



Lawsuit: Improper back surgery left plaintiff paralyzed

Type: Verdict-Plaintiff

Amount: \$7,625,000

Actual Award: \$4,000,000

State: Ohio

Venue: Cuyahoga County

Court: Cuyahoga County Court of Common Pleas, OH

Injury Type(s):

- *other* - infection; physical therapy
- *epidermis* - numbness
- *paralysis/quadriplegia* - paralysis; paraplegia

Case Type:

- *Medical Malpractice* - Hospital; Neurosurgery; Foreign Object; Surgical Error; Failure to Test; Unnecessary Procedure; Failure to Communicate

Case Name: Eloise L. Hance and William Hance v. Cleveland Clinic, No. CV-20-929034

Date: June 06, 2023

Plaintiff(s):

- William Hance, (, 0 Years)
- Eloise L. Hance, (Female, 68 Years)

Plaintiff Attorney(s):

- Charles I. Kampinski; Kampinski & Roberts, LPA; Cleveland OH for William Hance,, Eloise L. Hance
- Kristin Roberts; Kampinski & Roberts, LPA; Cleveland OH for William Hance,, Eloise L. Hance

Plaintiff Expert(s):

- John F. Burke Jr., Ph.D.; Economics; Cleveland, OH called by: Charles I. Kampinski, Kristin Roberts
- Aaron G. Filler M.D.; Neurosurgery; Santa Monica, CA called by: Charles I. Kampinski, Kristin Roberts
- David H. Berns M.D.; Neuroradiology; Beachwood, OH called by: Charles I. Kampinski, Kristin Roberts
- Richard P. Bonfiglio M.D.; Physical Medicine; Export, PA called by: Charles I. Kampinski, Kristin Roberts
- Marianne Boeing R.N.; Life Care Planning; Chagrin Falls, OH called by: Charles I. Kampinski, Kristin Roberts

Defendant(s):

- Cleveland Clinic

Defense Attorney(s):

- William A. Meadows; Reminger Co., LPA; Cleveland, OH for Cleveland Clinic
- Brian T. Gannon; Reminger Co., LPA; Cleveland, OH for Cleveland Clinic

Defendant Expert(s):

- E. Antonio Chiocca M.D., Ph.D.; Neurosurgery; Boston, MA called by: for William A. Meadows, Brian T. Gannon

Facts:

On Oct. 3, 2018, plaintiff Eloise Hance, 68, retired, underwent a procedure to implant a shunt. The shunt connected the subarachnoid space to a syrinx, which is a fluid-filled cyst in the spinal cord. A neurosurgeon employed by Cleveland Clinic performed the procedure, which was supposed to drain the syrinx.

Hance woke up from the surgery with severe pain and no sensation below her chest. While the neurosurgeon attempted the same shunt procedure on Feb. 15, 2019, Hance remained paralyzed and is now a paraplegic.

Hance sued Cleveland Clinic. Hance alleged that the surgeon and a resident were negligent during the October 2018 and February 2019 surgeries, and that Cleveland Clinic was vicariously liable for its employees' actions.

Plaintiff's counsel retained a neurosurgery expert who opined that the October 2018 surgery was inappropriate because Hance suffers from arachnoiditis, an inflammatory condition that affects the flow of cerebral spinal fluid. Counsel argued that, because Hance has this condition, the October 2018 procedure simply directed the fluid from the syrinx back into the subarachnoid space instead of sending the fluid to a separate body cavity.

Plaintiff's counsel further contended that post-operative studies showed a mass pressing against the spinal cord. Plaintiff's counsel argued that the mass was a gelatin surgical sponge. Plaintiff's counsel claimed that the surgical team negligently failed to remove the sponge before closing up the surgical incision, which is what caused the paralysis.

Plaintiff's counsel also argued that, once the supposed mass started compressing the

spinal cord, doctors only had a limited window to address the mass before it caused permanent paralysis. The neurosurgery expert testified that the treating neurosurgeon should have ordered an immediate MRI after the October 2018 procedure to determine the source of Hance's paralysis. Plaintiff's counsel argued that doctors could have then removed the mass before the paralysis became permanent, but no MRI was performed. After the October 2018 procedure, the resident in question wrote a note in the medical chart directing the staff to hold off on a post-surgical MRI. The neurosurgeon agreed with this direction, and no procedures were done to find or address a mass.

It was undisputed that Hance's paralysis was already permanent by the time the treating neurosurgeon performed the February 2019 surgery, which counsel argued was unnecessary. Per plaintiff's counsel, an MRI taken after the February 2019 procedure showed that 50 percent of the mass was gone, yet there was nothing in the operative report about a mass being removed. Plaintiff's counsel contended that the surgeon secretly removed a portion of the sponge during the February 2019 procedure in order to hide the fact that it had been previously left in the patient's spine.

Plaintiff's counsel further maintained that the neurosurgeon did not properly inform Hance of the risks of the October 2018 and February 2019 procedures. Hance said that the surgeon specifically told her the first surgery had a 95 percent chance of making her better, and a five percent chance of keeping her condition the same.

The neurosurgeon who performed the two procedures maintained that the shunt he used was reasonable. He also said that the October 2018 surgery involved an incision into the spinal cord. The defense argued that this incision explained Hance's post-operative symptoms and justified the plan to hold off on an MRI. Defense counsel also noted that Hance's motor strength improved after the procedure.

The defense further argued that a second syrinx had formed in Hance's spine after the October 2018 surgery, necessitating the February 2019 procedure. Plaintiff's counsel retained a neuroradiologist who disputed this argument. The neuroradiology expert opined that Hance only had one syrinx. Therefore, plaintiff's counsel argued, there was no need for the February 2019 surgery.

The defense's neurosurgery expert agreed that both surgeries were appropriate. The expert also claimed that the hospital was right to not perform an MRI, which would have put Hance at risk of further injury if she fell off the gurney. Defense counsel also noted that it would have been hard for doctors to monitor Hance's vitals during an MRI.

The hospital employees additionally denied leaving a sponge in the spinal cord or removing it during the February 2019 surgery. Defense counsel maintained that no mass or significant spinal cord compression was ever diagnosed. Instead, the defense argued, the imaging studies after the October 2018 surgery showed expected post-operative fluid. The treating surgeon also denied telling Hance that the first surgery had a 95 percent chance of success and a five percent chance of keeping her condition the same.

Injury:

Hance woke up from the October 2018 surgery paralyzed and in pain. She remained in the hospital for about a week and then had 10 days of inpatient rehabilitation before being sent home.

Hance is a paraplegic and confined to a wheelchair. She claimed that she lost more function and experienced more pain after the February 2019 surgery. She remained hospitalized for a few days after that surgery.

A few months later, Hance had a pain pump implanted in her stomach. She later received a spinal cord stimulator, as well. However, both of these devices led to infections and had to be removed. At least one of these infections necessitated another hospital stay.

Hance takes multiple medications every few hours to deal with her continued pain. Her counsel presented a life-care plan that included round-the-clock care, along with additional medications, equipment, doctors' appointments and spinal surgeries.

Hance noted that she was quite active prior to the October 2018 surgery. She said she used to enjoy swimming, horseback riding, biking, kayaking and hiking, but is no longer able to participate in these activities.

Hance sought recovery of past and future medical expenses and past and future noneconomic damages. Her husband filed a derivative claim.

Hance also sought punitive damages. Her counsel argued that the failure to obtain an MRI showed a conscious disregard for Hance's rights and safety.

The defense questioned whether any negligence by the hospital staff caused Hance's paralysis. Defense counsel contended that paralysis was a known complication of the shunt procedure and that an MRI or earlier intervention could not have reversed the paralysis.

The defense also disputed the contents of Hance's life-care plan. Defense counsel argued that some of the items in the plan were too expensive or not necessary.

Result:

The jury determined that an employee of the Cleveland Clinic deviated from the standard of care in treating Hance. The jury specifically concluded that the employees were negligent in performing the wrong procedure and failing to obtain an MRI, which caused injury to Hance. The jury also determined that the injury was permanent. However, the jury concluded that the neurosurgeon did not fail to discuss the material risks and dangers associated with the October 2018 and February 2019 procedures. The jury also did not conclude that a foreign object was left in Hance's spine.

The jury awarded \$6.625 million to Eloise Hance and \$1 million to her husband, William Hance. The jury declined to award punitive damages. The jury specifically determined that Cleveland Clinic did not demonstrate actual malice.

The award to Eloise Hance included \$3 million in economic damages and \$3.625 million in noneconomic damages. Pursuant to a statutory cap, the noneconomic damages awards were reduced to \$500,000 per plaintiff. This lowered the total award for the plaintiffs to \$4 million.

Eloise Hance

\$ 3,000,000 economic loss

\$ 3,625,000 non-economic loss

\$ 6,625,000 Plaintiff's Total Award

William Hance

\$ 300,000 Past Loss of Consortium

\$ 700,000 Future Loss of Consortium

\$ 1,000,000 Plaintiff's Total Award

Trial Information:

Judge: Emily Hagan

Trial Length: 2 weeks

**Trial
Deliberations:** 1.5 days

Jury Vote: 7-1 on permanent injury; 6-2 on all other questions

**Jury
Composition:** 6 male, 2 female

**Editor's
Comment:** This report is based on information that was provided by plaintiffs' and defense counsel.
Additional information was gleaned from court documents.

Writer msiegel2

Pedestrian v. Trash Truck: Homeless Man Hit by Trash Truck

Type: Settlement

Amount: \$1,150,000

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Central, CA

Case Type:

- *Motor Vehicle*

Case Name: Joseph Evans v. Waste Management, No. BC 177 287

Date: November 04, 1999

Plaintiff(s):

- Joseph Evans (Male, 43 Years)

**Plaintiff
Attorney(s):**

**Plaintiff Expert
(s):**

- Bob Wilson; Trucks; Whittier, CA called by:
- Gene Bruno; Physical Rehabilitation; Los Angeles, CA called by:
- Edwin Amos; Neurology; Santa Monica, CA called by:
- Arthur Kreitenberg; Orthopedic Surgery; Los Angeles, CA called by:
- Edward Carden; Pain Management; Inglewood, CA called by:
- Ronald Siegel; Pharmacy; Thousand Oaks, CA called by:
- Jeffrey Barenly; Podiatry; Los Angeles, CA called by:
- Raymond G. Schultz; Economics; Los Angeles, CA called by:
- Mortimore Moore Ph.D.; Accident Reconstruction; Wrightwood, CA called by:

Defendant(s):

- Waste Management

**Defendant
Expert(s):**

- Aaron Filler M.D.; PhD; Neurosurgery; Los Angeles, CA called by: for
- Chris Money; Economics; Garden Grove, CA called by: for
- Edward L. Garr M.D.; Orthopedic Surgery; Orange, CA called by: for
- Edward Workman; Physical Rehabilitation; San Clemente, CA called by: for
- Martin Breen; Criminology; Santa Ana, CA called by: for
- William M. Otto; Accident Reconstruction; Yorba Linda, CA called by: for

Insurers:

- self-insured (\$5 million)

Facts:

Plaintiff, a 43-year-old entrepreneurial recycler and homeless man, had been homeless for 8 years. He was hit by a trash truck while sleeping in an alley. Plaintiff had lived in the alley for a number of years and had just returned after being released on parole.

Contentions:

Plaintiff claimed he was sleeping in the alley way behind a shopping cart, but was visible to Waste Management front loader driver who struck him.

Defendant argued Plaintiff was struck by someone else. Even if he was hit by their truck, he was 100% negligent. He was under the influence of cocaine and negligent per se.

Injury:

Injuries: Degloving injury to both feet, primary injury on left foot, neuropathic pain and osteomyelitis.

Medical Costs: \$440,000 past, \$800,000 future.

Result:**Negotiations:**

1st Offer: \$550,000

1st Demand: \$1,950,000

Settlement: \$1,150,000

Trial Information:**Judge:**

Gregory C. O'Brien

Trial Length:

0

**Trial
Deliberations:**

0

Writer

BBENJAMI

Plaintiff claimed severe neck injuries in rear-end accident

Type: Mediated Settlement

Amount: \$1,100,000

State: California

Venue: Orange County

Court: Superior Court of Orange County, Santa Ana, CA

Injury Type(s):

- *neck* - herniated disc, cervical; herniated disc at C4-5; herniated disc, cervical; herniated disc at C5-6
- *other* - ablation; acupuncture; arthrodesis; scalenectomy; physical therapy
- *neurological* - thoracic outlet syndrome
- *surgeries/treatment* - laminectomy

Case Type:

- *Motor Vehicle* - Rear-ender; Intersection

Case Name: Angela Cozza v. Robert Farris, No. 30-2008-00106052

Date: July 17, 2009

Plaintiff(s):

- Angela Cozza (Female, 27 Years)

Plaintiff Attorney(s):

- Mark J. Meyers; Law Offices of Mark J. Meyers; Huntington Beach CA for Angela Cozza
- Mark W. Burnett; Law Offices of Mark J. Meyers; Huntington Beach CA for Angela Cozza

Plaintiff Expert (s):

- Aaron Filler M.D., Ph.D.; Neurosurgery; Santa Monica, CA called by: Mark J. Meyers, Mark W. Burnett
- Sylvain Palmer M.D.; Neurosurgery; Mission Viejo, CA called by: Mark J. Meyers, Mark W. Burnett
- Terrance B. Dinneen; Vocational Rehabilitation; Reno, NV called by: Mark J. Meyers, Mark W. Burnett

Defendant(s):

- Robin Farris

Defense Attorney(s):

- Andrew W. Salmond; Beam, Brobeck, West, Borges & Rosa LLP; Long Beach, CA for Robin Farris
- David J Brobeck Jr.; Beam, Brobeck, West, Borges & Rosa LLP; Santa Ana, CA for Robin Farris

Insurers:

- Mercury Insurance Co. (primary)
- Scottsdale Insurance Co. (excess)

Facts:

On March 30, 2007, plaintiff Angela Cozza, 27, a registered nurse, was rear-ended by a vehicle driven by Robin Farris while stopped in her vehicle on Antonio Parkway at the intersection of Bienvenidos in Rancho Santa Margarita.

