

located in the Long Island City section of Queens. While Green was operating a device that chopped concrete, he fell off of an elevated platform. He plummeted about 20 feet, and he landed on a floor. He sustained an injury of a leg.

Green sued the premises' owner, East Coast 7 LLC, and the project's general contractor, Rockrose G.C. Q.W. 7 LLC. He alleged that the defendants violated the New York State Labor Law.

Green claimed that he was required to work on an unguarded, unfinished, elevated platform that was not bounded by railings or any other structure or device that could not have prevented his fall. He also claimed that he had not been provided a harness or any other type of device that could have prevented his fall.

Green's counsel noted that the site's safety manager prepared a post-accident report in which he acknowledged that adequate protection had not been provided. Green's counsel contended that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Green was not provided the proper, safe equipment that is a requirement of the statute. He also contended that the site was not properly safeguarded and that, as such, the defendants violated Labor Law § 241(6). He further contended that the defendants violated the general safety provisions of Labor Law § 200.

INJURIES/DAMAGES *ankle; closed reduction; decreased range of motion; fracture, distal fibula; fracture, leg; physical therapy*

Green sustained a transverse fracture of the distal shaft of his right leg's fibula. He was placed in an ambulance, and he was transported to Mount Sinai Hospital of Queens, in Long Island City. His fracture was addressed via closed reduction: the application of a hard cast. After the cast was removed, Green underwent about nine months of physical therapy.

Green claimed that he suffers residual pain and a residual reduction of his right ankle's range of motion. He contended that his carpentry work provided annual income of \$70,000 to \$90,000, but that his injuries prevent his resumption of that work. He also contended that his injuries impair his performance of some of his daily activities.

Green sought recovery of his past and future medical expenses, his past and future lost earnings, and damages for his past and future pain and suffering. His wife presented a derivative claim.

Defense counsel contended that Green exaggerated the extent of his residual injuries. They claimed that he has completely recovered, that he does not experience residual effects and that he can resume his carpentry work.

RESULT The parties negotiated a pretrial settlement. The defendants' insurer agreed to pay \$750,000.

INSURER(S) AIU Holdings Inc. for both defendants

**PLAINTIFF
EXPERT(S)** Leonard R. Harrison Jr., M.D.,
orthopedics, New York, NY (did not testify)

Edmond A. Provder, vocational rehabilitation, Lodi, NJ (did not testify)
Frank D. Tinari, Ph.D., economics,
Livingston, NJ (did not testify)

**DEFENSE
EXPERT(S)** Robert Brower, vocational rehabilitation,
Medford, NY (did not testify)
Andrew B. Weiss, M.D., orthopedics,
Roseland, NJ (did not testify)

EDITOR'S NOTE This report is based on information that was provided by plaintiff's and defense counsel.

—Tim Heinz

VERDICT *of the* WEEK

MEDICAL MALPRACTICE

Informed Consent — Wrong Procedure

Docs denied knowledge of drugs' ill effects

VERDICT Defense

CASE Ann Streimer v. Ronald Biondo, D.D.S.
and William Grace, M.D., No. 108374/06
COURT New York Supreme
JUDGE Doris Ling-Cohan
DATE 6/24/2009

**PLAINTIFF
ATTORNEY(S)** Gary Silverstein, Rosenberg, Minc, Falkoff
& Wolff, LLP, New York, NY

**DEFENSE
ATTORNEY(S)** Ralph A. Catalano, Catalano, Gallardo
& Petropoulos, LLP, Jericho, NY (Ronald
Biondo)
Steven E. Garry, Costello, Shea &
Gaffney, New York, NY (William Grace)

FACTS & ALLEGATIONS In September 2004, plaintiff Ann Streimer presented to her oncologist, Dr. William Grace. Streimer suffered metastatic cancer of her breasts, and Grace was rendering treatment that included the intravenous administration of two bisphosphonates: Aredia and Zometa, which are manufactured by Novartis International AG. Streimer suggested that the drugs had led to her development of osteomas--bony growths that stemmed from her gums. Streimer questioned the merit of her continued use of

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the prescribed drugs, and she also expressed that she was considering surgical removal of the osteomas. Grace advised that Streimer needed to continue her use of the prescribed drugs, and he also recommended that an oral surgeon would have to evaluate her candidacy for surgery.

