# PUBLICATION PROVIDED BY:

# RISSMAN, BARRETT, HURT DONAHUE & McLAIN, P.A.

201 EAST PINE STREET
15TH FLOOR
P.O. BOX 4940
ORLANDO, FLORIDA 32802-4940
TELEPHONE (407) 839-0120
TELECOPIER (407) 841-9726
ORLANDO@RISSMAN.COM

TAMPA COMMONS
1 N DALE MABRY HIGHWAY
11TH FLOOR
TAMPA, FLORIDA 33609
TELEPHONE (813) 221-3114
TELECOPIER (813) 221-3033
TAMPA@RISSMAN.COM

207 S. SECOND STREET
FT. PIERCE, FLORIDA 34950
TELEPHONE (772) 409-1480
TELECOPIER (772) 409-1481
FTPIERCE@RISSMAN.COM


**CASE INFORMATION SHEET**
**FLORIDA LEGAL PERIODICALS, INC.**
**P.O. Box 3370, Tallahassee, FL 32315-3730**
**(904) 224-6649/(800) 446-2998 * FAX (850) 222-6266**

**COUNTY AND COURT:**

Brevard County Circuit Court

**NAME OF CASE:**

ROSANA RUSH, as Personal Representative of the Estate of DAVID RUSH, Deceased,

Plaintiff,

v.

CLIFFORD T. THOMPSON, M.D. and MELBOURNE INTERNAL MEDICINE ASSOCIATES, INC.,

Defendants

**CASE DOCKET NO.:** 05-2003-CA-065255 **JUDGE:** Honorable Bruce Jacobus

**PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL** [full names, firm and city]:

Robert Moletteire, Esq.
Moletteire & Torpy, P.A.
10 Suntree Place
Melbourne, FL 32940

**DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL** [full names, firm and city]:

Henry W. Jewett II, Esq.
Juan A. Ruiz, Esq.
Rissman, Barrett et al.
201 E. Pine Str., 15th Flr.
Orlando, FL

**AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT** [at time of accident or occurrence]:

Mr. Rush was a 59 year old male (DOB: 8/14/43) at the time of his death on November 15, 2002. Plaintiff contended Mr. Rush was employed as a salesman at the time, but the evidence was that he had retired because of health problems.

**FOR WRONGFUL DEATH CASES, PLEASE GIVE AGE AND RELATIONSHIP OF SURVIVORS:**

Mr. Rush is survived by his wife, Rosanna Rush (DOB: 12/23/43). She was 59 years old at the time of Mr. Rush's death.

**DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:**

The focus of this medical malpractice case was Mr. Rush's hospitalization at Holmes Regional Medical Center in Melbourne, Florida, between November 4, 2002 and November 15, 2002. Mr. Rush died in the hospital on November 15, 2002.

Plaintiff alleged that Dr. Thompson was negligent by performing an ileo-transverse anastomosis on Mr. Rush on November 4, 2002. Plaintiff also alleged that Dr. Thompson was negligent for failing to diagnose an alleged perforation of the anastomosis supposedly discovered later in the autopsy.

**CAUSE OF INJURY:** [factual description including allegations and defenses on liability]:

Plaintiff claimed Dr. Thompson's care of Mr. Rush during the November 4, 2002 to November 15, 2002 hospitalization was negligent and caused Mr. Rush's death. Dr. Thompson's involvement with Mr. Rush had begun about a year earlier when Mr. Rush was admitted to Holmes Regional on December 8, 2001, after suffering a ruptured diverticula in his colon. Dr. Thompson performed an emergency laparotomy, which resulted in a colostomy.

Mr. Rush had a stormy post-operative course, and remained hospitalized until January 9, 2002. He was discharged to a rehabilitation facility, where he spent another four weeks recovering. He was ultimately discharged home.

Mr. Rush wanted the colostomy reversed, but Dr. Thompson was reluctant to do so because of Mr. Rush's experience during the December 2001 to January 2002 hospitalization. By October 2002, Dr. Thompson felt Mr. Rush was physically capable of undergoing reversal surgery.

Dr. Thompson performed the colostomy reversal on October 24, 2002 at Holmes Regional. The surgery was successful, and Mr. Rush's post-operative course was uneventful. He was discharged home on October 31, 2002.

Mr. Rush was re-admitted to Holmes Regional emergently on the evening of November 4, 2002. Mr. Rush had called Dr. Thompson from home, and reported that he was severely short of breath. Dr. Thompson told Mr. Rush to get to the emergency department as soon as possible.

Workup in the emergency department revealed free air in the abdomen, indicating a bowel perforation. Dr. Thompson then performed an exploratory laparotomy. He found that the right (ascending) colon had two small perforations, with a small amount of soilage. The perforations were probably due to Ogilvie's Syndrome, which occurs when the bowel expands to the point that blood cannot flow into the bowel wall. The bowel wall then dies and breaks down due to ischemia, causing perforations.

Dr. Thompson resected the perforated colon, and then performed an ileo-transverse anastomosis, whereby the small bowel (the ileum) was anastomosed to the transverse colon. Dr. Thompson felt this was Mr. Rush's best option because the area of the anastomosis was well perfused with blood. This approach also avoided another ostomy, namely an ileostomy.

Unfortunately, Mr. Rush was very sick when he entered the hospital on November 20, 2002. His chest x-rays showed that his lungs were almost completely white with congestion. While the November 4, 2002 laparotomy had been successful, Mr. Rush continued to deteriorate because of the poor condition of his lungs. He gradually developed multi-organ failure and died on November 15, 2002.

