

FJVR INFORMATION SHEET

P.O. BOX 3730, Tallahassee, FL 32316-3730  
(904) 224-6649 (800) 446-2998 \*(904) 222-6266

COUNTY: Collier County Circuit Court

NAME OF CASE: Sheila Matthews v David Singer, M.D., Naples Community Hospital, Sunil R. Pandya, M.D., Michael J. Vickers, M.D.

DOCKET NO.: 07-1667 CA JUDGE: Cynthia Pivacek

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

Nancy LaVista, Esquire  
Mark Clark, Esquire  
Lytal, Reiter, Clark, Fountain & Williams  
West Palm Beach

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

Richard B. Mangan, Jr., Esquire  
R. Clifton Acord, II, Esquire  
Rissman, Barrett, Hurt, Donahue & McLain, P.A.  
1 North Dale Mabry Highway  
11th Floor  
Tampa, FL 33609  
For Defendants: David Singer, M.D. and Naples Radiologists, P.A.

Peter R. Restani, Esquire  
Scott C. Sankey, Esquire  
Restani, Dittmar & Hauser, P.A.  
201 Alhambra Circle  
Suite 1050  
Coral Gables, FL 33134  
For Defendants: Sunil R. Pandya, M.D. and  
South Florida Inpatient Medical Specialists

Robert Cousins, Esquire  
Lauren McBride, Esquire  
Stephens, Lynn, Klein, La Cava, Hoffman & Puya, P.A.  
2891 Center Pointe Drive  
Suite 305  
Ft. Myers, FL 33916  
For Defendants: Michael J. Vickers, M.D. and Neuroscience & Spine Associates

**AGE/SEX/OCCUPATION OF PLAINTIFF:**

Sheila Matthews is a 61-year old female who was unemployed at the time of the alleged incident and disabled.

**DATE, TIME and PLACE OF ACCIDENT or OCCURRENCE:**

North Collier Hospital, Naples, Florida. March 29, 2005 - April 3, 2005.

**CAUSE OF INJURY:**

Spinal epidural abscess from C4-T4.

**NATURE OF INJURY:**

Paraplegia

**FACTUAL SUMMARY:**

Sheila Matthews presented to the emergency department at the North Collier Campus of Naples Community Hospital on March 29, 2005 for evaluation of left upper posterior thoracic pain radiating through to her chest, cough and fever. She was 56 years old and was described as being disheveled, febrile, moaning and yelling in pain on arrival via EMS.

Ms. Matthews was diagnosed by the emergency room physician as having acute chest pain of undetermined etiology, fever, a markedly elevated D-dimer of undetermined cause, tachycardia and mild hyponatremia. She was admitted to the telemetry floor for monitoring to the services of Dr. Pandya, a hospitalist.

Dr. Pandya completed his initial history and physical in the afternoon on March 29, 2005. Ms. Matthews complained of chest pain which she described as being in the left back coming around to the anterior chest. Dr. Pandya obtained a past medical history that was significant for insulin dependent diabetes mellitus, bipolar disorder and tardive dyskinesia. At the time of the evaluation, Ms. Matthews' temperature was 100.2. It had previously been 102.9. Her pain level was 9 in her back. She complained of pain in the scapular region upon palpation of her chest. Her neurologic exam was non-focal.

Dr. Pandya's initial impression was acute febrile illness, bronchitis/rule out pneumonia, and rule out a UTI and insulin dependent diabetes mellitus. He started Ms. Matthews on empiric antibiotics and narcotic pain medications.

On Friday, April 1, 2005, Dr. Pandya requested a neurology consultation with Dr. Vickers due to the development of lower extremity weakness. According to Dr. Vickers' consult note, Ms. Matthews was not very forthcoming with her history, was quite agitated and in quite a bit of pain. Moreover, Ms. Matthews advised him that she had been able to walk in the morning on April 1, 2005; however, at the time of his consultation she did not feel she could walk.

Dr. Vickers was unable to obtain a review of systems due to Ms. Matthews' mental state. Her temperature at the time of his evaluation was 99.5. Ms. Matthews was moaning and crying intermittently. Ms. Matthews was unable to feel below her waist but did grimace to painful stimuli in the lower extremities. Intermittently, she could feel pin pricks below the waist. He was unable to check for posterior sensory level or saddle anesthesia as Ms. Matthews would not sit up in bed.

Dr. Vickers' motor exam revealed that Ms. Matthews either could not or would not move her lower extremities. Deep tendon reflexes were decreased in the lower extremities symmetrically, absent at the ankles and a trace at the knees. Her gait was not tested.

Dr. Vickers' dictation stated that given Ms. Matthews' bacteremia he would need to rule out extrinsic lesions such as an epidural infection. He ordered an MRI of the lumbar spine with and without contrast under general anesthesia. If that was negative, while Ms. Matthews was under anesthesia, he recommended at least screening sagittal views of the cervical and thoracic spine. Two lines down Dr. Vickers wrote that Ms. Matthews had lower extremity weakness and bacteremia, and that he needed to rule out infection.

