



Plaintiff claimed doctors late in diagnosing spinal syndrome

Type: Arbitration

Amount: \$1,276,335

State: California

Court: None, CA

Case Type: • *Medical Malpractice* - Hospital; Delayed Diagnosis

Case Name: Phil Thummel and Wendy Thummel v. Kaiser Foundation Hospitals, et al., No. None

Date: August 01, 2004

Plaintiff(s): • Phil Thummel (Male)
• Wendy Thummel (Female, 35 Years)

Plaintiff Attorney(s): • Virginia C. Nelson; Law Offices of Virginia C. Nelson; San Diego CA for , , Phil Thummel, Wendy Thummel

Plaintiff Expert (s): • Robert B. Hall; Physical Rehabilitation; San Diego, CA called by: Virginia C. Nelson
• Sharon Kawai; Physical Rehabilitation; Fullerton, CA called by: Virginia C. Nelson
• Charles Jablecki; Neurology; San Diego, CA called by: Virginia C. Nelson
• Stephen E. Doyne; Clinical Psychology; San Diego, CA called by: Virginia C. Nelson
• William A. Frumovitz; Obstetrics; Santa Monica, CA called by: Virginia C. Nelson

Defendant(s): • Kaiser Foundation Hospitals

Defense Attorney(s): • Storm P. Anderson; Law Offices of Barton H. Hegeler; San Diego, CA for Kaiser Foundation Hospitals
• Barton H. Hegeler; Law Offices of Barton H. Hegeler; San Diego, CA for Kaiser Foundation Hospitals

**Defendant
Expert(s):**

- Dr. James S. Grisolia; Neurology; San Diego, CA called by: for Storm P. Anderson, Barton H. Hegeler
- Linda D. Olzack M.D.; Physical Rehabilitation; Merced, CA called by: for Storm P. Anderson, Barton H. Hegeler
- Roger Thrush; Vocational Rehabilitation; La Mesa, CA called by: for Storm P. Anderson, Barton H. Hegeler
- Jerome Stenehjem; Physical Rehabilitation; San Diego, CA called by: for Storm P. Anderson, Barton H. Hegeler
- Charles W. Nager; Obstetrics; San Diego, CA called by: for Storm P. Anderson, Barton H. Hegeler
- Ravinder K. Mittal; Gastroenterology; San Diego, CA called by: for Storm P. Anderson, Barton H. Hegeler,

Facts:

In August 2002, plaintiffs Phil and Wendy Thummel, 35, went to a Kaiser Foundation hospital for the birth of their third child. The evening after the birth, Wendy suffered from excruciating back and leg pain and was unable to urinate. Four days later, she was diagnosed with cauda equina syndrome (a compression of the spinal nerve roots caused by a herniated disc). As a result of the delay in diagnosis, Thummel sustained permanent injury.

The Thummels sued Kaiser Foundation Hospitals and other associated Kaiser entities for medical malpractice, claiming that doctors at Kaiser failed to timely diagnose the cauda equina syndrome. The plaintiffs claimed that a word clerk responsible for forwarding referral orders did not transfer the order to a neurosurgeon for 48 hours.

Kaiser argued that its physicians met the standard of care in attributing Thummel's back and leg pain and intermittent difficulties initiating urination with birth trauma.

Injury:

Thummel sustained permanent nerve and muscle injury including interruption of bladder and bowel functions, as well as saddle anesthesia (distribution of numbness in areas including the groin and upper inner thighs, consistent with the portion of the body that would come in contact if sitting on a saddle). She also experienced sexual dysfunction. The plaintiff underwent approximately six to nine months of physical therapy and a treatment to allow her to urinate normally. She sought damages for medical expenses and pain and suffering.

Her husband claimed loss of consortium.

The defense disputed the nature and extent of the plaintiff's injuries and argued that her bladder function returned to normal and that biofeedback and an evacuation device could correct her bowel dysfunction. The defense also asserted that some of the plaintiff's injuries were due to preexisting problems with a herniated disc.

Result:

At a binding arbitration, the plaintiffs were awarded \$1,276,335 in damages for liability related to a systems failure.

Trial Information:**Writer**

dwenger

Physician improperly instructed stopping of meds: patient

Type: Mediated Settlement

Amount: \$145,000

State: California

Venue: Riverside County

Court: Superior Court of Riverside County, Indio, CA

Injury Type(s): • *surgeries/treatment* - laminectomy

Case Type: • *Medical Malpractice* - Anesthesiology

Case Name: Jane Doe v. Roe Anesthesiologist, Roe Orthopedic Group and Roe Orthopedic Surgery Center, No.

Date: October 26, 2011

Plaintiff(s): • Jane Doe (Female, 81 Years)

Plaintiff Attorney(s): • John R. Mittelman; Mittelman Law Firm; Temecula CA for Jane Doe

Defendant(s): • Roe Anesthesiologist
• Roe Orthopedic Group
• Roe Orthopedic Surgery Center

Defense Attorney(s): • Sheila A. Alexander; Schmid & Voiles; Irvine, CA for Roe Anesthesiologist, Roe Orthopedic Group, Roe Orthopedic Surgery Center

Facts:

On May 11, 2009, the plaintiff, an 81-year-old retired woman, was instructed by an appointments nurse to stop taking her Plavix and aspirin medication a couple of days before her next epidural injection.

