

**Publication: Cook County Jury Verdict Reporter Published: 7/21/2023  
(RRR 18/2) MEDICAL MALPRACTICE--PATIENT ALLEGEDLY MANHANDLED DURING  
EXAMINATION (12S)**

*Margarita Adame v Elmhurst Memorial Hospital* 19L-12772 Tried Jan. 20-Feb. 2, 2023

- **Verdict:** Not Guilty
- **Judge:** [James Michael Varga](#) (IL Cook-Law)
- **Pltf Atty(s):** [John S. Xydakis](#) ASKED: \$2,700,000
- **Deft Atty(s):** [Ruth V. Enright](#), [Patrick J. Vezino](#) of Baker & Enright (Chicago, IL) (Self-Insured) OFFER: \$10,000
- **Pltf Medl:** [Ronald Hugar, D.P.M.](#) (Podiatrist)
- **Pltf Expert(s):** Dr. [Walter Friberg](#) (Rehab/Physical Medicine)
- **Deft Expert(s):** Dr. [Kerrie Reed](#) (Rehab/Physical Medicine)

**Facts:**

Pltf F-51 was admitted to Elmhurst Memorial Hospital on January 6, 2016, for complaints of left-sided weakness. She underwent a physical and occupational therapy evaluation by hospital employee therapists the next day, January 7. Pltf contended she never consented to the evaluation, the therapists pulled her from her bed, they handled her in a rough manner, and while having her try to ambulate they dragged her left foot and subsequently struck her left foot/ankle with a wheelchair. The wheelchair was being used to follow behind her in case she needed to stop and sit down. Pltf's son was present during these events and corroborated pltf's allegations. They both testified the son told the therapists to stop and the therapists then left the room without completing their evaluation. Pltf complained of pain in the left foot/ankle to her attending physician the following day. Pltf went to a podiatrist in February 2016 who diagnosed a ligament injury, prescribed physical therapy, administered several injections into the ankle, and treated her for a year. Pltf's expert performed an independent medical evaluation in 2018 and opined that pltf sustained complex regional pain syndrome as a result of the occurrence. Pltf claims permanent constant pain and inability to ambulate even very short distances without using a walker for assistance, leaving her essentially homebound, incapable of caring for herself, and almost completely disabled (no past medical bills or LT submitted, unspecified future medical expenses sought). Pltf's battery and intentional infliction of emotional distress counts were voluntarily withdrawn at the start of trial. The case proceeded on claims of negligence, lack of consent, and willful and wanton. The therapists testified they did not recall the pltf, their custom and practice was to obtain patient consent for proceeding with an evaluation, and they customarily had patients sit up in bed and prepared them to stand. The therapists denied handling pltf roughly and denied the wheelchair hit pltf. Medical records showed the therapists ambulated the patient, completed the evaluation, and then placed her in a chair with her family and doctor present in the room. The defense argued the attending physician found no sign of injury when he examined pltf's foot/ankle on January 8, and nursing documentation showed no complaints of ankle/foot pain. The defense expert opined there was no objective evidence of any injury to pltf during therapy and pltf did not meet the criteria for a CRPS diagnosis. Judge Varga granted a directed verdict in favor of deft on the willful and wanton punitive damages count. Defense counsel reports pltf's last settlement demand was "at least six figures."

**Publication: Cook County Jury Verdict Reporter Published: 2/7/2020**

**(NNN 16/1) MEDICAL MALPR.—FAILURE TO DIAGNOSE LYMPHOMA IN BREAST CANCER PATIENT (12C)**

Maria George v Dr. Jamie H. Von Roenn, Dr. Sarika Jain, Northwestern Memorial Hospital, Northwestern Medical Faculty Foundation, Northwestern Memorial Healthcare 16L-4105 Tried Nov. 18-22, 2019

**Verdict:** Not Guilty v all defts.

**Judge:** Thomas V. Lyons, II (IL Cook-Law)

**Pltf Atty(s):** Randall F. Peters of Randall F. Peters & Associates (Chicago, IL) James J. Macchitelli of James Macchitelli (Schaumburg, IL) **DEMAND:** \$250,000 - \$2,500,000 **high/low ASKED:** \$2,750,000 - \$3,500,000

**Deft Atty(s):** Ruth V. Enright, Patrick J. Vezino of Baker & Enright (Chicago, IL) for all defts (Self-Insured) **OFFER:** none

**Pltf Medl:** Dr. Alla Gimelfarb (Oncologist)

**Deft Medl:** Dr. Adi Gidron (Oncologist) for all defts

**Pltf Expert(s):** Dr. Judy L. Schmidt, Wailuku, HI (808-281-5189) (Oncologist)

**Deft Expert(s):** Dr. Gary Kay (Oncologist) for all defts

#### **Facts:**

Pltf was diagnosed with breast cancer which required a left breast lumpectomy in 1989 and a total mastectomy in 1998. In December 2011, she was diagnosed with enlarged lymph nodes (abdominal, retroperitoneal, and mesenteric), a growth on her left ovary, and a spinal tumor; a spinal biopsy confirmed metastatic breast cancer. Pltf F-68 came under the care of deft breast cancer specialist Dr. Von Roenn in January 2012, who prescribed Tamoxifen, referred her to a gynecologic oncologist to evaluate the ovarian growth, and monitored her Stage IV cancer with serial radiologic imaging. The ovarian growth resolved with continued use of Tamoxifen. CT findings in July 2013 revealed the development of a lesion on the vaginal cuff, indicating additional metastasis. Deft oncologists changed pltf's medication and her condition remained stable until October 2014, when her vaginal lesion and some lymph nodes increased slightly in size, so Dr. Jain changed her medication again. In January 2015, pltf switched care providers to Dr. Adi Gidron at NorthShore. He ordered serial PET/CT scans in February and June 2015 which showed her cancer was stable. In October 2015, pltf's gynecologist found a 4-cm growth on the vaginal cuff during her annual exam and contacted Dr. Gidron. After another PET/CT scan and a biopsy, pltf was diagnosed with a different and aggressive form of cancer: non-Hodgkin's lymphoma (large B-cell double-hit). Pltf underwent aggressive chemotherapy, remained in remission for nearly two years before it recurred, underwent chemotherapy again, and her lymphoma is currently in remission. However, she is currently on chemotherapy for her breast cancer. Pltf contended the abnormal lymph node findings in December 2011 were not metastatic breast cancer but instead were low-grade follicular lymphoma which transformed to large B-cell double-hit in June 2015, defts' failure to diagnose this cancer deviated from the standard of care, and she would have been essentially cured of the underlying lymphoma if the cancer had been treated before it transformed. The defense expert agreed that in retrospect pltf likely did have follicular lymphoma while under defts' care, but opined that the clinical findings were all completely consistent with metastatic breast cancer and there was no reason to suspect otherwise until after she left their care and developed disproportionate growth of the vaginal lesion found in October 2015. The defense denied the follicular lymphoma could have been cured and argued that earlier treatment would not have prevented the inevitable transformation. Both parties' experts concurred pltf would

likely die within months from the lymphoma, while her life expectancy would have been another one to two years with only the Stage IV metastatic breast cancer.

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**Publication: Cook County Jury Verdict Reporter Published: 9/27/2019**

**(MMM 49/1) MEDICAL MALPRACTICE—DELAYED DIAGNOSIS OF CANCEROUS TUMOR ON FOREARM (12C)**

Rachel Lipman v Dr. Thomas Wiedrich, Northwestern Medical Faculty Foundation 16L-431 Tried Jul. 15-23, 2019

**Verdict:** Not Guilty v both defts.

**Judge:** Thomas V. Lyons, II (IL Cook-Law)

**Pltf Atty(s):** Shawn S. Kasserman, Robert F. Geimer, Patrick J. Giese of Tomasik Kotin Kasserman (Chicago, IL)  
 DEMAND: \$7,500,000 ASKED: \$11,500,000

**Deft Atty(s):** Ruth V. Enright, Robert S. Baker of Baker & Enright (Chicago, IL) for both defts OFFER: none

**Pltf Medl:** Dr. John Michael Kane, III (Oncologist)

**Deft Medl:** Dr. Michael Byun (Plastic Surgeon), Dr. Joel Charrow (Geneticist), Dr. Majid Mohiuddin (Radiation Oncologist), Dr. Silvia Panitch (Internist) for both defts

**Pltf Expert(s):** Dr. Christian Ogilvie of University of Minnesota Center for Pediatric Vascular Lesions, 2512 S. 7th St., Minneapolis, MN (612-365-6777) (Orthopedist); Dr. Vernon Sondak of Moffitt Cancer Center, 10920 N. McKinley Drive, Tampa, FL (813-745-4673) (Oncologist)

**Deft Expert(s):** Dr. Patrick Reavey of University of Rochester Medical Center, 160 Sawgrass Drive, Rochester, NY (585-275-1000) (Plastic Surgeon); Dr. Christopher Winfree of Columbia University Neurological Institute of New York, 710 W. 168th St., New York, NY (212-342-2776) (Neurosurgeon) for both defts

**Facts:**

Pltf F-22 had a mass removed from near her right eye in July 2013, which pathology revealed was a benign neurofibroma. The plastic surgeon, Dr. Michael Byun, subsequently referred her to deft Dr. Wiedrich regarding another mass in her right forearm. Dr. Wiedrich, a plastic surgeon and hand surgeon affiliated with deft NMFF, first saw pltf on December 19, 2013. He ordered an MRI which revealed a neurofibroma running along the entire median nerve and additional neurofibromas on the radial and ulnar nerves. The radiology report stated it was highly suspicious for plexiform neurofibroma, highly suggestive of neurofibromatosis, and genetic molecular counseling would be beneficial. Dr. Wiedrich informed pltf in Jan. 2014 that she likely had neurofibromatosis which he did not treat, and any surgery to remove the mass would require removal of the nerve which would severely impair arm function. He referred her to Dr. Joel Charrow, a geneticist/pediatrician at Lurie Children's Hospital who specializes in neurofibromatosis. However, Dr. Charrow did not see adult patients with that condition. Pltf and her mother claimed Dr. Wiedrich told them the tumor was not cancer, he could not remove it, pltf would just have to live with the pain, and Dr. Charrow could help with the pain. Pltf did not want to go on pain medication, so she did not see Dr. Charrow and instead sought alternative treatment, including a hypnotist, chiropractor, and nutritionist. Pltf maintained the nutritionist care did resolve her arm pain, but the mass grew over the next 14 months to the size of one-third of a football and began impairing her arm function. In March 2015, pltf went to a radiation oncologist, Dr. Majid Mohiuddin, at Lutheran General's Gamma Knife Clinic. Dr. Mohiuddin believed the mass was highly suspicious for malignant transformation and referred pltf to Dr. Terrance Peabody, an orthopedic oncologist affiliated with NMFF. Dr. Peabody's workup confirmed that the neurofibroma had transitioned into a malignant peripheral nerve sheath tumor. He recommended amputation, as did another specialist pltf consulted. Pltf ultimately received treatment from Dr. John Kane in Buffalo, New York, who performed an isolated limb infusion in an attempt to treat the cancer and

save the arm. The procedure was not successful. Pltf then went to the Netherlands where she underwent an isolated limb perfusion in Jan. 2016, which is not approved in the U.S. After chemotherapy and limb salvage surgery in New York, pltf remained cancer-free until late 2018, when metastatic lung cancer was diagnosed. Pltf underwent wedge resection lung surgery and is currently cancer-free. Pltf's experts maintained the standard of care required Dr. Wiedrich to treat a growing painful mass as cancer until it was ruled out, he should have ordered a biopsy, a timely biopsy would have allowed earlier diagnosis of cancer when it was still resectable, and his failure to diagnosis cancer had reduced her life expectancy to three years. The defense asserted Dr. Wiedrich complied with the standard of care by referring pltf to a specialist who had the expertise to treat her condition, and any testimony regarding prognosis or alteration of prognosis was speculative. The defense was barred from introducing any evidence regarding the benign eye neurofibroma.

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**Publication: Illinois Jury Verdict Reporter Published: 2/28/2020**

**(19 Jn/3) PREMISES LIABILITY--PLTF NAMED SWAN ATTACKED BY BIRDS ON HOSPITAL GROUNDS (8, 15A)**

Virginia Swan v Elmhurst Memorial Hospital, d/b/a Elmhurst Hospital, Elmhurst Memorial Healthcare 16L-526 Tried Jun. 20-27, 2019

**Verdict:** Not Guilty

**Judge:** Robert G. Kleeman (IL, Du Page 18th Jud Cir)

**Pltf Atty(s):** Mark W. Tader of Piccione, Keeley & Associates (Wheaton, IL) DEMAND: \$485,000

**Deft Atty(s):** Ruth V. Enright of Baker & Enright (Chicago, IL) for both defts (Self-Insured)

**Pltf Medl:** Dr. John Nikoleit (Orthopedist), Christopher Sbertoli, P.T. (Physical Therapist), Lisa Schwartz, P.T. (Physical Therapist)

**Deft Medl:** Sarah Hand (Paramedic) for both defts

**Facts:**

Pltf Virginia Swan went to Elmhurst Memorial Hospital to use the outdoor walking path on June 11, 2015. While walking along the path, pltf F-83 retiree was attacked by two or more red-winged blackbirds. As she tried to fend them off, she fell and sustained a right subtrochanteric hip fracture; she required surgery to place rodding and screws in her hip, underwent inpatient rehab, and received continuous outpatient physical therapy (\$169,325 medical expenses). Pltf complained of permanent pain, loss of mobility, decreased activity, and the need to move into an independent living facility. Pltf contended the hospital maintained a quasi-wild habitat along the path to attract wildlife in violation of the Animal Control Act. Pltf also maintained the hospital failed to warn pedestrians about the dangerous condition that the aggressive birds created along the path, even though it had placed warning signs after a previous bird attack occurred two days prior. The defense asserted the signs were sufficient and pointed out that the hospital additionally closed and roped off the area surrounding the bird nests. The hospital could not remove the birds or nests because they were classified as protected wildlife under federal law. Pltf denied there were any barricades in this area. The defense refuted this argument with security logs detailing the placement of barricades and testimony of several witnesses. Before trial, deft was granted summary judgment on pltf's claim under the Animal Control Act.

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**Publication: Cook County Jury Verdict Reporter Published: 6/21/2019**

**(MMM 35/4) MEDICAL MALPRACTICE—FINGER WOUND LEADS TO MRSA INFECTION, SURGERIES (12F)**

Paula Thomas v Northwestern Medical Faculty Foundation, Northwestern Memorial Hospital, Dr. Danielle McGee 16L-2924 Tried May 1-7, 2019

**Verdict:** Not Guilty v Northwestern Medical Faculty Foundation and Dr. Danielle McGee; Northwestern Memorial Hospital was voluntarily dismissed at the close of pltf's case.

**Judge:** Robert E. Senechalle, Jr. (IL Cook-Law)

**Pltf Atty(s):** John J. Driscoll of Driscoll Law Offices (Naperville, IL) Mark A. Kuchler of Ronaldson & Kuchler (Chicago, IL) DEMAND: \$950,000 ASKED: \$3,146,138

**Deft Atty(s):** Ruth V. Enright, Patrick J. Vezino of Baker & Enright (Chicago, IL) for all defts (Self-Insured) OFFER: none

**Pltf Medl:** Dr. John Baptiste McClellan (Orthopedist)

**Pltf Expert(s):** Dr. John Ortinau (Emergency Medicine)

**Deft Expert(s):** Dr. Daniel P. Mass (Hand Surgeon); Dr. James R. Hubler (Emergency Medicine) for all defts

**Facts:**

Pltf F-50 was walking her dog on a leash during the evening of October 12, 2009, when her dog lunged at another dog, causing her to trip over a tree stump and fall onto her right hand, left knee, and left shoulder. She went to the emergency room at Northwestern Memorial Hospital shortly thereafter, where she was seen by deft ER physician McGee. After x-rays showed no fracture, pltf's left arm was placed in a sling. A medical student cleaned and irrigated the one-centimeter laceration on the middle knuckle of her right middle finger, and then applied Dermabond to close the wound. Pltf was discharged around 11:45 pm with instructions to seek immediate medical care if signs of infection developed. Pltf testified she saw her primary care physician on October 15 after developing signs of infection, but he refused to treat her and instead provided an urgent referral to an orthopedic surgeon. However, the first available appointment she could get with the orthopedist was not until six days later, October 21. By this time, the condition of the right middle finger had significantly worsened with sharp stabbing pain (10/10), increasing swelling, and worsening immobility. An incision and debridement procedure was performed on October 22, followed by oral antibiotics and physical therapy. Pltf subsequently experienced continuing issues with finger pain and stiffness over the next three years, impacting her ability to perform her job duties as a security officer, so either prosthetic joint replacement or fusion surgery were recommended. Pltf elected to undergo surgery in 2015 to implant a prosthetic joint. The implant subsequently became infected with MRSA (Methicillin-resistant Staphylococcus aureus), the same type of bacteria found at the time of her 2009 debridement procedure. The MRSA infection required a six-week course of intravenous antibiotics, resulting in pltf developing a complication of frozen shoulder. Pltf was given the option of either remaining on antibiotics for the rest of her life or undergoing surgery to remove the implant and fuse the finger. Pltf chose the surgery, which was performed in December 2015 and fused the finger at 30 degrees flexion. During the procedure, the surgeon also performed a shoulder manipulation in an attempt to break up scar tissue to improve her range of motion and reduce pain. Pltf has permanent partial limitations in performing activities of daily living and complaints of shooting pain in cold weather; she has since retired (\$246,138 medical expenses, LT claim barred). Pltf contended Dr. McGee was negligent for failing to properly examine the finger, supervise the medical student, suture and splint the finger, and prescribe antibiotics. Defts asserted the infection was caused by the fall itself and was unpreventable. The defense argued that (1) the delayed treatment of the infection, and (2) the surgeon's negligence in failing

**Publication: Cook County Jury Verdict Reporter Published: 11/28/2014**

**(GGG 7/3) MEDICAL MALPR.--FAILURE TO CANCEL CARDIAC ABLATION WHEN CONTRAINDICATED (12H)**

Estate of Alfredo Tenuto, deceased v Dr. Thomas Bump, Dr. Joseph F. Stella, D.O., Heart Care Centers of Illinois S.C., SSM Regional Health Services, d/b/a St. Francis Hospital & Health Center 12L-6570 (refiled from 04L-8047) Tried Sep. 22-Oct. 7, 2014

**Verdict:** Not Guilty v all defts.

**Judge:** Michael R. Panter (IL Cook-Law)

**Pltf Atty(s):** Randall F. Peters of Randall F. Peters & Associates (Chicago, IL) James H. Porn DEMAND: none ASKED: \$4,746,916

**Deft Atty(s):** Julie A. Ramson, Dawn E. Ehrenberg of McKenna, Storer (Chicago, IL) for Dr. Thomas Bump (ISMIE) ; Richard H. Donohue, Laura E. Mallory of Donohue, Brown, Mathewson & Smyth (Chicago, IL) for Stella, Heart Care Centers of Illinois S.C. (ISMIE) ; Robert S. Baker of Baker & Enright (Chicago, IL) for SSM Regional Health Services, St. Francis Hospital & Health Center (Self-Insured) OFFER: none

**Pltf Medl:** Dr. Kishin Ramani (Cardiologist), Dr. William B. Evans (Nephrologist)

**Deft Medl:** Dr. Robert Fliegelman (Infectious Disease) for all defts

**Pltf Expert(s):** Dr. Jason Rashkin of Permanente Medical Group, 8008 Westpark Drive, McLean, VA (800-777-7904) (Cardiac Electro-Physiologist); Dr. Walter Baigelman (Pulmonologist); Dr. Elizabeth Kessler (Neurologist)

**Deft Expert(s):** Dr. Jeffrey Goldberger (Cardiac Electro-Physiologist) for Dr. Thomas Bump Dr. John P. Kress (Critical Care); Dr. Vincent Bufalino (Cardiologist) for Dr. Joseph F. Stella, D.O. Dr. Joseph Hartmann (Cardiologist) for d/b/a St. Francis Hospital & Health Center

**Facts:**

After M-76 Alfredo Tenuta was admitted to St. Francis Hospital (Blue Island) in July 2002 for workup of a syncopal episode, an angiography performed on July 22 revealed 100% occlusion of two coronary arteries and two substantial blockages in a third coronary artery. A quadruple coronary artery bypass graft surgery was performed by Dr. Vincent Kucich on July 24. Tenuta subsequently developed postop complications involving multiple arrhythmias, respiratory insufficiency, and mucus plugging, resulting in several re-intubations over the next 2.5 weeks. On Aug. 11, his condition had improved enough for him to be transferred from the ICU to a step-down unit, and a cardiac electrophysiology study and ablation procedure were scheduled to be performed by deft Dr. Bump on Aug. 12. However, Tenuta experienced a decline in his respiratory condition on Aug. 12. Deft Dr. Stella, the cardiologist assigned to Tenuta's care that week, examined him and determined his condition was stable enough to undergo the procedure in the electrophysiology lab. Dr. Bump examined the patient in the EP lab, where his condition was deteriorating with recurrent rapid SVT (supraventricular tachycardia) rhythms and oxygen saturation levels down into the 80s. Dr. Bump consulted with Dr. Stella, his partners, and the pulmonologist on the case, after which the decision was made to proceed with the cardiac ablation procedure in the hopes of correcting two of the patient's three arrhythmias. The ablation procedure was successful in stopping these two rhythm disturbances, but Tenuto developed increasing respiratory distress requiring re-intubation that evening in the ICU. Throughout this hospitalization, he had also been treated for recurrent pneumonia. On Aug. 13, he was diagnosed with recurrent sepsis, his oxygen saturation levels dropped into the 30s and 40s for 45 minutes before a mucus plug could be



removed, and an emergency bedside bronchoscopy was performed, but he suffered permanent neurological injuries. Tenuto remained hospitalized for another month and continued to suffer recurrent mucus plugging, difficulty controlling secretions, and pneumonia. On Sept. 13, he was transferred to RML Specialty Hospital, where he remained for several months. Tenuta was hospitalized another twenty times over the next six years, primarily for recurrent respiratory issues, until his death at age 83 on April 9, 2009. His estate sought damages for wrongful death as well as survival pain & suffering and loss of normal life; he was survived by his wife and four adult children (\$496,916 medical expenses). The estate contended Dr. Bump and Dr. Stella failed to adequately evaluate Tenuta's respiratory instability prior to the cardiac ablation procedure, they were negligent in failing to cancel or postpone the ablation procedure, Dr. Bump failed to have an anesthesiologist present to manage the patient's airway during the ablation, and Dr. Bump was an apparent agent of St. Francis Hospital. The defense denied all allegations.

