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DAILY REPORT

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VERDICTS & SETTLEMENTS

Blood test error is worth $5.4M, jury says

JUDGE REDUCES AWARD by $1.7 million in nerve damage case; both sides vow challenges

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A FULTON COUNTY JURY last week awarded more than $5 million in a case that is the worst nightmare for anyone who has ever gritted his teeth and looked away as a medical technician poked around trying to draw blood.

In the case of Michael Bowbliss, a woman performing a blood test probed for a vein, and he felt a painful jolt down his arm, one which remained even after the needle was removed. According to Bowbliss' suit against the testing company, the former college wrestler and father of three young children suffered permanent nerve damage that left him in chronic, debilitating pain requiring near-constant medication.

On Friday, a jury awarded Bowbliss and his wife, Dee Anna, $5.4 million for his injury, including $2 million on a loss of consortium claimed filed by his wife. Michael Bowbliss' attorney Lloyd Bell said that Fulton County State Court Chief Judge Patsy Y. Porter reduced the award by just over $1.7 million. That was the cost of two medical devices Bowbliss' expert witness said he would probably need in the future, but the judge found that sum "too speculative," said Bell.

"While I respect the court's decision [on the reduction], I strongly disagree with it, and am confident Mike will ultimately receive all the money the jury found he was entitled to," said Bell.

ZACHARY D. PORTER

Lloyd Bell, left, and Nelson Tyrone represented the man and his wife, respectively, in negligence suit.

Bell said key evidence in the case was provided by the corporate defendants themselves, Quest Diagnostics and its Alpharetta-based subsidiary, Quick-Med Inc., which hired the phlebotomist who performed Bowbliss' blood test.

"We had testimony from a Quick-Med manager that they had a policy of never admitting responsibility for anything," said Bell. "We asked her during a deposition, 'So the company policy was to put its interests ahead of those of its patients?' and she said it was."

Hawkins Parnell Thackston & Young partner Matthew F. Barr, who represents the defendants, provided a short emailed statement in response to a request for comment. "We believe that the evidence presented demonstrates the merits of our case, and we intend to pursue appropriate post-trial relief," it said.

On Monday morning, Barr filed a combined motion including a request for a mistrial and for a new trial.

According to Bell and the pretrial order in the case, Bowbliss, then 34, applied for a life insurance policy two years ago and, as part of the process, was required to undergo a physical exam administered by Quick-Med technician Patricia Robinson.

In May 2009, Robinson went to the Bowbliss' home in Buford and performed the exam, including drawing blood.

Robinson, according to the plaintiffs' portion of the order, inserted the needle at a 45-degree angle, but the "undisputed standard of care" requires that a testing needle be inserted at a 30-degree angle or less, it said, to protect a patient from nerve damage.

When the needle was inserted, Bowbliss felt "immediate, sharp pain radiating down his arm into his fingers," it said. "When it appeared that she had misplaced the needle and missed a vein, Ms. Robinson then moved the needle, while it was still in Mr. Bowbliss's arm, resulting in intense pain and injury to the right median nerve."

Bell said Robinson kept the needle in Bowbliss' arm, despite his complaining of excruciating pain, until she finally hit the vein and drew the blood sample. When it was removed, he said, the pain continued.

"He knew immediately that he was hurt," Bell said. "He tried putting ice on it, but that didn't help."

Four days after the incident, Bowbliss called Quick-Med to discuss his arm. A supervisor, Bell said, advised him to seek immediate medical help.

Over the next few months, said Bell, Bowbliss consulted with several doctors, neurologists and pain specialists.

"He thought it would resolve—'it's a needle stick, it'll get better'—but it just never did."

Bowbliss' injured nerve developed into Complex Regional Pain Syndrome, described by Bell as "a debilitating pain condition affecting the entire body, which has no known cure."

Bowbliss was ultimately referred to Erik Shaw, a pain management specialist at the Shepherd Center, who ordered a regimen of pain-killing and nerve-blocking drugs including ketamine, a human and animal tranquilizer sometimes used as a recreational street drug.

