

Pa. Court Affirms \$4.5M Award In Bacterial Infection Suit

By **Y. Peter Kang**

Law360 (September 25, 2018, 8:40 PM EDT) -- A Pennsylvania Superior Court panel affirmed Tuesday a \$4.5 million verdict in a suit accusing Temple University Hospital and two doctors of failing to prevent a patient's bacterial infection following knee surgery resulting in an amputated leg, rejecting an argument that the patient's expert witness was not qualified to testify.

In an unpublished opinion, a three-judge panel upheld a verdict in favor of patient Annabelle Glasgow in a suit accusing surgeon Dr. Easwaran Balasubramanian, referred to as Dr. Bala, Dr. Frederick P. Nissley and Temple University Hospital of providing negligent treatment to Glasgow following knee replacement surgery, which caused an infection that led to an above-the-knee leg amputation.

The panel turned aside the defendants' argument that one of Glasgow's expert medical witnesses, Dr. Lawrence Shall, was not qualified to testify as to what caused the patient's injuries because although he was qualified to testify as an orthopedic surgeon, his subspecialty was sports medicine unlike Bala's subspecialty of joint replacement.

Shall had testified at trial that Bala could've easily performed a wound culture or biopsy during several infection-treating surgeries the patient underwent after the initial surgery, which would've shown that the infections were too far gone for the knee implants to be viable and would've saved the patient's leg.

While Pennsylvania's Medical Care Availability and Reduction of Error Act requires an expert witness to be certified in the same subspecialty, the law allows for a waiver if the trial judge determines that the expert possesses sufficient training and experience in the subspecialty in the past five years.

"Here, the court found plaintiff met her burden of establishing that Dr. Shall met the waiver requirement for the 'same subspecialty' provision," the panel wrote. "We agree."

While Shall didn't practice in the same subspecialty, the panel noted that he had 30 years of experience with operation-related infections and the crux of the suit was about the standard of care for pre- and post-operative surgical treatment rather than the actual knee replacement surgery.

"The parties acknowledged that this case was about the infections and complications that arose after Plaintiff's surgery and how her pre-operative care may have impacted those complications," the panel said. "Essentially, the principles are universal."

In addition, the appeals court noted that Pennsylvania courts have allowed experts to testify even when they aren't certified in the same speciality as a defendant doctor, let alone subspecialty.

Representatives for the parties did not immediately respond to requests for comment Tuesday.

Judges Jack A. Panella, Anne E. Lazarus and Eugene B. Strassburger sat on the panel for the Superior Court.

Glasgow is represented by Irene M. McLafferty of Messa & Associates PC.

The appellants are represented by J. Michael Doyle, Sheila A. Haren and Karyn Dobroskey Rienzi of Post & Schell PC.

The case is Annabelle Glasgow v. Ian Ducan M.D. et al., case number 2384 EDA 2016, in the Superior Court of Pennsylvania.

--Editing by Connor Relyea.