

New York Law Journal

Verdicts & Settlements

WWW.NYLJ.COM

VOLUME 256—NO. 65

An ALM Publication

MONDAY, OCTOBER 3, 2016

MEDICAL MALPRACTICE

Undetected Endocarditis Blamed for Man's Death

Settlement: \$4,200,000

Amanda Vigilant Penn, as Administratrix of the Estate of Marcus Penn, Deceased, and Amanda Vigilant Penn, Individually v. The State of New York, No. 119657

Court: Court of Claims, New York

Plaintiffs' Attorney: Thomas Moore and Carmine Rubino, Kramer, Dillof, Livingston & Moore

Defense Attorneys: Ross Herman, Assistant New York Attorney General

Facts & Allegations: On June 1, 2010, foreman Marcus Penn, 33, developed weakness that caused a fall. He was suffering an infection and was being treated at SUNY Downstate Medical Center, in Brooklyn. During the ensuing hours, he developed hemiparesis. A CT scan revealed a brain hemorrhage. The next day, he became unresponsive, and he died

32 days later. Penn's widow, Amanda Vigilant Penn, claimed her husband's fall, hemorrhage and death were caused by undiagnosed endocarditis: inflammation of the heart.

Vigilant Penn, acting individually and as administrator of her husband's estate, sued the hospital's operator, the state of New York.

Plaintiffs' counsel said the hospital's staff did not appreciate symptoms suggesting endocarditis. He was hospitalized on May 22, 2010 and released four days later after receiving antibiotics, but was rehospitalized on May 27, 2010 with a bacterial infection. During the next five days, he had anemia, diarrhea, nausea, weight loss, a painful abdomen, and a persistent fever. He had previously suffered endocarditis, which required a heart valves replacement. An ultrasonography was performed on May 22, but plaintiffs' counsel said the test should have been repeated when Penn's symptoms worsened. Plaintiffs' counsel also said Penn should have been evaluated by a cardiovascular surgeon, and contended that Penn's hemorrhage was caused by

the hospital's excessive administration of an anticoagulant: Lovenox.

Defense counsel argued Penn's symptoms were properly addressed. They claimed that bloodwork and ultrasonography indicated Penn was not suffering endocarditis. However, plaintiffs' counsel said the bloodwork's accuracy was tainted by antibiotics.

Injuries/Damages: Penn was survived by a wife and two children. His estate sought recovery of wrongful-death damages that included reimbursement of funeral and burial costs, damages for past and future loss of earnings, pain and suffering, and for Penn's children's loss of parental guidance. Penn's widow presented a derivative claim.

Result: The parties negotiated a pretrial settlement. The state, which was self-insured, agreed to pay \$4.2 million.

Reprinted with permission from the October 3, 2016 edition of the NEW YORK LAW JOURNAL © 2016 ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited. For information, contact 877-257-3382 or reprints@alm.com. #070-09-16-35