MIAMI-DADE

MEDICAL MALPRACTICE

Failure to Test — Failure to Diagnose

Doctor failed to do follow-up colonoscopy, plaintiff alleged

VERDICT **$4,264,240**

CASE Hope Thomas, as personal representative of the Estate of Ronald Thomas v. Miguel Rodriguez M.D. and Feller, Kafka, Grijian M.D. PA d/b/a Miami Gastroenterology Association., No. 04-23523

COURT Miami-Dade County Circuit Court, 11th, FL

JUDGE Victoria Platzer

DATE 1/23/2007

PLAINTIFF ATTORNEY(S) **Gary A. Friedman**, Friedman & Friedman, Coral Gables, FL

DEFENSE ATTORNEY(S) **Miles A. McGrane, III**, McGrane, Nosich and Ganz, Miami, FL

FACTS & ALLEGATIONS In December 2000, plaintiff's decedent Ronald Thomas, 49, occupation not given, visited his physician Herbert Pena after suffering from rectal bleeding, change in bowel habits and stomach pain. Pena ordered lab work and referred Thomas to gastroenterologist Miguel Rodriguez, who performed a colonoscopy that identified two polyps and small internal hemorrhoids, but no evidence of cancer.

Thomas continued to visit Rodriguez periodically over the next 18 months. Despite his continued complaints of rectal bleeding, abdominal pain and pain radiating into his back, Rodriguez didn't order any additional tests. One year later Rodriguez considered doing a repeat colonoscopy and referral to a colorectal surgeon, however, he never scheduled it and never made a referral. Six months later, Thomas returned jaundiced with a 20-pound weight loss and was in stage 4 metabolic adenocarcinoma, which had spread.

Hope Thomas, as personal representative of her husband's estate, sued Rodriguez and practice Miami Gastroenterology for medical malpractice, claiming failure to diagnose.

Plaintiff's counsel claimed that although a cancer can be missed on a colonoscopy, Rodriguez should have recognized it may have been missed and re-scoped Thomas within 12 months when his symptoms had continued to worsen.

Plaintiff's counsel additionally argued that had Thomas been diagnosed with stage 1 cancer when his initial symptoms were presented, the 12-month window would have resulted in proper treatment and a possible remission.

INJURIES/DAMAGES *cancer; death*

Thomas died from cancer. He left a wife.

RESULT A jury found Rodriguez 100% liable and awarded the plaintiff $4,264,240.

–Matthew Rabin

FALSE ARREST

Wrongful Incarceration — Malicious Prosecution

Warrant arrest was based on mistaken identity

SETTLEMENT **$25,000**

CASE Shanna Anne-Marie Walker v. Miami-Dade County, a political Subdivision of the State of Florida, No. 06-04336-CA27

COURT Miami-Dade County Circuit Court, 11th, FL

DATE 12/11/2006

PLAINTIFF ATTORNEY(S) **Paul A. McKenna**, McKenna & Obront, Miami, FL
Curt D. Obront, McKenna & Obront, Miami, FL

DEFENSE ATTORNEY(S) **Wifredo A. Ferrer**, Assistant Dade County Attorney, Miami, FL

FACTS & ALLEGATIONS On July 5, 2004, plaintiff Shanna Anne-Marie Walker, 32, a Walgreens manager, was driving a rented car when she was pulled over by Miami-Dade police for following too closely. An officer ran a background check and told her that she had an arrest warrant for driving with an invalid license. The officer arrested her in front of her family. She was charged for driving without a valid license.

Walker sued Miami-Dade County for wrongful arrest, wrongful incarceration and malicious prosecution.

Plaintiff's counsel argued that there was no reason to arrest Walker because her license was valid, which was evidenced in the fact that the car was rented in her name.

Plaintiff's counsel contended that the arrest was based on a mistaken identity. The officer's background check produced someone with only the same last name as Walker and the same birth date while the address and first and middle name were different than Walker's. Plaintiff's counsel argued that a more extensive background check would have shown that she was not the same person who was wanted on the warrant.

