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2010 WL 4718948

2010 WL 4718948 (N.Y.Sup.)

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Supreme Court, Twelfth Judicial District, Bronx County, New York.

Loric **Stothart** v. Montefiore Medical Center

No. 24438/02

DATE OF VERDICT/SETTLEMENT: September 17, 2010

TOPIC: MEDICAL MALPRACTICE - NEGLIGENT TREATMENT - MEDICAL MALPRACTICE - POST-OPERATIVE CARE
Clot-preventing Measures Led to Eight Surgeries, Plaintiff Alleged

SUMMARY:

RESULT: Verdict-Plaintiff

Award Total: \$3,500,000

The jury found that Montefiore Medical Center's doctors departed from an accepted standard of medical care. It determined that **Stothart's** damages totaled \$3.5 million.

EXPERT WITNESSES:

Plaintiff: David Mayer, M.D.; Vascular Surgery; Huntington, NY Jonathan Alexander, M.D.; Cardiology; Danbury, CT

Defendant: Eugene Grossi, MD; Cardiothoracic Surgery; New York, NY George Brief, M.D.; Cardiology; New York, NY Michael Silane, M.D.; Vascular Surgery; New York, NY

ATTORNEYS:

Plaintiff: Peter DeFilippis; Peter DeFilippis & Associates P.C.; New York, NY (Loric **Stothart**); Conrad Jordan; trial counsel for Burns & Harris; East Hampton, NY (Loric **Stothart**)

Defendant: William G. Spratt; Shaub, Ahmuty, Citrin & Spratt; Lake Success, NY (Montefiore Medical Center)

JUDGE: Robert E. Torres

RANGE AMOUNT: \$2,000,000-4,999,999

STATE: New York

COUNTY: Bronx

INJURIES: **Stothart** suffered a tear of the skin of his right foot. The injury necessitated two surgeries: one involved the application of a graft of skin, and the other involved the creation of an arterial bypass. During **Stothart's** ensuing convalescence, his left leg developed a bedsore, which is alternately termed a "decubitus ulcer" or a "pressure sore." The wound was situated near the area of his left leg's Achilles tendon. The wound necessitated the creation of another arterial bypass, and **Stothart** subsequently underwent the excision of a portion of his left leg's Achilles tendon. **Stothart** also developed repeated clogging of his left leg's arterial graft, and the clogging necessitated four additional surgeries.

Facts:

On April 18, 2001, plaintiff Loric **Stothart**, 68, a retiree who suffered diabetes and peripheral vascular disease, underwent cardiac surgery that included the creation of an arterial bypass. The procedure was performed at Montefiore Medical Center, in the Bronx.

Doctors feared that **Stothart** was susceptible to the development of a postsurgical thrombosis. Thus, his legs were wrapped in bandages; sequential compression devices, which are sleeves that automatically stimulate the patient's legs; and thrombo-embolic-deterrent stockings, which are elastic hose that squeeze the legs.

After two days had passed, **Stothart's** right foot developed a burning sensation. His right leg's dressings were removed, and doctors observed that his right foot bore a closed blister and a small tear of the foot's skin. The tear worsened during the ensuing several months, so surgeries became necessary. One involved the application of a graft of skin; the other involved the creation of an arterial bypass, which was intended to increase the amount of blood that was reaching the foot.

Stothart was subsequently transferred to a secondary-care facility, where doctors observed that a bedsore had formed near his left leg's Achilles tendon. The bedsore led to complications that necessitated surgeries and years of treatment. **Stothart** claimed that the bedsore was a product of the bedridden period that followed the surgeries that addressed his right foot's injuries. He further claimed that those injuries were a result of the bandages and stockings that Montefiore Medical Center's doctors had applied. He contended that the bandages and stockings were an inappropriate means of treatment.

Stothart sued Montefiore Medical Center. He alleged that the hospital's doctors rendered inappropriate treatment, that their actions constituted malpractice and that the hospital was vicariously liable for their actions.

Stothart's counsel noted that **Stothart's** peripheral vascular disease reduced the amount of blood that reached **Stothart's** legs. He contended that the condition contraindicated the use of the bandages and stockings that were applied after the first surgery was performed. He claimed that the bandages and stockings further reduced the amount of blood that flowed to **Stothart's** legs, and he contended that the diminished circulation encouraged the formation of the wounds of **Stothart's** right foot. **Stothart's** expert vascular surgeon opined that the bandages and stockings could have been replaced by the administration of a small dosage of a blood-thinning medication, low-dose heparin.

Stothart's counsel also suggested that the bandages could have caused the tear of the skin of **Stothart's** right foot, but he maintained that the reduced circulation greatly increased the likelihood of an ischemic injury.

The defense's expert cardiothoracic surgeon challenged the suggestion that low-dose heparin could have replaced the application of bandages and stockings. The expert contended that the surgery was performed before the medical community had determined that low-dose heparin could be safely used during the immediate wake of such surgeries. The expert further contended that the bandages and stockings were an appropriate means of attempting to prevent the formation of a thrombosis.

Defense counsel also suggested that **Stothart's** right foot's injury could have been a result of tape that had been applied during the initial surgery. He claimed that the tape was a necessary means of securing the foot, and he contended that the resultant wound's persistence was a result of **Stothart's** peripheral vascular disease. However, **Stothart** claimed that he had not previously experienced a wound that would not heal.

In December 2008, **Stothart** suffered a myocardial infarction. He claimed that the event was caused by a malfunction of his left leg's arterial bypass. He further claimed that the bypass's problems caused pain, blisters, chronic ulcerations and a reduction of his blood's circulation. He underwent several additional surgeries, and he has endured 17 hospitalizations. He bears residual scars of his left leg, and he requires the assistance of a cane. He also claimed that his ambulatory deficiencies necessitate his employment of a residential aide.

Stothart sought recovery of \$3.5 million for his past pain and suffering, and he sought recovery of \$750,000 for his future pain and suffering.

The defense's expert vascular surgeon maintained that **Stothart's** bedsore was not related to the injury of **Stothart's** right foot. He contended that the bedsore was a result of **Stothart's** peripheral vascular disease.

Insurer:

FOJP Service Corp. **Loric Stothart**

ALM Properties, Inc.

Bronx Supreme

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