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VerdictSearch New York Reporter

Elena Beliaeva, Individually, and as Administratrix of the Estate of Svetlana Beliaeva
v. Gastro Biliary Associates, P.C.; Liviu Schapira, M.D.; and Sam Moscowitz, M.D.;
No. 11841/00

Verdict Date: 10/30/2003

Topic: Wrongful Death - Medical Malpractice - Diagnosis of Cancer; Doctors Accused of Failing to Spot Gastric Cancer

Result: The case settled for \$ 500,000 after summations and before the jury charge.

Disbursement: Award Total: \$ 500,000Injuries: Death, Loss of Services

Injury: Beliaeva died in December 1999 after receiving chemotherapy and radiation treatment. She is survived by her mother.

State: New York

Court: Queens Supreme

Judge: Orin R. Kitzes

Plaintiff Attorney: Mark M. Basichas; Sherman& Basichas; New York, NY (Elena Beliaeva, Estate of Svetlana Beliaeva)

Defendant Attorney: Timothy J. McGinn; Wilson, Elser, Moskowitz, Edelman& Dicker L.L.P.; Manhattan, NY (Gastro Biliary Associates, Gastro Biliary Associates, Liviu Schapira, Liviu Schapira, Sam Moscowitz, Sam Moscowitz)

Facts: Plaintiff's decedent Svetlana Beliaeva, 27, a part-time hospital employee, presented to her gastroenterologist, Dr. Liviu Schapira, in March 1998 with complaints of daily epigastric pain that had lingered for two weeks. Schapira attributed the pain to peptic ulcer disease, and told Beliaeva to return in four weeks. He prescribed Zantac, to be taken twice a day with two refills.

According to Beliaeva's mother and friend, Beliaeva returned to Schapira in May 1998 with continued complaints of epigastric pain, despite her use of Zantac. They claimed that no procedures were performed at that time, and that Beliaeva continued taking Zantac. Schapira denied that Beliaeva presented to him in May 1998, and his chart did not indicate the alleged visit. Beliaeva did not have insurance, so there was no further evidence regarding this visit. Schapira later presented documents in support of his claim that Beliaeva had not presented in May 1998, but some of the documents appeared to have been altered. Beliaeva claimed that the documents were altered to hide the May 1998 visit.

In November 1998, Beliaeva presented to her gynecologist with complaints of pelvic pain. A sonogram revealed a pelvic cyst. Several days later, Beliaeva called her gynecologist allegedly complaining of increased pelvic pain and "black stool." The gynecologist recommended that she go to a gastroenterologist. Later that day, she was seen by Dr. Sam Moscowitz, who was Schapira's partner. Both Schapira and Moscowitz practiced under Gastro Biliary Associates P.C.

Moscowitz claimed that Beliaeva complained of rectal bleeding with bright red blood. He performed a

sigmoidoscopy and noted an impression of irritable-bowel syndrome and hemorrhoids. Beliaeva was diagnosed with gastric cancer with metastasis to her ovary approximately 1.5 months later. She underwent chemotherapy and radiation. She died in December 1999.

Beliaeva's estate sued Schapira, Moscowitz and Gastro Biliary Associates. The plaintiff claimed that Schapira delayed the diagnosis of gastric cancer in May 1998. Schapira denied seeing Beliaeva in May 1998, but admitted that if he had, an upper endoscopy would have been warranted. He testified that the test may have revealed the cancer.

The plaintiff's expert oncologist testified that had the cancer been diagnosed in May, it would have been at stage I, with a 60% to 85% chance of five-year survival. Schapira's expert testified that even if the cancer had been diagnosed in May, it would have been at stage IV, with almost no chance for survival.

The plaintiff also contended that Moscowitz failed to diagnose gastric cancer in November 1998, and that Beliaeva's complaints of "black stool" warranted an upper endoscopy. Beliaeva's expert oncologist testified that if the cancer had been diagnosed in November, it would have been at stage II or III with a 20% to 50% chance of five-year survival. Moscowitz argued that Beliaeva did not complain of black stool, but of rectal bleeding with bright red blood. As such, a sigmoidoscopy was appropriate. Moscowitz admitted, however, that if Beliaeva had complained of black stool, an upper endoscopy would have been indicated and may have led to an earlier diagnosis. Beliaeva's gynecologist testified that Svetlana Beliaeva made specific complaints of "black stool," and that he spoke to Moscowitz and told him of these complaints. During cross-examination, he stated that he did not remember the conversation with Moscowitz. Moscowitz maintained that by November 1998, Beliaeva's gastric cancer was at stage IV with a close to 0% chance of survival.

Plaintiff Experts: Anthony Weiss, M.D.; Gastroenterology; New York, NY, Mark Basichas
Richard Hirschman, M.D.; Oncology; New York, NY, Mark Basichas

Defendant Experts: Ira S. Goldman, M.D.; Gastroenterology; Manhasset, NY, Timothy McGinn
Lionel Grossbard, M.D.; Oncology; New York, NY, Timothy McGinn

TRIAL-TIME: 7.0 days
Jury Composition
1 male, 5 female

Issue: Issue 28 VOLUME 21