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**Publication: Cook County Jury Verdict Reporter Published: 7/18/2014**

**(FFF 40/5) MEDICAL MALPRACTICE--DRUG COMBINATION CAUSED BLEEDING GASTRIC ULCER (12D)**

Bridget Pappas v Loyola University Medical Center, Dr. Donna Smith, Dr. Maryam Guiahi 10L-14218 Tried May 2-12, 2014

**Verdict:** Not Guilty v all defts.

**Judge:** Lorna E. Propes (IL Cook-Law)

**Pltf Atty(s):** Amber M. Lindell, Stacey I. Galloway, of Ronaldson & Kuchler (Chicago, IL) DEMAND: \$225,000 ASKED: \$231,068

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago, IL) for all defts (Self-Insured) OFFER: \$10,000

**Pltf Medl:** Dr. Linda Fisher (Internist), Dr. Patrick J. Lynch (Gastroenterologist)

**Pltf Expert(s):** Dr. Joel J. Cooper, 1999 Marcus Ave., #108, Lake Success, NY (516-488-6888) (Ob/Gyn)

**Deft Expert(s):** Dr. Scott Hite (Ob/Gyn) for all defts

**Facts:**

Jan. 13, 2009, deft obgyn Smith performed a total abdominal hysterectomy and bilateral salpingo-oophorectomy on pltf F-38 at Loyola University. Pltf was a breast cancer patient who was estrogen positive and receiving debilitating hormone treatments, and the hysterectomy was done so she could discontinue the hormone treatments. Pltf was also taking the blood thinner Coumadin following a prior stroke, was an insulin-dependent Type I diabetic, and had a history of painful neuropathies treated with narcotic medications. Deft 4th-year resident Guiahi participated in pltf's care at Loyola. Since pltf had some tolerance to narcotics, IV Toradol was given for postop pain. On Jan. 15, 2009, Dr. Smith and Dr. Guiahi discharged pltf with a prescription for Ibuprofen (90 tablets, 600 mg each, every six hours as needed up to 2400 mg per day). They also restarted her Coumadin therapy the day before discharge. Pltf subsequently had several follow-up calls and visits with Dr. Smith's office for treatment of what was thought to be a urinary tract infection. Several antibiotics were prescribed but her symptoms persisted and she was readmitted to Loyola on Jan. 27 for workup of a presumed UTI. No CBC was ordered nor was any internal bleeding suspected before she was discharged on Jan. 28. Pltf phoned Dr. Smith's clinic on Jan. 29 with complaints of painful urination and spoke to a nurse. Dr. Smith maintained she had directed that pltf be told to go to the emergency room, while pltf denied she was told to go the ER and claimed she was told if her pain got worse then she could go to the ER. In the early morning hours of Jan. 30, 2009, pltf passed out on the floor at home and was taken by ambulance to Elmhurst Memorial Hospital, where her hemoglobin level was low (7.9) and dropped four hours later to 5.8. She received at least three units of blood and underwent an EGD (esophagogastroduodenoscopy) which revealed a bleeding one-centimeter ulcer in the stomach involving a blood vessel. The ulcer healed within eight weeks and has not required treatment since (\$33,068 medl. bills). Treating physicians testified the significant blood loss was a life-threatening event caused by ingesting Ibuprofen while on Coumadin. Pltf contended defts deviated from the standard of care by prescribing the NSAID Ibuprofen - a known gastric irritant - for this length of time to a patient on Coumadin without also prophylactically prescribing antacids or a proton pump inhibitor due to the increased risk of gastrointestinal bleeding, and defts were negligent in failing to consider the possibility of GI bleeding or order a CBC when she presented Jan. 27 with symptoms of lightheadedness/dizziness which can be indicative of internal bleeding. The defense argued there was no deviation from the standard of care since the Ibuprofen was only prescribed for a short term, the risk of ulceration in the short term was very small, there was no proof that an antacid would prevent ulcer development, and there was no

evidence that a CBC during the UTI hospitalization would have led to a different outcome. The defense received a partially directed verdict on the CBC issue, and the case went to the jury only on the question of whether it was a deviation to prescribe Ibuprofen long-term to a Coumadin patient. Pltf's expert opined any prescription longer than ten days was long-term and required prophylactics, while defts and their expert insisted long-term involves months not weeks and absent GI symptoms there was no indication to prescribe antacids or PPI. Pltf previously settled a claim against CVS pharmacy for \$40,000 for failing to provide warning about risk of taking Ibuprofen with Coumadin.

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**Publication: Cook County Jury Verdict Reporter Published: 8/24/2012**

**(DDD 45/1) MEDICAL MALPRACTICE--MISHANDLED RESPIRATORY DISTRESS LED TO COMA, DEATH (12F)**

Estate of Michael Bell, deceased v Holy Cross Hospital, Timothy Ogrentz, R.N., Daniel Goedert, R.N. 07L-10022 (refiled from 02L-10342) Tried Jul. 9-31, 2012

**Verdict:** \$7,000,000: \$2,350,000 on Survival Act claim (\$600,000 medical expenses; \$200,000 LT; \$50,000 loss of household services; \$500,000 disfigurement; \$1,000,000 loss of society to wife; \$0 P&S/loss of normal life); \$4,650,000 on Wrongful Death claim: (\$3,000,000 loss of society to widow and two children; \$100,000 loss of household services from date of death to trial; \$250,000 future loss of household services; \$300,000 past lost earnings and benefits from death to trial; \$1,000,000 PCV future loss of earnings and benefits). Post-verdict, parties agreed to an additur of \$835,000 for stipulated medical bills and an adjustment of \$165,000 to the loss of normal life award in lieu of a motion for a new trial on that issue, for a total award of \$8,000,000.

**Judge:** James P. McCarthy (IL Cook-Law)

**Pltf Atty(s):** Kevin G. Burke, Elizabeth A. Kaveny of Burke, Wise, Morrissey & Kaveny (Chicago, IL) DEMAND: \$18,000,000 ASKED: \$22,667,186

**Def't Atty(s):** Robert S. Baker of Baker & Enright (Chicago, IL) for all defts (CHRPP) OFFER: \$2,500,000 - \$9,000,000 high/low

**Pltf Medl:** Dr. Ali Kutom (Cardiologist), Dr. Michael Todd Grendon (Internist), Dr. Hasmukh Patel (General Surgeon), Dr. Jagan K. Mohan (Neurologist), Dr. Yaseen K. Odeh (Internist), James Rodriguez (Paramedic)

**Def't Medl:** Dr. Michael P. O'Mara (Emergency Medicine), Dr. Rafia Saleem (Radiologist), Dr. Marvin Kupersmit (Radiologist), Roseann Johnson (Radiologic Technologist), William Bartgen (Paramedic) for all defts

**Pltf Expert(s):** Dr. Barry Brenner of University Hospitals Case Medical Center, 11100 Euclid Ave., Cleveland, OH (216-844-3610) (Emergency Medicine); Dr. Alisa D. Gean of University of California/San Francisco General Hospital, 1001 Potrero Ave., San Francisco, CA (415-206-8931) (Neuroradiologist); Dr. Daryl Gress of University of Virginia Health System, P.O. Box 800394, Charlottesville, VA (434-924-8371) (Neurologist); Elda Ramirez, R.N. of University of Texas School of Nursing, 6901 Bertner, Houston, TX (713-500-2162) (Nurse, Emergency Room); Dr. Jesse Hall (Critical Care); Stanley V. Smith, Ph.D. (Economist)

**Def't Expert(s):** Dr. John J. Flaherty (Emergency Medicine); Dr. Patrick Fahey (Pulmonologist); Laurie Carroll, R.N. (Nurse, Emergency Room); Dr. Joseph Hartmann (Cardiologist) for all defts

**Facts:**

Michael Bell was brought to Holy Cross Hospital's emergency room on July 14, 2002, suffering from a severe asthma attack. Paramedics administered two doses of Albuterol and a shot of epinephrine which resulted in only slight improvement of his severe respiratory distress. At the ER, Michael M-43 was seen by Dr. Kristen Waicosky and Nurse Goedert. Waicosky assessed the patient as being in moderate respiratory distress and prescribed one hour of continuous Albuterol nebulizers and other medications. Neither Waicosky nor Goedert took a history concerning Michael's prior asthma episodes, thereby failing to learn he had been at Rush's ER approximately 18 times for acute asthma attacks in the preceding five years and suffered respiratory arrest during two of these episodes requiring intubation. Pltf contended National Institute of Health guidelines for asthma treatment require taking history to include prior hospitalizations and

intubations as such patients are at the highest risk for respiratory arrest. Waicosky and Goedert also failed to obtain a peak airflow reading, another NIH guideline requirement. Michael was placed in a room around midnight on a cardiac monitor but without one-on-one monitoring. At 12:25 a.m., Nurse Ogrentz replenished the Albuterol nebulizer but at 12:30 a.m. found Michael slumped over with no heart rate, respirations, or blood pressure. Defts conceded the alarm should have been triggered, but no alarm strip was in the records and a 5.01 missing evidence instruction was given. Resuscitation restored a pulse and heartbeat, but Michael suffered severe hypoxic ischemic encephalopathy and profound anoxic brain damage. He remained in a coma for four years until he died on Sept. 24, 2006 (\$1,435,000 medl. stipulated, \$1,800,000 LT as truck driver). The estate asserted if Michael's severe respiratory distress and high risk status had been properly assessed, one-on-one monitoring would have been ordered and the respiratory arrest caught earlier, preventing any brain injury. The defense argued the cause of the arrest was cardiac in nature -- most likely from an arrhythmia, a known potential complication of epinephrine.

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**Publication: Cook County Jury Verdict Reporter Published: 11/25/2011**

**(DDD 6/1) MEDICAL MALPRACTICE—COLON PERFORATION DURING BYPASS SURGERY—DEATH (12H)**

Estate of Edward W. Dornhecker, deceased v Dr. Robert E. Applebaum, Cardiothoracic & Vascular Surgical Associates S.C., SSM Regional Health Services, d/b/a St. Francis Hospital & Health Center 07L-13665 Tried Sep. 22-Oct. 7, 2011

**Verdict:** Not Guilty v all defts. **Special Interrogatories:** Was Kim Cruz R.N. professionally negligent as defined to you in these instructions in failing to timely notify Dr. Applebaum that fecal matter was draining from Edward Dornhecker's former mediastinal chest tube site? "No." Did Diana Zeglin R.N. fail to timely notify Dr. Applebaum that fecal matter was draining from Edward Dornhecker's former mediastinal chest tube site? "No."

**Judge:** Elizabeth M. Budzinski (IL Cook-Law)

**Pltf Atty(s):** Patrick J. Kenneally, Brendan H. Kevenides of Patrick J. Kenneally Ltd. (Chicago, IL) DEMAND: \$850,000 ASKED: \$1,840,439

**Deft Atty(s):** Richard J. Hickey of Hickey, Melia & Associates (Chicago, IL) for Applebaum, Cardiothoracic & Vascular Surgical Associates S.C. (ISMIE) OFFER: none ; Ruth V. Enright of Baker & Enright (Chicago, IL) for SSM Regional Health Services, St. Francis Hospital & Health Center (Self-Insured) OFFER: \$30,000 total

**Pltf Medl:** Dr. Kenneth Pelehac (General Surgeon)

**Deft Medl:** Colleen Michele Cox-Dunlop, P.A. (Physician Assistant) for Dr. Robert E. Applebaum

**Pltf Expert(s):** Dr. G. James Avery, II (Cardiothoracic Surgeon); Dr. Marvin L. Corman (Colorectal Surgeon); Karen Shuster, R.N., 32818 Walker Road., #154, Avon Lake, OH (440-781-6122) (Nursing); Dr. Amy Noffsinger of University of Cincinnati, Dept. of Surgical Pathology, 231 Bethesda Ave., Cincinnati, OH (513-624-6441) (Pathologist)

**Deft Expert(s):** Dr. Mark Connolly (General Surgeon); Dr. John Sanders (Cardiothoracic Surgeon); Dr. Gregory Lauwers of Harvard Medical School, Massachusetts General Hospital, Gastrointestinal Pathology Service, WRN 206, 55 Fruit St., Boston, MA (617-724-0961) (Pathologist) for Dr. Robert E. Applebaum Sheryl Brown, R.N. (Nurse, Critical Care); Dr. John P. Flaherty (Infectious Disease) for d/b/a St. Francis Hospital & Health Center

**Facts:**

Dec. 14, 2005, Edward Dornhecker underwent coronary artery bypass graft surgery performed by deft Dr. Applebaum at St. Francis Hospital in Blue Island. On the morning of Dec. 16, the mediastinal chest drainage tube was removed and he appeared to be doing well at that time. Later that evening, the 71-year-old retiree began to experience difficulty breathing and oxygen desaturation, resulting in orders at 3 a.m. to transfer him from the cardiac telemetry unit to the ICU and to intubate him. As he was being transferred to the ICU bed at 4 a.m. on Dec. 17, nurses saw foul-smelling fecal material oozing from the former chest tube site. The nurses notified the on-call cardiologist and pulmonologist but allegedly failed to inform Dr. Applebaum of the fecal drainage until he arrived at the hospital at 11:30 a.m. The ICU nurse testified she had called Applebaum at 7 a.m. to advise him of the drainage, but Applebaum denied he received a call from her and there was no documentation of the call. Dr. Applebaum and a general surgeon immediately performed exploratory surgery. A one-centimeter hole was found in the colon near the site of the chest tube incision, requiring resection of the colon. After a course of antibiotics, Edward recovered from sepsis stemming from the bowel perforation, but he never regained the ability to breathe on his own. He remained hospitalized in the ICU for six months until he died at age 72 on May 23, 2006 (divorced, three children, \$1,337,305 medl. bills). The estate contended Dr. Applebaum negligently perforated the transverse colon while placing the chest tube during the bypass procedure, the perforation caused sepsis and eventual death, both nurses were negligent in failing to notify Dr. Applebaum of the draining fecal matter, and if they had timely notified him (within one hour) it would have increased Edward's chance of survival by 10%. The defense for Dr. Applebaum argued the patient's anatomy was wildly aberrant with the colon in an unexpected location due to three prior abdominal surgeries, he did not perforate the colon with the chest tube, and the perforation occurred spontaneously on the night of Dec. 16 due to pre-existing

bowel ischemia and weak bowel wall (caused by extensive vascular disease and diverticulitis) as well as stretching from the necessary separation of the sternum for the heart surgery. The hospital asserted the telemetry nurse had no responsibility to notify Dr. Applebaum of the fecal drainage because the patient was the responsibility of the ICU nurse at the time the drainage was noted, and the standard of care did not require the ICU nurse to notify Applebaum until the patient's condition was more stabilized at 7 a.m. The jury deliberated 2.5 hours.

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**Publication: Cook County Jury Verdict Reporter Published: 12/3/2010**

**(CCC 8/3) PREMISES LIABILITY--WOMAN FALLS IN LOBBY WHILE VISITING FATHER IN HOSPITAL (8)**

Gisela Elkin v Northwest Community Hospital 09L-1231 Tried Oct. 19-22, 2010

**Verdict:** Not Guilty

**Judge:** Jennifer Duncan-Brice (IL Cook-Law)

**Pltf Atty(s):** Robert K. Leyshon of Evins & Sklare (Chicago, IL) DEMAND: \$100,000 ASKED: \$50,000 - \$65,000

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago, IL) (CHRPP) OFFER: none

**Pltf Medl:** Dr. Justin Griffith (Emergency Medicine), Dr. Ira Fenton (Rheumatologist), Dr. Rama Kuchipudi (Pain Management), Dr. Jeremy Kaplan (Psychiatrist)

**Deft Medl:** Dr. Gabriel Kibrit (Internist)

**Facts:**

On August 23, 2005, pltf F-54 and three other family members went to Northwest Community Hospital to visit her father. While walking through the hospital's north pavilion entrance, the pltf caught her foot on a carpet in the lobby and fell, suffering soft tissue injuries. She claimed the fall aggravated her pre-existing degenerative L5-S1 joint disease, her pre-existing knee arthritis, and her pre-existing anxiety/panic attacks, resulting in decreased mobility which exacerbated her morbid obesity (\$21,126 medl. bills). The pltf owns Scott's Dogs in Lake Villa. The defense admitted that pltf fell and that she may well have tripped on the rug, but denied the rug was defective or unreasonably dangerous.

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**Publication: Cook County Jury Verdict Reporter Published: 6/4/2010**

**(BBB 34/2) MEDICAL MALPRACTICE--PLTF CLAIMS PHYSICAL THERAPY CAUSED HERNIATED DISC (12S)**

Sherry Sircher v SSM Health Care, d/b/a St. Francis Hospital & Health Center (Blue Island) 08L-296 (refiled from 03L-2846)  
 Tried Mar. 22-Apr. 1, 2010

**Verdict:** Not Guilty

**Judge:** Susan F. Zwick (IL Cook-Law)

**Pltf Atty(s):** Geoffrey L. Gifford, Matthew J. Huster of Pavalon, Gifford & Laatsch (Chicago, IL) DEMAND: none ASKED: \$4,700,000

**Deft Atty(s):** Ruth V. Enright of Baker & Enright (Chicago, IL) (Self-Insured) OFFER: none

**Pltf Medl:** Dr. Joseph Mayer (Neurologist), Dr. Robert A. Beatty (Neurosurgeon), Dr. Ira Goodman (Pain Management), Dr. John F. Shea (Neurosurgeon)

**Pltf Expert(s):** Peter J. McMenamin, P.T. (Physical Therapist)

**Deft Expert(s):** Christopher Webb, P.T. of Blanchard Valley Hospital, 1900 S. Main St., Findlay, OH (419-423-5481) (Physical Therapist); Dr. Jeffrey Karasick (Neurosurgeon)

**Facts:**

After pltf F-34 construction worker injured her lower back at work, she was subsequently diagnosed with lower back strain and referred for physical therapy treatment at St. Francis Hospital. Pltf contended the two physical therapists responsible for her care and treatment deviated from the standard of care by failing to take adequate measures to ensure her safety while performing exercises in physical therapy, instructing her to perform advanced exercises which were inappropriate for a patient in the early stages of lumbar spine treatment, devising exercises which placed her cervical spine at unreasonable risk, utilizing too much weight so as to place undue stress on the spine, devising exercises not known to have been used by other physical therapists, and failing to properly monitor and/or spot her while she was performing the exercises. As a result, pltf injured her neck during physical therapy exercises on March 7, 2001. No diagnostic studies were ordered at that time and she was diagnosed with cervical strain. Pltf's neck pain persisted and an MRI performed 17 months later revealed a herniated disc at C5-6. She underwent a cervical fusion at C4-6 which ultimately failed, causing continuing neck pain and debilitating headaches which require heavy medication and prevent her from obtaining employment (\$28,000 medl., \$3,200,000 lifetime LT). The defense asserted the exercises implemented by the physical therapists were not too advanced and complied with the standard of care, the exercises were designed to increase lower abdominal strength and did not put pltf's spine at risk, she only suffered muscle strain which is a known risk of physical therapy and which resolved in two or three months after further therapy, and there was no causal connection between the injury in March 2001 and the herniated disc discovered 17 months later. The jury deliberated 8 hours over 2 days. Pltf's post-trial motions are pending. Note: For a summary of subsequent appellate action regarding this case, see the Jury Verdict Reporter's Appellate Review of Damages publication at 13 ARD 44.

