The Randal (Rand) Paul Jury Verdict

2199 - Medical Negligence - Following a cataract surgery, ophthalmologist criticized for failing to timely detect and treat an infection that later resulted in the loss of the eye

Brown v. Paul, 01 CI 0937

Plaintiff: Charles D. Greenwell and Nancy J. Schook, *Middleton & Reutlinger*, Louisville

Defense: John David Cole and Frank Hampton Moore, Jr., *Cole Moore & Baker*, Bowling Green

Verdict Defense verdict on liability

Circuit: **Warren** (1), J. Lewis, 6-6-02

Bowling Green, Kentucky

On 7-26-00, John Brown, age 46, was the body shop manager at a GM dealership in Bowling Green and, but for diabetes, he was otherwise healthy and earning $40,000 or so. For several years, he had treated with an ophthalmologist, Dr. Randal Paul, for dry eyes and diminished vision.

This day, Paul performed a cataract surgery at the Medical Center. It seemed uneventful, Paul directing Brown to return for treatment a week later. His vision not improving, Brown returned three days early to see Paul. Paul prescribed steroids and sent Brown home.

By 8-2-00, Brown was back and his symptoms were worse. Paul knew there was a problem and referred him to a specialist in Nashville, Dr. Paul Sonkin. Several days later, it was learned Brown had endophthalmitis, a rare eye infection. A serious condition, Brown ultimately lost the left eye. He also faces the risk of blindness in the remaining eye. Brown has not returned to work.

In this lawsuit, Brown criticized Paul's care in two key regards. First, he failed to advise him of the serious risks of this surgery, particularly in light of his diabetic condition. Then to the follow-up care, and particularly on 7-31-00 when he first returned, Paul should have ruled out the infection. This was especially required as the endophthalmitis infection is more likely in diabetics.

Plaintiff's expert was Dr. Bruce Redler, Ophthalmology, Hilton Head, SC. If plaintiff prevailed, he sought his medicals of $24,687, plus $1,552 for incidental expenses. Lost wages totaled $65,541, William Irwin, Vocational Expert, Louisville, quantifying impairment at $566,980. Suffering was capped at $1.2 million. His wife, Keitha, a deputy circuit court clerk, claimed $200,000 for consortium.

Paul defended the case and, to informed consent, cited in his opening remarks, a ninety-second videotape that explained the serious risks of the surgery. Plaintiff conceded he'd seen the tape, but Paul had not meaningfully explained it.

To the merits, his experts called the care and management proper, particularly as the infection was not noted until thirteen days post-surgery. It was Paul's suggestion the infection was likely unrelated to the surgery in the first place. One expert, Dr. John Cotter, Ophthalmology, Greensboro, NC, called it a complication, suggesting Brown was "just unlucky." Also for Paul was Dr. Andrew Cotter, Ophthalmology, Lexington, who developed importantly that on the 7-31-00 visit, there was no sign of infection.

This June, the case went to a jury at 2:45 in the afternoon. An hour or so later, the panel wanted to see the videotape referenced above. It was played twice. Deliberating until five in the afternoon, the panel reported it was stuck at 6-6. Food was ordered and the panel marched on.

By 9:45, it had a verdict after deliberating 7 ½ hours. By a 11-1 count, the verdict was for the doctor and Brown took nothing. A defense judgment followed.

Pending is Brown's motion for a new trial, calling the deliberative process irregular. Namely, permitting a tired jury, that had heard proof for twenty hours over two days, to continue to deliberate when it had indicated it was stuck, resulted in a compromise by tired minds. This was echoed by a juror affidavit by the lone holdout for Brown. The motion also criticized the court's replaying the consent videotape, as it was not admitted into evidence. Paul replied and called that matter within the trial court's discretion.