

Back surgery leads to \$2.5 million jury verdict

Kelly Wiese

A man who sued his surgeon after unsuccessful and he claims unnecessary back surgery has won more than \$2.3 million from a St. Louis County jury. The jury awarded his wife an additional \$175,000.

Keith Haley, 40, of Battlefield in southwest Missouri, had a lumbar fusion in 1984. He later injured his back while reaching to lift a box in November 2003.

Two doctors treated him and found his back and spine were still fine 20 years after that surgery. Then, according to the lawsuit, he went to see Dr. Kevin Rutz, an orthopedic surgeon who works at Orthopedic Specialists in St. Louis County.

Rutz said Haley needed more back surgery. According to the litigation, Rutz began the procedure and discovered that the fusion still was intact but nonetheless proceeded to perform surgery. Haley eventually needed another surgery and has various medical problems stemming from the procedures, including nerve injuries and bone growths.

Haley claims the doctor generally failed to meet the medical standard of care for his profession, including a misdiagnosis and performing an inappropriate surgery.

"Our theory was 'if it ain't broke, don't fix it,'" Haley's attorney Steve Garner said.

A St. Louis County jury heard the medical malpractice trial and in March awarded Haley \$558,000 for past damages, including medical bills, along with \$1 million for future medical expenses and \$775,000 for other future costs, including pain and suffering. In addition to the collective \$2.33 million for Haley, his wife, Christina, received \$175,000 for her loss of consortium claim.

Verdicts in the millions of dollars are somewhat unusual in St. Louis County, and many plaintiffs' lawyers see it as a tough place to bring a large injury case. A review of data collected by Missouri Lawyers Weekly showed the county circuit had seven cases since the start of 2007 in which the plaintiff was awarded \$2 million or more, not including Haley.

"I've heard it's a difficult venue, but it depends on the case," said Garner, of Strong Garner Bauer in Springfield.

Garner said no agreement was reached with the doctor and clinic before the trial began, and talks were held while the jury was deliberating but those remain confidential.

According to the suit against Rutz and Orthopedic Specialists, Haley has pain in his back and leg and weakness in his leg and foot. These and other injuries are permanent and disabling, according to the suit. He used to work for UPS but can no longer hold a job because of his injuries, Garner said.

Rutz's attorney was Peter von Gontard, a shareholder in Sandberg, Phoenix & von Gontard in St. Louis. He did not return a call seeking comment.

Facts of the Case

Type of Action: Medical malpractice

Court: St. Louis County Circuit Court

Case Number/Date: 2105CC-03593/March 24, 2008

Judge: Melvyn Wiesman

Verdict or Settlement: \$ 2.5 million verdict

Plaintiff's Experts: Dr. Gregory Graziano, Ann Arbor, Mich. (liability); Dr. Terry Winkler, Springfield (future medical needs); Larry Cox, Springfield (life-care plan, wage loss); Wilbur Swearingen, Springfield (employability).

Special Damages: \$558,000 for past damages, including medical bills; \$1 million for future medical expenses; \$775,000 for other future costs, including pain and suffering; \$175,000 to wife, Christina Haley, for loss of consortium.

Caption: Keith T. Haley and Christina Haley v. Kevin D. Rutz M.D. and Orthopedic Specialists P.C.

Plaintiff's Attorneys: Steve Garner, Clifton Smart, and Neil Chanter, Strong Garner Bauer, Springfield

Defendant's Attorneys: Peter von Gontard and Chellie Butel, Sandberg, Phoenix & von Gontard, St. Louis