The family decided on a private autopsy by Dr. William Anderson (see below). Dr. Anderson reportedly found a perforation of the ileo-transverse anastomosis. Plaintiff contended that this breakdown occurred shortly after the November 4, 2002 surgery and caused sepsis, leading to Mr. Rush's deterioration. Dr. Thompson testified, though, that there was no evidence that the anastomosis had broken down while Mr. Rush was alive, and even if it had, the perforation was caused by Mr. Rush's poor lung condition and multi-organ failure. Dr. Thompson testified that Mr. Rush's death was caused by his pre-existing poor lung condition, and not by the anastomosis.

**NATURE OF INJURY** [please be specific concerning injuries, treatment and medical testimony]:

See above. Plaintiff contended that Mr. Rush would not have died if Dr. Thompson had performed an ileostomy and if he had re-explored Mr. Rush between the November 5, 2002 surgery and November 10, 2002.

**PLAINTIFF'S EXPERT WITNESSES** [include full name, degree, specialty and city]:

Stephen Becker, M.D.
General Surgeon
Fairlawn, NJ

Dr. Becker testified that Dr. Thompson was negligent by performing an ileo-transverse anastomosis on November 5, 2002 and that the standard of care required that he perform an ileostomy. Dr. Becker testified that the colonic perforation had contaminated the peritoneum with fecal material. In the face of this contamination, Dr. Thompson should not have performed an anastomosis because the anastomosis was bound to break down.

Dr. Becker argued that the ileo-transverse anastomosis broke down sometime after the November 5, 2002 procedure because of the contamination. Because Mr. Rush was not getting better, Dr. Thompson should have surgically re-explored the area somewhere between November 8 and November 10.

Dr. Becker testified that the alleged anastomotic breakdown caused continued infection which led to sepsis, ARDS, multi-organ failure, and ultimately death. Dr. Becker further testified that but for the alleged breakdown of the ileo-transverse anastomosis and the alleged delay in responding to the purported breakdown, Mr. Rush would not have suffered these complications and died.

Dr. Thompson disputed Dr. Becker's opinions. He explained why it was reasonable to perform the ileo-transverse anastomosis instead of an ileostomy. There was very little contamination from the perforations and the area of the anastomosis was well perfused. Further, there were no signs or symptoms after the November 4, 2002 surgery to indicate that anastomosis had broken down. Instead, Mr. Rush's deterioration was due to his poor underlying condition, including the condition of his lungs.

William Anderson, M.D.
Pathologist
Heathrow, FL

Dr. Anderson performed a "private autopsy" on Mr. Rush. He said that his autopsy revealed the breakdown of the anastomosis, which he said had to have occurred a few days before Mr. Rush's death.

However, Dr. Anderson conceded that he did not actually perform the autopsy or observe the anastomosis *in situ*. Instead, Dr. Anderson's assistant performed the autopsy because Dr. Anderson was out of town at the time of the autopsy. The assistant removed the anastomosed bowel from Mr. Rush's body and stored it in a bucket of preservative. Dr. Anderson did not actually examine the bowel at issue until over a month after the actual autopsy.

Dr. Thompson disputed Dr. Anderson's opinions during his testimony. Dr. Thompson said the anastomosis could not have been broken down at the time of autopsy because Dr. Anderson found fecal material within the bowel when he finally examined it. Dr. Thompson said that if the anastomosis actually had a hole in it at the time of the autopsy, then, after a month in a bucket of fluid, the fecal material would have washed out. Thus, in Dr. Thompson's opinion, the perforation of the anastomosis occurred during Dr. Anderson's examination, and not before Mr. Rush's death.

**DEFENDANT'S EXPERT WITNESSES** [include full name, degree, specialty and city]:

Frank Healey, III, M.D.
Colorectal Surgeon
Jacksonville, FL 32207

Dr. Healey testified that it was appropriate for Dr. Thompson to perform the ileo-transverse anastomosis on November 4, 2002. Additionally, Dr. Healey testified that a re-exploration of the anastomosis by Dr. Thompson was not clinically indicated.

**CHECK APPROPRIATE SPACE:** _____X_____ Verdict

**DATE OF VERDICT:**

January 28, 2008.

**VERDICT**

For the defense.

**COMPARATIVE NEGLIGENCE** [if applicable]:

Not applicable.

**JUDGMENT:**

For Defendant.

**DATE OF JUDGMENT:**

February 29, 2008

**DEFENDANT'S OFFER:**

Defendant did not make any pretrial offer to settle this matter.

**PLAINTIFF'S DEMAND:**

Plaintiff demanded $600,000 before trial to settle this matter.

**ATTORNEY'S COMMENTS:**

Plaintiff filed a Motion for New Trial, which was denied. There was no appeal.


| | | |
|---|---|---|
| **Submitted By:** | **Henry W. Jewett II, Esquire**<br>**Juan A. Ruiz, Esquire** | **Date: May 14, 2009** |
| **Firm:** | **Rissman, Barrett, Hurt, Donahue & McLain, P.A.** | |
| **Address:** | **201 E. Pine Str., 15th Floor**<br>**Orlando, FL 32801** | |
| **Telephone:** | **(407) 839-0120** | |
| **Fax:** | **(407) 841-9726** | |