The order was taken off by the unit secretary at approximately 4:00 p.m. on April 1, 2005. The process of taking off the order required the secretary to type the written order into the computerized order system utilized at the hospital. The typed order did not track the written order word for word.

Dr. Vickers' order was input again by another unit secretary at 1:35 a.m. on April 2, 2005. This secretary typed in that the patient had lower extremity weakness and that she needed an MRI of the lumbar spine with and without contrast under anesthesia and to "see chart for further instructions."

North Collier Hospital did not have an MRI scanner. Therefore, Ms. Matthews was transferred to the main campus of Naples Community Hospital for the study. At 6:15 a.m. on April 2, 2005, Ms. Matthews' ex-husband signed a consent for anesthesia services for an MRI of the lumbar spine with and without contrast under anesthesia.

The exact time Ms. Matthews arrived at Naples Community Hospital for the MRI on April 2, 2005 was unknown. However, anesthesia began at 9:20 a.m. The MRI began at 9:35 a.m. and was finished at 10:07 a.m. Ms. Matthews was admitted to post anesthesia at 10:35 a.m. At 12:40 p.m. she was discharged back to North Collier via EMS on oxygen.

The radiology tech who performed the lumbar MRI on April 2, 2005, testified that Ms. Matthews' chart was with her when she arrived in the radiology department. In addition, he testified that he most likely would have shown Dr. Singer the written order by Dr. Vickers of April 1, 2005.

Dr. Singer testified that he rarely if ever will have the actual written order by the ordering physician at the time reads the films. The information he usually has available to him is a requisition form. The requisition form in this case was never located by the hospital and was most likely saved for only a few days per routine. Dr. Singer's testimony was corroborated by his partner, Dr. Ryan. Dr. Ryan testified that rarely will a radiologist have the actual written order by the referring physician.

The exact time that Dr. Singer actually read the lumbar MRI on April 2, 2005 was unknown. The soonest it was available to read was approximately 10:07 a.m. Dr. Singer's dictation was not timed. According to his dictated report, the indication for the MRI of the lumbar spine with and without contrast was lower extremity weakness. He diagnosed a disc herniation at L5-S1 resulting in complete encroachment of the left lateral recess and encroachment of the left intervertebral foramina.

In addition, there was a mild posterior bulging disc annulus at L4-5 with a small annular tear centrally. There was also mild encroachment of both intervertebral foramina at L4-5 slightly worse on the right. Thus, the MRI was not negative.

Ms. Matthews was evaluated by Dr. Vickers at about 2:00 p.m. on April 2, 2005. His progress note stated that he was awaiting the MRI results and if the MRI did not include the cervical and thoracic sagittal images that he ordered, she would then need to be transported back to NCH for the cervical and thoracic spine images.

At 6:18 p.m. on Saturday, April 2, 2005, Dr. Vickers gave the nurse a routine verbal order for an MRI of the cervical and thoracic spine with and without contrast

under anesthesia. This was after he had learned that cervical and thoracic images had not been done that morning.

The MRI of the cervical and thoracic spine was performed on Sunday morning, April 3, 2005, at Naples Community Hospital. It was initially interpreted by Dr. Singer's partner, Dr. John Ryan. Dr. Ryan observed what he believed to be a spinal epidural abscess. Because Dr. Singer was the group's neuroradiology specialist, Dr. Ryan contacted him to come in and review the study. Dr. Singer came to the hospital, read the MRI and dictated the official report which was placed in the hospital chart. Dr. Singer agreed with Dr. Ryan's interpretation.

Ultimately, the results were called to the floor. This resulted in a neurosurgical consultation with Dr. Dernbach. Dr. Dernbach took Ms. Matthews to surgery that night. Dr. Dernbach performed a partial C4, C5, C6, C7, T1, T2, T3 and T4 laminectomy and drainage of an epidural abscess with decompression of the spinal cord.

Ms. Matthews remained hospitalized at Naples Community Hospital until April 21, 2005. She was transferred to the comprehensive rehabilitation center for intensive spinal cord rehabilitation. Her condition on transfer was described as improved quadriparesis. She was medically stable.

Ms. Matthews remains a paraplegic. She is currently a resident at Lely Palms Skilled Nursing Facility. She has intractable and severe pain according to her medical records that is spinal cord in origin. She also has had numerous complications such as pneumonia, renal failure, recurrent urinary tract infections, congestive heart failure and lower limb edema. She requires total care and assistance with activities of daily living. She also has depression/bipolar disease which pre-existed her injury. However, she claims that it has now become worse.

Plaintiff alleged that there was an unreasonable delay in diagnosing her spinal epidural abscess. She was a diabetic who was bacteremic with a fever, experiencing back pain, progressive neurologic deficits and urinary retention which required a stat MRI of the cervical, thoracic spine.

