

VERDICTS & SETTLEMENTS

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PERSONAL INJURY

MEDICAL MALPRACTICE

Failure to Diagnose Ovarian Cancer

VERDICT: \$2,899,887 (as to defendants Kim and Louis-Jacques only).

CASE/NUMBER: Scott J. Berger, Joshua Berger, by and through his Guardian ad Litem Scott J. Berger v. Young S. Kim, M.D., Carline Louis-Jacques, M.D., Kenneth Chan, M.D., Magella Medical Group, Robert Bier, M.D. / YC051949.

COURT/DATE: Los Angeles Superior Central / April 7, 2009.

JUDGE: Hon. Joseph R. Kalin.

ATTORNEYS: Plaintiff - Martin L. Stanley (Law Offices of Martin L. Stanley, Santa Monica); Sonia Perez Chaisson (Law Offices of Sonia P. Chaisson, Los Angeles).

Defendant - Yuk K. Law (Law Brandmeyer, LLP, Pasadena) for Dr. Chan, Magella Medical Group; Thomas F. McAndrews (Reback, McAndrews & Kjar, LLP, Manhattan Beach) for Dr. Kim; George E. Peterson (Peterson & Bradford, LLP, Burbank) for Dr. Louis-Jacques; Michael A. Zuk (Herzfeld & Rubin, L.L.P., Los Angeles) for Dr. Bier.

MEDICAL EXPERTS: Plaintiff - Robert Futeran, M.D., gynecologic oncology, Los Angeles; Peter Julien, M.D., radiology, Los Angeles; Marshall Kadner, M.D., OB/GYN, Beverly Hills; Jeremy Schwieger, M.D., internal medicine, Tarzana.

Defendant - Michael L. Berman, M.D., gynecologic oncology, Orange; Irwin Frankel, M.D., OB/GYN, Los Angeles; Michael Van-Scoy Mosher, M.D., oncology, Los Angeles; Jian Yu Rao, M.D., anatomic and clinical pathology, Los Angeles; Michael G. Ross, perinatology, Torrance; Jeffrey Salberg, M.D., internal medicine, Tarzana; Vicki L. Schiller, M.D., diagnostic radiology and ultrasonography, Santa Monica; Giuliana S. Songster, M.D., perinatology, Irvine.

TECHNICAL EXPERTS: Plaintiff - Susan P. Bleecker, economics, Pasadena.

Defendant - Ted Vavoulis, M.A., economics, Pasadena.

FACTS: This was a medical malpractice case regarding the failure to diagnose and treat ovarian cancer in a 31-year-old pregnant female. Six ultrasounds during her pregnancy revealed a large complex and persistent mass in the right ovary.

Decedent Ann Francis Seneriches was initially seen by her obstetrician, Carline Louis Jacques, M.D., who saw the mass on her ultrasound. Dr. Jacques referred her patient to a team of maternal fetal specialists at Magella Medical Group, including Kenneth Chan, M.D. None of the doctors referred her to a gynecological oncologist and none performed surgery to investigate the mass.

After the pregnancy, Dr. Jacques continued to see the patient, she ordered an additional ultrasound, which again showed the persistence of the mass. Thereafter, another ultrasound was ordered, either by Dr. Jacques and/or Young S. Kim M.D. That ultrasound again showed the persistence of the mass. Both Dr. Jacques and Dr. Young denied that they ordered the last ultrasound or that they had timely received the results of that ultrasound. This ultrasound was read by defendant Bier, who performed only a transabdominal ultrasound, but not a color doppler or transvaginal study.

After the last ultrasound was ordered, there was no follow-up care until six months later when the patient saw Dr. Kim at his office with a severely distended abdomen. She later went to the emergency room at Little Company of Mary Hospital where she was diagnosed with Stage III ovarian cancer and died within two months.

PLAINTIFFS' CONTENTIONS:

The plaintiffs contended that defendants were negligent and failed to comply with the standard of care by failing to properly diagnose and treat decedent by performing surgery to evaluate the mass, and/or failing to refer to a gynecological oncologist for further evaluation, and/or failing to fully inform the patient about the risks of not having surgery and/or further evaluation of the mass. As against Dr. Bier, plaintiffs claimed he failed to perform an adequate study, failed to recommend timely follow-up, and failed to adequately convey his findings.

DEFENDANTS' CONTENTIONS:

The defendants contended that they complied with the standard of care; that they were not responsible because decedent's cancer was a rare and aggressive ovarian cancer; that they acted reasonably in watching the mass via eight ultrasounds throughout the pregnancy and thereafter, and that they fully informed the patient about the risks. The mass resembled an endometrioma and not cancer.

Dr. Bier contended he was only asked to determine the presence of ovarian mass, but not further define it, which he appropriately did.

INJURIES: Wrongful death.

DAMAGES: The plaintiffs claimed \$1,899,877 for present value of economic losses, including lost support and loss of household services.

JURY TRIAL: Length, 15 days; Poll, 11-1 (overall for plaintiffs and against defendants Kim and Louis-Jacques), 9-3 and/or 10-2 (for defendants Bier and/or Chan/Magella); Deliberation, three days.

SETTLEMENT DISCUSSIONS:

The plaintiffs demanded policy limits of \$1,000,000 against both defendants Jacques and Kim. Defendant Jacques offered \$65,000 prior to trial, lowered to zero before trial. Defendant Bier offered \$29,999, defendant Kim offered \$250,000, defendants Chan and Magella Medical Group offered \$29,999, which was lowered to zero during trial.

RESULT: The jury found for plaintiff, awarding \$2,899,877 as against defendants Jacques and Kim. Jacques was found to be 60 percent at fault and Kim was found to be 25 percent at fault. The award included damages for full economic loss and \$1,000,000 for non-economic damages. The jury issued a defense verdict as to negligence for defendant Bier and as to causation for defendants Chan and Magella Medical Group.