

**Paik v Huang**

2013 NY Slip Op 30407(U)

February 25, 2013

Supreme Court, New York County

Docket Number: 117230/2008

Judge: Alice Schlesinger

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER  
Justice

PART IA PART 16

Index Number : 117230/2008  
PAIK, DEANIE S.  
vs.  
HUANG, WILLIAM  
SEQUENCE NUMBER : 001  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is *determined in accordance with the accompanying memorandum decision.*

**FILED**  
FEB 27 2013  
NEW YORK  
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: FEB 25 2013

*Alice Schlesinger*  
**ALICE SCHLESINGER**, J.S.C.

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER  
 DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
DEANIE S. PAIK, as Administratrix of the Estate of  
SUNG KU PAIK, deceased and DEANIE S. PAIK,  
Individually,

Plaintiffs,

Index No. 117230/08  
Motion Seq. No.

-against-

WILLIAM HUANG, M.D., MICHAEL STIFELMAN, M.D.,  
PRIMA PADMANABHAN, M.D., BASIR TAREEN, M.D.,  
THOMAS MALDONADO, M.D., MARK ADELMAN, M.D.,  
NYU UROLOGY ASSOCIATES, and NEW YORK  
UNIVERSITY MEDICAL CENTER,

Defendants.

**FILED**  
FEB 27 2013  
NEW YORK  
COUNTY CLERK'S OFFICE

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SCHLESINGER, J.:

In this medical malpractice and wrongful death action, the estate of Dr. Sung Ku Paik, by his wife as Administratrix, claims that Dr. Michael Huang, a urologist negligently performed his part of a retroperitoneal pelvic lymph node dissection. The alleged negligence occurred when Dr. Huang transected the anterior aspect of the patient's renal artery, approximately 75% of its circumference. This surgery took place on May 23, 2008. As a result of the transection and subsequent interposition graft performed by Dr. Thomas Maldonado to repair the artery, as opposed to a primary repair because, pursuant to Dr. Maldonado's operative report, "The right renal artery had been nearly completely dissected greater than 75% and was not able to be primarily repaired", Dr. Paik lost 2500 ml's of blood and required 5 units of packed cells. He died two days later, on May 25. A later autopsy listed as the

cause of death.

Complications of Renal Artery Injury during  
Lymph Node Dissection for Management of  
Kidney Cancer.

Then under final diagnosis, the report stated.

Post operative myocardial Infarction (By  
Enzymes), Progressive Hypotension, Renal  
Failure and Death and Incipient  
Bronchopneumonia.

Sung Ku Paik was 61 years old in 2007, when he was diagnosed with transitional cell carcinoma of the kidney. Ironically, Dr. Paik was himself a nephrologist. He was also a married man with two daughters. This diagnosis led to the removal of his left kidney and lymph nodes by defendant Dr. Michael Stifelman on October 26, 2007. Tissue from that surgery was sent to pathology, which analysis showed a high grade urothelial transitional cell carcinoma. Also, it was revealed that 9 of 22 lymph nodes were positive for metastasis.

Dr. Stifelman recommended follow-up chemotherapy which Dr. Paik agreed to and starting on February 1, 2008, he underwent six cycles of cisplatin-based chemotherapy. This was completed in April 2008.

The patient then asked if additional surgery would be beneficial and Dr. Stifelman referred him to defendant Dr. William Huang for consideration of retroperitoneal lymph node dissections. Its objective was to remove residual

cancerous lymph nodes.<sup>1</sup> Dr. Paik elected to have this done.

Both Dr. Stifelman and Dr. Huang might be involved in the surgery. As it was explained to Dr. Paik Dr. Stifelman would begin the May 23 surgery using a laparoscopic approach, if it could be performed safely. But if it could not, it would be converted to a laparotomy or open approach, with Dr. Huang performing that surgery.

That is what occurred. After about an hour, Dr. Stifelman noted that the colon was adherent to the retroperitoneum, the site where the excising of the nodes would take place, and he could not effectively mobilize it. While performing his part, he testified that he had no contact with the renal artery. Dr. Stifelman then left the operating room and was replaced by Dr. Huang who would perform the surgery as an open procedure. He was assisted by defendant, Dr. Basir Tareen and defendant Dr. Priyce Padmanabhan, an oncology fellow and a urology resident respectively.

Dr. Huang began his surgery by making a midline incision to enter the abdomen. It was toward the completion of dissecting the superior portion of the interaortacaval lymph node that he cut the right renal artery. He then took steps to precisely identify the injured vessel and to clamp the bleeding. He emergently requested a vascular surgeon to make the repair.

