

# The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES

An incisivemedia publication

## Local Jury Returns \$2m Malpractice Verdict

*Plaintiff Claimed Surgery Resulted in Permanent Tracheotomy*

BY JAMES AGGER

*Of the Legal Staff*

After five days of trial in Common Pleas Judge Samuel M. Lehrer's courtroom, a jury returned a \$2 million verdict in favor of a medical malpractice plaintiff who claimed that an unnecessary surgical procedure resulted in a permanent tracheotomy.

Thomas J. Duffy of Duffy & Quinn represented the plaintiff, Linda Graves, in her suit against Hahnemann University Hospital and her attending surgeon, Dr. Thomas B. Gain. Graves' husband, Odell Prewitt, also joined in the suit and was awarded \$50,000 for his loss of consortium claim.

The case stemmed from a procedure to treat Graves' enlarged thyroid.

In 1992, Graves contacted Gain for an opinion about whether surgery would be necessary to treat this condition.

"The surgery was unnecessary, and once it was performed it was done in an improper manner," Duffy said.

According to Duffy, before surgery Graves had no problems with her vocal cords. After the operation, Graves developed a condition known as a stridor in which her vocal cords were closed and she was unable to breathe.

Graves had to be intubated to restore her breathing, Duffy said. After several days, her doctors agreed that the vocal



**DUFFY**

cord paralysis was not a short-term condition and would require a tracheotomy.

### UNNECESSARY SURGERY

The medical malpractice suit proceeded on grounds that the surgery was unnecessary in the first place since the plaintiff's biopsy, performed in 1990, indicated that the increased size of the thyroid was not due to a malignancy and that it was functioning properly.

"[Graves] now speaks through an opening in her throat and has to deal with all the problems associated with the tracheotomy," said Duffy.

According to Duffy, defense counsel argued that the surgery was a medical necessity given the increase in size of the thyroid over the previous year.

Plaintiffs' counsel argued that during the procedure, Gain or an assistant had deviated from the standard of care, causing injury to the nerve that allows the vocal cords to function properly.

### EXPERT TESTIMONY

An expert for the plaintiffs, Dr. John Bogdasarian, testified that the surgery was unnecessary and that Gain or his assistant probably cut both recurrent laryngeal nerves during the procedure.

Gain's expert, Dr. Donald DeSantis, testified that since the operative reports indicated that the thyroid mobilized easily, it would not have been necessary to locate the recurrent laryngeal nerves.

Graves was able to secure other work after she was released from her job as a hotel catering secretary about eight months after receiving the tracheotomy.

Duffy said that prior to trial a tactical decision was made to drop the claim for wage loss and medical damages and instead focus on his client's pain and suffering damages.

"Considering the substantial physical and emotional harm that resulted, to put up relatively insignificant wage loss and medicals would have trivialized the extent of the injuries," Duffy said.

In addition, the plaintiff's entire case consisted of four witnesses and consumed only one day of testimony — including the opinion of a psychologist who testified about the impact of the surgery on the plaintiff's marriage.

The jury deliberated for an hour and a half before returning with a verdict which could total \$2.6 million with delay damages, Duffy said.

Andre C. Washington of Post & Schell represented Dr. Gain and could not be reached for comment yesterday.