

VERDICTS & SETTLEMENTS

FRIDAY, DECEMBER 7, 2012

PERSONAL INJURY MEDICAL MALPRACTICE

SETTLEMENT: Defense

CASE/NUMBER: *Jane Doe v. Roe*
ENT / CIVDS1016503.

COURT/DATE: San Bernardino Superior /
Nov. 5, 2012

JUDGE: Hon. Michael A. Sachs

ATTORNEYS:

Plaintiff - Gary M. Schneider, Arlan Cohen (Law
Office of Gary M. Schneider, Los Angeles).

**Defendant - Raymond L. Blessey, Dean Smith
(Taylor Blessey, LLP, Los Angeles).**

MEDICAL EXPERTS: Plaintiff - Sara Guentz, R.N.,
life care planning, Long Beach; Warren S. Line,
M.D., otolaryngology, Burbank; Carl J. Orfuss, M.D.,
neurology, Los Angeles; Barry D. Pressman, M.D.,
neuroradiology, Los Angeles.

Defendant - Edwin C. Amos, III, M.D., neurology,
Santa Monica; Frank J. Coufal, M.D., FACS,
neurosurgery, La Jolla; Dennis R. Maceri, M.D.,
otolaryngology, Los Angeles; Wallace Peck, M.D.,
neuroradiology, Newport Beach.

TECHNICAL EXPERTS: Plaintiff - Alessandro
F. Anfuso, M.S., C.V.E., vocational rehabilitation,
Diamond Bar; Susan P. Bleeker, C.P.A., economics,
Pasadena.

FACTS: In the summer of 2001, plaintiff Jane
Doe, then 33, dove into a pool and struck her head.
Approximately four months later, she was seen at
LAC-USC Medical Center and diagnosed with an
acute myelopathy. She soon thereafter underwent a
cervical spine fusion at C5-6. Plaintiff returned to
work approximately two months after surgery and
continued to work full-time until May 2010.

In late April 2010, Plaintiff presented to defendant
ENT/otolaryngology with a history of frequent
sore throats over the course of five years requiring
antibiotics. Her examination revealed evidence of
cryptitis (collection of bacteria and pus) in several
areas of the tonsils, which were felt to be the cause
of Plaintiff's recurring throat problems. Plaintiff was
examined by defendant ENT and the anesthesiologist,
and was found to have normal range of motion of the
cervical spine and without any current complaints
attributable to her neck.

On May 20, 2010, Plaintiff underwent a tonsillectomy
and adenoidectomy by defendant ENT. Approximately
5-10 minutes after Plaintiff arrived in the recovery
room, she began to complain of severe neck pain that
required four doses of Dilaudid. By the time Plaintiff
was discharged from the outpatient surgery center,
her pain had decreased to a mild level. Plaintiff was
discharged home with post-operative instructions.

On May 21, 2010, Plaintiff awoke with total body pain
and complaints of weakness and dysesthesias. She
was taken by ambulance to an acute care facility and
ultimately transferred to another hospital where she
was seen by a neurosurgeon and neurologist. Plaintiff
remained in the second facility for five days and at
the time of discharge required a walker to assist her
with ambulation.

On June 3, 2010, Plaintiff was seen by Dr. Orfuss
who diagnosed an acute spinal cord injury and
recommended that she be seen by a neurosurgeon.

On June 7, 2010, Plaintiff was seen by Dr. Srinath
Samudrala who also felt she had suffered an acute
spinal cord injury during the tonsillectomy. He
recommended a two-phase spinal surgery; anterior

fusion followed by a posterior laminectomy and
foraminotomy.

On June 17, 2010, Plaintiff underwent a cervical
spine fusion at C4-5 and C6-7 and removal and
replacement of the hardware that had been placed at
C5-6 previously.

Plaintiff returned to her job as general manager at
Hometown Buffet in late August 2010. However, by
early March 2011, she was experiencing a recurrence
of her symptoms that were severe enough to prevent
her from working and, in fact, never returned to work
after that despite undergoing a second surgery by Dr.
Samudrala in July 2011.

PLAINTIFF'S CONTENTIONS: Plaintiff contended
that she recovered fully from her spinal cord injury
in 2001 as evidenced by her ability to return to her
physically demanding job and active life style up to
the time of the tonsillectomy.

She claimed further that the tonsillectomy was not
indicated at the time due to the lack of evidence in her
medical records of documented episodes of tonsillitis
as opposed to garden-variety sore throats. In addition,
she alleged that due to her prior neck problems, she
was more vulnerable to a cervical spine injury during
a tonsillectomy. However, despite this fact, defendant
ENT negligently failed to take the necessary steps to
protect against an intraoperative spinal cord injury,
and as a result she did suffer an acute myelopathy with
residual disabling central neuropathic pain syndrome.

DEFENDANT'S CONTENTIONS: Defendant
contended that his care and treatment at all times was
within the applicable standard of care and nothing
he did or failed to do caused the claimed injuries by
Plaintiff.

