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Jury's \$2.8M verdict revived

Top court OKs rulings on CT scan, surgeon's lack of board certification

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Maryland's top court has unanimously reinstated a \$2.8 million jury award to a woman whose paraplegia was caused by a Bel Air vascular surgeon's negligence in 2007.

The **Court of Appeals** said the trial judge had ruled correctly in excluding a CT scan that would have bolstered Dr. Roger Schneider's defense, and in allowing the plaintiff's lawyer to mention that Schneider was not board-certified as a vascular surgeon

A lower appellate court had ruled

otherwise on both counts last year, striking down the verdict for plaintiff Victoria Little.

Little, who suffered paralysis as a result of massive bleeding during heart surgery, said that Schneider had applied too large a graft to bypass a blockage in her aorta.

At trial in **Harford County Circuit Court**, Little's experts testified that her aorta was only seven millimeters in diameter. The CT scan purportedly showed the aorta to have been 15 mm in diameter, which could have indicated Schneider was not negligent.

The Court of Appeals said Thursday

that Judge Stephen M. Waldron properly excluded the scan because Schneider had not seen it while treating Little, and therefore could not have relied on it in making his decision.

"The trial judge specifically inquired into Schneider's use of the [CT] scan and found that Dr. Schneider never reviewed the [CT] scan, never considered the [CT] scan, and never relied upon the [CT] scan," Judge Sally D. Adkins wrote Thursday for the high court. "Indeed the trial judge found no indication at all that Schneider even knew that the [CT] scan



FILE PHOTO

Andrew H. Baida, who represented the patient on appeal, said the decision means a defendant doctor's lack of board certification is 'not off-limits as a matter of law.'

See **REINSTATED 5A**

Reinstated >> Doctor's self-portrayal as 'paragon' justified contrary comment

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existed when he was treating Little."

James D. Cardea, Little's trial attorney and counsel of record, said he and his client are "very pleased" with the high court's resolution of the malpractice claim.

"It's been a long process," said Cardea, of **Schochor, Federico and Staton P.A.** in Baltimore.

The court also rejected the defense's second argument.

References to a defendant doctor's lack of board certification generally would be inadmissible in a malpractice case, Adkins wrote.

But, in this litigation, the reference was a valid response to statements by Schneider's trial lawyer and the doctor's own testimony, which included mention of his five-year residency, one-year fellowship and 11 years of teaching vascular surgery at Johns Hopkins; volunteer work in caring for indigent patients; and

numerous articles in medical publications, Adkins wrote.

Under the circumstances, the question about the doctor's lack of board certification was permissible "in order to counter Schneider's effort to cloak himself as the paragon of vascular surgeons," Adkins added.

Andrew H. Baida, who argued Little's case before the high court, said the decision provides "much needed guidance" to trial attorneys in medical malpractice cases.

In particular, the decision makes clear that a defendant doctor's lack of board certification is "not off-limits as a matter of law" and can be admitted if defense counsel "opens the door" by touting the physician's qualifications, said Baida, of **Rosenberg Martin Greenberg LLP** in Baltimore.

The decision on the CT scan also limits the medical evidence a defendant physician can introduce at trial, Baida added.

"When a physician testifies as a fact witness, that testimony is limited to what he or she saw or did," he said.

Ward B. Coe III, Schneider's appellate counsel, did not return telephone and email messages seeking comment Friday. Coe is with **Gallagher Evelius & Jones LLP** in Baltimore.

Little was admitted to the **Upper Chesapeake Medical Center** on July 16, 2007, for aortabifemoral bypass surgery. The procedure involves connecting the aorta to the femoral artery by suturing on a graft in order to bypass a blocked portion of the aorta.

According to trial testimony, Little lost nearly her entire blood supply — 10 times the normal loss of blood — during



ADKINS

WHAT THE COURT HELD

Case: *Little v. Schneider*, CoA No. 88, Sept. Term 2012. Reported. Opinion by Adkins, J. Argued June 6, 2013. Filed Aug. 22, 2013.

Issues: (1) Did the judge err in excluding a CT scan from being introduced at trial? (2) Did the judge err in permitting defendant physician's lack of board certification to be admitted at the malpractice trial?

Holding: No to both; the CT scan was properly excluded because the defendant physician did not see it during his treatment of the patient; the lack of board certification was admissible to rebut the doctor's "effort to cloak himself as the paragon of vascular surgeons."

Counsel: Andrew H. Baida for petitioner; Ward B. Coe for respondent.

RecordFax # 13-0822-24 (23 pages).

the procedure. The massive blood loss caused permanent injury to her spinal cord and paralysis from the waist down, according to the lawsuit, which Little filed Sept. 11, 2008, in Harford County Circuit Court.

As defendants, she named Schneider, his partner Dr. Mark Gonze and their practice, **Vascular Surgery Associates LLC**, as well as Dr. Michael Eves and **Northern Chesapeake Anesthesia Associates**. The jury found only Schneider, Gonze and Vascular Surgery Associates liable and awarded Little \$3.5 million in damages in May 2010.

The award included \$2 million in future medical expenses, \$224,398 in past medical expenses and \$1.3 million for pain and suffering. The pain and suffering damages were reduced to \$650,000 under Maryland's statutory cap for non-economic damages in medical malpractice cases, for a total award of \$2,874,398.

Gonze and the practice settled with

Little after trial for an undisclosed amount and did not join Schneider's appeal.

Adkins, in her opinion, said the court's conclusion that Schneider's lack of board certification was admissible "should not be read so broadly as to condone generally the use of negative irrelevant facts regarding a physician" in a medical malpractice case.

"For example, even excessive puffing during defendant's witness accreditation does not justify introduction of evidence that the physician was previously sued for malpractice," Adkins wrote. "Ordinarily, evidence of prior malpractice suits is so prejudicial that it would tip the scale unfairly against the doctor. Thus, evidence of prior malpractice suits would not be permissible in cases like this one, unless the defendant doctor injected this topic into the trial, for example, by testifying that he or she had never been sued for malpractice."

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ANDREW H. BAIDA
Attorney