

Mejia v. Community Hospital of San Bernardino

by Martin P. Weniz, Esq.
Counsel for Plaintiff, Maria Mejia

1. Facts of The Case

On a Saturday evening, May 3, 1997, Maria Del Carmen Mejia, walked into the emergency room at Community Hospital of San Bernardino ("CHSB") with complaints of severe neck pain twisted to the right. Tragically, after being discharged from the emergency room, and while leaving the hospital on the morning of May 4, 1997, she became quadriplegic.

Maria Mejia arrived at the emergency room on the evening of May 3, 1997 at approximately 10:00 p.m. accompanied by her mother and a female cousin. She was seen by a hospital triage nurse about one hour later. She later saw the emergency room physician on duty, Dr. Bauer, at approximately 3:30 a.m. on the morning of May 4, 1997. At the time, she had complaints of intense pain all over her neck, as well as some numbness in her hands.

Dr. Bauer was employed by a medical group, Emergency Physician's Medical Group, Inc. ("EPMG") which had a contract with CHSB to provide emergency room services there. EPMG and Dr. Bauer were additional insureds under CHSB's malpractice insurance policy.

At 3:35 a.m. Dr. Bauer ordered two tabs of Vicodin, ten milligrams of Valium, and ice to Maria's neck. These were administered shortly after the orders. Dr. Bauer also ordered a complete set of cervical x-rays. Maria Mejia is 4 feet 11 inches tall and weighs approximately 90 lbs.

At 4:08 a.m. the hospital's x-ray tech took Maria on a gurney to the x-ray department. Eight cervical spine x-rays were taken, the last one at 4:30 a.m. The x-ray tech then returned Maria along with her x-rays to the emergency room. Dr. Bauer reviewed the x-rays, and ordered that one of the them, a lateral view, be transmitted online ("teleraded") to the radiologist on call.

On May 4, 1997, Dr. Handler, a radiologist, was an employee of MSB Radiology Medical Group ("MSB"). MSB had an exclusive contract with CHSB to interpret all of the diagnostic images taken at CHSB. Although an "actual" employee of MSB, Dr. Handler then held the title of "Director of Diagnostic Imaging at Community Hospital of San Bernardino." The contract between CHSB and MSB provided that one or more of radiologists would be on duty at CHSB from the hours of 7:30 a.m. until 5:00 p.m., and from 5:00 p.m. until 7:30 a.m. MSB would provide an on call radiologist. Typically, in the after hours, a CHSB tech would send online images from the hospital to the on call radiologist's home computer for a "wet read."

Dr. Handler and MSB were both insureds under a different policy of malpractice insurance than that of CHSB, Dr. Bauer and EPMG.

On the evening of May 3, and the morning of May 4, 1997, Dr. Handler was the on call radiologist for CHSB. Some time around 5:00 a.m. one of Maria's lateral x-rays was tele-radiated to Dr. Handler at his home. Dr. Handler also received a phone call from the hospital at this time concerning the x-ray.

While there is conflicting evidence as to whether it was the x-ray tech or Dr. Bauer who actually spoke to Dr. Handler, it is certain that Dr. Handler received at least one clear and diagnostic lateral c-spine x-ray of Maria on his home computer screen that morning. According to Dr. Handler, he was asked by the x-ray tech to look at the lower cervical spine. In fact, the x-ray showed that Maria has an anomaly at her lower cervical spine. She has no cervical disk between the C6 and C7 vertebrae. They are fused together -- a finding which Dr. Handler termed a "congenital fusion" and a "normal variant."

Dr. Handler was evidently directed to the area of Maria's lower spine by what he was told during that phone conversation. However, while looking at the lower cervical spine, Dr. Handler failed to visualize Maria's real problem, also revealed by that x-ray, at her *upper* cervical spine -- a gross subluxation (dislocation) of the vertebrae at the C1/C2 levels. A true medical emergency. Since Dr. Handler had cleared Maria's x-ray, Dr. Bauer discharged her from the emergency room with a diagnosis of torticollis (wry neck).

Following her return from the x-ray department, Maria lay sleeping in the emergency room. Dr. Bauer came over to her, told her his diagnosis, and told her she was okay to leave the

hospital. She continued to sleep for a while. A nurse later came in to tell Maria it was time to leave. Written discharge instructions were given to Maria's mother, who was with her in the emergency room at all times.