JURY TRIAL: Length, 17 days; Poll, 10-2 (for
defense on negligence); Deliberation, 70 minutes

SETTLEMENT DISCUSSIONS: Plaintiff served a
CCP 998 for \$1 million (policy limit) prior to trial and
renewed the demand orally and in writing on several
occasions up to and including the commencement
of trial. Defendant rejected Plaintiff's policy limit
demand.

RESULT: Defense as to Roe ENT.

OTHER INFORMATION: Co-defendant
anesthesiologist was dismissed prior to trial in
exchange for a waiver of costs; co-defendant surgery
center settled its claim prior to commencement of
trial.

EXPERT TESTIMONY: Warren D. Line Jr.,
M.D., otolaryngology, testified that defendant
ENT negligently failed to establish adequate
documentation of prior episodes of acute tonsillitis
and failed to employ a "watchful waiting" approach
to confirm first hand a diagnosis of acute tonsillitis
before taking plaintiff to surgery. Moreover,
defendant ENT negligently failed to take the
necessary steps during the tonsillectomy to avoid
injury to plaintiff's cervical spine given her increased
vulnerability due to a prior neck surgery. Finally,
defendant ENT did not adequately assess Plaintiff
post surgery after she complained of severe neck
pain in the recovery room soon after awakening
from anesthesia.

On June 3, 2010, Plaintiff was examined by Carl J.
Orfuss, M.D., neurology, prior to his retention as
a designated expert by Plaintiff's counsel. At that
time, based on the clinical history and examination
findings, Dr. Orfuss felt that Plaintiff had suffered
an acute spinal cord injury during the tonsillectomy

possibly due to hyperextension of the neck during
intubation. After Dr. Orfuss was retained as an expert
and had the opportunity to review additional medical
records and depositions, he concluded that Plaintiff's
acute spinal cord injury was due to excessive rotation
of her neck during the tonsillectomy. Dr. Orfuss
examined Plaintiff again in April 2012 and felt due
to her residual pain and weakness, she would need
attendant care to assist with activities of daily living,
repeat imaging studies and ongoing physical and
occupational therapy.

Sara Guentz, RN, CRRN, BSN, relying on the medical
opinions of Dr. Carl Orfuss, established a life care
plan for Plaintiff and calculated the cost of same using
various resources. The categories of services needed
in her view included attendant care, medical services,
diagnostic procedures, medications, and equipment
and supplies. The annual cost of these services varied
with age and ranged \$32,000 to \$41,000.

Alessandro Anfuso, MS, CVE, testified to a reasonable
degree of vocational certainty, Plaintiff will not be able
to return to the competitive work force throughout the
remainder of her life due to prior spine surgeries and
fact that she had been out of work for more than a year.
In the event Plaintiff's medical condition improved
and, if she undergoes a vocational rehabilitation
program and academic training, Plaintiff may be able
to return to a sedentary job at a salary lower than the
one she had as a general manager of the restaurant.

Susan P. Bleeker, CPA, testified that Plaintiff's present
value past and future economic damages, including
loss of earning capacity, employment benefits and
medical expenses, in the event she does not return to
work was \$2,514,776. If Plaintiff was able to return
to work at a sedentary job at a future date, the present
value of her past and future economic damages was
\$1,913,400.

Dennis R. Maceri, M.D., otolaryngology, testified
that there were sufficient indications to recommend
a tonsillectomy for Plaintiff given her history of
frequent episodes of sore throats requiring antibiotic
treatment and her examination findings, including
cryptitis. Moreover, there was no indication that the
surgical technique used by defendant ENT did not
include the necessary precautions to protect against
a cervical spine injury.

Frank J. Coufal, M.D., neurosurgery, testified that
Plaintiff did not suffer an acute spinal cord injury at
the time of the tonsillectomy based on the clinical
findings, imaging study results and findings from
other diagnostic tests performed soon after the surgery
at issue. Plaintiff's persistent pain and functional
limitations were a result of a spinal cord injury
diagnosed in 2001 following a diving accident and
the finding of a syrinx noted subsequently. In addition,
Plaintiff developed central neuropathic pain syndrome
as a result of the 2001 cord injury.

Edwin C. Amos, M.D., neurology, testified that
Plaintiff's symptomatic complaints following the
tonsillectomy were due to a central neuropathic
pain syndrome that developed soon after her 2001
spinal cord injury. This opinion was based on the
evidence in Plaintiff's medical records after she was
surgically treated for the 2001 spinal cord injury of
persistent right-sided pain and dysesthesia complaints,
and intermittent weakness of the hand and lower
extremity. Plaintiff's post 2001 injury complaints were
aggravated at times by physical and emotional stress.
Plaintiff would likely be able to return to her job as a
general manager of a restaurant once she completed
the necessary course of psychotherapy designed to
assist her with dealing with her emotional stress and
depression.

FILING DATE: Dec. 6, 2010.