

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:

Hernando County Circuit Court

NAME OF CASE:

Richard J. Trester, Jr. v. Mason Hubsher, M.D. and Hubsher
Healthcare, P.A.

CASE DOCKET NO.: H27CA-2007-1256

JUDGE: Daniel B.
Merritt, Sr.

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL [full names, firm and

city]:

John W. Williams, Jr.
St. Petersburg, FL

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

Richard B. Mangan, Jr.
G. William Lazenby IV
Rissman, Barrett, Hurt, Donahue & McLain, P.A.
Tampa, Florida

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

Richard J. Trester was a 54-year-old male long distance truck driver at the time of the alleged negligence.

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

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

On October 9, 2005, Plaintiff, Richard J. Trester, was driving a semi truck in Texas when he hit a bump in the road, causing him to bounce in his seat. He continued to experience pain in the area of his coccyx after this occurred. He eventually completed his run from Texas to Florida, after which he went to his primary care physician, Mason Hubsher, M.D., on October 11, 2005.

Between October 11, 2005, and October 24, 2005, the patient continued to be seen by both Dr. Hubsher and physicians at Spring Hill Regional Hospital, all of whom diagnosed him as having suffered a contusion to his coccyx. Throughout the course of his treatment with both Dr. Hubsher and Spring Hill Regional, the patient was administered oral and injected steroids. The patient also underwent a CT scan of his pelvis, which was read as negative for any abscess. The CT of the patient's pelvis was performed on October 20, 2005.

The patient's last appointment with Dr. Hubsher was on October 21, 2005 after the patient's CT scan was read as negative for any abscess. The patient was then seen at Spring Hill Regional Hospital on October 23, 2005 because his pain continued despite having taken multiple pain medications. On that last visit the patient was seen in the Emergency Department by Dr. Stellpflug, who was initially named as a defendant in the case but settled prior to trial.

Dr. Stellpflug referred the patient to a surgeon, Dr. Manubay,

because he thought the patient might have a draining pilonidal cyst. Dr. Manubay chose not to see the patient in the hospital, but rather, scheduled an appointment with the patient on October 27, 2005.

Dr. Manubay saw the patient on October 27, 2005 and determined that he had a perirectal abscess requiring admission to the hospital. The patient was then admitted to Brooksville Regional Hospital. However, Dr. Manubay did not operate until October 28, 2005. He performed a sigmoidoscopy and incision and drainage of the patient's perirectal abscess. The patient eventually underwent a total permanent colostomy because of the progression of his infection.

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

In his Complaint, Plaintiff alleged that Dr. Hubsher fell below the applicable standard of care in the following respects:

1. Failing to recognize the high incidence of abscess formation in patients with diabetes, such as Plaintiff;
2. Failing to diagnose the abscess that existed in the perianal area of Plaintiff;
3. Administering steroid medications on the visits of October 11, 2005 and October 17, 2005 to a diabetic patient as steroids can both provoke diabetes and mask infections in diabetics, which further delayed the diagnosis of the patient's perirectal abscess; and
4. Injecting Prednisone, a steroid, into the area of Plaintiff's coccyx on October 17, 2005, as that area probably was contaminated and the injection likely caused an extension of the infection.

As to Dr. Stellpflug, Plaintiff alleged that he fell below the applicable standard of care in the following respects:

1. Did not perform a complete physical examination in that he failed to conduct an examination of the rectum and perineum in a diabetic with a new draining sacral tract and severe, refractory progressive low-back pain;
2. Incorrectly diagnosed Plaintiff's problems as being caused by a pilonidal cyst;
3. Failed to have Plaintiff admitted to the hospital;
4. Failed to appreciate the significance of repeated emergency department visits for the same or similar complaints despite having access to and actually reviewing the emergency department

records from those preceding visits;

5. Failing to appreciate the significance of the fact that Plaintiff had previously been ambulatory but required transport via EMS for his visit with Dr. Stellpflug;

6. Failed to appreciate the significance of a patient requiring progressive amounts of parenteral narcotics on previous emergency department visits to control his pain; and

7. Failing to recognize a possibility of perirectal or perianal abscess in a diabetic with progressive and intractable low-back pain and a spontaneously draining sacral tract.

