

VII/16-11 MEDICAL MALPRACTICE - UNNECESSARY SPLENECTOMY - ENLARGED SPLEEN
CAUSED BY PORTAL HYPERTENSION

Apolinaria and Jose Santos v. David Stein, Montefiore Hospital & Medical Center, Yeshiva University, and Helen Morehouse 18713/84 6-week trial Judge Bernard Burstein, Bronx Supreme

VERDICT: \$3,727,000 for Apolinaria S.; \$275,000 for Jose S. for loss of services (6/0). Breakdown: \$1,000,000 for past pain and suffering ; \$2,500,000 for future pain and suffering; \$108,178 for medical expenses; \$ 18,700 for household care; \$34,300 for past lost earnings; \$65,822 for future lost earnings. Liability: Stein and Montefiore 100% negligent. Defense verdict for Morehouse and Yeshiva University. Jury: 3 male, 3 female.

Pltf. Atty: Robert H. Silk of Silk & Bunks, Manhattan
Def. Atty: Frank D. Bastone, Jr., Manhattan, for Stein, Montefiore, and Yeshiva
Paul A. **Krez**, Manhattan, for Morehouse

Facts: Pltf., age 41 at the time, had an enlarged spleen for at least 5 years before the alleged malpractice. During the 9 months preceding this incident, her spleen was noted to have grown noticeably larger. Pltf. had no symptoms or complaints, however, and continued working at a luggage factory and caring for her four children. Defs. performed a sonogram which indicated that portal vein thrombosis was the cause of her condition. A CAT scan did not reveal portal vein thrombosis, but indicated enlarged lymph nodes and masses. Def. Morehouse, the radiologist (defense verdict) ruled out lymphoma, leukemia, or a primary tumor.

Dr. Stein performed an exploratory laparotomy on 9/16/83 and testified that he found dilated veins in the portal system which he attributed to portal hypertension. He conceded that he was aware that portal hypertension could cause an enlarged spleen. He also testified that although he found no evidence of cancer and noted that the lymph nodes that appeared enlarged on the CAT scan were normal, he decided to perform a splenectomy. This led to a thrombosis of the superior mesenteric vein and gangrene of the small bowel which required a resection and removal of 70-80% of the bowel on 9/22/83. Pltf. claimed that Def. improperly sutured the remaining live tissue of the bowel to dead tissue, making healing impossible and resulting in a leakage of the bowel into the peritoneal cavity. Pltf. suffered peritonitis, ascites, sepsis, respiratory consequences, acidosis, bleeding veins in the esophagus, a high spiking fever, diarrhea, and continual vomiting. She was hospitalized for an additional 90 days and required three further operations to repair the bowel. Pltf. now has a permanently shortened small intestine and has lost the ability to absorb food. She has required eight additional hospitalizations.

Pltf.'s experts testified that it was dangerous and contraindicated to perform a splenectomy on a patient with no signs of cancer but with portal hypertension, which would explain her enlarged spleen.

Def. contended that the CAT scan ruled out portal vein thrombosis and the exploratory laparotomy was necessary to rule out lymphoma. He also contended that the removal of the spleen was necessary so that he could examine the tissue for possible cancer. Def. also testified that he could not have known that he was suturing live tissue to dead tissue during the bowel resection.

The jury found that Def. was negligent for performing the splenectomy and for improperly performing the bowel resection. Demonstrative evidence: anatomical chart showing portal system. Jury deliberation: 3½ hours on liability; 3½ hours on damages. Offer: \$300,000; demand: \$2,000,000; amount asked of jury: "in the millions."

VII/1-7 MEDICAL MALPRACTICE - TREATMENT OF LEG FRACTURES - PLAINTIFF CLAIMS
OPEN REDUCTION WAS INDICATED

Brian Donnelly v. NYCHHC 7174/84 8-day trial Verdict, Bronx Supreme

VERDICT: Defense verdict (6/0). Pltf.'s motion to set aside the verdict was denied.

Pltf. Atty: Stanley Fremont of Eppinger, Rheingold & Fremont, Larchmont

Deft. Atty: Paul A. **Krez**, Manhattan

Facts: Pltf. was a 29-year-old paramedic at the time of this incident. He was treated at Jacobi Hospital from 8/27/81 to 11/16/82 for an oblique fracture of the tibia and fibula. He was treated with a closed reduction. Pltf. claimed that an open reduction with internal fixation devices should have been performed. Injuries: As a result of this alleged negligence, Pltf. claimed a 15-20° anterior angulation, with a limp and pain. Pltf. underwent corrective surgery. Deft. contended that closed reduction was the proper procedure, and that Pltf.'s less than optimal result was due to Pltf.'s own negligence. Deft. claimed that Pltf. fell seven times since this accident, and that he repeatedly signed himself out of the hospital against medical advice. Deft. contended that Pltf. was a known drug and alcohol abuser, and that his physicians felt that the use of internal fixation devices would be contraindicated. Pltf.'s credibility was attacked through certificates of conviction showing that he had been convicted of crimes involving moral turpitude. Demonstrative evidence: hospital records, model of lower extremity; X-rays. Jury deliberation: 15 minutes. No offer; demand: \$750,000.

