

NEW YORK

FAILURE TO MONITOR

Slips, Trips & Falls — Falldown

Dizzy patient's fall was not prevented, husband alleged

VERDICT

\$517,100

CASE

Joyce Patti & Stephen Patti v. Ellen Drexler
M.D. & Maimonides Medical Center,
No. 36987/02

COURT

Kings Supreme, NY

JUDGE

Gloria M. Dabiri

DATE

2/5/2007

PLAINTIFF

ATTORNEY(S)

Rory M. Shectman, Law Offices of
Kenneth A. Wilhelm, New York, NY

DEFENSE

ATTORNEY(S)

Frances Malfa, Wilson Elser Moskowitz
Edelman & Dicker LLP, New York, NY

FACTS & ALLEGATIONS On March 26, 2002, plaintiff Joyce Patti, 65, a retiree, presented to the office of Dr. Ellen Drexler, in Maimonides Medical Center, in Brooklyn. A primary care physician had referred Patti to Drexler for a neurological examination after Patti complained of unsteadiness. During the physical examination, Patti was asked to stand on one leg and hop. She fell and sustained an arm injury. She subsequently died of unrelated causes.

Patti's husband, Stephen Patti, acting individually and as administrator of his wife's estate, sued Drexler and the hospital. He alleged that Drexler failed to take adequate precautions during his wife's physical examination, that Drexler's actions constituted medical malpractice and that the hospital was vicariously liable for Drexler's actions.

Mr. Patti did not see his wife's fall, but he claimed that he heard his wife screaming and saw her lying on the floor. Plaintiffs' counsel claimed that Ms. Patti had informed Drexler of having imbalance problems.

The plaintiffs' expert neurologist opined that Drexler departed from good and accepted medical practice by not standing within arm's length of Patti during the exam and by failing to take any other precautions to prevent her fall.

Drexler contended that she took the appropriate precautions when conducting the neurological exam.

The defendants' expert neurosurgeon opined that Drexler did take the necessary precautions and that the additional steps specified by the plaintiffs' expert neurologist were unnecessary and did not need to be taken. He also testified that steps described by the plaintiffs' expert were not the standard of care.

INJURIES/DAMAGES *fracture, humerus; internal fixation; open reduction*

Patti sustained a fracture of the humerus of her left, non-

dominant arm. She was taken to Maimonides Medical Center's emergency room and given the option of undergoing surgery. She returned to the hospital a week or two later and underwent open reduction and internal fixation to treat her fracture. Afterward, she was treated at a nursing home and underwent about six months of physical and occupational therapy.

During her deposition, Patti complained of pain and contended that she had trouble with bathing and household chores as a result of her injury. Mr. Patti testified that his wife was unable to perform her household chores and that she experienced continued pain from her injury up until the time of her death, on Jan. 31, 2005.

Ms. Patti's estate sought recovery of Patti's medical expenses and damages for her past pain and suffering. Mr. Patti sought recovery of \$50,000 for his loss of services.

Defense counsel disputed the severity and extent of Ms. Patti's injury. The defense contended that Patti made a good recovery after her physical and occupational therapy, that Patti waited about a week or two before deciding to undergo surgery and that if she suffered any pain during this time, she was the sole proximate cause of that pain.

RESULT The jury found that the defendants were liable for Patti's injuries. It awarded her estate a total of \$517,100 in damages from the day of the accident until her death, a period of about two years and 10 months. The jury did not award for the husband's loss of services.

ESTATE OF JOYCE

PATTI

\$17,100 past medical cost
\$500,000 past pain and suffering
\$517,100

DEMAND

\$250,000

OFFER

\$100,000

TRIAL DETAILS

Trial Length: 6 days
Trial Deliberations: 4 hours
Jury Vote: 6-0

PLAINTIFF

EXPERT(S)

Aric Hausknecht, M.D., neurology,
New York, NY

DEFENSE

EXPERT(S)

Douglas Cohen, M.D., neurosurgery, New
York, NY

POST-TRIAL Defense counsel has moved to set aside the verdict as excessive. Plaintiffs' counsel has moved to increase the loss-of-services award.

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' and defense counsel.

—Tim Heinz