

CALIFORNIA

LOS ANGELES COUNTY

MEDICAL MALPRACTICE

Negligent Injection — Medical Malpractice — Negligent Treatment — Medical Malpractice — Informed Consent

Negligent injection caused paralysis, patient claimed

Mixed Verdict \$7,978,185

Case Michael Markow and Francie Markow v. Howard L. Rosner M.D., Nirmala Thejomurthy M.D., Cedars-Sinai Medical Center, The Pain Center, and Does 1 through 100, No. BC476993

Court Superior Court of Los Angeles County, Los Angeles

Judge Elizabeth R. Feffer

Date 5/5/2014

Plaintiff

Attorney(s)

Arnie E. Goldstein, Goldstein, Gurbuz & Robertson, Encino, CA (Michael Markow)

Howard A. Kapp, Law Offices of Howard A. Kapp, Los Angeles, CA (Francie Markow)

Joy Robertson, Goldstein, Gurbuz & Robertson, Encino, CA (Michael Markow)

Defense

Attorney(s)

Raymond R. Moore, Moore McLennan, LLP, Glendale, CA (Howard Rosner M.D., Nirmala Thejomurthy M.D.)

Robert C. Reback, Reback, McAndrews, Kjar, Warford, Stockalper & Moore LLP, Manhattan Beach, CA (Cedars-Sinai Medical Center, The Pain Center)

Facts & Allegations

On Nov. 11, 2010, plaintiff Michael Markow, 64, a retiree, presented to The Pain Center at Cedars-Sinai Medical Center in Los Angeles for pain management with Dr. Howard Rosner, an anesthesiologist/pain management specialist. Markow had been treating with Rosner since 2006 due to severe neck pain. On the date in question, Rosner administered a total of four bilateral facet joint and selective nerve block injections at the C1-2 level. Rosner was accompanied by Dr. Nirmala Thejmurthy, who was serving as the procedural anesthesiologist at the time of the injections.

Markow claimed that upon awaking from the procedure, he experienced horrific facial pain, for which he was prescribed pain medication. He alleged he remained bedridden for the next few days, with increasing pain in his neck and throat, and then saw five physicians, including Rosner, regarding his symptoms.

On Nov. 20, 2010, Markow was taken to the emergency room at Cedars-Sinai Medical Center with developing neurological conditions. He was ultimately diagnosed with quadriplegia, secondary to a cervical spine infarction at the C2 level.

Markow sued Rosner, Thejmurthy and the operator of The Pain Center, Cedars-Sinai Medical Center. Markow alleged that the defendants failed to obtain his informed consent, and were negligent in his treatment and injections, causing the cervical spine infarction that progressed to quadriplegia. He further alleged that the defendants' actions constituted medical malpractice.

Markow's counsel contended that Rosner failed to obtain Markow's informed consent to perform the dangerous, high-risk injections. Counsel also contended that Rosner injected Markow with Omnipaque -- an iodine-based contrast material -- despite Markow's well-documented allergy to the substance. Counsel further contended that Rosner's pre-procedure orders and the post-procedure billing indicated that Rosner requested, and Cedars-Sinai billed for, Omnipaque. Alternatively, Markow's counsel argued that Rosner misplaced a needle during the procedure, causing a vasospasm to develop over the next nine days and ultimately manifesting into Markow's deteriorating neurological condition.

Markow's counsel contended that Thejmurthy and the nursing staff had had a duty to stop the administration of Omnipaque and that they should have prevented the injections during the pre-procedure "timeout." Thus, counsel argued that both doctors' negligent treatment did not meet the standard of care.

Defense counsel argued that the injections were performed appropriately, that the procedure was within the standard of care, and that Omnipaque was not used in any of the injections. Rosner testified that he instead used Gadolinium, a non-iodine-based contrast, which was dictated in his procedure note. Thus, defense counsel contended that had Markow's reaction to the injections been allergy/trauma based, it would have been both immediate and catastrophic.

Defense counsel argued that Markow's quadriplegia was totally unrelated to the subject procedure/injections. They contended that Markow suffered an evolving cervical spine infarction at some point after the procedure, as Markow had multiple risk factors for a stroke, including experiencing at least one prior stroke.

Cedars-Sinai claimed that both Rosner and Thejomurthy were independent contractors, immunizing the entity from any liability based on agency. It also claimed that Markow signed over 20 documents in which he acknowledged that the doctors were not agents or employee of the medical center.

