

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:

In the Ninth Judicial Circuit in and for Orange County.

NAME OF CASE:

ANN MARIE BAGLEY, individually, ROBERT BAGLEY, her husband, and
KAYLA MARIE BAGLEY, ALYSSE NICOLE BAGLEY, and MADISON GRACE
BAGLEY, their minor children,

Plaintiff,

v.

OB & GYN SPECIALISTS, P.A.; and AMANPREET BHULLAR, M.D.,

Defendants

CASE DOCKET NO.: 2009-CA-006622-0 **JUDGE:** Julie H. O'Kane

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL:

Sean Domnick, Esquire
Harry Shevin, Esquire
Domnick & Shevin, P.L.
5100 PGA Boulevard
Suite 317
Palm Beach Gardens, FL 33418

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:

Jennings L. Hurt III, Esquire
Henry W. Jewett II, Esquire
Juan A. Ruiz, Esquire
201 E. Pine Street, 15th Floor
Orlando, FL 32801

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:

Ann Marie Bagley - 36 years old
Antenatal nurse at Winnie Palmer Hospital

Robert Bagley - 36 years old
Former pool contractor

Kayla Marie Bagley - 11 years old
Alyse Nicole Bagley - 8 years old
Madison Grace Bagley - 4 years old

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

N/A

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

On September 14, 2006, Ann Marie Bagley delivered her third child, Madison Grace Bagley, at Winnie Palmer Hospital. She was discharged from the hospital in stable condition. On September 20, 2006, Mrs. Bagley was seen by Dr. Bhullar in his office. At the time, Dr. Bhullar was employed by OB & GYN Specialists, P.A. OB & GYN Specialists, P.A. was Mrs. Bagley's primary OB/GYN provider and had delivered Madison, six days earlier.

On September 20, 2006, Mrs. Bagley complained to Dr. Bhullar of having a severe headache for two days duration. She reported that the headache did not improve with any change in position. She further reported having taken Percocet/Tylenol for the pain with mild improvement, but the headache itself did not resolve.

Mrs. Bagley described the headache as starting at the front of her head and moving to the back of the head. She did not have any photophobia, and the headaches usually occurred in the evenings.

On initial examination, Mrs. Bagley's blood pressure was slightly elevated at 120/90. Her blood pressure was rechecked later in the visit and was within normal limits at 118/80.

Dr. Bhullar's impression was probable tension headache. He specifically noted that he doubted her headache was preeclamptic in nature.

Dr. Bhullar prescribed Flexeril, a muscle relaxant, for Mrs. Bagley's headache. Further, he asked Mrs. Bagley if she would like to go to triage at Winnie Palmer Hospital to be evaluated for her headaches. This would involve performing laboratory studies on her. Mrs. Bagley declined to go to triage at Winnie Palmer Hospital. Notably, this was not documented in Mrs. Bagley's medical record.

The following morning, September 21, 2006, at approximately 5:30 a.m., Mrs. Bagley was found by her husband moving her left side only. Paramedics were called to the Bagley home and she was transported emergently to South Lake Hospital.

A CT scan of her brain taken at South Lake Hospital demonstrated a large left basal ganglionic intracerebral hemorrhage with intraventricular extension and a shift in midline structures from left to right. Mrs. Bagley was then transported to Orlando Regional Medical Center for emergent neurosurgical evaluation and treatment.

Upon arriving at ORMC, Mrs. Bagley was taken to surgery by Dr. Jonathan Greenberg, a neurosurgeon, who performed a left frontotemporal craniectomy with evacuation of intracerebral hemorrhage, allograft, expansive duraplasty and titanium mesh cranioplasty.

CAUSE OF INJURY:

The cause of Mrs. Bagley's injuries was the September 21, 2006 intracerebral hemorrhage.

NATURE OF INJURY:

Mrs. Bagley suffered a significant cognitive neurologic injury. She also suffered a permanent right hemiparesis as a result of the intracerebral hemorrhage.