The nurse helped Maria down from the gurney where she had been sleeping. She felt "sleepy" and "loose" and no longer had pain due to the effects of the medication. She told the nurse she needed to urinate. The nurse went to find her a portable commode, leaving her standing next to the gurney. She urinated into the commode. The commode fell over, spilling urine on to the ground and on to her socks. She walked over to a chair near the gurney and the nurse helped put fresh socks on her feet. While seated on the chair, Maria suddenly felt nauseous and vomited. The nurse helped clean her up and gave her a new hospital gown to wear.

After Maria was cleaned up, the nurse went to find her a wheelchair to take her out of the emergency room. Maria was standing with her mother waiting for the wheelchair when the nurse returned with it. Maria walked over to sit in the wheelchair. Then she, the nurse, and her mother left the emergency room.

When they arrived to the emergency room waiting area, Maria told the nurse and her mother that she again felt sick and needed to vomit. The nurse told Maria and her mother that she would retrieve a basin for her to vomit into and left. Maria told her mother that she could not hold it and needed to vomit right away. Maria's mother gestured to the female cousin, who had stayed in the emergency room waiting room the entire night, to come over. She told the cousin to

take Maria, still seated in the wheelchair, to the bathroom next to the waiting area. Maria's cousin wheeled her into the bathroom.

Maria vomited into the bathroom toilet and her head remained in the toilet bowl. Maria's mother then entered the bathroom. She and Maria's cousin raised Maria's head out of the toilet. They cleaned up the bathroom and left with Maria still seated in the wheelchair. They wheeled Maria to the Hospital parking lot where they were being picked up by Maria's sister. Maria was still in the wheelchair when they arrived at her sister's car. Maria's mother asked Maria to get into the car, but Maria could not, so her mother and cousin lifted her into the back seat of the car. Maria's mother thought Maria was incapacitated from the drugs she had received at the hospital.

They drove home, approximately 20 minutes away from the hospital. Maria slept. When they arrived, Maria's father was summoned to carry Maria to her bed. From the time she arrived home that morning, Maria slept for approximately 24 hours until the morning of May 5, 1997. When she awoke, she again felt pain in her neck and on her right arm. Her mother and other family members noticed that her hands were in a closed "clenched" position. She could not move her arms or legs and she felt numbness all over her body.

By now you can probably guess the rest. Maria Mejia never walked again.

2. The Litigation and Trial

Maria Mejia filed a lawsuit on April 17, 1998 against CHSB, Dr. Handler, MSB, Dr. Bauer, and EPMG. Dr. Handler and MSB were represented by Elliot, Snyder & Reid and CHSB, Dr. Bauer, and EPMG were represented by Thompson and Colegate.

On April 26, 1999, Plaintiff made Code of Civil Procedure Section 998 Offers to Compromise to Defendants Handler and MSB for one million dollars each, their policy limits. Since there was no response to the offers they expired by operation of law.

Trial of this matter commenced on September 18, 2000, in Department S16 of the Superior Court for the County of San Bernardino, Central District, before the Honorable Bob N. Krug. Immediately after Plaintiff closed her case-in-chief, counsel for CHSB served plaintiff with a written Motion For Nonsuit as to Defendant Community Hospital of San Bernardino. The motion was orally argued, and Judge Krug granted the motion in favor of CHSB.

Following a two-month trial, on November 15, 2000, the jury returned a verdict in favor of Plaintiff against Defendants, Dr. Handler and MSB. in relevant part, as follows:

Past Pain and Suffering -	\$ 50,000.00
Future Pain and Suffering -	\$200,000.00
Past Cost of Medical and Hospital Care -	\$502,268.00

Present cash value of Plaintiff's future medical costs -	\$7,209,083.00 ¹
TOTAL PRESENT CASH VALUE	\$7,961,351.00

The jury also returned a verdict in favor of Dr. Bauer and EPMG, and found plaintiff, Maria Mejia, 3% contributorily negligent, but not a cause of her injuries.²

On November 17, 2000, a written Order Granting Judgment of Nonsuit in favor of CHSB was entered by the Court.

