



STORAGE NAME: h6527a.CJC

DATE: 3/16/2017

March 9, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6527 - Representative Harrison
Relief/Charles Pandrea/North Broward Hospital District

THIS IS AN EQUITABLE CLAIM BASED ON A JURY VERDICT, WHEREIN THE JURY FOUND THE NORTH BROWARD HOSPITAL DISTRICT D/B/A CORAL SPRINGS MEDICAL CENTER 10% LIABLE FOR THE DEATH OF JANET PANDREA BY AND THROUGH ITS PATHOLOGIST, DR. PETER TSIVIS, M.D. THE DISTRICT HAS PAID \$200,000 PURSUANT TO THE STATUTORY CAP, LEAVING \$608,554.78 TO BE PAID PURSUANT TO THIS CLAIM BILL.

FINDING OF FACT:

On January 14, 2002, a 65 year-old Janet Pandrea was presented to Dr. Martin S. Stone, M.D., complaining of a cough. Dr. Stone ordered a chest x-ray which revealed a mass. Mrs. Pandrea returned on January 17 for a CT of her chest which revealed a 6 x 4 centimeter mass.¹ Dr. Stone recommended a fine needle core biopsy be performed.

On January 24, Janet Pandrea was admitted to the North Broward Hospital District d/b/a Coral Springs Medical Center ("the District") under the care of Dr. Stone for a CT guided

¹ The Mayo Clinic defines a CT scan as "[c]omputerized tomography (CT scan) — also called CT — [that] combines a series of X-ray views taken from many different angles and computer processing to create cross-sectional images of the bones and soft tissues inside your body."

chest biopsy.

On January 25, Dr. Peter Tsivis, M.D., a pathologist for the District, interpreted the biopsy tissue as consistent with non-Hodgkin's lymphoma but did not provide any information on the type or classification of the non-Hodgkin's lymphoma in his report.² Dr. Tsivis submitted his surgical pathology report from the chest biopsy and stated that the specimen demonstrated malignant neoplasm consistent with malignant non-Hodgkin's lymphoma. However, in the microscopic description of Dr. Tsivis' report, he noted that the material in the biopsy was insufficient for confirmatory studies and that additional tissue would be necessary for further evaluation.

On January 30, Dr. Stone referred Mrs. Pandrea to Dr. Abraham Rosenberg, M.D., at Oncology and Hematology Associates of West Broward for an oncologic evaluation. On February 1, Dr. Rosenberg referred Mrs. Pandrea to have a PET scan performed.³ The PET scan, when looked at in conjunction with the CT scan, supported that the mass was consistent with underlying lymphomatous process.

On February 6, 2002, Dr. Rosenberg referred Mrs. Pandrea for a bone marrow biopsy (which revealed no evidence of malignancy) and called Dr. Tsivis to request additional stains of the biopsy tissue which would help in determining the type of non-Hodgkin's lymphoma Mrs. Pandrea might have had.

On February 7, Dr. Rosenberg started Mrs. Pandrea on chemotherapy using Rituzan, Cytosan, Oncovin and Prednisone before receiving the results of the stains he had requested the day before.⁴ During the day on February 9, Mrs. Pandrea experienced seizures; she lost consciousness that evening. On February 10, she was transported by ambulance to the emergency room at Northwest Medical Center. Her chief complaint was of nausea and vomiting since the chemotherapy session. It was determined that she was having adverse reactions to the Oncovin which was discontinued and replaced with Fludara. Mrs. Pandrea was discharged from Northwest Medical Center on February 13.

Mrs. Pandrea underwent her second cycle of chemotherapy on February 27. On March 6, based on a decreased white blood cell count, Mrs. Pandrea's oncologist prescribed her an

² At trial, it was established that there are over twenty types of non-Hodgkin's lymphoma and knowing which type and classification is an integral part of determining how a patient should be treated.

³ The Mayo Clinic defines as PET scan as follows: "[a] positron emission tomography (PET) scan is an imaging test that helps reveal how your tissues and organs are functioning. A PET scan uses a radioactive drug (tracer) to show this activity."

⁴ In his report, dated February 14, 2002, Dr. Tsivis noted that the additional stainings produced "findings . . . insufficient for further diagnostic evaluation of [the] specimen." However, in the addendum diagnosis of the report, Dr. Tsivis noted that the "needle core biopsy specimen demonstrate[d] malignant neoplasm consistent with malignant non-Hodgkin's lymphoma."

antibiotic, Levofloxacin. Mrs. Pandrea subsequently developed muscle weakness and pain, and the antibiotic was stopped on March 13.

On March 18, Dr. Stone admitted Mrs. Pandrea to University Hospital, LTD d/b/a University Hospital and Medical Center ("University Hospital") with her chief complaints being difficulty breathing and muscle pain. She was subsequently given a differential diagnosis of rhabdomyolysis by Dr. Charles Kimmel, M.D.⁵ Mrs. Pandrea's respiratory efforts continued to decline after she was admitted to University Hospital, and she was intubated by a respiratory therapist on the morning of March 21. Later that day she was transferred to ICU.

