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May 2013

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Medical Negligence - An elderly woman suffered an infection to her ankle and foot while it was in a cast following a fall - because the infection had not improved after several weeks of treatment, she elected to have her leg amputated below the knee - this suit against her orthopedist followed

Martin v. Campbell Clinic, P.C., 5948-07

Plaintiff: Les Jones and Tannera George Gibson, *Burch Porter & Johnson*, Memphis

Defense: Buckner Wellford and Jennifer Sink, *Baker Donelson Bearman Caldwell & Berkowitz*, Memphis

Verdict: \$1,308,808 for plaintiff less 25% comparative fault

Court: **Shelby**

Judge: Robert L. Childers

Date: 1-23-13

On 11-23-06, Peggy Martin, then age 72 with a history of peripheral vascular disease and smoking, fell and turned her left ankle. She initially went to the emergency room the day of the fall, and then saw Dr. Gregory Dabov about a week later at Campbell Clinic in Southaven, MS. An x-ray taken at that time showed that she had fractured her ankle, and she was placed in a walking cast and told to return after one week. At the time, she had no skin changes or palpable masses on either of her lower extremities. However, her chart noted equal but weak pulses.

Martin returned to the clinic on 12-

11 for a follow-up, at which time Dabov decided to leave her in the cast. She was told to return in another four weeks for an x-ray and exam. When she returned on 1-8-07, the cast was removed, and it was discovered that Martin had developed a heel ulcer, as well as dark eschar and sloughing of the skin on the dorsum of her foot. She was told to return in two weeks for a wound check.

On 1-22, Martin returned with a large eschar on the dorsum and over her heel. She was referred to a plastic surgeon wound care specialist. By 2-9, the ulcers on Martin's left ankle and heel were infected, and the area on her dorsum was a large ulcer with an exposed tendon. After a hospital admission and several weeks of wound therapy and debridement, Martin elected to undergo a below-the-knee amputation on 3-12-07.

Martin's suit against the Campbell Clinic alleged Dabov's failure to provide the correct method of treatment, to properly monitor and examine her foot after placing her in a cast, to take reasonable steps following the injury to prevent permanency and to reduce the nature and extent of the injury. She claimed that on the 12-11-06 visit, she presented with complaints of pain that were ignored by Dabov. She believed that on that date, her cast should have been removed, given that she showed signs of echymosis at the time the cast was placed, as well as her history of peripheral vascular disease and smoking. She also believed that her next appointment should have been scheduled before 1-08-07. Her causation expert was Dr. Amelia Kiser, Family Medicine, Glasgow,

KY, and Dr. Thomas Myers, Orthopedist, Atlanta, GA served as plaintiff's standard of care expert.

The defense denied that Martin made any complaints prior to and including 12-11-06. Therefore, she either was not having any problems or was self-medicating with alcohol. It argued that Martin, who stood 5'2" and weighed 92 pounds, drank between one and four 12 ounce cans of beer every night. It also pointed to the fact that plaintiff had not refilled or used her prescription pain medication that had been prescribed at the emergency room on 11-23. Defendant believed it was unlikely that plaintiff had any skin breakdown as of the 12-11 visit. During her hospitalization in February, tests showed that the blood flow to her feet was significantly reduced. As such, the removal of the cast on 12-11 would have made no difference in whether Martin ultimately would have experienced skin breakdown. The defense's standard of care expert was Dr. Riley Jones, Orthopedic Surgeon, Memphis, while Dr. Susan Austin, Orthopedic Surgeon, Memphis, offered expert testimony as to causation.

The case was first tried in July 2012, but ended in a mistrial when the jury was unable to reach a unanimous verdict. When the case was tried again in January 2013, a Shelby County jury found that Campbell Clinic, through Dabov, had deviated from the standard of care and that Martin suffered injury as a result. However, the jury also found that Martin herself was 25% at fault for her injuries. It awarded \$108,808 for medicals, \$300,000 for physical and mental pain and suffering, \$300,000 for

disfigurement, \$300,000 for loss of enjoyment of life and \$300,000 for permanency. The judgment that followed reduced the total award of \$1,308,808 to \$981,606 for Martin's apportionment of fault.

Products Liability - A Mexican plaintiff driving a Ford Explorer died in a roll-over crash in Mexico – the crash was blamed on a combination of a defective Bridgewater tire and instability defects in the Explorer – as there was no jurisdiction over either Ford or Bridgewater in Mexico, the case was tried in Nashville with substantive Mexican law (particularly as related to damages) governing the case

Ramirez v. Bridgewater Tire et al, 05-1555

Plaintiff: Steve North, *North Law Office*, Madison, Richard L. Denney, *Denney & Barrett*, Norman, OK and Robert L. Langdon and Adam W. Graves, *Langdon & Emison*, Lexington, MO

Defense: Scott G. Edwards, *Hartline Dacus Barger Dreyer*, Dallas, TX and A. Scott Ross and J. Isaac Sanders, *Neal & Harwell*, Nashville for Bridgewater Tire

Stephen A. Marcum, *Marcum & Petroff*, Huntsville and Craig A. Morgan, Austin, TX for Ford Motor

Verdict: Defense verdict

Court: **Davidson**

Judge: Thomas W. Brothers

Date: 2-22-13

Jesus Ramirez was driving a 1998 Ford Explorer on 9-27-00 in the San Luis Potosi region of Mexico. The vehicle was outfitted with Bridgewater Tires. Suddenly a tire on the Explorer suffered a tread separation. This caused the SUV to roll over. Ramirez was killed in the

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For plaintiff _____ (Name, City, Firm)

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a pretext to mask retaliation. In this lawsuit she presented a single retaliation count, Complex Industries firing her for having reported the racial hostility. If Jones prevailed at trial, she sought both compensatory and punitive damages. Complex Industries defended as noted above and denied any retaliation.

The jury's verdict was for Jones on the retaliation count and she took \$60,213 in lost wages. The jury added \$42,000 more in other

"compensatory" damages. Finding that punitive damages were appropriate, the jury assessed a \$350,000 penalty. The verdict totaled \$450,213. When the record was reviewed no judgment had been entered.

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