On December 21, 2000, the Judgment in favor of Plaintiff, as to Defendants, Handler and MSB, was entered by the Court, and Notice of Entry of Judgment was given by Plaintiff to all parties.

1 The jury also found the amount of plaintiff's future medical, hospital, surgical, and rehabilitation care for plaintiff's life expectancy, (determined by the jury to be age 72) resulting from defendants' negligence to be the amount of \$26,821,654.00. The amount stated above, \$7,209,083.00 is the present cash value of plaintiff's future medical, hospital, surgical, and rehabilitation care for her life expectancy.

2 It should be noted that Dr. Handler and MSB were found 97% at fault. The jury also found that Maria was 3% "negligent", but *not* a cause of her own injuries. By this finding, plaintiff should not have been held comparatively liable in any respect. Nonetheless, plaintiff waived 3% of her award, and the amount of the present value of the jury verdict was accepted as \$7,722,511.00 (i.e. \$7,961,351.00 - 3% = \$7,722,511.00).

Since the present value of plaintiff's verdict (\$7,722,511.00) exceeded the *Code of Civil Procedure Section 998* Offers previously made to Defendants Handler and MSB, prejudgment interest was owed to plaintiff at the legal rate of 10% from the time the 998 Offers were made (April 26, 1999) until the date of entry of the judgment (December 21, 2000), a total of 605 days. *Civil Code Section 3291*. The amount of money that was owed in prejudgment interest as of the date of entry of the judgment was the sum of \$1,280,032.00, which is calculated as follows: $(\$7,722,511.00 \times 10\% \times 605 \div 365 = \$1,280,032.00)$. Thus, the total present cash value of the verdict, inclusive of prejudgment interest as of the date of entry of the judgment, December 21, 2000, was \$9,002,543.00 (i.e. $\$7,722,511.00 + \$1,280,032.00 = \$9,002,543.00$).

On January 16, 2001, Plaintiff filed and served her Notice of Appeal from the Judgment of Nonsuit in favor of Community Hospital of San Bernardino. Plaintiff did not appeal the Judgment in favor of Defendants Bauer and EPMG.

On April 18, 2001, Defendants Handler and MSB filed their Notice of Appeal as to the December 21, 2000 Judgment entered in favor of Plaintiff.

On July 24, 2001, Plaintiff and Defendants, Handler and MSB conducted a post-trial mediation, in an effort to settle their pending case. As a result of the mediation, Plaintiff settled her claims with Handler and MSB Radiology for a confidential amount.

Following plaintiff's settlement with Handler and MSB Radiology, the two remaining parties to the action, Plaintiff, Maria Mejia, and Defendant, Community Hospital of San Bernardino, filed briefs with the Court of Appeal of the State of California, Fourth Appellate District, concerning the issues arising from the Nonsuit.

On July 12, 2002, The Court of Appeal, Fourth District, Division Two, issued its Opinion reversing the Judgment of Nonsuit. In a published opinion entitled *Maria Del Carmen Mejia v. Community Hospital of San Bernardino (2002) 99 Cal.App.4th 1448, 122 Cal.Rptr.2d 233*, the Appellate Court held that the trial court erred in granting CHSB a nonsuit on the issue of ostensible agency, since there was no evidence that plaintiff knew or should have known that the negligent radiologist (Handler) was not an agent of the hospital. Under the law governing ostensible agency in the hospital context, effectively, all a patient needs to show is that he or she sought treatment at the hospital, which is what plaintiff alleged. Unless the evidence conclusively indicates that the patient should have known that the treating physician was not the hospital's agents, such as when the patient is treated by his or her personal physician, the issue of ostensible agency must be left to the trier of fact.

Community Hospital of San Bernardino filed its Petition For Review or, in The Alternative Request For Depublication of the Opinion to the California Supreme Court on August 21, 2002. The Supreme Court, En Banc, denied both the Petition for Review and the Request for Depublication on October 2, 2002

On October 7, 2002 the Court of Appeal issued a Remittitur. The Opinion of the Court of Appeal became final, and the case was remanded back to the Superior Court.

The remaining issues in the *Mejia* litigation against Community Hospital of San Bernardino were vigorously litigated, and the parties recently agreed to a settlement of the case in January, 2004.