

The Legal Intelligencer

PHILADELPHIA, TUESDAY, AUGUST 6, 2024

An ALM Publication

Phila. Jury Hits Temple Hospital With \$44.9M Verdict Over Patient's Post-Discharge Choking Injuries

BY ALEEZA FURMAN

Litigation Reporter

Temple University Hospital was hit with a \$44.9 million verdict Monday in the case of a discharged patient who sustained neurological damage choking on food.

The plaintiff claimed Temple Hospital caused his injuries by prematurely discharging him from his treatment for a gunshot wound to the neck. And in order to prove the hospital's negligence, plaintiffs counsel had to refute their own client's version of events.

Thomas Duffy of the Duffy Firm, who represented plaintiff Dylan Hernandez alongside associate Sean Dougherty, said the case hinged on a question of what Hernandez was eating when he choked.

The plaintiffs asserted that Hernandez had been eating mashed potatoes, but the defendants contended that Hernandez had also been eating fried chicken—something Hernandez himself had testified to doing.

The hospital, defended by Joe Tucker and Rebecca Waddell of the Tucker Law Group, contended that the plaintiff had contributed to his own injuries by ignoring instructions to avoid solid foods.

But according to Duffy, Hernandez's recollection of eating the chicken prior to choking was inaccurate. He said plaintiffs counsel had to demonstrate that their client's injuries had made his memories unreliable.

Duffy said medical records and testimony from the plaintiff's family reflected that Hernandez had only been eating mashed potatoes when he choked. He contended that the defense

was basing its case on Hernandez's faulty memory, rather than scientific evidence.

"In my opening, I said, 'I'm the one who's going to present the evidence, and they're the ones that are going to present all kinds of diversions,'" Duffy recalled.

According to pretrial memos, Temple



SEAN DOUGHERTY AND TOM DUFFY

Hospital had treated Hernandez for a gunshot wound to the neck in 2020 and discharged him with instructions on the foods he could safely eat.

Two days after he was discharged, Hernandez choked and ultimately required resuscitation at Temple Hospital, court records show. The plaintiffs claimed the incident left Hernandez, at the time 15, with severe brain damage necessitating substantial medical care.

The jury's award was largely made up of economic damages, awarding about \$39.1 million for past and future medical expenses. The verdict also included approximately \$2.3 million for loss of earnings and \$3.5 million for noneconomic damages.

Duffy said the plaintiffs are seeking an additional \$7 million in delay damages.

Temple Health general counsel John Ryan, meanwhile, maintained that the hospital provided Hernandez with appropriate care. "We contend that he disregarded the care team's instructions on foods that could be safely eaten in his condition. Regrettably, it was that decision that led to his subsequent additional injury several days after discharge," Ryan said in a statement.

The case, captioned Hernandez v. Temple University Hospital, was tried before Judge Glynnis D. Hill of the Philadelphia Court of Common Pleas.

Hernandez marks the first case to be tried to verdict against Temple since the hospital revamped its defense strategy last year, when it lost a \$30 million medical malpractice case.

"We are deeply concerned that verdicts of this nature jeopardize the availability of quality medical care for Philadelphians, further jeopardizing the health of those most in need," Ryan said. "Under the strain of such excessive verdicts that are based on emotion and sympathy and not medical facts and science, it becomes increasingly challenging for hospitals in Philadelphia to continue providing essential healthcare services to our community."

Duffy noted that, while the plaintiffs won, his opposition put up a strong defense. "It was not an easy case," he said. "I was up against very worthy, very good lawyers."

Duffy attributed his victory to the strength of the case's facts. "It's not like I pulled some rabbit out of a hat," he said. "The medicine was on my side."