The doctors made multiple attempts to wean Mrs. Pandrea from the mechanical ventilator but were unsuccessful until March 25. On March 27, an abdominal x-ray revealed free air below the diaphragm. Mrs. Pandrea was diagnosed with a perforated viscus and had emergency abdominal surgery. Subsequent to the viscus repair surgery, Mrs. Pandrea developed sepsis and died on April 2, 2002. Her family had a private autopsy performed after her death, and the coroner determined that the mass in Mrs. Pandrea's chest was a benign thymoma which was erroneously diagnosed as non-Hodgkin's lymphoma.⁶

LITIGATION HISTORY:

On December 17, 2002, Charles Pandrea, as Plaintiff, filed a Complaint in the 17th Judicial Circuit Court, in and for Broward County, Florida, for the death of his wife, Janet Pandrea, against Abraham Rosenberg, M.D., Oncology and Hematology Associates of West Broward, M.D., P.A., Najib Saba, M.D., Edward Dauer, M.D., P.A., Peter A. Tsivis, M.D., North Broward Hospital District d/b/a Coral Springs Medical Center, Steven Charles Kimmel, M.D., West Broward Rheumatology Associates, Inc., Martin S. Stone, M.D., Martin Spencer Stone, M.D., P.A., Ramon Ramirez, M.D., Leonard Buchbinder, M.D., Abraham A. Chamely, M.D., Abraham A. Chamely, M.D., P.A., Marlon A. Labi, M.D., Ted Hugh Brady, D.O., Marlon A. Labi, M.D. and Associates, P.A., Robert Geronemus, M.D., and South Florida Nephrology Associates, P.A.⁷

In the Complaint, Mr. Pandrea alleged that Dr. Tsivis was

⁵ Rhabdomyolysis is a syndrome of striated muscle necrosis that has many different etiologies. However, because Mrs. Pandrea began experiencing the symptoms of rhabdomyolysis during treatment with Levofloxacin, the coroner later determined that the most likely etiology of rhabdomyolysis in her case was a reaction to the Levofloxacin. Rhabdomyolysis during Levofloxacin therapy is rare but has been reported during clinical trials in less than 1% of cases.

⁶ The coroner determined that Mrs. Pandrea's demise was ultimately the result of complications of treatment of rhabdomyolysis. He listed the cause of death as complications of treatment of levofloxacin-induced rhabdomyolysis following chemotherapy for non-Hodgkin's lymphoma.

⁷ Of the named Defendants, only the District and Dr. Tsivis were subject to the provisions in section 768.28, F.S., which limits liability to \$200,000.

negligent when he failed to properly care and treat Mrs. Pandrea, failed to properly interpret the pathology from the chest mass needle core biopsy, failed to recommend a repeat biopsy due to the material in the specimen being insufficient for any confirmatory studies, and/or failed to recommend appropriate additional diagnostic tests. Mr. Pandrea also alleged that the District was vicariously liable for the actions of its employee, Dr. Tsivis. The Defendants denied these allegations.

Trial commenced on May 6, 2005, and ended on June 8, 2005, when the jury rendered its verdict. The jury awarded Mr. Pandrea \$72,498.08 in medical/funeral expenses, \$3,000,000 in past pain and suffering and \$5,000,000 in future pain and suffering for a total of \$8,072,498.08 in damages. As to the cause of Janet Pandrea's death, the jury found Abraham Rosenberg, M.D., to be 50% liable, University Hospital 28% liable, Martin S. Stone, M.D., 12% liable, and the District 10% liable.

The Honorable Judge Robert Collins entered a Final Judgment on June 15, 2005, ordering Dr. Rosenberg to pay \$4,043,016.09, the University Hospital to pay \$2,252,763.06, Dr. Stone to pay \$965,469.88, and the District to pay \$808,554.78.

After the Final Judgment was rendered Mr. Pandrea entered into settlement agreements with several of the Defendants; the District did not enter into a settlement agreement with Mr. Pandrea.

Post-verdict, the District paid \$200,000 to Mr. Pandrea pursuant to the sovereign immunity limit.

CLAIMANT'S POSITION:

The Claimant asserts that as a result of Dr. Tsivis' negligence, Mrs. Pandrea underwent unnecessary chemotherapy which led to the decreased white blood cell count, which led to the administration of the antibiotic, Levofloxacin, which led to the rhabdomyolysis, which led to her respiratory failure, and ultimately her death.

The Claimant also asserts that under Florida law the concept that an initial wrongdoer is responsible for any negligence that occurs and/or arises as a result of medical treatment received from the injuries that flow from there is well established and applies to Dr. Tsivis' misdiagnosis.⁸

Additionally, the Claimant asserts that it was reasonably foreseeable that Dr. Rosenberg would begin chemotherapy

⁸ Respondent asserts that this concept is only relevant when the initial wrongdoer causes a physical harm to the injured party, which Dr. Tsivis did not do in this case.

treatment based on Dr. Tsivis' pathology report which reflected the existence of non-Hodgkin's lymphoma. Dr. Tsivis' initial misread of the pathology slides, Claimant asserts, lead to the series of unfortunate events that caused and/or substantially contributed to cause Mrs. Pandrea's death.

