



## MEDICAL MALPRACTICE

### Informed Consent

# Bone marrow donor injured during removal procedure

**VERDICT(P)**      **\$9,700,000**

**CASE**              Paul Furey and Suzanne Furey v. Andrew A. Jennis M.D. and Joel A. Brochstein M.D., No. BER-L-7579-99

**VENUE**            Bergen County Superior Court, NJ

**JUDGE**            Joseph L. Yannotti

**DATE**              09/30/2002

**PLAINTIFF**  
**ATTORNEY(S)**    Adam M. Slater, Nagel, Rice, Dreifuss & Mazie, Livingston, NJ

**DEFENSE**  
**ATTORNEY(S)**    Kenneth Brown, Parsippany, NJ  
Robert Polifroni, Hardin, Kundla, McKeon, Poletto & Polifroni, Springfield, NJ

**PLAINTIFF**  
**EXPERT(S)**        Samuel Snyder M.D., orthopedic surgery, Fairlawn, NJ  
Richard Balch, physical therapy, Mahwah, NJ

**DEFENSE**  
**EXPERT(S)**        Howard Blank M.D., orthopedics, Milburn, NJ

**INSURER(S)**      Princeton and Medical Inter-Insurance Exchange

**FACTS & ALLEGATIONS** The failure of two doctors to obtain the informed consent of their patient will cost them \$9.7 million, a jury recently decided. Paul Furey, a computer consultant, sued hematological oncologists Andrew Jennis and Joel Brochstein after a procedure to remove his bone marrow for donation left him with limited mobility and chronic pain.

In 1997, Furey was treated by the two doctors at the Hackensack University Medical Center after being contacted by the National Marrow Donor Program about donating bone marrow to a leukemia patient.

During the procedure several needles were inserted into Furey's posterior iliac crest, a bone in the hip in which a great amount of bone marrow is concentrated. According to Adam M. Slater, the attorney representing Furey and his wife, the procedure helped to save the leukemia patient's life but left Furey in constant pain.

Slater reported that while Jennis and Brochstein were performing the

operation, they stuck the needles into Furey's pelvis several hundred times. He claimed that at least once, a needle hit and injured Furey's sacroiliac joint, which joins the pelvis to the sacrum bone in the spine, thereby causing his injuries. He sued for medical malpractice and lack of informed consent. His wife made a claim for loss of consortium.

Slater said that while the defendants denied that they had hit the joint, arguing that Furey's injuries were related to an existing back condition, they did stipulate to liability and failure to obtain informed consent.

The doctors admitted that, had they made Furey aware of the risk of weeks or months of diminished mobility, he would not have agreed to participate. Slater said that Furey, who was scheduled to compete in a marathon five weeks after the operation, would never had agreed had he known he might not have been able to participate in the race.

**INJURIES/DAMAGES** Furey suffered permanent injury to his left sacroiliac joint. He suffers from daily pain and discomfort and has limited use of his hip and is unable to do anything that would exert pressure on his hip. Furey had undergone physical therapy for a lengthy time. He still has physical therapy on and off. Furey has had numerous injections into the joint of his hip. He takes pain killers and anti-inflammatories. Furey has suffered from emotional distress and frustration since the incident. He was a marathon runner, biathlete, youth coach, and an active participant in many other sports. As a result of the injuries he suffered in the operation, he is no longer able to run or participate in sports. Furey faces a lifetime of permanent progressive disability and faces the possibility of a fusion of the sacroiliac joint in the future.

**VERDICT INFORMATION** The jury found for the plaintiffs, awarding Paul Furey \$9 million for pain and suffering, physical impairment and loss of enjoyment of life and his wife \$700,000 for loss of consortium.

Slater noted that Furey's athleticism played a large part in eliciting sympathy from the jury, saying that convincing the jury of the emotional weight of the loss of enjoyment of life was as important as establishing physical disability. "Furey was not just a recreational athlete. His family's lifestyle revolved around athletics." Slater said that since the operation, Furey has since gained 50 lbs. and is unable to engage in even mild forms of physical activity.

Neither Jennis's attorney nor Brochstein's returned calls for comment.

**PAUL FUREY**            \$9,000,000 all damages

**SUZANNE FUREY**      \$700,000 future loss of consortium

**POST TRIAL** Slater expects motions for a new trial and remittitur.