



Passaic Jury Awards \$3.5M for Failure To Disclose Results of Hepatitis Tests

Cheryl and Frank Diehl v. St. Joseph's Hospital and Medical Center: A Passaic County jury awarded \$3.5 million in a suit by a hospital nurse whose employer did not tell her for six years that she had tested positive for hepatitis C.

Through accidental needle sticks and spills, Cheryl Diehl was exposed to patients' blood three times between July 1991 and March 1997 at St. Joseph's Hospital and Medical Center. Her suit charged that the in-house employee health office tested her for hepatitis three times during that period but officials failed to tell her the diagnosis or told her falsely that she had tested negative.

In February 1998, after a conversation with a supervisor over whether she had tested positive, Diehl decided to look at her files in the office computer and found that the first positive diagnosis dated back to December 1992.

The Diehls retained associate Adam Slater of Nagel, Rice, Dreifuss & Mazie in Livingston and sued the



PHOTO BY CARMEN NATALI

THREE TESTS IN SIX YEARS: Adam Slater's client discovered she had first tested positive for hepatitis C in December 1992, after she looked at her files in the office computer in February 1998.

next year. The case went to trial before Superior Court Judge David Waks. Cheryl Diehl was awarded \$2.925 million and her former husband was awarded \$575,000.

Through the years, Diehl suffered from the symptoms of the disease, which include chronic fatigue. She also gave birth to two children. But her tiredness and inability to pull her weight at home led to conflict with her husband Frank, and the pair eventually divorced.

Although hepatitis is transmissible sexually to partners and in utero to children, neither the husband nor the children were infected, Slater says.

The Paterson hospital's lawyer, Robert Baum, a partner with Hein, Smith, Berezin, Maloof & Jacobs in Hackensack, says he intends to appeal on the grounds that the failure to inform was accidental and not intentional, and that therefore Diehl's claim should have been restricted to workers' compensation.

— By Jim Edwards