

Payout in death may be state's biggest

But challenge looms for 'loophole' allowing jury to ignore malpractice cap

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Last week's jury award of \$17.4 million, plus about \$9 million in interest, to the family of a high school athlete who died after a medical mistake will be the largest malpractice payout in state history - if it stands.

The jury's award won't become official until Milwaukee County Circuit Judge Michael Guolec handles final motions in the case Dec. 6. An attorney for the company that insured the one doctor held liable, Angela Beauchaine, said only a legal "loophole" allowed the \$26 million total award, and that appeals are being considered.

"Something needs to be done with the statute, and hopefully the Supreme Court will do it," said Emile Banks, who represented OHIC Insurance at the three-week trial.

He was referring to limits on malpractice awards adopted in mid-1990s tort reforms that cap intangible "pain and suffering" losses at less than \$500,000. But a state appeals court has held that the cap applies only to fully licensed doctors; Beauchaine was a resident in training at the time.

That very issue - whether a resident is covered by the cap - is pending before the Wisconsin Supreme Court in another case. The cases will likely both fuel discussion of tort reform, a frequent sub-topic in the health insurance debate of the presidential election.

Banks said the size of Thursday's verdict didn't surprise any of the defense attorneys involved because Sarah Hegarty had been such a promising teenager. She was a standout three-sport athlete at Divine Savior Holy Angels High School whose priest testified to her character and whose funeral was so well attended it shut down traffic on Wisconsin Ave.

She died in 1998 after two years of medical treatment and 89 operations that followed a 1996 trip to Children's Hospital of Wisconsin in Wauwatosa, during which Beauchaine and several other doctors failed to properly diagnose a twisted small intestine and did not get the girl into surgery until 6 a.m. the following day. Her small intestine died due to blood loss and had to be removed, and the ensuing complications eventually killed her.

"We understood going in where this case would probably end up," Banks said.

It was the second-largest malpractice verdict in state history, topped only by the \$24.7 million awarded in 1990 to the family of former Brewers infielder Randy Ready, after prescribed diet pills crippled his wife, Dorene Ready. But the parties wound up settling for a lesser amount during the appeal.

The Hegarty verdict - with the interest - would top the Ready award. The interest is added by law because in 2000, defendants rejected a settlement offer that was less than the final award.

Jeremiah and Mary Hegarty, to \$425,000 in pain and suffering damages. (The verdict included a separate award of \$3.1 million for medical expenses.)

"When you compare the outcomes of a 'capped' case versus an 'uncapped' case, it just slaps you on the side of the head," End said. "The current state of the law is so unfair, and this sheds a light on it."

Mark Adams, general counsel for the Wisconsin Medical Society, countered that damage award limits help keep health care costs down and quality up, and ventured that limits probably would be applied to the Hegarty case on appeal because Beauchaine ought to be considered a health care provider under state law.

"A resident normally is under some supervision directly from a licensed physician," Adams said.

Even before any appeal, the payout will likely be reduced because the jury found Beauchaine only 75% responsible for Hegarty's injury and death; another Children's Hospital doctor, Ernest Stremski, was found to have been 25% responsible.

But Stremski isn't on the hook for any of the damages. He, like several other doctors originally named in the suit, was dismissed, with the plaintiffs' consent, before trial.

That could shrink the award by more than \$3 million, according to Stremski's attorney, Paul Kelly.

The Hegarty family's attorney, Bill Cannon, declined to discuss the dismissals of the other defendants, citing confidentiality agreements.

Banks, however, said the plaintiffs were most interested in Beauchaine.

"They settled out," he said of the others. "She was left in because potentially her damages were uncapped."

Beauchaine's attorney did not return a message seeking comment. Beauchaine did not return a message left at the Idaho medical clinic where she now works.


Milwaukee County has a particular interest in the outcome. Jeremiah Hegarty was a member of the county's Pension Board, and as such, was offered family coverage under the county's group health plan.

Milwaukee County spent \$2.5 million for Sarah Hegarty's care, assistant corporation counsel Mark Grady said. The county became an "involuntary plaintiff" in the case, and by agreement with the Hegarty family will recover some of those medical expenses from the jury award.



At A Glance

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