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Verdicts & Settlement

MEDICAL MALPRACTICE

Hypoxia Blamed on Pursuit of Phantom Cancer

Mixed Verdict: \$7 million

Capwell v. Guneratne, No. 14832/02

Court: Westchester Supreme, Justice Nicholas Colabella, Dec. 12, 2008

Plaintiff Attorney: Judy Livingston of Kramer, Dillof, Livingston & Moore in Manhattan

Defense Attorneys: J. Peter Collins of Feldman, Kleidman & Coffey in Fishkill (for Arif M. Muslim, M.D., P.C., Arif Muslim, Eileen Bogursky, Mid Valley Oncology Hematology, P.C., St. Luke's Hospital, Umangi Patel, Umangi Patel Oncology, P.C., Women's Medical Care of Hudson Valley, P.C.); Carl A. Formicola of Kanterman, O'Leary & Soscia in Manhattan (for Westchester County Healthcare Corp.); none reported for Franklin Guneratne

Facts & Allegations: In August 2000, plaintiff's decedent, Theresa Capwell, 33, a homemaker, presented to Dr. Arif Muslim at St. Luke's Hospital in Newburgh. She reported she suffered severe pain from her abdomen. Muslim opined that Capwell's symptoms could have been a product of pancreatitis, or inflammation of the pancreas. He also opined that Capwell was suffering residual ascites, a bloated condition caused by the peritoneal cavity's retention of fluid.

Capwell's symptoms persisted. In September, she was admitted to the hospital, and doctors opined that she may have been suffering ovarian cancer, and they also believed that the disease could have metastasized to her liver and lungs. Capwell was evaluated by one of the hospital's obstetrician/gynecologists, Dr. Eileen Bogursky, and an oncologist, Dr. Umangi Patel. Bogursky determined that Capwell had to undergo further evaluation and tests that necessitated a transfer to another facility. After several diagnostic tests, doctors believed a cytological study produced evidence of malignancy, but a biopsy did not provide evidence of malignant tissue.

On Sept. 23, 2000, Capwell suffered respiratory distress due to a collapsed lung. Her condition worsened, so she was attached to a ventilator. On Oct. 3, 2000, she underwent a CT scan, but the test's results did not lead to any improvement of her condition. During the ensuing day, she suffered cardiorespiratory arrest that produced hypoxia that affected her entire brain. As a result, Capwell's existence became vegetative, and she died on Sept. 10, 2001.

Capwell's widower, Scott Capwell, acting individually and as administrator of his wife's estate, sued Muslim; Muslim's practice, Arif M. Muslim, MD, P.C.; St. Luke's Hospital; Westchester Medical Center's operator, Westchester County Healthcare Corp.; his wife's treating internist, Dr. Franklin Guneratne;

Bogursky; Bogursky's corporate affiliate, Women's Medical Care of Hudson Valley, P.C.; Patel; and Patel's corporate affiliates, Mid Valley Oncology Hematology, P.C. and Umangi Patel Oncology, P.C. The plaintiffs alleged the doctors and Westchester Medical Center's staff failed to diagnose and treat Ms. Capwell's pancreatitis, that Westchester Medical Center's staff failed to properly address Capwell's respiratory ailment, and that the failures constituted malpractice. The plaintiffs further alleged that Muslim's practice and St. Luke's Hospital were vicariously liable for Muslim's actions, that Women's Medical Care of Hudson Valley was vicariously liable for Bogursky's actions, and that Mid Valley Oncology Hematology and Umangi Patel Oncology were vicariously liable for Patel's actions.

Plaintiffs' counsel ultimately discontinued the claims against Guneratne. The matter proceeded to a trial against the remaining defendants.

Among other things, plaintiffs' counsel claimed that Capwell's pancreatitis progressed while her doctors erroneously pursued cancer that was not present. She contended that the doctors disregarded tests results that revealed that Capwell's blood did not contain an abnormal concentration of carcinoembryonic antigen, which is a protein that is typically found in the blood of people who suffer ovarian cancer and other types of cancer.

Bogursky, Muslim, Patel and St. Luke's Hospital's counsel contended that Capwell's doctors appropriately believed that Capwell was suffering cancer that could have spread to her liver, lungs and pancreas. They claimed the belief was supported by Capwell's symptoms and the results of a CT scan. They also claimed they treated Capwell's pancreatitis.

Likewise, Westchester County Healthcare's counsel contended, among other things, that Westchester Medical Center's staff justifiably believed that Capwell was suffering cancer, and he also contended that the staff provided treatment of Capwell's pancreatitis.

Injuries/Damages: Brain damage; death; hypoxia; pancreatitis; pneumothorax; respiratory arrest.

Result: The jury rendered a mixed verdict. It found that Westchester Medical Center's staff departed from accepted standards of medical care. Thus, Westchester County Healthcare was liable for the plaintiffs' damages. The remaining defendants were not assigned liability. The jury determined the estate's damages totaled \$7 million, but it did not award damages for wrongful death. Westchester County Healthcare's counsel has moved for dismissal.

MOTOR VEHICLE

Woman Lost Leg After Being Hit by Bus

Settlement: \$8 million

Caradonna v. Coach Leasing Inc., No. 100162/06