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**Publication: Cook County Jury Verdict Reporter Published: 5/28/2010**

**(BBB 33/4) MEDICAL MALPRACTICE--PLTF CLAIMS SPINAL SURGERY CAUSED NUMB FINGERS (12M)**

Rosemary Hogan v Northwest Community Hospital, Cynthia Barlo, R.N., Cora Villanueva, R.N., Pamela Wright, O.R.T., Dr. Richard Mannion, Dr. Gerard Marty, Dr. Somasundaram Thamilavel 05L-9816 (refiled from 01L-6060) Tried Mar. 11-22, 2010

**Verdict:** Not Guilty v all defts.

**Judge:** William J. Haddad (IL Cook-Law)

**Pltf Atty(s):** Michael J. Radtke of Radtke & Nusbaum (Chicago, IL) DEMAND: none ASKED: \$158,000

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago, IL) for Northwest Community Hospital, Barlo, Villanueva, Wright (CHRPP) OFFER: NCH \$50,000 withdrawn ; John J. Walsh, III, David C. McMurtrie of Pretzel & Stouffer (Chicago, IL) for Mannion, Marty (Fireman's Fund) OFFER: none ; Aiju C. Thevatheril of Swanson, Martin & Bell (Chicago, IL) for Dr. Somasundaram Thamilavel (American Physicians Assurance) OFFER: none

**Pltf Medl:** Dr. Roderick Birnie (Orthopedist)

**Deft Medl:** John Espina, O.T. (Occupational Therapist), Rosie Park Radford, P.T. (Physical Therapist) for Northwest Community Hospital , Dr. Richard Tuttle (Rehab/Physical Medicine) for Mannion, Marty, Thamilavel

**Pltf Expert(s):** Dr.Robert Clayton Erickson, II (Orthopedist)

**Deft Expert(s):** William Culver, R.N. (Nursing); Dr.Avi Bernstein (Orthopedist); Dr.William C. Davison (Neurologist) for Northwest Community Hospital Dr.Jack Perlmutter (Orthopedist); Dr.Daniel B. Hier (Neurologist) for Mannion, Marty Dr.Kenneth Tuman (Anesthesiologist) for Dr. Somasundaram Thamilavel

**Facts:**

May 25, 1999, pltf F-68 retiree underwent a revision lumbar laminectomy at Northwest Community Hospital due to lumbar radiculopathy and shooting leg pains. The prior laminectomy had been done thirty years earlier. The revision surgery was performed by deft M-42 spinal surgeon Dr. Mannion, assisted by deft Dr. Marty; deft Dr. Thamilavel was the anesthesiologist and the remaining defts were on the surgical team. After the surgery, pltf developed numbness and tingling in the 4th and 5th fingers of her right hand, symptoms of ulnar neuropathy. She testified she told all the nurses, doctors and therapists about her symptoms, but the hospital chart showed only two transient complaints of hand numbness three days postop. Pltf subsequently underwent surgery to release the ulnar nerve and experienced some improvement until the nerve became trapped in scar tissue, resulting in two more surgeries and continuing pain and numbness (\$8,141 medl. bills). Pltf sued under the theory of res ipsa loquitur. The defense contended all personnel complied with the standard of care and the positioning, padding and monitoring of the patient during surgery was appropriate. The defense denied pltf's ulnar neuropathy was caused by the surgery because an EMG performed two months postop showed the compression neuropathy at the elbow had begun at least six months earlier based upon the amount of intrinsic muscle wasting, the ulnar neuropathy was due to a separate process involving narrowing of the antecubital tunnel at the elbow and was completely unrelated to the surgery, and pltf's first complaints of numbness and tingling in the 4th and 5th fingers came more than one month after surgery, while symptoms resulting from poor positioning and padding of the elbow would have occurred almost immediately postop. Northwest's expert Dr. William Davison examined the pltf in 2009, found no evidence of ulnar nerve dysfunction, and testified that her complaints were due to an essential tremor exacerbated by her long-term smoking. Hospital's offer listed above was made in 2004 at the time of the nonsuit of the original 2001 lawsuit and thereafter

withdrawn; pltf made no specific demand in this 2005 case but had demanded Dr. Thamilavel's \$1 million policy in the 2001 suit.

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**Publication: Cook County Jury Verdict Reporter Published: 5/14/2010**

**(BBB 31/2) MEDICAL MALPRACTICE--HOSPITAL FAILED TO PREVENT MULTIPLE BEDSORES (12S)**

Estate of Edith M. Born, deceased v Swedish Covenant Hospital 06L-13360 Tried Feb. 11-24, 2010

**Verdict:** \$65,000 on survival count; Not Guilty on wrongful death count (\$30,000 medical expenses; \$30,000 pain & suffering; \$5,000 disfigurement; \$0 disability; \$0 loss of society).

**Judge:** James Michael Varga (IL Cook-Law)

**Pltf Atty(s):** Tara R. Devine, Sarah Beth Kwasigroch of Salvi, Schostok & Pritchard (Chicago, IL) DEMAND: \$1,500,000 ASKED: \$1,030,000 - \$1,980,000

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago, IL) (CHRPP) OFFER: \$50,000

**Pltf Medl:** Dr. Maria Omiotek (Family Practice), Nancy Chaiken, R.N. (Nursing)

**Deft Medl:** Dr. Haresh Muni, M.D. (Nephrologist), Dr. Charles Drucek (General Surgeon)

**Pltf Expert(s):** Janet McKee of Clinical Expertise Inc., 918 Lucerne Terrace, Orlando, FL (407-894-4166) (Nutrition); Martha Hawkins, R.N., 10054 Lake Shore Drive, Nampa, ID (208-466-4186) (Nursing); Dr. Blanche A. Borzell (Family Practice)

**Deft Expert(s):** Dr. David Ginsburg (Nephrologist); Janice Colwell, R.N. of University of Chicago Hospitals, 5841 S. Maryland Ave., Chicago, IL (773-702-1000) (Nursing); Annalyn Skipper, Ph.D., 1206 N. Euclid Ave., Oak Park, IL (708-386-6289) (Nutrition)

**Facts:**

On Dec. 18, 2004, F-65 retiree Edith Born collapsed at her apartment and was not found by family members until Dec. 20, when she was taken by ambulance to Swedish Covenant Hospital. She was diagnosed with emphysematous pyelonephritis (a gaseous infection) in her left kidney which had caused a systemic infection, septic shock, and multi-system organ failure. She also suffered an incomplete myocardial infarction on the day of admission. The patient was put on vasopressors due to her extremely low blood pressure and was diagnosed as an uncontrolled diabetic who also had hypertension, coronary artery disease, and peripheral vascular disease. Surgery was performed on Dec. 24, 2004, to remove the left kidney. Edith gained 40 lbs of fluid during the first week of hospitalization due to the aggressive treatment of her extremely low blood pressure, and she also developed a severe allergic reaction to medication, resulting in a body-wide rash with blistering. On Dec. 27, the nursing staff detected a tear in the skin over the sacrum and consults were requested from the dermatology service and the wound care team. The wound care physician, Dr. Drucek, examined Edith on Dec. 29 and ordered a specialty bed, a bowel management system, and having the patient turned every two hours to prevent pressure sores. Edith subsequently developed multiple pressure sores, underwent three sharp debridements, developed anoxic encephalopathy as a result of sepsis and recurrent mucous plugging of tube, was transferred to Kindred Hospital on Feb. 11, 2005, and was transferred to Glencrest Nursing Home on March 11, where she died on March 16, 2005 (\$30,000 medl. bills). The death certificate listed coronary artery disease as the cause of death. The estate contended the hospital's nursing staff's failure to comply with orders to turn the patient every two hours caused the formation of multiple pressure sores which then worsened, the hospital's nutritionist failed to provide adequate nutrition to prevent and heal the sores, the eight pressure sores which developed and persisted were so taxing on Edith that they were a contributing factor in her death, and the death was most likely due to a pulmonary embolism secondary to her weak and debilitated immobile state which in part was caused by the multiple skin lesions. The hospital's electronic medical chart had a specific field to record turning the patient,

but on 15 days of Edith's hospitalization, this section of the chart reflected she remained in one position for 4 to 12 hour stretches, and on 15 other days no entries reflecting any turns were made. The defense claimed that although the nurses were inconsistent in charting the turns, the other care they charted elsewhere involved care that of necessity would have involved some repositioning of the patient. The hospital also had a nursing policy which required turning the patient every two hours. Nurses did not follow hospital policy requiring documentation of all pressure sores with a minimum of weekly photographs and measurements; photos of Edith's sacral wound were taken only twice during her eight-week hospitalization. The defense argued the skin lesions were not the result of the patient not being turned and the pressure that caused the skin defects was internal pressure due to her severe edema, third spacing of fluid, and/or allergic skin reaction; the absence of any pressure sores on her heels was evidence that adequate turning did in fact occur; and the nutritionist's recommended nutritional intake was appropriate. The defense further contended the cause of death was the incomplete myocardial infarction on Dec. 20, 2004, becoming a complete myocardial infarction on March 16, 2005, and was completely unrelated to any issues with her skin, which was documented to be slightly improving at Kindred and Glencrest.

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**Publication: Cook County Jury Verdict Reporter Published: 12/31/2009**

**(BBB 12/2) PREMISES LIABILITY--BIG LADY GETS BIG VERDICT FOR VESTIBULE TRIP/FALL (8)**

Linda Noel v Alexian Brothers Medical Center 06L-12131 Tried Nov. 2-10, 2009

**Verdict:** \$482,329 after 10% off \$535,921 (\$185,921 past medical expense; \$150,000 past and \$50,000 future loss of normal life; \$50,000 past and \$100,000 future pain and suffering)

**Judge:** Henry R. Simmons, Jr. (IL Cook-Law)

**Pltf Atty(s):** Samuel A. Kavathas, Jr. of Kavathas & Castanes (Chicago, IL) DEMAND: \$250,000 - \$200,000 (indicated) ASKED: \$535,921

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago, IL) (Self-Insured) OFFER: none

**Pltf Medl:** Dr. Dennis Abella (Internist), Dr. William J. Hopkinson (Orthopedist)

**Pltf Expert(s):** Peter J. Poczynok (Safety)

**Deft Expert(s):** Dr. Patrick Sullivan (Internist)

**Facts:**

June 6, 2006 Linda Noel (57) went to Alexian Brothers Medical Center (Elk Grove Village) to see Dr. Dennis Abella because her blood sugar was "out of whack" following recent use of Prednisone to treat an insect bite. Linda, who weighed in excess of 400 pounds, had been brought to the hospital by her 80-year-old mother and her brother, who secured a wheelchair at the entrance and took Linda to the appointment. Dr. Abella found that Linda's blood sugar was extremely high--556--although, otherwise, her exam was within normal limits. He advised Linda to enter the hospital, but she declined. After the appointment, her brother wheeled her down to the vestibule at the hospital's main entrance, and left her there with her mother while he retrieved their car. When he returned 10 minutes later, he helped Linda stand up. As he went to open the door for Linda, he allegedly saw her trip on the vestibule's carpet mat and fall, fracturing her right tibial plateau. Despite undergoing a complete knee replacement 15 months later, Linda now needs either a walker or wheelchair to get around--limitations she did not have before (\$185,921 medl. bills; unemployed). Linda testified that as she was exiting the vestibule, she felt her foot catch under something and, as she was falling, looked down and saw her foot under the carpet. Her brother testified that the mat on which Linda tripped had duct tape holding it down, was torn/worn/frayed, and had ripples in the material as high as 1"-2". However, three photos purportedly taken by a hospital security guard within minutes of the accident depict a fairly new carpet that had no duct tape applied to its perimeter, although the mat did not lay flat on the floor and had waves on the sides. A security camera covered the hospital's front entrance, but the fall occurred just outside its viewing area. Linda's mother also witnessed the fall, but did not testify at trial due to declining health. The defense, supported by its former head of housekeeping, denied that the mat portrayed in the photos created a trip hazard (contradicting pltf's safety expert), and insisted that duct tape is never used to hold down a carpet. This witness also stated that worn-out mats are routinely replaced with new ones after the new carpets have been unrolled for several days so that they will lay flat when put into use. The defense also contended that pltf's brother may have pushed the wheelchair into the carpet (causing it to bunch up), asserted that pltf was contributorily negligent (failing to see the waves in the carpet while waiting for her brother; not watching where she was walking), and argued that the condition of the mat was open/obvious. Finally, the defense called Dr. Patrick Sullivan, who opined that due to Linda's high blood sugar, she suffered orthostatic hypotension (sudden loss of blood pressure) when she stood up to leave the wheelchair--and that the fall would not have occurred if she had entered the hospital as Dr. Abella recommended. However, Dr. Abella responded that there was nothing in Linda's medical records either before or after the fall to indicate that her high blood sugar contributed to the accident.

Further, the paramedic who attended to Linda soon after she fell described her as alert and oriented, with no signs that her high blood sugar was impacting either her ability to walk or her mental status. Pltf's atty reports that key to the outcome was the testimony of Mr. Jay Patel, who was a valet on duty at the hospital at the time of the occurrence. At his deposition, Patel was asked what would be done when the vestibule carpet got bunched up. He responded that it wouldn't happen because they used tape to hold it down. In closing, pltf's counsel argued that it was possible that when the hospital security guard went back to his office and got his camera, someone from maintenance removed the old mat and replaced it with the one that was photographed. Further, the reason the carpet was wavy was because (as the former head of housekeeping testified) new carpets don't lay flat when they are first unrolled. Of course, the defense contested any claim that the mat had been replaced. The jury deliberated less than two hours.

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**Publication: Cook County Jury Verdict Reporter Published: 12/11/2009**

**(BBB 9/3) MED. ASSAULT—COMBATIVE PATIENT INJURED BY HOSPITAL SECURITY GUARDS (12T)**

Robert Bakes v St. Alexius Medical Center, Matthew Nowikowski, John Walstad, Initial Security Inc. 05L-11620 (refiled from 02L-9284) Tried Oct. 14-23, 2009

**Verdict:** Not Guilty v all defts. Special Interrogatories: Was Carol Szafranski negligent in telling the security guards to stop Robert Bakes? "No." Were the security guards agents of St. Alexius Medical Center? "No."

**Judge:** James P. Flannery, Jr. (IL Cook-Law)

**Pltf Atty(s):** Steven E. Garstki, Stewart D. Stoller of Stoller & Garstki (Chicago, IL) DEMAND: \$350,000 ASKED: \$3,064,600

**Deft Atty(s):** Ruth V. Enright of Baker & Enright (Chicago, IL) for St. Alexius Medical Center (CHRP) OFFER: none ; Patrick R. Grady of Wolf & Wolfe (Chicago, IL) for Nowikowski, Walstad, Initial Security Inc. (Self-Insured) OFFER: ISI \$5,000

**Pltf Medl:** Dr. Howard Freedberg (Orthopedist)

**Pltf Expert(s):** Dr. Michael Treister (Orthopedist); Lee Stapel , 542 Justina St., Hinsdale, IL (630-323-1892) (Security)

**Deft Expert(s):** Dr. Brian J. Cole (Orthopedist); Dr. Yelena Tumashova (Neurologist); Karla J. Knoop, R.N. , 601 Diversatech Drive North, Manteno, IL (815-468-1092) (Nursing) for St. Alexius Medical Center Richard Sem (Security) for Nowikowski, Walstad, Initial Security Inc.

**Facts:**

July 21, 2000, pltf M-42 was an inpatient at St. Alexius Medical Center where he had undergone surgery on his right knee several days earlier. He became upset when a nurse informed him he was going to be discharged that day, so the nursing staff attempted to calm him by offering to contact his doctor and arrange to have him remain in the hospital until his pain was under control. Pltf refused to listen to the nurses, got dressed, and began to ambulate improperly on the operated leg; at that time, he had not yet demonstrated an ability to properly use his crutches to not bear weight on the right knee. The nursing staff offered to call pltf's wife to drive him home or to call a friend or a cab, but he declined the offer and insisted he was going to walk home, which was twelve miles away. He also stated he would buy street drugs to relieve his pain. The nursing staff and the nursing supervisor on duty concluded that pltf's mental status had changed, he was confused and agitated, and he was a danger to himself and others as he had threatened the staff. Security assistance was requested, and defts Nowikowski and Walstad responded. When the two security guards reached the lobby of the hospital, they were instructed by the nursing supervisor, Carol Szafranski, to prevent pltf from leaving the hospital. Walstad used his foot to stop the revolving exit door from moving, while Nowikowski placed himself between pltf and the door, but in doing so, Nowikowski accidentally stepped on pltf's right foot. However, the pltf claimed the security officers jammed his right foot in the door three times. Pltf eventually accepted a wheelchair and was taken back to his room until his wife arrived and took him home. Pltf contended the incident caused him to suffer tarsal tunnel syndrome in his right foot with permanent nerve damage, tarsal tunnel release surgery, continuing numbness and pain, and loss of his guitar repair business (\$28,600 past medl. bills). Pltf sued Initial Security and its guards for negligence, assault, battery, false imprisonment, and punitive damages; the assault and false imprisonment claims were dropped during trial. Pltf alleged St. Alexius and its nurses were negligent and the security guards were agents of the hospital. The defense for St. Alexius asserted the hospital had a right to prevent pltf from leaving the hospital because his mental state had changed to the point that he was a danger to himself and was weight-bearing on his operative knee. The defense for the security guards contended their policies and post orders required security officers to follow the direction of the medical staff when dealing with a combative patient. Defts further denied that pltf's tarsal tunnel syndrome was caused by the confrontation in the lobby but rather was the result of complications from his knee surgery. The court granted a directed verdict in favor of the hospital with regard to the actions of pltf's nurse, Tejal Patel, and the issue of actual agency with regard to the security guards; Special Interrogatories addressed the issues of the supervising nurse's actions and the hospital's apparent agency of the guards.



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**Publication: Cook County Jury Verdict Reporter Published: 4/3/2009**

**(AAA 25/1) MEDICAL MALPR.--DELAYED DIAGNOSIS OF SUBARACHNOID HEMORRHAGE--DEATH (12F)**

Estate of Sheila Griffin, deceased v Dr. Leland Lenahan, Evergreen Medical Specialists Ltd., Holy Cross Hospital; Holy Cross Hospital v AR Imaging S.C., Dr. Robert L. McMiller 04L-5919 Tried Feb. 2-17, 2009

**Verdict:** \$1,200,000 v Dr. Leland Lenahan, Evergreen Medical Specialists Ltd., Holy Cross Hospital and AR Imaging S.C.; Not Guilty v 3rd party deft Dr. Robert McMiller. Jury apportioned liability 65% v Holy Cross Hospital, 30% v AR Imaging, and 5% v Dr. Lenahan/Evergreen Medical.

