttime and weekend coverage for the hospital's neurosurgery service. The resident had never done a rotation in neurology or neurosurgery and was not trained to do spinal taps. She assessed the patient and then spoke with the staff neurosurgeon, who was then performing emergency surgery on another patient. They agreed that plaintiff likely had a CSF leak headache and admitted him to the hospital for pain control. They determined that the interventional radiology service should place a lumbar drain to address the CSF leak headache later that morning around 9:00 a.m. and that CSF could be collected at that time to investigate the possibility of infection.

Plaintiff was admitted to a neurosurgery unit. Around 6:30 a.m. he started exhibiting mental status changes but the neurosurgery service was not notified until 8:30 a.m., when plaintiff's GCS was down to 9. The staff neurosurgeon saw plaintiff at that time and ordered immediate administration of IV steroids and antibiotics. He did not want the spine tapped to collect CSF without first having a head CT scan done to investigate the possibility that plaintiff's mental status had deteriorated due to

elevated intracranial pressure. Elevated intracranial pressure is a relative contraindication to tapping the spine because the sudden change in pressure gradient when the spine is tapped can cause the brain to herniate as it is literally sucked downward due to the change in pressure gradient. The neurosurgeon instructed his scribe nurse to order a head CT scan and instructed the anesthesia service to sedate plaintiff and then transport him to the scanner before taking him to the interventional radiology suite for spinal tap and lumbar drain placement.

The nurse ordered a stat head CT scan but apparently cancelled it without advising the neurosurgeon. The anesthesia service sedated plaintiff, but then transported plaintiff to the to the interventional radiology suite without first taking him to the scanner. The interventionalist tapped the spine, saw that the CSF was obviously infected, and called the neurosurgeon, who at that time was looking for his patient, thinking he had been taken to the scanner.

Immediately after the tap, plaintiff's pupils were fixed and dilated due to a brain herniation. His GCS was now 3. IV steroids and antibiotics were started four hours later. Later that evening, intracranial pressure was so high that the neurosurgeon had to remove portions of plaintiff's skull to accommodate the swelling.

Plaintiff was ultimately diagnosed with E coli meningitis. He remained in the ICU for seven weeks and was then transferred to a rehabilitation facility for several weeks of intensive therapy. Serial neuropsychological testing over the next four years documented permanent deficits, including mild to moderate short-term memory loss, mild speech deficits which impacted word finding and speed of speech, mild to moderate impairment of executive functioning, and loss of IQ from an estimated pre-injury IQ of 145 to a post-injury IQ in the range of 85 to 100. Plaintiff could take care of himself in some respects and use public transit services under controlled conditions, but he can no longer work or drive a car or leave his home without supervision or guidance.

Plaintiff alleged that various acts of negligence by both the physicians and nursing staff led to a 14-hour delay in starting IV antibiotics and performance of an ill-advised spinal tap which precipitated the brain herniation. Plaintiff further alleged that the hospital's neurosurgery staff was inappropriately staffed and understaffed.

Plaintiff had been married five months before the incident with a plan to have children. He was an accomplished poet with a national reputation and worked as a customer service representative. Past wage loss was $164,000. Past medical bills were $1.3 million. Future care needs were projected at $3.3 million by plaintiff's life care planner, who included the cost of a nanny for 15 years and the cost of a personal care attendant for 8 hours per day. Future wage loss was projected in the range of $800,000 to $1.8 million by plaintiff's economist. The high end of the wage loss was premised on plaintiff's goal of teaching creative writing at the college level as he was a nationally recognized poet at the time of his injury.

Defendants denied all allegations of negligence, but focused their efforts on their defenses to causation and damages. They argued that plaintiff had E coli meningitis, a particularly virulent form of meningitis associated with high morbidity and mortality, and that plaintiff's expert causation opinions

were not scientifically sound.

As to damages, defendants alleged that although plaintiff likely would not return to work, he was capable of taking care of himself while his wife worked and that he needed only 4 hours per day of personal care attendant services. Defendants further contended that the need for nanny services was not an item of damage, particularly since plaintiff and his wife did not yet have children. Defendants further alleged that it was only speculative that plaintiff would ever get a job teaching creative writing at a college level. Defense experts contended that the cost of plaintiff's future care needs was $1.4 million and value of future wage loss was $800,000.

Before the case was mediated, defendants moved to dismiss all claims on the basis of alleged deficiencies in plaintiff's expert affidavits and on the basis of that plaintiff's expert opinions on causation lacked scientific reliability and therefore were inadmissible under the *Frye-Mack* standard. Plaintiff countered the *Frye-Mack* motion by submitting large-scale studies showing that outcomes for adult E coli meningitis patients were not materially different from other types of meningitis and by submitting small-scale studies showing that outcomes in adult E coli meningitis were directly linked to the timing of antibiotic therapy and the mental status of the patient at the time antibiotics were started. The trial court summarily denied the defense motions in a 25-page Order and Memorandum and set the case for trial.

Shortly before trial the parties mediated the case and agreed to settle all claims for $5.6 million, which includes an agreement by the defense to satisfy a health insurance subrogation claim for $600,000.

Services

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