



N E W J E R S E Y

JURY VERDICT

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SUMMARIES
WITH TRIAL
ANALYSIS

**\$950,000 RECOVERY – MEDICAL MALPRACTICE –
CONTRAINDICATED USE OF INFRA-RED
COAGULATION DEVICE TO TREAT GRADE 3-4
HEMORRHOID COMPLEX – NECROTIC LESION IN
RECTUM – INTRACTABLE NEUROPATHIC PAIN –
INSERTION OF INTRATHECAL PUMP – INABILITY TO
WORK.**

Volume 29, Issue 6
November 2008

Monmouth County

This was an action involving a then 36-year-old plaintiff who presented to the defendant gastroenterologist with hemorrhoids that were treated by the defendant with the use of an infra-red coagulation device that entails using a timed intra-red beam to heat

and cause the hemorrhoid to coagulate and shrink. The hemorrhoid complex had been noted to be between a Grade 3 and Grade 4, reflecting that it had prolapsed from the rectum. The plaintiff contended that the use of the device which such a large complex is contraindicated. The plaintiff left with his wife and family for vacation following the same day procedure and developed severe pain within several days. The plaintiff returned to this country, visited the non-party colorectal surgeon and it was determined that the plaintiff had sustained a necrotic lesion in the rectum.

The plaintiff's expert gastroenterologist maintained that the use of this device in the case of such a large complex was contraindicated because it was too extensive. The expert maintained that the infra-red device is timed to expose the hemorrhoids to one and a-half seconds and that it should not be applied more than two to three times. The expert maintained that based upon the necrosis developing shortly after the procedure, it was clear that the defendant either applied the device more times than is safe, left the complex exposed for a longer period than that which is safe, or both.

The plaintiff contended that when he returned home, an ulcerated necrotic lesion in the rectum which required surgery was noted. The plaintiff maintained that despite the surgery, he developed intractable neuropathic pain syndrome that is permanent in nature. The plaintiff's expert pain management physician contended that because of the severe nature of the continuing pain, the plaintiff required a very extensive amount of oral pain medication. The physician related that the plaintiff became so groggy from the medication that he had great difficulties functioning on a day to day level. The plaintiff contended that he could not work and could not continue an active life with his family. The plaintiff, who was a salesperson, contended that he is permanently unemployable and the plaintiff's economist would have projected future lost wages which exceeded \$2 million.

The plaintiff subsequently underwent surgery in which an intrathecal morphine pump was installed and the device administers morphine directly into the spinal column. The pain management physician would have related that the device leaves the plaintiff "epi-

sodically functional," in that on relatively good days he can take the children to school or go shopping, but then must rest for a significant period. The physician would have also testified that the pump will permanently require periodic replacement.

The defendant denied that he was negligent or that the device caused the injury. The defendant's expert gastroenterologist maintained that out of the thousands of similar procedures he has conducted, he has not seen similar injuries. The expert further related that such an injury has not been noted in the medical literature.

The plaintiff countered that the literature reflected the absence of similar injury when the device was used correctly on proper candidates. The plaintiff would have contended that there was no alternative explanation for the formation of an ulcerated necrotic lesion in the same area the defendant attempted to treat the hemorrhoid complex other than improper use of the infra-red device.

The defendant had \$1,000,000 in coverage. The case settled prior to trial for \$950,000. @TITLEHD = REFERENCE

Amabile vs. Basri. Docket no. MON-L-2658-03; 7-08.

Attorneys for plaintiff: Bruce H. Nagel and Barry M. Packin of Nagel Rice, LLP in Roseland, NJ.

COMMENTARY:

The defendant had denied using the infra-red improperly, denied that its use in the case of the plaintiff was contraindicated and the defendant's expert gastroenterologist maintained that there is no mention in the medical literature of the device causing such an injury. The plaintiff would have countered the defense expert's position by strenuously arguing that the absence of a history of such injuries occurring in the medical literature reflected that such an injury will not occur if a physician does not apply the device more times than is safe and does not leave the complex exposed for a longer period than that which is safe. Additionally, the plaintiff, whose expert found that use of the device the case of a Grade 3-4 complex is contraindicated, pointed to the defendant's own records that described the hemorrhoid complex as a Grade 3-4. Finally, the case settled for slightly less than the policy limits of \$1,000,000. It is thought that had the case proceeded to trial, creating the possibility of an excess verdict/Rova Farms situation, the use of the time unit rule may well have been particularly appropriate in this case involving a relatively youthful plaintiff who suffered objective, demonstrable injuries which will cause extensive pain and suffering over a lengthy life expectancy.