

Settlement exceeds \$1 million

• Family of man who died during oral surgery reaches out-of-court deal

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The trial of a malpractice lawsuit filed by the family of Steven Kawczk, an Akron man who died after a piece of gauze was sucked down his windpipe during oral surgery, ended abruptly yesterday in an out-of-court settlement worth at least \$1 million.

Although the terms of the settlement were not released, the money will come entirely from malpractice insurance covering the Green dentist, John N. Santin, who performed the surgery, and his assistant, according to attorneys in the case.

The settlement does not call for payment to the Kawczk family from two other original defendants: the city of Green, which provided the paramedics and ambulance that took Kawczk to the hospital, and Dr. Ugo Gallo, the emergency room physician who treated him at Akron City Hospital.

Timothy F. Scanlon, the attorney for the Kawczk family, said he had "mixed feelings" about the outcome of the suit, which had sought nearly \$10 million in damages.

But he voiced hope that "it's a settlement that may help everyone put this pain behind them and pick up the rest of their lives."

Scanlon declined to reveal the amount of the settlement. Earlier, he had gone to federal court in an unsuccessful attempt to establish

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• Assistant also covered by malpractice insurance

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that Santin's malpractice insurance covered claims up to \$3 million. The insurance company argued the ceiling was \$1 million.

"That's one of the factors that went into the settlement," Scanlon said.

Scanlon said Santin's assistant, Lori McCauley, also was covered by Santin's insurance. "She also had a policy of her own."

Kawczk, 41, died at the hospital on May 5, 1994, the day after he underwent oral surgery at Santin's Fortuna Drive office to replace some front teeth with dentures in preparation for a job interview. He was a custodian at Voris Elementary School and the father of three children.

The trial was unusual because Santin conceded that he made mistakes. Kawczk sucked down the gauze, which was used to stem bleeding from the surgery, while attempting to come out of general anesthesia.

The key issue was whether the

paramedics and emergency room doctor who tried to save Kawczk also were negligent.

The dentist's attorney, Richard J. Rymond of Cleveland, told the jury at the start of the trial last Tuesday that Kawczk's family deserved to be compensated for their loss and suggested \$1 million would be a fair amount.

But Santin argued he wasn't solely responsible because Kawczk was alive and appeared to be in stable condition when he was taken to the hospital.

Holding the Green paramedics responsible would have required more than proof of negligence. To win damages from a city, Ohio law demands "willful or wanton misconduct."

Several court observers speculated that the paramedics were included as defendants only as part of a courtroom strategy to counter Santin's claim he wasn't solely liable.

Scanlon said yesterday that was true.

"I never was under any impression that Green had done anything wrong," he said. "But if they weren't in the case, Santin would say they were responsible. They had to be in the case to protect against that."

Scanlon asked that Green be dismissed from the suit last week after all four paramedics had testified.

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Scanlon said some legitimate questions could be raised about Dr. Gallo's treatment of Kawczk in the emergency room.

"He should have kept continuous oxygen going" to Kawczk, Scanlon said. "He should have known he aspirated a gauze pad."

Gallo's attorney had argued that any mistakes were irrelevant because Kawczk was essentially brain dead when he arrived at the hospital.

In testimony last week, Gallo said that Kawczk was breathing only with the assistance of mechanical devices when he arrived. He was pronounced dead the next day, after repeated examinations showed no brain activity.

Scanlon said the testimony at the trial may have affected Kawczk's widow, Sandra L. Kawczk.

"I think she had some question of whether he (Gallo) was responsible," Scanlon said. "There was evidence at the trial she had never heard before."

Gallo's attorney, Robert F. Orth of Akron, said he considered the out-of-court settlement, which calls on Gallo to pay only a portion of court costs of the case, a vindication of his client.

"No settlement money was paid by Dr. Gallo or his insurance company," Orth said.