Misdiagnoses, death leads to $1.5M verdict

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An Horry County jury has awarded $1.5 million to the estate of a man who died after being misdiagnosed at a local medical center.

Christopher Douton, 41, was a project engineer with S&ME, Inc. in Conway and on Jan. 11, 2013, was at his office processing soil samples when his left leg went numb and he began experiencing a great deal of pain.

Douton was taken to Conway Medical Center and was seen by emergency room physician Amanda Battisti, D.O. An attorney for Doughton's estate, Scott Evans of Georgetown, said that despite Douton reporting a pain level of 10 and numbness in his leg, Battisti characterized his symptoms as moderate.

He received "minimal testing," Evans said, and was discharged after being diagnosed with a pinched nerve and leg pain, and was told to follow up with an orthopedist after the weekend.

But the next day, when his leg became completely numb, Douton was taken to Grand Strand Regional Medical Center where he learned that a blood flow restriction had rendered his leg ischemic.

Medical personnel attempted to have Douton flown to Duke or the Medical University of South Carolina, but fog prevented a flight.

He was on his way to MUSC by ambulance when he died.

According to his attorneys, Douton was charged more than $1,400 for his evaluation but a $16 blood panel would have detected his condition. Two surgeons testified for his estate that had he been properly diagnosed during his initial visit, there is at least a 90 percent chance that he would have survived.

The verdict was rendered against Conway Emergency Group, LLP, the for-profit medical group hired by Conway Medical Center, a nonprofit hospital, to provide staffing services within the emergency department, Evans said.

Another Douton attorney, Jeffrey Chandler of Myrtle Beach, said that he hopes the verdict serves as a wake-up call to the medical community.

"This was a case where the doctor chose the most common diagnosis that she thought fit the symptoms yet failed to reassess the patient when his symptoms changed during the course of his emergency room visit," Chandler said. "Had she done so, Mr. Douton would be with his family today."

Evans said he is thankful that jurors remained diligent while flood waters were just outside the courthouse and some of their homes were under water.

"Fortunately, the jury understood that this was a case that could impact the standard of care in emergency rooms throughout Horry County," he said.

Attorneys for the defendant, Jack McCutcheon and Ashley Gwin of Thompson & Henry in Conway, did not immediately return a message seeking comment.

'Unreasonable' delay costs plaintiff $34K in sanctions

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A tactical decision to wait to seek sanctions has backfired on a plaintiff and its attorneys, costing them a $34,150 sanctions award after the South Carolina Court of Appeals ruled that the delay was unreasonable.

The decision of first impression provides a little more clarity on the procedural guidelines for pursuing sanctions under Rule 11, which pertains to improper or frivolous pleadings and is silent about timeliness. But the Nov. 2 opinion does not go so far as to establish a specific filing deadline.

"We do, however, hold that a party must file a motion for sanctions pursuant to Rule 11 within a reasonable time of discovering the alleged improprieties to comport with the purposes of the rule," Judge H. Bruce Williams wrote in the unanimous decision.

A trial judge had awarded the plaintiff sanctions for the time its attorneys spent dealing with the defendant attorney's violation of a disqualification order. The attorney in question, Tony Megna, was disqualified because he also served as the defendant's chief executive officer and was a necessary fact witness in the case.

The plaintiff filed its sanctions motion nearly three years after the court disqualified Megna and more than two years after it won summary judgment against the defendant, Pee Dee Health Care.

"We certainly understand and we knew going into this that timing is an important factor and timeliness would be required," said an attorney for the plaintiff, J. René Josey of Turner Padget Graham & Laney in Florence. He noted that his client was considering filing a petition for a rehearing.

"It sort of stings to be retroactively subjected to a new rule," he added, "but we think we've got good grounds for them to reconsider it."

Pee Dee Health Care and its attorneys had urged the court to find that any Rule 11 sanction motion is untimely if it is filed more than 10 days after the court issues a judgment in the underlying matter.

"The court adopted a broader rule," said James M. Griffin of Griffin & Davis in Columbia, who represented Pee Dee on appeal. "It could be outside 10 days and still be reasonable."

Williams, who noted that other jurisdictions have split over the timeliness issue, relied on the North Carolina Court of Appeals' decision in Griffin, which held that a 13-month delay in filing a Rule 11 sanctions motion was unreasonable.

> *He added that "Megna's behavior was concerning, particularly given that the law regarding his recusal was so clear." But he found that "the main purpose of Rule 11, however, is to deter future litigation abuse, not compensate the opposing party."*

"Some courts recognize the ability of a party to file a motion for sanctions at the end of litigation or after a judgment," Williams said, "but we are unable to find any authority to support the proposition that a party can wait until the entire case has finished."

He added that "Megna's behavior was concerning, particularly given that the law regarding his recusal was so clear." But he found that "the main purpose of Rule 11, however, is to deter future litigation abuse, not compensate the opposing party."

Williams concluded that the plaintiff's tactical decision to wait until the case was finished to seek sanctions for conduct that had occurred over the course of three years failed to prevent any additional litigation abuse from occurring.

In the wake of the decision, Griffin recommended that "anyone considering a Rule 11 motion would be safe to do it within the 10 days" of judgment.

"The further you get outside that 10-day period the less likely the court will be to find it to be reasonable," he said.

But Josey contended that Rule 11 timeliness should be decided on a case-by-case basis.

"There may be some cases where you should seek sanctions early and often," he said. "But there are others where you should hold your powder and wait until the dust is settled."

The 13-page decision is Pee Dee Health Care, P.A. v. Estate of Thompson (Lawyers Weekly No. 011-096-16). A digest of the opinion is available at sclawyersweekly.com.

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