

# Chicago Daily Law Bulletin

Volume 158, No. 35

## Family gets \$7.5 million in death after spleen removal

BY PAT MILHIZER

Law Bulletin staff writer

A Cook County jury awarded \$7.5 million to the family of a 49-year-old man who died after a surgery to remove his spleen.

In January 2007, Juan Fernandez underwent the surgery at the University of Illinois Medical Center because he suffered from a disorder that prevented his blood from properly clotting.

Surgeons used a robot — called the “da Vinci Robotic Surgical System” — to perform the operation.

Fernandez suffered two holes in his duodenum, an organ that's 6 to 10 inches from the spleen. Fernandez became sick and developed sepsis that caused several organs to fail.

He also suffered brain damage and died in February 2007. He is survived by his wife and 11-year-old son; his wife filed a medical-malpractice lawsuit against four doctors.

The doctors denied the allegation that the duodenum holes occurred during the surgery.

Jurors issued the verdict Friday. They

awarded \$4.5 million for loss of consortium, \$1.5 million for loss of a normal life, \$1 million for past medical bills and \$500,000 for pain and suffering.

Due to a high-low agreement that both sides negotiated before the verdict, the family can only collect \$6 million. The high-low agreement also dismissed three of the four doctors from the suit.

The family was represented by Edward W. McNabola and Theodore C. Jennings of Cogan & McNabola P.C. This is McNabola's fourth consecutive trial in which a defendant didn't offer a settlement and a jury returned a plaintiff verdict that exceeds \$1 million.

McNabola said there was nothing wrong with using the robot during the procedure, but he said it was probably unnecessary.

“It's kind of like using an 18-wheeler to go pick up a carton of milk,” McNabola said.

The family pursued the claim under the doctrine of *res ipsa loquitur* and alleged that the accident didn't happen without negligence. The family couldn't definitively say which doctor allegedly caused the duodenum holes.

Fernandez worked as a carpenter at a home improvement store and pursued a master's degree so he could teach high school math, McNabola said.

“I think the family is heartened by the fact that the jury saw the truth,” McNabola said. “But it's a hollow victory for the family because Juan led an exemplary life and was a wonderful person who made the family the most important thing in his life. And the wife and son will never get him back.”

The defendants were represented by David C. Hall and Theodore C. Hosna of Hall, Prangle & Schoonveld LLC.

Hall said he's disappointed with the verdict.

“We had four highly qualified surgeons testify that there's no way in heck that these holes occurred at or about the time of surgery. ... It's disappointing when a verdict is based upon assumption and not the evidence,” Hall said.

Circuit Judge James P. Flannery Jr. presided over the three-week trial in the Daley Center.

The case is *Lenika Fernandez, etc. v. George Salti M.D., et al.* No. 08 L 1117.