PLAINTIFF'S EXPERT WITNESSES:

- 1. Nathan Hirsch, M.D. - OB/GYN
South Miami, FL**

Dr. Hirsch opined that Dr. Bhullar deviated from the standard of care in failing to have Mrs. Bagley referred to a neurologist, neurosurgeon or the emergency room for evaluation of her complaints of severe headache. According to Dr. Hirsch, a postpartum headache is one of the most important and dangerous

findings for a woman. According to him, approximately one-third of all women suffering from a severe headache in the postpartum period will have an intracerebral hemorrhage or other significant neurologic event.

Dr. Hirsch also opined that the fact that Mrs. Bagley had been taking Percocet for her headaches, without effect, was an indicator of the severity of Mrs. Bagley's headaches. According to Dr. Hirsch, Percocet is one of the strongest narcotic pain medications in the world. The fact that Mrs. Bagley's headaches were unaffected by the Percocet mandated, according to Dr. Hirsch, that Mrs. Bagley be referred emergently to a neurologist or emergency department.

**2. Nancy Futrell, M.D. - Neurology
Salt Lake City, UT**

Dr. Futrell opined that had Mrs. Bagley been referred to the emergency department, she would have been admitted to the hospital for evaluation. While admitted, Mrs. Bagley's blood pressure and vital signs would have been monitored such that the attending physician would have been alerted to the impending neurologic catastrophe which awaited Mrs. Bagley.

It was Dr. Futrell's opinion that Mrs. Bagley suffered an intracerebral bleed sometime between September 14, 2006 and September 20, 2006. Dr. Futrell opined that every time Mrs. Bagley suffered or complained of a headache, she was having a "leak" of her intracerebral hemorrhage. This leak continued, unabated, until such time as the "large" event occurred on September 21, 2006.

According to Dr. Futrell, had Mrs. Bagley been hospitalized, she would have exhibited signs and symptoms of an extension of her intracerebral hemorrhage and would have been in a position to receive emergent medical care such as a neurosurgical intervention.

According to Dr. Futrell, had this neurosurgical intervention occurred on a more timely basis, before the hemorrhage had expanded to the point where it was first recognized on September 21, 2006, Mrs. Bagley would have been spared the larger neurologic insult. The massive expansion of the hemorrhage could have been prevented.

If the intervention had occurred on an earlier, more timely basis, according to Dr. Futrell, Mrs. Bagley would not have

suffered her ultimate significant neurologic sequelae. Further, Dr. Futrell opined that Mrs. Bagley would have been able to be a productive member of society, capable of caring for her children.

**3. Jonathan Greenberg, M.D. - Neurosurgery
Orlando, FL**

Dr. Greenberg was Mrs. Bagley's primary treating neurosurgeon. He testified that, in his opinion, Mrs. Bagley should have been referred by Dr. Bhullar to the emergency department for evaluation of her complaints of headaches. He opined that the postpartum period is one of the most dangerous for a woman. Specifically, women are at an increased risk for intracerebral hemorrhage in the postpartum period.

Dr. Greenberg testified that Mrs. Bagley's headaches were related to the impending intracerebral hemorrhage. However, he further explained that if these headaches were truly related to the intracerebral hemorrhage, they would have been unrelenting in nature and would have taken the form of a "bi-frontal" headache. This was in contrast to the testimony of Mr. Bagley that Mrs. Bagley's headaches were intermittent, would wax and wane, and would begin in the front of her head and move toward the back.

According to Dr. Greenberg, if the intermittent bleeding had led to a collection of blood of at least 1 centimeter in diameter in the left basal ganglia, the headaches would have been constant and, moreover, Mrs. Bagley would have developed neurologic symptoms.

Dr. Greenberg testified that had a CT scan been performed on September 20, 2006, it would have shown a hemorrhage in the basal ganglia. He further opined that since Mrs. Bagley reported only headaches with no neurologic deficits, the hemorrhage was probably less than 2 centimeters in diameter.