**Judge:** Clare E. McWilliams (IL Cook-Law)

**Pltf Atty(s):** Scott D. Lane, Mark A. Brown of Lane & Lane (Chicago, IL) for Estate of Sheila Griffin, deceased  
 DEMAND: \$1,200,000 ASKED: \$5,000,000

**Deft Atty(s):** Thomas R. Hill of Dykema, Gossett (Chicago, IL) for Lenahan, Evergreen Medical Specialists Ltd. (ISMIE); Robert S. Baker of Baker & Enright (Chicago, IL) for Holy Cross Hospital (CHRPP); William C. Anderson, III, Elizabeth A. Connolly of Anderson, Rasor & Partners (Chicago, IL) for AR Imaging S.C. (ISMIE); John P. Fassola of Power & Cronin (Oak Brook, IL) for Dr. Robert L. McMiller (ISMIE) OFFER: RLM \$700,000

**Pltf Expert(s):** Dr. Michael R. Clark, 1493 Fox Croft Rd., East Lansing, MI (517-285-0432) (Emergency Medicine); Dr. Richard Sanders Polin, 4324 SW Greenleaf, Portland, OR (202-288-4760) (Neurosurgeon); Dr. Michael J. Racenstein (Radiologist) for Estate of Sheila Griffin, deceased

**Deft Expert(s):** Dr. Neal Little, 585 Green Rd., Ann Arbor, MI (734-665-9490) (Emergency Medicine); Dr. Andrew Chenelle (Neurosurgeon) for Dr. Leland Lenahan Dr. Bruce Silver (Radiologist) for Holy Cross Hospital Dr. Keith Schaible (Neurosurgeon) for Dr. Robert L. McMiller

**Facts:**

June 27, 2002, 44-year-old Sheila Griffin was found unresponsive on the floor of her home with vomit and bleeding from the nose and mouth. She was taken by ambulance to Holy Cross Hospital at 11:15 p.m. and was treated in the emergency room by Dr. Leland Lenahan, an employee of Evergreen Medical Specialists. She had extremely elevated blood pressure, hemiparesis, and an altered mental state. A brain CT scan at 1:44 a.m. was interpreted as revealing a basal ganglia bleed. Based on this misdiagnosis, Sheila was admitted into Holy Cross with orders for a neurosurgery consult in the morning. At 6:00 a.m. on June 28, the correct diagnosis of a massive subarachnoid hemorrhage was made, and the patient was emergently transferred to Rush for advanced neurosurgical care. However, by the time she arrived at Rush at 7:15 a.m. she was in a profound coma and it was too late to provide effective treatment; she died at 4:40 p.m. that afternoon (survived by two adult children). The estate contended the delayed diagnosis of the subarachnoid hemorrhage deprived Sheila of appropriate and timely treatment causing loss of a 75% chance of survival and lost 40% chance of a good outcome. At issue was who read the CT scan and reported the misdiagnosis, as both the interim and final CT reports showed subarachnoid hemorrhage. The CT was allegedly read by an on-call radiologist using a remote access computer system to review scans while not physically present in the hospital. Dr. Lenahan said he received a call from an unidentified radiologist with the diagnosis of basal ganglia bleed. Pltf maintained the hospital was liable under apparent agency for the conduct of any radiologist who read the CT scan. Holy Cross Hospital filed a 3rd party contribution and indemnity claim against radiologist McMiller and his group AR Imaging as Dr. McMiller had been listed as the on-call radiologist on the schedule at the time. Pltf further alleged Dr. Lenahan failed to properly manage the patient's blood pressure, and claimed the hospital failed to obtain a CT scan earlier and failed to follow its own CT scan protocols. Dr. Lenahan asserted he did not review the

CT scan, he reasonably relied on the radiologist's interpretation in making his treatment decisions, and he appropriately managed the blood pressure. Dr. McMiller denied he was the on-call radiologist who reviewed the scan in question, and denied the accuracy of the schedule listing him as the on-call radiologist that night; when shown the scan during a deposition four years later, he said he would have remembered such a striking and apparent subarachnoid hemorrhage. Defense for AR Imaging argued there was no direct evidence that any radiologist was sent the scan or reviewed the scan, and there was no documentation in the patient's chart of the incorrect diagnosis being reported by a radiologist. The defense for Holy Cross Hospital argued the E/R physician and radiologist were not apparent agents of the hospital, the alleged CT protocols were not in place at the time of this occurrence, and an earlier CT scan would not have resulted in a different diagnosis by the radiologist. All depts asserted an earlier diagnosis would not have made the outcome any different.

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**Publication: Cook County Jury Verdict Reporter Published: 2/20/2009**

**(AAA 19/3) MEDICAL MALPRACTICE—FAILURE TO TIMELY DIAGNOSE AND TREAT LUNG CANCER (12C)**

Estate of Jessie Tolbert, deceased v Dr. Rudyard U. Smith 05L-13564 (refiled from 02L-4873) Tried Nov. 6-13, 2008

**Verdict:** Not Guilty

**Judge:** Donald J. Suriano (IL Cook-Law)

**Pltf Atty(s):** Todd A. Heller of Todd A. Heller & Associates (Deerfield, IL) ASKED: \$3,050,000

**Deft Atty(s):** Ruth V. Enright of Baker & Enright (Chicago, IL) (Frontier Insurance)

**Pltf Medl:** Dr. Joseph M. Thompson (Internist), Dr. Ann Mellott (Oncologist)

**Deft Medl:** Dr. Merlin Kelsick (General Surgeon)

**Pltf Expert(s):** Dr. David J. Slivnick of North Shore Oncology/Hematology Associates Ltd., 1800 Hollister Dr., #112, Libertyville, IL (847-367-6781) (Oncologist)

**Deft Expert(s):** Dr. Rachel D. Oosterbaan (Internist); Dr. Leon Dragon (Oncologist)

**Facts:**

June 15, 1998, Jessie Tolbert was admitted to Trinity Hospital for vascular surgery on his legs due to peripheral vascular disease. Deft internist Smith performed a medical screening and clearance for surgery at the request of the surgeon, including ordering a chest x-ray which revealed an abnormal density in the lung. A bronchoscopy was performed and came back negative. Prior to discharge on June 23, 1998, deft and the surgeon met with Tolbert and his family and recommended he undergo a thoracotomy to remove the lung nodule. Records showed he agreed to the thoracotomy but asked to be discharged to return later for surgery. The thoracotomy was never done, and Tolbert's lung cancer was not diagnosed until July 2001, when he casually approached a doctor in the hallway at Jackson Park Hospital and asked for cough medicine. That physician ordered a chest x-ray, but by then the cancer had progressed to Stage IV. Tolbert died at age 63 on Jan. 21, 2002 (survived by wife and 7 children). Tolbert's family claimed that at no time were they informed that the lung nodule was likely cancer and needed to be removed. Deft and the vascular surgeon testified they repeatedly advised Tolbert and his family that the negative bronchoscopy did not rule out cancer and he needed to undergo the thoracotomy urgently to remove the lung nodule as it was likely cancer until ruled otherwise. Pltf pointed to the fact that nowhere in the chart did the doctors document that they advised the patient he might have cancer. The defense argued Tolbert was of the personality that he only accepted medical care when he was highly symptomatic despite his 39-year history of heavy smoking, Dr. Smith plainly advised the patient and his family that cancer was highly suspected, the thoracotomy was a major surgery which would not have been recommended if there had not been a very serious potential diagnosis, and Tolbert's failure to follow medical advice was a contributing or sole proximate cause of the advancement of his cancer. The jury deliberated 45 minutes including lunch.

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**Publication: Cook County Jury Verdict Reporter Published: 1/2/2009**

**(AAA 12/6) MEDICAL MALPR.--DEATH FROM ALLEGED SEDATIVE OVERDOSE DURING SURGERY (12A)**

Estate of Cedrick Adams, deceased v St. Francis Hospital & Health Center (Blue Island), Joseph Potter, R.N., Andrea Swanson, R.N., Dr. Kevin J. Dolehide, D.O. 04L-1741 Tried Oct. 27-Nov. 6, 2008

**Verdict:** Not Guilty v all defts. Dr. Dolehide settled out for \$1,000,000 policy during jury deliberations.

**Judge:** Jennifer Duncan-Brice (IL Cook-Law)

**Pltf Atty(s):** James M. Sanford, Michael J. Laux of Cochran, Cherry, Givens, Smith & Montgomery (Chicago, IL)  
 DEMAND: \$5,000,000 (indicated) ASKED: \$5,350,000

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago, IL) for St. Francis Hospital & Health Center (Blue Island), Potter, Swanson (Self-Insured) OFFER: \$100,000 - \$200,000 total (indicated) ; Martin P. Head of Bollinger, Ruberry & Garvey (Chicago, IL) for Dr. Kevin J. Dolehide, D.O. (ISMIE) OFFER: KJD \$1,000,000 policy

**Pltf Medl:** Dr. Joseph Lawrence Cogan (Pathologist)

**Pltf Expert(s):** Dr. Carey B. Strom of Cedars Sinai Hospital, 9090 Wilshire Blvd., #101, Beverly Hills, CA (310-550-0400) (Gastroenterologist); Jennie S. Daugherty, R.N., 281 Dandridge Dr., Franklin, TN (615-495-5014) (Nursing); Dr. Ronald Wender (Anesthesiologist); Larry DeBrock, Ph.D. (Economist)

**Deft Expert(s):** Dr. Jeffery Vender (Anesthesiologist); Dr. Joseph Hartmann (Cardiologist); John Weber, R.N., 464 Broadview Ave., Highland Park, IL (847-681-8031) (Nursing) for St. Francis Hospital & Health Center (Blue Island), Potter, Swanson Dr. Mick Meiselman (Gastroenterologist); Richard T. Scheife, PharmD. of Tufts University Medical Center, 800 Washington St., Box 806, Boston, MA (617-636-5390) (Pharmacologist) for Dr. Kevin J. Dolehide, D.O.

#### **Facts:**

Feb. 6, 2003, deft gastroenterologist Dr. Kevin Dolehide performed an elective ERCP (endoscopic retrograde cholangiopancreatography) on Cedrick Adams at St. Francis Hospital, Blue Island. Adams M-30 had been diagnosed with gallstones, and Dr. Dolehide was concerned there might be stones in the common bile duct, so he decided to perform an ERCP rather than referring the patient to a surgeon for a laparoscopic cholecystectomy. Deft Nurse Potter assisted with instrumentation during the procedure and deft Nurse Swanson carried out Dr. Dolehide's order for conscious sedation medications Demerol and Versed. Dr. Dolehide also prescribed Phenergan as an anti-nausea medication during the procedure. However, Adams suffered respiratory arrest during the ERCP, resuscitative efforts were unsuccessful, and he died (survived by wife and three minor children). The assistant medical examiner who performed the autopsy, Dr. Cogan, opined that Demerol intoxication was the cause of death. The estate contended Dolehide was negligent for performing an ERCP which was not indicated, he should have simply referred the patient for gallbladder surgery, he negligently prescribed Demerol and Versed to be given together to combat the patient's agitation, he failed to recognize the agitation was from hypercarbia (elevated arterial carbon dioxide) due to being in deep sedation, and he misinterpreted the agitation as indicating light sedation and thus prescribed an excessive amount of conscious sedation agents. The estate alleged Nurse Swanson deviated from the standard of care by failing to adequately monitor the patient during the ERCP, failing to appreciate the downward trend of his vital signs, and failing to make timely nursing interventions, and claimed Nurse Potter was negligent in improperly maintaining the patient's airway during the procedure. The defense for Dr. Dolehide argued the ERCP was indicated, it was performed in compliance with the standard of care, and the elevations in the patient's blood pressure and heart rate prior to the arrest were the natural result of the scope being passed down the esophagus through the

stomach and into the small intestine. The defense for the hospital asserted that the patient was never in deep sedation, an appropriate amount of conscious sedation agents were given in an appropriate time frame, the nurses complied with the standard of care, and determining the level of sedation is a medical diagnosis which is not the province of a nurse. Defense experts opined that the patient's death was actually due to an idiosyncratic reaction to Demerol (he had never received Demerol before) which caused his circulating volume to collapse, and although not a true allergic reaction, the idiosyncratic reaction was very similar to severe anaphylaxis, which would explain why an otherwise healthy 30-year-old would have an arrest with absolutely no response to CPR, Atropine, pacemaker insertion, defibrillation or any other actions that were attempted during the code.

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**Publication: Cook County Jury Verdict Reporter Published: 10/10/2008**

**(ZZ 52/5) MEDICAL MALPR.--DELAYED TRANSFUSION BLAMED FOR INFANT'S BRAIN DAMAGE (12H)**

Luca Vaia, disabled minor v Loyola University Physician Foundation, Loyola University Health System, Loyola University Medical Center, Dr. Jonathan Muraskas, Dr. Khaled Hilal, Teri Russell, N.N.P. 03L-10647 Tried Aug. 11-29, 2008

**Verdict:** Not Guilty v all defts (after Elmhurst Memorial Hospital settled out for \$5,750,000 and Dr. Jeanette Edwards and Elmhurst Pediatric Association settled out for \$2,000,000 prior to trial).

**Judge:** William J. Haddad (IL Cook-Law)

**Pltf Atty(s):** Barry R. Chafetz, Shawn S. Kasserman, Margaret M. Power of Corboy & Demetrio (Chicago, IL) DEMAND: \$4,000,000 withdrawn ASKED: \$60,000,000

**Deft Atty(s):** Ruth V. Enright, Robert S. Baker of Baker & Enright (Chicago, IL) for all defts (Self-Insured) OFFER: \$2,000,000

**Pltf Medl:** Dr. James J. Glower (Emergency Medicine), Carmella A. Svejda, R.N. (Nursing), Sammy Williams, P.T. (Physical Therapist), Emily Lauer (Occupational Therapist), Kathleen Post (Speech Pathologist), Barbara Petro, N.N.P. (Nurse, Neonatal)

**Deft Medl:** Dr. Jeanette Edwards (Pediatrician), Alan Hoffstadter (Medical Technician) for all defts

**Pltf Expert(s):** Dr. Mhairi Graham MacDonald-Ginzburg, 13656 Harper's Ferry Road, Purcellville, VA (540-668-6435) (Neonatologist); Rachel Lockwood, N.N.P., 180 Mill Lane, Boyce, VA (540-837-1878) (Nurse, Neonatal); Dr. Lawrence Gartner, 28398 Alamar Road, Valley Center, CA (760-751-9479) (Pediatrician); Dr. John H. Menkes (Pediatric Neurology); Dr. Gary Yarkony (Physiatrist); Charles Linke, Ph.D. (Economist)

**Deft Expert(s):** Dr. William Meadow (Neonatologist); Dr. Richard A. Molteni (Neonatologist); Linda Grossglauser, R.N. (Nurse, Neonatal); Dr. Lisa Thornton (Pediatric Rehabilitation); Charles Breeden, Ph.D. (Economist) for all defts

**Facts:**

Luca Vaia was born at Elmhurst Memorial Hospital on July 15, 2000, full-term with a normal delivery and normal Apgar scores. He was discharged on July 17 despite facial jaundice and an above-normal bilimeter reading of 16. Baby Luca did well for two days before exhibiting decreased feeding, irritability and restlessness; his mother called Dr. Edwards' office twice on July 19 and was told to feed him with a syringe and bring him into the office the next morning. After the parents noticed the infant had turned yellow, they brought him to Elmhurst's emergency room at 10:22 p.m. on July 19. Luca's bilirubin level was found to be 38.2 (hyperbilirubinemia) and Loyola was called at 1:00 a.m. on July 20 to have him transferred for a double volume exchange transfusion. Loyola's transport team including deft neonatal nurse practitioner Russell picked up the baby and arrived back at Loyola at 2:45 a.m. An umbilical venous catheter was inserted for the exchange transfusion, and an order was placed to reconstitute whole blood to be used for the transfusion. The blood was prepared and ready by 5:02 a.m., but when the exchange transfusion was started at 5:35 a.m., it was discovered that the umbilical catheter was no longer withdrawing blood. Alternative arterial access was attempted by fellow Hilal, but he was unable to obtain an arterial line after multiple attempts and called the pediatric surgery service for assistance. After four attempts by pediatric surgeons were unsuccessful, Dr. Hilal was able to get an arterial line into the brachial artery. The exchange transfusion was started at 7:25 a.m., the first unit of blood was successfully administered within an hour, and the child's bilirubin level was reduced to 18.8 and out of critical range. However, Luca suffered bilirubin encephalopathy due to excess bilirubin crossing the blood brain barrier, causing severe cerebral palsy, spastic quadriplegia, profound hearing loss,

and upward gaze palsy; he requires 24-hour care and can only communicate via advanced computerized devices (\$508,528 past medl. bills). Pltf contended there was a delay in performing the exchange transfusion and Luca's brain damage could have been prevented if the transfusion had been done at least one hour earlier. Pltf claimed Nurse Russell unnecessarily delayed the transfer to Loyola by remaining at Elmhurst with the baby for 75 minutes before leaving, she should have spent no more than a half hour there, Loyola should have had the blood ready for transfusion by the time of the child's arrival, Dr. Hilal deviated from the standard of care by failing to insert a larger umbilical catheter causing a 2-hour delay in placing a separate arterial line, and deft attending neonatologist Muraskas was negligent for not coming to the hospital when called at 1 a.m. and 3 a.m. July 20. Defense argued the child's bilirubin level had been at critical levels well in excess of 24 hours before Loyola was contacted, defts acted in a safe and timely methodical manner in preparing for and executing the exchange transfusion, it was not the standard of care to pre-order blood, the transport was within the standard of care and exact time limitations cannot be applied, there was no reason for Dr. Muraskas to come to the hospital as the fellow was capable of performing the exchange transfusion, and problematic placement of arterial lines is something that is encountered every day in neonatal ICU. Defense further asserted the sole proximate cause of the child's injuries was the conduct of prior care providers, his clinical symptoms demonstrated he had suffered the severe effects of bilirubin crossing the blood brain barrier prior to his arrival at Loyola, and there was nothing Loyola could have done to prevent the injuries. Jury returned verdict at 9:30 p.m. after 8.5 hours of deliberation. Pltf's post-trial motions are pending.

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**Publication: Cook County Jury Verdict Reporter Published: 7/11/2008**

**(ZZ 39/1) MEDICAL MALP.--TREATMENT DELAY BLAMED FOR MEAT CUTTER'S AMPUTATED LEG (12H)**

John MacDonald, Kathleen MacDonald v Dr. Samir Shah, Dr. Kenneth Eng, SSM Health Care Corp., d/b/a St. Francis Hospital & Health Center 05L-2373 (refiled from 01L-11205) Tried May 19-30, 2008

**Verdict:** \$2,400,000 v Dr. Eng and St. Francis Hospital: \$1,975,000 to John (\$1,000,000 loss of normal life; \$300,000 pain & suffering; \$625,000 disfigurement; \$50,000 medical); \$425,000 to Kathleen (loss of consortium); Not Guilty v Dr. Shah. However, pltfs and the hospital entered into a \$300,000 - \$1,500,000 high/low agreement during jury deliberations, and Dr. Eng's Guaranty Fund coverage limit is \$300,000.

**Judge:** William J. Haddad (IL Cook-Law)

**Pltf Atty(s):** Brian Hurst of Beutel & Hurst (Chicago, IL) for both pltfs DEMAND: \$8,000,000 ASKED: \$4,000,000 - \$6,000,000

**Deft Atty(s):** Scott C. Nelson, Devon L. Battersby of Ruff, Weidenaar & Reidy (Chicago, IL) for Dr. Samir Shah (ISMIE) OFFER: none ; John S. Olson for Dr. Kenneth Eng (Illinois Guaranty Fund; PHICO Ins.) OFFER: KE \$300,000 ; Robert S. Baker of Baker & Enright (Chicago, IL) for d/b/a St. Francis Hospital & Health Center (Self-Insured) OFFER: none

**Pltf Medl:** Virginia Hackett, R.N. (Nursing), Porfiria Perez, R.N. (Nursing) for John MacDonald

**Pltf Expert(s):** Dr. Joseph A. Chiota, Jr., 101 E. Fairway Dr., #504, Covington, LA (985-871-8227) (Cardiologist); Dr. Darren B. Schneider of University of California, 400 Parnassus Ave., A-581, Box 0222, San Francisco, CA (415-353-4366) (Vascular Surgeon); Dr. Bayliss Yarnell of Daniel Freeman Memorial Hospital, 333 N. Prairie Ave., Inglewood, CA (310-419-8247) (Emergency Medicine); Barbara Levin, R.N., 8 Country Dr., Hingham, MA (781-740-0254) (Nursing) for John MacDonald

**Deft Expert(s):** Dr. Joseph V. Messer (Cardiologist) for Dr. Samir Shah Laurie Carroll, R.N. (Nurse, Emergency Room); Dr. Joseph Schneider (Vascular Surgeon); Dr. John J. Flaherty (Emergency Medicine) for d/b/a St. Francis Hospital & Health Center

**Facts:**

March 18, 2000, pltf M-51 meat cutter arrived at St. Francis Hospital in Blue Island around 3:00 a.m. complaining of right leg pain after falling two hours earlier at home. His medical history included peripheral vascular disease and a prior right leg femoral popliteal bypass in 1996. After being triaged as a level 1 (the most acute category), pltf was examined in the emergency room at 3:10 a.m. by deft Eng. Dr. Eng noted right leg pain with right foot numbness and faint pulse, and formulated a diagnosis of acute arterial insufficiency. At 3:28 a.m., Dr. Eng called deft Shah, who was pltf's cardiologist. Dr. Shah ordered Heparin, admission into hospital for observation, and an arterial Doppler exam in the morning when the vascular lab opened. Pltf remained in the emergency room until 5:45 a.m., when he was transferred to a floor. Dr. Shah was not contacted again until 6:30 a.m., when he ordered a consult by a vascular surgeon due to the patient's worsening pain. The vascular surgeon saw the patient at 8:00 a.m. and diagnosed a cold, insensate and pulseless right lower extremity. Pltf was taken to an operating room at 8:15 a.m. for an emergency fasciotomy, during which the surgeon found an arterial occlusion with complete necrosis of the right calf (no viable muscle), requiring subsequent amputation of the right leg above the knee. Pltf contended deft doctors were negligent for failing to definitively treat the patient's symptoms upon presentation and failing to order an emergent vascular consult while he was in the emergency room. Pltf argued deft hospital was negligent for the conduct of its emergency room nurse for her failure to make appropriate reassessments of the

patient, failure to detect worsening condition, and failure to go up the chain of command to seek definitive care. Pltf further claimed the hospital was liable for the conduct of its apparent agent, Dr. Eng. The defense for Dr. Shah asserted he complied with the standard of care in relying on the on-site physician and he made the appropriate orders in light of the information provided by Dr. Eng. Dr. Eng maintained he complied with the standard of care because he believed he had contacted a cardiovascular surgeon when he phoned Dr. Shah, even though Dr. Shah was actually a cardiologist. St. Francis Hospital contended that its emergency room nurse complied with the standard of care in performing appropriate examinations of the patient, she was not required to go above the doctors involved to seek treatment for the patient, and it was unreasonable for pltf to think Dr. Eng was the hospital's apparent agent due to the contrary wording of its consent forms. The jury found against the hospital as to apparent agency and in favor of the hospital on the nursing issue.