The plaintiff had a history of two bypass surgeries and was on lifetime regimen of Plavix and aspirin. When she developed some left-sided flank pain, and conservative treatment failed to relieve her symptoms, she was recommended epidural injections to resolve her intractable pain. A thoracic epidural was subsequently scheduled for May 11, 2009. The plaintiff claimed that she was not instructed to stop taking her Plavix and aspirin before the epidural, and that when she told her an anesthesiologist she had taken both medications the night before, the anesthesiologist performed the procedure anyway. The plaintiff was then instructed by the appointments nurse to stop taking her Plavix and aspirin "3 to 4 days before [her] next injection on June 1, 2009."

Four days before the next epidural, the plaintiff stopped taking both the Plavix and aspirin. During the June 2009 lumbar epidural injection, she felt immediate discomfort, which increased over the next several hours. She was then taken by ambulance to a local emergency department, where an MRI showed a massive hematoma at T11-12, L1-2 and L2-3.

The plaintiff sued the anesthesiologist, the orthopedic group and the orthopedic surgery center. She alleged that the anesthesiologist was negligent for telling her to stop her medication, constituting medical malpractice, and that the orthopedic group and surgery center were vicariously liable for the anesthesiologist's actions.

Plaintiff's counsel contended that the anesthesiologist was negligent in advising his patient to stop taking her Plavix and aspirin only 3 to 4 days before the procedure, and that the standard of care required stopping all antiplatelet medications no less than 5 days before the procedure. Counsel also noted that the general consensus from medical literature discussing when to stop such medications gives recommendations to stop between 5 and 7 days before undergoing elective procedures, whereas the Plavix website recommends that patients stop taking it no less than 5 days before undergoing elective procedures.

Defense counsel contended that the defendant complied with the standard of care, and that the injuries sustained by the plaintiff were not due to the effects of the antiplatelet medication. Instead, counsel contended that the hematoma was a risk of the procedure, which had been discussed with the plaintiff and consented to.

Injury:

The plaintiff sustained a massive hematoma at T11-12, L1-2 and L2-3, which caused stenosis and neural compression. One day after her second epidural injection, she underwent emergency surgery consisting of decompression and a 5-level laminectomy to avoid the risk of permanent nerve injury and cauda equina syndrome.

Post-operatively, the plaintiff now suffers unrelenting right-sided pain, which radiates through her buttock and down her right leg to her calf, along with paresthesia. Two rhizotomies were ultimately performed over an eight month period following her decompression surgery, but they provided no relief. Thus, she claimed that she now has no further options for reduction of her lifelong pain.

Result: The parties negotiated a \$145,000 pretrial settlement, which was established via the guidance of a mediator.

Trial Information:

Judge: Harrison Sommer

Demand: \$250,000

Offer: \$20,000

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

Writer pidiculla

Doctor argued he isn't to blame for plaintiff's pain

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Los Angeles County

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

Injury Type(s):

- *head* - headaches
- *brain* - cerebrospinal fluid leak
- *other* - scar tissue; epidural injections; chronic pain syndrome
- *neurological* - neurological impairment; arachnoiditis

Case Type:

- *Medical Malpractice* - Anesthesiology; Informed Consent; Negligent Injection

Case Name: Jane Doe v. Andres Falabella, M.D., No. GC040325

Date: February 24, 2011

Plaintiff(s):

- Jane Doe (Female, 43 Years)

Plaintiff Attorney(s):

- Benjamin C. Johnson; The Boesch Law Group; Los Angeles CA for Jane Doe
- Cynthia E. Fruchtman; The Boesch Law Group; Los Angeles CA for Jane Doe

Plaintiff Expert(s):

- J. Antonio Aldrete M.D.; Anesthesiology; Birmingham, AL called by: Benjamin C. Johnson, Cynthia E. Fruchtman
- Irv Klein M.D.; Anesthesiology; Van Nuys, CA called by: Benjamin C. Johnson, Cynthia E. Fruchtman
- Hart C.M. Cohen M.D.; Neurology; Los Angeles, CA called by: Benjamin C. Johnson, , Cynthia E. Fruchtman
- Barbara Greenfield R.N.; Life Care Planning; South Pasadena, CA called by: Benjamin C. Johnson, , Cynthia E. Fruchtman

Defendant(s):

- Andres Falabella, M.D.

Defense Attorney(s):

- Yuk K. Law; Law, Brandmeyer + Packer, LLP; Pasadena, CA for Andres Falabella, M.D.
- Kent T. Brandmeyer; Law, Brandmeyer + Packer, LLP; Pasadena, CA for Andres Falabella, M.D.

