



MEDICAL MALPRACTICE VERDICT

Plaintiff was suffering from bilateral pneumonia in May of 2019. Her condition was serious and she was admitted to River Region Medical Center in Vicksburg. Her care at the hospital was supervised by a hospitalist, Dr. Jean Augustin. Two days later Plaintiff was diagnosed with fluid in her lungs. She was taken to the cath lab to have a thoracentesis procedure performed. The procedure has a risk of a complication where blood can spill into pleural spaces. In the event of that complication, a drain can be placed to clear the blood. However, if the hemothorax is not identified, the pooling of blood can impair lung function, depress oxygenation and lead to death.

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The thoracentesis was concluded and Plaintiff returned to her home. Her condition was stable. Augustin evaluated her from 10:55 a.m. until 11:13 a.m. and she remained stable. Plaintiff continued to be monitored by Nurse Krystal Norris. Following Augustin's departure there was proof that Plaintiff's condition changed and she exhibited classic signs of a hemothorax. Norris documented those changes but failed to appreciate their clinical significance or communicate with Augustin. In that alternative case, Plaintiff alleged if Augustin was advised, he should have acted immediately to complete a bedside assessment, order a CT scan and diagnose/treat the developing hemothorax. The hemothorax was not diagnosed and there was proof blood accumulated in Plaintiff's pleural spaces. This compressed her lungs and impaired her respiratory function. By the time a code was called, it was too late. Plaintiff was dead at 1:19 p.m., allegedly because of the hemothorax complication.

In this lawsuit, Plaintiff's estate targeted both River Region and Augustin. Plaintiff believed either Norris was to blame for failing to advise Augustin of her condition, or alternatively, if Augustin was advised, he failed to act. In any event, the untreated hemothorax led to Plaintiff's death.

Plaintiff built its case through several experts, Dr. John Schweiger, Hospitalist, Tampa, FL; Dr. Matthew Thompson, Pathology, Louisville, KY; and Nicole Bailey, RN, Clinton. The estate's damages represented Plaintiff's lost retirement as well as loss of household services as quantified by an economist, William Brister, Jackson. The estate could also take sums for Plaintiff's pain and suffering as well as the loss of love and affection and consortium of her husband and two adult daughters. River Region and Augustin denied fault. Norris alleged she advised Augustin of the condition. Augustin denied being so advised. The defense indicated that Plaintiff remained stable until noon, but when her condition became worse, Nurse Norris called the treating pulmonologist and a code was called. Defendants believed her death was not related to a hemothorax but instead to her very critical illness. The infection was so overwhelming it was not survivable. Defendants relied on Dr. David Schwartz, Pathology, Atlanta, GA, who explained this causation theory. The state medical examiner had reached a similar conclusion. Defendants also relied on Dr. Steven Stogner, Pulmonology, Hattiesburg and James Caldwell, RN, Grover, MO.

This case was tried over several days in Vicksburg. Jury deliberations were less than an hour, and was for Plaintiff on liability. The jury awarded Plaintiff \$450,000 for lost retirement. The loss of household services was \$300,000. Plaintiff's pain and suffering was \$850,000 while the emotional pain and suffering and loss of love and affection of her family (the husband and two adult daughters) was \$1.5 million. The verdict totaled \$3,100,000 and that sum was comprised of \$2.35 million in noneconomic damages. Defendants subsequently moved to reduce the verdict to comply with Mississippi's tort scheme to limit non-economic damages (\$500,000) in medical malpractice cases. In that case, the scheme would work to save Defendants \$1.85 million as the \$2.35 million in non-economic damages would be reduced to \$500,000.