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

Plaintiff alleged that, as a result of the negligence of Drs. Hubsher and Stellpflug, Mr. Trester was required to undergo a total colostomy surgery which left him with a colostomy bag. Plaintiff's colorectal surgery expert, Daniel Feingold, M.D., testified that there was sufficient evidence for both Drs. Hubsher and Stellpflug to have made an earlier diagnosis of the patient's perirectal abscess, and that the abscess had progressed into a much worse infection, Fournier's Gangrene.

Plaintiff's internal medicine expert, Richard Hays, M.D., testified that Dr. Hubsher fell below the applicable standard of care by failing to diagnose the patient's perirectal abscess. Specifically, he indicated that the patient's continued complaints of pain should have led Dr. Hubsher to conclude that there was some ongoing process other than a simple coccygeal contusion because such contusions do not cause the amount of pain that Mr. Trester experienced.

Plaintiff's radiology expert, Mark Herbst, M.D., testified that the October 20, 2005 CT scan did not image low enough to detect what was eventually diagnosed as a perirectal abscess.

Defendant's colorectal surgery expert, Marvin Corman, M.D., testified that there was no infection present for Dr. Hubsher to diagnose on any of the visits he had with the patient. He indicated that the patient's perirectal abscess developed some time **after** the last visit the patient had with Dr. Hubsher, and that it eventually turned into Fournier's Gangrene. Dr. Corman testified that there was nothing Dr. Hubsher could have done to diagnose this infectious process any earlier because, more likely than not, it was not present at any of the visits the patient had with Dr. Hubsher.

Defendant's internal medicine expert, Michael Yaffe, M.D., testified that Dr. Hubsher met the standard of care and that it was completely appropriate to diagnose the patient as having

experienced a coccygeal contusion because the patient's history was completely consistent with that diagnosis.

Further, Dr. Yaffe indicated that it was not inappropriate for Dr. Hubsher to utilize injected steroids for this patient, despite him being a diabetic. While a long course of steroids could potentially adversely affect a diabetic and make him immunocompromised, Dr. Yaffe saw nothing wrong with the very short course of steroids administered both orally, and by injection, by Dr. Hubsher.

Dr. Martin Silbiger, Defendant's radiology expert, testified that the CT scan performed on October 20, 2005 did cover the patient's entire pelvis and was completely negative for any infectious process at the time that the radiological study was performed.

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

Daniel L. Feingold, M.D., Colorectal Surgery, New York, NY

Richard M. Hays, M.D., Internal Medicine, Wellington

Mark B. Herbst, M.D., Radiology, St. Petersburg

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

Marvin L. Corman, M.D., Colon & Rectal Surgery, Stony Brook University, Stony Brook, NY (video depo)

Michael Yaffe, M.D., Internal Medicine, Columbus, OH

Martin L. Silbiger, M.D., Radiology, Tampa

CHECK APPROPRIATE SPACE: X Verdict

DATE OF VERDICT:

April 24, 2009

VERDICT:

Defense verdict

COMPARATIVE NEGLIGENCE [if applicable]:

Not applicable

JUDGMENT:

For Defendants

DATE OF JUDGMENT:

May 18, 2009

DEFENDANT'S OFFER:

Defendants did not offer anything to settle this case.

PLAINTIFF'S DEMAND:

Plaintiff indicated that this case could have been resolved for Dr. Hubsher's liability limits of \$250,000. Plaintiff requested a verdict in excess of \$1,000,000 at trial.

ATTORNEY'S COMMENTS:

Plaintiff objected to Defendants' colorectal surgery expert, Dr. Corman, being allowed to articulate standard of care opinions in favor of Dr. Hubsher. Defendants argued, pursuant to Florida Statutes Chapter 766, that Dr. Hubsher, a family practitioner, would not typically have provided treatment for a perirectal abscess and that, therefore, Dr. Corman, who routinely treats such medical emergencies was qualified to opine regarding standard of care as a "similar healthcare provider."

Following trial, Defendants filed their Motion for Taxable Costs in which they requested approximately \$60,000 for taxable items associated with the preparation and trial of this case; Plaintiff filed his Notice of Appeal. By agreement, Defendants withdrew their Motion to Tax Costs and Plaintiff withdrew his Notice of Appeal.

Submitted By: G. William Lazenby IV

Date: November 11, 2009

Firm: Rissman, Barrett, Hurt, Donahue
& McLain, P.A.

Address: 1 North Dale Mabry Highway
11th Floor
Tampa, FL 33609

Telephone: (813) 221-3114

Fax: (813) 221-3033