Cozza sued Farris, alleging that she was fully stopped at the intersection, waiting for the light to turn green when she was hit.

Farris conceded liability.

Injury:

Cozza sustained a herniated disc at C4-5 and C5-6. She was taken by ambulance to a hospital, complaining of pain in her neck. She underwent a right C5 laminectomy, a surgery to relieve pressure on the spinal cord or spinal nerve by widening the spinal canal. She also underwent arthrodesis at C4-5 and C5-6, which is the artificial induction of joint ossification between two bones via surgery.

Cozza underwent extensive physical therapy several times a week, which increased pain in her neck. After several months of therapy, Cozza developed thoracic outlet syndrome (greater left than right), radiating into the fourth and fifth digits. She underwent an open MRI-guided approach for percutaneous chemomyolytic ablation of the left anterior and middle scalene muscles with chemoneuroplastic treatment of the left distal brachial plexus, which failed to relieve pain.

Six weeks later, the plaintiff underwent a scalenectomy. She might require additional shoulder or scapular pathology in the future. For an extended period of time, she could not bathe herself, exercise, drive or cook. At filing, she was unable to lift anything weighing more than five pounds and was undergoing acupuncture and pain management.

Cozza returned to work in May 2008 as an infusion oncology nurse with weight and lifting limitations. Since the most recent surgery in August 2009, she has not been able to return to work.

Her medical costs, which were paid by workers' compensation, totaled \$151,294.55. She sought \$88,128 in lost wages and damages for past and future pain and suffering.

Result:

The case settled for \$1.1 million with a waiver of the workers' comp lien.

Trial Information:

Judge: Peter Polos, Martin Handweiler

Editor's Comment: This report is based on information provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

Writer kvbrown

Rear-ender exacerbated man's pre-existing spine injuries

Type: Settlement

Amount: \$1,000,000

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Los Angeles, CA

Injury Type(s):

- *back* - herniated disc, lumbar
- *neck* - cervical disc injury; herniated disc, lumbar

Case Type:

- *Motor Vehicle* - Rear-ender; Intersection

Case Name: John Doe v. Stacy Kolinsky, Holiday Candy Co. Inc., No. LC 073276

Date: September 29, 2006

Plaintiff(s):

- John Doe (Male, 42 Years)

Plaintiff Attorney(s):

- Scott J. Corwin; Law Offices of Scott J. Corwin; Los Angeles CA for John Doe

Plaintiff Expert(s):

- Aaron Filler M.D.; PhD; Neurosurgery; Los Angeles, CA called by: Scott J. Corwin
- Adrian T. Casey M.D.; Neurosurgery; London, CA called by: Scott J. Corwin
- Gerald Sacks M.D.; Pain Management; Santa Monica, CA called by: Scott J. Corwin
- Steven E. Levine M.D.; Neurology; Los Angeles, CA called by: Scott J. Corwin

Defendant(s):

- Stacy Kolinsky
- Holiday Candy Co. Inc.

Defense Attorney(s):

- Christopher M. Sheedy; Calendo, Puckett, Sheedy & DiCorrado; Glendale, CA for Stacy Kolinsky, Holiday Candy Co. Inc.

**Defendant
Expert(s):**

- Perry R. Secor M.D.; Orthopedic Surgery; Long Beach, CA called by: for Christopher M. Sheedy

Facts:

On Dec. 15, 2003, the plaintiff, 42, a corporate lawyer, was driving a sedan southbound on Eilat Street in Woodland Hills. Stacy Kolinsky was driving a van in the same direction in the scope of her employment with Holiday Candy Co., Los Angeles. At the Valerie Street intersection, the plaintiff braked for a stop sign, and was rear-ended by Kolinsky.

Claiming physical injuries, the plaintiff sued Kolinsky and Holiday Candy for motor vehicle negligence.

The defense admitted liability.

Injury:

The plaintiff was in a prior car accident on Aug. 1, 2001 in which he herniated discs in his lumbar and cervical spine, resulting in two surgeries.

In the subject accident, the plaintiff exacerbated his pre-existing cervical and lumbar spine injuries. He also suffered a double crush phenomenon to his sciatic nerve at the piriformis muscle. A cervical spine MRI performed after the accident demonstrated that the plaintiff's cervical spine herniated discs increased in size and in compression of exiting nerve roots at several levels. Post-accident lumbar spine MRIs did not reveal any significant change in the plaintiff's lumbar spine herniated discs that predated the accident. However, the plaintiff had subjective increase in his symptoms following the accident.

The plaintiff underwent cervical spine artificial disc replacement surgery on Feb. 26, 2004. He subsequently underwent lumbar piriformis release surgery on July 8, 2004. Neither his cervical nor lumbar spine condition improved, and he underwent pain management and epidural injections on a monthly basis for almost two years.

The plaintiff demanded \$308,084 in medical specials and \$100,000 in future medical costs for a four-level cervical anterior discectomy and fusion that was scheduled when the case settled.

The plaintiff also made an unspecified demand for pain and suffering.

Defense counsel disputed the nature and extent of the plaintiff's injuries, contending that virtually all the injuries were pre-existing and that all his treatment would have been necessary regardless of the subject accident.

Defense counsel noted that the accident's impact was relatively minor, with no police, paramedics or ER personnel being summoned to the scene. Defense counsel added that the plaintiff, who drove home unassisted, did not seek medical attention until 23 days later, and his car had only cosmetic damage.

Defense counsel contended that the plaintiff was totally and permanently disabled prior to the subject accident, and absent the subject accident, he would never have been able to return to work.

Defense counsel pointed out that, before the subject accident, the plaintiff was involved in several legal proceedings, including a federal court disability claim and a Social Security Administration disability claim, in which he was determined to be totally disabled.

Defense counsel also pointed out that the plaintiff had a pending workers' compensation claim originating from the prior accident.

Defense counsel also contended that the cervical spine artificial disc replacement surgery was experimental and not the appropriate procedure to remedy the plaintiff's claimed cervical spine injuries.

Result:

Two days before the plaintiff's CCP 998 offer was set to expire and about four months before trial was set to begin, the case settled for \$1 million, the limit of Holiday Candy's insurance policy.

Trial Information:

Judge: Bert Glennon Jr.

Demand: \$1 million as per CCP 998

Writer rmackay

Below-the-knee amputee denied consenting to second surgery

Type: Verdict-Plaintiff

Amount: \$1,000,000

State: California

Venue: Orange County

Court: Superior Court of Orange County, Santa Ana, CA

Injury Type(s):

- *other* - piriformis syndrome; chronic pain syndrome

Case Type:

- *Fraud*
- *Medical Malpractice* - Neurosurgeon; Informed Consent; Negligent Treatment

Case Name: Nadine Froesch v. Israel P. Chambi, FACS, and OC Multispecialty Surgery Center, No. 30-2013-00680714-CU-MM-CJC

Date: February 03, 2016

Plaintiff(s):

- Nadine Froesch (Female, 49 Years)

Plaintiff Attorney(s):

- John C. Adams, III; Hunt & Adams; Santa Ana CA for Nadine Froesch
- Thomas D. Rowley; Law Office of Thomas D. Rowley; Laguna Hills CA for Nadine Froesch

Plaintiff Expert(s):

- Chad R. Marquis C.P.O.; Prosthetics; Orange, CA called by: John C. Adams, III, Thomas D. Rowley
- Janos P. Ertl M.D.; Orthopedic Surgery; Indianapolis, IN called by: John C. Adams, III, Thomas D. Rowley
- Nader Pouratian M.D.; Neurosurgery; Los Angeles, CA called by: John C. Adams, III, Thomas D. Rowley
- Patricia A. Ahearn M.D.; Internal Medicine; San Juan Capistrano, CA called by: John C. Adams, III, Thomas D. Rowley

Defendant(s):

- Israel P. Chambi, FACS
- OC Multispecialty Surgery Center

**Defense
Attorney(s):**

- Michael A. Zuk; Herzfeld & Rubin LLP; Los Angeles, CA for Israel P. Chambi, FACS, OC Multispecialty Surgery Center

**Defendant
Expert(s):**

- Aaron G. Filler M.D.; Neurosurgery; Santa Monica, CA called by: for Michael A. Zuk

Facts:

On Oct. 19, 2012, plaintiff Nadine Froesch, 49, underwent a left piriformis release surgery for the relief of severe and debilitating pain in her left buttocks from pressure on the sciatic nerve area. The procedure was performed by Dr. Isreal Chambi, a neurosurgeon. That same day, Froesch also underwent decompression surgery on the left peroneal nerve for the relief of pain radiating into her left residual limb.

Prior to the surgeries, Froesch became a left-sided, below-the-knee amputee due to an automobile accident with a drunken driver when she was 20 years old. Froesch later consulted with Chambi in 1999 due to complaints of severe pain in the right buttocks area that was caused by an impingement on the sciatic nerve by the piriformis muscle in the buttock, a condition known as "piriformis syndrome." To relieve Froesch's pain, Chambi performed right piriformis release surgery, where the piriformis muscle is reduced in size by cutting the muscle away from the area of the impingement on the sciatic nerve. The surgery was ultimately performed without complications, and Froesch's right buttocks pain promptly resolved. However, in 2012, Froesch again experienced the same piriformis syndrome, but this time in her left buttocks area. As a result, she returned to Chambi for a consultation regarding her left buttocks pain on Aug. 28, 2012. During the consultation, surgery was discussed. However, after the subject surgeries on Oct. 19, 2012, Froesch claimed that her pain persisted.

Froesch sued Chambi and the OC Multispecialty Surgery Center.

While the surgery center was named in the complaint, it was never served. Thus, the surgery center was never a defendant in the action.

Froesch claimed the left piriformis release procedure was ineffective and that Chambi was negligent, as her pain persisted post-surgery and she had to undergo a repeat of the left piriformis release surgery at UCLA a year later. She also claimed that she never consented to the second procedure and that Chambi committed medical battery by performing the left peroneal nerve decompression without her consent. In addition, Froesch claimed that Chambi committed fraud by deceiving her and concealing his intent to perform the left peroneal nerve decompression for the purpose of monetary gain.

Froesch testified that during the consultation on Aug. 28, 2012, the visit dealt solely with her having another piriformis release procedure, like the one performed in 1999, but on the left side, and that Chambi did not discuss a peroneal nerve decompression procedure, which involved a small incision on her left residual limb. She also testified that there was no subsequent pre-operative office visit, or pre-op examination, to clear her for the two operative procedures and that she never consented to the second procedure or signed a consent listing both procedures.

Plaintiff's counsel introduced a pre-op note signed by Chambi and dated Oct. 18, 2012, which noted the intended performance of the second procedure, the peroneal nerve decompression. However, Froesch claimed that Chambi had not examined her on Oct. 18, 2012, and that the note was fabricated, as it contained factual errors that referenced tests

and nerve conduction studies performed on her "left foot," when in fact she had no left foot or left lower leg. The report also noted nerve responses and pulses in Froesch's non-existent left foot on Oct. 18, 2012, and failed to mention that Froesch was a below-the-knee amputee, utilizing an artificial left, lower leg and foot. However, plaintiff's counsel contended that when later copies of Chambi's records were requested, his records contained a different pre-op examination of Froesch, again allegedly performed in his offices on Oct. 18, 2012, and that this second report contained major changes from the first, including that Froesch was a below-the-knee amputee and editing out all references to Chambi having conducted and obtained medically impossible nerve responses, pain complaints, pulses, and dorsiflexion of her left foot, all of which were claimed specifically in the original Oct. 18, 2012 pre-op exam report.

In regard to the performance of the peroneal nerve decompression, Froesch testified that upon awakening in the recovery room, she was horrified and shocked to discover that, in addition to an incision on her left buttocks, Chambi had made an incision in the below-the-knee portion of her left residual leg. Froesch claimed that she was stunned and hysterical, repeatedly exclaiming to the nurse, "Why did he cut my leg? Why did he cut my leg?" Plaintiff's counsel noted that the surgical nurse testified that she had responded to Froesch that the incision was made at the place on her left limb that had been marked by Chambi prior to surgery and that Froesch had consented. However, both Froesch and her sister, who accompanied her on the day of surgery, testified that when Chambi returned to the surgery center, he immediately began to apologize for not discussing the additional procedure, which required an incision below the left knee. Froesch explained that her dismay resulted from the fact that she had just completed approximately two years of extensive and painful reconstruction surgery on her left residual limb, a surgery known as the "Ertl procedure," by her treating orthopedic surgeon in order to prepare her residual limb for a permanent, custom-fitted prosthesis that was being fabricated at the time.

