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PAKECH vs. CHILDREN'S HOSPITAL OF PHILADELPHIA.
90-09-2485

DATE OF VERDICT/SETTLEMENT: December 14, 1995

TOPIC: MEDICAL MALPRACTICE - FAILURE TO PROPERLY DIAGNOSE ANKLE SPRAIN
- IMPROPERLY READING OF STRESS X-RAY - CAST APPLIED TOO TIGHTLY - PRE-
MATURE DISCHARGE FROM HOSPITAL - COMPARTMENT SYNDROME - PERMANENT NERVE
DAMAGE - FOOT DROP - FOUR SURGICAL PROCEDURES.

SUMMARY:

Result: \$1,200,000 Verdict

EXPERT WITNESSES:

Plaintiff's: [Robert L. Worthington-Kirsch](#) from Wynnewood.: Plain-
tiff's radiologist.

[John L. Sbarbaro](#) from Bala Cynwyd.: Plaintiff's orthopedic surgeon.

[Philip Spergel](#) from Jenkintown.: Plaintiff's vocational expert.

[Brian Sullivan](#) from Philadelphia.: Plaintiff's economist.

Defendant's: [Paul Hecht](#) from Philadelphia.: Defendant osteopath's or-
thopedic expert.

[Philip Alburger](#) from Philadelphia.: Defendant surgeon's orthopedic
expert.

[Gary Silverstein](#) from St. James, N.Y.: Defendant radiologist's ex-
pert.

ATTORNEY:

Plaintiff's: [George J. Badey, III](#) of Sheller, Ludwig & Badey in
Philadelphia for plaintiff.

Defendant's: [Edward Schwabenland](#) of Schwabenland & Ryan in Wayne for
second defendant hospital.

[Michael E. McGilvery](#) of Wright, Young & McGilvery in Plymouth Meeting
for defendant surgeon.

[David Soltz](#) of Sand & Saidel in Philadelphia for defendant osteopath.

[Daniel N. German](#) of Rapp, White, Janssen & German in Philadelphia for
defendant radiologist and first defendant hospital.

JUDGE: Victor J. DiNubile

RANGE AMOUNT: \$1,000,000-1,999,999

STATE: Pennsylvania

COUNTY: Philadelphia County

INJURIES:

MEDICAL MALPRACTICE - FAILURE TO PROPERLY DIAGNOSE ANKLE SPRAIN - IMPROPERLY READING OF STRESS X-RAY - CAST APPLIED TOO TIGHTLY - PREMATURE DISCHARGE FROM HOSPITAL - COMPARTMENT SYNDROME - PERMANENT NERVE DAMAGE - FOOT DROP - FOUR SURGICAL PROCEDURES.

FACTS:

This action was brought on behalf of the minor female plaintiff against the defendants osteopath, radiologist, surgeon and two hospitals where the plaintiff was treated for injuries initially sustained in an automobile accident. The plaintiff alleged that the defendants failed to properly diagnose an ankle sprain, casted the injury too tightly and prematurely discharged her from the hospital resulting in permanent nerve damage. The defendants maintained that the plaintiff was properly treated by all concerned.

The minor plaintiff was 15 years old in April of 1986, when she was injured in an automobile accident. As a result of an ankle sprain and other orthopedic injuries, she sought treatment from the defendant osteopath in June of 1986. In January of 1987, the defendant osteopath sent the plaintiff to the first defendant hospital for a stress x-ray of her right ankle which was reported as normal by the defendant radiologist. The plaintiff contended that her right ankle problem never completely resolved during the approximately ten month period during which she was treated by the defendant osteopath.

After leaving the care of the defendant osteopath in April of 1987, the plaintiff was not treated for her right ankle problem until July of 1988 when she was first seen by the defendant surgeon. The defendant surgeon diagnosed the plaintiff's problem as an unstable right ankle and initially recommended conservative treatment. When conservative treatment was not successful, this defendant recommended ankle reconstruction surgery which was carried out on Friday, November 18, 1988. The evening following the surgery and the next morning, the plaintiff contends that she continued to complain of severe pain and that her cast was on too tight. The plaintiff alleged that notwithstanding these complaints, she was discharged from the second defendant hospital the following morning.

The defendant treating surgeon, did not see the plaintiff on the Saturday of her release and the plaintiff was discharged by a resident, according to evidence offered. Later that Saturday evening, the plaintiff went back into the emergency room of the second defendant hospital complaining of severe pain. At that time, it was determined that the plaintiff's cast was on too tight and that she was suffering from compartment syndrome in the lateral compartment of her right leg. The plaintiff's experts testified that the compartment syndrome caused permanent damage to the superficial peroneal nerve in the plaintiff's right leg and, as a result, she suffered permanent foot drop. The plaintiff has undergone three surgical procedures subsequent to the initial reconstruction operation in an attempt to remedy the problem.

The plaintiff's vocational rehabilitation expert opined that the plaintiff is able to work, but is required to maintain a sitting, sed-

entary job and is unable to walk for any considerable distance without an increase in the symptoms. The plaintiff walks with a noticeable limp and has several severe scars and atrophy in her right calf which makes it smaller than her left calf.

The plaintiff contended that the defendant osteopath failed to properly diagnose the level of sprain suffered in the original automobile accident and, therefore, did not treat it appropriately with immobilization. The theory of negligence against the defendant radiologist was that he did not know how much stress was applied when stress x-ray views were taken of the plaintiff's right ankle and, therefore, improperly reported the study as negative. The plaintiff alleged that the defendant surgeon applied the plaintiff's cast too tightly and that the second defendant hospital discharged her prematurely following the reconstructive surgery.

The defendant osteopath contended that he properly treated the plaintiff's condition and that immobilization would not have assisted her, given the fact that he first saw her six weeks after the initial injury and, therefore, immobilization was not a viable option at that point. The defendant radiologist argued that the x-ray was properly performed and that in looking at the x-ray, it could be determined that the appropriate amount of stress was applied to the ankle. The defendant surgeon and second defendant hospital alleged that the compartment syndrome developed later in the day after the plaintiff was discharged from the hospital. Hospital records indicated that the plaintiff had very little pain upon discharge, according to evidence offered by the defendants. The jury found the second defendant hospital to be 99% negligent and the defendant surgeon to be 1% negligent. The other defendants were found not negligent. The plaintiff was awarded \$1.2 million. The plaintiff's motion to add \$400,000 in delay damages to the award is pending.

COMMENTARY:

Conflicting evidence was presented concerning the plaintiff's condition at the time she was discharged from the second defendant hospital following reconstructive surgery to her ankle. There was no discharge summary from the hospitalization which could have been relied on as a definitive statement regarding the plaintiff's pain level at the time. Hospital records introduced by the defendant indicated that the plaintiff's pain level was well within normal limits and in fact 'zero' on one record at the time of discharge. The defendant hospital stressed this evidence to support its (and the defendant surgeon's) argument that the compartment syndrome must have occurred after the plaintiff's discharge from the hospital. However, the plaintiff produced the actual prescriptions which were written by residents at the hospital upon discharge. The prescriptions included Tylenol with codeine and Percocet which were explained to the jury as powerful medications prescribed for pain. The jury may very well have found this evidence important in evaluating this crucial issue and may have rationalized that these medications would not have been prescribed for the plaintiff in the absence of complaints of pain.

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