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§ _____ - MEDICAL MALPRACTICE - NEGLIGENT ATTEMPT TO REMOVE NORPLANT CONTRACEPTIVE IMPLANTS - MEDIAN NERVE DAMAGE - RSD - UNNECESSARY PERFORMANCE OF MULTI-LEVEL CERVICAL FUSION - CHRONIC PAIN - TOTAL PERMANENT DISABILITY FROM EMPLOYMENT CLAIMED.

Delaware County, Pennsylvania

This was a consolidated medical malpractice case against two separate sets of defendants. The plaintiff alleged that the first defendants, Planned Parenthood and two of its physicians, negligently attempted to remove Norplant contraceptive implants causing a median nerve injury and RSD. The second set of defendants was Mercy Fitzgerald Hospital and one of its neurosurgeons whom the plaintiff claimed performed an unnecessary multi-level cervical fusion. The first defendants maintained that the plaintiff did not sustain a median nerve injury as a result of the Norplant removal. The second defendants argued that the cervical surgery performed was warranted in light of the plaintiff's on-going neck pain, cervical instability and the lack of success with conservative treatment.

The plaintiff was a 39-year-old female with two children in February of _____. She had worn Norplant contraceptive implants for five years and sought to have the implants removed. Norplant is made up of six tiny silicone rods that contain progestin. These rods are implanted under the skin on the inside of the upper arm where they are left for up to five years. The plaintiff had had similar implants removed and replaced five years earlier and testified that the prior removal had been a simple, painless procedure.

The plaintiff testified that she was normally treated at the defendant Planned Parenthood's offices in Yeadon, Pennsylvania. However, when she reported that she wanted to have her Norplants removed, the Yeadon office referred her to its Philadelphia location where the plaintiff claimed she had an appointment to see the defendant, Dr. Janet Wilson, who specialized in removal of the implants.

The plaintiff's evidence showed that the manufacturer of Norplants, Wyeth Laboratories, had taken the product off the market in the United States. The plaintiff claimed that the product's withdrawal from the market stemmed from the difficulty encountered in removing the implants as they had a tendency to become encapsulated in tissue. The plaintiff contended that literature from the manufacturer indicated that only doctors experienced in removal of the implants should attempt the removal surgery. When the plaintiff arrived at the defendant Planned Parenthood's Philadelphia office, she claimed that she was seen by the defendant, Dr. Joel LeBed, rather than Dr. Wilson whom she was expecting. The plaintiff alleged that LeBed did not have sufficient experience in removing the Norplant implants. Evidence showed that LeBed was the newly-appointed director of the defendant's Philadelphia facility.

The plaintiff testified that she was in intense pain as the defendant, LeBed, attempted unsuccessfully to remove the implants for 15 minutes under local anesthesia. Finally, with the plaintiff in tears, she contended that LeBed gave up and called the co-defendant, Dr. Wilson. Wilson was able to remove all of the implants. After undergoing the Norplant removal, the plaintiff testified that she immediately began to experience pain in the left side of her arm at the surgical site. The pain worsened and spread to the left side of her body, including her chest, leg and foot, according to the plaintiff's testimony.

The plaintiff underwent treatment, consisting of medication and a series of some 12 epidural injections to the

base of her cervical spine which she received as an out-patient at Mercy Fitzgerald Hospital. The plaintiff's physiatrist testified that the plaintiff suffered RSD as a result of median nerve damage sustained during the removal of the Norplants. The plaintiff's ob/gyn testified that a median nerve injury would not occur in the absence of negligence during Norplant removal.

Approximately a year and a-half after removal of the Norplants, the plaintiff had been diagnosed with RSD, had just undergone an epidural injection and was having difficulty walking. Her treating doctor referred her to the emergency room of the defendant Mercy Fitzgerald Hospital. The plaintiff was admitted and came under the care of the defendant neurosurgeon, Richard B. Kanoff. This defendant diagnosed instability in the plaintiff's cervical spine.

The plaintiff testified that the defendant, Kanoff, told her that she did not have RSD and that if he performed surgery, it would take away all her pain. The plaintiff underwent a multiple-level laminectomy and fusion of the cervical spine performed by the defendant, Kanoff, several days after her admission.

The plaintiff's medical experts testified that the cervical surgery performed by the defendant was not necessary and not warranted by the plaintiff's diagnostic films. The plaintiff testified that following the neck surgery, her condition worsened. She claimed that the RSD, which was limited to the left side of her body, spread to the right side.

The plaintiff claimed that she was previously very active, was a basketball coach, did cartwheels and jumped rope with her children. She alleged that she has been left with chronic pain and is unable to return to work in her position as an administrative assistant with a temporary employment agency. The plaintiff's doctor suggested that a spinal stimulator may be required in the future to control pain. The plaintiff's economist testified that he conservatively estimated the plaintiff loss of earnings in the secretarial field to be \$_____, although her skills and abilities exceeded that of a secretary.

The two physicians employed by the defendant, Planned Parenthood, maintained that the plaintiff did not sustain injury as a result of the Norplant removal. The defense argued that the median nerve is outside the operative field for the removal procedure and could not have been injured, as alleged by the plaintiff. These defendants asserted that RSD can be a complication of any surgery without the occurrence of negligence.

The defendant neurosurgeon maintained that the plaintiff's diagnostic films showed spinal instability and that the fusion surgery was warranted. Evidence showed that the plaintiff was involved in a car accident many years before the Norplant removal. The defendant, Dr. Kanoff, testified that he did not tell the plaintiff that the surgery would take away all of her pain, but informed her that the instability in her cervical spine could present future problems if she were exposed to trauma. The second defendants also argued that the plaintiff had already applied for disability by the time she presented to the hospital.

The jury found that the defendant, Janet Wilson (Planned Parenthood), was not negligent. It found the defendant, Joel LeBed (Planned Parenthood), 60% negligent and the neurosurgeon, Richard B. Kanoff (Mercy Fitzgerald Hospital), 40% negligent. The plaintiff was awarded total damages of \$_____. The award was comprised of \$_____ in past and future loss of earnings, \$_____ in future medical expenses, \$_____ in past and future pain and suffering and \$_____ to the plaintiff's husband for his loss of consortium. Post-trial motions on behalf of the defendants, Planned Parenthood and its two physicians, are pending. A confidential settlement was reached with the remaining defendants.

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