In addition, Froesch contended that Chambi had negligently performed the surgical procedures. She claimed that she had previously informed Chambi that she no longer had a left peroneal nerve at the location on her residual limb, as her treating orthopedic surgeon had surgically removed it during the reconstructive surgeries so that the new prosthesis could be worn without nerve pain in the area. The plaintiff's treating neurosurgery expert also testified that Froesch had no sensation in the area enervated by the peroneal nerve. However, plaintiff's counsel noted that Chambi's report on Aug. 28, 2012, thoroughly documented a positive Tinel's sign in the peroneal nerve below the knee, establishing that there was peroneal nerve irritation, which needed surgical attention. Thus, Froesch claimed that Chambi was negligent for not removing the piriformis muscle to relieve the entrapped sciatic nerve. Plaintiff's counsel noted that Chambi's operative report on Oct. 19, 2012, stated that he had resected 85 percent of Froesch's piriformis muscle and thereby relieved its pressure on the sciatic nerve. However, Froesch claimed her left buttocks pain persisted post-surgery and did not improve as it had from her 1999 surgery on her right side. Plaintiff's counsel contended that Froesch was eventually re-evaluated at UCLA in August 2013, during which diagnostic examinations and radiological studies confirmed that Froesch still had left piriformis syndrome. As a result, a repeat left piriformis release surgery was performed by Froesch's treating neurosurgeon at UCLA on Dec. 19, 2013. Plaintiff's counsel contended that it was confirmed during the December 2013 procedure that Froesch's left piriformis muscle was not only still entrapping (compressing) the sciatic nerve, but it was "pristine," totally intact, and with no evidence of having ever been surgically touched, much less 85 percent "resected" or "reduced to scar tissue," as Chambi claimed in his Oct. 19, 2012 operative report.

Chambi testified that the peroneal nerve decompression surgery was discussed with Froesch on Aug. 28, 2012, during his initial consultation with her, and he presented his consultation note for that date, which discussed both procedures. Chambi also presented his chart diagrams, indicating Froesch's pain radiating from the area of the left buttocks to the area of the left residual limb. He also testified that on Oct. 19, 2012, the morning of the surgery, he performed a pre-op exam on Froesch and that he had fully discussed the peroneal nerve decompression procedure with Froesch, and that Froesch consented. To support his testimony, Chambi presented a copy of the surgical center's informed consent form, which was signed by Froesch on Oct. 19, 2012, and which identified both surgical procedures to be performed on that date. However, Chambi admitted that there had not been a pre-op examination or office visit on Oct. 18, 2012. Chambi testified that references to Froesch's left foot in the chart note dated Oct. 18, 2012 were errors and were "an obvious mistake," in that he knew Froesch was a left-sided, below-the-knee amputee because he had performed the earlier surgery in 1999, and that the chart note dated Oct. 18, 2012 was subsequently amended to correct the errors.

In response, Froesch testified that she did not see or talk to Chambi before she was placed under general anesthesia at about 7:30 a.m. on Oct. 19, 2012. She also denied signing the surgery center's surgical consent form for the peroneal nerve decompression. Thus, she claimed that she did not give consent to undergo the peroneal nerve decompression. However, defense counsel noted that Froesch did admit that the signature on the document entered into evidence was hers and that both surgical nurses and the anesthesiologist who all saw Froesch prior to the surgery testified that Froesch was aware of, and consented to, the peroneal nerve decompression surgery.

In regard to Froesch's claims regarding the performance of the surgeries, defense counsel contended that while the surgical nurse did explain to Froesch about the incision made to her leg, the nurse testified that she was with Froesch when Chambi returned to the surgery center and that she did not hear Chambi make any such statement or apology regarding "cutting" into Froesch's left residual limb. Instead, the surgical nurse claimed that Chambi had assured Froesch that he did not cut her peroneal nerve, but had made a small incision to release the scar tissue in the area that was impinging on the nerve.

In regard to the piriformis release surgery, defense counsel offered comparisons of Froesch's pre- and post-operative MRI images of the piriformis muscle, and argued that the MRIs demonstrated a reduction in size of the piriformis muscle subsequent to the piriformis release performed by Chambi on Oct. 19, 2012. The defense's medical experts also opined that the MRI evidence showed that a substantial portion of the piriformis muscle had been removed by Chambi because it was much smaller than the one on the contra lateral side. Thus, defense counsel argued that the only way for the muscle to appear smaller on the MRI was for Chambi's surgery to have been undertaken properly. Defense counsel also noted that the plaintiff's treating neurosurgeon and expert had no explanation for the smaller appearance.

Injury:

Froesch contended that her left buttocks pain persisted after the surgeries performed by Chambi and did not improve as it had from her 1999 surgery on her right side. As a result, she was re-evaluated at UCLA in August 2013, during which diagnostic examinations and radiological studies confirmed that Froesch still had left piriformis syndrome. As a result, a repeat left piriformis release surgery was performed by Froesch's treating neurosurgeon at UCLA on Dec. 19, 2013. During the procedure, the plaintiff's treating neurosurgeon removed 90 to 95 percent of Froesch's allegedly fully intact piriformis muscle and thereupon decompressed the sciatic nerve.

Froesch claimed that after the repeat left piriformis procedure that was performed by her treating neurosurgeon, she had prompt and permanent post-surgical relief of her left piriformis buttock nerve pain. However, she claimed that the prior procedure performed by Chambi that involved a small lateral incision on her residual limb had undermined her long recovery from the prior reconstructive surgeries and forced her to undergo multiple additional surgeries to prepare her residual limb for the prosthesis fittings.

Defense counsel presented excerpts from Froesch's deposition from May 2013, seven months after Chambi's surgery, in which Froesch testified that she continued to have excruciating pain in her left lower limb and that she needed two crutches to walk, and could not wear her prosthesis. Defense counsel also noted that Froesch testified that the severity of the pain at this time, along with her inability to wear her prosthesis, prevented her from being a functional amputee and affected her activities of daily living such as doing laundry, shopping, and pushing a grocery cart. However, defense counsel presented a surveillance video that was taken over a six-hour period on May 18, 2013, which showed Froesch walking unaided with her prosthesis, carrying two bags of trash, one in each hand, and walking up the front steps to her house. The video also showed Froesch walking unaided in her prosthesis while carrying a desktop computer to her truck and loading the computer into the truck. It further showed Froesch walking in her prosthesis with her child and lifting the child into the truck, as well as walking in her prosthesis and pushing a shopping cart with her child into and around a box store and making purchases. In addition, the video showed Froesch attending a children's gymnastic event, walking around the activity area unaided in her prosthesis and taking photos, and thereafter stepping over a wide barrier in the activity area when returning to the spectator's bench.

Result:

The jury found for Froesch on each of her claims. It determined that Froesch's damages totaled \$1 million, including \$200,000 for medical negligence, \$500,000 for medical battery, and \$300,000 for fraud.

Trial Information:**Judge:**

Kirk H. Nakamura

Demand:

\$875,000 (C.C.P. § 998)

Offer:

No consent (C.C.P. § 998)

Trial Length: 9 days

Jury Vote: 10-2 as to medical negligence; 10-2 as to medical battery; 9-3 as to fraud

Post Trial: Defense counsel moved for a new trial, which was heard by Judge Robert Moss. However, Moss denied the motion. As a result, Chambi's counsel filed a notice of appeal on May 16, 2016.

Editor's Comment: This report is based on information that was provided by plaintiff's and defense counsel.

Writer pidiculla

Bicyclist hits parked dump truck waiting to enter project site

Type: Mediated Settlement

Amount: \$450,000

Actual Award: \$450,000

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Torrance, CA

Injury Type(s):

- *arm* - fracture, arm; fracture, ulna; fracture, humerus
- *elbow* - fracture, elbow; fracture, radial head

Case Type:

- *Negligence*
- *Recreation* - Bicycle
- *Motor Vehicle* - Parked Car

Case Name: Steven Meislin v. Javier Villegas, Ugalde Trucking Co., Inc., Jadel Trucking, Keller Builders Inc., Shoring Engineers, KPRS Construction Services Inc. and H.B. Drollinger Co., No. YC046094

Date: June 02, 2004

Plaintiff(s):

- Steven Meislin (Male, 48 Years)

Plaintiff Attorney(s):

- Matthew B.F. Biren; Biren Katzman; Brentwood CA for Steven Meislin
- Marc J. Katzman; Biren Katzman; Brentwood CA for Steven Meislin

**Plaintiff Expert
(s):**

- V. Paul Herbert; Truck Industry Policy & Procedures; Quincy, CA called by: Matthew B.F. Biren, Marc J. Katzman
- Aaron Filler M.D.; PhD; Neurosurgery; Santa Monica, CA called by: Matthew B.F. Biren, Marc J. Katzman
- Jerry R. Ellison; Civil; Los Angeles, CA called by: Matthew B.F. Biren, Marc J. Katzman
- Anthony C. Stein; Ergonomics/Human Factors; La Canada, CA called by: Matthew B.F. Biren, Marc J. Katzman
- William M. Klorman; Construction; El Monte, CA called by: Matthew B.F. Biren, Marc J. Katzman

Defendant(s):

- Jadel Trucking
- Javier Villegas
- Shoring Engineers
- H.B. Drollinger Co.
- Keller Builders Inc.
- Ugalde Trucking Co. Inc.
- KPRS Construction Services Inc.

**Defense
Attorney(s):**

- Guillermo W. Schnaider; Kinkle, Rodiger & Spriggs; Los Angeles, CA for Javier Villegas, Ugalde Trucking Co. Inc., Jadel Trucking
- Richard P. Dieffenbach; Law Offices of Marcus M. Baukol; Los Angeles, CA for Keller Builders Inc., Shoring Engineers, KPRS Construction Services Inc., H.B. Drollinger Co.

**Defendant
Expert(s):**

- John Muse; Accident Reconstruction; Huntington Beach, CA called by: for Guillermo W. Schnaider, Richard P. Dieffenbach
- Edward Workman; Vocational Rehabilitation; San Clemente, CA called by: for Guillermo W. Schnaider, Richard P. Dieffenbach
- Gerald P. Bretting; Accident Reconstruction; El Segundo, CA called by: for Guillermo W. Schnaider, Richard P. Dieffenbach
- Charles A. Samo; Engineering; Pasadena, CA called by: for Guillermo W. Schnaider, Richard P. Dieffenbach
- Chadwick F. Smith; Orthopedic Surgery; Los Angeles, CA called by: for Guillermo W. Schnaider, Richard P. Dieffenbach

Insurers:

- Progressive Insurance Co.
- AIG Insurance Co.

Facts:

On Mar. 15, 2002, plaintiff Steven Meislin, 48, a part-time limousine driver, was riding his bicycle in the bicycle lane on Westchester Parkway in Los Angeles. Subsequently, he collided with a dump truck that was stopped in a no stopping zone, blocking the bike path. The dump truck was one of several that were staging on Westchester, waiting to enter a construction project on the corner of Westchester and Sepulveda Westway.

Meislin sued the hauling contractor who contracted with the excavation subcontractor, Ugalde Trucking, Orange; the sub-hauler, Jadel Trucking (no longer in business), Los Angeles; and the independent contractor working for Jadel who owned the truck that Meislin struck, Javier Villegas, alleging negligence. Meislin also sued the general contractor of the construction project, Keller Builders Inc., San Francisco; the developer of the construction project, H.B. Drollinger Co., Los Angeles; the construction management company, KPRS Construction Services Inc., Brea; and the excavation subcontractor, Shoring Engineers, Santa Fe Springs, alleging negligence.

Meislin contended that the trucking defendants were negligent because the dump truck was illegally blocking the bike path, while in a no stopping zone. Meislin asserted that the construction defendants were liable because they directed the staging operation to occur in a manner where the bike path would be illegally blocked. He also asserted that the construction defendants failed to obtain a permit from the city to block the bicycle lane and failed to utilize appropriate traffic controls that would have alerted oncoming bicycle riders that the lane was blocked ahead.

The defendants contended that the accident was entirely caused by Meislin's lack of attention. They argued that the dump truck, which had its hazard lights on, was clearly visible for more than 300 feet.

Injury:

Meislin sustained a fractured left humerus, a fractured right radial head and ulna, and left partial brachial plexus palsy. The fractures were treated by open reduction and internal fixation with hardware. He claimed past medical specials of \$70,000 and future medical specials of \$50,000 if surgery for the brachial plexus palsy was performed. Meislin also claimed past loss of earnings \$23,000.

Result:

Meislin settled his claim for \$450,000 on the first day of trial with the help of settlement Judge Lois A. Smaltz. The trucking defendants paid \$225,000 and the construction defendants paid \$225,000.

The plaintiff's counsel reported that one of the evidentiary issues involved in this case regarded the admissibility of the Work Area Traffic Control Handbook. Meislin contended that the defendants' failure to use proper traffic controls was based upon guidelines set forth in the handbook. The defendants contended that this handbook was advisory only and not admissible. Meislin responded by asserting that the handbook guidelines were admissible because of the city of Los Angeles' ordinances and the construction project's contractual documents, which obligated compliance with the guidelines. The handbook admissibility issue was the subject of a defense motion in limine, which was still pending at the time of the settlement.