VI/8-17 MEDICAL MALPRACTICE - LACK OF INFORMED CONSENT - TARDIVE
DYSKINESIA FROM THORAZINE

Rivera v. NYCHHC 27536/82 Judge Ira Gammerman, New York Supreme

VERDICT: Defense verdict.

Pltf. Atty: Myron Kahn of Kahn & Gordon, Manhattan

Def. Atty: Paul A. **Krez**, Manhattan

Facts: Pltf., age 39, claimed that he developed tardive dyskinesia as a long-term side effect of Thorazine treatment at Gouveneur Hospital. He brought suit for lack of informed consent and medical malpractice.

Pltf. had a long-standing history of schizophrenia and was treated for 7 years with Thorazine. He claimed that he was not advised that 30% of long-term Thorazine users eventually develop side effects. Def. argued that Pltf. was advised, although it is not indicated in the medical record. Injuries: tardive dyskinesia; torticollis; clenching of jaw and involuntary facial movements which interfere with eating, talking, and drinking. Def. contended that Pltf.'s facial symptoms were temporary or related to other psychiatric problems. No offer; demand: \$900,000.

VI/7-71 MEDICAL MALPRACTICE - ORTHOPEDIC SURGERY TO CORRECT FINGER
MALFORMATION - POOR RESULT - DEFENSE VERDICT

Chin v. Reed 84 Civ 7116 Verdict 5/15/87 Judge Robert L. Carter, Southern District

VERDICT: Defense verdict.

Pltf. Atty: J. Austin Brown of Harley & Brown, Manhattan
Def. Atty: Paul A. **Krez**, Manhattan

Facts: Pltf., age 43, underwent surgery to correct a Boutonniere deformity of the left middle finger. The deformity had existed for 24 years. Deft. performed a reconstruction of the PIP joint with correction of the deformity with a modified Littler repair and plication of the central tendon.

Pltf. claimed that after the operation, she developed a 25° radical deviation of the PIP joint with decreased range of motion and pain. Pltf. also contended that a fusion of the PIP joint would be needed to derotate and correct the angulation. Deft. argued that the procedure was proper and that there were no signs of infection or neurovascular problems. Injuries: 25° radical deviation of PIP joint with range of motion of 0 to 15°; malrotation of 45°. No offer; demand: \$10,000,000

VII/21-9 MEDICAL MALPRACTICE - FAILURE TO DIAGNOSE SKULL FRACTURE -
WRONGFUL DEATH

James Jones, Adm. of the Est. of Philip Jones v. NYCHHC 23830/78 Verdict 5/1/89 Judge Leonard Scholnick, Kings Supreme

VERDICT: Defense verdict (6/0). Co-Def. Catholic Medical Center of Brooklyn and Queens, Inc. settled before trial for \$20,000.

Pltf. Atty: Robert Wood of Dinkes, Mandell, Dinkes & Morelli, Manhattan
Def. Atty: Paul A. **Krez**, Manhattan

Facts: Decedent was age 23 when he died on 10/10/77. He had a history of seizure disorders since childhood. On 10/4/77, he suffered a grand mal seizure and fell unconscious on a public sidewalk in Brooklyn. He was taken by ambulance to Kings County Hospital and released that evening. The record indicated that X-rays were taken and reported as negative, but the hospital was unable to find the X-rays at the time of trial and a missing document charge was given to the jury. Decedent's mother testified that decedent was drowsy, unable to walk steadily, and had a severe headache at the time of his discharge from the hospital. Medical records showed that decedent could not stay awake during his examination.

Decedent returned to Def.'s emergency room the next day complaining of a severe headache. Pltf. claimed that Def. gave decedent a perfunctory examination and discharged him with directions to take Tylenol. A neurologist was not consulted. On 10/7/77, decedent, who was comatose, was brought to St. Mary's Hospital (Catholic Medical Center of Brooklyn & Queens, Inc., settled before trial for \$20,000). He died 36 hours later without regaining consciousness. An autopsy revealed that he had a skull fracture with an epidural hematoma and massive infarction and swelling of the brain.

