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**Seibel & Eckenrode PC** of St. Louis won four consecutive medical malpractice cases over a four-week period from November 15, 2004 through December 10, 2004. **J. Thaddeus Eckenrode** ([jte@Seibel-Eckenrode.com](mailto:jte@Seibel-Eckenrode.com)) tried two of the cases, while **Robert C. Seibel** ([rsc@seibel-eckenrode.com](mailto:rsc@seibel-eckenrode.com)) defended the other two.

A "lost chance" case was tried by Mr. Eckenrode in St. Louis County Circuit Court, in which the surviving spouse of a man who died of prostate cancer claimed that he would have lived up to five years longer if the defendant physicians had not altered the hormonal ablation therapy that he had been on per his urologist's instructions and had they not failed to note the serious increase in PSA levels thereafter. The patient died less than a year after the hormonal therapy was re-initiated. The case, *Schomaker v. American Multi-Specialty Group*, resulted in a defense verdict on November 18. Although defense liability experts were stricken by the court in a discovery dispute, the decedent's treating oncologist offered testimony that suggested that life expectancy would not likely have been altered with the earlier resumption of hormonal ablation therapy. Likewise, plaintiff's expert conceded several points on cross-examination about the lack of a true consensus in medicine regarding the long-term efficacy of hormonal ablation therapy, and he also came across, at times, as smug, which turned off some of the jurors.

Another case, *Pobst v. St. Francis*, was tried by Mr. Seibel in Cape Girardeau (Missouri) Circuit Court, and resulted in a defense verdict on November 18. The claim was that the defendants misdiagnosed a MRI finding as a benign tumor and failed to consider an aneurysm, which it was found to be during subsequent surgery. During an operative procedure to address the aneurysm, the plaintiff suffered a stroke. Plaintiff contended that the defendants should have considered an aneurysm during the original MRI interpretation.

As one of their experts, the defense used the video-taped testimony of one of the nation's leading pituitary neurosurgeons,



J. Thaddeus Eckenrode



Robert C. Seibel

Dr. Edward Laws. In contrast to plaintiff's experts, Dr. Laws testified that all of the fees he receives from review and testimony go to the continuing education of his department's residents and nurses. In addition, the neurosurgeon (not a defendant) who eventually performed surgery to bypass plaintiff's aneurysm testified that plaintiff's stroke occurred during his surgery and that plaintiff arrived under his care neurologically intact, despite the fact that Dr. Park entered the aneurysm on the assumption it was a pituitary tumor. All the witnesses complimented Dr. Park on his efforts to control the bleeding and to make a timely referral to a neurosurgeon to address the aneurysm.

Mr. Seibel represented Dr. Daniel Fabito in a case in the Circuit Court of the City of St. Louis, which involved the post-operative care provided to a patient by the defendant doctor following surgery performed by a co-defendant physician. The claims against Dr. Fabito were that he should have operated on the decedent on the days he covered for the co-defendant surgeon because a post-operative intestinal leak should have been obvious. The jury returned a defense verdict on December 6.

Dr. Fabito's defense was that decedent was too ill to return to surgery while being resuscitated from septic shock, which apparently developed as the result of a micro-perforation of the bowel. Dr. Fabito and his local colo-rectal surgery expert joined the testimony of several treating physicians who felt that the first goal in treating the decedent was to adequately resuscitate decedent and then evaluate the possible need for exploratory surgery. When a CT scan did not reveal an active leak in the bowel, Dr. Fabito elected to postpone surgical intervention. Decedent's condition actually improved in the ensuing days. It was clear that plaintiff's focus was on later care provided by the co-defendant surgeon, though both defendants received defense verdicts.

The fourth victory was a "shoulder dystocia" case, in which a permanent brachial plexus injury occurred during the birth of a child delivered by the defendant, Dr. Carrie Carda. Mr. Eckenrode tried this case in St. Louis City Circuit Court. Although the nursing notes reflected that "fundal" pressure was applied after the baby's shoulder became lodged in the birth canal, which is inappropriate, the defense successfully convinced the jury that the nursing note was in error, and that the doctor actually used "suprapubic" pressure (which is appropriate) to dislodge the shoulder and deliver the baby. The plaintiff's expert suggested that the note was written at a time when a mistake in the recording was less likely to have occurred, suggesting that it was accurate, and the verbal testimony of the doctor and nurse was not. The defense utilized the "high risk-high reward" strategy of suggesting that the plaintiffs were calling Dr. Carda and the nurse "liars," and that they gave sworn testimony, under penalty of perjury, that suprapubic pressure had been used, which they would not do just to defend a civil lawsuit. The defense also overcame a claim that a vacuum

extractor had been inappropriately used, and the jury returned a defense verdict on December 10, 2004 in *Gilmore v. Womens Health Specialists*.

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