According to Dr. Greenberg, had Mrs. Bagley been sent to the emergency room, she would have been admitted to the hospital and would have been able to undergo neurosurgical intervention to relieve the pressure on her brain caused by the hemorrhage. While Dr. Greenberg testified that he could not say the hemorrhage could have been avoided, he opined that the damage to Mrs. Bagley's brain would have been far less significant since neurosurgical intervention would have occurred, thereby relieving the pressure on the brain.

Dr. Greenberg opined that Mrs. Bagley's neurologic injury would not have been as significant as it was following the September 21, 2006 hemorrhage, and he believed that she would have been able to keep a large portion of her neurocognitive abilities as opposed to what was lost following the intracerebral hemorrhage.

**4. Gordon Sze - Neuroradiology
New Haven, CT**

Dr. Sze testified that Mrs. Bagley's hemorrhage occurred somewhere between 24 hours to a few hours prior to 6:50 a.m. on September 21, 2006. He was unable to provide any additional certainty with respect to when the hemorrhage occurred other than to state that it occurred at least four to five hours before the CT scan was performed.

Dr. Sze further opined that the location of Mrs. Bagley's hemorrhage was consistent with a hypertensive event. He could not say more likely than not the cause of the hemorrhage. He could also not state more likely than not whether Mrs. Bagley had been bleeding prior to the performance of the CT scan on September 21, 2006.

**5. Ronald Snyder - Physiatry
Maitland, FL**

Dr. Snyder generated a comprehensive rehabilitation consultation report for Mrs. Bagley. This was as a result of two face-to-face interviews and evaluations. Dr. Snyder's report was "all encompassing" calling for attendant care for Mrs. Bagley up to and including 24 hours a day as Mrs. Bagley's husband aged.

He also recommended that Mrs. Bagley undergo an outpatient community rehabilitation program. This was a program aimed at helping Mrs. Bagley regain some of her independence as well as aiding in her neurocognitive rehabilitation.

**6. Joyce Eastridge - Economist
Maitland, FL**

Ms. Eastridge was Plaintiffs' economist expert. She testified with respect to an analysis of economic damages prepared by her based upon recommendations made by Dr. Snyder.

Ms. Eastridge addressed Mrs. Bagley's loss of earning capacity, medical expenses, future medical expenses and loss of future wages.

Ms. Eastridge testified that Mrs. Bagley's future medical expenses ranged from \$9,882,324 to \$15,609,628. Her past lost wages totaled \$179,388. The total amount of future economic damages presented by Ms. Eastridge at trial ranged from \$11,654,684 to \$17,991,459.

**7. Kenneth Stein, M.D. - Emergency Medicine
St. Louis, MO**

Dr. Stein testified that had Mrs. Bagley gone to the emergency department on September 20, 2006, she would have likely undergone a CT scan of the head and that the CT would have shown a bleed in the brain. At that point, Mrs. Bagley would have been turned over to an appropriate specialist, such as a neurosurgeon, for definitive treatment.

DEFENDANT'S EXPERT WITNESSES:

**1. Christopher Robinson, M.D. - Maternal/Fetal Medicine
Charleston, SC**

Dr. Robinson testified that the care and treatment rendered to Mrs. Bagley on September 20, 2006 by Dr. Bhullar met the standard of care.

More specifically, it was Dr. Robinson's opinion that a headache in a postpartum patient is rarely indicative of an intracerebral hemorrhage. Dr. Robinson further explained that headache is the single most common complaint in all women and the most frequent complaint in a postpartum woman. Dr. Robinson attributed Mrs. Bagley's complaints of headache to a tension-type headache and indicated that they were not being caused by an impending intracerebral hemorrhage.

Dr. Robinson felt it was appropriate for Dr. Bhullar to prescribe Flexeril to treat Mrs. Bagley's tension headache. He also did not feel that there was any "ominous" sign with respect to the fact that Mrs. Bagley had been taking Percocet to treat her headaches. Dr. Robinson disagreed that Percocet was one of the "strongest narcotic pain medications on the planet." In fact, he explained that many of his obstetric patients at his own medical center are treated frequently with Percocet.

