

**MEDICAL MALPRACTICE****Surgical Error—Delayed Diagnosis—Post-Operative Care—Childbirth****C-section led to loss of pancreas, return of diabetes****VERDICT** **\$17,500,000****CASE** Brenda L. Schenk v. University of
Rochester Strong Memorial Hospital,
No. 10996/04**COURT** Monroe Supreme, NY
JUDGE Harold L. Galloway
DATE 05/27/2008**PLAINTIFF**
ATTORNEY(S) Steven E. Pegalis, Pegalis & Erickson,
LLC, Lake Success, NY**DEFENSE**
ATTORNEY(S) Harold A. Kurland, Ward Norris Heller
& Reidy LLP, Rochester, NY (University
of Rochester Strong Memorial Hospital)

FACTS & ALLEGATIONS On Oct. 13, 2003, plaintiff Brenda Schenk, a 32-year-old blind woman, underwent Caesarean delivery of a daughter. The delivery was performed at University of Rochester Strong Memorial Hospital, in Rochester. During the procedure, a doctor unknowingly transected tissue that connected Schenk's bladder and transplanted pancreas. Nine days passed before the damage was discovered. During the intervening period, digestive enzymes leaked out of the pancreas and damaged a large portion of Schenk's abdominal wall. The pancreas had to be removed, and, as a result, Schenk suffered a recurrence of type-I diabetes that had been resolved by the initial transplant of the pancreas. She claimed that she may not be able to undergo a second transplant.

Schenk sued the hospital and several doctors that were

alleged to have been involved in her treatment. She alleged that the doctors failed to properly plan and perform the C-section, that they failed to timely detect the surgical injury, that their failures constituted medical malpractice, and that the hospital was vicariously liable for their actions.

Schenk's counsel discontinued the claims against the doctors. The matter proceeded to a trial against the hospital.

Schenk's counsel claimed that the doctors failed to establish a proper presurgical plan. He contended that the plan should have included the input of a transplant surgeon. He also contended that the transplant surgeon should have been required to participate in the C-section. He further contended that the surgeons should not have worked in such close proximity to Schenk's bladder.

Schenk's counsel also claimed that the doctors should have performed intraoperative inspections of Schenk's bladder and pancreas, and he argued that dye should have been injected into the bladder. He contended that the dye would have revealed the transection.

Defense counsel contended that the C-section was properly planned and that Schenk's transplant and other relevant factors were considered. He contended that the pancreas and the damaged area were not within the operative field and that, as such, the damaged area was not seen or knowingly encountered during the C-section.

INJURIES/DAMAGES During the C-section, a doctor unknowingly transected tissue that connected Schenk's bladder and pancreas. The damage was not noticed. During the ensuing nine days, digestive enzymes leaked out of the pancreas and damaged a large portion of Schenk's abdominal wall. The pancreas had to be removed, and, as a result, Schenk suffered a recurrence of type-I diabetes that had been resolved by the initial implant of the pancreas. She is not a likely candidate for a second transplant.

Schenk's diabetes necessitates her use of medication. She suffers residual pain that stems from her abdomen, and that pain is also addressed via painkillers. Schenk contended that her diabetes, pain and other unrelated disabilities impair her ability to raise and relate to her daughter.

Schenk claimed that her injuries will necessitate lifelong assistance by an in-home health-care aide. She sought recovery of the \$174,000 annual cost of that service. She also sought recovery of other economic damages and a total of \$10 million for her past and future pain and suffering.

VERDICT INFORMATION The jury found that the C-section was properly performed, that the doctors properly consulted a transplant surgeon, that the transplant surgeon did not need to monitor the C-section and that the C-section's timing did not result in any damages. However, it also found that the C-section was not properly coordinated and planned, and it further found that the procedure was prematurely terminated. Thus, it concluded that the hospital's staff departed from accepted standards of medical care. It determined that Schenk's damages totaled \$17.5 million.

BRENDA L.

SCHENK \$1,500,000 Personal Injury Future Medical Cost
 \$11,000,000 Personal Injury Past Pain And Suffering
 \$5,000,000 Personal Injury Future Pain And Suffering

INSURER **MCIC Vermont Inc.** (University of Rochester Strong Memorial Hospital)

PLAINTIFF EXPERT(S) **Robert Montgomery M.D.**, Transplant Surgery, Baltimore, MD
Irwin Merkatz M.D., High Risk Obstetrics, Bronx, NY
Barry Root M.D., Physical Medicine, Kings Point, NY
Alan Leiken Ph.D., Economics, Stony Brook, NY

DEFENSE

EXPERT(S) **Frank Craparo M.D.**, Fetal Medicine, Abington, PA
Donald Hricik M.D., Nephrology, Cleveland, OH
Richard Bonfiglio M.D., Physical Medicine, Murrysville, PA
David Shaffer M.D., Transplant Surgery, Nashville, TN
Matthew McCabe, Economics, Syracuse, NY

POST-TRIAL Defense counsel contended that the damages awards were excessive. He has expressed an intention to challenge the verdict.

EDITOR'S COMMENTS This report is based on information that was provided by plaintiff's counsel and University of Rochester Strong Memorial Hospital's counsel. The remaining defendants' counsel was not asked to contribute.



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