

CASE INFORMATION SHEET
FLORIDA LEGAL PERIODICALS, INC.
P.O. Box 3370, Tallahassee, FL 32315-3730
(904) 224-6649/(800) 446-2998 * FAX (850) 222-6266

COUNTY AND COURT:

The 9th Judicial Circuit Court for Orange County, Florida

NAME OF CASE:

KATHLEEN SCHWARTZ and THOMAS SCHWARTZ, her husband,

Plaintiff,

v.

RAVINDRA TAK, M.D. and PHYSICIAN ASSOCIATES, LLC,

Defendants

CASE DOCKET NO.: 2012-CA-017414-0 **JUDGE:** Keith F. White

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL:

John Dill and Grant Kuvin
Morgan & Morgan, P.A.

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:

Karissa L. Owens and Henry W. (Skip) Jewett II
Rissman, Barrett, Hurt,
Donahue, McLain & Mangan, P.A.

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:

61 Unemployed Female

FOR WRONGFUL DEATH CASES, PLEASE GIVE AGE AND RELATIONSHIP OF SURVIVORS:

N/A

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

The claim arose out of medical care rendered to plaintiff, Mrs. Schwartz, by defendant, Dr. Ravindra Tak, on September 21 & 22 and October 11, 2011.

CAUSE OF INJURY:

Mrs. Schwartz developed clostridium difficile colitis (c. diff) associated with antibiotic use. The c. diff colitis caused Mrs. Schwartz to develop pseudomembranous colitis that required hospitalization and surgical intervention resulting in a subtotal colectomy and ileostomy.

Plaintiffs alleged that an antibiotic, Cipro, ordered by Dr. Tak on September 21, 2011 aggravated a pre-existing c. diff infection causing it to develop into a condition that necessitated surgery. Plaintiffs argued that had no Cipro been given, the c. diff colitis would have resolved on its own.

NATURE OF INJURY:

Plaintiffs presented evidence at trial that the ileostomy was permanent or, if it could be reversed, would result in frequent, uncontrollable bowel movements or bowel incontinence. Mrs. Schwartz claimed that the ileostomy caused her to suffer mental anguish and aggravated her pre-existing chronic anxiety and depression.

PLAINTIFF'S EXPERT WITNESSES:

Kim Edward LeBlanc, M.D.
Family Practice
Pittsburg, Pennsylvania

Dr. LeBlanc opined that Dr. Tak had deviated from the standard of care by ordering an antibiotic for a virus. He testified that c. diff colitis should be treated with Flagyl and that Cipro would be counter-indicated in a patient with c. diff. However, he conceded on cross-examination that he felt it was most likely that Mrs. Schwartz had a virus when she presented to Dr. Tak's office in September 2011 and that the symptoms from the c. diff colitis likely did not begin until October 2011. He also agreed that he would have been critical of Dr. Tak for ordering any antibiotic on September 21, 2011, including Flagyl, the treatment for c. diff colitis.

Neil Julie, M.D.
Gastroenterology
Rockville, Maryland

Dr. Julie testified that Mrs. Schwartz had a c. diff infection in September 2011 when she presented to Dr. Tak's office and that had he either not given Cipro, or given Flagyl instead, she would not have required surgery. Instead, the Cipro aggravated her pre-existing c. diff infection after briefly masking her symptoms. He also opined that the ileostomy was either not reversible or that Mrs. Schwartz would have problems with bowel control if she could have the ileostomy reversed.

John Russell, Ph.D.
Rehabilitationist/Life Care Planner
Melbourne, Florida

Dr. Russell prepared a Life Care Plan based upon the future care recommendations of Ronald Tolchin, M.D., a physical rehabilitation physician in Miami, Florida. The plan recommended future GI and internal medicine care as well as a revision surgery for plaintiff's ileostomy.

Fred Raffa, Jr., Ph.D.
Economist
Orlando, Florida

Dr. Raffa opined that the present value of the Life Care Plan prepared by Dr. Russell was \$164,407.

DEFENDANT'S EXPERT WITNESSES:

Richard Hayes, M.D.
Family Practice
Wellington, Florida

Dr. Hayes testified that Dr. Tak had met the standard of care at all times during his treatment of Mrs. Schwartz. He opined that the cause of the symptoms at the time of plaintiff's first two presentations to Dr. Tak's office (diarrhea, abdominal pain, malaise, fever and nausea) was more likely than not a bacterial infection and that the c. diff infection had not yet begun. Dr. Hayes agreed that both the Clindamycin given to plaintiff in August 2011 and the Cipro given to plaintiff on September 21, 2011 by Dr. Tak could have caused the c. diff colitis.

However, it was appropriate for the Cipro to have been prescribed in light of the risk associated with not treating a suspected bacterial infection and the lack of reason to suspect the possibility of a c. diff infection as of the date the Cipro was ordered. Nevertheless, Dr. Tak screened for c. diff by ordering a laboratory stool analysis for c. diff, which was performed via an enzyme immunoassay (EIA) method. Dr. Hayes testified that the EIA was the standard of care in September and October 2011 and that the PCR method (advanced by plaintiffs as being the more reliable test) was not even available to outpatient providers at that time.

Paul Auwaeter, M.D.
Infectious Disease
Baltimore, Maryland

Dr. Auwaeter testified that the c. diff colitis began around October 7, 2011 when plaintiff's symptoms of diarrhea and abdominal pain returned following her two visits to Dr. Tak's office in September and subsequent improvement (both by patient report and by normalization of her WBC and potassium levels) with the Cipro. Thus, while the Cipro was the likely cause of the c. diff colitis, it was not the cause of the symptoms that brought plaintiff to Dr. Tak's office initially.

Dr. Auwaeter opined that the patient most likely had a bacterial campylobacter infection in September 2011 as she subsequently tested positive for that bacteria in a stool antigen study performed October 12, 2011 in the hospital. Additional support for that opinion was derived from the fact that the patient improved following the course of Cipro, which covers campylobacter but not c. diff.

Had she had c. diff colitis in September 2011, Dr. Auwaeter would not have expected her condition to have improved and would have instead expected her to have deteriorated rapidly. Dr. Auwaeter also testified as to the nature of c. diff colitis and the fact that it is an unpredictable disease.

CHECK APPROPRIATE SPACE: X Verdict

DATE OF VERDICT:

February 16, 2016

VERDICT:

Defense Verdict

COMPARATIVE NEGLIGENCE:

N/A

JUDGMENT:

Pending

DATE OF JUDGMENT:

Pending

DEFENDANTS' OFFER:

The only offers to settle made on behalf of the defense were proposals for settlement (totaling \$1,200) issued in 2013.

PLAINTIFFS' DEMAND:

Plaintiffs asked for an award of \$3.17 million during closing.

ATTORNEY'S COMMENTS:

The defense has agreed to waive its claims for attorney's fees and costs in exchange for plaintiffs' agreement not to pursue an appeal.

Submitted By: Karissa L. Owens Date: March 14, 2016

Firm: Rissman, Barrett, Hurt,
Donahue, McLain & Mangan,
P.A.

Address: 888 S.E. 3rd Avenue
Suite 300
Fort Lauderdale, FL 33316

Telephone: (954) 526-5480

Fax: (954) 745-7258

KOM/kom