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$1.8M award in case of ankle surgery that led to leg amputation

PLAINTIFF'S ATTORNEYS argue surgery was done too soon on Valdosta man injured in flipped truck

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A JURY IN VALDOSTA awarded $1.8 million in a medical malpractice case against a local orthopedic surgeon for a man whose leg had to be amputated after an operation to repair a broken ankle.

The case—which lawyers said was marked by potential jurors in voire dire showing unusual sympathy for the plaintiff—ended with a confidential settlement after the verdict.

The plaintiff was Zan Childress, who severely injured his ankle when his truck ran off the road and flipped over in December 2010. He was trapped inside, hanging upside down by his left ankle—wedged between the floor and a wall of the cab—for an hour until rescue workers freed him, according to his lawyers.

He sued the surgeon who first operated on the ankle, Dr. John Kendrick, and the practice group Valdosta Orthopedic Associates. The lawsuit contended the surgery was done too soon—20 hours after the accident—and that the doctor should have waited five to seven days for the swelling to resolve around the crushed bone. Because the surgery was too soon, the lawsuit claimed, later swelling caused the wound to open, preventing healing and leading to infection.

In January 2011, Childress turned to a new doctor, who performed eight subsequent surgeries to attempt to repair the ankle and cover the wound and exposed bone with skin grafts. It didn't work, and in November 2011, Childress' leg was amputated below the knee. He was 32.

"These are tough cases to win and even tougher in rural venues such as South Georgia," said plaintiff's attorney Ranse Partin of Conley Griggs Partin in Atlanta, who tried the case with Robert Howell of Moultrie.

Robert Howell worked on the plaintiff's case for nearly three years.

Howell had been working on the case for nearly three years. A month before trial, he brought in Partin, his friend and classmate from the University of Georgia Law School.

Howell said, "As far as I can tell from talking to local court personnel—some of whom have been there forever—we believe this is the highest personal injury verdict in Lowndes County. It's certainly the highest medical malpractice verdict."

Defense counsel Gregory Talley of Coleman Talley in Valdosta said he couldn't verify whether the verdict was the biggest for the county, but he added, "For me, it certainly is." The plaintiff's lawyers described Talley, a former University of Georgia quarterback, as a worthy adversary known for winning defense verdicts in medical malpractice cases. They said they'd never known Talley to lose in the courtroom.

"We still believe Dr. Kendrick complied with the standard of care and provided appropriate and timely treatment," said Talley, pointing out that the new doctor's eight subsequent operations also were unsuccessful in saving the leg.

The plaintiff's lawyers described what they view as their winning strategies for the trial.

"With any good plaintiff's case anywhere, you've got to start out with an exceptional client," said Howell. "We had an exceptional client from a well-liked and respected family in Valdosta."

Both plaintiffs lawyers noted an unusual event in jury selection. Five or six potential jurors were struck for cause because they announced that they knew the Childress family, had high regard for them, were familiar with Zan's ordeal and would be biased on his behalf. "We generally get that in favor of the doctor," Howell said. Having so much good will in the community for the plaintiff, he said, "was a first for me."

Although those people left the jury pool, the others heard what they said. "It was favorable and flattering toward our client," Partin said.

The jury selection was helpful to the plaintiffs attorneys in another way, Howell and Partin said. They used a strategy employed in other cases by Partin's firm that is meant to elicit more than a simple yes or no answer from the jurors, engaging them in a dialogue that reveals more about their potential empathy.

For example, they asked the jurors to rate their trust in doctors on a scale of one to 10, then engaged them in conversation about their reasons. In this way, they ruled out people who tend to trust doctors implicitly, they said.

Also, they asked the jurors if any family member or loved one had lost a limb. They used these answers to rule out those less likely to understand the nature of the loss, the phantom pain that continues and the challenge of using prosthetic devices with accompanying complications, they said. The man who became the jury's foreman told the group in voir dire that his uncle is a double amputee.

The plaintiffs lawyers also aimed to keep the trial short—three days, plus the jury's deliberation, which lasted 5½ hours on the fourth day. "My experience tells me that a lengthy trial sometimes gets blamed on the plaintiff," Howell said.

Partin added that it helps to be "respectful of the jury's time."

Another aid was a simple stack of books. As Partin questioned the plaintiff's expert witness, he held up medical textbooks used for reference to support the point that the surgery should have been delayed long enough for swelling to resolve. The law allows those texts to be cited, but it doesn't allow the witness to read from them, Howell said. As the witness cited the books, the plaintiff's team stacked them up on their table. Some were 2,000 pages long.

They used a model of a human foot and ankle—combined with photos of their client's injuries—to show the jury what went wrong after the initial surgery, Howell said.

They chose not to use an economist to assess their client's damages, Howell said. Instead, they gave the jury numbers for medical expenses of just under $300,000 as well as lost wages from the time Childress couldn't work and the pay cut he took when he did return to a new, lower paying job. He's a parts manager for a tractor dealership.

To set a value for the loss of a leg, they used images of experiences Childress will never be able to have with his two young sons: playing football in the yard, kneeling to catch their baseball pitches, teaching them to ride a bicycle and running alongside, climbing into a deer stand when they learn to hunt. Then Howell, who made the closing argument, named a figure. "I suggested that it should not be less than $1 million," he said.

The case, tried before Lowndes County Superior Court Judge Frank Horkan, is *Childress v. Kendrick*, No. 2012-CV-2346. DR