

2004 WL 1595052 (N.Y.Sup.)
For Dockets See [0025449/1997](#)

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Supreme Court, Tenth Judicial District, Suffolk County, New York

LINDA BAYLIS V. STONY BROOK ANESTHESIOLOGY P.C., GABRIEL SAN ROMAN, M.D., STEPHEN A.
VITKUN, M.D. & FELICIA CALLAN, M.D.

No. 25449/97

DATE OF VERDICT/SETTLEMENT: April 27, 2004

TOPIC: MEDICAL MALPRACTICE - ANESTHESIOLOGY WOMAN CLAIMED THAT NEGLIGENT
INTUBATION LED TO ARDS

SUMMARY:

AWARD: \$1,226,712

RESULT: Verdict-Plaintiff

The jury rendered a plaintiff's verdict on liability and damages. It awarded Baylis \$1,226,712 in past and future pain and suffering and past and future lost earnings.

EXPERT WITNESSES:

Plaintiff: Jeffrey Seidenberg, Ph.D.; Economics; Riverdale, NY Laurence Engelberg, M.D.; Pulmonology; Bay Shore, NY Mark Schlessinger, M.D.; Anesthesiology; Hackensack, NJ

Defendant: Charles Militana, M.D.; Anesthesiology; Manhasset, NY Jeffrey Siegel, M.D.; Pulmonology; New Hyde Park, NY

ATTORNEYS:

Plaintiff: Conrad Jordan; New York, NY, trial counsel to Gersowitz, Libo and Korek; Manhattan, NY

Defendant: Richard E. Fehringer; Lewis, Johs, Avallone, Aviles and Kaufman; Melville, NY

JUDGE: Melvyn Tanenbaum

RANGE AMOUNT: \$1,000,000-1,999,999

STATE: New York

COUNTY: Suffolk County

INJURIES: After the laparoscopy, Baylis was diagnosed with ARDS, which has a substantial mortality rate with some

survivors having no residual affects and others suffering permanent lung damage. She underwent a tracheostomy and spent nearly two weeks on a respirator.

SUMMARY:

Insurance Carrier: Frontier Insurance Co. for Stony Brook Anesthesiology and Vitkun

FACTS:

On July 5, 1996, plaintiff Linda Baylis, 40, a secretary, underwent a laparoscopy at Stony Brook University Medical Center to check if her fallopian tubes were patent. Baylis was attempting to become pregnant. A 4'6" Chinese woman with a short neck and dysmorphic features, Baylis was anticipated to be a difficult intubation.

After the procedure and extubation, Baylis was received at the recovery room approximately two and a half hours later in critical condition. She developed Adult Respiratory Distress Syndrome (ARDS) and required three more weeks of hospitalization, during which time she underwent a tracheostomy and spent nearly two weeks on a respirator.

Baylis sued Dr. Stephen Vitkun, who was responsible for her intubation and was a vice chairman of anesthesiology at Stony Brook; Stony Brook Anesthesiology Associates P.C., Vitkun's private practice; Dr. Gabriel San Roman, the ob-gyn who performed the laparoscopy; and Dr. Felicia Callan, the ob-gyn resident assisting on the surgery. She claimed that Vitkun negligently failed to protect her airway from the aspiration of regurgitated gastric contents during the surgery and immediately thereafter at the point of extubation. San Roman and Callan were both dismissed on motion before trial.

Baylis called an expert anesthesiologist who testified that proper protection of her airway required the use of an endotracheal tube (ET) instead of simply a laryngeal mask airway (LMA). An LMA is often used when an ET cannot be placed but, as constructed in 1996, does not fully protect the airway against aspiration, which Baylis' expert argued made it inappropriate for a laparoscopy.

Vitkun asserted that he placed an LMA into Baylis' pharynx and then followed up with a fiberoptic placement of an ET through the LMA, which events were noted in the record. Vitkun claimed that the intubation took less than a minute and that general anesthesia was induced uneventfully.

Baylis, relying on notations indicating a highly difficult intubation and another notation suggesting a lack of an ET, argued that an ET probably was not used because the placement was too difficult.

Baylis further argued that, even if an ET was used, it was removed prematurely. Her expert testified that standard protection of the airway required that extubation not be performed until Baylis was fully awake and had her gag and swallow reflexes intact. Vitkun argued that Baylis was extubated fully awake. He further claimed that she remained awake until she was reintubated at 12:50 p.m. Baylis claimed that she was never fully awake in the operating room, and argued that Vitkun's contention that she remained awake from 11:15 to 12:50 was not credible given her consistently low oxygen saturation levels of 74% to 80% during this period, the presence of three attending anesthesiologists post-surgery, and the fact that she was received in the recovery room at 1:40 p.m. in critical condition.

Baylis' expert anesthesiologist testified that Baylis' ARDS resulted from aspiration, which he claimed was not an accepted risk of a laparoscopy procedure. According to the expert, Baylis' aspiration resulted from Vitkun's failure to protect the airway.

Vitkun denied that Baylis aspirated, claiming that her ARDS was idiopathic. He called an expert anesthesiologist who testified that aspiration is an accepted risk of surgery and does not indicate malpractice.

Baylis claimed that she had no history of pulmonary problems before the laparoscopy. Since the incident, she claimed that she has had a restrictive lung impairment demonstrated by pulmonary function tests indicating a 35% to 50% loss of lung volume, although her treating pulmonologist was unsure whether such results were truly abnormal given Baylis' extremely short stature. However, her pulmonologist also testified that her lung problems were caused by ARDS. Vitkun's examining pulmonologist found moderate restrictive impairment but attributed it mainly to Vitkun's obesity and unusual body habitus. Baylis criticized this theory by noting that she was only ten pounds lighter prior to the onset of ARDS. She also argued that even if Vitkun's assertion of inherently poor lung capacity were true, it would mean that Baylis had an increased susceptibility to lung restriction. The court gave an increased susceptibility to injury charge to the jury.

In addition to restrictive lung disease, Baylis claimed that she now suffers from asthma, an obstructive condition which requires the daily use of two types of inhalers, some prednisone, and nebulizer treatments. Baylis claimed that her lung ailments, including shortness of breath on exertion, coughing, and congestion, prevented her from working and from performing other former activities: long walks, playing with her dog, using a treadmill and exercise bike, and other heavy housecleaning. Baylis had worked approximately 17 of the previous 19 years at approximately 12 different jobs, most recently as a secretary for a construction company making \$5 an hour.

Baylis asked the jury for \$1,226,712.

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