PATIENT SAFETY BLOG

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Malpractice Insurance Companies Fight Over Every Dollar

July 22, 2011 by Patrick A. Malone

Never underestimate the doggedness of an insurance company in guarding its own treasury from malpractice claimants. Even when the patient wins, you can often count on a multi-year battle in the appeals courts to collect what you are owed.

For our firm's client Sharon Burke, an eleven-year odyssey has finally ended in her favor, after a second trip to the District of Columbia Court of Appeals.

Ms. Burke's malpractice case concerned a misreading of her MRI scan that caused a fateful delay in finding a problem in the arteries feeding blood to her brain. The delay led to a disabling stroke for her. Read more details here.

On the first go-round, the Court of Appeals denied the radiologists' motion for a new trial. You can read about that decision on our firm's website about verdicts, here.

But that decision came three years after we won the verdict at trial. So on Ms. Burke's behalf, we wanted the interest that had accrued on the verdict during that 3-year span.

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That started round 2 of the appellate war. We calculated the interest owed based on the fluctuating interest rate provided by the District of Columbia statute. The rate varies with the rate of interest published by the Internal Revenue Service for underpayment of taxes, which in turn is pegged to the interest rate on U.S. Treasury bonds. That's a fair system, because it gives the winning party a rough approximation of the market interest rate on the money owed while the defendant holds onto the money during the appeal.

Between our verdict in March 2004 until the final judgment in March 2007, the rate had climbed from 3 percent to 6 percent. So we asked for interest for each quarter based on the interest rate then in effect. That came to a little under $500,000.

The insurance company really liked the 3 percent rate that was in effect when the verdict first came down. That saved it a little under $200,000 from what we calculated it owed. So it asked the trial judge to order the lower interest rate. To our surprise, the trial judge granted the insurer's request. The judge had "discretion" to change the interest rate downward, but we appealed her decision, since we said there was no reason to penalize Ms. Burke with a sub-market interest rate on the money the radiologists' insurer owed to her.

This week, four years later, the District of Columbia Court of Appeals agreed with our argument. It said the trial judge had abused her discretion in lowering the interest. The court noted the important public policy behind "post-judgment" interest. The idea is to "make the plaintiff whole" -- that is, when you win a lawsuit and the defendant owes you money, if the defendant wants to hold onto the money while it appeals, in fairness, you should get something close to what the market would have paid by way of interest.

You can read the decision on our website.

Now Sharon Burke will finally get paid everything she is owed. It won't restore her brain health, but it will help the dignity and quality of her life.

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