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**Publication: Cook County Jury Verdict Reporter Published: 5/9/2008**

**(ZZ 30/5) MEDICAL MALPRACTICE--REPAIR OF FRACTURED FEMUR FAILS, CAUSING NONUNION (12M)**

Tonya Wilbourn v Dr. Mark Cavalenes, Rush Oak Park Hospital 04L-2988 Tried Mar. 6-13, 2008

**Verdict:** Not Guilty v both defts

**Judge:** Clare E. McWilliams (IL Cook-Law)

**Pltf Atty(s):** Steven B. Muslin, Craig M. Sandberg of Muslin & Sandberg (Chicago, IL) DEMAND: none ASKED: \$4,389,889

**Deft Atty(s):** Richard C. Huettel of Cassiday Schade (Chicago, IL) for Dr. Mark Cavalenes (ISMIE) OFFER: none ; Robert S. Baker of Baker & Enright (Chicago, IL) for Rush Oak Park Hospital (CHRPP) OFFER: none

**Deft Medl:** Dr. Smita Shah (General Practitioner) for both defts

**Pltf Expert(s):** Dr. Phillip James Kregor of Vanderbilt Orthopaedic Institute, 1215 21st Ave. South, Medical Center East - South Tower, Suite 4200, Nashville, TN (615-936-0112) (Orthopedist)

**Deft Expert(s):** Dr. Steven I. Rabin (Orthopedist) for Dr. Mark Cavalenes Dr. Jeffrey Grosskopf (Orthopedist) for Rush Oak Park Hospital

**Facts:**

Feb. 13, 2002, pltf F-40 suffered a transverse fracture of the mid-shaft of her right femur in a motor vehicle accident and was brought to Oak Park Hospital by ambulance. Deft Cavalenes was the orthopedic surgeon on call to the emergency room and assumed her orthopedic care. After a cardiac issue was cleared, Dr. Cavalenes performed open reduction internal fixation surgery on the femur fracture on the evening of Feb. 15. For 1.5 hours, Dr. Cavalenes attempted to insert an antegrade intramedullary rod into the femur, but was unsuccessful. No retrograde intramedullary rods were available, so he decided to instead affix a dynamic compression plate to the femur. After pltf declined her general practitioner's recommendation to stay in the hospital's rehab unit for several more weeks of supervised physical therapy, she was discharged from the hospital on March 1. On March 15, 2002, the plate in pltf's leg broke while she was ambulating with a walker, causing her to fall. She was taken to West Suburban Hospital, where she was again treated by Dr. Cavalenes. He removed the plate and performed a retrograde intramedullary rodding of the right femur. Pltf suffered nonunion of the fracture, which she claims is still not healed; she currently uses a walker to ambulate and takes Vicodin four times a day due to constant pain (\$109,178 medl., \$5,711 LT 9 weeks as social worker). At issue was what kind of plate was inserted in the initial surgery by Dr. Cavalenes. Pltf contended he improperly used a Synthes 12-holed narrow plate instead of the required broad plate. Neither of Cavalenes' operative reports states what type of plate was implanted at Oak Park and removed at West Suburban. A nursing report and a bill indicated a broad plate was used, but pltf argued Oak Park Hospital's medical records had so many errors and corrections, including stating it was the left leg that was operated on, that they could not be relied upon by the jury. Experts from each side disagreed as to what kind of plate was shown on x-rays taken after the plate failed. The hospital was sued under an apparent agency theory. The defense maintained a Synthes 12-holed broad plate was used, pltf failed to follow instructions not to bear weight on her right leg, and the plate failed due to a combination of excessive weight-bearing and her fall. Defense further asserted that pltf's femur is healed and is no longer non-united, the last films taken of the femur in July 2003 showed some progression and healing, the rod implanted in 2002 would have failed by now if the fracture was not healed, and pltf's current ability to bear weight while using a walker was further

evidence that it had healed. UPDATE: For a summary of subsequent appellate action regarding this case, see the Jury Verdict Reporter's Appellate Review of Damages publication at 12 ARD 47.

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**Publication: Cook County Jury Verdict Reporter Published: 9/21/2007**

**(YY 49/5) MEDICAL MALPR.--ULCER PERFORATION LEADS TO PERITONITIS AND BRAIN DAMAGE (12F)**

Andrea Kuehn, disabled v Dr. Linas M. Klygis, Dr. Allen C. Bernthal, GI & Liver Specialists Ltd., MacNeal Memorial Hospital Association, Dr. Robert M. Sholtes 00L-8911 Tried Jun. 11-29, 2007

**Verdict:** Not Guilty v all defts. However, pltf and MacNeal Memorial Hospital reached a high/low agreement of \$5,250,000 - \$7,000,000 prior to trial.

**Judge:** Jennifer Duncan-Brice (IL Cook-Law)

**Pltf Atty(s):** Martin J. Healy, Jr., Daniel B. Malone, John P. Scanlon of Healy Law Firm (Chicago, IL) ASKED: \$28,534,331

**Deft Atty(s):** Mark J. Smith, Jenny O. Blake of Lowis & Gellen (Chicago, IL) for Dr. Linas M. Klygis (American Physicians Assurance) OFFER: none ; Brian T. Henry, Brian C. Sundheim of Pretzel & Stouffer (Chicago, IL) for Bernthal, GI & Liver Specialists Ltd. (Fireman's Fund) OFFER: none ; James C. Adamson, Lawrence Helms of Swanson, Martin & Bell (Chicago, IL) for MacNeal Memorial Hospital Association (Self-Insured) OFFER: MMHA \$5,250,000 - \$7,000,000 high/low ; Robert S. Baker of Baker & Enright (Chicago, IL) for Dr. Robert M. Sholtes (Frontier Insurance) OFFER: none

**Pltf Medl:** Mary Murray, P.A. (Physician Assistant), Dr. Lee Schwartz (Psychiatrist), Dr. Charles Tattersall (General Surgeon)

**Deft Medl:** Dr. James Valek (Family Practice), Dr. Jennifer Houston (Family Practice), Dr. George Lu (Family Practice), Dr. Trupti Gokani (Neurologist), Leslie Boyle, R.N. (Nursing), Cynthia Kreczmer, R.N. (Nursing), Dr. Manisha Patel Shah, D.O. (Family Practice), Ann Fron, R.N. (Nursing), Dr. Mary Meadows (Family Practice), Dr. Bruce T. Kline (Family Practice), Dr. Carrie Jaworski (Family Practice) for MacNeal Memorial Hospital Association

**Pltf Expert(s):** Dr. John Cello (Gastroenterologist); Dr. Ramon Solhkhah, 1090 Amsterdam Ave., Suite 16C, New York, NY (212-523-3069) (Psychiatrist); Dr. Gary Yarkony (Rehab/Physical Medicine); Larry DeBrock, Ph.D. (Economist)

**Deft Expert(s):** Dr. Michael Goldberg (Gastroenterologist) for Dr. Linas M. Klygis Dr. Robert Craig (Gastroenterologist) for Dr. Allen C. Bernthal Dr. Steven Sauerberg (Family Practice) for MacNeal Memorial Hospital Association Dr. Jesse Viner (Psychiatrist) for Dr. Robert M. Sholtes

**Facts:**

Aug. 6, 1998, pltf Andrea Kuehn was admitted to MacNeal Memorial Hospital with complaints of persistent abdominal pain, a one month history of nausea and vomiting, and severe mental status changes including seeing "halos" and "Jesus" and believing she could heal herself. Histories given by family members included claims the unemployed F-40 patient had been taking 100 aspirin per week for 12 years and suffered from peptic ulcer disease. She was hypokalemic (low potassium) and hypochloremic (low chloride) and was admitted to the hospital's family practice teaching program where attendings and residents called in Drs. Klygis, Bernthal and Sholtes for GI and psychiatric consults. On Aug. 7, Dr. Bernthal recommended an endoscopy (EGD) to look for peptic ulcer disease, but pltf refused. Dr. Sholtes assessed an acute psychotic condition and prescribed Haldol and Cogentin. That night, pltf was extremely agitated and complained of severe abdominal and right shoulder pain which was not reproducible upon physician examination. The afternoon of Aug. 8, Dr. Klygis postponed a scheduled EGD as pltf was over-sedated, hypokalemic and had no signs of an acute abdomen but, at approximately 5 p.m., her abdomen became distended. An abdominal x-ray was interpreted by residents who failed to note the presence of free air.

She was transferred to the ICU where perforation of her duodenum was confirmed; surgical repair took place at 1:30 a.m. Pltf claimed the ulcer perforated on the evening of Aug. 7, causing peritonitis, a drop in blood pressure, and hypoxic ischemic encephalopathy/permanent brain damage (\$649,931 past medl., \$2,884,400 future medl. bills). Pltf contended an EGD should have been performed on the 7th, despite patient's refusal to consent, or plain films or a CT scan ordered, and maintained the psychiatric medications exacerbated the effects of the perforation. The defense argued a CT scan would have, at best, indicated the need for an EGD which is the test of choice to evaluate peptic ulcer disease; pltf's refusal to consent to the EGD on the 7th needed to be honored despite her mother's permission; and it was within the standard of care to defer the EGD, as pltf was over-sedated and had no signs of an acute abdomen. All depts maintained the ulcer perforated at approximately 5:00 p.m. on Aug. 8, when pltf's symptoms changed. Both psychiatric experts supported Dr. Sholtes' prescribing Haldol, but differed on the appropriateness of Cogentin; in any event, the defense asserted, the last dose of Haldol and only dose of Cogentin were given some 20 hours before the perforation and therefore had cleared the patient's system. Finally, depts argued a CT scan showed a focal stroke which was inconsistent with global injury and, during the time in question on Aug. 7, pltf's blood pressure was, in fact, variable.

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**Publication: Cook County Jury Verdict Reporter Published: 9/7/2007**

**(YY 47/1) MEDICAL MALPR.—UNDIAGNOSED MENINGITIS LEAVES TEACHER BRAIN DAMAGED (12F)**

Judith Spiegelman v Victory Memorial Hospital, Dr. Murray Keene, Emergency Specialists of Illinois, Dr. Louise Riff, Dr. Pedro Palu-Ay 05L-5236 (refiled from 00L-13671) Tried Jun. 12-28, 2007

**Verdict:** \$11,110,000 v Victory Memorial Hospital, Dr. Murray Keene and Emergency Specialists of Illinois (\$5,580,000 loss of normal life; \$1,250,000 past pain & suffering; \$1,150,000 future pain & suffering; \$1,080,000 disfigurement; \$2,050,000 future medical expenses); Directed Not Guilty v Dr. Louise Riff at the close of pltf's case. Dr. Pedro Palu-Ay settled out prior to trial for \$500,000.

**Judge:** Daniel M. Locallo (IL Cook-Law)

**Pltf Atty(s):** Thomas O. Plouff, David E. Gilbreth of Costello, McMahon & Burke (Chicago, IL) ASKED: \$13,900,000 - \$18,400,000

**Deft Atty(s):** Ruth V. Enright of Baker & Enright (Chicago, IL) for Victory Memorial Hospital (CHRPP) OFFER: none ; Timothy A. Weaver of Pretzel & Stouffer (Chicago, IL) for Keene, Emergency Specialists of Illinois (PIC-Wisconsin) OFFER: none ; William J. Rogers of Bollinger, Ruberry & Garvey (Chicago, IL) for Dr. Louise Riff (CNA Pro) OFFER: none

**Pltf Medl:** Dr. Hugh R. Adams (Rehab/Physical Medicine), Dr. Sean Flynn (Radiologist)

**Deft Medl:** Dr. Reuben Weisz (Neurologist) for all defts

**Pltf Expert(s):** Dr. Rodger MacArthur (Infectious Disease); Dr. Michael Deck of Brown University, 15 Highland Dr., Jamestown, RI (401-560-0046) (Neuroradiologist); Dr. John Caronna (Neurologist); Dr. Stanley Zydlo (Emergency Medicine); Henry Brennan, Jr. (Life Care Planner)

**Deft Expert(s):** Dr. Mark E. Cichon, D.O. (Emergency Medicine); Dr. Fred A. Zar (Infectious Disease); Dr. Ruth Ramsey (Neuroradiologist) for Victory Memorial Hospital Dr. John J. Flaherty (Emergency Medicine); Dr. John Segreti (Infectious Disease) for Keene, Emergency Specialists of Illinois

**Facts:**

Nov. 29, 1998, pltf F-56 presented to Victory Memorial Hospital with complaints of pansinusitis, left middle ear infection with purulent drainage, fever, double vision, left facial palsy, frontal headache, neck pain, dizziness and nausea. E/R physician Keene diagnosed sinusitis, Bell's palsy, and otitis media, and discharged her with antibiotics. Pltf refused to leave because by then she could not walk, had balance problems, and was falling to the left. Keene ordered a CT scan to rule out a stroke, called attending physician Palu-Ay, and had pltf admitted with a diagnosis of possible stroke and orders for antibiotics (Biaxin and Cipro). The radiologist called Keene two hours later reporting no evidence of a stroke but the worst case of pansinusitis and mastoiditis he had ever seen. Keene should have known that meant pltf was at risk for spread of the head infection to the meninges and brain, but he denied he was told anything other than "no acute findings" so he never called Palu-Ay about the CT results. The next morning, pltf was incoherent, lethargic and stuporous. A neurologist diagnosed brain abscess and possible bacterial meningitis, and ordered an MRI to determine if a spinal tap could be done safely; MRI was interpreted as showing stroke. Infectious disease specialist Riff was called but could not see the patient until she obtained temporary hospital privileges the next day. She phoned in antibiotic changes, but did not order the correct antibiotic for meningitis (Rocephin) until the morning of Dec. 1, by which time pltf had lapsed into a coma which lasted several months. Pltf substitute teacher sustained cognitive deficits, motor and sensory impairment, inability to walk, speech deficits, memory problems, cranial nerve damage with severe facial distortion, and confinement to a nursing home (\$3,900,000-\$4,400,000 life care plan). Pltf contended defts' failure to timely diagnose and treat bacterial meningitis led to the profound brain damage and paralysis, Keene was negligent in failing to suspect bacterial meningitis or central nervous system infection, the hospital held Keene out as an apparent agent and failed to promptly give Riff temporary privileges, and Riff failed to suspect meningitis and timely give Rocephin despite fever and stiff neck that had developed by mid-day Nov. 30. Defense for Keene argued pltf did not have the classic symptoms of meningitis in the E/R (high fever, stiff neck, mental status changes), she

did not report double vision, her temperature of 100.1 was not a fever, she had subclinical focal meningitis which spread from the mastoid into the brain, and it was not diagnosable in the E/R except via spinal tap, which was not indicated. Hospital denied apparent agency and negligence in granting privileges to Riff. Judge directed verdict in favor of hospital on issues of institutional negligence and apparent agency as to Riff; verdict against hospital was on its apparent agency as to Keene. Post-trial motions are pending. NOTE: For a summary of subsequent appellate action regarding this case, see the Jury Verdict Reporter's Appellate Review of Damages publication at 11 ARD 13.

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**Publication: Cook County Jury Verdict Reporter Published: 9/7/2007**

**(YY 47/4) MEDICAL MALPRACTICE--PATIENT WITH INFECTED FOOT LOSES TOE AND TRIAL (12I)**

Emma Davis v Holy Cross Hospital 03L-4495 Tried May 30-Jun. 4, 2007

**Verdict:** Not Guilty

**Judge:** John B. Grogan (IL Cook-Law)

**Pltf Atty(s):** Lester L. Barclay, Rafael L. Taylor of Barclay & Dixon (Chicago, IL) ASKED: \$350,000

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago, IL) (CHRPP)

**Pltf Medl:** Dr. Waldo Arteaga (Internist)

**Deft Medl:** Steven French, D.P.M. (Podiatrist)

**Pltf Expert(s):** Dr. Cedric Coleman (Internist)

**Deft Expert(s):** Dr. Rachel D. Oosterbaan of Northwestern Memorial Physicians Group, 20 S. Clark St., #1100, Chicago, IL (312-926-3627) (Internist)

**Facts:**

Jan. 8, 2002, pltf F-62 presented to the emergency room at Holy Cross Hospital after she stepped on a nail the previous day. She had no primary medical doctor and was admitted into the hospital with Dr. Waldo Arteaga, an internist, assigned as her attending physician. Pltf was given intravenous antibiotics through Jan. 10, when she was discharged with a prescription for oral Augmentin and directions to follow up with her primary medical doctor in two days. Pltf called Dr. Arteaga for a cheaper prescription on either Jan. 11 or Jan. 13. She did not follow up with her primary medical doctor, and returned to Holy Cross Hospital on Jan. 18 with a large abscess which required multiple surgeries to drain. Pltf was subsequently transferred to Christ Hospital on Jan. 27, 2002, where she underwent amputation of her second left toe as well as a femoral popliteal bypass to treat arterial occlusions in the left leg (\$56,000 medl. bills). Pltf contended she should not have been discharged from Holy Cross on Jan. 10, she should have been kept as an inpatient for continued intravenous antibiotics, the hospital violated its policies by failing to provide written discharge instructions, and Dr. Arteaga was an apparent agent of the hospital. Defense asserted both Dr. Arteaga and the discharging nurse gave verbal instructions to pltf to take her antibiotics, to follow up with her primary doctor in two days, and to maintain non-weightbearing on the left foot. Defense further argued that pltf's failure to timely fill her prescription, follow up with her doctor, and seek care when her condition worsened, all made her contributory negligence more than 50% responsible for the amputation.

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**Publication: Cook County Jury Verdict Reporter Published: 7/27/2007**

**(YY 41/6) MED. MAL.--PSYCHIATRIST'S PATIENT OF 38 YEARS CLAIMS DOCTOR DIDN'T HELP (12P)**

Martin Szymanski v Estate of Dr. George Stanton, deceased 03L-13924 (refiled from 98L-12612) Tried Apr. 30-May 8, 2007

**Verdict:** Not Guilty

**Judge:** Sharon Johnson Coleman (IL Cook-Law)

**Pltf Atty(s):** Sandra G. Nye of Nye & Associates (Chicago) DEMAND: \$1,000,000 policy

**Deft Atty(s):** Ruth V. Enright of Baker & Enright (Chicago, IL) (Frontier Insurance) OFFER: none

**Deft Medl:** Dr. William Egan (Psychiatrist)

**Pltf Expert(s):** Dr. Henry Lahmeyer (Psychiatrist)

**Deft Expert(s):** Dr. James L. Cavanaugh (Psychiatrist)

**Facts:**

Pltf Martin Szymanski was 28 years old when he began treating with the deft psychiatrist in March 1958 and saw Dr. Stanton on an essentially monthly basis until December 1996. Throughout those 38 years, deft (now deceased) treated pltf for a major depressive disorder with psychotic and obsessive-compulsive components and prescribed various medications. Pltf alleged Dr. Stanton failed to diagnose his bipolar disorder, aggravated his condition by giving him the wrong medications, and caused him to develop tardive dyskinesia (a motor disorder) as a side effect of Thorazine which deft prescribed. Pltf also alleged the doctor was negligent in failing to prescribe family, cognitive, behavior and group therapies. He claimed that as a result he never got any better and in fact became worse, he could not have a successful career despite above-average intelligence, and he was never able to marry because deft did not explain the facts of life to him until he was in his mid-thirties (\$8,000 past and future dental work for damage from grinding of teeth resulting from dyskinesia; \$0 LT, despite pltf's attorney's effort to introduce pltf's own research as to income he believed he would have earned had he received proper psychiatric care). The defense contended Dr. Stanton did not misdiagnose pltf's major depressive disorder and properly prescribed Thorazine as it worked best and its efficacy outweighed its known risk for tardive dyskinesia. Defense further noted that pltf, who is currently a part-time tutor, had two long-term jobs, including a 20-year career as an accountant with the Chicago Board of Education from which he retired and receives a pension. Finally, the defense maintained that, while it was true pltf did have problems with alcohol and relationships, the deft kept him functioning and the other therapies recommended by pltf's expert would likely have been of little to no value, even if pltf had been willing and financially able to engage in them.

