

## Case Study #2 - Extractions

### **Case Captioned:**

Doris Drulz v. Dr. Pheilnuten, filed in Supreme Court in New York County, NY.

### **Insured Attorney:**

Al Betsroff, an experienced med mal trial attorney.

### **Plaintiff Attorney:**

Wi Gottem, who is a competent med mal atty, who is has a reputation for being difficult.

### **Detailed Description of Loss:**

The plaintiff presented to Dr. Pheilnuten, a general dentist, for surgical extraction of impacted teeth 1, 16, 17 and 32. Dr. Pheilnuten is a general dentist who had been practicing for 30 years. He obtained good written consent prior to the extractions, which included the risk of nerve injury.

Following the extractions, the plaintiff complained of numbness to her mouth, lip and tongue, both sides. The plaintiff went on to be diagnosed with permanent, bilateral injury to the lingual and inferior alveolar nerves resulting in almost total numbness of her tongue, lower lip, adjacent areas of her chin bilaterally and an inability to taste food. The plaintiff alleges she has problems eating and speaking as a result of the injuries.

## DAMAGES

### **Age/Status**

The plaintiff is a 37 year old, attractive, female attorney employed with a well known, high profile, law firm in NY. Prior to this injury the plaintiff was a trial attorney. She attended Columbia Law School and graduated Cum Laude.

### **Occupation**

Trial Attorney. As a result of this injury the plaintiff maintains she can no longer practice as a trial attorney. She is embarrassed to speak in public and is concerned she will drool or have food or spittle on her lips and won't feel it. She has since voluntarily left her position at the law firm and is exploring other career options that don't require public speaking. She is alleging loss of earning capacity in

skilled practitioner. However, the expert was of the opinion that Dr. Pheilnuten's the plaintiff had a significant and permanent injuries as a result of his care. He opined too much bone was removed from the lower right and lower left extraction sites and that the films show the insured "was all over with the burr" and departed from good and accepted surgical practice by utilizing an overaggressive and improper surgical technique. In addition the insured surgical incision was incorrect and caused trauma to the lingual aspect of tongue and to the lingual nerve bilaterally. He confirmed the plaintiff's loss of taste and indicated it was permanent. While the patient had good informed consent, a patient is not consenting to poor surgical technique and negligent care.

**Analysis & Evaluation:**

Additionally, we had the patient examined by a neurologist who confirmed her injuries.

Given the extent of the injury, its permanency and the plaintiff's age and life expectancy and the impact on her lifestyle, the full liability value of the case could be in excess of \$1,000,000 if a jury were to agree with the loss of earning capacity claim.

**Mitigating Factors:**

- 1.) The plaintiff did have informed consent and did know the risks of the procedure, including the risk of nerve damage.
- 2.) Nerve damage can and does happen absent any negligence during the extraction process. Admittedly, it is very unlikely that nerve injury would occur bilaterally absent any negligence.
- 3.) The injuries, while permanent do not appear to affect her speech to the degree she alleges and her "disability" appears to be more her perception than anything we could identify during her deposition. She did not appear to speak abnormally or to drool.
- 4.) The plaintiff voluntarily left her job as a trial attorney due to her perception that she could not be as effective and due to her embarrassment over the change in her speech and the possibility she could have drool while she was speaking. She left soon after the injury and did not try to work as an attorney in any capacity and instead decided to look for a less high profile occupation, settling on early childhood education as a field she'd like to study.

**Probable ultimate cost?**