

## VERDICTS &amp; SETTLEMENTS

www.dailyjournal.com

FRIDAY, JULY 20, 2012

**MEDICAL MALPRACTICE**  
Wrongful Death

VERDICT: Defense.

CASE/NUMBER: Lori Russell, Melissa Russell and Brian Russell v. Facey Medical Group / PC046819.

COURT/DATE: Los Angeles Superior Chatsworth / June 4, 2012.

JUDGE: Hon. Melvin D. Sandvig.

ATTORNEYS: Plaintiff - Robert J. Mandell (The Mandell Law Firm, Northridge); Deborah C. Lacombe (Blumberg Law Corp., Long Beach).

Defendant - Yuk K. Law (Law, Brandmeyer + Packer, LLP, Pasadena).

MEDICAL EXPERTS: Plaintiff - Meldon Levy, M.D., cardiology, internal medicine, Los Angeles; Richard Metz, M.D., internal medicine, Los Angeles.

Defendant - Jeffrey F. Caren, M.D., cardiology, Los Angeles; William Klein, M.D., internal medicine, pulmonology, Newport Beach; Alan W. Weinberger, M.D., internal medicine, Los Angeles.

TECHNICAL EXPERTS: Plaintiff - David T. Fractor, Ph.D., economics, Pasadena.

Defendant - Jennie McNulty, CPA, MBA, economics, Los Angeles.

FACTS: On April 30, 2008, Dean Russell, 56, presented to Facey's urgent care center and was evaluated by Dr. Kevin Vuong for complaints of cough (especially at night), post-nasal drip, throat tickle, and sinus tenderness. Dr. Vuong diagnosed sinusitis and bronchospasm, and prescribed antibiotics and albuterol inhaler.

Russell had the significant history of coronary artery disease with a myocardial infarction when he was 29 years old. His coronary risk factors included hypertension, cardiac arrhythmia, over-weight, hyperlipidemia. He had a negative nuclear stress test performed in the summer of 2007 by an outside cardiologist, along with an echocardiogram, as a routine follow-up.

On June 17, Dean presented to Dr. Wei-Cheng Jen, his primary care physician at Facey for a number of complaints, including dry cough, chest and nasal congestion, itchy throat, wheezing of the lungs, and cough causing chest tightness. Dr. Jen had a spirometry test performed that showed Dean had evidence of reversible airway disease most likely due to allergic asthma. Dr. Vuong prescribed prednisone and albuterol inhaler, among other medications. Dean was referred to an allergist.

On June 23 and July 2, 2008, Dean was evaluated by allergist Dr. Cornelia DeLiconia at Facey. Dr. DeLiconia and her partners, Drs. Jacob Offenberger and Joseph Shapiro, were contracted allergists with Facey Medical Group, and they saw Facey's patients at Facey's offices. Dr. DeLiconia diagnosed allergic asthma after conducting allergy sensitivity test that showed Dean was allergic to tree pollens. Dean reported improvements of his symptoms with the use of the medications.

On July 31, 2008, Dean returned to Dr. Jen, at which time his total cholesterol and LDL counts were elevated, and it was thought that the Simvastatin recommended by his insurance company was not effective. Dr. Jen asked the insurance company to put him back on Lipitor. Dean complained of cough, chest tightness, wheezing, nasal swelling and dry cough. Dr. Jen felt that his symptoms were due to allergic asthma, and he continued the use of the asthma medications.

On Aug. 18, 2008, Dean was seen by allergist Dr. Offenberger at Facey Medical Group for an urgent visit because he was unable to sleep at night due to shortness of breath. Dr. Offenberger also diagnosed allergic asthma. Dr. Offenberger continued the allergic asthma medications.

On Aug. 17, 2008, Dean was last seen at Facey Medical Group by allergist Dr. Shapiro. Dean reported improvement of symptoms, but he had daily burning in his chest with a little bit of tightness with exertion. Dr. Shapiro felt Dean had allergic asthma, and he continued the allergic asthma medications. Dean was asked to go to Dr. Shapiro's private office (outside of Facey Medical Group) to undergo an exhaled nitric oxide test to determine titration of asthma medications.

Dean did not return to his physicians before he died at work on Sept. 17, 2007, apparently as a result of sudden chest pain and an acute myocardial infarction. No autopsy was performed.

The decedent was survived by his widow and two adult children.

PLAINTIFF'S CONTENTIONS: Plaintiffs contended that the five physicians at Facey Medical Group who treated Dean mistakenly diagnosed allergic asthma when Dean was actually experiencing cardiac ischemic symptoms, including those consistent with cardiac asthma.

Plaintiffs claimed that the physicians should have suspected a cardiac problem given Dean's high risk factors for and history of coronary artery disease, and a consultation by a cardiologist was required under the standard. The cardiologist would have made the correct diagnosis, and Dean's life would have been saved by angioplasty or coronary artery bypass surgery. Additionally, plaintiffs contended that Facey Medical Group was vicariously liable for the three allergists on the theory of ostensible agency, because these independent contractors treated Dean at Facey Medical Group's facilities.

DEFENDANT'S CONTENTIONS: Facey Medical Group contended there were objective laboratory results to support the diagnosis of allergic asthma, and the standard of care did not require any of the physicians to refer Dean to a cardiologist. In terms of causation, Facey Medical contended that Dean died of an unpredictable and unpreventable plaque rupture in a coronary artery that caused the sudden myocardial infarction and demise.

DAMAGES: \$250,000 to \$2 million (but MICRA caps non-economic damages at \$250,000).

SPECIALS IN EVIDENCE: LOE: \$376,034 Future LOE: \$932,294 (present cash value).

JURY TRIAL: Length, 10 days; Deliberation, two hours.

SETTLEMENT DISCUSSIONS: Plaintiffs served CCP 998 offer for \$1 million, and demanded \$399,999 immediately before trial.

Defendant offered waiver of costs.

RESULT: Defense verdict as to Facey Medical Group.

OTHER INFORMATION: Plaintiffs chose to dismiss all five physicians before trial and pursued the case against Facey Medical Group for vicarious liability of the physicians, including the three allergists who were independent contractors with their own professional liability insurance coverage.

Facey Medical Group will file a cost bill.