

New Jersey Law Journal

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\$5.5M Settlement, \$1.3M Attorney Fees After High School Principal Dies Donating Bone Marrow

The settlement illustrates the merits of persevering when initial indications suggest that a case lacks merit, the estate's lawyer, David Mazie, said. The first two liability experts who studied the case were unwilling to say that malpractice had been committed, he said.

By Charles Toutant | November 12, 2020



Deceased Westfield High School Principal Dr. Derrick Nelson. Image via YouTube

A \$5.5 million settlement has been reached in a medical malpractice suit in the case of a high school principal who died during a bone marrow donation procedure.

The settlement was reached in Union County Superior Court between the estate of Derrick Nelson and the defendants, anesthesiologist Jerry Baratta and Hackensack Anesthesiology Associates. The agreement calls for attorney fees of \$1.37 million for the estate's lawyer, David Mazie of Mazie Slater Katz & Freeman of Roseland, to be drawn from the settlement.

Nelson, the principal of Westfield High School, died in April 2019, several months after slipping into a coma during the operation. The suit claimed Baratta's negligence caused him to suffer a severe brain injury due to loss of oxygen, which ultimately caused his death.

The settlement illustrates the merits of persevering when initial indications suggest that a case lacks merit, Mazie said. The first two liability experts who studied the case were unwilling to say that malpractice had been committed, he said. But a third expert, who had the benefit of additional data from the operation obtained in discovery, concluded that the anesthesiologist committed malpractice by failing to promptly administer oxygen when the patient's oxygen level plunged, Mazie said.

Mazie said his willingness to search for merit in the case was tied to the selfless act that led to Nelson's death—he was donating bone marrow for a teenager in France who was battling cancer, a total stranger. In addition, Nelson was an officer in the U.S. Army reserves who served in Afghanistan besides being a well-liked principal. Gov. Phil Murphy ordered flags to fly at half-staff in honor of Nelson.

"Given what he did, how selfless he was and given that he's such a hero, I would never let this case go—I would go to 10 experts if I had to," Mazie said.

In addition, the case was challenging from a damages standpoint, Mazie said. Nelson, while engaged, was not married at the time of his death, which limited the economic claims available in the case to lost wages and recovery for his one child and his elderly parents. Damages were also limited by the fact that Nelson did not experience any conscious pain and suffering as a result of the malpractice, he said.

But the \$5.5 million settlement was reached because of the outpouring of sentiment when Nelson died, including a movement to name Westfield High School after him and multiple scholarships created in his name, Mazie said. Those factors would have likely had an impact on the jury if the case had gone to trial, Mazie said.

The proposed attorney fee of \$1.37 million is subject to approval at a hearing set for Friday. It consists of one-third of the first \$750,000, 30% of the second \$750,000, 25% of the third \$750,000, 20% of the fourth \$750,000 and 22.5% of the portion of the settlement over \$3 million.



David Mazie of Mazie Slater Katz & Freeman. Courtesy photo

When Nelson underwent the bone marrow donation procedure, he was overweight and was known to have sleep apnea, placing him at higher risk when undergoing anesthesia, according to the suit. As the procedure progressed, Nelson's condition deteriorated and his heart rate became slower, the suit claimed. His oxygen saturation level, which was at the already low level of 91 at the outset of the procedure, fell to a level of 31.

It wasn't until that point that Baratta administered oxygen to Nelson, but the volume was insufficient, the suit claimed.

Besides Baratta and his practice, the suit named Hackensack University Medical Center as a defendant, but it was dismissed from the case.

Michael Ricciardulli of Ruprecht Hart Ricciardulli & Sherman in Westfield, who represented Baratta and Hackensack Anesthesiology Associates, did not respond to a call about the case.

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