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Hospital Held Liable For Man Who Died While on Ventilator *Rivera v. Temple University Hospital Inc.*

\$750,000 Verdict

Date of Verdict:

Oct. 25, 2010.

Court and Case No.:

C.P. Philadelphia July Term 2008, No. 4304.

Judge:

Gregory Smith.

Type of Action:

Medical malpractice.

Injuries:

Wrongful death and survival.

Plaintiff's Attorneys:

Thomas J. Duffy, Duffy + Partners,
Philadelphia.

Defense Counsel:

George Young Jr. and Edvard Wilson, Young &
McGilvery, Philadelphia.

Comment:

A Philadelphia jury has awarded the family of a 31-year-old man \$750,000 after they alleged poor care at a local hospital led to his death.

According to the plaintiff's memorandum in *Rivera v. Temple University Hospital Inc.*, Jose Daniel Fontanez died May 25, 2007, from respiratory arrest nine days after being admitted to Temple University Hospital and five days after staff there intubated him for respiratory management.

The administratrix of Fontanez's estate, Susanna F. Rivera, alleged in a pretrial memorandum that the hospital failed to properly monitor Fontanez and manage his ventilation while he was intubated. As such, Rivera continued, Fontanez suffered from respiratory acidosis and then asphyxiated to death.

According to the plaintiff's pretrial memorandum, acidosis affects the body's ability to rid itself of carbon dioxide and creates a need to "breathe faster but the inability to do so."



TOM DUFFY

"Specifically, as he became acidotic on the 25th, Mr. Fontanez would have begun to feel pain due to the need to breathe faster but the inability to do so," Rivera's attorneys wrote in the plaintiff's pretrial memorandum.

They later continued: "Until the oxygen deprivation lead to ischemic brain death, Mr. Fontanez would have had the sensation of drowning with a constant demand for oxygen registering in his senses."

In its pretrial memorandum, Temple University Hospital argued that Fontanez had a history of depression, had tried to commit suicide in the past and likely suffered from thallium poisoning at the time of his death.

When Fontanez went to the hospital May 16, he had no appetite, was vomiting and suffering from stomach pain. He had been depressed for two months, while also suffering from bilateral hand parathesis and other ailments within that time frame.

Fontanez, according to the defendant's pretrial memorandum, had previously ingested rat poison as an attempt at committing suicide and also expressed an interest in neurotoxins.

The hospital argued that Fontanez's vital signs were "acceptable" when he checked into the hospital, but did have an anion gap of 20 and was suffering from "electrolyte disturbances, elevated creatinine, knetonuria and elevated bilirubin."

Over his stay at the hospital, however, he became encephalopathic comatose, which required staff to place him on life support.

An expert told the hospital that Fontanez would have died regardless of the treatment he

received, according to the defendant's pretrial memorandum.

Rivera, however, argued that Fontanez's death was preventable "with the appropriate care."

In the plaintiff's pretrial memorandum, Rivera noted that she would put on the board special damages of \$1 million to \$1.8 million. The plaintiff's settlement demand before trial was \$5 million.

A jury sided with the plaintiffs and awarded damages for both pain and suffering and wage loss claims. The total award came to \$750,000.

Attorneys described the case as a "difficult" one to try.

The defense, however, seemed to "wed themselves to the thallium theory," Rivera's attorney said, but there was no evidence Fontanez had obtained the metal or ingested it.

"Third, they were cavalier in defending how poorly the care he received was while he was on the ventilator," they said. "My guess is that [the jury] wanted to see that he was cared for properly, regardless of what brought him to the hospital."

An entry on the case's online docket notes that the case may have been disposed of differently.

According to a Dec. 6 docket entry, the plaintiff had petitioned the court to approve a settlement and distribute those funds under seal. That petition was granted by the court and neither plaintiff nor defense attorney George Young commented on that portion of the case.

Further, Young said Temple also declined to comment on the case as a whole.

— *Leo Strupczewski, of the Law Weekly*