Pltf. claimed that Def. was negligent for improperly diagnosing and treating decedent's head injury. Def. contended that CAT scans were not available at its hospital at that time and that the skull fracture was so small that it would not appear on an X-ray. Def. also argued that even if the correct diagnosis was made, decedent's brain injury was so serious that it would not have changed the outcome.

XVI/32-16 MEDICAL MALPRACTICE PRESCRIPTION OF NON-STEROIDAL ANTI-INFLAMMATORY DRUG TO ELDERLY WOMAN WITH RENAL AND HEART CONDITIONS
GASTROINTESTINAL BLEED DEFENSE VERDICT

Edward Falvey, as Adm. of the Est. of Dorothy Falvey v. Gianni Persich and Aron Palkhiwala 1299/95
6-day trial Queens Supreme

Judge: Herbert A. Posner

Verdict: Defense verdict for both Defts. (6/0).

Pltf. Atty: Michael Morris of Finz & Finz, Manhattan

Def. Atty: Edwin H. **Knauer**, for Persich

John Barker of Ellenberg & Hutson, L.L.P., Manhattan, for Palkhiwala

Facts: On 12/6/93, Pltf.'s decedent, a 77-year-old retired homemaker, presented to Def. Dr. Palkhiwala, her treating cardiologist, with complaints of a painful right heel. Def. referred decedent to Def. Dr. Persich, a podiatrist. Dr. Persich diagnosed plantar fasciitis/heel spur syndrome, and recommended either a local steroidal injection or physical therapy. Decedent refused both recommendations, and Dr. Persich then recommended Daypro, a non-steroidal anti-inflammatory drug (NSAID). Dr. Persich did not have any prescription pads available, so he asked Dr. Palkhiwala to write the prescription, which he did. Ten days later, decedent suffered a major gastrointestinal bleed, and required the removal of 80% of her stomach. She died before trial, and there was no claim for wrongful death.

Pltf. contended that the prescription of Daypro was contraindicated for this patient because of her age, renal status, and heart condition. Defts. argued that Daypro, like other NSAIDs, is routinely prescribed for elderly patients in the same physical condition as Pltf.'s decedent was at the time. They contended that gastrointestinal bleeding is a known risk, albeit rare, which was explained to decedent. They also argued that Pltf.'s renal lab results were in the normal range, and that decedent suffered from urinary incontinence only. Defts.' expert testified that urinary incontinence is not a renal condition. Offer: \$150,000; demand: \$675, 000; amount asked of jury: \$1,300,000. Jury deliberation: 2 hours

MEDICAL MALPRACTICE - DELAY IN ADMISSION FOR DIABETIC WITH
CELLULITIS - DEFENSE VERDICT

Guisepppe and Maria Micali v. Dr. Franklyn Maroni and Dr. Nicholas Camarinos 2-week
trial Judge Joan Marie Durante, Queens Supreme

VERDICT: Defense verdict for Maroni (6/0). Deft. Camarinos was discontinued
prior to trial. Jury: 4 male, 2 female.

Pltf. Atty: Bruce Clark of Kramer, Dillof, Tessel, Duffy & Moore, Manhattan
Deft. Atty: Michael Flomenhaft of Morris & Duffy, Manhattan, for Maroni
Paul A. **Krez** of Kanterman, Taub & Treitner, Manhattan, for Camarinos

Facts: Pltf., age 59 at the time, alleged medical malpractice due to a delay in
hospitalization which resulted in the amputation of his leg due to cellulitis infection. Pltf.
had been diabetic when he sought treatment from Deft. Maroni, his family general
practitioner.

Pltf. claimed that Deft. advised waiting one week before deciding on hospitalization.
The following day, Pltf. visited Deft. Camarinos, a podiatrist, who recommended
hospitalization. Two days later, Pltf. went back to Deft. Maroni and was subsequently
hospitalized.

A missing witness charge was given because Deft. Maroni was unable to attend the
trial. Deft.'s request to provide an explanation was denied. Deft. attacked Pltf.'s
credibility and argued that Pltf. had rejected repeated requests to be hospitalized by the
Defts. A witness also testified that Pltf. admitted he lost his leg because he didn't listen to
the doctor. Deft. also contended that Pltf. had badly mismanaged his diabetes, increasing
the chances for an infection. Pltf. was retired when the events occurred. Injuries: below-
knee amputation. Note: Prior to trial, the parties entered into a high/low agreement of
\$150,000/\$450,000. Offer: \$200,000; demand: \$325,000; amount asked of jury:
\$750,000. Pltf. Expert: Dr. Martin Surks, endocrinologist, Bronx. Deft. Expert: Dr. John
Riccardi, vascular surgeon, Queens.