

MEDICAL MALPRACTICE

Wrong diagnosis led to fatal surgery, suit alleged

AMOUNT \$7,000,000

Estate of Jean Anthony

\$3,500,000 Wrongful Death: Survival

\$3,500,000 Wrongful Death: wrongful death

TYPE Verdict-Mixed

STATE New York

CASE Esther Benoit as Administratrix of the Estate of Jean Anthony Benoit, Deceased v. Interfaith Medical Center Olugbenga O. Dawodu, M.D., Marvin S. Becker, M.D., Serge Balmir, M.D., Albert Wright, M.D., and Mohamed Mansour, M.D.

VENUE Kings County

JUDGE Lawrence S. Knipel

DATE February 7, 2012

TRIAL LENGTH 4 weeks

TRIAL DELIBERATIONS 4.5 hours

JURY VOTE 6-0

JURY COMPOSITION 4 male/ 2 female

PLAINTIFF(S) Estate of Jean Anthony Benoit (Male, 52 Years)

PLAINTIFF ATTORNEY(S) John Bonina; Bonina & Bonina, P.C.; Brooklyn, NY, for Estate of Jean Anthony Benoit

PLAINTIFF EXPERT(S) David Zimmon M.D.; Gastroenterology; Port Washington, NY called by: Estate of Jean Anthony Benoit Gerard Catanese M.D.; Forensic Pathology; Syosset, NY called by: Estate of Jean Anthony Benoit Robert Aldoroty M.D.; Surgery; New York, NY called by: Estate of Jean Anthony Benoit

INSURER(S): Physicians' Reciprocal Insurers

FACTS & ALLEGATIONS On Dec. 7, 2006, plaintiff's decedent Jean Benoit, 52, a livery service's dispatcher, presented to internist Dr. Olugbenga Dawodu. Benoit reported that he was suffering from fatigue and weakness, and the doctor observed severe jaundice.

Benoit was referred to Interfaith Medical Center, in Brooklyn. He was admitted, and a test revealed that his blood contained a greatly excessive level of bilirubin. Subsequent tests suggested that he was suffering from an obstruction of a hepatic duct, which facilitates the drainage of bile.

On Dec. 12, 2006, Benoit underwent diagnostic surgery: an endoscopic retrograde cholangiopancreatography. The procedure was performed by a gastroenterologist, Dr. Mohamed Mansour. The procedure did not reveal the cause of Benoit's symptoms, and it caused a hemorrhage that necessitated clipping and cauterization of an artery.

On Dec. 18, 2006, Benoit underwent a percutaneous transhepatic cholangiography: an X-ray of the bile ducts. The procedure was performed by radiologist Dr. Serge Balmir, who suspected that the hepatic duct's obstruction was a result of an intra-ductal mass. The test did not permit full visualization of the duct. The test was repeated during two of the ensuing four days, but the results were inconclusive.

On Dec. 29, 2006, Dr. Albert Wright performed an exploratory laparotomy. He determined that Benoit's hepatic ducts were not obstructed.

On Dec. 31, 2006, a doctor noted that Benoit was exhibiting oliguria: a decreased output of urine. Tests revealed a severe decrease of Benoit's blood's hematocrit and hemoglobin. Dawodu suspected internal bleeding, and he ordered transfusions. Wright was consulted, but he did not believe that bleeding was occurring.

Benoit's condition deteriorated. He suffered shock, failure of his kidneys and severe impairment of his respiration. He died on Jan. 2, 2007. Benoit's widow, Esther Benoit, claimed that her husband's death was a result of unaddressed bleeding that was caused by the procedure that Mansour performed.

Ms. Benoit, acting as the administrator of her husband's estate, sued Balmir, Dawodu, Mansour, Wright, Interfaith Medical Center and her husband's treating physician, Dr. Marvin Becker. The estate alleged that the doctors failed to properly diagnose and/or treat Mr. Benoit's condition, that the failures constituted malpractice, and that Interfaith Medical Center was vicariously liable for the actions of Balmir, Mansour and Wright.

The estate's counsel ultimately discontinued the claim against Becker. The matter proceeded to a trial against the remaining defendants.

The estate's counsel claimed that Balmir, Dawodu, Mansour and Wright were distracted by the incorrect belief that Mr. Benoit was suffering from an obstruction of a hepatic duct. He contended that Benoit's initial symptoms were a product of benign recurrent intrahepatic

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cholestasis, which is a rare condition that inhibits the liver's release of bile. The estate's expert gastroenterologist opined that Benoit's hepatic ducts could have been fully visualized via performance of a magnetic resonance cholangiopancreatography, and the estate's counsel contended that the test would have conclusively demonstrated that Benoit was not suffering obstruction of a hepatic duct. The estate's counsel claimed that such a finding would have led to the pursuit of other possible causes of Benoit's symptoms. He contended that the doctors' misdiagnoses led to Mansour's performance of the cholangiopancreatography that caused Benoit's fatal bleeding.

The estate's counsel also claimed that Wright should have detected and addressed Benoit's bleeding. The estate's expert surgeon opined that exploratory surgery should have been performed on Dec. 31, 2006, and he contended that prompt reparations would have saved Benoit's life.

The estate's expert pathologist noted that Benoit lost 700 cubic centimeters of blood, but the hospital's expert pathologist opined that such an amount could not produce a fatal result. The hospital's pathologist opined that Benoit's death was an unpreventable result of sepsis, and he noted that bleeding was not observed during a sonography that was performed during the day that preceded Benoit's death.

The hospital's counsel also contended that bleeding is an accepted risk of an endoscopic retrograde cholangiopancreatography, and he claimed that Mansour promptly and effectively resolved any bleeding that occurred during the procedure. He claimed that the procedure is a standard method of addressing a potentially obstructed hepatic duct. He contended that doctors suspected that a potentially cancerous mass may have been obstructing one of Benoit's hepatic ducts, and he claimed that the test provided the best method of locating such a mass.

INJURIES/DAMAGES The estate's counsel claimed that Benoit suffered undiagnosed benign recurrent intrahepatic cholestasis. He contended that doctors performed five unsuccessful diagnostic procedures that included an endoscopic retrograde cholangiopancreatography, a laparotomy and three percutaneous transhepatic cholangiographies. The first test was performed on Dec. 12, 2006, and the estate's counsel claimed that the test caused bleeding that ultimately claimed Benoit's life. The last test was performed on Dec. 29, 2006. Benoit subsequently developed symptoms that included shock, failure of his kidneys and severe impairment of his respiration. He died on Jan. 2, 2007. Benoit, 52, was survived by a wife and three teenaged children. Benoit's estate sought recovery of wrongful-death damages that included Benoit's lost earnings, damages for Benoit's pain and suffering, and damages for his children's loss of parental guidance. Defense counsel noted that Benoit's children have reached the age of majority.

RESULT The jury rendered a mixed verdict. It found that Mansour and Wright departed from accepted standards of medical care. Wright was assigned 80 percent of the liability, and Mansour was assigned 20 percent of the liability. Interfaith Medical Center was thusly deemed vicariously liable, and Balmir and Dawodu were not assigned liability. The jury determined that the estate's damages totaled \$7 million.