

# Nogueras v. LaBarbera

Medical Malpractice-Diagnosis of Myocardial Infraction

Suffolk County

**CASE:** Miriam Nogueras, indiv. and as Adm. of the Est. of Charles Nogueras v. Philip LaBarbera, M.D., P.C. and Philip LaBarbera, indiv. 18596/88 7-day trial Verdict 12/10/93 Judge Alan D. Oshrin

**COURT:** Suffolk Supreme  
**VERDICT:** Defense verdict (5/1). Jury: 5 male, 1 female.

**PLAINTIFF:**  
**ATTORNEYS:** James Duffy of Kramer, Dillof Tessel, Duffy & Moore, Manhattan

**DEFENSE:**  
**ATTORNEY:** David W. Brand of Brand & Brand, Garden City

**FACTS & ALLIGATIONS:** Decedent, a 59-year-old teletype operator on the stock exchange, presented to Deft: internists on 11/14/87 with complaints of occasional chest pain, right arm pain upon walking, and coughing and wheezing at night. He also told Defendant that he used two pillows to sleep at night. Decedent had a history of a mild cardiac infraction in 1977 and angina. His previous doctor had prescribed Corgard, a beta blocker; nitroglycerin; and Lozol, a diuretic; Deft performed a physical examination and took decedent's blood pressure, which was 190/105. He also performed an EKG, which resulted in non-specific findings.

**INJURIES & DAMAGES:** Defendant diagnosed atherosclerotic heart disease and uncontrolled hypertension and prescribed by decedent's previous doctor. Defendant also told decedent to return in 2 weeks with his medical records. Decedent died 2 days later of an acute anterior wall myocardial infarction.

Plaintiff contended that Defendant negligently failed to diagnose left ventricular failure at decedent's office visit. She contended that the fact that decedent was using two pillows at night was evidence of orthopnea, or congestion while reclining a

result of heart failure. Plaintiff also argued that Defendant was negligent for taking only one blood pressure reading and for basing his diagnosis on hypertension on that one reading. Pltfs. Expert contended that the prescription of Calan was contraindicated in the face of left ventricular failure and that the combination of Calan and Corgard lowered decedent's heart rate and blood pressure, causing his death. Plaintiff contended that decedent, who took his own blood pressure, told her on the morning of his visit with Deft that he had very low reading. Plaintiff also contended that a nurse at decedent's job took his blood pressure on the morning of his death, and that his pressure was again quite low.

Defendant denied that decedent was suffering from left ventricular failure or heart failure at his office visit. He argued that decedent's congestion was caused by a cold or bronchitis. Defendant denied that decedent had orthopnea, which appears in advanced stages of congestive heart failure, because decedent showed no signs of congestion: abnormal lung sounds, rales, edema, or shortness of breath. He contended that in a case of classic orthopnea, the patient sleeps in an almost upright position, requiring more than two pillows. Defendant also claimed that one blood pressure reading was properly diagnostic for uncontrolled hypertension. He contended that Corgard and Calan, taken together, control hypertension and is therapeutic for patients at risk of a mild cardiac infarction. Finally, Defendant argued that if decedent had presented with heart failure, that condition would have been the cause of his death. Heart failure was not indicated as a cause of death on the hospital record or in decedent's death certificate.

Plaintiff admitted that an acute anterior wall myocardial infarction was a contributing factor in decedent's death, but argued that the infarction was caused by stasis in a coronary artery as a result of very low blood pressure, which allowed a clot to form. Plaintiff also contended that decedent suffered from heart block, a delayed conduction of electricity in the heart, resulting from the combination of

Corgard and Calan. Defendant denied that decedent had heart block and noted that it was not mentioned in the hospital record or on decedent's death certificate. Deft's expert testified that in his 37 years of practice, he had never seen a patient suffer a heart attack as a result of low blood pressure. Decedent, at age 59 at his death, left a wife and three children, two of them adults. Demonstrative evidence: blackboard drawings; EKG tracings, Offer \$100,000: demand \$1,000,000 plus excess coverage; amount asked of Jury: \$2,900,000 (\$150,000 for household services: \$500,000 for lost earnings; \$750,000 for pain and suffering; \$400,000 to each of two children for loss of parental guidance; \$600,000 to the third Child).

**JURY**

**DELIBERATION:** 6 hours

**CARRIER:** Frontier

**PLAINTIFF**

**EXPERT:** **Dr. Ernestos Jonas,**  
Chief of Cardiovascular  
Medicine, Massau  
County Medical Center

**DEFENSE**

**EXPERT:** **Dr. Charles Bertrand,** Chief  
Of Cardiology, Lawrence  
Hospital and St. Agnes  
Hospital, White Plains.