

\$500,000 Settlement In Suit Alleging Failure To Treat Hepatitis C

The plaintiff, George Schaefer, was 45 years old when he began treating with the defendant doctor in 1991. At the time, he had a known 20-year history of non A, non B hepatitis (later known as Hepatitis C), contracting the virus in Vietnam during the war. Mr. Schaefer's hepatitis caused little if any problems with his daily living up until 1991, when he began treating with the defendant doctor. At that same time, Schering Plough began marketing the drug Interferon, the first known drug to treat Hepatitis C.

Mr. Schaefer saw the defendant physician because he was fatigued and had viral symptoms. He indicated to the doctor on the medical intake forms that he had a history of hepatitis. Blood work was ordered, the results of which were positive for the active Hepatitis C virus.

However, despite knowing the patient's history and receiving the positive blood tests, the defendant doctor failed to refer Mr. Schaefer to a gastroenterologist, hepatologist or infectious disease specialist to treat his Hepatitis C virus. Instead Mr. Schaefer was treated for the other viruses including the Epstein-Barr virus. In over 20 visits to the defendant physician from 1991 to 1996, Schaefer was never told that his hepatitis could be treated with drug therapy nor was he referred to a specialist. By the time plaintiff was referred to a hepatologist and gastroenterologist in 1997, it was too late. A long overdue biopsy revealed severe cirrhosis. Drug therapy was no longer an option and he was listed for liver transplantation.

Plaintiff sought recovery based on the theory of "lost chance of cure" in not being referred for treatment sooner. Plaintiff hired an infectious disease expert and a hepatologist who opined that the lost chance was approximately 35%, which included a 10% loss for a complete cure and a 25% loss for stabilization of the virus without progression to cirrhosis.

Defendant countered with an expert out of Northwestern University who opined that plaintiff would not have been a candidate for Interferon drug therapy in 1991 since he probably had cirrhosis at that time and Interferon would have been contraindicated under those circumstances. In the alternative, the defense expert claimed that the success rate of Interferon was only about 6% in 1991 and therefore was unlikely to have changed plaintiff's current course of events.

Injury: Lost chance of cure. Plaintiff still awaits a liver transplant. He is totally disabled from his job as a

service manager at a local car dealership. He resides with his wife and has one son.

Result: \$500,000 settlement, reached on the day trial was scheduled to begin.

Plaintiff's Expert Witnesses: Morton Davdison, M.D., Infectious Disease, Larchmont, NY; Martin Black, M.D., hepatology, Temple University, Philadelphia, PA; Donald Jennings, Ed.D., Vocational Expert, Jenkintown, PA; Royal Bunin, Bunin & Associates, Economics Professor, Temple University, Wynnewood, PA

Plaintiff's Attorney: Louis J. DeVoto of Ferrara Rossetti & Devoto, Cherry Hill NJ.

Schaefer v. Unnamed Physician, (Camden Cty. Super. Ct. N.J. Sept. 30, 2002)