

Y MEDICAL MALPRACTICE

K BAY CIRCUIT COURT

Jury finds dentist was not negligent in extraction

A court decided a dentist was not negligent in his treatment of a patient who suffered an infection.

In 2008, Sharette Howarth, then 63, was having Dr. Robert Pierce remove some teeth so she could receive dentures. Howarth, who appeared pro se, claimed she contracted osteomyelitis after the extractions, requiring her to undergo a course of antibiotics. Defense counsel argued Howarth did not articulate how Pierce allegedly gave her a bone infection. The defense's oral surgery expert said Howarth did not have an infection after the extractions but contracted it during the later insertion of dentures.

Case: Howarth v. Pierce

Case No.: 09-5419-CA

Plaintiff lawyer: Sharette Howarth, pro se

Defense lawyer: Michael J. Obringer, Marshall Dennehey Warner Coleman & Goggin, Jacksonville

t OSCEOLA CIRCUIT COURT

Wife gets \$1M settlement for husband's intubation

The family of a man who suffered fatal complications during intubation received a \$1 million settlement.

In 2006, Harold Hicks, 67, underwent intubation to undergo surgery for a blocked intestine. The intubation was ordered by an anesthesiologist, Dr. Scott Wurm, and performed by nurse Clemente Arnold. During the insertion of the breathing tube, Hicks aspirated vomit into his lungs, causing brain damage and a massive infection. He died the following day. Hicks' wife claimed the defendants should have pumped her husband's stomach before the surgery.

Defense counsel claimed aspirating vomit is a known complication of intubation.

Case: Estate of Hicks v. Wurm

Case No.: 2007 CA 000762

Plaintiff lawyer: Elizabeth H. Faiella, Elizabeth Hawthorne Faiella, Winter Park

Defense lawyer: Thomas E. Dukes III, McEwan Martinez & Dukes,

Coral Gables attorney helps client win \$16.5M for asbestos exposure

Case: Charles B. Garrison and Cynthia Garrison v. Union Carbide Corporation, et al

Case no: CACE-10-012353

Description: Products liability

Filing date: March 16, 2010

Trial dates: September 5-16, 2011

Jury award: \$16.5 million

Judge: Broward Circuit Judge John Murphy III
Plaintiff attorney: Juan Bauta II, Ferraro Law Firm, Coral Gables

Defense attorneys: Colin Kelly, Alston + Bird, Atlanta; Bruce Bishop, Willcox & Savage, Norfolk, Virginia; Michael Terry, Hartline Dacus Barger Dreyer, Corpus Christi, Texas

Details: Charles Garrison found he had trouble swallowing in 2009. When doctors checked what was troubling the 59-year-old father of two, they initially thought he had throat cancer. But tests determined the tumor was outside his esophagus and concluded he had mesothelioma, which has been linked to asbestos exposure.

Garrison traced his exposure to a four-month period in 1974 when he attended college in New Hampshire and stayed at his uncle's home. With little cash in hand, Garrison agreed to remodel his uncle's attic and slept in the same room where he worked.

He told his lawyers he still remembered the brand of joint compound — Georgia-Pacific Ready-Mix — he used because he later sold 5-gallon buckets of it at the Naples lumber yard where he worked from 1975 to 1998.

Garrison and his wife, Cynthia, sued chemical manufacturers Georgia-Pacific and Union Carbide as well as several other companies. All but Dow Chemical subsidiary Union Carbide were dismissed before trial, and the family settled with Georgia-Pacific for \$1.5 million.

Plaintiff case: At trial, Juan Bauta II argued the company was responsible for Garrison's disease. Jurors were shown asbestos was widely used in construction products until companies phased it out in the early 1980s.

Tulane University professor Dr. Arnold Brody, the first investigator to find asbestos fibers can be inhaled and stay in the lungs, testified how the material could move within Garrison's body. Drexel University health professor Arthur Frank testified about causation.

To counter defense arguments that Garrison has throat cancer and not mesothelioma, Dr. Jerrold Abraham, a professor at State University of New York's Upstate Medical University, said doctors who examined Garrison's throat with a camera found nothing there.

Additionally, a biopsy revealed had Garrison's tumor had mesothelial cells, which



J. ALBERT DIAZ

Attorney Juan Bauta II successfully argued Union Carbide was responsible for Charles Garrison's disease.

line the lungs and should not have been near his throat tumor.

Bauta had to address defense criticism that doctors never plucked a piece of the tumor from the lining of Garrison's lungs. But he argued doctors never had to — the existence of a throat tumor with mesothelial cells showed a cancer had originated in the lung lining and spread.

Bauta asked jurors to place 30 percent of the blame on Georgia-Pacific and the rest on the asbestos supplier, Union Carbide.

Defense case: Company lawyers did not respond to calls for comment by deadline, but spokesman Scot Wheeler said its lawyers argued Garrison was not exposed to Union Carbide asbestos. They also argued Garrison's cancer is unrelated to asbestos exposure.

The company argued Garrison has esophageal cancer and used testimony from Dr. Victor Roggli, a pathologist at Duke University Medical Center. The pulmonary specialist and asbestos researcher said he couldn't tell whether Garrison had mesothelioma or not without a physical sample from the lining of his lungs, Bauta said. Wheeler said the company noted Garrison's cancer is in remission.

Outcome: Jurors decided Union Carbide was 80 percent at fault and attributed the rest to Georgia-Pacific. The jury awarded the couple \$20.6 million, but because only Union Carbide remained in the case, the award was reduced to \$16.5 million.

Quote: "Whenever you've got a guy like Victor Roggli, who's published a ton in the area, that's always something to be very concerned about. But at the end of the day, he couldn't say definitely yes or no," Bauta said.

Post-judgment: The company hopes to set aside the verdict or appeal.

— Jose Pagliery