INJURIES/DAMAGES Walker was arrested in front of her 11-year-old daughter and 75-year-old mother. While being booked at the police station Walker was subjected to a strip search. She had to squat in front of a female prison guard and a underwent a vaginal exam. The use of the exam has since been discontinued. She

was then held for four hours. She claims that she gets anxious every time a police car pulls up behind her or alongside her. Walker also had to explain to her daughter why she was arrested and the psychological impacts the arrest had on her daughter.

RESULT The case settled for $25,000.

DEMAND	$50,000
OFFER	$25,000

EDITOR'S NOTE This report is based on information submitted by the plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

–Matthew Rabin

ORANGE COUNTY

PREMISES LIABILITY

Negligent Repair and/or Maintenance

Girl injured at camp while learning how to wakeboard

DECISION	**Defense**
CASE	Steven Applegate and Suzanne Applegate individually and as legal parent and guardians of Jessica Applegate v. Cablewater Ski, No. 48-2005-CA-006779-O
COURT	Orange County Circuit Court, FL
JUDGE	C. Mackinnion
DATE	3/7/2007
PLAINTIFF ATTORNEY(S)	**Deborah R. Reid**, Rumrell, Costabel, Warrington, Brock, Jacksonville, FL
DEFENSE ATTORNEY(S)	**Robert E. Bonner**, Meier, Bonner, Muszynski, O'Dell & Harvey P.A., Orlando, FL

FACTS & ALLEGATIONS On June 3, 2005, plaintiff Jessica Applegate, age 6, was attending a wakeboarding camp at Cablewater Ski, an onshore facility that trains students to water-ski and wakeboard by pulling them on a cable across a pool. While at the camp, Applegate was wakeboarding across the pool when she fell off the board and was struck by another student wakeboarding behind her on the line.

Her parents, Steven Applegate and Suzanne Applegate, sued Cablewater Ski on a premises liability theory.

As part of registering Jessica for the wakeboarding class, the Applegates had to sign a waiver releasing Cablewater of any liability related to negligence. Jessica's parents signed the waiver.

Plaintiff's counsel tried to argue that it was against public policy for parents to release claims for children.

Defense counsel contended that the 14th amendment and state law both grant parents the right to make decisions for their children. Cablewater's attorney additionally stated that a precedent would be set by this case that would require parents to receive court approval before allowing their children to participate in any remotely dangerous activity, such as a school sport or attending camp.

Defense counsel additionally contended that the language in the release was clear and unequivocal.

INJURIES/DAMAGES *eye; fracture, orbit*

As a result of the accident, Jessica suffered a shattered eye socket and may have to undergo plastic surgery. Jessica didn't suffer any loss of vision as a result of the accident. Her medical bills were less than $10,000.

RESULT Judge C. Mackinnion ruled in favor of the defense.

POST-TRIAL The plaintiffs have appealed to the 5th District Court of Appeals. The U.S. District Court for the Southern District of Florida has held that a similar pre-suit waiver was not enforceable against the personal injury claims of a minor. *In re Complaint of Royal Carribean Cruises Ltd.*, 459 F.Supp.2d 1275, 1276 (S.D.Fla. Oct 23, 2006) (NO. 04-20155 CIV). A similar case is currently pending before the 4th DCA.

EDITOR'S NOTE This report is based on information provided by plaintiffs' and defense counsel.

–Matthew Rabin

SEXUAL ASSAULT

Special Olympics volunteer molested women at practice

VERDICT	**$2,100,000**
CASE	Margaret Showalter, Nancy Vasil, and her parents Joseph Vasil and Charlotte Vasil v. Special Olympics Florida, No. 48-2004-CA-009559-O
COURT	Orange County Circuit Court, FL
JUDGE	Reginald Whitehead
DATE	3/3/2007
PLAINTIFF ATTORNEY(S)	**Daniel F. Dill**, Law Office of Daniel F. Dill, P.A., Orlando, FL