RESPONDENT'S POSITION:

The District asserts that Dr. Tsivis' reports were non-diagnostic. To support this assertion, the District points to the fact that Dr. Rosenberg's expert testified that the pathology studies interpreted by Dr. Tsivis were non-diagnostic and agreed that Dr. Rosenberg should not have commenced chemotherapy treatment based upon Dr. Tsivis' reports. Additionally, the District points to the Petitioner's experts who, along with Dr. Rosenberg's expert, agreed that Dr. Rosenberg should not have commenced chemotherapy treatment without obtaining additional biopsy samples and the results of the special staining that he had ordered.

The District also asserts that the jury's verdict in this case was substantially based on a combination of either bias, prejudice or sympathy for the Pandreas and against the District. Further, the District suggests the jury intended to either punish certain co-Defendants in this case for their lack of candor or compassionate medical care or was caught up in a wave of sympathy in favor of the Claimant.

Additionally, the District asserts that Mrs. Pandrea's death was not the direct or natural and probable result of Dr. Tsivis' misinterpretation of the needle core biopsy. In both his initial report and addendum, Dr. Tsivis indicated that the biopsy material was insufficient to run any confirmatory studies. Further, the District asserts that Dr. Rosenberg's negligent commencement of chemotherapy in the absence of a diagnostic pathology study was an unforeseeable, intervening force which extinguishes any liability of Dr. Tsivis.⁹

The District asserts that there are no compelling reasons or justifications to pass and fund the bill.

CONCLUSION OF LAW:

The legislature is not bound by the jury's findings of fact. A claim bill is an act of legislative grace in which the legislature allows a citizen to collect damages where they would normally be barred by common law sovereign immunity. The legislature can give the jury's findings of fact weight in making its own determination, but the legislature should conduct its own inquiry of the facts and make its own determination of the facts and law at issue.

I find that Dr. Tsivis was an employee of the District and was in

⁹ Respondent points to the testimony of multiple witnesses (of both the Plaintiff and other Defendants) who, during trial and in depositions, testified that Dr. Rosenberg's initiation of chemotherapy based on non-diagnostic studies was not expected or foreseeable.

the course and scope of his employment at the time he interpreted Mrs. Pandrea's needle core biopsy. I find that Dr. Tsivis had a duty to diagnose. I find that both his initial report and addendum were non-diagnostic reports because they did not address what type of non-Hodgkin's lymphoma Mrs. Pandrea might have had and stated that additional tissue would be necessary to perform confirmatory tests. I find that Dr. Tsivis did not breach any duty he owed to Mrs. Pandrea.

Additionally, I find that Dr. Tsivis could not have reasonably foreseen that Dr. Rosenberg would initiate chemotherapy treatment based on Dr. Tsivis' non-diagnostic reports and before Dr. Rosenberg's requested staining results had been rendered. I find that Dr. Rosenberg's commencement of chemotherapy in the absence of a diagnostic pathology study was an unforeseeable, intervening force which extinguishes any liability of Dr. Tsivis.

COLLATERAL SOURCES:

Prior to trial, Claimant settled with Dr. Charles Kimmel for \$100,000, Dr. Marlon Labi for \$200,000, and Dr. Ramon Ramirez for \$10,000, for a total of \$310,000.

After the Final Order was entered, and pursuant to post-verdict settlement agreements, Claimant received \$2,615,000 from Dr. Rosenberg, \$1,200,000 from the University Hospital, and \$645,000 from Dr. Stone, for a total of \$4,460,000.

In total, including settlements before the trial and the post-verdict payments from all the Defendants, Claimant has received \$4,970,000.

Additionally, the Claimant had a life insurance policy on Mrs. Pandrea.

RESPONDENT'S ABILITY
TO PAY:

Should the bill be enacted, the monies would be paid from Broward Health's General Operating Fund. Payment of these funds, although having some impact, would not preclude the North Broward Hospital District from continuing in its mission to provide affordable and quality health care to the general public within the borders of the North Broward Hospital District.

ATTORNEY'S/
LOBBYING FEES:

Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 6% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total \$2,129.81.

LEGISLATIVE HISTORY:

This is the tenth legislative session in which this claim has been presented to the Legislature. This claim has been filed in both

of the chambers every year beginning in 2009. It has never been heard in a committee in the House. The only time in which it was heard in the Senate was in the 2015 legislative session, in which Senate Bill 28 by Senator Diaz de la Portilla received a favorable vote from the Senate Judiciary Committee. However, the bill died in the Senate Appropriations Subcommittee on Health and Human Services.

RECOMMENDATIONS:

For the reasons stated above, I respectfully recommend that the be reported **UNFAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Harrison, House Sponsor
Senator Steube, Senate Sponsor
Tom Cibula, Senate Special Master