Bowbliss continued to work for a pest-control company that has employed him since college, Bell said, unloading trucks and serving as a salesman.

"The CRPS is constant in right arm, and that arm has begun to curl," Bell said. "He can still use it, but he pays a price when he does. Any lifting or pushing sets up a repetitive pain response."

In March 2010, Bell filed a negligence and negligent hiring suit on the Bowbliss' behalf, naming Quick-Med and Quest as defendants, and including a loss of consortium claim. Robinson, described by Bell as a "middle-aged grandmother who supports herself" and who still works for Quick-Med, was not named.

After filing the suit, Bell asked Atlanta sole practitioner Nelson Tyrone to come aboard and represent Dee Anna Bowbliss.

Roswell attorney Lawrence B. Schlachter, who is also a board-certified neurosurgeon, helped review evidence and interview witnesses but did not participate in the trial, Bell said.

Bell said the defense turned down an offer to settle the suit for $10 million, and there was no mediation.

During the trial that commenced April 24, plaintiffs' witnesses included Shaw from the Shepherd Center; Christine H. Presley, an expert in phlebotomy and venipuncture at the Medical Center of Georgia in Macon; Loretta Lukens, a registered nurse and life-care planner from Arizona; and pain-management specialist John Givogre from Gainesville, Ga.

Lukens presented evidence calling for a $3.2 million plan to care for Bowbliss the rest of his life, Bell said.

The plaintiffs also called a number of before-and-after witnesses to testify as to the impact of Bowbliss' injury on his demeanor and family interactions, Bell said.

The defense called two witnesses, he said: Robinson, the technician who drew the blood, and Valerie Ford, a phlebotomy coordinator for Emory Healthcare who testified regarding the standard of care for blood draws.

Ford, said Bell, "turned out to be one of our best witnesses."

"She agreed with all of our points, but insisted that Quick-Med had complied with the standard of care anyway," Bell explained.

Defense filings indicate that Quick-Med denied liability for Bowbliss' injury and insisted that Robinson performed her duties properly.

"Specifically," said the defense portion of the pretrial order, "she inserted the needle at an appropriate angle and did not fall below the standard of care at any time during the subject blood draw. She was not required under the circumstances to immediately withdraw the needle after it was inserted. She did not probe the needle or 'root' with the needle when it was in Mr. Bowbliss' arm."

At closing, Bell said he focused on the $3.2 million life-care plan and asked the jury to award three times that amount for pain and suffering. Tyrone, Dee Anne Bowbliss' attorney, asked for "a multiple of whatever the jury returned for Mike," he said.

On Friday, the jury took about seven hours to award Michael Bowbliss $3,464,255, including separate line items for a spinal cord stimulator and an intrathecal pump, a device that allows small amounts of medications to be pumped directly into the spinal fluid. The jury awarded Dee Anna Bowbliss $2 million on her claim.

Bell said that Shaw, Bowbliss' doctor, had testified during trial that his patient would likely need the medical devices in the future, and that defense attorney Barr asked Porter to order a directed verdict denying those claims when testimony ended. Porter said she would wait for the verdict to come in, but upon its presentation, she struck the costs of the devices, listed on the verdict form as totaling $1,714,255.

After that adjustment, the total award was $3,750,000 for both plaintiffs.

After the verdict was returned, Bell filed a motion under Georgia's frivolous claims statute, O.C.G.A. §9-11-68(e), asking the jury to decide whether the plaintiffs should be awarded attorney fees, as well.

After hearing from both sides, the jury deadlocked, and Porter declared a mistrial on that portion of the trial and dismissed the panel.

Bell said he would appeal Porter's ruling reducing the award and would also file a motion seeking to collect fees and expenses under the post-judgment attorney fees statute.

The motion filed by Barr says that due to the bifurcated trial and hung jury on the second portion, the entire verdict "is incomplete and cannot be accepted."

"Accordingly," it concludes, "Defendants respectfully request that the Court declare a mistrial on all issues and that the Court set aside the jury's verdict and grant Defendants the right to a new trial on all issues." DR