Steven Meislin

\$450,000 Personal Injury: settlement

Trial Information:

Judge: Bob T. Hight

Demand: \$795,000 lowered to \$550,000

Offer: \$250,000 raised to \$350,000 then to \$400,000

Writer rstewart

Woman slipped twice on wet stairs at office building

Type: Mediated Settlement

Amount: \$365,000

State: California

Venue: Orange County

Court: Superior Court of Orange County, Santa Ana, CA

Injury Type(s):

- *arm*
- *other* - buttocks; loss of consortium
- *neurological* - thoracic outlet syndrome
- *pulmonary/respiratory* - lung, puncture

Case Type:

- *Premises Liability* - Slip and Fall; Office Building; Stairs or Stairway; Dangerous Condition

Case Name: Ellen Clark, Nick Clark v. Open America Inc. and Does 1-50 Inclusive, No. 05CC10430

Date: October 04, 2006

Plaintiff(s):

- Nick Clark (Male)
- Ellen Clark (Female, 38 Years)

Plaintiff Attorney(s):

- John P. Rapillo; Law Offices of John Rapillo; Newport Beach CA for Ellen Clark, Nick Clark

Plaintiff Expert(s):

- Aaron Filler M.D.; Orthopedics; Los Angeles, CA called by: John P. Rapillo
- Clifford Bernstein M.D.; Pain Management; Newport Beach, CA called by: John P. Rapillo

Defendant(s):

- Open America Inc.

Defense Attorney(s):

- Kathleen L. Casey; Corral, Chase, Parish & Arnett; Orange, CA for Open America Inc.

**Defendant
Expert(s):**

- Michael Weinstein M.D.; Orthopedics; Newport Beach, CA called by: for Kathleen L. Casey

Insurers:

- Zurich

Facts:

On Sept. 23, 2003, plaintiff Ellen Clark, 38, a marketer, slipped while descending wet stairs in the Huntington Beach office building where she worked. She got up and slipped again, down more steps.

Claiming physical damages, Clark sued janitorial and custodial services company Open America Inc., Long Beach, for premises liability.

Plaintiff's counsel argued that a cleaning crew mopped the stairs just before Clark descended them, and that the crew left a slippery, wet condition without erecting warning signs.

Open America admitted liability.

Injury:

Clark hyperextended her left arm on a handrail before landing on her buttocks. The next day she was diagnosed with trapezius strain and rhomboid strain.

Over the next year, Clark was given different courses of physical therapy and underwent many diagnostic studies. Clark did not respond well to therapy and could not work. She was given trigger point injections. One such injection resulted in a right pneumothorax (punctured lung).

About one year after the incident, Clark was diagnosed with Thoracic Outlet Syndrome and underwent one surgery. It was successful, and she had no residuals.

Clark claimed about \$115,000 in medical specials.

Clark, who made \$52,000 a year, was demoted after the accident to a job as marketing assistant paying \$8,000 less per year. She had to work reduced hours. She made a past and future wage loss claim of \$116,302, adding an unspecified amount for pain and suffering.

Clark's husband, Nick Clark, age undisclosed, made an unspecified demand for loss of consortium.

Open America disputed the nature and extent of Clark's injuries, the reasonableness and necessity of her medical treatment, the earnings loss and the extent of her husband's loss of consortium.

Defense counsel noted that, in 1999, Clark was involved in an automobile accident which resulted in a cervical fusion surgery. Although the surgery was successful, Clark continued to experience intermittent difficulties thereafter. Defense counsel alleged that the Thoracic Outlet Syndrome was caused by trauma from the 1999 automobile accident.

Result: Before trial, the case settled for a lump sum of \$365,000.

This figure represents new money because Open America purchased the worker's compensation lien of about \$170,000 for an undisclosed amount during litigation.

Trial Information:

Judge: David A. Thompson, Tom Dillard (mediator)

Editor's Comment: Some of the information in this report was based on an article in the Daily Journal.

Writer rmackay

Left turn at uncontrolled intersection lead to collision

Type: Verdict-Plaintiff

Amount: \$260,733

Actual Award: \$260,733

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Santa Monica, CA

Injury Type(s):

- *back* - annular tear; herniated disc, lumbar
- *neck* - annular tear; herniated disc, lumbar

Case Type:

- *Motor Vehicle* - Bus; Intersection

Case Name: Cheryl Budgett v. Tumbleweed Transportation and Natasha Alford, No. SC 070 249

Date: June 11, 2003

Plaintiff(s):

- Cheryl Budgett (Female, 35 Years)

Plaintiff Attorney(s):

- Victor L. George; Law Offices of Victor L. George; Manhattan Beach CA for Cheryl Budgett
- Jeffrey I. Pheffer; Pheffer Law Corporation; Los Angeles CA for Cheryl Budgett

Plaintiff Expert(s):

- Aaron Filler M.D.; PhD; Neurosurgery; Santa Monica, CA called by: Victor L. George, Jeffrey I. Pheffer
- William S. Nojima D.C.; Chiropractic; Los Angeles, CA called by: Victor L. George, Jeffrey I. Pheffer
- Nicholas J. Carpenter; Biomechanics; Laguna Hills, CA called by: Victor L. George, Jeffrey I. Pheffer

- Defendant(s):**
- Natasha Alford
 - Tumbleweed Transportation
- Defense Attorney(s):**
- J. Peter Fiske; Kohrs & Fiske for Tumbleweed Transportation, Natasha Alford
- Defendant Expert(s):**
- Thomas J. Grogan; Orthopedic Surgery; Santa Monica, CA called by: for J. Peter Fiske
- Insurers:**
- Lancer Insurance Company

Facts: On Feb. 23, 2001, plaintiff Cheryl Budgett, a 35-year-old digital composite imaging supervisor, was driving her 1968 Ford Mustang uphill on Mulholland Drive near Sherman Oaks. Natasha Alford, a school bus driver employed with Tumbleweed Transportation, was driving a bus in the opposite direction downhill on Mulholland and made to make a left turn at an uncontrolled intersection in front of the uphill-proceeding plaintiff. At this point, the two vehicles collided. Budgett sued Tumbleweed and Alford alleging vehicular negligence.

Budgett contended that Alford was negligent in the operation of her bus, and was the sole cause of this accident and the injuries she sustained.

The defendants contended that Budgett was contributorily negligent.

Injury: Budgett claimed that Alford's negligence was the direct cause of all her injuries (multiple lumbar disc injuries, including annular tears and herniations), and her need for epidural injections and future lumbar fusion surgery. She claimed \$57,554 in past economic specials, \$180,000 in future medical specials and \$32,000 in future loss of earning capacity.

The defendants maintained that all of Budgett's injuries were pre-existing and were caused by a previous accident. The defendants contended that Budgett was in treatment for those injuries when this accident occurred.

Result: The jury returned a verdict of \$260,733 after finding no contributory negligence on the part of Cheryl Budgett.

Cheryl Budgett

\$110,733 Personal Injury: economic damages

\$150,000 Personal Injury: noneconomic damages

Trial Information:

Judge: Terry B. Friedman

Demand: \$169,000 (per plaintiff's counsel); \$311,000 at final status conference (per defense counsel)

Offer: \$51,501 CCP 998

Trial Length: 6 days

Trial Deliberations: 1.5 days

Jury Vote: 12-1 on liability; 9-3 on damages

Writer rstewart

Defense claimed plaintiff had symptoms before car accident

Type: Settlement

Amount: \$29,000

State: California

Venue: Orange County

Court: Superior Court of Orange County, Santa Ana, CA

Injury Type(s):

- *back* - herniated disc, lumbar; herniated disc at L5-S1
- *head* - headaches; concussion
- *neck* - strain, cervical
- *other* - physical therapy; epidural injections; aggravation of pre-existing condition
- *shoulder* - glenoid labrum, tear; shoulder impingement; rotator cuff, injury (tear)
- *neurological* - radiculopathy
- *sensory/speech* - tinnitus
- *surgeries/treatment* - arthroscopy
- *mental/psychological* - post-concussion syndrome

Case Type:

- *Motor Vehicle* - Broadside; Left Turn; Intersection; Multiple Vehicle

Case Name: Faig Freihat v. Susan Elizabeth Leon and Kelly Leon, No. 30-2016-00857340-CU-PA-CJC

Date: February 08, 2018

Plaintiff(s):

- Faig Freihat (Male, 54 Years)

Plaintiff Attorney(s):

- Gene J. Goldsman; Law Office of Gene J. Goldsman; Santa Ana CA for Faig Freihat
- Diane Biron Newsome; Law Office of Gene J. Goldsman; Santa Ana CA for Faig Freihat

Plaintiff Expert(s):

- Jai Singh M.S.; Biomechanical; Thousand Oaks, CA called by: Gene J. Goldsman, Diane Biron Newsome
- Aaron G. Filler M.D.; Neurosurgery; Santa Monica, CA called by: Gene J. Goldsman, Diane Biron Newsome
- Stephen P. Grifka M.D.; Otolaryngology; Santa Monica, CA called by: Gene J. Goldsman, Diane Biron Newsome
- Lawrence R. Miller M.D.; Pain Management; Santa Ana, CA called by: Gene J. Goldsman, Diane Biron Newsome

Defendant(s):

- Kelly Leon
- Susan Elizabeth Leon

Defense Attorney(s):

- Robert W. Armstrong; Demler, Armstrong & Rowland, LLP; Long Beach, CA for Susan Elizabeth Leon, Kelly Leon
- Kathryn V. Dao; Demler, Armstrong & Rowland, LLP; Long Beach, CA for Susan Elizabeth Leon, Kelly Leon

Defendant Expert(s):

- Hamid R. Djalilian M.D.; Otolaryngology; Orange, CA called by: for Robert W. Armstrong, Kathryn V. Dao
- Scott K. Forman M.D.; Orthopedic Surgery; Newport Beach, CA called by: for Robert W. Armstrong, Kathryn V. Dao
- Michael A. Wienir M.D.; Neurology; Tarzana, CA called by: for Robert W. Armstrong, Kathryn V. Dao

Insurers:

- Safeco Insurance Cos.

Facts:

On May 7, 2015, plaintiff Faig Freihat, an unemployed 54 year old, was driving on Victoria Street, in Costa Mesa. As he entered the intersection with Canyon Drive, his vehicle was broadsided by a vehicle operated by Susan Leon, who was attempting to make a left onto Canyon Drive from the opposite direction on Victoria Street. While a green traffic light permitted Leon's entrance into the intersection, she did not have a green left turn arrow. Upon impact, the air bags in Freihat's vehicle deployed and Freihat claimed injuries to his right shoulder, head and back.

Freihat sued Susan Leon and the owner of Susan Leon's car, Kelly Leon. Freihat alleged that Susan Leon was negligent in the operation of her vehicle and that Kelly Leon was vicariously liable for Susan Leon's actions.

The defendants admitted liability.

Injury:

Freihat claimed that he sustained a concussion, resulting in tinnitus and post-concussion syndrome. He also claimed that he suffered an aggravation of a prior injury to his right, dominant shoulder, resulting in a labral tear, and an aggravation of a prior lower back injury, resulting in a herniated lumbar disc at the L5-S1 level.

After the crash, Freihat was placed in an ambulance and transported to Hoag Hospital Newport Beach, where he was diagnosed with a neck strain, and was treated and released.

A few days later, he visited his primary care doctor with complaints of headaches,

dizziness, and tinnitus, which is a ringing in the ears. Freihat claimed the tinnitus specifically resulted from the deployment of the air bags during the crash. He later saw a specialist for his alleged tinnitus and post-concussion syndrome, but received no additional treatment for those injuries.

At the end of May 2015, Freihat saw a treating knee surgeon for a prior injury unrelated to the accident. However, he also mentioned he had pain to his right, dominant shoulder, which he believed was due to the May 2015 crash. An MRI was recommended, and Freihat was diagnosed with a labral tear and shoulder impingement syndrome. As a result, he began a course of physical therapy in June 2015. At around the same time, he also began complaining of problems to his lower back, but he claimed he originally wanted to focus on repairing his shoulder and did not start treating his back pain until later.

Freihat ultimately underwent arthroscopic surgery on his right shoulder in October 2015. However, during his subsequent post-surgery physical therapy, he re-injured the shoulder, suffering an open tear of his right rotator cuff. After some follow-up appointments with an orthopedist, Freihat underwent a second arthroscopic repair of his shoulder in August 2016 and had additional follow-up appointments after the second surgery. He then started treating his back pain in September 2016 and the following month, he underwent an MRI that showed a herniated lumbar disc at the L5-S1 level. Freihat then received morphine injections and a series of epidural steroid injections, the latest of which took place in 2017.

Freihat admitted that he had previous injuries to his right shoulder and lower back, but he claimed that the subject accident aggravated those injuries. He also claimed that both his back and his shoulder were symptom-free prior to the crash and that he had never had shoulder tears before the accident.

Freihat was looking for employment at the time of the crash, but he never returned to work after the accident. He also stated that he had enjoyed working on cars, but that his tinnitus made the work difficult because he could not hear what was wrong with the vehicles. He also stated that he can no longer ride his bike with his family or coach soccer.