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**Publication: Cook County Jury Verdict Reporter Published: 5/18/2007**

**(YY 31/1) MEDICAL MALPRACTICE--POSTOP PATIENT DEVELOPS DEEP VEIN THROMBOSIS (12H)**

Julie Hubbard v Alexian Brothers Medical Center 02L-10373 (refiled from 99L-1592) Tried Mar. 19-27, 2007

**Verdict:** \$1,100,000 (\$550,000 pain & suffering; \$550,000 loss of normal life)

**Judge:** Patricia Banks (IL Cook-Law)

**Pltf Atty(s):** Michael I. Starkman DEMAND: \$450,000 ASKED: \$5,000,000

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago, IL) (CHRPP) OFFER: none

**Pltf Medl:** Dr. Thomas Painter (Vascular Surgeon)

**Deft Medl:** Dr. Steven M. Cohen (General Surgeon), Dr. Barry Glick, D.O. (Internist)

**Pltf Expert(s):** M. Kathryn Mrozek, R.N., 19803 Schoolhouse Rd., Mokena, IL (708-710-1880) (Nursing); Dr. Morris Papernik (Internist)

**Deft Expert(s):** Theresa D. Annis, R.N. (Nursing); Dr. Jeffrey Kopin (Internist)

**Facts:**

Pltf F-33 was admitted to Alexian Brothers Medical Center in Elk Grove Village for acute appendicitis, and she underwent appendectomy surgery on Feb. 10, 1997. Pltf contended deft provided inadequate postoperative ambulation, causing her to develop a blood clot and deep vein thrombosis in her leg, which was diagnosed on Feb. 13, 1997. As a result, pltf suffered postphlebotic syndrome in her left leg with permanent swelling, risk of ulcerations, and lifestyle limitations. Defense argued nurses provided progressive mobility as tolerated. Surgeon Steven Cohen was a former co-deft who settled out in 2006 for \$225,000 (on improper DVT prophylaxis claim).

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**Publication: Cook County Jury Verdict Reporter Published: 2/2/2007**

**(YY 16/4) MEDICAL MALPRACTICE--PATIENT SUFFERS VISION LOSS AFTER SHOULDER SURGERY (12A)**

Richard W. Olson v Dr. Jeffrey Rooker, Mercy Hospital 05L-537 (refiled from 98L-11856) Tried Dec. 6-14, 2006

**Verdict:** Not Guilty v Dr. Jeffrey Rooker (Special Interrogatory: Was the vision loss in pltf's left eye caused by compression while he was under general anesthesia for the surgical procedure? "No."); Mercy Hospital settled out for \$25,000 prior to trial.

**Judge:** Donald J. Suriano (IL Cook-Law)

**Pltf Atty(s):** Timothy J. Touhy, of Touhy & Touhy (Chicago, IL) ASKED: \$13,000,000

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago, IL) for Dr. Jeffrey Rooker (Frontier Insurance) OFFER: none

**Pltf Medl:** Dr. John H. Fournier (Ophthalmologist)

**Deft Medl:** Dr. Marilyn Mets (Ophthalmologist), Dr. Kirk Packo (Ophthalmologist), Dr. Frank LaFranco (Ophthalmologist) for Dr. Jeffrey Rooker

**Pltf Expert(s):** Dr. Stephen Hirshorn, 11715 Phoenix Circle, Tampa, FL (904-395-0111) (Anesthesiologist)

**Deft Expert(s):** Dr. Jeffery Vender (Anesthesiologist); Dr. Walter M. Jay (Neuro-ophthalmologist) for Dr. Jeffrey Rooker

**Facts:**

Oct. 14, 1996, pltf M-45 underwent elective shoulder surgery at Mercy Hospital to repair his left rotator cuff. The surgery was performed by Dr. Michael Maday (dismissed from case with summary judgment one week before trial), and deft anesthesiologist Dr. Rooker administered general anesthesia for the procedure. Pltf claimed he awoke from surgery with blurred vision in his left eye and then lost the vision in his left eye a few days later. Hospital records contained no report of complaints relative to blurred vision after the surgery. Seven years later, in 2003, pltf lost the vision in his right eye, leaving him totally blind. Treating ophthalmologists disagreed as to the cause of the vision loss in the left eye. Dr. Fournier testified it was caused by compression of the left eye globe during the administration of anesthesia for the shoulder surgery, with the compression causing an ischemic event which resulted in the death of the optic nerve. Dr. Packo said the left eye vision loss was not due to compression but was rather caused by idiopathic anterior ischemic optic neuropathy (AION), for which there is no known cause but there are risk factors. Dr. Packo opined the idiopathic AION was most likely the result of pltf's peripheral vascular disease, and pointed to pltf's other risk factors including cigarette smoking, having his first myocardial infarction when he was 37, and taking medication to lower his cholesterol. Dr. LaFranco diagnosed idiopathic AION in the right eye in 2003, and defense argued the loss of vision in the right eye seven years after the left eye blindness proved it was due to an unknown cause and not the surgery. Court excluded evidence from pltf that his 2003 blindness occurred when he was hit in his right eye by a Christmas card. Post-trial motions are pending.

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**Publication: Illinois Jury Verdict Reporter Published: 3/3/2006**

**(05 D/6) MEDICAL MALPRACTICE--DOCTORS WIN "NG" IN KANKAKEE HIP, SPINE CASE (12M)**

Gary Jeck, Lona Jeck v Dr. Michael Sergeant, Dr. Mark Webster 95L-145 Tried Dec. 12-16, 2005

**Verdict:** Not Guilty to both pltfs v both defts

**Judge:** Kendall O. Wenzelman (IL, Kankakee 21st Jud Cir)

**Pltf Atty(s):** Tony L. Brasel for both pltfs DEMAND: \$700,000 ASKED: \$2,000,000 - \$2,300,000 total

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago, IL) for Dr. Michael Sergeant (Frontier Insurance) ; J. Dennis Marek of Ackman, Marek, Meyer & Boyd (Kankakee, IL) for Dr. Mark Webster (ISMIE) OFFER: none

**Pltf Medl:** Dr. William E. Krauss (Neurosurgeon), Dr. Alison M. Emslie-Smith (Neurologist), Dr. David Chabolla (Neurologist), Dr. Daniel Berry (Orthopedist) for Gary Jeck

**Deft Medl:** Dr. Sam Ho (Neurologist) for Dr. Michael Sergeant

**Pltf Expert(s):** Dr. Sheldon Margulies (Neurologist) for Gary Jeck

**Deft Expert(s):** Dr. W. Bruce Ketel (Neurologist) for Dr. Michael Sergeant Dr. John J. Flaherty (Emergency Medicine) for Dr. Mark Webster

**Facts:**

In November of 1992, pltf Gary Jeck was referred to deft Dr. Sergeant for workup of complaints of spasticity, numbness and weakness in his lower legs. Dr. Sergeant ordered a survey MRI of the brain and entire spine and other medical tests, but was unable to make a diagnosis. He referred pltf M-42 to Dr. Sam Ho, a neurologist at Northwestern Memorial Hospital in January 1993, who also was not able to make a diagnosis after an MRI of pltf's thoracic spine and additional tests. Pltf continued to deteriorate and Dr. Sergeant prescribed high dose pulse steroid treatments which resulted in temporary improvement. On April 23, 1993, Mr. Jeck saw deft Dr. Webster in the emergency room of St. Mary's Hospital in Kankakee with a complaint of excruciating groin pain and Dr. Webster performed a trigger steroid injection. Eventually, Dr. Sergeant referred pltf to Mayo Clinic, where he was seen on June 11, 1993. There, within 24 hours, he was diagnosed as suffering from an extensive hip infection and bone spurs in his cervical spine which were impinging on his spinal cord. He underwent surgery there to decompress the impingement on his cervical spine; also, his hip joint was removed at that time and remained unreplaced for 6 months, while the infection cleared up. Eventually, a hip replacement was performed at Mayo, which needed to be repeated in 2003 (\$175,000 past medl., \$160,000 future medl., \$35,000 LT as a construction worker). Pltf contended (1) the delay in diagnosing the cervical lesions allowed his neurologic symptoms to worsen until the time of the decompression, (2) the high doses of steroids he was given depressed his immune system, resulting in the hip infection and the subsequent hip replacements and (3) he was not fully informed of the risks of the steroid injections. He continues to suffer from permanent mobility problems with an unstable gait caused by the spinal cord injury and exacerbated by the hip problems. He was unable to return to his job as a construction worker, but now works as a dispatcher for the same employer. His wife's claim was for loss of consortium. Defts argued that their treatment of pltf fell within the standard of care. Originally, St. Mary's Hospital was named as a deft in the suit, but was dropped fairly early on, without paying anything. Dr. Ho was also an original deft; he settled out for \$70,000 prior to trial. Pltf's post-trial motions are pending.

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**Publication: Cook County Jury Verdict Reporter Published: 1/13/2006**

**(XX 13/5) PREMISES LIABILITY--FALL ON WET FLOOR WHILE VISITING MOTHER IN HOSPITAL (8)**

Kathryn Metscaviz v Alexian Brothers Medical Center 02L-13805 Tried Nov. 28-30, 2005

**Verdict:** \$200,000 (\$125,000 past and future pain & suffering; \$75,000 loss of normal life)

**Judge:** Richard B. Berland (IL Cook-Law)

**Pltf Atty(s):** Joel H. Greenburg of Joel H. Greenburg Ltd. (Chicago) Robert B. Patterson of Robert B. Patterson Ltd. (Chicago, IL) DEMAND: \$1,500,000 ASKED: \$3,090,000

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago, IL) (CHRPP) OFFER: none

**Pltf Medl:** Dr. W. Bruce Ketel (Neurologist)

**Deft Medl:** Dr. Edward Burke (Internist)

**Deft Expert(s):** Dr. Elizabeth Kessler (Neurologist)

**Facts:**

May 31, 2001, pltf was exiting Alexian Brothers Hospital after visiting her mother when she slipped and fell on a wet corridor floor. The floor was left wet from a floor scrubbing machine, and no warning signs were posted. Pltf F-51 had been disabled from arachnoiditis since 1978, suffered from a spasm abnormality with 2 to 4 mass spasms per week, and was using bilateral ankle braces and a cane to ambulate at the time of the occurrence. Pltf sustained contusions to her back, left knee, left shoulder and the back of her head, and claimed the fall exacerbated her pre-existing arachnoiditis, increased her pain, worsened her spasms, decreased her ability to ambulate, and shortened her life expectancy by ten years. She was hospitalized for nine days with a mass spasm prompted by the fall, and subsequently underwent physical therapy which exacerbated the spasms leading to a second hospitalization at Alexian in Oct. 2001; deft paid the medical bills for this treatment (\$27,586) but refused to pay any additional medical expenses. Defense admitted negligence, admitted it paid pltf's medical bills through Nov. 2001, and admitted she received some injuries in the fall, but contended she only sustained soft tissue injuries. Defense expert Dr. Kessler opined that the pltf did not have arachnoiditis and was not injured to any substantial degree in the fall. Defense further denied the fall accelerated pltf's arachnoiditis or shortened her life expectancy.

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**Publication: Cook County Jury Verdict Reporter Published: 2/17/2006**

**(XX 18/3) MEDICAL MALPR.—OCTOGENARIAN DIES FOUR MONTHS AFTER COLON RESECTION (120)**

Estate of Eleodora Bruno, deceased v St. Mary of Nazareth Hospital, Dr. David C. Chua, Dr. Joseph Danon, Dr. Nam Huh 01L-6562 (refiled from 96L-13091) Tried Oct. 31-Nov. 10, 2005

**Verdict:** Not Guilty v Dr. David Chua, Dr. Joseph Danon and Dr. Nam Huh; Directed Not Guilty v St. Mary of Nazareth Hospital.

**Judge:** John B. Grogan (IL Cook-Law)

**Pltf Atty(s):** Michael L. Blumenthal of Milton M. Blumenthal & Associates (Chicago, IL) DEMAND: none ASKED: \$2,300,000

**Deft Atty(s):** Ruth V. Enright of Baker & Enright (Chicago, IL) for St. Mary of Nazareth Hospital (CHRPP) ; R. Dennis Rasor of Anderson, Rasor & Partners (Chicago, IL) for Dr. David C. Chua (ISMIE) ; Stephen A. Kolodziej of Brenner, Ford, Monroe & Scott (Chicago, IL) for Dr. Joseph Danon (Frontier Insurance) ; John M. Stalmack, John J. Riewer of Bollinger, Ruberry & Garvey (Chicago, IL) for Dr. Nam Huh (Doctor's Company) OFFER: none

**Pltf Medl:** Dr. Rafael Pelegrin (Internist), Dr. Mohammed Siddiqui (General Surgeon), Dr. Shanti Siddiqui (Gastroenterologist)

**Pltf Expert(s):** Dr. Albert C. Beatty , 3 Blancoyd Rd., Merion Station, PA (215-242-0749) (General Surgeon)

**Deft Expert(s):** Dr. Jerrold L. Schwartz (Gastroenterologist) for Dr. David C. Chua Dr. Gary Gruber (Internist); Dr. Patrick Fahey (Pulmonologist) for Dr. Joseph Danon Dr. William Soper (General Surgeon) for Dr. Nam Huh

**Facts:**

Nov. 9, 1994, patient F-80 underwent a sigmoid colon resection with anastomosis and adhesiolysis to relieve her severe diverticulosis, colonic stricture (narrowing) and partial large bowel obstruction. The surgery was successful, but several days later the patient spiked a fever and developed a fungal blood infection and sepsis (of undetermined origin) two weeks postop. This resulted in the patient's hospitalization for four months, during which time her condition continually deteriorated and she died on March 5, 1995 (\$700,000+ medl. bills). Estate contended deft doctors failed to properly work up the patient, they should not have recommended and performed the resection surgery, the surgery was unnecessary because the diverticulosis was not severe enough to warrant surgery before first attempting other medical alternatives (such as stool softeners, laxatives and dietary restrictions), there was no partial colon obstruction, and surgery should not have been performed until a complete bowel obstruction was present. Hospital was sued only on an apparent agency theory, allegedly as the apparent principal of Dr. Danon, the patient's internist. Dr. Chua is a gastroenterologist and Dr. Huh is a general surgeon. Defense asserted appropriate medical alternatives were attempted with no relief of decedent's continuing bowel problems, her colon was reaching the point of near complete obstruction, the obstruction was not going to resolve but only worsen, and the patient was losing weight and was very uncomfortable. Defense further argued elective colon surgery is preferable from a patient outcome standpoint before a complete obstruction occurs because the risk of bowel perforation and contamination with fecal matter is lower in the elective situation. Hospital denied it was Dr. Danon's apparent agent, despite the fact his offices were located in the hospital.

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**Publication: Cook County Jury Verdict Reporter Published: 11/11/2005**

**(XX 4/5) MEDICAL MAL.--INFECTED DIALYSIS CATHETER CAUSED DEATH OF MOTHER OF FOUR (12H)**

Estate of Kimberly Ford, deceased v Estate of Dr. Gregory Hrynyszyn, deceased, Neomedica Dialysis Centers, Westlake Community Hospital 00L-8685 Tried Sep. 19-28, 2005

**Verdict:** Not Guilty v Dr. Gregory Hrynyszyn; Neomedica Dialysis Centers and Westlake Community Hospital dismissed after settling out during trial: Neomedica settled out for \$115,000 on the first day of trial and Westlake settled out for \$90,000 on the second day of trial.

**Judge:** Carol Pearce McCarthy (IL Cook-Law)

**Pltf Atty(s):** Larry R. Rogers, Sr., Brian LaCien of Power, Rogers & Smith (Chicago) DEMAND: \$4,000,000 ASKED: \$7,000,000

**Deft Atty(s):** Miguel A. Ruiz, Lawrence R. Stolberg of Pretzel & Stouffer (Chicago) for Estate of Dr. Gregory Hrynyszyn, deceased (ISMIE) OFFER: GH \$1,000,000 ; Stanley V. Boychuck of Swanson, Martin & Bell (Chicago, IL) for Neomedica Dialysis Centers ; Robert S. Baker of Baker & Enright (Chicago) for Westlake Community Hospital

**Pltf Expert(s):** Dr. Steven B. Yablon, 2 Crosfield Ave., #312, West Nyack, NY (845-358-2400) (Nephrologist)

**Deft Expert(s):** Dr. David Ginsburg (Nephrologist) for Estate of Dr. Gregory Hrynyszyn, deceased

**Facts:**

Patient F-35 died on Aug. 3, 1998, due to an infected perma-catheter used for dialysis (survived by four children). Deft Dr. Hrynyszyn was the patient's nephrologist. Estate contended Dr. Hrynyszyn was negligent in failing to timely prepare the patient for impending renal failure by failing to have an AV fistula or an AV graft placed in time to allow these devices to mature, so they could be used as soon as the patient required dialysis, causing the patient instead to have a perma-catheter installed for dialysis treatments. Estate maintained perma-catheters have an increased risk for infection as opposed to AV fistulas or grafts. Estate further alleged Dr. Hrynyszyn was also responsible for the negligent care of the patient during outpatient dialysis treatments at Neomedica and during the final hospitalization at Westlake, despite the fact he did not see the patient during the relevant period of time. Defense for Hrynyszyn argued the sole proximate cause of the patient's death was the negligence of others, based on pltf's expert's testimony on cross-examination that the patient would have survived if the other caregivers had done what was required of them at the time. Defense further asserted Dr. Hrynyszyn could not be charged as the attending physician or the responsible physician for care in which he did not participate. The defense did not call any expert regarding the standard of care; defense expert Dr. Ginsburg offered opinions only regarding the patient's life expectancy as a diabetic end-stage renal disease patient and on the issue of whether she was a candidate for liver transplantation surgery. Defense counsel for Hrynyszyn reports offering a \$250,000-\$2,000,000 high/low agreement just prior to closing arguments, which pltf rejected and countered with a high/low demand of \$2,500,000-\$5,000,000. Jury deliberated 4 hours.

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**Publication: Cook County Jury Verdict Reporter Published: 10/14/2005**

**(WW 52/12) MEDICAL MALPRACTICE--DELAY IN TRANSFUSING BLOOD BLAMED FOR DEATH (12F)**

Estate of Albert Fuchsen, deceased v Elmhurst Memorial Hospital, Dr. Robert S. Lapporte 01L-8899 Tried Aug. 16-26, 2005

**Verdict:** Not Guilty v both defts. However, Estate had entered into a \$150,000-\$700,000 high/low agreement with hospital and a \$100,000-\$700,000 high/low agreement with Dr. Lapporte.

**Judge:** Jennifer Duncan-Brice (IL Cook-Law)

**Pltf Atty(s):** William V. Saracco of William V. Saracco & Associates (Chicago, IL) DEMAND: \$2,000,000 total ASKED: \$2,000,000

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago) for Elmhurst Memorial Hospital (CHRPP) ; James M. Hofert, Linnea L. Schramm of Hinshaw & Culbertson (Chicago) for Dr. Robert S. Lapporte (ISMIE)

**Deft Medl:** Dr. Leslie Cheng (Internist), Dr. Mohamed Sait for both defts

**Pltf Expert(s):** Dr. Gary B. Harris (Emergency Medicine); Dr. Stephen T. Hubbard of University of Washington, 4490 Eagle Harbor Dr. NE, Bainbridge Island, WA (206-855-8132) (Cardiologist); Debra Krejci, R.N., Hobart, IN (219-947-6202) (Nursing); Brian P. Sullivan, Ph.D. of Center for Forensic Economic Studies, 1608 Walnut St., 8th fl., Philadelphia, PA (215-546-5600) (Economist)

**Deft Expert(s):** Dr. John J. Flaherty (Emergency Medicine); Laurie Carroll, R.N. (Nurse, Emergency Room); Dr. Michael Heniff, 12255 S. 80th Ave., Palos Heights, IL (708-448-1400) (Pulmonologist) for Elmhurst Memorial Hospital Dr. John Ortinau (Emergency Medicine); Dr. Dan J. Fintel (Cardiologist) for Dr. Robert S. Lapporte

#### **Facts:**

Sept. 18, 2000, patient M-62 presented to Elmhurst Memorial Hospital's emergency room at 1:10 p.m. with a history of black tarry stools for 4 days. Estate contended defts failed to timely administer blood and proper treatment to patient suffering from gastrointestinal bleeding. Blood was not infused until 4:12 p.m., and patient suffered myocardial infarction at 4:30 p.m. while still in the emergency department. He eventually died from multi-system organ failure, sepsis and DIC on Oct. 6, 2000, survived by wife and 6 adult children (\$181,000 medl., \$380,000 LT as hobby shop owner). Defense denied any negligence and maintained E/R doctor Lapporte and hospital nurse were not informed of patient's low hemoglobin level (3.9) until 3:30 p.m due to lab computers being down and a clotted specimen. Defense argued patient contributed to his own injuries by not seeking treatment earlier and by not following physician instructions regarding medication, and his condition was not salvageable by the time he came to the hospital.

