

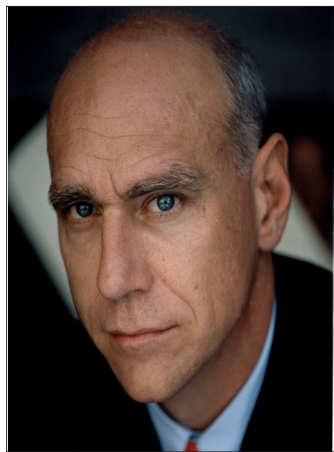
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WEEKLY

Woman settles case over spinal injury

She alleged delay in surgery caused lasting damage



Brian Timothy Meyers

A Jackson County woman received a \$3.3 million settlement from five defendants in a medical malpractice suit after a spinal injury left her a paraplegic.

Kathleen A. Duncan, 47, in November 2006 was working at Saint Luke's East Hospital in Lee's Summit as a radiology clerk. She wasn't doing a physically demanding task when she felt a pop and a burning sensation in the middle of her back, and then felt a second pop. She had suffered a spontaneous, massive thoracic disc rupture, and she was immediately paralyzed from the hips down.

She was wheeled to the hospital's emergency room, where physician Tiina Auksi-Butler ordered an MRI test for the lower back, but the results didn't explain the paralysis. Plaintiff's attorney Brian Timothy Meyers claimed the problem was mid-back and Auksi-Butler missed it.

Auksi-Butler's attorneys didn't return a call or email seeking comment.

Medical staff decided to send Duncan to Saint Luke's Hospital in Kansas City to be seen by a neurosurgeon. She was transferred there about eight hours after arriving at the emergency room.

Neurosurgeon Eric Flores performed surgery and removed a disc, but not in the

area causing the most problems. It wasn't until days later, during another surgery, that that disc came out.

The plaintiff alleged that Butler took the wrong MRI and was too slow in diagnosing and transferring Duncan. The plaintiff sued Flores for taking out the wrong disc and the hospital due to the doctor's actions and a nurse's possible role in delaying the transfer.

The plaintiff claimed her chances of recovery were better than average because she arrived at the emergency room within minutes of the injury. She said doctors missed that window to remove the disc and restore function in her legs.

Jeffrey Kuntz, the hospital's attorney, questioned Auksi-Butler's testimony that she ordered the nurse to call for an "emergent" case ambulance. He said the nurse ordered a regular-priority ambulance as instructed.

Jon Kieffer, Flores' lawyer, said all experts agreed that Duncan's injury left her with permanent and significant neurological problems, and that she never would have recovered completely.

Kieffer also said that multiple factors outside of Flores' control — including "blizzard-like conditions" — delayed moving Duncan. He said no experts criticized the timeframe for surgery.

As to the surgery itself, Kieffer said MRI staff who could determine the problem's exact location weren't available in the middle of the night. Flores had to decide between calling MRI staff and risking waiting too long, or proceeding by counting ribs to determine where to operate. Kieffer said Flores chose the latter because the small chance for recovery was fading.

Kieffer also said Duncan's unexpected 12th rib led Flores

to the wrong level of the thoracic spine, and that two radiologists misinterpreted the spinal X-rays.

Meyers said the plaintiff largely blamed Auksi-Butler for the delayed diagnosis and transfer. Just days before the trial was to begin, Auksi-Butler and her medical group agreed to pay \$500,000 over the policy limit for a total of \$1 million, and the remaining parties paid the remaining \$1,850,000, he said. The hospital also satisfied a health care lien of \$467,825.

Kieffer said Flores' conduct was defensible.

"The case ultimately was settled in view of the exceptionally high damages claim, the fact that the plaintiff was a very nice lady who would have made a very sympathetic witness, and the difficulties inherent in what would be characterized as a 'wrong level surgery' case," Kieffer said.

— Laura Girresch

\$3.3 million settlement

MEDICAL MALPRACTICE

■ **Court:** Jackson County Circuit Court at Independence

■ **Case Number/Date:** 0816-CV36811/February 25, 2011

■ **Judge:** John Torrence

■ **Plaintiff's Experts:** Dr. John R. Clifford, Baton Rouge, La. (neurosurgery); Dr. James Matthews, Chicago (emergency room care); Dr. John J. McGreal, New York (emergency room care); Tracy Wingate, Kansas City (life care and occupational therapy); Dr. Steven Simon, Overland Park, Kan. (physical medicine and rehabilitation); John Ward, Prairie Village, Kan. (economics)

■ **Defendants' Experts:** For Saint Luke's East Hospital: Laura Burchell-Henson, San Diego (nursing); Natasha Crawford, Liberty (nursing). For Kansas City Neurosurgery Group and Flores: Dr. William C. Lauerman, Washington, D.C. (spine surgery). For Metro Emergency Physicians and Auksi-Butler: Dr. Fred Abrahamian, Los Angeles (emergency room care); Dr. Paul G. Matz, St. Louis (neurosurgery)

■ **Special Damages:** \$1.43 million in past medical bills billed; \$467,000.00 in medical bills paid; \$780,000.00 in lost earning capacity.

■ **Caption:** Kathleen A. Duncan v. Saint Luke's East Hospital d/b/a Saint Luke's East-Lee's Summit, The Kansas City Neurosurgery Group, LLC, Eric P. Flores, M.D., Metro Emergency Physicians, LLC, and Tiina Auksi-Butler, M.D.

■ **Plaintiff's Attorneys:** Brian Timothy Meyers, Peter K. Andreone and Brian C. McCart, The Law Offices of Brian Timothy Meyers, Kansas City

■ **Defendants' Attorneys:** Thomas W. Wagstaff and Jeffrey M. Kuntz, Wagstaff & Cartmell, Kansas City, for Saint Luke's East Hospital; Jonathan P. Kieffer and Brandon M. Henry, Wagstaff & Cartmell, Kansas City, for Kansas City Neurosurgery Group and Flores; Diana M. Jordison and Justin D. Fowler, Horn Aylward & Bandy, Kansas City, for Metro Emergency Physicians and Auksi-Butler