Plaintiff's counsel contended that Freihat was a candidate for future back surgery.

Freihat sought recovery of past and future medical expenses, loss of future earning capacity, and damages for his past and future pain and suffering.

Defense counsel maintained that Freihat's injuries were pre-existing and exaggerated. Counsel specifically noted that Freihat never complained of back pain until several years after the subject crash and that a shoulder MRI, which Freihat received in August 2014, showed the same damage that was present in the post-crash MRI.

The defense's expert neurologist allegedly found no evidence of neurological impairment.

The defense's retained orthopedic surgery expert opined that the accident only caused sprains and strains to Freihat's shoulder and that those injuries should have resolved within eight weeks.

The defense's otolaryngology expert performed an independent medical exam and opined that Freihat had no hearing problems. The expert also opined that if the accident had

caused Freihat's tinnitus, the ear ringing would have started immediately after the crash.

Defense counsel contended that Freihat's medical records showed that he had complained about shoulder and back pain in the years prior to the accident. Counsel also pointed to a deposition Freihat gave during an unrelated workers' compensation litigation about a prior workplace accident. During the deposition, which took place after the subject car crash, Freihat claimed that the workplace accident was the source of all of his injuries.

Result:

Plaintiff's counsel originally filed a CCP § 998 settlement offer for the defendants' \$100,000 policy limit. After that offer expired, plaintiff's counsel demanded \$250,000 from the defendants.

One week before trial, defense counsel made a CCP § 998 settlement offer for \$29,000, which was accepted by Freihat.

According to plaintiff's counsel, Freihat suffers from serious health issues that made him reluctant to go through a strenuous trial because of the stress that it would cause him. Freihat was aware that it would have been a very contentious trial because of pre-existing injuries and alleged aggravations of those injuries as a result of the subject automobile accident. Therefore, he chose to accept the defense's offer to settle his case for \$29,000.

Trial Information:

Judge: Martha Gooding

Editor's Comment: This report is based on information that was reported by plaintiff's and defense counsel.

Writer msiegel2

Medical Malpractice: Injection Hit Sciatic Nerve

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: San Bernardino County

Court: Superior Court of San Bernardino County, Victorville, CA

Case Type:

- *Medical Malpractice*

Case Name: Patricia MacBrohn vs. Victor Valley Community Hospital, No. VCV 010 917

Date: August 05, 1998

Plaintiff(s):

- Patricia MacBrohn (Female, 52 Years)

Plaintiff Attorney(s):

- Daniel L. Hough; ; Tustin CA for Patricia MacBrohn

Plaintiff Expert (s):

- Aaron Filler M.D.; PhD; Surgery; Los Angeles, CA called by:
- Pegijean Comer R.N.; Nursing; Los Angeles, CA called by:

Defendant(s):

- Victor Valley Community Hospital

Defense Attorney(s):

- Campbell H. Finlay; Davis, Grass, Goldstein & Housouer; Upland, CA for Victor Valley Community Hospital

Defendant Expert(s):

- Mary Lange R.N.; Nursing; Riverside, CA called by: for
- Robert S. Bray; Surgery; Los Angeles, CA called by: for

Insurers:

- Optima Healthcare

Facts: 8/29/95: Plaintiff, a 52-year-old unemployed woman, was admitted to Defendant hospital for the repair of a cerebrospinal fluid leak and pseudomeningocele resulting from a lumbar laminectomy performed on August 3, 1995. Following surgery, a nurse in the recovery room negligently administered an intramuscular injection of demerol and Vistaril into Plaintiff's left thigh. The injection struck the sciatic nerve.

Plaintiff claimed that at the time the injection was administered, she pulled herself onto her side and the nurse negligently administered the injection in the posterior/lateral aspect of Plaintiff's left thigh.

Defendant argued that the injection was appropriately administered in the anterior/lateral portion of the thigh in the vastus lateralis muscle. It would be anatomically impossible to strike the sciatic nerve with an intramuscular injection using a one-inch needle in that location. Plaintiff never complained of the alleged incident whilst she was in the hospital. Plaintiff's symptoms were secondary to an old L-5 nerve root injury in the left anterior thigh with an RSD component. The adhesions were not caused by the injection, rather they were due to naturally occurring fibrous bands.

Injury: **Injuries:** Intraneural injury and perineural adhesions.

Residuals: Burning pain in the left leg from the toes up into the hip and low backer and well as Reflex Sympathetic Dystrophy in the left anterior thigh.

Result: Settlement:

Offer: None

Demand: \$250,00 CCP 98

Verdict: Defense

Jury Poll: 12-0

Note: Motion for new trial not made.

Trial Information:

Judge: Jules E. Fleuret

Trial Length: 7 days

**Trial
Deliberations:** 1.5 days

Writer BBENJAMI

Entertainer Aboard Cruise Ship Falls on Stairway

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Federal

Court: United States District Court, Central District, Los Angeles, CA

Case Type:

- *Admiralty/Maritime*

Case Name: Bronwen Bakke v. Royal Caribbean Cruises, Ltd., No. CV 98-2649-NM

Date: December 28, 1999

Plaintiff(s):

- Bronwen Bakke (Female, 30 Years)

Plaintiff Attorney(s):

- Robert Feinstein; Law Office of Robert Feinstein; Woodland Hills CA for Bronwen Bakke
- Merv Wolff; Wolff & Appell; Encino CA for Bronwen Bakke

Plaintiff Expert (s):

- Aaron Filler M.D.; PhD; Neurosurgery; Los Angeles, CA called by: Merv Wolff
- Kaymar Assil M.D.; Pain Management; Thousand Oaks, CA called by: Robert Feinstein
- Raymond G. Schultz; Economics; San Marino, CA called by: Robert Feinstein

Defendant(s):

- Royal Caribbean Cruises, Ltd.

**Defense
Attorney(s):**

- William H. Collier, Jr.; Keesal, Young & Logan; Long Beach, CA for Royal Caribbean Cruises, Ltd.
- Joseph A. Walsh, II; Keesal, Young & Logan; Long Beach, CA for Royal Caribbean Cruises, Ltd.
- Adym W. Rygmyr; Keesal, Young & Logan; Long Beach, CA for Royal Caribbean Cruises, Ltd.

**Defendant
Expert(s):**

- David T. Fractor; Economics; Pasadena, CA called by: for Joseph A. Walsh, II
- Edward L. Bennett; Vocational Rehabilitation; Los Angeles, CA called by: for William H. Collier, Jr.
- Rajeev Kelkar PhD; Biomechanics; Menlo Park, CA called by: for William H. Collier, Jr.
- Cpt. Robert A. Janecek; Marine; Dana Point, CA called by: for Adym W. Rygmyr
- Robert Freundlich; Neurology; Encino, CA called by: for William H. Collier, Jr.

Facts:

April 19, 1997, plaintiff, a 30-year-old entertainer, was working upon the defendant's cruise ship as an independent contractor. While walking up a stairway, she was using the handrailing to steady herself. The handrailing rotated as she grasped it, causing her to wrench her arm as she fell.

Plaintiff contended the defendant did not properly maintain the handrail and stairway. This rendered the stairway and handrail unseaworthy.

Defendant contended that the stairway and handrailing were seaworthy. The plaintiff's condition (complex regional pain syndrome) was pre-existing from a prior slip and fall. Even if the plaintiff did fall as alleged, the fall did not cause the injuries claimed. Defendant's medical expert testified that the plaintiff's medical condition predated the date of accident by quite some time.

Plaintiff attorney asked the Court to award \$4,500,000.

Injury:

Injuries: Reflex sympathetic dystrophy--complex regional pain syndrome in right arm.

Treatment: Surgical release of ulnar nerve in right arm.

Residuals: Permanent loss of use of right arm for life.

Specials:

Medical to date \$52,000. Future medical \$350,000-\$550,000. Wage loss to date \$65,700. Future wage loss \$629,900 (present value).

Result:

BenchTrial.

Settlement talks:

Demand \$800,000 before trial. Offer \$300,000 before trial.

Result: DEFENSE JUDGMENT.

Plaintiff has filed an appeal.

The Court awarded the defendant costs of \$14,059.

Trial Information:**Judge:**

Nora M. Manella

Trial Length:

6 days

**Trial
Deliberations:**

0

Writer

BBENJAMI

Plaintiff claimed she had green arrow to make left turn

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Santa Monica, CA

Injury Type(s):

- *back*
- *other* - coccyx/tailbone
- *neurological* - nerve damage/neuropathy; nerve damage, sciatic nerve
- *gynecological* - vagina

Case Type:

- *Motor Vehicle* - Left Turn; Intersection; Question of Lights

Case Name: Tania Batache v. Robert Ayala and Sehmi Motors, Inc., No. SC076527

Date: May 29, 2008

Plaintiff(s):

- Tania Batache (Female, 33 Years)

Plaintiff Attorney(s):

- John "Jack" DeNove; Cheong Denove Rowell & Bennett; Los Angeles CA for Tania Batache

Plaintiff Expert(s):

- H. Ronald Fisk M.D.; Neurology; Los Angeles, CA called by: John "Jack" DeNove
- John Kowalczyk M.D.; Urology; Los Angeles, CA called by: John "Jack" DeNove
- Aaron Filler M.D.; Neurology; Santa Monica, CA called by: John "Jack" DeNove
- Jesse L. Wobrock Ph.D.; Accident Reconstruction; Los Angeles, CA called by: John "Jack" DeNove
- Lance Betson M.D.; Gynecology; Fullerton, CA called by: John "Jack" DeNove

Defendant(s):

- Robert Ayala
- Sehmi Motors, Inc.

Defense Attorney(s):

- Eugene F. West; West & Miyamoto; Camarillo, CA for Robert Ayala, Sehmi Motors, Inc.

Defendant Expert(s):

- J. Bradley Taylor M.D.; Urology; Laguna Hills, CA called by: for Eugene F. West
- Jon B. Landerville M.S., P.E.; Accident Reconstruction; Torrance, CA called by: for Eugene F. West
- Barry I. Ludwig M.D.; Neurology; Los Angeles, CA called by: for Eugene F. West
- Jeffrey B. Wheeler M.S.; Injury Biomechanics; Los Angeles, CA called by: for Eugene F. West
- Phillip J. Kanter M.D.; Orthopedics; Beverly Hills, CA called by: for Eugene F. West
- Stephen L. G. Rothman M.D.; Neuroradiology; Torrance, CA called by: for Eugene F. West

Facts:

On April 4, 2002, plaintiff Tania Batache, 33, a fitness trainer and massage therapist, was making a left turn at a stop light when she was hit by Robert Ayala, who was proceeding through the intersection. Batache claimed her back was seriously injured.

Batache sued Ayala and Sehmi Motors Inc., Ayala's employer, claiming Ayala ran a red light. Batache claimed she had a green left turn arrow when she began to make her left turn.

Ayala maintained that he had done nothing wrong, and had had a green light. He alleged that Batache caused the accident by making an unsafe left turn into the path of approaching traffic.

Injury:

Batache claimed permanent injuries to her thoracic spine, coccyx, sciatic nerve and peripheral nerves, resulting in bladder dysfunction; pelvic floor myalgia; vaginal numbness; and significant functional disabilities as a result of the accident.

Batache's functional disabilities included an inability to walk, drive, or have a bowel or bladder movement without manual assistance.

Batache submitted \$245,337 in medical expenses. Her future lost earnings were estimated at \$950,000.

Batache asked the jury for between \$6 million and \$7,625,000 in damages for her medical expenses, future lost earnings, and pain and suffering.

Result:

The jury rendered a defense verdict.

Trial Information:**Judge:**

John L. Segal

Demand:

\$1 million

Offer: \$550,000

Trial Length: 7 days

**Trial
Deliberations:** 5 hours

Jury Vote: 12-0

**Editor's
Comment:** This report is based on information that was provided by defense counsel. Plaintiff's counsel did not respond to the reporter's phone calls.

Writer epeterson

Nerve injury a rare complication of vascular surgery: defense

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Kern County

Court: Superior Court of Kern County, Kern, CA

Injury Type(s):

- *other* - atrophy; trapezius muscle, strain
- *neurological* - nerve damage/neuropathy; nerve damage, spinal accessory nerve

Case Type:

- *Medical Malpractice* - Surgeon; Surgical Error; Failure to Refer; Delayed Treatment; Failure to Diagnose; Post-Operative Care

Case Name: Sylvia J. Childers v. Jose M. Soto-Velasco, M.D., and Does 1-20, inclusive, No. BCV-17-100041

Date: April 05, 2019

Plaintiff(s):

- Sylvia J. Childers (Female, 68 Years)

Plaintiff Attorney(s):

- Chanel Katiraie; Tensor Law P.C.; Santa Monica CA for Sylvia J. Childers
- Lisa M. Iulianelli; Law Offices of Lisa M. Iulianelli; Chula Vista CA for Sylvia J. Childers

Plaintiff Expert (s):

- Aaron G. Filler M.D.; Neurosurgery; Santa Monica, CA called by: Lisa M. Iulianelli

Defendant(s):

- Jose M. Soto-Velasco

Defense Attorney(s):

- Kevin E. Thelen; LeBeau-Thelen, LLP; Bakersfield, CA for Jose M. Soto-Velasco

**Defendant
Expert(s):**

- June S. Salvo D.O.; Internal Medicine; Bakersfield, CA called by: for Kevin E. Thelen
- Jerome A. Barakos M.D.; Neuroradiology; San Francisco, CA called by: for Kevin E. Thelen
- Michael E. Gold M.D.; Neurology; Santa Monica, CA called by: for Kevin E. Thelen
- Vincent Guzzetta M.D.; Vascular Surgery; San Diego, CA called by: for Kevin E. Thelen

Insurers:

- Medical Protective Co.