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**Publication: Cook County Jury Verdict Reporter Published: 10/14/2005**

**(WW 52/16) MEDICAL MALPRACTICE--INADEQUATE MONITORING BLAMED FOR DEATH (12S)**

Estate of Richard M. Papaleo, deceased v Northwest Community Hospital 03L-3469 (refiled from 98L-14531) Tried Aug. 1-12, 2005

**Verdict:** Not Guilty

**Judge:** Robert E. Gordon (IL Cook-Law)

**Pltf Atty(s):** Robert W. Karr, Christine A. Coffman of Robert W. Karr & Associates (Chicago) DEMAND: none ASKED: \$2,100,000

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago) (CHRPP) OFFER: none

**Pltf Medl:** Dr. Aldo Fusaro (Pathologist), Carla Cunningham (Speech Pathologist), Karen Cutler, R.N. (Nursing), Amy Lynn Lancaster, R.N. (Nursing), Teresita Balausy, R.N. (Nursing), Susan Neu, R.N. (Nursing), Paula Polston, R.N. (Nursing), Teresa Erickson, R.N. (Nursing)

**Deft Medl:** Dr. Alan Loren (Trauma Surgeon)

**Pltf Expert(s):** Lisa A. Edwards, R.N., 3636 S. Alameda, Corpus Christi, TX (361-548-5976) (Nursing); Dr. Thomas L. Petty, 899 Logan St., Denver, CO (303-996-0868) (Pulmonologist)

**Deft Expert(s):** Dr. David Ginsburg (Internist); Dr. W. Bruce Ketel (Neurologist); Theresa D. Annis, R.N. of Elmhurst Memorial Hospital, 200 N. Berteau Ave., Elmhurst, IL (630-833-1400) (Nursing)

**Facts:**

March 30, 1998, Richard Papaleo was found in the middle of the street with head trauma after having apparently fallen from a bicycle, and he was brought via ambulance to the emergency room at Northwest Community Hospital. He underwent several surgeries for his brain injury, skull fracture and other orthopedic injuries. He was kept in ICU until April 9, 1998, when he was transferred to a general floor. Patient M-51 had difficulty swallowing and clearing his throat, physicians ordered placement of feeding tubes to supplement oral feeding, and on April 10 and 11 the nursing staff attempted to place the tubes without success. On April 11, patient was noted to have secretions and a productive cough, and the nursing staff had difficulty suctioning the patient to remove secretions. That afternoon, he suffered cardiac arrest and respiratory arrest and was not able to be resuscitated (survived by wife and adult child). Estate contended the nursing staff failed to properly monitor patient's condition when he required constant monitoring, failed to notify physicians they were unable to adequately suction patient or keep his airway open, and failed to take appropriate measures to prevent the arrest and death. Defense argued patient had a sitter 24 hours a day and no treating healthcare provider found he had any difficulty in breathing or with his airway process. Defense asserted patient was subject to seizures and his death was due to Sudden Death in Epilepsy, which caused an autonomic change in his brain to occur resulting in the arrest, and he died unexpectedly without any negligence by the hospital or nurses.

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**Publication: Cook County Jury Verdict Reporter Published: 7/8/2005**

**(WW 39/3) PREMISES LIABILITY--WOMAN BREAKS ANKLE IN HOSPITAL PARKING LOT (8)**

Abby Alfaro Garcia v Swedish Covenant Hospital 03L-273 Tried May 9-11, 2005

**Verdict:** Not Guilty

**Judge:** Richard B. Berland (IL Cook-Law)

**Pltf Atty(s):** Joseph G. Haffner DEMAND: none ASKED: \$165,000

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago) (CHRPP) OFFER: none

**Pltf Medl:** Dr. Edward Forman, D.O. (Orthopedist)

**Facts:**

Jan. 13, 2001, pltf F-32 claimed she slipped and fell on an unnatural accumulation of ice in deft's parking lot, causing a fractured ankle (\$37,115 medl., \$3,000 LT 6 weeks as HMO eligibility coordinator). Defense contended pltf's fall was due to frost on the ground which was a natural occurrence.

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**Publication: Illinois Jury Verdict Reporter Published: 6/15/2004**

**(04 My/1) MEDICAL MALPRACTICE--AORTIC ANEURYSM PATIENT DIES WHILE ON DIALYSIS (12H)**

Estate of Marilyn Crawford, deceased v Sherman Hospital, Dr. May Chow, Dr. Mohammad Zahid 01L-192 Tried Apr. 30-May 13, 2004

**Verdict:** Not Guilty v all defts **Special Interrogatory:** Was decedent's pre-existing condition the sole proximate cause of her death? "Yes."

**Judge:** F. Keith Brown (IL, Kane 16th Jud Cir)

**Pltf Atty(s):** Theodore C. Jennings of James T. Ball Ltd. (Chicago, IL) DEMAND: \$450,000 ASKED: \$8,000,000

**Deflt Atty(s):** Ruth V. Enright of Baker & Enright (Chicago, IL) for Sherman Hospital (CHRP) OFFER: none ; Louis A. Varchetto, Marcelline DeFalco of Mulherin, Rehfeldt & Varchetto (Wheaton, IL) for Dr. May Chow (ISMIE) OFFER: none ; Brian J. Hickey, Jennifer A. Bollow of Cassidy, Schade & Gloor (Naperville, IL) for Dr. Mohammad Zahid (ISMIE) OFFER: none

**Deflt Medl:** Dr. William Craig Thatcher (Thoracic Surgeon) for all defts

**Pltf Expert(s):** Dr. Jay Schapira (Cardiologist); Dr. James Alan Shayman (Nephrologist)

**Deflt Expert(s):** Dr. Alan Kadish (Cardiologist); Dr. David Ginsburg (Nephrologist) for Sherman Hospital Dr. George Martin Mullen, Jr. of Cardiovascular Associates, Alexian Brothers Medical, 701 Biesterfield Rd., Elk Grove Village, IL (847-981-3680) (Cardiologist); Dr. David J. Leehey of Loyola University Hospital, 2160 S. First Ave., Maywood, IL (708-216-3306) (Nephrologist) for Dr. Mohammad Zahid

**Facts:**

March 2, 1998, F-62 underwent grafting of her abdominal aorta aneurysm and a bypass of her right renal artery at Sherman Hospital in Elgin. She had a history of severe atherosclerosis that was the primary cause of her aortic aneurysm, 100% occlusion of her right renal artery with significant kidney shrinkage, and at least 60% blockage of two main coronary arteries. Hypertension and smoking also aggravated the atherosclerosis. After surgery patient experienced acute kidney failure. She underwent dialysis on several occasions and during dialysis treatment on March 11, she sustained a massive heart attack and died despite initial resuscitation. Experts for decedent testified too much fluid was removed too quickly, which caused her blood pressure to drop and led to cardiac ischemia and the massive heart attack. Defense for all defts argued patient's demise was the result of her pre-existing illnesses. Defense reported the amount of fluid to be removed from patient was allegedly reduced by Dr. Zahid in the medical orders after patient died.

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**Publication: Cook County Jury Verdict Reporter Published: 6/4/2004**

**(VV 34/5) PREMISES LIABILITY--SENIOR FALLS IN HOSPITAL PARKING LOT (8)**

Elizabeth Reynolds v Swedish Covenant Hospital 00L-14121 Tried Mar. 18-24, 2004

**Verdict:** Not Guilty (Special Interrogatories: Did deft know or should it have known that the condition in the parking lot presented an unreasonable risk of harm? "No." Did the condition in the parking lot present an unreasonable risk of harm? "No.")

**Judge:** James P. McCarthy (IL Cook-Law)

**Pltf Atty(s):** Todd Klein of Conway & Chiaviello (Chicago) DEMAND: \$100,000 ASKED: \$130,000

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago) (CHRPP) OFFER: none

**Pltf Medl:** Dr. David Raab (Orthopedist)

**Facts:**

Dec. 17, 1999, pltf F-65 was walking to her car parked in Swedish Covenant Hospital's Professional Plaza parking lot when she allegedly stepped on a piece of broken concrete in the lot and fell, suffering aggravation of a torn rotator cuff (\$21,213 medl. bills). Pltf retiree was accompanying her husband who was receiving treatment for head trauma after falling on ice. Defense contended pltf slipped and fell on ice, which is what she told medical personnel 2 days and 4 days after occurrence.

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**Publication: Cook County Jury Verdict Reporter Published: 5/7/2004**

**(VV 30/5) MED. MAL.--DEATH ONLY HOURS AFTER RELEASE FROM EMERGENCY ROOM (12H)**

Estate of Beckie Clark, deceased v St. Francis Hospital (Blue Island), Dr. Bruce C. Johnson, Bruce Johnson M.D. S.C., Critical Care Ltd. 99L-14535 Tried Jan. 28-Feb. 6, 2004

**Verdict:** Deadlocked v Johnson and Critical Care; Directed Not Guilty v St. Francis Hospital. Jury was reportedly hung 7-5 in favor of pltf.

**Judge:** Jennifer Duncan-Brice (IL Cook-Law)

**Pltf Atty(s):** Stephen M. Passen, John J. Driscoll of Stephen M. Passen Ltd. (Chicago) DEMAND: \$2,000,000 ASKED: \$4,500,000

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago) for St. Francis Hospital (Blue Island) (Self-Insured) OFFER: SFH(I \$25,000 ; Brian T. Henry of Pretzel & Stouffer (Chicago) for Johnson, Bruce Johnson M.D. S.C. (ISMIE) OFFER: BCJ \$100,000 ; Mark M. Burden of Donohue, Brown, Mathewson & Smyth (Chicago) for Critical Care Ltd. (ISMIE)

**Pltf Expert(s):** Dr. John J. Shufeldt, Jr., Phoenix, AZ (520-426-6368) (Emergency Medicine); Dr. Jay Alexander (Cardiologist)

**Deft Expert(s):** Dr. John Ortinau (Emergency Medicine); Dr. Joseph V. Messer (Cardiologist) for St. Francis Hospital (Blue Island), Johnson, Bruce Johnson M.D. S.C., Critical Care Ltd.

**Facts:**

May 4, 1998, patient F-58 came to the emergency room at St. Francis in the middle of the night with complaints of shortness of breath and orthopnea. Deft E/R physician Johnson diagnosed mild congestive heart failure and discharged her. Clark died in her sleep hours later of a presumed arrhythmia (no autopsy was done). Estate alleged Dr. Johnson was negligent for not admitting patient for new onset congestive heart failure, and contended Johnson was an agent of Critical Care and apparent agent of hospital. Allegations of nursing negligence were stricken pursuant to Sullivan v Edward. Defense argued that patient had chronic congestive heart failure, not new onset.

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**Publication: Cook County Jury Verdict Reporter Published: 4/16/2004**

**(VV 27/3) MEDICAL MALPRACTICE--APPARENT AGENCY CLAIMED IN MISSED APPENDICITIS (12F)**

Myrna Torres v Holy Cross Hospital, Chicago Osteopathic Practice Plan 01L-66 (refiled from 94L-6613) Tried Jan. 15-28, 2004

**Verdict:** Not Guilty v Holy Cross Hospital; Chicago Osteopathic Dismissed immediately before opening arguments after settling out for \$35,000. Special Interrogatory: Did pltf's mother know or should she have known that Edgardo Correa M.D. was not an employee or agent of Holy Cross Hospital? "Yes."

**Judge:** Carol Pearce McCarthy (IL Cook-Law)

**Pltf Atty(s):** Robert A. Strelecky of Clifford Law Offices (Chicago) DEMAND: \$1,200,000 ASKED: \$5,000,000

**Deft Atty(s):** Ruth V. Enright of Baker & Enright (Chicago) for Holy Cross Hospital (CHRPP) OFFER: HCH \$250,000 ; D. Scott Rendleman of Pretzel & Stouffer (Chicago) for Chicago Osteopathic Practice Plan (Illinois Guaranty Fund)

**Deft Medl:** Dr. Charles Spencer (Pediatrician) for Holy Cross Hospital

**Pltf Expert(s):** Dr. Thomas Zizic (Rheumatologist); Dr. John J. Flaherty (Pediatric Emergency Medicine); Dr. Kenneth Bennett (General Surgeon)

**Deft Expert(s):** Dr. Ross E. Petty of University of British Columbia, Children's Hospital, 4480 Oak St., Rm 1A19, Vancouver, BC, Canada V6M3V4 (604-875-3678) (Pediatric Rheumatology); Dr. James Mathews (Emergency Medicine); Dr. Daniel Deziel (General Surgeon) for Holy Cross Hospital

**Facts:**

Aug. 22, 1991, pltf F-17 was brought to Holy Cross Hospital's emergency room at 9:30 p.m. with complaints of nausea, vomiting and mid-epigastric pain. After waiting two hours to be seen in the busy E/R, pltf was examined by Dr. Edgardo Correa, who discharged her several hours later with an incorrect diagnosis of gastritis. Dr. Correa had failed his board certification exams several times before finally passing in 2001. Pltf claimed Dr. Correa examined her only once, never performed any follow-up exams as required by the standard of care, failed to appreciate the significance of lab results including elevated white blood count, misread white blood count as a slightly low 4.1 rather than its actual level of 14.1, improperly administered medications which masked pain complaints, and failed to diagnose her appendicitis. Pltf returned to Holy Cross Hospital's E/R on Aug. 24 and was diagnosed with a ruptured appendix which was gangrenous. Prior to her discharge from the hospital, pltf began to exhibit signs of arthritis in her knee. Pltf subsequently developed severe, debilitating and permanent arthritis in all of her major joints, which pltf's expert opined was a reactive arthritis caused by the severe infection and peritonitis stemming from the burst appendix. Pltf, who is now a teacher, requires medications which carry significant risks, her activities are severely curtailed, she will require hip and knee replacements in the near future (as well as possibly other joints), she is at increased risk of bowel adhesions, and her chances of conceiving a child are decreased (efforts at which have been unsuccessful for 2.5 years). Pltf voluntarily dismissed Dr. Correa and his employer Emergency Medical Associates of Illinois P.C. shortly before trial because their carrier was in bankruptcy. Chicago Osteopath was sued for alleged actual agency and Holy Cross Hospital was sued on theory of apparent agency. Hospital contended that the consent form signed by pltf's mother advised that the emergency physicians were not employees or agents of the hospital. Defense argued that pltf's appendicitis was at such an early stage when she first came to the E/R that her complaints of pain had not yet localized to the right lower quadrant of her abdomen, which is the classic indicator of appendicitis, and therefore the diagnosis of gastritis was within the standard of care even though it was clearly wrong in retrospect. Defense further asserted that either the pltf was contributorily negligent in failing to advise her parents of her worsening symptoms after she was discharged, or, if she did tell parents, the sole proximate cause of her injuries was her parents' failure to return her to the E/R as instructed so the appendix could have been removed before it ruptured. Defense expert Dr. Petty, the author of the only internationally recognized textbook for the past 15 years on pediatric arthritis, opined that there is no scientifically acceptable evidence that a ruptured appendix can cause arthritis, pointing to only two prior reported cases in the world with any possible connection between the two. Defense did not dispute severity of pltf's arthritis or future care. Post-trial motions are pending.



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**Publication: Cook County Jury Verdict Reporter Published: 10/24/2003**

**(VV 2/2) MEDICAL MALPR.—SURGERY CAUSED UNDETECTED STOMACH PERFORATION (120)**

Estate of Eloise Warren, deceased v Dr. Kenneth Anderson, III, Dr. Judith Keddington, SSM Health Care Corp., d/b/a St. Francis Hospital (Blue Island) 00L-2059 Tried Aug. 19-Sep. 3, 2003

**Verdict:** Not Guilty v Dr. Anderson and Dr. Keddington; Directed Not Guilty v St. Francis Hospital.

**Judge:** Donald M. Devlin (IL Cook-Law)

**Pltf Atty(s):** Larry R. Rogers, Sr., Sean M. Houlihan of Power, Rogers & Smith (Chicago) DEMAND: \$2,000,000 policy ASKED: \$13,000,000

**Deft Atty(s):** Mark J. Lura, William D. Nolen of Anderson, Bennett & Partners (Chicago) for Dr. Kenneth Anderson, III (ISMIS) ; John G. Langhenry, III, John P. Palumbo of Mangan, Langhenry, Gillen & Lundquist (Chicago) for Dr. Judith Keddington (ISMIE) ; Ruth V. Enright of Baker & Enright (Chicago) for SSM Health Care Corp., St. Francis Hospital (Blue Island) (Self-Insured,Self-Insured) OFFER: none

**Pltf Medl:** Dr. Shaku Teas (Pathologist), Dr. Margaret Dickerson (Radiologist), Dr. Yong Kyu Choe (Radiologist), James Ulaszek, R.N. (Nursing)

**Deft Medl:** Dr. George Prackup (Radiologist) for Anderson, Keddington

**Pltf Expert(s):** Dr. Stuart Gourlay , 1430 Tara Hills Dr., Suite D, Pinole, CA (510-724-5714) (General Surgeon)

**Deft Expert(s):** Dr. Robert Fitzgibbons , 601 N. 30th St., Omaha, NE (402-280-4503) (General Surgeon) for Anderson, Keddington

**Facts:**

April 26, 1999, Eloise Warren, who suffered from gastroesophageal reflux disease, underwent a laparoscopic Nissen fundoplication procedure performed by deft surgeons to strengthen the valve between the esophagus and stomach and prevent reflux. Patients are typically discharged from the hospital after 23 hours observation following the procedure, but F-54 Warren developed severe subcutaneous emphysema, pneumomediastinum and abdominal pain which pltf alleged was a sign of a perforated viscus and necessitated immediate surgical exploration for the perforation. Pltf further contended that deft surgeons merely had an esophagram done to rule out a perforation, but breached the standard of care by not doing a complete upper GI of the stomach and esophagus because a perforation is equally as likely to be in the stomach. Perforation of the stomach was diagnosed eleven days postop when patient's symptoms drastically worsened and an upper GI was completed. Estate argued that much of Warren's pain was masked by 27 Darvocet injections and steroids over the course of the hospitalization, which should have alerted defts that the continuous pain was suggestive of a perforation. Defts performed surgery to repair the perforation on May 7, but patient suffered cardiopulmonary arrest on May 9 causing anoxic encephalopathy, and died on May 10, 1999, of alleged sepsis and multi-organ failure (survived by mother and six siblings). Estate maintained that the ongoing infection and deterioration after defts' failure to diagnose the perforation caused the patient's death. Defense asserted that the cause of the subcutaneous emphysema was inconclusive, perforated viscus was always part of the differential diagnosis but the clinical picture and diagnostic tests did not warrant immediate surgical intervention, and death was due to a tension pneumothorax which occurred while patient was on a ventilator following the second surgery to repair the perforation. Parties disagreed as to whether the tension pneumothorax caused the arrest or the arrest caused the pneumothorax. Pathologist testified cause of death was peritonitis and not tension pneumothorax. Hospital was sued as apparent agent of deft surgeons but received directed verdict after pltf's case-in-chief. Note: For a summary of subsequent appellate action regarding this case, see the Jury Verdict Reporter's Appellate Review of Damages publication at 8 ARD 79.

**Publication: Cook County Jury Verdict Reporter Published: 9/26/2003**

**(UU 50/2) MEDICAL MALPR.--FLESH-EATING BACTERIA LEAVES OPEN ABDOMINAL HOLE (120)**

Lydia Aguirre v Dr. Ramesh P. Rao, Norwegian American Hospital 99L-14607 Tried Jun. 30-Jul. 21, 2003

**Verdict:** \$3,413,032 v Dr. Rao (\$1,444,000 pain & suffering; \$624,000 loss of normal life; \$500,000 disfigurement; \$485,032 past medical); Not Guilty v Norwegian American Hospital. However, Dr. Rao, whose policy limit is \$1,000,000, had entered into a \$950,000-\$1,000,000 high/low agreement during trial.

