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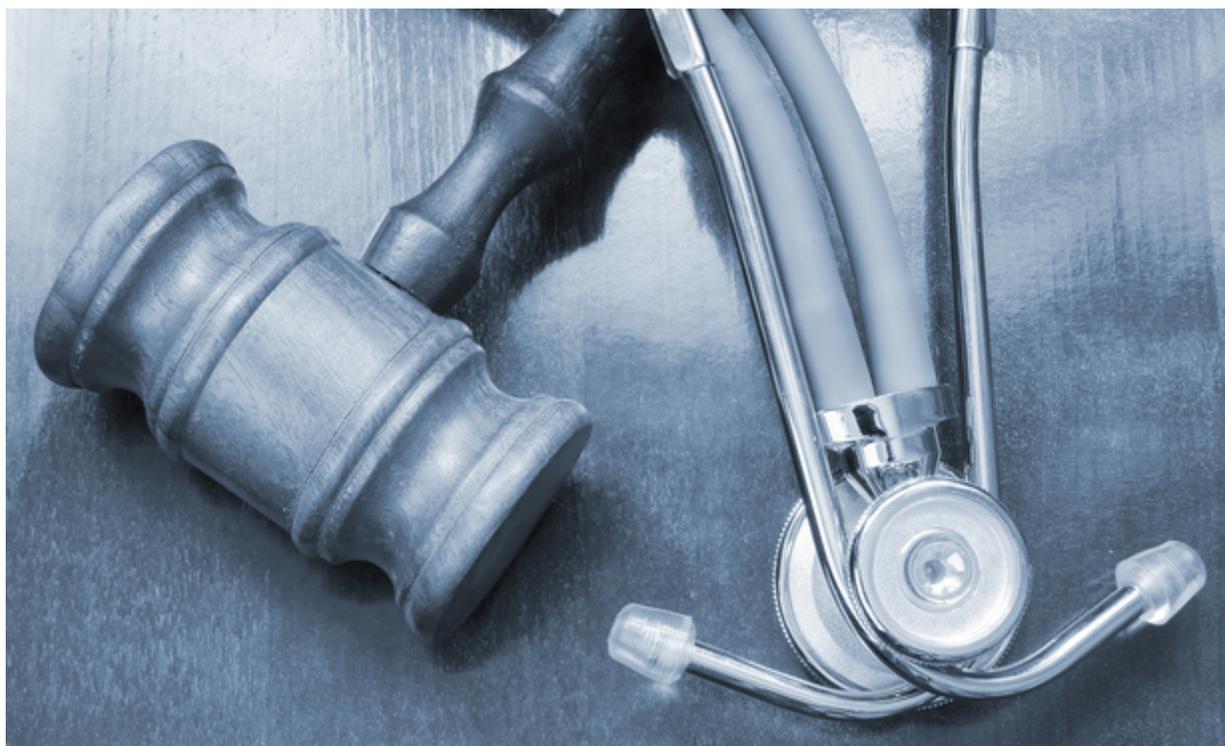
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\$5.1 Mil. Awarded in Montco to Brain-Damaged Woman

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Case Digest Summary

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The Montgomery County jury handed up the \$5.1 million verdict to Jacqueline DiTore and her husband in *DiTore v. Zager*. The jury found defendants Dr. Warren H. Zager and Abington Surgical Center (ASC) 38.5 percent and 61.5 percent negligent, respectively. All defendants other than Zager, his practice group and ASC were dismissed from the case before trial.

Andrew Youman, Jason Pearlman and Kristen Loerch Sipala of Philadelphia-based Kline & Specter represented the plaintiffs in the case. Youman said there was a high-low agreement in place, although he could not reveal the specific details.

Youman did note, "The low was every penny of insurance coverage in the case and the high was excess money out of people's pockets. ... And we ended up with the high—all of the insurance coverage plus money from the defendants in excess of the insurance coverage."

DiTore was awarded \$4.6 million and her husband was separately awarded \$500,000 for loss of consortium.