WINSTON COUNTY TRUCKING AWARD

Plaintiff was on his way to work in November of 2018. Plaintiff traveled on rural Hwy 490. It is a two-lane highway and described as a “ten-ten” road in that it is ten feet and ten inches from the centerline to the edge of the pavement. Some twenty minutes earlier, a trucker for Southeastern Freight Lines had stopped on Hwy 490 outside of Wells Church Furniture. The driver was there for a regular pick-up. However, this driver was a substitute and it was his first time at the location. He arrived late and it was dark. The driver parked the big rig directly in the eastbound lanes. The truck had flashers on. However, it fully blocked the eastbound lanes of the highway. The driver went to the business and saw David Wells. Wells explained to the driver there was a large driveway off of Hwy 490 that could be used. It had tightly packed gravel and was regularly used by truckers. Wells went to a shed to get a forklift to load the truck. The forklift had headlights and an orange strobe light. Wells cranked the forklift and headed to the driveway. He observed the trucker was still in the roadway. Wells loaded the truck (still in the highway) and was preparing to cross back over the westbound lane of Hwy 490. The arms of the forklift were elevated to the height of the truck’s deck. Wells looked both ways and saw nothing. He looked again and saw headlights coming. It was Plaintiff approaching in a Nissan Frontier truck. Plaintiff was on the phone (hands-free) talking with his mother. Plaintiff testified he was traveling within the 35 mph speed limit. Wells decided to “punch” it on the forklift and make it across. A forklift of course only has one speed. Wells almost made it.

The forklift had nearly cleared Hwy 490 when Plaintiff's truck struck it. It was a hard impact and Plaintiff suffered serious injuries, which included a tibia plateau fracture. Plaintiff was taken to a local hospital and transported to Jackson. He underwent two surgeries on his leg and a third to remove hardware. Plaintiff's other injuries included a laceration to his head, a C4-5 disc herniation (it was surgically repaired) and an L5-S1 injury that the treating Dr. Orhan Ilercil, Neurosurgery, indicated will require surgery. Plaintiff walks with a limp and there was proof he was disabled from working for at least a year and perhaps as much as three years.

In this lawsuit Plaintiff sought damages from Southeastern Freight, Wells Church Furniture and Wells individually. The heart of his case was that the large tractor-trailer (while it had lights on) blocked the road and there were no warning signal, orange cones, triangles nor a flagger to alert motorists. This was significant as the area was not well-lit. When Plaintiff came out of the curve, he did not have time to stop. Defendants contested fault and both looked to the duties of Plaintiff. It was argued that he must have been speeding. If Plaintiff was not speeding, he would have hit the forklift straight on. While Plaintiff was seriously injured, there were disputes as to the length of his vocational disability and ongoing prognosis. Defense experts in this regard were Kathy Smith, Life Care Plan and Dr. David Gandy, Orthopedics, Jackson.

This case was resolved by a Louisville jury. Judge Lancaster granted a directed verdict for Wells Church Furniture as Wells was not working in the scope of his employment at the time of the incident. The verdict was mixed on liability. It found all three parties (Southeastern Freight, Wells and Plaintiff) at fault. The fault was assessed 90% to Southeastern Freight and 5% each to Wells and Plaintiff. The jury then awarded Plaintiff \$500,000 each for non-economic and economic damages. The raw verdict totaled \$1,000,000.

Attorney Spotlight



Jeremy Hawk

Jeremy was born and raised on the Mississippi Gulf Coast. He received his undergraduate degree from the University of South Alabama in Mobile where he graduated with a B.A. in English in 2000. He then attended law school at Mississippi College School of Law in Jackson where he was the recipient of the Victor Mavar scholarship and graduated in 2003 with his Juris Doctor. Following law school, Jeremy was a partner at a regional law firm gaining 16 years of experience in Mississippi practice.

Jeremy is a trial attorney who handles a variety of legal matters in both state and federal courts throughout Mississippi. He is a AV Preeminent Rated and a Silver Client Champion with Martindale Hubbell and Lawyers.com. Jeremy is the Mississippi representative and on the Board of Directors for Eagle International Associates (www.eagle-law.com), which is an international network of independent law firms, adjusters and claims related service providers throughout the United States, Canada, and Europe.

Jeremy's practice focuses on the defense of general personal injury matters for individuals, companies and insurance carriers. Jeremy's practice also includes the defense of motor vehicle accidents, premises liability, professional liability and E&O claims, insurance coverage disputes, bad faith litigation, trucking defense, employment and labor defense and other general insurance defense matters. Jeremy has tried numerous jury cases to verdict in both state and federal courts in Mississippi.

