

FACTS & ALLEGATIONS In 2012, plaintiff Alan Hantak, a 76-year-old retiree, was diagnosed with pleural malignant mesothelioma, a form of cancer in the lining of the lungs. Hantak alleged that his mesothelioma was caused by exposure to asbestos during his 30-plus years working as an electrician in Miami Dade County.

Hantak sued ABB Inc., Georgia Pacific LLC, Kaiser Gypsum Co., Inc., Union Carbide Corp., Premix Marbletite Manufacturing Co. and Rockwell Automation Inc. Hantak alleged that the defendants failed to warn that exposure to asbestos could cause mesothelioma or other respiratory diseases.

ABB was dismissed before trial. Georgia Pacific, Kaiser Gypsum, Union Carbide and Premix Marbletite settled with Hantak during the trial.

Hantak claimed that during his career as an electrician, he had installed at a lumber yard two new Allen Bradley motor starters that contained asbestos. Allen Bradley was a subsidiary of Rockwell Automation. Hantak also claimed that other electrical components he installed or performed maintenance work on contained asbestos, which may have been manufactured by another Rockwell subsidiary.

Defense counsel argued that there was no proof that Hantak ever worked on or around Rockwell products that contained asbestos or that any work he would have done on any Rockwell product would have released asbestos fibers in a sufficient quantity to be a substantial contributing cause of his mesothelioma.

The defense presented the testimony of a naval archivist expert, who reviewed historical records of the Navy ship upon which Hantak served in the 1950s. The expert testified that the vessel contained approximately 20 tons of amosite asbestos used to cover pipes and other equipment. Defense counsel contended that plaintiffs' experts agreed during cross-examination that the Navy exposure alone was sufficient to cause Hantak's mesothelioma.

INJURIES/DAMAGES *chemotherapy; loss of consortium; mesothelioma*

Hantak claimed that he developed mesothelioma as a result of using products manufactured by the defendants that contained asbestos. He underwent chemotherapy to slow the progress of the disease.

As a result of his mesothelioma, Hantak was confined to a wheelchair, required supplemental oxygen, and needed narcotics medication to control his pain. His counsel claimed that Hantak had a reduced life expectancy. Hantak sought to recover damages for past and future pain and suffering. Hantak's counsel asked the jury to award \$20 million in damages. Hantak's wife, Patricia, joined the action on a consortium claim.

Defense counsel argued that Hantak's mesothelioma was a result of exposure to amosite asbestos while he was in the Navy.

RESULT The jury rendered a verdict for the defense.

TRIAL DETAILS Trial Length: 14 days
 Trial Deliberations: 90 minutes
 Jury Composition: 6 female

PLAINTIFF EXPERT(S) Arnold R. Brody, M.D., oncology, New Orleans, LA
 William M. Ewing, industrial hygiene, Kennesaw, GA
 Steven Markowitz, M.D., occupational medicine, New York, NY
 James Millette, Ph.D., microscopy, Atlanta, GA

DEFENSE EXPERT(S) Thomas McCaffery, maritime, Alexandria, VA

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

—Gary Raynaldo

MEDICAL MALPRACTICE

Negligent Injection — Prescription and Medication

Doctor failed to tell her to halt anti-platelets, woman alleged

VERDICT \$284,000
ACTUAL \$327,171

CASE Irma S. Kelley v. Dr. Hashem Sultan, M.D., an individual, and Kendall Pain Center, LLC,

No. 11-18450-CA-05
COURT Miami-Dade County Circuit Court, 11th, FL

JUDGE Marc Schumacher
DATE 1/24/2013

PLAINTIFF ATTORNEY(S) Paul A. McKenna, Paul A. McKenna & Associates, P.A., Coral Gables, FL

DEFENSE ATTORNEY(S) Jacob A. Armpriester, Armpriester Law Offices, Boca Raton, FL

FACTS & ALLEGATIONS On Sept. 15, 2009, plaintiff Irma Kelley, 80, a retiree, underwent an injection, which was performed by Dr. Hashem Sultan, at his practice, Kendall Pain Center, LLC, in southwest Miami-Dade County. The day before, Kelley had gone to Sultan complaining of back pain, part of what was reportedly ongoing disc degeneration in her lower back, leading Sultan to recommend the injection

for pain management purposes. The injection was into her thoracic spinal canal at T-6. Immediately after the procedure, Kelley began to feel dizzy. While being driven home, she lost feeling in both legs. Upon her arrival home, she was immediately transported to a hospital where she was diagnosed as having sustained a dorsal hematoma, which hindered her ability to ambulate and allegedly caused her to become incontinent.