In February 2005, Streimer was evaluated by an oral surgeon, Dr. Ronald Biondo. She did not mention that she and Grace had discussed that her osteomas could have been caused by her use of bisphosphonates. Biondo concluded that he would perform an osteoplasty--removal of Streimer's bony growths. The procedure's first half was performed in February 2005. Streimer's palatal region subsequently developed a small area in which bone had become exposed, but the surgery was completed in April 2005. She subsequently observed widespread exposure of her jawbone. The condition is painful and permanent.

Streimer claimed that the osteoplasty's poor outcome was a result of her use of bisphosphonates. She contended that Biondo and Grace should have been aware that an osteoplasty is not a safe means of addressing a patient who uses bisphosphonates.

Streimer sued Biondo and Grace. She alleged that Biondo performed inappropriate surgery, that Biondo and Grace failed to obtain informed consent to that surgery, that Grace failed to prevent the surgery, and that the doctors' actions constituted malpractice.

Streimer's counsel claimed that scientific research had previously established that bisphosphonates can cause osteonecrosis of the jaw. He contended that the hazardous link was deeply explored in a May 2004 article that was published by the Journal of Oral and Maxillofacial Surgery. The article was written by Dr. Salvatore Ruggiero. After the article's publication, Novartis International created a "Dear Doctor" letter that warned that its bisphosphonates should not be used by patients who intend to undergo invasive dental procedures. In September 2004, the letter was delivered to doctors who prescribed those drugs. In May 2005, it was delivered to members of the dental community. Streimer claimed that she and Biondo discussed the letter, and, as such, Streimer's counsel argued that Biondo should not have performed the osteotomy. He further argued that Biondo did not explain the associated risks that stemmed from Streimer's use of bisphosphonates, and, as such, he claimed that Biondo did not obtain Streimer's informed consent to the osteoplasty.

Streimer's counsel also contended that Grace should have received the "Dear Doctor" letter that was delivered in September 2004. Streimer claimed that the letter's contents were never discussed by Grace, and, as such, her counsel argued that Grace did not obtain Streimer's informed consent to his approval of the osteoplasty. He further argued that Grace should not have permitted the procedure.

Grace contended that he did not receive the "Dear Doctor" letter, and he claimed that he did not have to obtain informed consent to a procedure that Biondo recommended and performed. He also contended that he explained that he possessed merely limited knowledge of the subject.

Biondo contended that the osteoplasty was performed prior to any widespread dissemination of bisphosphonates' associated risks. As such, he argued that contemporaneous accepted medical standards did not require warnings of those risks. His counsel presented Ruggiero, who acknowledged that those risks were not generally known when Streimer's surgeries were performed. However, a Frye hearing was conducted, and Judge Joan Carey ultimately concluded that those risks were generally recognized when Streimer's surgeries were performed.

INJURIES/DAMAGES *jaw; necrosis*

Streimer suffers osteonecrosis of her jaw. She underwent about 40 sessions of hyperbaric treatment, but she claimed that she suffers chronic pain and discomfort, and she contended that her condition necessitates enhanced methods of oral hygiene. The condition is being addressed via Streimer's use of prophylactic antibiotics, and she undergoes periodic removal of necrotic bone.

Streimer sought recovery of damages for her past and future pain and suffering.

RESULT The jury rendered a defense verdict.

DEMAND \$340,000 (total, from both defendants)
OFFER None

INSURER(S) **Medical Liability Mutual Insurance Co.**
for Grace
OMS National Insurance Co. RRG for
Biondo

TRIAL DETAILS Trial Length: 7 days
Jury Deliberations: 30 minutes
Jury Vote: 6-0
Jury Composition: 2 male, 4 female

PLAINTIFF
EXPERT(S) **A. Norman Cranin**, oral surgery,
Hewlett, NY
Leonard Dauber, M.D., oncology,
Bronx, NY

DEFENSE
EXPERT(S) **Mark Fialk, M.D.**, oncology, Scarsdale, NY
Salvatore L. Ruggiero, D.M.D., M.D.,
oral surgery, West Islip, NY

POST-TRIAL Judge Doris Ling-Cohan denied plaintiff's counsel's motion for a new trial.

EDITOR'S NOTE This report is based on court documents and information that was provided by defense counsel. Plaintiff's counsel did not respond to the reporter's phone calls.

—Jaclyn Stewart