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AVRIGAN

\$1 Million Verdict For Podiatric Med-Mal

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A diabetic man who fractured his foot and later had to have a below-the-knee amputation was awarded \$1 million Friday by a Philadelphia jury for a doctor's failure to diagnose his developing gangrene.

That award was reduced to \$800,000, however, for the plaintiff's own role in the deterioration of his condition.

John Martin and his wife Kathleen sued podiatrist Anthony J. Vuolo and Port Richmond Family Foot Care for negligence and loss of consortium. The pair were represented by Michael F. Barrett and Ara Richard Avrigan of Saltz Mongoluzzi Barrett & Bendesky.

In October 1996, Martin, then 63 and insulin dependent, fell and suffered a crushed bone on the bridge of his foot. He was taken to the emergency room of Northeastern Hospital.

Vuolo evaluated Martin and ordered a cast for him, according to the complaint.

Martin saw Vuolo five more times that year, on Nov. 5 and Dec. 3, 7, 19 and 28. The complaint alleged that Martin presented with an ulcer under his cast that continued to spread throughout the month of December due to Vuolo's neglect.

On Dec. 28, Martin came to the ER of Episcopal Hospital with a right foot described in the complaint as "malodorous" and plagued with gangrene, edema and cellulitis, a spreading inflammation of deep tissues usually caused by infection.

The following day, Martin was taken to the operating room for debridement of the gangrene. The damage had spread to the talus, an adjoining bone to the one originally fractured, and possible involvement of the ankle joint was noted.

Doctors decided there was no possibility of salvaging Martin's right foot. The following day, he underwent a below-the-knee amputation.

Among the numerous claims of negligence posited against Vuolo, the Martins said the doctor was negligent for failing to properly evaluate and diagnose Martin's condition, failure to timely perform surgery on him, failure to order inpatient hospitalization and failure to order intravenous antibiotics.

VERDICT

After a five-day trial before Philadelphia Common Pleas Court Judge Mary D. Collins, a jury returned a verdict of \$800,000 against Vuolo but also found John Martin 40 percent comparatively negligent, reducing the damage award to \$600,000. Kathleen Martin was awarded \$200,000 for loss of consortium.

Barrett said the jury held Martin partially responsible because "the defense focused a theory that Martin was noncompliant with Dr. Vuolo's care. They alleged he was told to return after Dec. 19 if there was a change in his condition, and that Martin didn't," he said. "That was hotly disputed, and it was our position that it wasn't true.

"The [defense] also tried to inject evidence that Martin had a history of non-compliance with other health-care providers."

Podiatrist Laurel Bondi of Belton, Mo., and vascular surgeon Richard Nitsburg of Summit, N.J., were experts for Martin. The defendants presented podiatrist Warren Joseph and vascular surgeon Mathew Dougherty, both from Philadelphia. John F.X. Monaghan and Eric Greenberg of Monaghan & Gold in Elkins Park represented defendants Port Richmond Family Foot Care and Vuolo.

Port Richmond Family Foot Care was not found liable because of a stipulation with regard to Vuolo's agency. "In essence, the verdict would be molded if necessary, but Dr. Vuolo had enough [of his own insurance] coverage to meet the amount," Barrett said.

The Martins plan to petition for delay damages of approximately \$50,000.●