

C A T A VERDICTS AND SETTLEMENTS

Doc. 66

JUDGMENT \$ Not applicable SETTLEMENT \$ 15,000.00

OFFER \$ -0- DEMAND \$ 50,000.00

DID CASE GO TO ARBITRATION? IF YES, WHAT WAS THE **RESULT**?

No

MONTH AND YEAR of SETTLEMENT or VERDICT:

February, 1990

CASE CAPTION/COUNTY: Anthony P. DiMarco, Sr., et. al. vs. Leonard H. Bernstein, M.D., et. al.

Cuyahoga County Common Pleas Case No. 149199

COUNSEL FOR PLAINTIFF(S): Name Joseph L. Coticchia & Don C. Iler
(Do you want us to withhold name of Plaintiff's Counsel? No)

Address 1640 Standard Building

Cleveland, Ohio 44113

(216) 861-6622 (JLC)

Tel. No. 696-5700 (DCI)

COUNSEL FOR DEFENDANT(S): Name John V. Jackson, II

INSURANCE COMPANY: The PIE Mutual Insurance Company'

TYPE OF ACTION: (Auto, med **mal**, products liability, slip & fail, etc.)

Breach of privilege

AGE OF PLAINTIFF: 60 OCCUPATION: Salesman

MEDICAL SPECIALS (past) \$ N/A (future) \$

WAGE LOSS \$ DIMINISHED EARNING CAPACITY \$

INJURIES: Invasion of privacy

BRIEF DESCRIPTION OF CASE: Plaintiff lost a prior medical malpractice case against Defendant. (See attached; defense verdict after trial.) However, during the prior trial, Plaintiff's counsel had found "Meeting with Aaron Jacobson" entered into Defendant's treatment chart. The date of the meeting was 6 months prior to Plaintiff's counsel sending a letter of representation to Defendant. After objection and lengthy side bar conference, Plaintiff's counsel

(CONTINUED on reverse)

EXPERTS FOR PLAINTIFF(S):

EXPERTS FOR DEFENDANT(S):

RETURN TO: Laurie F. Starr, Esq.

SINDELL, RUBENSTEIN, FINBUND, PAVLIK, NOVAK & CELEBREZZE

200 National City-East Sixth Building

Cleveland, OH 44114

(216) 781-8700

DESCRIPTION OF CASE, **continued:**

withdrew the question regarding why Aaron Jacobson's name was in Plaintiff's treatment chart.

A subsequent breach of physician/patient privilege case (the instant case) was filed against Dr. Bernstein, Aaron Jacobson, Esq. and The PIE Mutual Insurance Co. After Defendant's Motion For Dismissal was overruled, Plaintiff filed a Motion To Compel Production of Documents. After an **in camera** inspection, Defendant was ordered to produce a letter from Defendant Dr. Bernstein to Defendant Mr. Jacobson. Again, this letter was dated 6 months prior to Plaintiff's counsel's letter of representation to Dr. Bernstein. After Plaintiff and Plaintiff's counsel, Joseph Coticchia, were deposed and before Mr. Jacobson and Dr. Bernstein were deposed, the case settled,

1883

most as stream. is good
Dental. well suited to modern
at once @ old for site.

Doc. 66

Still have balance 4.41 cts

Per: 6 Nov Bunt

If not better
see Analyst

11/15 is. It to see ~~old~~ Schuchman about diagnoses
to all get med. & medicine. send

11/18/83 P.L. told list of work left to Dr. Schuchman

2/10/84 send = Dr. Jacobson J. Bunt



Drs. Desberg, Bernstein, Inc.

HILLCREST MEDICAL BUILDING • 6801 MAYFIELD ROAD
MAYFIELD HEIGHTS, OHIO 44124 • PHONE 2161473.4545
MARYMOUNT MEDICAL BLDG • 12000 MC CRACKEN ROAD
GARFIELD HEIGHTS, OHIO 44125 • PHONE 2161581-9222

DANIEL DESBERG, M.D., F.A.C.S.
LEONARD H. BERNSTEIN, M.D., F.A.C.S.

February 14, 1984

Aaron Jacobson, Esq.
7th Floor Engineers Building
Cleveland, Ohio 44114

Dear Mr. Jacobson:

I am dictating you this letter as you instructed during our conversation concerning Mr. Anthony P. DiMarco, Sr. In reviewing his chart at the hospital, I noticed that an inquiry was made by Mr. Joseph Coticchia, who apparently is his attorney.

Mr. DiMarco was seen by me in the office on August 30, 1983, with the complaint of painless hematuria starting a few days prior to the office visit. Mr. DiMarco had symptoms of prostatism, getting up two to five times at night. He stated that he did not have any decreased size in force of stream. Because of the hematuria, evaluation was indicated including IVP and cystoscopy. At the time of the office examination, his prostate was enlarged and he had some firm areas which were suggestive of carcinoma. He was admitted to the hospital on September 2, 1983, because of the gross, painless hematuria, and the hospital record noted that he had nocturia times three to six and frequency, and also a sense of urgency.

He had a history of ear surgery in 1983 by Dr. Schreibmann. He had also had some tinnitus in the left ear.

A transurethral resection of the prostate and a prostatic biopsy were done on September 2, 1983. The operation itself was moderately bloody due to a very vascular prostate. During the post operative period he did well up until he began to bleed again after his catheter was removed and he had clot retention. He had to be catheterized a few times and had continuous bleeding. Because of the continuous bleeding, I thought this might have been due to inflammation of the prostate. He was started on Amicar, a drug that is recommended for bleeding, and he was started on Tobramycin to combat any infection. The Tobramycin is an aminoglycoside antibiotic which is known to have renal toxic effects and also ear disturbances.

February 14, 1984
Aaron Jacobson, Esq.

While he was on these drugs, his BUN and Creatinine never rose. He had no evidence of renal toxic effect, and in reviewing the nurses notes, he had no evidence of any ear disturbances. He finally did well and was discharged on the 15th of September, 1983, with his BUN and Creatinine within normal limits. At the time of discharge, he had no complaints of dizziness or inner ear disturbance. I don't believe the nurses notes show anything to that effect also.

He returned to see me on September 23, 1983, for a post operative visit and complained of dizziness which he couldn't explain nor could I since I have never seen a patient on aminoglycosides, that is Tobramycin, that had dizziness especially if their BUNs and Creatinines were within normal limits. I told him to return to work if the dizziness was OK.

On November 8, 1983, he still complained of loss of balance. I told him to see me in six months regarding his prostate. I told him if he was not better, I thought he should see a neurologist.

On the 15th of November, 1983, the patient was to see Dr. Schreiber about the dizziness. He took a list of the medicines that he took in the hospital to Dr. Schreiber, and Dr. Schreiber felt that he did have some inner ear problems, but he did not feel that I had committed any error or any wrong doing in the practice of the urological procedure on Mr. DiMarco.

I have contacted the Lilly Company and asked them to send me some information concerning the Tobramycin. They did send me that information and it is enclosed.

If I can be of any help, please let me know.

Sincerely,



Leonard H. Bernstein, M.D., F.A.C.S.

LHB:nlo

Enclosures