**2. Scott Cutler, M.D. - Neurosurgery
Tampa, FL**

Dr. Cutler was primarily used to educate the jury with respect to the structures of the brain as well as the basal ganglia. Dr. Cutler explained the etiology of intracerebral hemorrhages such as the one suffered by Mrs. Bagley. He also explained in detail the magnitude of the damage caused to surrounding brain tissue when an intracerebral hemorrhage such as this ruptures.

Dr. Cutler also opined that even with immediate hospitalization on September 20, 2006, Mrs. Bagley might still possibly have suffered the same outcome. Dr. Cutler was prevented from rendering this opinion within a reasonable degree of medical probability as he was unable to provide this opinion during his pretrial deposition.

Dr. Cutler ultimately testified that it was possible that Mrs. Bagley would have still suffered the stroke with the same amount of neurologic and physical sequelae, even had she been hospitalized on September 20, 2006.

It was further Dr. Cutler's opinion that he could not say more likely than not that Mrs. Bagley's headaches during the week of September 14, 2006 through September 20, 2006 were related to her intracerebral hemorrhage. He opined that her complaints of headaches could just as easily have been related to an event that was not an intracerebral hemorrhage as they were to the event itself.

Dr. Cutler advised that a 1 - 2 centimeter bleed in the left basal ganglia would have caused "constant" headache as well as neurological symptoms.

DATE OF MISTRIAL:

After four weeks of trial, the jury deliberated for five days. A mistrial was declared when the jury announced that it was hopelessly deadlocked. The trial court interviewed the jurors privately and announced that they were split 3-3 for Plaintiffs and Defendants.

A mistrial was declared on July 21, 2011.

SETTLEMENT:

The case was subsequently settled for a confidential amount.

COMPARATIVE NEGLIGENCE:

N/A

JUDGMENT:

N/A

DATE OF JUDGMENT:

N/A

DEFENDANT'S OFFER:

Prior to trial, the \$250,000 insurance coverage limits available to Dr. Bhullar and OB & GYN Specialists, P.A. were offered but rejected.

PLAINTIFF'S DEMAND:

Prior to trial, Plaintiffs refused to accept the \$250,000 tender. At all times up to, through and following trial, Plaintiffs demanded an amount over and above the policy limit.

Plaintiffs' demand at trial in his closing argument was \$49,191,847.

ATTORNEY'S COMMENTS:

During Plaintiffs' case in chief, Plaintiffs called several Bagley family members: Doris Altman, Mr. Bagley's grandmother; Ashley Bagley, Mrs. Bagley's sister-in-law; and Paula Conrad, Mr. Bagley's mother.

These witnesses variously testified that Mrs. Bagley had told them between September 14, 2006 and September 20, 2006 that she was having the worst headache of her life, that the headache was of sudden onset, that the headache was different than any type of headache she had had previously, that the pain was excruciating, and she had to lie on the bathroom floor to seek relief. Plaintiffs attempted to utilize this testimony to establish the significant and emergent nature of Mrs. Bagley's headaches.

However, Robbie Bagley, Mrs. Bagley's husband, testified that Mrs. Bagley's first complaint of headaches occurred on September 16, 2006. He advised his wife had headaches 1 to 2 times each day, every day, until September 19, 2006. These headaches lasted 10 - 15 minutes each, and she took Tylenol which would generally provide her relief.

Mr. Bagley further explained that Mrs. Bagley laid down when she had a headache and that 15 - 20 minutes later, she would feel better. The headaches moved from front to back but otherwise did not change in intensity over the course of four days. Mr. Bagley was not aware that Mrs. Bagley was taking Percocet for her headaches or that she had to lie on the bathroom floor to seek relief from the headaches.

