



In This Issue

[DRI News](#)

[And The Defense Wins!](#)

[Legislative Tracking](#)

[Committee Spotlight](#)

[Quote of the Week](#)

[Vital Verdicts](#)

[DRI CLE Calendar](#)

Links

[About DRI](#)

[Membership](#)

[Membership & Referral Directory](#)

[Update Member Profile](#)

[Pay Dues Online](#)

[CLE Seminars and Events](#)

[Committees](#)

[Expert Witness Database](#)

[Publications](#)

[Archive](#)

And The Defense Wins

Three DRI members — **John M. “Skip” Hudgins, IV** (shudgins@wwhgd.com) and **Patrick B. Moore** (pmoore@wwhgd.com), both partners with **Weinberg, Wheeler, Hudgins, Gunn & Dial LLC** in Atlanta, along with local counsel **Brian E. Currie** (bcurrie@tdclaw.com) of **Taylor, Day & Currie** of Jacksonville, Florida — recently obtained a defense verdict for The Nemours Foundation in Jacksonville. The Foundation’s Children’s Clinic was sued based on the alleged negligence of four of its doctors. Counsel for the 10-year-old female plaintiff alleged that the Nemours doctors were negligent in their assessment of a spinal MRI and, as a result, she was misdiagnosed as having a conversion disorder. Further, following a series of additional missed cues, she ended up paralyzed from the chest down.

Despite this tragic outcome, defense counsel were able to show the jury that the overall care was reasonable and appropriate under the presenting circumstances. Plaintiff’s pre-trial demands were in excess of \$25 million. The defense team credits part of its success with overcoming the plaintiff’s counsel’s often overbearing efforts to disqualify any reasonable, educated juror for cause — resulting in a conservative panel to decide the case.

The case involved a 10-year-old, who suffered from two episodes of lower body paralysis in 2001. After swift spontaneous recovery from each episode of paralysis and a negative MRI, the child was diagnosed by a psychiatrist with a conversion disorder based on stress related to parental discord. A year later, after a third episode of paralysis, it was discovered that a spontaneous epidural hematoma had reoccurred and was again pressing on her spinal column.

Although surgical intervention relieved the pressure, the girl was left permanently paralyzed from the chest down with some involvement of the upper extremities. Plaintiff alleged that a radiologist misread an early MRI, which showed the spinal hematoma a year before the final episode and that a pediatric neurologist failed to conduct appropriate follow-up to discover the hematoma after the first two episodes of paralysis. Plaintiff further alleged that the psychiatrist misdiagnosed the patient in 2001 and was negligent in 2002 when he advised that she did not need to go to the emergency room after



John M. “Skip” Hudgins, IV



Patrick B. Moore



Brian E. Currie

the third episode of paralysis, because it was simply another conversion reaction. Finally, plaintiff claimed a second pediatric neurologist failed to initiate an immediate MRI and surgical intervention, which would have prevented the paralysis.

Defendants conceded the hematoma was visible in an early MRI after the second episode of paralysis in 2001. However, the defense explained that while some abnormalities are clearly visible in hindsight, it was not below the standard of care to misread or fail to detect certain abnormalities on MRI films prospectively in 2001. The defense also showed that the neurologist considered every possibility for the paralysis, rendered appropriate care, and had a right to rely on the negative MRI and agree with the conversion disorder diagnosis.

The defense also established that even though the psychiatrist's diagnosis proved inaccurate, plaintiff presented with all of the clinical signs of a classic case of conversion disorder in light of the negative MRI. Consequently, the psychiatrist's initial diagnosis and the neurologist's reliance thereon were reasonable. The defense denied the parents' claim that the psychiatrist in 2002 advised the parents against going to the ER immediately following the third onset of paralysis.

The defense then argued that immediate surgical intervention by the second neurologist was not necessarily required by the standard of care due to the patient's presentation, prior history and the amount of time elapsed from the onset of symptoms. The treating neurosurgeon, who was not an employee of the defendant, testified that earlier surgery would not have made a difference in the child's ability to walk.

Essentially, defense counsel had to concede that, in hindsight, mistakes were made. Their defense relied on the jury's acceptance that doctors can make errors, especially those that are only revealed retrospectively, and still be within the standard of care. Given the severity of injuries, and the undeniable sympathy for the 10-year-old plaintiff, it was critical that an objective and reasonably educated jury be empanelled. Plaintiff's counsel were known for their jury selection tactics whereby they repeatedly asked question after question to elicit an answer that might serve as a basis for a challenge for cause. Aware of this *voir dire* strategy, the defense team carefully questioned jurors to ensure that any jurors who were rehabilitated were done so on the record in accordance with Florida law. Despite a multitude of challenges for cause, the defense was able to retain enough well-educated, thoughtful jurors on the panel that the final jury selected to serve was very representative of Jacksonville's general population.