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<sup>1</sup>In this motion by all defendants for summary judgment, the plaintiff's opposition includes no challenge to the issue of informed consent. Additionally, it seems apparent based on the consent forms Dr. Paik signed, the multiple discussions he had with his several doctors, and his own medical knowledge that such a cause of action would lack any merit. So it is dismissed.

This is when Dr. Maldonado, a vascular surgeon took over the surgery. He immediately noted that a significant injury had occurred and opined at his deposition that the vessel was "most likely injured with a Metzenbaum scissors or it was cut in some way. It did not appear to be an avulsion, but rather a clean cut of the anterior aspect" (p. 24 lines 1-25). As stated earlier, Dr. Maldonado made a judgment that he was unable to do a primary repair. This was because of "the amount of injury with regard to the circumference was too great in my opinion to undergo a primary repair. And so I felt that interposition graft was better". (p. 25 lines 1-25). Finally, Dr. Maldonado stated that there would have been some type of significant blood loss due to events that occurred before his arrival in the OR (p.26).

Aiding Dr. Maldonado, at his request was a second vascular surgeon, defendant, Dr. Mark Adelman. Before the two performed the interposition graft repair, they inserted a shunt to provide blood flow to the remaining right kidney.

After the anastomosis (connection) of the graft by suturing, the surgeons established that there was good blood flow in the artery to the kidney. Dr. Huang then came back to the OR where he assured himself that the graft was functioning well and that the kidney was well perfused. He then closed the abdomen.

The following day, May 24, Dr. Huang noted disturbing post-operative events. These included decreased urine output, increased troponin, acidosis, and decreased blood pressure. He testified that increased troponin was suggestive of myocardial ischemia. The following day, May 25, 2008, Dr. Paik suffered a myocardial infarction

and died at 4:49 that afternoon.

### Discussion

It is on these facts that all defendants have moved for summary judgment, to dismiss all causes of action. Their motion is supported by an affidavit from a Dr. Bruce Foster, a board certified urologist, licensed to practice in Indiana. He is also a Professor of Urology at Indiana University School of Medicine. He has reviewed all of the relevant medical and legal records of this case, the latter including depositions. He states he is familiar with the standard of care for Urological Surgery and that all of his opinions "are offered with a reasonable degree of medical certainty" (¶12).

At the commencement of this action, many defendant doctors were named as well as the hospital where the surgery was performed, New York University Medical Center. The complaint grouped them together charging all with negligent conduct involving the surgery. There was also a cause of action, the third, that sounded in lack of informed consent. But the subsequent Bill of Particulars seemed to focus on Dr. Huang. By the time of this motion which is supported by Dr. Foster's affidavit, the sole remaining accusation of negligence, as it appears in the opposition, is on Dr. Huang. Therefore, I will not discuss opinions given by Dr. Foster as they relate to anyone other than Dr. Huang. Nor will I discuss any other asserted negligence except for what occurred during Dr. Huang's open procedure part of the surgery. Such being the case, at this point, all claims against all defendants except Dr. Huang

are dismissed.<sup>2</sup>

Dr. Foster, as noted, deals with all aspects of the action. His affidavit is divided chronologically first the “pre-operative treatment,” followed by the “perioperative treatment” and concluding with the “post-operative treatment”. It is nineteen paragraphs in all. Of those, he only opines about Dr. Huang’s surgical care in four of those, paragraphs 10 through 13.

First, he generally opines that “Dr. Huang’s surgical technique was consistent with accepted standards of medical care at all times,” that he used the correct instruments and that he “properly performed the midline incision and entered the abdomen” (¶10). The remainder of this paragraph describes how Dr. Huang proceeded with the surgery.

Dr. Foster then states that “the right renal artery was inadvertently partially transected” (¶11). However, he adds “a transection of the renal artery is a known and accepted risk of a post-chemotherapy RPLND surgery, and that it can-and-did-occur in the absence of any medical negligence”. He explains that “when a residual lymph node is very adherent to a vascular structure, there is a very narrow margin for simultaneously avoiding injury to the vascular structure while successfully removing the lymph node.” (¶12)

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<sup>2</sup>This is done with no need for a determination by me of whether a prima facie case has been made out as the plaintiff no longer claims any departures against anyone other than Dr. Huang.

Dr. Foster then describes what Dr. Huang did next, mobilizing the vessel, placing a clamp on it, and “immediately and emergently request that vascular surgeons repair the vessel.” He says this transection was quickly controlled “with minimal blood loss” (¶13). He neither mentions nor comments on the loss of 2500 mls of blood requiring 5 units of packed cells. Further, he says nothing about the cause of death, in other words, why and how it happened. He simply points to Dr. Paik’s worsening condition on May 24<sup>th</sup>, as noted by Dr. Huang.