Additionally, Mr. Bagley testified that during the day and the evening immediately prior to the stroke, Mrs. Bagley appeared normal and had no complaints of a headache. She did not take any medication that evening for headaches. He further testified that Mrs. Bagley felt well enough to have friends over for dinner, in addition to being able to care for their 6-day old newborn child, Madison, without any complaints of headache.

To counter Plaintiffs' claim regarding Mrs. Bagley's headache, the defense called six separate healthcare providers to testify with respect to Mrs. Bagley's complaints of headache. Meredith McKay, R.N., Karen Seyfert, R.N. and Christy Daiss, R.N. were all co-workers of Mrs. Bagley, who had been a nurse at Winnie Palmer Hospital. These three individuals had spoken to Mrs. Bagley between September 14, 2006 and September 20, 2006.

Each testified that at no time during those conversations did Mrs. Bagley ever explain to them that she was having a severe sudden onset headache which was the worst headache of her life. Mrs. Bagley never informed these individuals that she had to lie on the bathroom floor to seek relief from the headaches.

Additionally, on September 17, 2006, Mrs. Bagley spoke to Dr. Sheryl Logan, a physician at OB & GYN Specialists, to inquire regarding breast and chest heaviness. According to Dr. Logan, Mrs. Bagley never complained of an unrelenting severe headache. Had Mrs. Bagley so advised Dr. Logan of such a headache, Dr. Logan would have told her to come to triage at Winnie Palmer Hospital.

Likewise, the defense called Dr. James Lawrence and Dr. April Merritt, both physicians and acquaintances of Mrs. Bagley. While Mrs. Bagley informed both of these physicians that she had a headache between September 14, 2006 and September 20, 2006, at no time did Mrs. Bagley tell either Dr. Lawrence or Dr. Merritt that she was having the worst headache of her life which was unrelenting in nature and that caused her to lie on the bathroom floor for relief.

All seven healthcare providers called by the defendants in their case confirmed that had Mrs. Bagley complained to them of a severe, unrelenting headache which was unlike any other she had previously had and that required her to lay on the bathroom floor for relief, they would have told her to go the emergency department for immediate evaluation. All seven healthcare providers confirmed that Mrs. Bagley never made these complaints to any of them at any time.

Ms. Daiss, Mrs. Bagley's best friend, testified she had spoken to Mrs. Bagley on the evening of September 20, 2006 immediately prior to her September 21, 2006 stroke. At no time did Mrs. Bagley tell Ms. Daiss that she was having the worst headache of her life which was unrelenting in nature and that required her to lay on the bathroom floor for relief. Ms. Daiss advised that had Mrs. Bagley so advised her of such a significant headache, Ms. Daiss would have told her to call 911, go to an emergency room or triage at Winnie Palmer Hospital.

The jury began deliberations on Friday, July 15, 2011. On the first afternoon of deliberation, July 15, 2011, the jury requested that the testimony of Dr. Greenberg be read back to them. The trial court granted this request.

Later that evening, the jury informed the trial court that they were deadlocked. The trial court gave the jury the "Allen charge" and sent them back to deliberate. They returned later that evening and asked to continue deliberations on Monday.

On Monday, July 18, 2011, the jurors requested the read-back of numerous other witnesses. This process of reading witness testimony lasted until Thursday, July 21, 2011, at which time the jurors announced, once again, that they were deadlocked and could not come to a unanimous decision. The jury deliberated a total of 44 hours, 30 minutes.

Upon polling the jurors, it was discovered that the jurors were split 3/3. The case was reset for trial in January 2012.

However, it was ultimately settled by the parties on November 7, 2011.

Submitted Jennings L. Hurt III **Date:** March 13, 2012
By: Henry W. Jewett II
Juan A. Ruiz

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

Address: 201 E. Pine Street
Suite 1500
P.O. Box 4940
Orlando, FL 32802-4940

Telephone: (407) 839-0120 **Fax:** (407) 841-9726

Doc. 2403