



Paraplegic loses case over rare stem cell surgery

By Ed White
Associated Press

DETROIT (AP) — A motorcycle wreck turned a Lenawee County man into a paraplegic. Desperate for any relief, he chose stem-cell surgery in Europe, a procedure that may have improved his health but left him with a \$51,000 bill.

Now, after years of litigation, the Michigan Supreme Court says Kevin Krohn's auto insurance company doesn't have to pay, declaring that the experimental surgery -- not approved in the U.S. -- was not "reasonably necessary" under state law.

The recent 4-3 ruling closes a case in which the court's conservative Republican majority prevailed over liberal Democratic justices. At least six civil cases this year have been decided by the same margin, typically disputes that involve insurance, medical malpractice, employer liability or the ability to sue in lower courts.

Justice Brian Zahra insists the Krohn case doesn't mean insurers always are off the hook for uncommon medical procedures. But Justice Diane Hathaway believes the court has created a tough standard never intended under Michigan's no-fault auto insurance law.

"The majority effectively asserts that it was unreasonable as a matter of law for (Krohn) to have pursued the only procedure that could possibly prevent him from being a paraplegic for the rest of his life," she said in a dissent.

Krohn's attorney, James Iafrate, said the decision is disappointing.

"What were his choices, really?" Iafrate said. "His only chance of getting better was to undergo some type of procedure like this. It seemed like a reasonable choice on his part."

Krohn, 42, did not respond to requests for comment through his attorney. In 2001, while riding a motorcycle, he was struck by a van and suffered a spinal fracture, a devastating injury that paralyzed his lower body.

Four years later, Krohn traveled to Portugal for a procedure that is not available in the U.S. because it has not been approved by the Food and Drug Administration. Tissue containing stem cells was removed from his sinus area and transplanted to his spine with the hope that it would regenerate spinal-cord nerves. Iafrate said Krohn was able to regain some bladder control and move his legs a bit.

"It did help," the attorney said. "It's both the physical therapy and the surgical procedure. You can't do one without the other. You need aggressive physical therapy to stimulate stem-cell growth."

Krohn's health insurer, Blue Cross and Blue Shield of Michigan, refused to pay for the surgery and so did his vehicle insurer, Home-Owners insurance Co. He sued Home-Owners and won a jury verdict in Lenawee County court, but the appeals court and, now, the Supreme Court said the case should have been dismissed without a trial.

Home-Owners said Krohn may have felt better simply because of aggressive therapy, not the stem-cell transplant. It also noted that a U.S. doctor did not prescribe the surgery, nor was it tested in clinical trials.

"The purpose and focus of (state law) is the protection of individuals injured in auto accidents, not the funding of experimental research projects, no matter how admirable," Home-Owners attorney Allen Philbrick said.

At trial, jurors heard from Portuguese Dr. Carl Lima, who was on Krohn's medical team but did not participate in the transplant. He said at least 110 people have had the procedure since 2001, with a majority showing some improvement.

Zahra, who wrote the Supreme Court's opinion, was not swayed. He said Lima's testimony failed to provide an "objective basis" that Krohn's surgery was "reasonably necessary."

"Since we are not medical experts, we are not going to artificially limit the types of objective and verifiable evidence that a party may present to support its claim," Zahra said on July 29. "Instead, we simply note that there must be some evidence from the medical community that a particular procedure would have some beneficial effect on a person's care, recovery or rehabilitation" to meet state law.

Attorney Steven Gursten, a specialist in no-fault auto law, said the "troubling" decision has created a buzz among lawyers. He predicts it will be used by insurance companies to prevent more people from getting cutting-edge treatments for brain and spinal injuries.

"When I go to national conferences, brain-injury experts are so excited about advances in the next 10 years," Gursten said.

Iafrate, the attorney, said Krohn can't work and gets by on Social Security disability payments.

"Fifty thousand dollars is a big deal to him," Iafrate said, referring to the cost of surgery. "To an insurance company, frankly, it's not a lot of money."

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