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Hamot must pay \$806K

State Supreme Court denies final appeal in 1996 lawsuit

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The estate of a late Erie businessman is set to receive \$806,714 in a medical-malpractice case -- 13 years after the estate sued Hamot Medical Center and three years after the estate won at trial.

The estate of Edward P. Mascharka Sr., 84, who founded Janitor Supply Co. in 1954, is due the money in light of the state Supreme Court denying Hamot's final appeal in the case Aug. 20.

The estate's lawyer, Tim Riley, of Erie, cited the Supreme Court decision and filed an \$806,714 judgment against Hamot in Erie County Court on Tuesday, setting in motion the payments to the estate.

"Certainly we are disappointed by the decision by the Supreme Court, but we certainly respect that decision, accept that decision and call this case closed," Hamot spokesman Charles "Boo" Hagerty said.

Mascharka's estate sued Hamot in August 1996, after he fell at the hospital and suffered a brain injury in 1994 and died at a residential rehabilitation center on May 1, 1996. The estate argued Hamot's level of nursing care for Mascharka -- who was admitted for complications from a stroke -- fell below acceptable standards, a contention Hamot disputed, according to court records.

The estate prevailed against Hamot at a jury trial in Erie County Court in October 2006. The state Superior Court in July 2008 upheld the verdict and Erie County Judge Shad Connelly's rulings in the case, prompting Hamot to ask the state Supreme Court to hear an appeal, a request the court turned down Aug. 20.

The appeals contributed to the unusually long period of time that passed between the filing of the suit and the final resolution of the case.

But the delays were primarily due to unforeseen circumstances, including the 2002 insolvency of PHICO Insurance Co., a medical-malpractice carrier that had insured Hamot, said Riley, the lawyer for the estate.

The insolvency placed legal actions involving PHICO on hold until the Pennsylvania Property and Casualty Insurance Guaranty Association subsequently assumed PHICO's obligations,

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following state law.

"It is one of those things that can happen," Riley said of the delays.

One of Mascharka's survivors didn't live long enough to see the suit resolved. Mascharka's son, Edward P. Mascharka Jr., who Riley said testified at the medical-malpractice trial in 2006, died in June at age 71.

Riley said the \$806,714 award will be distributed to the heirs of Edward Mascharka Sr. in accordance with his will and the wills of any heirs who have died.

At trial, Riley faulted Hamot for not monitoring Mascharka more vigilantly, despite an attending physician noting that Mascharka suffered from memory problems and "was prone to falling at night because he got out of bed unassisted," according to the Superior Court decision that upheld the verdict.

"The care he got at the hospital turned out to be less than the care he got in his own home," Riley said in an interview.

The jury awarded Mascharka's estate total damages of \$481,000 -- \$121,000 for past medical expenses and \$360,000 for pain and suffering and other noneconomic damages.

The final amount grew to \$806,714 to take into account delay damages -- or damages that accrued because of delays in the case -- and interest that accrued from the time of the verdict, on Oct. 19, 2006, through Wednesday.

The total interest on the award came to \$117,490.

The interest would have been less had Hamot not appealed. Had the hospital ended the case after the verdict, "it could have been resolved for a lot less money," Riley said.

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