

2003 WL 22965664 (N.Y.Sup.)  
For Dockets See [0024803/1998](#)

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Supreme Court, Second Judicial District, Kings County, New York

ANESHA CAIN, AN INFANT UNDER THE AGE OF 14 YEARS, BY HER MOTHER AND NATURAL GUARDIAN, LUCIA CAIN, AND LUCIA CAIN, INDIVIDUALLY V. EDWIN AMARO, DAN KLORES ASSOC. INC., AND 'JOHN DOE,' THE ENTIRE NAME BEING FICTITIOUS, THE TRUE NAME BEING UNKNOWN TO THE PLAINTIFF, IT BEING INTENDED TO DESIGNATE THE DRIVER OF THE HEREINAFTER DESCRIBED MOTOR VEHICLE

2003 WL 22170391 (N.Y.Sup.)  
For Opinion See [2004 WL 5243235](#) (Trial Order), [2004 WL 5264697](#) (Trial Order)

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Supreme Court, Second Judicial District, Kings County, New York

MAHMOUD DIARASSOUBA V. WILLIAM URBAN, M.D.; SPENCER LUBIN, M.D.; AND KENTARO HORIUCHI, M.D.

No. 46674/98

DATE OF VERDICT/SETTLEMENT: July 21, 2003

TOPIC: MEDICAL MALPRACTICE - NEGLIGENT TREATMENT - MEDICAL MALPRACTICE - SURGEON SURGEONS' FAILURE TO REPOSITION PATIENT'S LEG LED TO NERVE DAMAGE

SUMMARY:

AWARD: \$1,500,000

RESULT: Verdict-Plaintiff

The jury found, by special interrogatory, that the defendants departed from standards of medical care when they failed to reposition Diarassouba's leg during the surgery. The jury also found that the defendants' failure to use a decompression device during the surgery did not constitute a departure from standards of medical care.

The jury assigned 60% liability to Urban, 20% liability to Horiuchi and 20% liability to Lubin. It awarded Diarassouba \$1.5 million.

EXPERT WITNESSES:

Plaintiff: Alexander Weingarten, M.D.; Pain Management; New Hyde Park, NY

Defendant: James Dixon, M.D.; Orthopedics; New York, NY James Eisenkraft, M.D.; Anesthesiology; New York, NY Samuel Rappaport, M.D.; Neurology; New York, NY

ATTORNEYS:

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

Defendant: Kevin F. Mahon; Morris, Duffy, Alonso and Faley, L.L.P.; New York, NY Christopher A. Terzian; Bartlett, McDonough, Bastone and Monaghan; New York, NY

JUDGE: Marsha L. Steinhardt

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

STATE: New York

COUNTY: Kings County

INJURIES: Diarassouba testified that he continues to take prescription pain medication. He claimed that he experiences constant calf numbness, and 15 to 20 daily instances of shooting pain, which lasts for three to five seconds. He rated the pain's intensity as seven, on a scale of one to 10, with 10 representing the most intense pain.

SUMMARY:

Insurance Carrier: Physicians' Reciprocal Insurers for William Urban

FACTS:

On June 5, 1996, plaintiff Mahmoud Diarassouba, 32, a math professor, underwent left-knee surgery at Downstate Medical Center in Brooklyn, N.Y. Orthopedic surgeon Dr. William Urban performed the surgery. Dr. Spencer Lubin was the anesthesiologist for the first portion of the surgery. He was relieved by Dr. Kentaro Horiuchi, who was also an anesthesiologist.

When Diarassouba awoke from the 10-hour procedure, he complained of pain in his right calf -- an area that was resting in a leg support during the surgery. On June 7, 1996, he was diagnosed with three deep vein thromboses in his right-calf area. He was given blood-thinning medication, and his pain and swelling gradually subsided over several days, after which he was discharged. On his last day in the hospital, a physical therapist noted that Diarassouba had complained of numbness in his right extremity. The complaint was not verified by objective findings.

Diarassouba claimed that he began to experience painful paresthesia in his right calf and foot approximately two weeks after his discharge from the hospital. He sought treatment from Urban, who prescribed pain medication and referred Diarassouba to pain-management consultants.

The consultants diagnosed tibial neuropathy and reflex sympathetic dystrophy. Diarassouba underwent nerve-injection treatment on his tibial nerve. Meanwhile, Urban detected a hard mass in Diarassouba's calf. He ordered an MRI, which revealed a mass and areas of necrosis. In February 1997, Diarassouba underwent nerve conduction-velocity tests, which revealed right-tibial-nerve entrapment.

Diarassouba sued Horiuchi, Lubin and Urban. He contended that the defendants should have used a mechanical-compression device on his right leg to prevent deep vein thromboses. He also claimed that the defendants should have repositioned his leg to prevent tibial-nerve compression.

Diarassouba presented a pain-management expert, who testified that Diarassouba began to experience neurological symptoms, such as numbness, five days after the operation. The expert contended that such presentation was consistent with a nerve injury caused by surgery.

The defendants agreed that they shared responsibility for Diarassouba's care during the surgery, but they argued that Diarassouba's nerve injury could not have been caused during the surgery because neurological symptoms -- such as shooting foot and calf pain -- did not appear until two weeks after the surgery. They contended that Diarassouba's numbness and discomfort during the two weeks following the surgery was due to the deep vein thrombosis, which, they claimed, was treated properly. They also contended that Diarassouba sustained a sciatic-nerve injury -- not a tibial-nerve injury -- and that the injury developed because he was bedridden and resting awkwardly on his right hip after his discharge.

The defendants' experts testified that the standard of care did not include repositioning a patient's leg or using a mechanical compression device. They also testified that Diarassouba's MRI did not reveal a dead-tissue mass, and that it merely showed normal sequelae from properly treated deep vein thromboses.

Diarassouba asked the jury to award \$1.75 million.

The defendants presented a surveillance video of Diarassouba walking slowly without a limp. They argued that this constituted evidence that Diarassouba did not sustain calf-tissue damage due to the alleged tibial-nerve injury.

ALM Properties, Inc.

Supreme Court, Kings County, New York

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