Facts:

On Oct. 12, 2015, plaintiff Sylvia Childers, 68, a retiree, underwent an endarterectomy: surgical removal of arterial plaque. The procedure addressed her right carotid artery, and it was performed by vascular surgeon Dr. Jose Soto-Velasco, at Mercy General Hospital, in Sacramento.

Soto-Velasco had evaluated stenosis in Childers' right common and internal arteries on Oct. 6, 2015, and he recommended that Childers undergo the surgery to address calcified stenosis. After the surgery on Oct. 12, 2015, Soto-Velasco saw Childers in the recovery room and conducted an examination and assessment of Childers, bilaterally, to see if there was any noted gross neurologic (focal or otherwise) deficits, especially those involving the face and/or tongue. No neurologic deficits were noted, and Childers did not exhibit reperfusion syndrome symptomatology. Childers was observed overnight and determined to be neurologically intact. As a result, Childers was discharged from Mercy General Hospital with wound-care instructions on Oct. 13, 2015. She was asked to follow-up with Soto-Velasco on an outpatient basis in five days.

Childers returned to see Soto-Velasco at his office on Oct. 20, 2015. During that visit, Childers' sutures were removed by Soto-Velasco, and the incision was referenced to be healing properly.

Childers next saw Soto-Velasco at his office on Oct. 27, 2015, and then again on Nov. 24, 2015. During the November 2015 visit, Childers reportedly claimed to be improving and doing better. Her carotid scar was improving, and the plan was to move forward with a left carotid endarterectomy once she was fully recovered from the left subclavian artery stent placement that was completed five days prior at Bakersfield Heart Hospital, in Bakersfield.

On Feb. 9, 2016, Childers presented to Central Cardiology, in Bakersfield, and saw a cardiologist that she saw for previous cardiac procedures. During the visit, Childers complained of pain across her right shoulder area. As a result, the cardiologist referred Childers for an evaluation of her right shoulder dysfunction by an orthopedic surgeon who had performed bilateral shoulder arthroscopies on Childers in 2000 and 2001. The orthopedic surgeon later diagnosed Childers as having a right winged scapula and pain in both shoulders, and recommended a nerve conduction study/electromyography to evaluate the status of the nerves in the right shoulder, including the spinal accessory nerve, among others.

On Feb. 23, 2016, Childers returned to see Soto-Velasco at his office. During the visit, Childers complained about right shoulder pain and dysfunction. She also told Soto-

Velasco that she had seen the orthopedic surgeon who had done a study and apparently related to her that he felt her condition was related to a spinal accessory nerve injury. Soto-Velasco examined Childers' right shoulder/upper extremity and found that she could not raise her arm higher than the level of her shoulder. Childers reportedly told Soto-Velasco that she thought the injury was related to the carotid endarterectomy, which Soto-Velasco thought was unlikely given the location and trajectory of the spinal accessory nerve. Soto-Velasco did not move forward with further evaluation of Childers' right shoulder complaints and, instead, discussed with Childers the potential for a future left carotid endarterectomy.

Three days later, Childers underwent a nerve conduction study and electromyography with a neurologist, who confirmed that the study showed evidence of trapezius muscle atrophy, sternocleidomastoid atrophy and a suspected spinal accessory nerve injury. No other nerves, outside of the spinal accessory nerve, were identified by the neurologist as having any abnormalities. The neurologist also did not formulate an opinion relating to the cause of the spinal accessory nerve injury or the time frame upon which the injury occurred.

Childers returned to see the orthopedic surgeon on March 10, 2016. They reviewed the results of the NCS/EMG testing, and the orthopedic surgeon assessed Childers as having evidence of a spinal accessory nerve injury, which was causing Childers' right shoulder/upper extremity symptomatology and winged scapula. The orthopedic surgeon's plan was to contact a surgeon in Los Angeles who performed peripheral nerve repairs and refer Childers to that provider for further care and treatment.

Childers once again returned to Soto-Velasco on March 15, 2016. During that visit, Soto-Velasco's patient visit note indicated that Childers' arm was slightly better and that Childers was contemplating the possibility of a nerve graft. Discussions were again had regarding the potential need for a left carotid endarterectomy, but further testing done in Soto-Velasco's office showed only 50 percent stenosis in the left, internal carotid artery. As a result, Soto-Velasco determined that intervention by way of a carotid endarterectomy was not recommended, given the 50 percent stenosis figure and lack of ipsilateral symptomatology. He sent Childers for a follow-up appointment in six months, for Oct. 11, 2016, but Childers never returned to see Soto-Velasco.

Childers sued Soto-Velasco, alleging that Soto-Velasco was negligent in the performance of the Oct. 12, 2015, surgery and negligent in the post-operative care of his patient. Childers also alleged that Soto-Velasco's negligence constituted medical malpractice.

Plaintiff's counsel contended that Soto-Velasco utilized improper surgical techniques during the Oct. 12, 2015, procedure such that it resulted in injuries to several of Childers' nerves and muscles in her right shoulder and spine. Counsel also contended that Soto-Velasco was negligent in his post-operative care and management of Childers.

Childers and her daughter claimed that they told Soto-Velasco about Childers suffering from right, upper extremity dysfunction during the Oct. 20, 2015, visit, but that it was not documented in Soto-Velasco's chart. They also claimed that they again told Soto-Velasco at his office on Oct. 27, 2015, that Childers was suffering from right, upper extremity dysfunction, but that it was again not documented in Soto-Velasco's chart. Childers further claimed that she told Soto-Velasco that she thought the injury was related to the carotid endarterectomy, but Soto-Velasco still did not move forward with further evaluation or

treatment of Childers' right shoulder complaints. Plaintiff's counsel argued that if Soto-Velasco had moved earlier with a referral to a peripheral nerve specialist, then Childers' spinal accessory nerve injury could have been addressed and potentially minimized with interventional neuroplasty procedures.

Soto-Velasco acknowledged that Childers' spinal accessory nerve was likely inadvertently injured during the subject procedure when he moved the sternocleidomastoid muscle to exposure the carotid bifurcation. He likewise acknowledged that an injury to the spinal accessory nerve can result in sternocleidomastoid and trapezius atrophy, which can lead to the development of a winged scapula, which he did not dispute that Childers had at time of the trial. However, defense counsel argued, through expert testimony, that Childers' carotid endarterectomy was indicated and that Soto-Velasco's performance of the carotid endarterectomy met the standard of care. Counsel also argued that the risk of a spinal accessory nerve injury is rare but recognized complication (in the range of 0.3 percent) and that such an injury can occur during surgery in the absence of negligence.

In regard to Childers' post-operative case, defense counsel called Childers' primary care provider, an internist, to testify at trial. The physician testified that when she saw Childers on Nov. 2, 2015, Childers complained of right, upper extremity dysfunction. However, the physician claimed that she did not immediately suspect a nerve injury of some kind and, rather, thought that Childers, who had a past history of bilateral shoulder arthroscopy with osteophyte removal, may have had a frozen shoulder secondary to the positioning during the carotid endarterectomy. The primary care provider testified that as a result, she ordered an X-ray of the right shoulder, but she admitted that it would not demonstrate evidence of potential nerve damage. The physician further testified that she saw Childers again on Dec. 9, 2015, and started Childers on a physical therapy regimen for her right, upper extremity, but the physician claimed she still did not suspect any nerve damage at that point.

Soto-Velasco claimed that he did not recall Childers making any such dysfunction-related complaints during the visits to his office on Oct. 20, 2015, and Oct. 27, 2015, and he agreed that no such notes were made in the patient's charts during those visits. He also claimed that Childers only complained to him about right shoulder pain and dysfunction for the first time on Feb. 23, 2016, but that he did not move forward with further evaluation of Childers' shoulder complaints because Childers' complaints were already being managed by her orthopedic surgeon and because he felt, at that time, that Childers' complaints were unlikely to be connected to the Oct. 12, 2015, procedure.

Defense counsel contended that Soto-Velasco reasonably managed Childers. Counsel argued that when Childers brought her complaints of having functionality issues with her right, upper extremity to Soto-Velasco's attention for the first time on Feb. 23, 2016, it was reasonable to not manage that condition, as it was already being treated by Childers' orthopedic surgeon.

Injury:

Childers claimed she sustained injuries to her spinal accessory nerve, trapezius muscle, and sternocleidomastoid muscle. She also claimed that MR neurography and other imaging studies showed evidence of injuries to the anterior scalene muscle, middle scalene muscle, levator scapular muscle, serratus anterior muscle and deltoid muscle, as well as injuries to the long thoracic nerve, dorsal scapular nerve, axillary nerve and hypoglossal nerve. Childers alleged that as a result, she suffered atrophic changes/weakness to those muscles, affecting her right, upper extremity. As a result, she had a number of visits with her treating neurosurgery expert and underwent two sets of nerve injections to her neck to try to reduce scar tissue and inflammation around the allegedly injured nerves.

The plaintiff's treating neurosurgery expert testified about his evaluation of Childers and his attempt to treat Childers' right spinal accessory nerve injury following her March 15, 2016 visit with Soto-Velasco. However, he was largely unsuccessful in alleviating the Childers' right, upper extremity complaints.

Childers testified that her right, upper extremity issues greatly affected her activities of daily living, including housework, gardening, bathing, curling her hair, baking, and lifting heavy pots and pans. She also claimed that she could sometimes "push" herself through some of the pain, but that she would "pay for it" the next day. She alleged that as a result, she requires future surgery.

The plaintiff's treating neurosurgery expert did not take Medicare and, therefore, by the time of trial, had charged Childers over \$17,000, out-of-pocket, for medical care. The expert also estimated that the costs associated with Childers' future surgery totaled \$15,000 in surgical fees and \$150,000 in facility fees.

The parties stipulated that Childers' past medical costs totaled \$17,260. As a result, plaintiff's counsel asked the jury, during closing arguments, to award Childers \$17,260 in past medical costs and \$165,000 in future medical costs. No specific dollar amount was requested for non-economic damages for Childers' alleged past and future pain and suffering.

Defense counsel disputed Childers' alleged future medical costs, and moved to exclude the plaintiff's neurosurgery expert's testimony as to the alleged reasonable value of the surgical and facility fees. However, the motion in limine was denied by the court.

Result:

The jury rendered a defense verdict. It found that Soto-Velasco was not negligent.

Trial Information:**Judge:**

Stephen D. Schuett

Demand:

\$200,000

Offer: Cost waiver (C.C.P. § 998)

Trial Length: 7 days

**Trial
Deliberations:** 2.5 hours

Jury Vote: 11-1

**Jury
Composition:** 3 male, 9 female; 1 black, 1 Filipino, 6 Hispanic, 4 white

**Editor's
Comment:** This report is based on information that was provided by defense counsel. Plaintiff's counsel declined to contribute.

Writer pidiculla

Restaurant denied mopping floor on morning of alleged fall

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Contra Costa County

Court: Superior Court of Contra Costa County, Contra Costa, CA

Injury Type(s):

- *other* - loss of consortium
- *shoulder* - rotator cuff, injury (tear)
- *neurological* - neurological impairment; brachial neuritis

Case Type:

- *Hotel/Restaurant*
- *Premises Liability* - Restaurant; Dangerous Condition; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Slip and Fall

Case Name: Laura Neufeld and Paul Neufeld v. Da 4 Bears, Inc., Black Bear Diners, Inc., Sonoma BBD, Inc. and Sonoma BBQ, Inc., No. CIVMSC12-01320

Date: February 19, 2014

Plaintiff(s):

- Paul Neufeld (Male)
- Laura Neufeld (Female, 40 Years)

Plaintiff Attorney(s):

- Peter W. Alfert; Hinton Alfert & Kahn LLP; Walnut Creek CA for Laura Neufeld, Paul Neufeld

Plaintiff Expert(s):

- Brad P. Avrit P.E.; Safety; Marina del Rey, CA called by: Peter W. Alfert
- Aaron Filler M.D., Ph.D.; Neurosurgery; Santa Monica, CA called by: Peter W. Alfert
- Carol R. Hyland M.A.; Life Care Planning; Lafayette, CA called by: Peter W. Alfert
- David C. Bradshaw M.D.; Physical Medicine; Castro Valley, CA called by: Peter W. Alfert

Defendant(s):

- Da 4 Bears, Inc.
- Sonoma BBD, Inc.
- Sonoma BBQ, Inc.
- Black Bear Diners, Inc.

**Defense
Attorney(s):**

- David M. Glaspy; Glaspy & Glaspy; Walnut Creek, CA for Da 4 Bears, Inc.
- None reported; Walnut Creek, CA for Black Bear Diners, Inc., Sonoma BBD, Inc., Sonoma BBQ, Inc.

