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# Visiting judges hear malpractice case

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JAMES HALPIN / PUBLISHED: JUNE 26, 2019

WILKES-BARRE — A visiting panel of the state Superior Court on Tuesday began hearing dozens of cases at the Luzerne County Courthouse, including an appeal of a multi-million-dollar medical malpractice case from Luzerne County.

Superior Court Judges Anne Lazarus, Mary Murray and Correale Stevens — a native son of Hazleton — are in town for two days to hear oral arguments for appeals in civil and criminal from across the state. Superior Court Judge Maria McLaughlin was also on hand Tuesday morning to stand in on several Luzerne County cases from which Stevens recused himself.

"You offer the public a unique opportunity to better understand the judiciary," Luzerne County President Judge Richard M. Hughes III said during a brief welcoming ceremony prior to the judges hearing arguments in the local cases.

Among them was a \$3.36 million verdict against Dr. Mallikarjun Udoshi and Wilkes-Barre General Hospital that a jury delivered last year stemming from the care of Edwardsville resident Frederick Macosky.

The lawsuit filed by the Kingston law firm Selingo Guagliardo alleged Udoshi, as an agent of the hospital, failed to properly interpret the results of a stress echocardiogram in 2014. The complaint alleged Udoshi reported back to the primary care doctor that the test was normal.

Almost two years later, Macosky began experiencing shortness of breath and other symptoms, and doctors discovered he had "profound abnormalities" in his heart, the

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MARK MORAN / STAFF PHOTOGRAPHER  
Luzerne County President Judge Richard Hughes, left, talks with Pennsylvania Superior Court Senior Judge Correale Stevens at the Luzerne County Courthouse in Wilkes-Barre on Tuesday morning.



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complaint alleged.

A doctor at the Hospital of the University of Pennsylvania in Philadelphia then discovered that the 2014 test had, in fact, produced abnormal results.

In March 2018, a jury delivered the \$3.36 million verdict, finding Udoshi 80 percent liable and the hospital liable for 20 percent of the damages.

Attorneys previously reached a confidential settlement with the estate of Udoshi, who died of cancer at age 73 in May 2016. But the hospital was still on the hook for its share of the verdict — \$672,803 plus interest.

The hospital subsequently appealed the verdict. In court Tuesday, Wilkes-Barre General Hospital attorney Marcy B. Tanker argued the plaintiffs presented no expert testimony in the case and therefore failed to reach the bar necessary to prove corporate negligence.

"The trial court was wrong because this was not a case of obvious negligence," Tanker said.

Tanker argued Udoshi failed to accurately interpret the results of the initial test and that he then delivered his interpretation — rather than the actual findings — to the ordering physician.

"That goes to the negligence of the physician, not corporate negligence on the part of the hospital," Tanker said.

At one point, Lazarus interjected to say the question is not whether Udoshi sent an interpretation, but whether the hospital has a procedure requiring all test results to be sent.

"The test format that Dr. Udoshi used was a permissible format," Tanker said.

Former judge Joseph M. Cosgrove, a Luzerne County native who is now in private practice at Selingo Guagliardo, argued the plaintiffs didn't dispute that the hospital has effective policies in place.

"The problem is that those policies could be bypassed," Cosgrove said.

He maintained the report Udoshi transmitted containing his interpretation of the results failed to mention Macosky's heart was functioning at 46.6 percent — what Cosgrove argued was "a very critical thing to know about a patient."

Yet when the hospital's computer system flagged the report as deficient for being unsigned, someone responded by simply signing it anonymously as "the department," he said.

"There's nothing in the policy that allows that to be done," Cosgrove said. "They just don't know how to follow the policy."

The judges took the matter under consideration and will deliver a decision at a later date.

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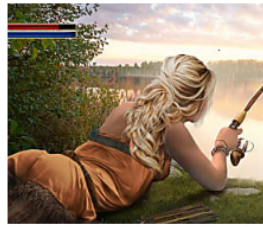
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