

Hospital in cast after verdict

Jury offers \$17 million award in Vanderburgh County case

By Denise G. Callahan • Special to Indiana Lawyer

It took a brain surgeon to help a Vanderburgh County jury determine St. Mary's Medical Center owes a former employee \$17 million for a slip-and-fall injury.

"They've certainly raised the bar for plaintiffs in Vanderburgh County. It blew everyone away," said Robert John, president of the informal plaintiffs' bar in the county. "It is over 10 times more than any verdict we have ever had in the county."

What blew everyone away was that a jury — after only a handful of hours — handed Dr. Gregory J. Loomis, a neurosurgeon at St. Mary's, almost \$17 million to compensate him for the loss of his career.

Big verdicts are big news in the county that lies in the southwestern portion of the state. John says he can only recall three \$1 million awards and zero that go beyond that.

"We have an awful lot of good people of German heritage who are hard working people," he said. "It's not like it's the lottery down here. But they gave him his loss of income and his loss of future income. They'll pay the economic damages here but they get stingy on pain and suffering."

Dr. Loomis, prior to his slip on a puddle of water in an employee pantry at the hospital, was a successful brain surgeon — one of the highest paid professions around. Today, due to the effects of Reflex Sympathetic Dystrophy, a condition his attorneys contend was brought on by his fall — he is relegated to legal consulting work.

A trembling left hand, eternal sleep deprivation and memory problems — all symptoms of RSD — are not conducive to brain surgery. In fact, the doctor doesn't feel comfortable treating patients at all anymore, said his attorney Gregory Bubalo, of the Becker Law Office in Louisville, Ky.

RSD, a disease affecting the nervous system that is usually preceded by a minor injury to a nerve, is characterized by burning pain out

of proportion to the injury. There is no cure for the progressive disease, which can lead to complete incapacitation if untreated.

"Both sides agreed that Dr. Loomis' condition ended his career as a neurosurgeon," said Gary Becker, senior partner of Becker Law Office. "The bulk of the jury's award was based on lost wages associated with Dr. Loomis' career being cut short by about 20 years."

Neurosurgeons can earn in excess of \$1.2 million a year, Bubalo says. But before the verdict, Loomis was earning only \$50,000 to \$70,000 as an expert witness in workers' compensation, medical malpractice and personal injury lawsuits.

"This is a fellow who worked for 14 years to be a doctor and now he can't," Bubalo said. "St. Mary's didn't bring in economic experts to refute our numbers. We brought in two experts who didn't know each other, who gave independent estimates of his earning potential. The hospital could have challenged our numbers, but they didn't."

Since RSD is not exactly the most well-known disease, Bubalo says he used the analogy of a short-circuited wire in Loomis' brain to coach the jury, in *Loomis v. St. Mary's Medical Center of Evansville, Inc.*, 82DO3-9912-CT-3895, to understand the disabling ailment. That, and the doctors who treated the surgeon after his fall, and the two economists, played a part in the win.

Attorney Gregory Meyer of Evansville, who helped fight Loomis' case, said the Indianapolis doctor the hospital called to the witness stand just wasn't as effective as the home-grown physicians.

"Their doctor said the RSD existed prior to the fall, but that was inconsistent with what the treating physi-

cian said," Meyer said. "Their doctor examined him for about an hour and a half, a year and a half after the accident."

Meyers, who was propelled into private practice by this case — since Loomis was his client and his former law firm represents the hospital in some matters — says the outcome wasn't necessarily news to him.

"I can't say I was shocked because the verdict was very consistent with our evidence," he said.

"If you looked at his lost income and lost future income and pain and suffering — \$16.95 million verdict in Vanderburgh County is highly unusual, but not when you look at the evidence."

Other attorneys like John, however, are wondering — though he admits he doesn't have any empirical evidence — if more than just the evidence edged the jury toward a high verdict.

"I know Dr. Loomis personally and he is a good man, but there is an undercurrent here with St. Mary's ever since they took over Welborn and closed down the downtown hospital," he said. "There has been a lot of controversy over that move. I don't know if that played into it or not."

Whether jurors felt animosity toward the hospital or not, Bubalo during his opening statement managed to make certain staff members look sort of shady. One nurse in particular was apparently discredited by her own accident report. After the doctor slipped on the water she filled out the report and designated a puddled floor as the culprit in the accident. During her deposition, Bubalo said, she denied there was a dangerous, wet, slippery floor problem.

Hospital spokesperson Ann Burnworth wouldn't say much about the case, except it was one-of-a-kind and the award was huge. She called the award an "outrageous amount of money."

The hospital disagrees with both

the verdict and the award and she said the Indiana Court of Appeals and possibly the Indiana Supreme Court will be hearing from them.

"We are going to pursue every appeal process we can," she said. "And our parent company, Ascension Health, will be putting all of its resources behind this appeal."

Ascension Health is a conglomerate of 75 Catholic hospitals and health care facilities.

Meyers says the threat of a big-buck-backed appeal doesn't scare him.

"I wish they'd spend the money for the appeal to fix the unsafe conditions at the hospital," he said. "I don't know what they'd appeal on. The judge was very good and the jury was one of the most attentive I've ever seen."

Bubalo said he assumes, since he

can't fathom the hospital could charge errors occurred during trial — that they'll try and get the case reversed as a matter of law.

Since there was only circumstantial evidence — a number of nurses who testified there was often water on the floor — that water caused the fall, Bubalo figures they'll go after that argument.

"They're saying somehow he just magically lost his footing and fell," he said. "But that's just not common sense."

No matter what happens on appeal, John said the case has plaintiffs lawyers countywide scratching their heads wondering what effect the giant award will have on them. One thing's for sure, they'll have to deal with clients pressuring them for brain-surgeon-sized compensation. For now however, they will probably just help their fellow attorney bask in his big win.

"We have this little plaque we pass around when someone gets a big one," Bubalo said. "We're just going to have to give it to Greg and buy a new one to pass around."*



Bubalo