

HEALTH

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Jury verdicts like the \$183 million award against Penn Medicine can be tied up for years, but usually stand

It could be years before the case against the Hospital of the University of Pennsylvania with a \$183.7 million jury verdict is fully resolved.

The Hospital of the University of Pennsylvania is appealing a \$183 million verdict against it in a medical malpractice case.

by Harold Brubaker

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The University of Pennsylvania Health System plans to appeal the state record \$183 million medical malpractice verdict against it this month, but experts expect it to be a tough road for Philadelphia's largest private employer because relatively few jury verdicts are overturned.

This is the second eye-popping verdict this year out of Philadelphia, where another local jury in February awarded \$43.5 million to Chris Maragos, an ex-Eagles captain who sued the doctors that treated his knee.

The massive verdicts in Philadelphia's Court of Common Pleas come amid a trend toward larger civil verdicts in Pennsylvania and nationwide. The Pennsylvania Supreme Court also recently decided to allow more suits to be brought in Philadelphia, where juries are more likely than in the suburbs to decide in favor of plaintiffs.

And those decisions by jurors are not often reversed.

Pennsylvania does not keep statistics on the success of appeals, but attorney John J. Hare, who specializes in appeals for defendants in civil cases, said national studies of state and federal courts have shown that only 10-15% of appeals succeed in getting a verdict overturned.

"Statistically appeals are always difficult, although it's also true that bigger verdicts tend to get increased scrutiny on appeal because of the stakes involved," said Hare, a shareholder in the Philadelphia office of Marshall Dennehey Warner Coleman & Goggin PC, who is involved in the appeal on the Maragos case.

In the record award against the Hospital of the University of Pennsylvania, a jury decided that a child born with severe brain injuries was injured because Penn doctors delayed performing a cesarean section even though they knew that the mother had an infection in her uterus.

Sometimes verdicts are overturned. That happened in 2020 when judges on the Superior Court of Pennsylvania overturned a \$40 million jury verdict in Delaware County involving allegations that an obstetrician applied too much pressure during delivery in 2011, injuring a newborn's spine. Hare was on the defense team in that case.

But that's a rarity, said Shanin Specter, cofounder of Kline & Specter PC, which he said is the largest injury law firm in Pennsylvania. "Verdicts are reduced very rarely in Pennsylvania," he said.

A long road ahead in HUP case

It could be years before the HUP case, which involves allegations that a delayed C-section in 2018 caused severe brain injuries, is fully resolved.

Penn provided no additional comment beyond its statement Tuesday: "We are disappointed in this verdict and continue to believe that appropriate medical care was provided."

The jury's verdict does not require Penn to pay all \$183 million at once.

The jury's verdict for the now 5-year-old boy included \$10 million for past pain and suffering, \$70 million for future pain and suffering and \$1.7 million for lost earnings. Those amounts are to be paid in a lump sum, minus a share for his attorneys.

Another \$101 million will be paid out in annual installments through 2088. If the beneficiary dies before 2088, the remainder of the \$101 million would not have to be paid.

Pennsylvania law requires Penn to go back to Judge Gwendolyn N. Bright, who handled the trial, to ask her to reduce or overturn the verdict, before it can appeal to Superior Court, according to Hare, who chairs the appellate and post-trial group at Marshall Dennehey.

Such post-trial motions can take six months more. The case involving former Eagles team captain Maragos is in that stage now. Hare is representing Rothman Orthopaedic Institute, one of the parties found liable in that case.

The child in the Delaware County case that Superior Court judges overturned was born in 2011. The case was filed in 2013, and a jury decided in favor of the family in 2018. Two years later the appeals court vacated the judgement, finding that certain evidence was improperly presented to the jury.

Then in early 2021, the Pennsylvania Supreme Court declined to accept the case on appeal, a decade after that child's birth.

Bigger jury verdicts

Hare has seen a trend toward bigger jury verdicts in Pennsylvania during the last 18 months. He counted 10 jury verdicts in all civil cases for at least \$10 million.

“While this one was an outlier in terms of size,” Hare said, referring to the HUP verdict, “it’s definitely part of a trend of bigger civil verdicts.”

In the 10 years through 2021, only two years saw more than two jury verdicts in Pennsylvania medical malpractice cases that were worth \$10 million or more, according an Inquirer analysis of state data.

Philadelphia alone this year has had two so far that far surpassed that benchmark. Data for 2022 were not yet available.

Another lawyer, Thomas R. Hurd, who does both plaintiff and defense civil litigation at McElroy, Deutsch, Mulvaney & Carpenter LLP in Philadelphia, pointed out that more than half the HUP verdict was for the cost of future care.

“Any of these cases where you have significant future care needs are going to have big dollars numbers associated with them because that cost of care is just increasing significantly,” Hurd said.

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I write about the business side of health care and the nonprofit sector.