

Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

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Comprehensive Statewide Jury Verdict Coverage

Civil Jury Verdicts

Complete and timely coverage of civil jury verdicts including circuit, division, presiding judge, parties, case number, attorneys and results.

Medical Negligence - The plaintiff alleged he underwent an unnecessary pacemaker surgery – beyond a simple medical error, the plaintiff alleged a conspiracy and joint venture by the hospital and local cardiologists to perform unnecessary procedures – while the hospital denied it all and developed proof the pacemaker was medically necessary, a London, KY jury found for the plaintiff and imposed \$20,000,000 in punitive damages

Wells v. St. Joseph London et al, 12-90
Plaintiff: Hans G. Poppe, *Poppe Law Firm*, Louisville, Gary Hudson, London and J. Thomas Rhodes, *The Rhodes Firm*, San Antonio, TX
Defense: B. Todd Thompson, Bradley R. Hume and Lon S. Hayes
Thompson Miller & Simpson, Louisville
Verdict: \$21,274,785 for plaintiff
Court: **Laurel**, J. Lay,
8-10-16

Kelly Wells, age 39 and a milk truck driver, treated in 2010 with Dr. Anis Chalhoub, a cardiologist at St. Joseph London following a single fainting episode. St. Joseph's London is owned by Catholic Health Initiatives of Denver, Colorado which also operates St. Joseph Health System. These parties in this report will be referred to as the hospital defendants.

Chalhoub recommended that Wells have a pacemaker installed and advised that if a pacemaker was not installed, Wells was at risk of death. Wells agreed and the procedure was performed on 9-22-10. Chalhoub also told Wells he had an artery that was 60% blocked and that it may require a future stent if it worsened.

The next summer Chalhoub made a further recommendation to Wells that he have a stent placed. Wells became suspicious (he wasn't the only Chalhoub patient with the same thought) and he consulted with other doctors.

The news from his new doctors was alarming. He didn't need the pacemaker in the first place. However because the pacemaker had grown into his heart and removal involved the risk of infection or death, Wells was advised to leave it in place. A pacemaker cannot be "turned off" and it now at its lowest setting in Wells' heart and provides no medical benefit. Additionally, Wells was told the "blockage" was only 10%, not the 60% to 80% he had been told by Chalhoub, and it required no medical treatment of any kind.

This case would begin with the simple notion that Chalhoub committed medical error in performing an unnecessary surgery in installing the pacemaker. However it would grow to allege a much larger and sinister scheme.

It was the plaintiff's proof that the hospital defendants entered a joint venture agreement with London cardiologists (including Chalhoub) from 2008 to 2011. A complex

arrangement was developed whereby the doctors were paid on a tiered system based on how many procedures they performed. Once the doctors hit certain volume benchmarks, they were paid even more.

As the system was set up, there was no oversight beyond the doctors themselves. The plaintiff would call it akin to the "fox guarding the henhouse." A hospital administration expert for Wells, Fred Hyde, Ridgefield, CT, called this arrangement reckless.

Thus a system was put in place that permitted and incentivized local cardiologists to perform unnecessary procedures. The joint venture lasted from 2008 to 2011 and in this time the hospital defendants saw a dramatic increase in cardiology services and revenue. Several cardiologists were earning more than \$1,000,000 a year. A federal investigation was conducted (based on an anonymous complaint) and ultimately the hospital defendants settled a qui tam action against it for \$16,500,000 regarding the improper relationship with doctors.. Another local cardiologist (Sandesh Patel) pled guilty to Medicare fraud and went to federal prison. Chalhoub has recently been indicted and charges are pending against him for multiple counts of Medicare fraud.

Besides the claims by Wells, some 300-plus lawsuits were filed against the cardiologists and the hospital. Two have already come to trial and resulted in defense verdicts. *Marshall v. St. Joseph London* (No. 5284 against

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