Kelley sued Sultan and his practice, alleging that Sultan violated the standard of care in that he did not ensure that Kelley stopped taking her anticoagulants prior to the injection.

According to testimony from Kelley's son, Sultan never told Kelley to stop taking Plavix, her anti-platelet drug, prior to the injection, resulting in the hematoma. Plavix, and other anti-platelet drugs, cause a greater risk of bleeding when injections are performed. According to Kelley's counsel, Sultan failed to advise Kelley about the risks of taking Plavix when receiving an injection.

According to the plaintiff's treating neurologist, he asked Kelley in the emergency room whether she was taking Plavix, to which she answered yes. According to the doctor, Sultan violated the standard of care by performing the injection on a patient who was still taking anti-platelet drugs.

Sultan denied any negligence, contending that he did tell Kelley to stop taking Plavix prior to the injection. Sultan claimed that he had performed approximately 7,000 epidural procedures like the one he performed on Kelley, and this was the first time any adverse reactions had occurred.

INJURIES/DAMAGES *catheterization; epidural injections; hematoma; incontinence; leg; paralysis*

Upon her arrival at South Miami Hospital, Kelley was found to be paralyzed. An MRI was performed, revealing that the dorsal hematoma was pressing against the nerves of her spinal column. An emergency evacuation of the hematoma was performed. Another evacuation procedure was performed the next day, as the first procedure was unable to remove all of the dorsal hematoma pressing against the nerves of her spinal column.

As a lasting result of the incident, Kelley claimed that she experienced permanent gait problems. She allegedly was unable to leave her home without the assistance of a cane, walker or wheelchair to help her ambulate. She also became incontinent of urine, allegedly due to the incident. She claimed that it became necessary to use a catheter four to six times a day. She allegedly would have to use the catheter for the remainder of her life.

Kelley's counsel asked the jury for a recovery of \$384,000 for her past and future medical costs. Jurors were also asked to double or triple that amount for pain and suffering damages.

Defense counsel contended that the hematoma in Kelley's spine was related to a pre-existing deformity in her spine. He also contended that Kelley was not incontinent, but instead had a spastic bladder that existed prior to the procedure. According to the defense's expert urologist, it is not uncommon for older people to hide their incontinence from their family and their doctors. The expert opined that

Kelley was likely embarrassed about the issue, and that no one found out until after the hematoma was sustained. The defense contended that the epidural injury was not the cause of her incontinence.

RESULT The jury rendered a verdict in favor of Kelley, determining that damages, for past and future medical costs, totaled \$284,000. No award was allotted for pain and suffering damages.

IRMA S. KELLEY \$284,000 past and future medical costs
\$284,000

OFFER \$40,000

INSURER(S) Self-Insured for both defendants

TRIAL DETAILS Trial Length: 3 days
Trial Deliberations: 3 hours
Jury Composition: 2 male, 4 female

PLAINTIFF EXPERT(S) George C. Ibars, M.D., neurology, Miami, FL (treating)

DEFENSE EXPERT(S) Angelo E. Gousse, M.D., bladder, Miramar, FL

POST-TRIAL Plaintiff's counsel filed a motion for additur, due to the jury's finding of awarding past and future medical costs without awarding for pain and suffering damages. The motion was heard on March 8, 2013, and resulted in the court awarding \$40,000 to Kelley for her pain and suffering. Also awarded was \$3,171.40 for fees and costs, bringing the total net award to \$327,171.40.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's and defense counsel.

—Kirk Maltais

MOTOR VEHICLE

Stop Sign — Broadside — Intersection — Multiple Vehicle

Plaintiff claimed collision caused lasting back pain

VERDICT **\$55,200**

CASE Samuel T. Bartlett v. Hermann R. Rico, No. 11-21317-CA

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

JUDGE Sarah I. Zabel

DATE 1/9/2013