



Defendants have tried to frame this case as simply a dispute over the appropriateness of medical care. Unlike the cases cited by Defendants, the evidence in this case supported a finding that Defendants did nothing to provide medical treatment to Plaintiffs until the last possible moment. The fact that treatment, once provided, required immediate hospitalization and multiple surgeries provided a sufficient basis for the jury to conclude that the prison simply ignored their conditions. The Eighth Amendment (or, in the case of pretrial detainees, the Fourteenth Amendment) does not allow prison officials to provide only treatment sufficient to prevent death or loss of limb.

Plaintiffs established Defendants' deliberate indifference to their serious medical needs. The evidence indicated that sick call procedures were so deficient as to constitute a denial of medical care. For example, because of Plaintiff Keller's work schedule, he was not in his cell during sick call. Defendant Crowe testified that she was aware that some prisoners had this problem, but no corrective action was taken during Mr. Keller's incarceration. There was sufficient evidence for the jury to conclude that it was effectively impossible for Mr. Keller to obtain medical treatment until his condition had progressed to the point of requiring hospitalization. This constitutes deliberate indifference. In addition, upon his return from the hospital, instead of providing the follow-up care noted by the

hospital, Mr. Keller was placed in solitary confinement with no bandages or other care.

As to Plaintiff Martin, the jury was entitled to credit testimony that his complaints of severe pain and pus and blood dripping from his leg were ignored despite his repeated requests for help. The undisputed fact that he was hospitalized for nearly a month and underwent several surgeries underlies the seriousness of the medical need.

The jury also had a more than sufficient basis for concluding that Defendants through deliberate indifference allowed conditions in the facility that were likely to cause disease, injury, or suffering. There was ample evidence from which the jury could conclude that Defendants, including the County, knew of the MRSA infection spreading throughout the prison and failed to take necessary steps to minimize the number of inmates affected, for example by keeping the showers and food handling areas in a sanitary condition and instructing inmates on how to avoid the spread of infectious diseases.

Defendants take exception to several evidentiary rulings during the course of the trial. These asserted errors require little discussion. With regard to the exclusion of Plaintiffs' criminal records, Defendants have not presented evidence of Plaintiffs' conviction on any charges that would bear upon their ability to testify truthfully. Their proposed Exhibit 60

consists of printed docket sheets from the internet which are not authenticated, which fail to give any coherent indication of the charges of which Mr. Keller might have been convicted, and which are unclear as to whether he was adult or a juvenile at the time of any offense. Defendants produced no information regarding Mr. Martin's criminal record.

Defendants also complain that Plaintiffs' expert, Dr. McGovern, rendered opinions that went beyond the scope of his report and that Defendants' expert's testimony was curtailed. I granted both sides considerable leeway in presenting their cases, and Defendants have not demonstrated any prejudicial error beyond simply stating that they were prejudiced. As to the preclusion of extensive cross-examination as to letters sent between Mr. Keller and his girlfriend, I ruled that the letters spoke for themselves, and they were admitted into evidence and provided to the jury. Evidence as to the infections of other inmates was relevant both to demonstrate the severity of the infection in the facility and Defendants' knowledge of the conditions.

The assertion that questioning from the bench constituted advocacy for the Plaintiffs is without merit. I directed questions to both defense and plaintiff witnesses when necessary to clarify matters that counsel left murky.

Defendants also seek a new trial because one of the jurors apparently winked at Plaintiffs' counsel. Defendants requested

the juror's removal from the jury (N.T. Jan. 7, 2005 at 3); however, they did not move to have the juror or other jurors questioned or for a mistrial. Because there was no conversation or prior acquaintance between the juror and Plaintiffs' counsel, there was no basis for removing a juror for a single polite gesture.

Finally, Defendants challenge the damage award as excessive, noting that Plaintiffs suffered no economic losses. The jury was explicitly instructed on that very point, so the verdict must have been based on Plaintiffs' pain and suffering. Defendants do not offer what they believe would be appropriate compensation for an individual whose scrotum has swollen to the size of a grapefruit and emits a discharge, who requires several days in the hospital, and upon return is placed in solitary confinement without any follow-up care. Nor do Defendants offer a damages baseline for an individual who is hospitalized for approximately a month and undergoes several surgical procedures during which his leg is, in the words of one witness, filleted. The jury's verdict is not so excessive as to be insupportable or shock the conscience of the Court. Gagliardo v. Connaught Labs., Inc., 311 F.3d 565, 574 (3d Cir. 2002). I will not disturb the jury's award.

An order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

	:	
	:	
Kevin Keller, <i>et al.</i>	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	NO. 03-4017
County of Bucks, <i>et al.</i>	:	
Defendants.	:	
	:	

**O R D E R**

AND NOW, this 22d day of March, 2005, upon consideration of Defendants' Motion and Amended Motion for a New Trial, and the response thereto,

IT IS hereby ORDERED that the Motions are DENIED for the reasons stated in the accompanying memorandum. It is further ORDERED that Plaintiffs' Motion to Strike Defendants' Motion for a New Trial is DENIED.

BY THE COURT:

/s/John P. Fullam, Sr. J.  
Fullam, Sr. J.