**Judge:** Thomas E. Flanagan (IL Cook-Law)

**Pltf Atty(s):** Lorna E. Propes, Elizabeth A. Kaveny of Propes & Kaveny (Chicago) DEMAND: \$10,000,000 ASKED: \$5,085,032

**Deft Atty(s):** Robert M. Collins of Bollinger, Ruberry & Garvey (Chicago) for Dr. Ramesh P. Rao (ISMIE) OFFER: RPR \$1,000,000 policy ; Robert S. Baker of Baker & Enright (Chicago) for Norwegian American Hospital (CHRPP) OFFER: none

**Pltf Medl:** Dr. William Scott Helton (General Surgeon), Dr. Mimis Cohen (Plastic Surgeon), Dr. Richard Baum, Dr. Matilde Rios (Internist)

**Pltf Expert(s):** Dr.Francis Barnes (General Surgeon); Dr.Fred A. Zar (Infectious Disease)

**Deft Expert(s):** Dr.Richard Jorgensen (General Surgeon); Dr.John P. Flaherty (Infectious Disease) for Dr. Ramesh P. Rao Dr.Keith Millikan (General Surgeon) for Norwegian American Hospital

**Facts:**

Pltf F-31, who had a history of diabetes, hypothyroidism and brain surgery for removal of pituitary tumor, was under the care of Dr. Matilde Rios, an internist. Rios diagnosed gallbladder disease and referred pltf to Norwegian American Hospital for surgery by Dr. Rao. On Aug. 21, 1998, the fourth day of hospitalization, general surgeon Rao performed a laparoscopic cholecystectomy to remove pltf's gallbladder. Four days later, pltf's bilirubin elevated and Dr. Rao and Dr. Rios suspected a retained stone in the common bile duct. An ERCP could not be performed, and the 318-lb pltf could not fit into the hospital's CAT scanner, so she was transferred to UIC Hospital. At UIC, Dr. Helton performed surgery and opined that Dr. Rao had removed pltf's common bile duct, common hepatic duct, and the bifurcation of her left and right hepatic ducts. Pltf's biliary tree was repaired, but she developed necrotizing fasciitis (flesh-eating bacteria), which resulted in the removal of most of her abdominal muscles and left her with a gaping abdominal hole covered only by scar tissue. Three subsequent plastic surgeries by Dr. Mimis Cohen failed to successfully close the wound, and Dr. Cohen will not perform any additional surgeries unless the pltf loses 40 to 50 pounds. The only theory against Norwegian American Hospital was apparent agency. Dr. Rios was originally a deft in this suit, but she was diagnosed with breast cancer and began chemotherapy two months before trial; when Rios moved to continue trial, pltf voluntarily dismissed her. Defense called surgical experts who contended that the patient had abnormal anatomy which caused the injury.

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**Publication: Cook County Jury Verdict Reporter Published: 6/20/2003**

**(UU 36/6) MEDICAL MALPR.--HOSPITAL DENIES MISREAD PAP SMEAR LED TO DEATH (12C)**

Estate of Khana Beryozkina, deceased v Swedish Covenant Hospital 00L-8907 Tried May 13-21, 2003

**Verdict:** Not Guilty

**Judge:** John E. Morrissey (IL Cook-Law)

**Pltf Atty(s):** James T. Ball of James T. Ball Ltd. (Chicago) DEMAND: \$2,900,000 ASKED: \$4,000,300

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago) (CHRPP) OFFER: none

**Pltf Medl:** Dr. Albert Saporta (Gastroenterologist)

**Deft Medl:** Dr. Yuri Cherny (Family Practice), Dr. Morteza Dini (Ob/Gyn)

**Pltf Expert(s):** Dr. Barry L. Singer (Oncologist)

**Deft Expert(s):** Dr. James R. Dolan (Ob/Gyn); Dr. Jack C. Olson of Rush-Presb.-St.Luke's Hospital, 1725 W. Harrison #319, Chicago, IL (312-942-7030) (Geriatrics)

**Facts:**

May 25, 1997, a technician employee of Swedish Covenant Hospital misread a pap smear from 70-year-old patient as normal. A subsequent pap smear on July 31, 1998, showed CIN III precancerous cells, which led to the re-read of the May 1997 slide which also revealed CIN III. Patient was never told of the misread slide by her physician, and she refused a hysterectomy until she became symptomatic, at which time cancer was discovered in her ovaries, uterus, fallopian tubes and omentum, but not in the cervix. Patient died at age 72 from pulmonary embolus after surgery and chemotherapy (\$300,000 medl. bills); estate claimed loss of chance of survival. Hospital admitted negligence in the original reading of the 1997 pap smear, but denied causation, arguing that ovarian cancer is unrelated to cervical cancer and that pap smears screen only for cervical cancer.

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**Publication: Cook County Jury Verdict Reporter Published: 4/12/2002**

**(TT 26/2) MEDICAL MALPRACTICE--INJECTION BLAMED FOR SCIATIC NERVE PROBLEMS (12D)**

Dwayne Jones v Alexian Brothers Hospital, Mary Gans, R.N. 98L-10152 Tried Feb. 5-13, 2002

**Verdict:** \$1,493,790 v both defts (\$500,000 disability; \$450,000 past and future pain & suffering; \$355,790 past and future medical expenses; \$188,000 past and future LT; \$0 disfigurement)

**Judge:** Cheryl A. Starks (IL Cook-Law)

**Pltf Atty(s):** David J. Heyer DEMAND: \$1,500,000 ASKED: \$1,690,000

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago) for both defts (CHRPP; CNA) OFFER: \$200,000 total

**Pltf Medl:** Dr. Jules Koveleski (Neurologist), Dr. Louis Pupillo (Neurosurgeon), Dr. Robert Levy (Neurosurgeon)

**Pltf Expert(s):** Linda Winterer, R.N., 1718 Sutton, Schaumburg, IL (847-884-1708) (Nursing)

**Deft Expert(s):** Dawn Wujcik, R.N. (Nursing); Dr. W. Bruce Ketel (Neurologist) for both defts

**Facts:**

Pltf received an intramuscular injection of Demerol into his buttocks on Feb. 4, 1997, while he was hospitalized for a kidney stone. Pltf claimed that Nurse Gans improperly injected the shot too close to his sciatic nerve; no direct contact to the nerve was alleged. Pltf M-52 claimed he immediately experienced a burning sensation in his left leg, which developed into chronic leg and buttock pain, due to irritation of the sciatic nerve. Pltf eventually required implantation of a peripheral nerve stimulator; the implant allows him to live pain-free but requires outpatient battery replacements every 1.5 to 2 years (\$58,790 past medl., \$188,000 LT as truck driver). Wife's consortium claim was dropped during trial. Defense contended that pltf's first symptom did not appear for over four hours, pltf suffered a rare complication from a properly performed necessary medical treatment, and it was unlikely that the 1.5-inch needle could have come anywhere close enough to the sciatic nerve to cause irritation. Defense further argued that if pltf sustained any sciatic nerve damage, it was a result of his pre-existing propensity for nerve injuries; pltf had pre-existing carpal tunnel syndrome in both hands, neuropathies in both elbows, and an uncontrollable head tremor which shook throughout the trial.

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**Publication: Illinois Jury Verdict Reporter Published: 3/15/2001**

**(01 F/7) MEDICAL MALPRACTICE—VEIN LACERATED DURING OVARIAN CYST SURGERY (12L)**

Marcia Wallin v Dr. William E. Woods, Victory Memorial Hospital 98L-598 Tried Feb. 20-23, 2001

**Verdict:** Not Guilty v both depts

**Judge:** Barbara Gilleran Johnson (IL, Lake 19th Jud Cir)

**Pltf Atty(s):** Eric A. Krumdick, Francis P. Kasbohm of Fraterrigo, Beranek, Feiereisel & Kasbohm (Chicago) DEMAND: \$350,000 ASKED: \$362,255

**Deft Atty(s):** Tom E. Rausch of Campion, Curran, Rausch, Gummerson & Dunlop (Crystal Lake, IL) for Dr. William E. Woods (ISMIE) OFFER: none ; Ruth V. Enright of Baker & Enright (Chicago, IL) for Victory Memorial Hospital (CHRPP) OFFER: none

**Deft Medl:** Dr. Timothy J. Ryan (Vascular Surgeon), Dr. Ahmad Nejat (General Surgeon), Gloria Maduro, R.N. for both depts

**Pltf Expert(s):** Dr. Richard M. Soderstrom , 1101 Madison St., #580, Seattle, WA (206-622-0349) (Ob/Gyn)

**Deft Expert(s):** Dr. Fred Duboe (Ob/Gyn) for Dr. William E. Woods Dr. James J. Smith , 121 S. Wilke Road, #515, Arlington Heights, IL (847-259-4122) (Ob/Gyn) for Victory Memorial Hospital

**Facts:**

On April 12, 1997, pltf F-16 went to Victory Memorial Hospital in Waukegan suffering from acute abdominal pain and was diagnosed with a left ovarian cyst. Deft Woods attempted laparoscopic surgery but had to perform an open laparotomy when he lacerated completely through the inferior vena cava upon insertion of the trocar. The surgery resulted in a long midline scar from the pubic bone to her navel, preventing pltf from wearing a bikini and other clothes she liked to wear. She spent four days in intensive care and also developed a bowel obstruction (ileus) (\$29,000 medl. bills). The defense argued that perforation of the vena cava was a rare but known risk of the procedure and was promptly recognized and repaired. Deft hospital denied agency claim and defended the actions of Dr. Woods. The pltf's expert, obstetrician Dr. Soderstrom, testified that the proper angle of introduction of the trocar is 45 degrees into the peritoneum. If such an angle is used, Dr. Soderstrom claimed, it is impossible to perforate the vena cava. Soderstrom surmised that deft Woods inserted the trocar at a 75 degree angle. Defense asserted the proper angle of introduction is anywhere between 45 and 90 degrees.

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**Publication: Cook County Jury Verdict Reporter Published: 2/23/2001**

**(SS 19/9) MED. MAL.--HEMORRHAGE, COLON LOSS FOLLOW AORTO-BIFEMORAL BYPASS (12H)**

Harrison Tyler, Clovise Tyler v Dr. Elizabeth T. Clark, Catholic Health Partners, d/b/a Columbus Hospital 97L-2998 Tried Nov. 27-Dec. 7, 2000

**Verdict:** Not Guilty to Harrison v Clark; Not Guilty to Clovise v Clark (on her consortium claim); after Columbus Hospital settled out during trial for \$20,000. Dr. Clark and pltfs agreed to a \$1,000,000/\$100,000 high-low arrangement during jury deliberations.

**Judge:** Bill Taylor (IL Cook-Law)

**Pltf Atty(s):** David E. Rapoport, Paul D. Richter of Rapoport Law Offices (Rosemont) for both pltfs DEMAND: HT \$1,000,000 policy ASKED: HT \$1,800,000, CT \$250,000

**Deft Atty(s):** Roger Littman of Querrey & Harrow (Chicago) for Dr. Elizabeth T. Clark (ISMIE) OFFER: none ; Robert S. Baker of Baker & Enright (Chicago) for Catholic Health Partners, Columbus Hospital (CHRPP, CHRPP)

**Deft Medl:** Dr. Robert W. Hedger (Nephrologist), Dr. Julian Zinder (Internist), Dr. Michael J. Stewart (Internist), Dr. Suresh Amble (Radiologist) for Dr. Elizabeth T. Clark

**Pltf Expert(s):** Dr. Horst Filtzer, 1493 Cambridge St. Suite 781, Cambridge, MA (617-665-1801) (Vascular Surgeon) for Harrison Tyler

**Deft Expert(s):** Dr. Fred Littooy. (Vascular Surgeon) for Dr. Elizabeth T. Clark

**Facts:**

September 28, 1995 Harrison Tyler (64) underwent an aorto-bifemoral bypass graft procedure, performed by vascular surgeon Dr. Elizabeth Clark at Columbus Hospital. Post-op bleeding led to hypotension, 1-month coma, additional surgery, and other complications that necessitated a 100-day hospital stay (\$135,000 medl. expense). Despite multiple colonoscopies and further bypass surgery, his colon was lost. His wife, Clovise (60) cites loss of consortium. Pltfs claimed that Harrison (who was on dialysis due to chronic renal failure) was not an appropriate candidate for aorto-bifemoral bypass surgery, and alleged that the inferior mesenteric artery had been injured during the procedure. Columbus Hospital settled out following pltfs' expert testimony. Dr. Clark (36) insisted that the standard of care was met, and that Harrison had experienced recognized complications. Dr. Clark also contended that Harrison's colon loss was inevitable due to his advancing atherosclerosis.

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**Publication: Cook County Jury Verdict Reporter Published: 11/24/2000**

**(SS 6/4) MED. MAL.--NEW MOM FAINTS WHILE VISITING SON IN HOSPITAL NURSERY (12S)**

Marie Woolsoncroft v Northwest Community Hospital 97L-3704 (formerly 91L-5566) Tried Sep. 27-Oct. 5, 2000

**Verdict:** Not Guilty

**Judge:** Richard J. Elrod (IL Cook-Law)

**Pltf Atty(s):** Andrew T. Staes, James A. Murphy of Cole & Staes (Chicago) DEMAND: \$125,000 ASKED: \$1,290,000

**Deft Atty(s):** Robert S. Baker of Baker & Enright (Chicago) (CHRPP) OFFER: none

**Pltf Medl:** Dr. Howard Freedberg (Orthopedist)

**Deft Medl:** Dr. Carl D. Cucco (Ob/Gyn)

**Pltf Expert(s):** Vivianne Dawkins, R.N. of Cook County Hospital, 1835 W. Harrison, Chicago, IL (312-633-6000) (Nurse, Obstetric)

**Deft Expert(s):** Dr. Elizabeth Nye, 500 N. Michigan #1046, Chicago, IL (312-670-2530) (Ob/Gyn); Kathleen DiDominicis, R.N. of Palos Community Hospital, 12255 S. 80th Ave., Palos Heights, IL (708-923-4000) (Nurse, Obstetric)

**Facts:**

April 17, 1990, fifteen hours after the delivery of her first child, pltf walked to the hospital nursery to see her newborn son, where she fainted. Pltf F-34 sustained a spiral fracture of her right ankle (\$18,000 medl. bills). Pltf contended that the nurses were negligent for allowing her to go to the nursery without assistance, failing to monitor her food intake, and failing to otherwise appreciate that she was at a high risk for falling. Defense contended that no one could predict that pltf would faint at the nursery.

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**Publication: Cook County Jury Verdict Reporter Published: 12/1/2000**

**(SS 7/4) MEDICAL MAL.--COLONOSCOPY BOWEL PUNCTURE NOT FOUND UNTIL NEXT DAY (120)**

Margaret Fuesel v Dr. Adrienne L. Fregia, Dr. Charlene A. Sennett, St. Francis Hospital & Health Center (Blue Island) 96L-10687  
 Tried Sep. 6-18, 2000

**Verdict:** \$199,155 v Dr. Fregia (\$150,000 pain & suffering; \$43,322 medical; \$5,833 LT; \$0 disability and disfigurement); Not Guilty v Dr. Sennett and St. Francis Hospital.

**Judge:** Carol Pearce McCarthy (IL Cook-Law)

**Pltf Atty(s):** John F. Winters, Jr., Daniel E. O'Brien of Winters, Enright, Salzetta & O'Brien (Chicago) DEMAND: \$325,000  
 ASKED: \$1,449,155

**Deft Atty(s):** Julie A. Ramson of McKenna, Storer, Rowe, White & Farrug (Chicago) for Dr. Adrienne L. Fregia (ISMIS) OFFER: none ; John G. Langhenry, III, Henry F. McRoberts of Mangan, Langhenry, Gillen & Lundquist (Chicago) for Dr. Charlene A. Sennett (ISMIS) OFFER: none ; Ruth V. Enright of Baker & Enright (Chicago) for St. Francis Hospital & Health Center (Blue Island) (Self-Insured) OFFER: none

**Pltf Medl:** Dr. Donald Gerry (Family Practice)

**Pltf Expert(s):** Dr. Mick Meiselman (Gastroenterologist); Dr. Richard M. Gore (Radiologist)

**Deft Expert(s):** Dr. Jay Goldstein (Gastroenterologist) for Dr. Adrienne L. Fregia Dr. Richard Buenger (Radiologist) for Dr. Charlene A. Sennett Dr. Ross A. Benjoya (Radiologist) for St. Francis Hospital & Health Center (Blue Island)

#### Facts:

Sept. 30, 1994, pltf F-55 underwent a colonoscopy at St. Francis Hospital performed by Dr. Fregia, a gastroenterologist, for rectal bleeding. However, the colonoscopy was aborted due to patient discomfort and movement during the procedure. Pltf was sent to recovery and then discharged home with verbal instructions as to signs and symptoms of perforations and written instructions pertaining to her returning the following day for a barium enema and lower G.I. procedure since the colonoscopy was not completed. When pltf returned the following morning, she said she made complaints of pain, discomfort and nausea to hospital personnel, but that none of the complaints were relayed to the radiologist, Dr. Sennett. The barium procedure was started and immediately aborted when Dr. Sennett observed barium leaking from the colon into the free abdominal space via a perforation. Pltf underwent emergency laparotomy surgery to repair the perforation and flush the barium out of the abdominal cavity; she required a colostomy bag for six weeks before undergoing reversal of the colostomy (\$43,322 medl., \$5,833 LT 2.5 months as Carson's furniture department manager). Pltf claims ongoing abdominal pain due to adhesions and future risk of irritable bowel syndrome. Pltf alleged that Dr. Fregia negligently performed the colonoscopy, inserted too much scope causing bowel tension and perforation, and failed to adequately sedate patient for the procedure. Pltf maintained that Dr. Sennett failed to obtain an adequate history and that the standard of care required that a scout film be performed prior to the barium procedure because of the known aborted/abnormal colonoscopy the day before. Pltf also asserted that the hospital failed to provide proper discharge instructions and failed to relay her complaints of pain to the radiologist. Defense for Dr. Fregia denied negligence and contended that perforation is a known risk of the procedure. Defense for Sennett denied that the standard of care required a scout film. Defense for the hospital argued that its written discharge instructions were adequate and that it was not nursing duty to inform patient of perforation signs/symptoms in written discharge instructions, but rather it was Dr. Fregia's responsibility. The hospital denied that pltf verbalized any complaints of pain to its employees on Oct. 1 and claimed that all information conveyed by pltf to clerks or technicians was conveyed to radiologist. Defts also denied that the intraperitoneal barium caused any additional damage.

**Publication: Cook County Jury Verdict Reporter Published: 9/29/2000**

**(RR 51/9) MED. MAL.--BLOOD DRAW YIELDS HAND REFLEX SYMPATHETIC DYSTROPHY (12G)**

Diane Thomas, Edward Thomas v Northwest Community Hospital, d/b/a Schaumburg Treatment Center 97L-1811 Tried Jul. 6-18, 2000

**Verdict:** Not Guilty to Diane v both depts

**Judge:** Carol Pearce McCarthy (IL Cook-Law)

**Pltf Atty(s):** Sal Indomenico of Sal Indomenico & Associates (Chicago) for Diane, Edward DEMAND: \$4,500,000 total ASKED: \$8,575,000 - \$9,052,000 total

**Deft Atty(s):** Robert S. Baker, Ruth V. Enright of Baker & Enright (Chicago) (CHRPP) OFFER: \$1,000,000 total

**Pltf Medl:** Dr. Cameron Thomson (Internist), Dr. Thomas D. Palella (Rheumatologist) for Diane Thomas

**Deft Medl:** Dr. Margaret O'Leary, Dr. Romulo Hernandez (Emergency Medicine), Dr. Z. John Bilos (Hand Surgeon)

**Pltf Expert(s):** Dr. Henry Kurzydowski (Anesthesiologist); Dr. Joseph LaMancusa, 2020 Goldring Ave. #403, Las Vegas, NV (702-598-1935) (Neurologist); Penny Delsohn, R.N. of Novaeon Inc., 3041 Woodcreek, Downers Grove, IL (630-322-8822) (Life Care Planner); Stanley V. Smith, Ph.D. (Economist) for Diane Thomas

**Deft Expert(s):** Dr. W. Bruce Ketel (Neurologist); Dawn Wujcik, R.N. of Palos Community Hospital, 12251 S. 80th Ave., Palos Heights, IL (708-923-4000) (Nurse, Emergency Room)

**Facts:**

Pltf alleged that a nurse at the Schaumburg Treatment Center was negligent in drawing venous blood for a CBC on Jan. 13, 1996, by continuing the draw and probing her wrist despite complaints of pain and numbness. Pltf F-37, a sign language interpreter for the deaf, developed reflex sympathetic dystrophy in her left hand as a result of the venous draw, causing severely limited function and permanent disability of left hand with the need for ongoing physical therapy, medication and medical management of her RSD (\$75,000 past medl., \$973,000 PCV future medl., \$827,000-\$1,304,000 LT for life--42 years). Defense conceded that the pltf sustained RSD as a result of the venous draw but argued that it was an unavoidable complication of a properly performed procedure.

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