**Defendant
Expert(s):**

- Mark Cohen M.S.; Economics; Walnut Creek, CA called by: for David M. Glaspy
- Rajeev Kelkar Ph.D.; Biomechanical; Mountain View, CA called by: for David M. Glaspy
- Charles V. DiRaimondo M.D.; Orthopedic Surgery; Concord, CA called by: for David M. Glaspy

Facts:

On the morning of Dec. 25, 2010, plaintiff Laura Neufeld, a legal secretary in her 40s, walked into the ladies' restroom of a Black Bear Diner in Sonoma when she slip and fell. She sustained injuries to her right dominant arm.

Neufeld sued the believed operators of the diner, Da 4 Bears Inc., Black Bear Diners Inc., Sonoma BBD Inc. and Sonoma BBQ Inc. She alleged the defendants failed to properly maintain the restroom, creating a dangerous condition.

It was ultimately determined that the operator of the diner was Da 4 Bears Inc. Thus, the other defendants were let out of the case and the matter proceeded to trial against Da 4 Bears only.

Neufeld claimed the floor of the restroom was slippery and it looked wet, as if it had just been mopped. She claimed that as a result of the floor's condition, she slipped and fell.

Da 4 Bears denied liability, claiming the floor of the diner's restroom was not mopped on the morning of the alleged accident.

Injury:

Five weeks after the accident, Neufeld first presented to a physician and was diagnosed with a torn rotator cuff of her right shoulder. She subsequently underwent two shoulder surgeries.

Neufeld claimed she was left with a brachial plexus nerve injury to her right shoulder. She alleged that as a result, she is disabled from working. Thus, Neufeld sought recovery for her medical costs and loss of earnings. She also sought recovery of damages for her pain and suffering. Her husband, Paul Neufeld, sought recovery for his loss of consortium.

Result:

The jury found that the restaurant was not negligent. Thus, it rendered a defense verdict.

Trial Information:

Judge: George V. Spanos

**Editor's
Comment:** This report is based on information that was provided by plaintiff's and defense counsel.

Writer pidiculla

Antibiotics would not have saved man's life: defense

Type: Verdict-Defendant

Amount: \$0

State: Alabama

Venue: Mobile County

Court: Mobile County Circuit Court, AL

Injury Type(s):

- *other* - death; fever; sepsis; meningitis; MRSA infection

Case Type:

- *Wrongful Death* - Survival Damages
- *Medical Malpractice* - Neurosurgeon; Negligent Treatment; Post-Operative Care; Prescription and Medication

Case Name: Lucy Ladd, as personal representative of the Estate of John F. Ladd, Jr. v. Mobile Infirmary Medical Center, William B. Faircloth, M.D., and Coastal Neurological Institute, P.C., No. 02-CV-2015-902453

Date: March 12, 2020

Plaintiff(s):

- Estate of John F. Ladd, Jr (Male, 57 Years)

Plaintiff Attorney(s):

- Stephen D. Heninger; Heninger Garrison Davis LLC; Birmingham AL for , Estate of John F. Ladd, Jr

Plaintiff Expert(s):

- Aaron G. Filler M.D., Ph.D.; Neurosurgery; Santa Monica, CA called by: Stephen D. Heninger

Defendant(s):

- William B. Faircloth M.D.
- Mobile Infirmary Medical Center
- Coastal Neurological Institute, P.C.

Defense Attorney(s):

- None reported for Mobile Infirmary Medical Center
- Tamela E. Esham; Armbrrecht Jackson LLP; Mobile, AL for William B. Faircloth M.D., Coastal Neurological Institute, P.C.

**Defendant
Expert(s):**

- Rand M. Voorhies M.D.; Neurosurgery; Metairie, AL called by: for Tamela E. Esham
- Steven D. Burdette M.D.; Infectious Diseases; Dayton, OH called by: for Tamela E. Esham

Facts:

On May 27, 2015, plaintiff John Ladd Jr., 57, underwent a lumbar laminectomy, which was performed by Dr. William Faircloth, a neurosurgeon. The next day, Ladd was allegedly discharged with an open wound from his surgical incision without any protective dressing or prescribed antibiotics. Over the course of the next 10 days, Ladd developed a fever and experienced increasing back pain.

On June 11, 2015, Ladd saw Faircloth, who admitted him to Mobile Infirmary Medical Center, in Mobile. The next day, Ladd was found to be infected with gram positive cocci with clusters, and a lumbar puncture was positive for bacterial meningitis.

On June 13, 2015, Ladd died from complications related to a MRSA infection and sepsis. His estate claimed that his death was due to Faircloth's failure to treat Ladd with antibiotics following the back surgery.

Lucy Ladd, on behalf of her husband's estate, sued Mobile Infirmary, Faircloth and Fairchild's practice, Coastal Neurological Institute P.C. The estate alleged that the defendants failed in their standard of care toward Mr. Ladd and that their failure constituted medical malpractice.

Mobile Infirmary was dismissed, prior to trial.

The estate's counsel argued that Faircloth was negligent in discharging Mr. Ladd with an open wound and with no prescription for antibiotics despite the risk of post-operative infection.

The plaintiffs' neurosurgery expert testified that the standard of care required that prophylactic antibiotics following a non-instrumental surgery be prescribed to the patient. Faircloth breached the standard of care by failing to prescribe such antibiotics, the expert concluded.

According to the defense's experts in neurosurgery and infectious diseases, prescribing prophylactic antibiotics following a non-instrumental surgery was not the standard of care. The defense's infectious diseases expert testified that even if Ladd had been given prophylactic antibiotics, it would not have been effective because Ladd had not developed an immune response following the surgery. Ladd's failure to develop an immune response led to overwhelming sepsis in his body, the expert determined.

Injury: Ladd died from complications related to a MRSA infection and sepsis. He is survived by a wife and a child.

His estate sought recovery of millions of dollars in punitive damages.

The defense maintained that Ladd's estate was not entitled to any punitive damages.

Result: The jury rendered a defense verdict. It found that Faircloth was not negligent.

Trial Information:

Judge: John R. Lockett

Trial Length: 1 weeks

**Trial
Deliberations:** 0

**Editor's
Comment:** This report is based on information that was provided by defense counsel for William B. Faircloth, M.D. and Coastal Neurological Institute P.C. Plaintiffs' counsel did not respond to the reporter's phone calls. Mobile Infirmary Medical Center's counsel was not asked to contribute.

Writer ajenkins

Use of Cage, Not Plate, in Spinal Fusion Questioned

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Orange County

Court: Superior Court of Orange County, Santa Ana, CA

Case Type:

- *Insurance*
- *Medical Malpractice*

Case Name: Prestige Motorcoach and Farmers Insurance Group v. Michael Sukoff, M.D., No. 01CC03067

Date: September 25, 2002

Plaintiff(s):

- Prestige Motorcoach (0 Years)
- Farmers Insurance Group (0 Years)

Plaintiff Attorney(s):

- Gregory M. Hatton; Hatton Petrie & Stackler; Newport Beach CA for Prestige Motorcoach
- Daniel E. Heck; Hatton Petrie & Stackler; Newport Beach CA for Prestige Motorcoach

Plaintiff Expert(s):

- Aaron Filler M.D.; PhD; Neurosurgery; Los Angeles, CA called by: Gregory M. Hatton, Daniel E. Heck
- James T. London; Orthopedics; San Pedro, CA called by: Gregory M. Hatton, Daniel E. Heck
- Richard Bart; Claims Handling; Los Angeles, CA called by: Gregory M. Hatton, Daniel E. Heck

Defendant(s):

- Michael Sukoff, M.D.

Defense Attorney(s):

- John E. West; Beam Brobeck & West; Santa Ana, CA for Michael Sukoff, M.D.

**Defendant
Expert(s):**

- Pablo Villablanca M.D.; Radiology; Los Angeles, CA called by: for John E. West
- Ronald Young M.D.; Neurosurgery; Los Angeles, CA called by: for John E. West

Insurers:

- The SCPIE Companies

Facts:

On Feb. 24, 1997, La Juana Johnson was involved in a personal injury accident involving plaintiff Prestige Motorcoach. Following the accident, defendant Michael Sukoff, M.D., performed surgery on Johnson's cervical spine at the C6-C7 level consisting of a discectomy and fusion using a titanium cage with coral. The post-operative film taken the day following the surgery allegedly showed a complete collapse of the fusion with the titanium cage spiking into the vertebral bodies. Plaintiff Farmers Insurance claimed that due to the defendant doctor's negligence in performing the surgery, it was required to pay an additional \$300,000 to settle Johnson's claims against its insured, Prestige Motorcoach. The plaintiffs then filed an indemnity/declaratory relief action, as well as a medical malpractice cause of action, against the defendant doctor.

The plaintiffs asserted that defendant Michael Sukoff, M.D. fell below the standard of care. The plaintiffs' medical expert, Arron Filler, M.D., who was La Juana Johnson's subsequent treating neurosurgeon, testified that if the defendant doctor had used a plate, the collapse would not have occurred. He further testified that as a result of the collapse, La Juana Johnson suffered from a significant loss of range of motion of her cervical spine, as well as residual pain. He recommended further surgery, which had not been performed as of the date of trial. The plaintiffs' medical expert, James London, M.D., testified that the defendant doctor fell below the standard of care in failing to use a plate and in failing to advise the patient, post-operatively, that the fusion had failed and that further surgery was warranted. He further testified that because the patient had osteoporosis, it was particularly important to use a plate to avoid the kind of problem that occurred.

The defendant doctor asserted that he was not negligent in his treatment of La Juana Johnson. Defense medical expert, Ronald Young, M.D., testified that the defendant doctor acted within the standard of care and that the use of a plate was within the discretion of the surgeon. He stated if the patient did in fact have osteoporosis, of which he saw no evidence, then it would be a contraindication to the use of a plate since they are secured with screws, which can pull out if the patient's bone is weak or brittle. He also testified that the post-operative films show integration into the vertebral bodies, which is expected following this type of surgery. He did not see any evidence of instability or a need for further surgery.

Defense medical expert, Pablo Villablanca, M.D., testified that he read films of the patient's cervical spine in August 1998, and noted that foramina were all open and that the spinal cord was not compressed. He believed that the post-operative films showed good alignment and proper positioning of the coral cage. He did not see any reason why the patient would be having any complaints from the C6-C7 level.

The defendant doctor testified that the coral cages are placed in cancellous bone rather than cortical bone and are expected to migrate or settle after placement. The post-operative film showed good fusion and he saw no reason to recommend any further surgery. In fact, his records as well as another treating physician, Dr. Raul Rahman, showed that she was improved following the surgery and was discharged from care approximately eight months following the operation.

Injury:

The plaintiffs claimed that La Juana Johnson's cervical fusion surgery failed resulting in spinal instability, pain and lack of range of motion. As a result, the plaintiffs claimed that Farmers had to pay an additional \$300,000 to settle the case.

Result: After deliberating for one and one-half days, the jury returned with a defense verdict.

Demand \$200,000

Offer None, no consent

Trial Information:

Judge: John M. Watson

Trial Length: 8 days

**Trial
Deliberations:** 1.5 days

Writer RSTEWART

Anesthesiologist properly administered anesthetic: defense

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Santa Cruz County

Court: Superior Court of Santa Cruz County, Santa Cruz, CA

Injury Type(s): • *paralysis/quadriplegia* - paralysis

Case Type: • *Medical Malpractice* - Anesthesiology; Informed Consent; Negligent Injection

Case Name: Christopher Tuosto and Elizabeth Tuosto v. John C. Glina, M.D. and Anesthesia Medical Group of Santa Cruz, Inc., No. 17CV00264

Date: August 30, 2019

Plaintiff(s): • Elizabeth Tuosto
• Christopher Tuosto (Male, 63 Years)

Plaintiff Attorney(s): • Lisa T. Flint; Moran Law; Santa Ana CA for Christopher Tuosto, Elizabeth Tuosto
• Michael F. Moran; Moran Law; Santa Ana CA for Christopher Tuosto, Elizabeth Tuosto

Plaintiff Expert(s): • Jack Berger M.D.; Anesthesiology; Hollywood, CA called by: Lisa T. Flint, Michael F. Moran
• Aaron G. Filler M.D.; Neurosurgery; Santa Monica, CA called by: Lisa T. Flint, Michael F. Moran
• James Spiegel M.D.; Orthopedic Surgery; Santa Cruz, CA called by: Lisa T. Flint, Michael F. Moran
• Robert Quinn M.D.; Physical Medicine; Santa Cruz, CA called by: Lisa T. Flint, Michael F. Moran

Defendant(s): • John Glina
• Anesthesia Medical Group of Santa Cruz

**Defense
Attorney(s):**

- Barry C. Marsh; Hinshaw, Marsh, Still & Hinshaw, LLP; Saratoga, CA for John Glina, Anesthesia Medical Group of Santa Cruz

**Defendant
Expert(s):**

- John K. Ratliff M.D.; Neurosurgery; Philadelphia, PA called by: for Barry C. Marsh
- Philip Bickler M.D., Ph.D.; Anesthesiology; San Francisco, CA called by: for Barry C. Marsh
- Michael Zeineh M.D., Ph.D.; Neuroradiology; Stanford, CA called by: for Barry C. Marsh

Insurers:

- NORCAL Mutual Insurance Co.

