Defense Firm Scores Med-Mal Hat Trick 3 Straight Weeks

Lawyers Say Success Due To Strong Staff

BY ANNE C. **VITALE**

Winning a medical malpractice verdict, whether for the plaintiff or the defendant, is a tough task for any small law firm.

That's what makes the accomplishment of a six-member St. Louis defense firm so remarkable -- they scored that trick in three straight weeks in three different jurisdictions.

The partners at Seibel & Eckenrode, who orchestrated the St. Louis City, St. Louis County and Scott County victories, said credit for the feat goes to their staff

"A symphony conductor can't produce music without musicians," said Bob Seibel. "In the same way, our role as the trial lawyer, as important as it is, is only as effective as the people who support us throughout the process.

“The key to putting together a series of verdicts like these is a strong behind-the-scenes team," Seibel said.

Tad Eckenrode agreed. "Medical malpractice cases are very difficult because they are gray-area cases that could go either way," Eckenrode said. "Both sides have credible expert witnesses to support the competing theories in the cases."

According to Eckenrode, there is "no magic formula" to prevailing in a med-mal case beyond organization and preparation.

"The key is just to be willing to try these cases and see what happens."

Defense Verdicts

In the St. Louis City case, *Downey v. Brinkman, et al.,* lead attorney Eckenrode defended a doctor involved in the treatment of a patient who died of lung cancer. His wife, the plaintiff, claimed there was a delay in the diagnosis and treatment of a tumor. According to the plaintiff, a routine chest X-ray conducted in 1996 revealed density she contended was Stage I cancer, which has a 70 percent survival rate when treated promptly. The plaintiff said the patient was not referred to a specialist until 1998, when the tumor had progressed into Stage IV cancer, which is usually fatal within a year.

Eckenrode's client, Dr. Robert Brinkman, contended that the density was "unchanged" on routine films for several years, leading to a presumption that it was benign. When a change was noted on an X-ray in 1998, Dr. Brinkman immediately referred the patient to a pulmonologist.

Co-defendant Dr. Richard Highbloom had ordered one of the chest X-rays as a pre-operation screening exam before performing an unrelated coronary bypass procedure. The plaintiff claimed Dr. Highbloom failed to diagnose the cancer as well.

The defendants contended that the patient had severe coronary disease --as evidenced by two bypass surgeries, two heart attacks and high cholesterol -- that caused him to have a substantially reduced life expectancy, with or without cancer.

At trial, the plaintiff sought $3.2 million in damages. The jury returned a verdict on March 13 in favor of Dr. Highbloom but against Dr. Brinkman. However, the jury found only a 5 percent lost chance of survival and awarded no damages.

Ken Brostron of Lashly & Baer in St. Louis, who represented Dr. Highbloom, said that Dr. Highbloom was added after the plaintiff learned Dr. Brinkman had not ordered the chest X-rays, which was a pivotal part of the plaintiff's case. "He wasn't the primary care physician and only had a limited role in the care of decedent,"

Brostron said. "We presented it very straightforwardly, and the jury understood that."

St. Louis County

In the St. Louis County case, *Jones v. Poetz,* lead attorney Eckenrode's client was a doctor who, the plaintiff claimed, failed to diagnose and treat respiratory failure that led to the death of a 54-year-old woman. According to the plaintiff, the respiratory failure apparent during the course of three doctor visits was so extreme that the woman had trouble walking and talking.

However, the doctor denied that the woman had extreme respiratory failure and contended she died of an unrelated heart attack. To support this theory, Eckenrode pointed out that the woman had several severe risk factors for a heart attack -- her parents and two siblings died of heart attacks at ages younger than she was at the time of her death; the woman had high cholesterol and high triglycerides; and she smoked two packs of cigarettes a day for 30 years.

The plaintiff's expert refuted the defense's heart attack theory by claiming the decedent showed no symptoms of a heart attack. However, the woman's husband testified that she complained of chest pains the night before she died.

At trial the plaintiff demanded $680,000, including $170,000 in special damages for future loss of services and funeral expenses. The jury returned a verdict on March 20 in favor of the doctor.

Scott County

In the Scott County case, *Beeson v. Law and Cardiovascular Consultants of Cape Girardeau, Inc.,* lead attorney Bob Seibel defended a cardiologist involved in the treatment of a prominent Cape Girardeau attorney, David Beeson, in October 2001. The plaintiff claimed that the 54-year-old died of a heart attack less than one month after undergoing a stress EKG and stress echocardiogram, both of which the defendant cardiologist interpreted as negative for coronary artery disease. The plaintiff's experts contended the EKG and echocardiogram suggested the presence of coronary artery disease and that further tests were warranted.

Seibel argued that the EKG and echocardiogram were negative. He also sought to establish that the patient probably had coronary artery blockages that put him at significant risk for sudden cardiac death but that were below the threshold for detection by EKG and echocardiogram.

In addition, Seibel maintained that the risk factor intervention recommended to the patient would not have had sufficient time to prevent death one month later.

The plaintiff sought $3.4 million in damages, but the jury returned a defense verdict on March 26.

Significant Risks

“We depend on the claims staffs of the carriers which were represented in these cases to support the decision to try difficult cases," said Seibel. "And each of these cases posed significant risks.

"All of these cases were tried against top-notch plaintiff's counsel in venues where substantial plaintiff’s verdicts are possible. That makes these verdicts for the physicians we represented all the more satisfying.

Eckenrode added: “Part of what we have to do is evaluate the risk of an adverse verdict and advise our clients. In some cases, there is a substantial risk, but still a plausible, credible defense. So when the insurance carrier or client is willing to go forward, we applaud them for their willingness."

Eckenrode noted that in medical malpractice cases jurors hear each side's version of the story several times. "So I never want my defense cases to drag on and on," he said. "The key is to keep the jurors interested through things they see, rather than just things they hear, and to keep it short, which I think the jurors appreciate."

In cases with disputed facts, Eckenrode said credibility is a major issue. "It's important that when our witnesses testify, we have to make sure they do so with a degree of reasonableness, without all the anger and anxiety associated with being sued," he said.

"The witnesses must realize there are two sides to the story so that they can plausibly and reasonably explain their care and their decision-making process in providing that care.

"That way, when the jury is reviewing their testimony retrospectively, they will understand that they acted reasonably."

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