

## Tom Demetrio Discusses Medical Malpractice Caps in "Jury Awards Not a Panacea"

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Chuck Tiedje is retired at 40 with millions in the bank and a body constantly in pain.

The former Arlington Heights police officer, whose squad car was broadsided by a speeding hearse in October 2000, woke after 26 days in a coma to a pain that never left.

After 24 surgeries on everything, he says, except his left elbow and left wrist and, more than two years of physical therapy, he can walk, but he can't work.

The price of his pain, as judged in a 2003 settlement with the hearse driver and funeral home, was \$10 million.

"I can't tell you how many times I've heard people say 'Man, I'd do that in a second,'" Tiedje said of the \$10 million award. "They have no idea what 24 surgeries does to you."

Horrible accidents and horrible injuries can result in multimillion dollar settlements or jury awards for people who file personal injury, wrongful death or medical malpractice lawsuits.

But suburban plaintiffs involved in these suits said winning them isn't anything like winning a lottery jackpot, with its promises of exotic vacations, expensive homes, luxury cars and designer clothes.

The suits drag on for years in court. Lawyers' fees and court costs eat up a substantial part of the settlement. And fundamentally, even after a win, the tragic situation that brought them into the courtroom is essentially unchanged, they said.

### Attorneys

- Thomas A. Demetrio

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"Everyone assumes I got handed a check for \$10 million," said Tiedje, who said he received "a little over half" that amount after paying medical bills and attorneys.

"I still would like to have the body back I had before the accident," he said. "People look at me and think 'He looks fine.' It's kind of deceiving. They don't see what I feel."

No one looks at Alex Gehrke and sees a healthy child. The wheelchair bound 6-year-old is mentally alert but cannot communicate, has limited control of her movements and eats through a tube in her stomach.

Alex Gehrke's brain damage resulted not from her premature birth but from a mistake made at a Walgreens pharmacy in Elgin, a Cook County jury ruled last week.

After Alex was born, her doctor prescribed an anti-seizure medication. A pharmacist gave her mother an adult diabetes drug. The results were devastating, the jury concluded.

Alex's parents, Dave and Tracey Gehrke, filed a suit against the drugstore chain and jurors awarded the family \$21 million last week.

Walgreen Co. has yet to decide if it will appeal, a company spokesman said.

The multimillion dollar awards given to families like the Tiedjes and Gehrkes are examples of what some lawmakers view as excessive compensation that must be capped. Trial lawyers have lobbied against the caps.

Tracey Gehrke said the family's suit against Walgreen Co. wasn't motivated out of anger or revenge. Instead, they wanted to guarantee Alex, even with her limitations, would be able to live as full and normal a life as possible.

"I was happy (the jury) understood us enough to provide medical care for the rest of (Alex's) life," Tracey Gehrke said.

The suit was filed in 1999. The trial started five years later on July 19. After three days of deliberation, the jury returned the verdict. For the Gehrkes, all of it was stressful.

"You're trying not to think about it but you're constantly thinking about it," Tracey Gehrke said. "It was five years of knowing at some point this was going to come to an end."

The Gehrke's attorney, Gilbert Ross of Chicago, will receive one-third of the settlement, or \$7 million. Had he lost, he would have received nothing for five years of work.

Multimillion dollar attorney salaries are part of the reason President Bush proposed a \$250,000 cap on non-economic damages in medical malpractice suits. The House has passed the bill, but it's been defeated in the Senate.

Trial attorneys worry that if the medical malpractice cap passed, it could set a precedent on other types of personal injury or wrongful deaths suits. Substantial judgments are a key way, they say, to punish mistakes like the one at the Elgin pharmacy.

Edward Murnane, president of the Illinois Civil Justice League, a group lobbying for such caps, says large settlements do nothing more than make attorneys rich. Those who are wronged should receive money for their economic losses, such as medical bills and lost wages, but nothing else, he said.

"Whether they are getting \$2 million, \$10 million, \$21 million or \$200 million, it's not going to change the condition of that young child," Murnane said.

But the Gehrke case is "a very good example" of why non-economic damages should not be capped, said Tom Demetrio, a trial lawyer with the high profile Chicago personal injury law firm of Corboy & Demetrio.

"This is the opposite of a frivolous lawsuit," he said. "This is where someone is so profoundly damaged, it's devastating."

The average lawyer fee on successful suits is 28 percent at Corboy & Demetrio, he said. An attorney being paid more than a third of the total award, Demetrio said, is "unconscionable."

The firm represented many of the families whose children died or were injured in the Fox River Grove train and school bus collision in October 1995.

In addition to lawyers' fees, the cost of mounting a vigorous case, including jury exhibits and experts to testify, is expensive and widely varies, Demetrio said. The court costs in the Gehrke case are not yet known.

The Gehrkes' remaining money will pay for Alex's care over her lifetime. She's expected to live into her 70s.

She is in speech therapy through both a private therapist and Elgin Area School District U-46. She attends Liberty Elementary in Bartlett.

She receives special physical therapy that involves horses at a Maple Park stable, an activity that not only helps her with movement and feeling but also provides "an adventure" wheelchair-bound children rarely experience, Ross said.

And she's received 80 sessions of an experimental therapy that involves a pressurized oxygen tank, therapy that insurance won't reimburse.

That \$110-per-session therapy helps Alex become more alert and aware of her surroundings, Tracey Gehrke said.

In the future, Tracey Gehrke knows things will need to change so Alex can live as normal a life as possible.

She said she wants the kitchen in their Elgin home wheelchair-accessible for the day she hopes her daughter will be able to handle a motorized wheelchair.

She wants to build a shower big enough for her daughter and her wheelchair to fit into so one day her parents won't have to lift her into the bathtub.

She wants Alex's communication to improve with a computer's help. And she wants broader hallways in their ranch home so Alex can easily get around.

"I just want her to be able to have as simplified a life as possible, to live with us, to be part of the family," said Tracey Gehrke. "I don't want her ever to feel like she's an outsider."

Because they're Alex's caretakers, the Gehrkes will need to go through Cook County probate court, which watches over the funds in such cases, to get the money to do those projects or buy a handicapped-accessible van.

Randy and Susie Garcia are working with the probate court to access money for their son Aaron, a 12-year-old seventh-grader at Palatine Township Elementary District 15's Winston Campus, a kindergarten through eighth grade school. They expect to access the lawsuit money by September.

On June 22, the Garcias won a \$11.7 million jury award against Edward Hospital in Naperville claiming injuries caused to Aaron while Susie was in labor resulted in his cerebral palsy. They will see almost \$8 million of that after attorneys' fees and other court costs, Randy Garcia said.

With the money, Randy Garcia said they plan to buy a van for Aaron and a speech system identical to the one used by paralyzed physicist Stephen Hawking. The money also will pay for a tutor to help him master it.

It will also allow them to modify their Palatine home to make it more accessible to the wheelchair-bound -- but mentally sound -- Aaron.

"This is for Aaron," Randy Garcia said. "This doesn't go for us. It's not a jackpot by any means. It's a compensation for a wrong done to him."