Facts:

On Nov. 16, 2015, plaintiff Christopher Tuosto, 63, an insurance salesman, underwent a total knee replacement at Dominican Hospital, in Santa Cruz. During the procedure, Dr. John Glina, an anesthesiologist, administered a spinal anesthetic. However, following the surgery, Tuosto allegedly experienced lower extremity paralysis and a non-functioning bladder. He claimed his condition was due to spinal cord damage at the L1 level.

Tuosto sued Glina and Glina's employer, Anesthesia Medical Group of Santa Cruz Inc. Tuosto alleged that Glina was negligent in the administration of the spinal anesthetic and for failing to obtain his informed consent. He also alleged that Glina's negligence constituted medical malpractice and that Anesthesia Medical Group was liable for Glina's actions.

Tuosto claimed that he did not provide any consent for any form of anesthetic management, including spinal anesthesia, and that he never even met the anesthesiologist, Glina, before the operation. Tuosto admitted that he read, signed and accepted the risks of surgery consent forms, which included the "risks of anesthesia," but that he did not sign a separate, written consent form for anesthesia. He also claimed that he advised his non-party orthopedic surgeon that he did not want a spinal anesthetic, but he admitted that he did not advise any anesthesiologist before the operation that he did not want a spinal anesthetic. Tuosto asserted that because he did not give any consent for any anesthesia, the administration of the spinal anesthetic constituted an intentional medical battery, for which he claimed damages not limited by the California cap on non-economic damages.

Plaintiff's counsel contended that in addition to failing to obtain Tuosto's consent, Glina failed to properly document his spinal anesthetic, resulting in the placement of the spinal needle either into the conus medullaris or cauda equina, causing trauma to the lumbar spine.

The plaintiff's expert neurosurgeon opined that Glina placed the spinal needle at the L1 level. The expert testified that he assumed Tuosto had no pre-existing history of difficulty with ambulation or of a neurogenic bladder, and opined that because Tuosto had decreased reflexes post-operatively, it indicated an injury to the spinal cord at L1. The expert testified that he performed diffusion tensor imaging of the lumbar spine and that, based on those images, he opined that there was "discontinuity on the left [side] at the L1 level, affecting the cauda equina." The expert also opined that, "on the left side of the spinal cord at L1, some of the proximal dorsal elements [were] seen to contact the dural margin" and that despite motion artifact secondary to patient movement during the MRI/DTI, the alleged area of injury was not an artifact (an anomaly seen during visual representation).

The plaintiff's anesthesiology expert testified that a separate written consent for anesthesia was required by the standard of care, and opined that Glina's documentation of the administration of spinal anesthesia fell below the standard of care. Based upon the opinion of the plaintiff's expert neurosurgeon, the expert anesthesiologist opined that there was a misplacement of the spinal needle approximately 5 inches proximal to where the needle should have been placed for a spinal anesthetic.

Defense counsel noted that while Tuosto claimed he never met Glina before the operation, Tuosto was impeached on cross-examination when presented with his pre-trial answers to interrogatories, during which Tuosto stated that Glina "walked into the preoperative area and introduced himself" and that there was a discussion about the method of anesthesia. Defense counsel also disputed that Tuosto sustained any trauma to his lumbar spine.

The defense's expert anesthesiologist opined that the care and treatment provided by Glina complied with the standard of care.

Defense counsel contended that, based on medical records from the Mr. Tuosto's treating physical medicine and rehabilitation specialist, Mr. Tuosto had increased spasticity post-operatively, not decreased spasticity. Counsel also noted that the treating physician's medical records stated that Tuosto developed decreased sensation in the legs and some bladder dysfunction following a prior hip surgery in 2010.

Defense counsel noted that the plaintiff's expert neurosurgeon admitted, on cross-examination, that if Tuosto had increased spasticity post-operatively, it would suggest an upper motor neuron injury, and not an injury at the L1 level. According to defense counsel, the plaintiff's expert also admitted that post-operative MRI's did not show evidence of an epidural hematoma, blood, fluid, scar tissue or any other abnormalities within the spinal cord and that a DTI is much more often utilized to evaluate white matter tracts in the brain, not in the spinal cord.

The defense's neuroradiology expert, the director of DTI at Stanford, presented a Power Point presentation of post-operative imaging of the lumbar spine and opined that there was no evidence of an injury to the spinal cord at any level. The expert also identified both axial and sagittal images to illustrate his opinion that there was no verifiable injury to the spinal cord, and testified that a DTI is not utilized as a diagnostic tool for the spinal cord in clinical practice. The defense expert was also presented with a "patent" allegedly held by the plaintiff's expert neurosurgeon, and testified that the patent application included a diagram of the leg, and did not involve either the brain or the spinal cord. He further opined that there was no evidence of an epidural or spinal hematoma, an abnormality of the spinal cord at L1, or iron or blood, which might suggest residual injury at any level of the lumbar spinal cord. In addition, the expert neuroradiologist testified that the plaintiff's expert neurosurgeon's opinion was based on a non-diagnostic artifact and that to be a "real finding," the abnormality should be seen in both axial and sagittal planes. However, the defense expert noted that the MRI ordered by the plaintiff's expert neurosurgeon on Oct. 19, 2017, demonstrated that cerebrospinal fluid was present circumferentially around the conus at the L-1 level without arachnoiditis, which is a pain disorder caused by the inflammation of the arachnoid, one of the membranes that surround and protect the nerves of the spinal cord. As a result, the defense expert opined that since there was no inflammation shown on the MRI, there was no injury.

Injury: Tuosto claimed that he suffered trauma to his lumbar spine, at the L1 level, which left him with lower extremity paralysis and a non-functioning bladder.

Tuosto acknowledged that he had a history of motor vehicle accident in 1972, from which he suffered an incomplete spinal cord injury at the C6 level. However, he claimed that he was fully ambulatory with no bladder dysfunction prior to the subject anesthetic administration on Nov. 16, 2015, but that after the subject procedure, he was left non-ambulatory. He alleged that as a result, he requires 24/7 attendant care from his wife, and the use of a wheelchair and/or scooter for transportation.

Tuosto sought recovery of \$4.5 million in damages, including the loss of his insurance sales business. His wife, Elizabeth Tuosto, sought recovery of damages for the nursing services she provided her husband and for her loss of consortium. She estimated that her damages totaled \$1.5 million.

Defense counsel argued that Mr. Tuosto did not sustain any injury to his spinal cord from the anesthetic administration.

The defense's expert neurosurgeon opined that the constellation of Tuosto's past medical history -- including a cervical spinal cord injury, thoracic stenosis at T9-10, lumbar spine stenosis, weakness in the quadriceps and hamstrings, and loss of stability of the right knee joint following a prior total knee replacement -- produced the deficits perceived by Tuosto post-operatively.

Additionally, on cross-examination, the plaintiff's treating orthopedic surgeon testified that he underestimated the impact of Tuosto's pre-existing neurological injury, as well as the pre-existing weakness to Tuosto's quadriceps and hamstrings, prior to performing the total knee replacement on Nov. 16, 2015. According to defense counsel, the plaintiff's treating surgeon essentially admitted that Tuosto did not have the functional reserve for his body to tolerate the trauma of the total knee replacement.

Result: The jury rendered a defense verdict. It found that Glina was not negligent in the care and treatment of Tuosto.

Trial Information:

Judge: Timothy J. Schmal

Demand: \$500,000 (during mediation)

Offer: \$150,000 (during mediation)

Trial Length: 14 days

Trial Deliberations:	2 hours
Jury Vote:	12-0
Jury Composition:	5 male, 7 female
Post Trial:	Defense counsel filed and served a memorandum of costs in the amount of \$102,000.
Editor's Comment:	This report is based on information that was provided by defense counsel. Plaintiffs' counsel did not respond to the reporter's phone calls.
Writer	pidiculla

Hand surgery met standards of care, surgeon contended

Type: Verdict-Defendant

Amount: \$0

State: Pennsylvania

Venue: Allegheny County

Court: Allegheny County Court of Common Pleas, PA

Injury Type(s):

- *other* - thumb; atrophy; physical therapy
- *wrist* - carpal tunnel syndrome
- *epidermis* - numbness
- *hand/finger* - hand; finger
- *neurological* - nerve damage/neuropathy; nerve damage, median nerve

Case Type:

- *Medical Malpractice* - Hospital; Neurosurgeon; Neurosurgery; Surgical Error; Failure to Diagnose; Post-Operative Care; Wrong Site/Procedure

Case Name: William Eckenrode and Kimberly Eckenrode v. Hae-Dong Jho, West Penn Allegheny Health System d/b/a Allegheny General Hospital, and Allegheny Specialty Practice Network d/b/a Jho Institute for Minimally Invasive Neurosurgery, No. GD-12-015136

Date: September 24, 2015

Plaintiff(s):

- William Eckenrode (Male, 50 Years)
- Kimberly Eckenrode (Female)

Plaintiff Attorney(s):

- Paul A. Lagnese; Berger & Lagnese, LLC; Pittsburgh PA for William Eckenrode, Kimberly Eckenrode
- David M. Paul; Berger & Lagnese, LLC; Pittsburgh PA for William Eckenrode, Kimberly Eckenrode

Plaintiff Expert (s):

- Martin I. Boyer M.D.; Hand Surgery; St. Louis, MO called by: Paul A. Lagnese, David M. Paul

Defendant(s):

- Hae-Dong Jho
- West Penn Allegheny Health System
- Allegheny Specialty Practice Network

**Defense
Attorney(s):**

- Steven J. Forry; Marshall Dennehey Warner Coleman & Goggin, P.C.; Pittsburgh, PA for Hae-Dong Jho, West Penn Allegheny Health System, Allegheny Specialty Practice Network
- Brett C. Shear; Marshall Dennehey Warner Coleman & Goggin, P.C.; Pittsburgh, PA for Hae-Dong Jho, West Penn Allegheny Health System, Allegheny Specialty Practice Network

**Defendant
Expert(s):**

- Aaron G. Filler M.D.; Neurosurgery; Santa Monica, CA called by: for Steven J. Forry, Brett C. Shear

Facts:

On March 25, 2011, plaintiff William Eckenrode, a competitive rifleman in his late 50s, underwent carpal tunnel release surgery by neurosurgeon Hae-Dong Jho at Allegheny General Hospital, in Pittsburgh.

Eckenrode had been diagnosed with carpal tunnel syndrome after experiencing numbness and tingling in the first and third fingers of his right hand since 2009. During surgery, Jho used a transverse wrist incision and a blind cut of the transverse carpal ligament.

Eckenrode maintained that after the procedure he had immense pain and complete numbness throughout the median nerve, which passes down the arm and through the carpal tunnel. He was unable to use his right hand and began to develop thenar eminence atrophy (atrophy of the pad of muscles below the thumb).

On April 18, Eckenrode was seen by Jho and an assistant. Despite clear signs and symptoms of a median nerve injury, Eckenrode claimed, Jho and the assistant told him that his recovery would take time and that he should undergo physical therapy.

On May 10, Eckenrode presented to an orthopedic surgeon, who referred him to a hand specialist. On Aug. 30, Eckenrode underwent exploratory surgery on his right hand, and it was determined that his median nerve was lacerated. The surgeon attempted to repair the cut nerve.

Eckenrode sued Jho and Allegheny Hospital (and its owner), alleging that Jho had negligently failed to provide appropriate care for his injuries, constituting medical malpractice.

Eckenrode argued that the method Jho used -- a transverse wrist incision and a blind cut of the transverse carpal ligament -- was a technique that had been discredited in medical literature for years.

Eckenrode's expert in hand surgery supported this contention, faulting Jho for using the discredited surgical technique, which put the median nerve in maximum danger of iatrogenic injury. With the technique there was a lack of control over the cutting device and inadequate protection of the median nerve, according to the expert.

The defense's expert in neurosurgery opined that the unfortunate post-operative symptoms which Eckenrode experienced were not evidence of any negligence, but were well-known and recognized complications of the carpal tunnel release procedure. The expert determined that Jho met the standard of care in performing both surgery and post-surgical care.

Injury: Following the Aug. 30 procedure, Eckenrode treated with a course of physical therapy. No further treatment was administered, and he sought about \$6,000 in lost wages.

Eckenrode's expert determined that Jho's failure to design and execute a carpal tunnel release procedure caused him to suffer a 75 percent thickness laceration of his median nerve and complete transection of the nerve's motor branch. Eckenrode claimed that he did not regain sensation in his thumb, index finger, and ring finger. He continues to have occasional pain in his right (dominant) hand, which forces him to use his left hand.

According to Eckenrode, he was unable to continue his vocation as a competitive rifleman, and can no longer play the guitar or bow hunt. He has difficulty buttoning shirts, tying his shoes, and doing anything that involves his right hand. Eckenrode sought damages for past and future pain and suffering. His wife sought damages for her claim for loss of consortium.

Result: The jury found that Jho was not liable.

Trial Information:

Judge: Michael E. McCarthy

Trial Length: 4 days

Editor's Comment: This report is based on information that was provided by plaintiffs' counsel and on court documents. Defense counsel did not respond to the reporter's phone calls.

Writer ajenkins