Jeremy met his wife, Claire, while attending law school. Claire is a 6th grade language arts teacher at Madison Middle School. Jeremy and Claire have two children – Lucy and Liam. They are members at St. Joseph Catholic Church in Gluckstadt, Mississippi. Jeremy is an avid golfer, enjoys hunting and fishing, and loves following his children's athletic endeavors.



\$26 MILLION PLAINTIFF VERDICT – HINDS COUNTY

CHC Investments is a company owned by Richard Copeland. Copeland purchased the old Delphi Packard manufacturing facility in Clinton, MS in 2014 for a million dollars. There was some evidence Copeland thought the facility was worth \$150,000 or so. The Delphi Packard building is a 19 acre facility with 729,000 square feet under roof. Delphi Packard operated it for 30 years making electrical components used in the auto manufacturing process. The building was empty when CHC Investments purchased it.

Thereafter, CHC Investments bought a policy of insurance from Starr Surplus Lines Insurance Group. The annual premium on the policy (it had \$41.392 million dollar limits) was \$75,500. The policy was in effect in August of 2018. At that time, the building was mostly empty except that a CHC Investments sister company was storing property. There was also proof the building was regularly inspected. In August of 2018, the facility was hit by vandals and thieves. They targeted the building's large copper and aluminum cables near the substations that powered the facility. CHC Investments promptly made a claim for coverage. It valued the overall loss at \$35,000,000, which represented the replacement cost to repair the vandalism damage. It had postured that before the damage, the building was in an excellent and highly marketable "plug and play" condition for industrial uses. While Starr Surplus paid nearly \$500,000 on the claim, it denied the largest part, citing the building was vacant. CHC Investments had resisted the notion that the sister company, described above, was an occupant.

CHC Investments sued Starr Surplus to enforce the contract. The theory was simple enough. The insurance contract was in effect, there was a loss, it was timely reported and documented, and Starr Surplus failed to pay. Plaintiff also alleged wrongful delay and denial by Starr Surplus but those claims did not advance to the jury.

The claimed damage was the \$35,000,000 described above. Key experts for CHC Investments were Brian Revere, Public Adjustor, and Charles Ingram, Commercial Electrical. Starr Surplus denied it had breached the contract, citing the vacancy clause and Plaintiff had not made a timely loss submission. The defense argued there was inadequate proof what portion of the damages suffered to this 50-year old building were related to vandalism. Plaintiff had essentially sought to recast this vandalism event as an attempt to renovate the entire building.

This case was tried over two weeks in Jackson. The jury returned a handwritten verdict for CHC Investments in the sum of \$26,885,275. A consistent judgment was entered for Plaintiff. Starr Surplus moved for JNOV relief. Its motion described Plaintiff's case as a "calculated pursuit" of a grossly excessive verdict that ended in a shocking result. This was in spite of Starr Surplus not just objecting to the Court's jury instructions, but doing so "vociferously." Making it even worse, the jury's award was 27 times what CHC Investments paid for the building, and an astonishing 180 times what Copeland had thought it was worth. This error was compounded at trial as the court excluded proof of what CHC Investments paid for the building. This permitted CHC Investments to portray the building as in perfect condition and ready for commercial occupancy, when in fact even Plaintiff had diminished its value. There was also alleged error by the Court in excluding evidence that expert Revere had originally worked on a contingency contract. He had only changed that status to an hourly fee (it was alleged that the contingency fee status would be unethical) when Starr Surplus objected.

The errors culminated in the closing argument, the insurer argued, when CHC Investments compared the insurer in closing arguments to Byron De La Beckwith, the well-known white supremacist who murdered Medgar Evers. This was all a part of Plaintiff's "anti-corporate" appeal to the jury. CHC Investments replied that Starr Surplus simply refused to acknowledge its failure to conduct an adequate investigation that "fell miles short" had resulted in the "cold, harsh truth" of this jury verdict. It also countered the notion the verdict was excessive because at \$26.8 million, it was still \$8,000,000 less than claimed. Plaintiff also resisted the notion that it had compared Starr Surplus to De La Beckwith. Rather the argument referenced that important decisions are made at the historic Hinds County Courthouse. The JNOV motion remains pending.



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