

**Kyle Wodzenski v. Fred Moore Carter II MD John J. Rongo, RPA; 2017 Jury Verdicts LEXIS 12489**

22738/10

September 27, 2017

**Headline:** Overly Tight Splint Caused Necrosis of Finger, Plaintiff Claimed

**Published Date:** October 23, 2017

**Topic:** Medical Malpractice - Failure to Treat - Medical Malpractice - Post-Operative Care - Medical Malpractice - Physician's Assistant

**Injury:** Necrosis, Amputation, Finger

**Practice Area:** Healthcare Law; Torts

**State:** New York

**Court:** Suffolk Supreme

**Plaintiff Counsel**

**Norman Steiner**

Firm Name: Law Offices of **Norman Steiner**

Address: Kings, NY

Plaintiff Name: (Kyle Wodzenski, Kyle Wodzenski)

**Defendant Counsel**

Geoffrey H. Pforr

Firm Name: Perry, Van Etten, Rozanski & Primavera, LLP

Norman Steiner

Address: New York, NY

Defendant Name: (1, 1, 1, John J. Rongo, John J. Rongo, John J. Rongo)

**Judge:** Peter H. Mayer

### **Case Summary**

On Sept. 18, 2009, plaintiff Kyle Wodzenski, a laborer in his 20s, underwent amputation

of much of his left hand's index finger. The amputation was necessitated by necrosis that had developed during the aftermath of a fracture of the finger.

Wodzenski's fracture occurred on Aug. 31, 2009. The injury was addressed via surgery that was performed by an orthopedist, Dr. Fred Carter II. A splint-type dressing was applied to the finger. On Sept. 3, 2009, Wodzenski was evaluated by Carter's physician's assistant, John Rongo. Rongo examined the injured finger, but he did not remove the dressing. The dressing was removed after eight additional days had passed, and the necrosis was immediately discovered. The condition could not be reversed, and the amputation followed. Wodzenski claimed that the necrosis was a result of a failure to timely remove his dressing.

Wodzenski sued Carter and Rongo. The lawsuit alleged that Rongo failed to properly treat Wodzenski's injured finger, that Rongo's failure necessitated the amputation of the finger, that Rongo's failure constituted malpractice, and that Carter was vicariously liable via application of the doctrine of respondeat superior.

Wodzenski's expert orthopedist opined that Wodzenski's dressing should have been removed on Sept. 3, 2009. He contended that subsequent swelling caused excessive tightening of the dressing, that the overly tight dressing prevented the finger's receipt of blood, and that necrosis resulted. He opined that Rongo departed from an accepted standard of medical care.

The defense's expert orthopedist opined that Wodzenski's necrosis was a result of a crushing mechanism that caused the underlying fracture.

### **Injury Text:**

Wodzenski underwent amputation of a portion of his left, dominant hand's index finger. The amputation removed two of the finger's three bones.

Wodzenski claimed that his injury prevented his performance of 10 months of work. He also claimed that his disfigurement causes embarrassment that diminishes his enjoyment of life.

The parties stipulated that Wodzenski's medical expenses and lost earnings totaled \$44,235.88. Wodzenski sought recovery of that amount, and he also sought recovery of damages for past and future pain and suffering.

Defense counsel contended that Wodzenski does not suffer ongoing residual effects of the amputation.

### **Trial Length**

3.0 weeks

### **Jury Deliberation**

2.0 hours

### **Jury Composition**

4 male, 2 female

**Jury Poll**

6-0 (liability); 5-1 (damages)

**Post Trial Status**

Defense counsel has indicated an intention to renew his motion for dismissal. He has also indicated that he will move to set aside the verdict.

**Insurer:**

Medical Liability Mutual Insurance Co. for both defendants

**Plaintiff Expert(s)**

Nurhan Kasparyan

Address: Burlington, MA

Specialty: Hand Surgery

Affiliation: **Norman Steiner**

**Defendant Expert(s)**

Neal Hochwald

Address: Huntington, NY

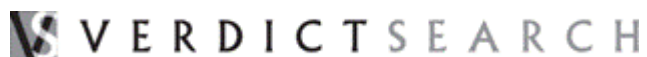
Specialty: Hand Surgery

Affiliation: Geoffrey Pforr

**Award:** \$ 500,000

**Award Details:** After the presentation of all evidence, defense counsel moved for dismissal. He contended that Wodzinski's counsel did not establish the cause of Wodzinski's necrosis. Justice Peter Mayer reserved judgment.

The jury found that Rongo departed from an accepted standard of medical care. It determined that Wodzinski's damages totaled \$500,000, which addressed past pain and suffering. After the addition of the stipulated damages, Wodzinski's recovery totaled \$544,235.88.



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