The case stems from a surgical procedure that DiTore underwent June 7, 2010, at ASC. According to the plaintiffs' pretrial memorandum, the surgery was an outpatient ear, nose and throat procedure to be performed by Zager.

Youman told The Legal that DiTore's injuries "occurred through a series of events that were the responsibility of everybody in the operating room, including the surgeon, the nurses and the CRNA. All of them failed to follow safe medication procedures and the surgeon in particular failed to halt surgery after finding that there was no upside in continuing what was an elective procedure and determining there had been a large medication error and overdose."

Prior to the procedure, Zager called for an injection of 1 percent lidocaine with epinephrine for local anesthesia. According to court papers, Zager also ordered that cotton balls soaked in Afrin (a topical vasoconstrictor) be prepared so they could be put in DiTore's nose to control bleeding during the surgery.

The circulating nurse poured the Afrin, a clear liquid, into an unlabeled cup. Court papers said the nurse did not communicate to others in the operating room that she was pouring Afrin into the cup.

According to court papers, a second nurse saw the cup of Afrin and drew it into an unmarked syringe, thinking it was the lidocaine.

Zager used the syringe to inject Afrin into DiTore's nasal cavity and then attended to other preparations for the procedure. Court papers indicated that afterward, DiTore's heart rate dropped to 36. A nurse anesthetist, not realizing that DiTore had been injected with Afrin, administered glycopyrrolate, which brought DiTore's heart rate up to 80.

When Zager returned to the operating area, he asked for more 1 percent lidocaine. According to court papers, a nurse responded that she only had 2 percent lidocaine. Zager asked what was put into the syringe and the discovery was made that DiTore had been injected with Afrin.

"The injection of 6-7 cc of Afrin represented a 100-fold increase in vasoconstrictive activity as compared to what was recommended," court papers said.

According to court papers, Zager elected to proceed with the operation, not knowing how DiTore would be affected by the Afrin injection. In order to move forward with the operation, Zager still had to anesthetize DiTore's nose, so Zager injected the patient with more lidocaine.

Following the additional injection, court papers said, DiTore's heart rate spiked to 140 with a blood pressure of 260/150. At that point the drug labetalol was administered to DiTore; however, it was determined that labetalol was the wrong drug to administer under the circumstances.

According to court papers, the labetalol bottomed out DiTore's blood pressure and she went into cardiac arrest. DiTore was transported to Abington Memorial Hospital where she was resuscitated.

DiTore now suffers from impaired cognitive abilities, vision, memory and speech as a result of the incident. According to court papers, her injuries are expected to worsen with age.

Court papers alleged that in addition to Zager being negligent, ASC was at fault because it knew that Zager and those in his practice were not following safe medical procedures.

Zager's court papers said that he properly relied on his surgical team to prepare the correct medications and when it was determined that an error had been made, he was correct in relying on the judgment of the nurse anesthetist to continue with the procedure.

Additionally, defense papers maintain that Zager's actions at the beginning of the surgery and the injection of lidocaine were "minimal and had no effect on the plaintiff's eventual outcome."

The defense argued in papers that the lidocaine did not compound the effect that the Afrin had on DiTore and did not contribute to her reaction.

Lastly, Zager's papers said that DiTore is "high-functioning" and is restricted only by limitations she has imposed on herself.

James P. Kilcoyne of Kilcoyne & Nesbitt in Plymouth Meeting, Pa., represented Zager and his practice group and declined to comment beyond noting that his clients were protected by a high-low agreement.

ASC was represented by Daniel J. Sherry of Marshall Dennehey Warner Coleman & Goggin in King of Prussia, Pa.

Sherry said, "We submitted the matter to the jury for their decision, we appreciate the amount of time the jury took in deliberating and we thank them and the judge for their involvement."

P.J. D'Annunzio can be contacted at 215-557-2315 or pdannunzio@alm.com (<mailto:pdannunzio@alm.com>). Follow him on Twitter [@PJDAnnunzioTLI](https://twitter.com/PJDAnnunzioTLI) (<https://twitter.com/PJDAnnunzioTLI>).

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