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Supreme Court, Eleventh Judicial District, Queens County, New York.

Ellen **Baccari**, Donato **Baccari** v. Ramesh Babu, New York University Hospital Center

No. 6048/05

DATE OF VERDICT/SETTLEMENT: June 25, 2010

TOPIC: MEDICAL MALPRACTICE - UNNECESSARY PROCEDURE - MEDICAL MALPRACTICE - INFORMED CONSENT -
MEDICAL MALPRACTICE - NEUROSURGERY - MEDICAL MALPRACTICE - NEUROSURGEON
Inappropriate Surgery Led to Spinal Fluid Leak, Suit Alleged

SUMMARY:

RESULT: Verdict-Plaintiff

Award Total: \$3,250,000

The jury found that Babu departed from an accepted standard of medical care. It determined that the plaintiffs' damages totaled \$3.25 million. However, their recovery was reduced to the high/low stipulation's maximum amount: \$2 million.

EXPERT WITNESSES:

Plaintiff: Angela M. Hegarty, M.D.; Psychiatry; Central Islip, NY Richard M.D. Lechtenberg; Neurology; Brooklyn, NY
Defendant: James Goodrich; Neurosurgery; Bronx, NY

ATTORNEYS:

Plaintiff: Conrad Jordan; East Hampton, NY, trial counsel to Law Offices of Morton Povman PC; Forest Hills, NY (Donato **Baccari**, Ellen **Baccari**)
Defendant: Robin R. Dolsky; Heidell, Pittoni, Murphy & Bach; New York, NY (NYU Hospital Center, Ramesh Babu)

JUDGE: Kevin Kerrigan

RANGE AMOUNT: \$2,000,000-4,999,999

STATE: New York
COUNTY: Queens

INJURIES: **Baccari** claimed that she sustained damage of her brain's dura membrane. She contended that the injury allowed a leak of cerebrospinal fluid. During the ensuing 10 months, she underwent six cranial surgeries, and she suffered bouts of meningitis. In August 2003, she underwent the implantation of a permanent shunt that allows proper drainage of her cerebrospinal fluid.

Facts:

On Oct. 31, 2002, plaintiff Ellen **Baccari**, 67, a retiree, underwent microvascular decompression surgery. The procedure was performed by a neurosurgeon, Dr. Ramesh Babu, at NYU Hospital Center, in New York. The surgery addressed trigeminal neuralgia, a condition that was causing extreme facial pain. **Baccari** claimed that the surgery left a hole in her brain's dura membrane. The hole allowed a leak of cerebrospinal fluid, and that condition led to surgeries and hospitalizations.

Baccari sued Babu and NYU Hospital Center. **Baccari** alleged that Babu performed inappropriate surgery, that he failed to obtain informed consent to the procedure, that his actions constituted malpractice and that NYU Hospital Center was vicariously liable for Babu's actions.

Baccari's counsel noted that **Baccari's** pain was being addressed via medication: Tegretol. **Baccari** claimed that the medication was effective, and she contended that it was not causing residual effects. **Baccari's** counsel claimed that **Baccari** was suffering an atypical form of trigeminal neuralgia and that, as such, Babu's surgery offered a merely modest possibility of success. He argued that medication was the better treatment option.

Baccari claimed that Babu exaggerated the risks of Tegretol and minimized the risks of surgery. She claimed that, if properly informed of the surgery's alternatives, benefits and risks, she would not have undergone the procedure. Thus, **Baccari's** counsel argued that Babu did not obtain informed consent to the procedure.

After the presentation of **Baccari's** case, Judge Kevin Kerrigan dismissed the claim against NYU Hospital. The trial continued against

Babu.

Babu contended that he offered a choice of surgery or continuing the Tegretol regimen, but that he explained that Tegretol's effect would gradually diminish. He also contended that he fully explained the surgery's alternatives, benefits and risks. He claimed that the procedure was successful, and he also claimed that **Baccari's** Tegretol regimen has been reduced since the surgery.

Babu also contended that the surgery's known complications include a leak of cerebrospinal fluid.

Baccari further claimed that she suffers permanent residual pain that stems from the back of her head. She also claimed that she suffers post-traumatic stress disorder. She bears residual scars of her head. She contended that her residual condition limits her recreational and social activities, such as exercising and visiting relatives. She further claimed that she retains exaggerated fears about her health and that of loved ones, such as her husband and grandchildren.

Baccari sought recovery of \$2.7 million for her past pain and suffering and \$1.2 million for her future pain and suffering. Her husband, Donato **Baccari**, sought recovery of a total of \$450,000 for his past and future loss of services.

Defense counsel contended that Ms. **Baccari's** cranial surgeries did not require an invasion of her brain's tissue. He argued that her post-traumatic stress disorder was not related to the surgery that Babu performed.

The parties stipulated that the plaintiffs' damages could not exceed \$2 million. They also stipulated that the plaintiffs' damages had to equal or exceed \$500,000.

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Queens Supreme

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