

XVIII/15-50 POLICE CASE CLAIM OF EXCESSIVE FORCE USED ON DWI SUSPECT HEAD INJURY HOSPITAL FAILS TO MONITOR PATIENT WRONGFUL DEATH OF 37-YEAR-OLD MALE

SETTLEMENT: Jeff DeStefano, as Adm. of the Est. of Charles Doherty v. City of NY and NYCHHC 4612/86
Date of Settlement 6/6/00 Queens Supreme

Pltf. Atty: Richard N. **Slater** of Cardali & Cardali, P.C., Manhattan
Def. Atty: Ralph Janzen, Asst. Corp. Counsel

This action settled after opening statements for \$250,000. At 11:55 PM on 12/21/84, Pltf. s decedent, a 37-year-old elevator repairman, was traveling with his girlfriend on Northern Blvd. in Queens, returning home from a Christmas party. He was pulled over by NYPD officers at the intersection of 87th St. and was arrested for DWI. Pltf. claimed that at the scene, the arresting officers pushed decedent s head against the trunk of his car and caused him to bleed. Decedent was taken to the police precinct, but was later brought to the emergency room at Elmhurst Hospital by the arresting officers, due to the laceration to his scalp.

According to the hospital record, decedent did not permit triage. At the request of the head nurse, he was moved to an observation room because he was agitated, combative and violent. The arresting officers remained in the observation room to await an examination of decedent by the attending doctor. One of the officers, who is presently an NYPD captain, alleged that decedent got up from a chair, took two steps, and fell, striking his head. Decedent immediately went into respiratory and cardiac arrest and could not be revived. He died shortly thereafter.

Decedent s autopsy revealed that the cause of death was a fractured skull with a subdural hematoma. There was additional bruising on the face and about the body. The toxicology report indicated that decedent s BAC was .24 at the time of death, and that there were traces of marijuana and cocaine in his system. Pltf. alleged excessive force and battery, as well as a failure to supervise, against Def. City s police officers. Pltf. claimed that Def. NYCHHC failed to properly monitor decedent at the hospital. Def. denied any wrongdoing. Def. City s officers contended that decedent fell at the scene of the arrest, at the station house of the precinct, and again at the hospital in the observation room, because of his intoxicated state.

Decedent died intestate, and was survived by his mother and four siblings. Under New York State intestacy law, everything passed to decedent s mother, who died in 1985, and the wrongful death claim was therefore limited to 3 months pecuniary loss. The pain and suffering claim was for brought for the 60 minutes from the time of the arrest until the time of death.

Pltf. Experts: Pltf. would have called Henry Branche, expert on police procedure, Massapequa; Dr. Mark Taff, forensic pathologist, Malverne; Dr. Diane Sixsmith, emergency medicine, New York Hospital, Queens Division.

Def. Experts: Def. would have called Dr. James Fyfe, Ph.D., police procedure expert, Reston, Virginia; Dr. Dominick DeMaio, pathologist, former chief medical examiner for the City of New York.