The plaintiff’s opposition consists of an affirmation from a physician who is board certified in General Surgery and Thoracic and Cardiovascular Surgery. He states he is a “Professor Emeritus of Clinical Surgery at a major metropolitan medical school” and is “affiliated with a major teaching hospital”. He further states that “he has developed an extensive experience in the surgery of the retroperitoneal space and the structures in it” (¶5). He states he has worked with an urologist in about two dozen nephectomies where the exposure of the great vessels were done by him. He states he has also performed retroperitoneal lymph dissections. Therefore, he says he is “fully familiar with not only the surgical anatomy and with the standards of care concerning the indications and performance of a retroperitoneal lymph node dissection as they existed in 2008.”

This expert takes issue with Dr. Huang’s surgical approach, a midline incision, which he says could not provide adequate access to the right retroperitoneum space. He states that the appropriate route of access would have been the lateral

approach through the 10<sup>th</sup> rib - which would give the surgeon direct access to the aorta, the lymph nodes and the right renal artery.<sup>3</sup> This doctor basically opines that Dr. Huang was not able to properly visualize the right renal artery as he failed to obtain adequate exposure of it. He says that it is obvious that the defendant surgeon failed to identify the right renal artery and this is borne out by “totally unacceptable transection (¶13) which was greater than 75% of the circumference of the artery, followed by “massive sudden blood loss” (¶14). Finally, he opines that the blood loss was a substantial contributing factor to Dr. Paik’s death.

Counsel in his Reply accuses the expert opinion as being “entirely conclusory” without sufficient explanation. But I disagree. It is clear to me that what the opposition doctor is actually saying is that Dr. Huang lost control of his surgery which is indicated by his failure to identify the right renal artery leading to his cutting 75% of its circumference. While it is true that he does not detail the reasons why a midline incision was wrong here and why a lateral approach would have been much better, he does communicate that the latter approach would have provided “the best access with the least risks in gaining exposure required to perform a right retroperitoneal lymph node dissection safely” (¶10).

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<sup>3</sup>The physician appears to connect his criticism of using the midline incision with Dr. Paik being stocky and 5'5". In Reply, counsel implies that in fact he was 5'6" and thin. The autopsy supports the opposition. But frankly, I do not think this particularly matters.

In fact, I find that the criticisms defense counsel level at the plaintiff's doctor are at least as appropriate to be leveled at his Dr. Foster. I say this because, as noted earlier, Dr. Foster's basic point is that the transection was a risk of the procedure. He further offers that the surgery was difficult because of the adherence of the lymph nodes. However, he fails to explain why and how this severe transection occurred if Dr. Huang truly could visualize the major vessels. On this point, it is interesting to note that after the transection, the first thing Dr. Huang did was to "immediately mobilized the vessel to ascertain exactly which vessel had been partially transected" and then place a clamp on it. (¶13 of Foster's Affidavit). This certainly suggests the defendant's uncertainty as to which vessel he had injured because he was unable to clearly see it before he cut it.

In any event, I find that there are legitimate issues here regarding whether Dr. Huang's severe transection of the artery was simply an accident and risk of the procedure or instead simply negligence which could have been avoided and with it Dr. Paik's death. The opposition convinces me that neither conclusion is irresistible. It also convinces me that a trial is necessary to resolve these differences.

Finally, in Reply, counsel argues that the claim of an improper midline surgical incision was never before raised. However, I disagree. At least three allegations of the Bill of Particulars spoke to this.

- Defendants improperly performed surgery and caused a perforation of the right renal aortic artery

- Defendants failed to use proper surgical technique and
- Defendants failed to visualize the right renal artery

These implicitly charge that the wrong surgical approach was attempted. Therefore, for the reasons stated above, Dr. Huang's motion for summary judgment solely with regard to his actions during surgery is denied.

Accordingly, it is hereby

ORDERED that the motion for summary judgment by the defendants Michael Stifelman, MD., PRIMA Padmanabhan, M.D., Basir Tareen, M.D., Thomas Maldonado, M.D., Mark Adelman, M.D., NYU Urology Associates, and New York University Medical Center is granted, and the Clerk is directed to sever and dismiss those claims; and it is further

ORDERED that the motion by defendant William Huang, M.D. is denied insofar as it relates to his actions during surgery but is otherwise granted.

Counsel shall appear for a pre-trial conference on Wednesday, March 6, 2013 at 11:00 prepared to discuss settlement and select a firm trial date.

Dated: February 25, 2013

**FEB 25 2013**

**FILED**

FEB 27 2013

J.S.C.

NEW YORK  
COUNTY CLERK'S OFFICE ALICE SCHLESINGER