

# New York Law Journal

## Verdicts & Settlements

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### MEDICAL MALPRACTICE

#### **Doctors' errors had paralyzing effect, plaintiffs claimed Settlement \$9,000,000**

*Henry Williams as Guardian of Ebony Curry, an Incapacitated Person, & Henry Williams, Individually v. NYCH & H Corp., Leah Bright, D.O., and Steven Pulitzer, M.D., No. 3251/12*

**Court:** Kings Supreme

**Judge:** Gloria M. Dabiri

**Date:** 5/26/2015

**Plaintiffs' Attorney:** Thomas A. Moore, Kramer, Dillof, Livingston & Moore

**Defense Attorneys:** Daniel G. Federico, DeCorato Cohen Sheehan & Federico LLP

**Facts & Allegations:** On May 18, 2011, plaintiff Ebony Curry, a 27-year-old autistic, mentally disabled woman, fell on a stairway of her residence, which was located in Brooklyn. Curry tumbled to the bottom of the stairway. Paramedics arrived, and Curry's neck was placed in a stabilizing

collar. She was placed in an ambulance, and she was transported to Kings County Hospital Center, in Brooklyn.

Curry was examined by Dr. Leah Bright, who removed the collar that a paramedic had applied. Curry was not walking, but she was moving her extremities. She underwent a CT scan of her neck, and a doctor determined that the results did not reveal an injury. Curry was discharged after five hours had passed, and she returned to her home.

After several hours had passed, a Kings County Hospital Center radiologist, Dr. Steven Pulitzer, reviewed the results of the scan that Curry had undergone. Pulitzer determined that the test revealed a severe injury of Curry's spine. Pulitzer updated the hospital's records, but his finding was not relayed to Bright or Curry's family. During the ensuing day, Curry was transported to another hospital, where a doctor diagnosed compression of the C3-4 level of Curry's spine. Curry underwent immediate surgery that saved her

life, but doctors could not reverse paralysis that stems from her injury. Curry's father, Henry Williams, claimed that Curry's injury should have been diagnosed during Curry's initial hospitalization. He contended that prompt intervention could have prevented the injury's paralyzing residual effect.

Williams, acting individually and as Curry's guardian, sued Bright, Pulitzer and Kings County Hospital Center's operator, New York City Health and Hospitals Corp. The plaintiffs alleged that Bright and Kings County Hospital Center's staff failed to diagnose the injury of Curry's spine, that Bright failed to properly treat Curry, that Pulitzer failed to adequately disclose his diagnosis of Curry's injury, that the failures constituted malpractice, and that Kings County Hospital Center was vicariously liable for the actions of Bright and Pulitzer.

The plaintiffs' expert neurologist opined that Kings County Hospital Center's staff should have diagnosed the injury of Curry's spine. He opined that the

CT scan's result was misread, and he contended that Pulitzer's diagnosis should have been promptly relayed to the doctors who had treated Curry.

The plaintiffs' expert neurologist also opined that Bright did not properly treat Curry. He noted that Curry was not walking, and he contended that her non-ambulant state should have prompted performance of an MRI scan. He also suggested that a neurologist should have been consulted. The expert further opined that Bright should not have removed the stabilizing collar that the paramedic had applied.

Bright claimed that she appropriately determined that Curry could be discharged. She acknowledged that Curry was not walking, but she claimed that Curry's father advised that Curry occasionally refused to walk while fatigued. The defense's expert acknowledged that Curry's CT scan's results were misread, but he opined that Curry was properly treated and appropriately discharged.

**Injuries/Damages:** *paralysis*

Curry suffered compression of her spine's C3-4 level. She underwent surgery that included a discectomy, which involved excision of her C3-4 disc, and

a corpectomy, which involved excision of a portion of her C3 vertebra. After four days had passed, she underwent fusion of her spine's C3-4 level.

Plaintiffs' counsel contended that Curry's injury was not timely treated, and he claimed that the delay allowed paralyzing residual effects. Curry's legs are paralyzed, and she retains little use of her arms and hands. She requires constant use of a wheelchair. Curry's father claimed that Curry previously enjoyed unfettered ambulation.

The plaintiffs' expert neurologist opined that Curry's paralysis creates lifelong needs that include therapy, the assistance of aides and nurses, and specialized equipment. The expert estimated annual expenses of \$505,530.

Curry's father sought reimbursement of a medical-expenses lien that approximated \$560,000, recovery of Curry's future medical expenses, recovery of \$10 million for Curry's past pain and suffering, and recovery of \$40 million for Curry's future pain and suffering. He also presented a derivative claim.

Defense counsel challenged the cost of Curry's future medical needs.

**Result:** During the jury's fourth day of deliberations, the parties negotiated a settlement. New York City Health and Hospitals, which is self-insured, agreed to pay \$9 million. The settlement also included waiver of the medical-expenses lien.

**Plaintiff Experts:** Joseph Carfi, M.D., physical medicine, New Hyde Park, NY

Mark R. Killingsworth, Ph.D., life-care planning, New Brunswick, NJ

Richard Lechtenberg, M.D., neurology, Brooklyn, NY

**Defense Experts:** Timothy G. Haydock, M.D., emergency medicine, Katonah, NY

**Editor's Note:** This report is based on information that was provided by plaintiffs' and defense counsel.

—Jack Deming