In response, Markow's counsel argued that an ostensible agency existed between Cedars-Sinai and Rosner, and held that they were jointly and severally liable. Markow's counsel also presented evidence in dispute of the medical center's claim that Rosner was an independent contractor in that the hospital's Web site listed Rosner as the "Medical Director of the Pain Center at Cedars-Sinai Medical Center."

Injuries/Damages

loss of consortium; infarction; cervical disc injury; neuralgia; nerve damage, trigeminal nerve; swelling; quadriplegia; catheterization; vasospasm

Markow suffered a cervical spine infarction at the C2 level, which ultimately rendered him an incomplete C2 quadriplegic with some limited movement in his lower, right arm. He is now confined to a wheelchair and requires 24-hour care, of which he currently receives daytime care from a caregiver and full-time care from his wife, Francine Markow.

Mr. Markow claimed that despite his pre-existing neck condition, he was a very active person before the subject procedure, as he enjoyed working out and engaging in other physical activity. Mrs. Markow claimed her life is now drastically changed, as she devotes almost all of her time caring for her husband.

Thus, Mr. Markow sought recovery of \$176,201.29 in past economic damages, \$1.5 million for future hospitalizations, and \$3.9 million for other future medical expenses/life care plan. He also sought recovery of \$2 million in damages for his past pain and suffering, and \$1 million in damages for his future pain and suffering. In addition, Mrs. Markow sought recovery of \$1.5 million in damages for her loss of consortium.

Defense counsel argued that Mr. Markow's quadriplegia was totally unrelated to the subject procedure/injections and that the cervical spine infarction occurred at some point after the procedure, as Mr. Markow was at risk for a stroke. Counsel also argued that the plaintiffs' life care planner grossly overstated Mr. Markow's future medical costs.

Defense counsel ultimately did not present testimony from their expert physiatrist, life care planner, or economist.

Result

The jury found that Thejomurthy was not negligent and rendered a defense verdict in regards to the claims against Thejomurthy. It also found that Cedars-Sinai was negligent, but that its negligence was not a substantial factor in causing the plaintiffs' injuries and damages. However, the jury found that Rosner was negligent and it unanimously found that Rosner was an agent of Cedars-Sinai. Thus, the jury determined that Rosner was 60 percent at fault and that Cedars-Sinai was 40 percent at fault. It also determined that the Markows' damages totaled \$7,978,185.44.

Plaintiff(s)

Francine Markow

Michael Markow

Demand \$3 million (C.C.P. § 998) to Cedars-Sinai; \$1 million policy limits (C.C.P. § 998) to each Rosner; and Thejomurthy

Offer Waiver of costs

Insurer(s)

self-insured Cedars-Sinai Medical Center

The Doctors Co. for Howard Rosner M.D.

Trial Details

Trial Length: 21 Days

Jury Deliberations: 2.5 Days

Jury Poll: None reported

Jury Composition: 6 male, 6 female

Plaintiff

Expert(s)

David T. Fractor, Ph.D., economics, Pasadena, CA (Arnie E. Goldstein, Howard A. Kapp, Joy Robertson)

David P. Goldstein, M.D., anesthesiology, Farmington, NM (Arnie E. Goldstein, Howard A. Kapp, Joy Robertson)

Thomas L. Hedge, Jr., M.D., physical medicine, Northridge, CA (Arnie E. Goldstein, Howard A. Kapp, Joy Robertson)

Arthur P. Kowell, M.D., Ph.D., neurology, Encino, CA (Arnie E. Goldstein, Howard A. Kapp, Joy Robertson)

Tricia West, R.N., BSN, life care planning, Agoura Hills, CA (Arnie E. Goldstein, Howard A. Kapp, Joy Robertson)

Defense

Expert(s)

Mark S. Wallace, M.D., anesthesiology, La Jolla, CA (Raymond R. Moore, Robert C. Reback)

Andrew H. Woo, M.D., neurology, Santa Monica, CA (Raymond R. Moore, Robert C. Reback)

Post-Trial

Counsel for Rosner and Cedars-Sinai are likely to file post-trial motions. Counsel for Cedars-Sinai claimed one of the motions will argue an inconsistency in the verdict as to fault apportionment, as the jury found Cedars-Sinai was not at fault.

Editor's Note

This report is based on information that was provided by plaintiffs' and defense counsel.

Plaintiff(s)

Demographics

Francine Markow

Age: None reported

Occupation: None reported

Gender: Female

Married: Yes

Children: Yes

Children Description: None reported

Michael Markow

Age: 64 Years

Occupation: retiree

Gender: Male

Married: Yes

Children: Yes

Children Description: injured party

Written By –Dan Israeli