**PLAINTIFF EXPERT WITNESSES:**

Thomas Naidich, M.D.,  
Mt. Sinai Medical Center  
Post Office Box 1234  
Department of Radiology  
New York, NY 10029

Specialty: Neuroradiology

Dr. Naidich testified that Dr. Singer fell below the standard of care in that he failed to review the written orders in the hospital chart and ensure that Ms. Matthew's cervical and thoracic spine was imaged at the same time as her lumbar spine on April 2, 2005.

Walter Kernan, M.D.  
3100 Rimmon Hill Road  
Yale Medical School  
New Haven, CT 06525  
Specialty: Internal Medicine

Dr. Kernan testified that Dr. Pandya fell below the standard of care. It was his opinion that Ms. Matthews had a fever, back pain, neurologic deficits, elevated white blood cell count and diabetes which required a stat MRI of the entire spine and a neurological consult sooner than April 1, 2005. It was also his opinion that the neurology consult actually ordered by Dr. Pandya on April 1 should have been ordered stat.

Richard Kishner, M.D.  
572 East McNab Road  
Pompano Beach, FL 33060  
Specialty: Neurology

Dr. Kishner testified that Dr. Vickers fell below the standard of care. He was critical of Dr. Vickers' April 1, 2005 order because it was a conditional order. His opinion was that Dr. Vickers should have ordered a stat MRI of the entire spine.

Nicholas Suite, M.D.  
7900 N.W. 33rd Street, Suite 101  
Davie, FL 33024  
Specialty: Neurology and Internal Medicine

Dr. Suite testified as to life care needs and the extent of Ms. Matthews' disability.

Craig Lichtblau, M.D.  
550 North Lake Boulevard  
North Palm Beach, FL 33408  
Specialty: Physical Medicine  
Sub-specialty: Rehabilitation

Dr. Lichtblau testified as Plaintiff's life care planning expert.

Frederick Raffa, Ph.D.  
Raffa Consulting Economists, Inc.  
17 South Osceola Avenue, Suite 200  
Orlando, FL 32801  
Specialty: Economist

Dr. Raffa testified as to the economic loss incurred by Plaintiff.

Hubert Aronson, M.D.  
7400 N. Kendall Drive, Suite 307  
Miami, FL 33156  
Specialty: Neurosurgery

Dr. Aronson testified that earlier diagnosis and decompression would have resulted in lesser disability.

**DEFENSE EXPERT WITNESSES:**

Gordon Sze, M.D.,  
Yale Medical School  
123 York Street  
Apartment 17-B  
New Haven, CT  
Specialty: Neuroradiology

Dr. Sze testified that Dr. Singer complied with the standard of care. His obligation was to correctly read images presented to him for review by the technical staff of the Radiology Department, which he did. It was not Dr. Singer's responsibility to read or carry out physician orders.

Daniel Lichtstein, M.D.,  
777 Glades Road, Biomed Science  
Boca Raton, FL 33431  
Specialty: Internal Medicine

Dr. Lichtstein testified that Dr. Pandya met the standard of care. It was his opinion that the first definitive symptoms of a neurologic deficit were documented on April 1, 2005. He further opined that it was well within the standard of care for Dr. Pandya to order a neurology consult to further evaluate the cause of the neurologic symptoms.

Owen Samuels, M.D.  
Emory University School of Medicine  
1365 Clifton Road, N.E.  
Building B, Suite 6200  
Atlanta, GA 30332  
Specialty: Neurology

Dr. Samuels testified that Dr. Vickers met the standard of care.

**CHECK APPROPRIATE SPACE:**          X   Verdict

**DATE OF VERDICT:**                    September 1, 2009

**VERDICT:**                                Defense verdict for all defendants

**DATE OF JUDGMENT:**                Please see comments below.

**DEFENDANT'S OFFER:**                Zero

**PLAINTIFF'S DEMAND:**               \$9,000,000.

**ATTORNEYS COMMENTS:**

Plaintiff filed a Motion to Interview the Jurors and/or Motion for New Trial based upon juror misconduct. After trial, the Judge's bailiff received a telephone call from a person identifying herself as one of the jurors on the case. She advised the bailiff that she had heard a juror tell another juror in her presence that he had read the newspaper and was aware that the hospital had settled.

The Judge granted the Motion to Interview which was heard on November 9, 2009. At the hearing, the foreman admitted to having read a local newspaper article(s) which revealed that the hospital had settled. The court granted Plaintiff a new trial.

**Submitted by:**        Richard Mangan, Jr., Esquire  
                                 R. Clifton Acord II, Esquire

**Date:**                    March 17, 2010



**Firm:** Rissman, Barrett, Hurt, Donahue & McLain, P.A.  
**Address:** 1 North Dale Mabry, 11<sup>th</sup> Floor, Tampa, FL 33609  
**Telephone No.:** (813) 221-3114      **Fax No.:** (813) 221-3033