Defendant Expert(s):

- Gerald Manecke M.D.; Anesthesiology; San Diego, CA called by: for Yuk K. Law, Kent T. Brandmeyer
- Bernard Ullman M.D.; Neurology; Redondo Beach, CA called by: for Yuk K. Law, Kent T. Brandmeyer
- Matthew Lotysch M.D.; Neuroradiology; Bakersfield, CA called by: for Yuk K. Law, Kent T. Brandmeyer
- Michael A. Wienir M.D.; Neurology; Tarzana, CA called by: for Yuk K. Law, Kent T. Brandmeyer

Facts:

On Feb. 10, 2007, the plaintiff, 43, a real estate agent, underwent a spinal tap at an outside hospital, which was negative, but produced severe headaches. She was diagnosed with a slow leakage of spinal fluid out of the hole created by the spinal tap needle, causing her headaches. She was referred through a friend to Dr. Andres Falabella, an anesthesiologist at City of Hope in Duarte.

Falabella decided to treat the problem with a "blood patch" procedure, which involves drawing blood from the patient's arm and then injecting it into the epidural space in her lumbar region. The clotting properties of the blood are intended to plug the pinhole previously left by the spinal tap needle, stopping the leakage of spinal fluid and curing the headaches.

On March 14, the plaintiff underwent the "blood patch" procedure at City of Hope. Falabella claimed he introduced the epidural needle into what he believed was the epidural space using the "loss of resistance air technique," which involves pushing the needle into patient's back by feel until it is in the correct space. When Falabella injected the blood through the needle into the plaintiff's back, she screamed in pain and lost consciousness. She awoke several minutes later and claimed the pain was unbearable. She claimed the pain never abated and continues to the present.

The plaintiff sued Falabella for medical malpractice, alleging that he did not obtain adequate informed consent for the procedure and that he was negligent in the performance of the procedure itself.

The plaintiff contended that Falabella pushed the epidural needle too far in and punctured her dura, the membrane barrier between the epidural space and the subdural space. She alleged that by injecting blood directly into her subdural space, Falabella caused damage to her spinal cord and cauda equina nerve roots. She claimed that after the injection, Falabella acknowledged that he punctured the dura. She further alleged the doctor tried to cover up his mistake by accusing her of having a psychiatric disorder that caused her pain complaints.

Plaintiff's counsel presented a third-party witness, Kathy Coco, who was in the room during the procedure, to corroborate her testimony. Coco, who was on the other side of a

drawn curtain, claimed she overheard what happened, including Falabella's alleged admission that he punctured the plaintiff's dura. Coco further claimed that Falabella refused to stop injecting blood into the spinal cord, even after the plaintiff was screaming and pleading for him to stop.

Falabella contended that he obtained proper informed consent. He claimed that puncturing the dura during the placement of an epidural needle is a recognized, accepted complication of this procedure, since the needle is placed blindly by the doctor. He argued that the technique was appropriate and pursuant to his many years of training as an anesthesiologist (the plaintiff denied that Falabella made this argument). He claimed that he may have nicked the dura, but that no blood entered the subarachnoid space and touched the spinal cord.

Falabella denied stating that he punctured the dura, claiming that he never felt that he did so. He claimed he asked the plaintiff's mother whether the plaintiff had a psychiatric history, given her extreme pain complaints, which he claimed were disproportionate to what one would normally experience from the procedure.

Injury:

The plaintiff claimed the blood injected directly into her subdural space caused her to develop arachnoiditis, a condition where the arachnoid membrane becomes inflamed such that cauda equina nerve roots may actually adhere or clump together, and where scar tissue may form. She claimed that the condition has caused her permanent, incapacitating pain. She said she sees multiple physicians to keep her pain under control and medicated.

The plaintiff claimed that she has not been able to work or function outside her home since the procedure on March 14, 2007. She claimed she requires assistance from her elderly mother to carry out her daily activities, and also has difficulty bathing and dressing herself. The plaintiff said she uses ice packs constantly to numb the pain, and is essentially bedridden.

The plaintiff claimed \$500,000 in out-of-pocket medical costs not covered by insurance. She also sought damages for future medical costs for nursing aide services and doctor visits to treat her pain. She claimed her annual future medical costs will range from \$85,000 to \$125,000, and sought approximately \$4.9 million in total damages for past and future medical costs. She also asked the jury for \$500,000 for past and future pain and suffering.

Falabella contended that the plaintiff does not have arachnoiditis. He claimed that it is a radiologic diagnosis, that the plaintiff underwent a series of lumbar MRI scans after the procedure, and that none of them showed any clumping of nerve roots -- the radiographic hallmark of arachnoiditis. Falabella claimed that the plaintiff's pain complaints, while apparently real to her, are due to non-organic, somatoform causes.

Falabella also claimed, in regard to the plaintiff's mental health, that she suffered from untreated hypochondria and perhaps even Munchausen's disorder. He alleged this further illustrated the plaintiff's exaggeration of her symptoms for attention-seeking purposes and for financial gain via the medical malpractice suit.

The plaintiff contended that there was no proof of any mental disorder.

Result: The jury rendered a unanimous defense verdict.

Trial Information:

Judge: Joseph F. De Vanon Jr.

Demand: \$999,000

Offer: Waiver of costs in exchange for dismissal

Trial Length: 12 days

**Trial
Deliberations:** 55 minutes

Jury Vote: 12-0

**Jury
Composition:** 2 male, 10 female

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

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