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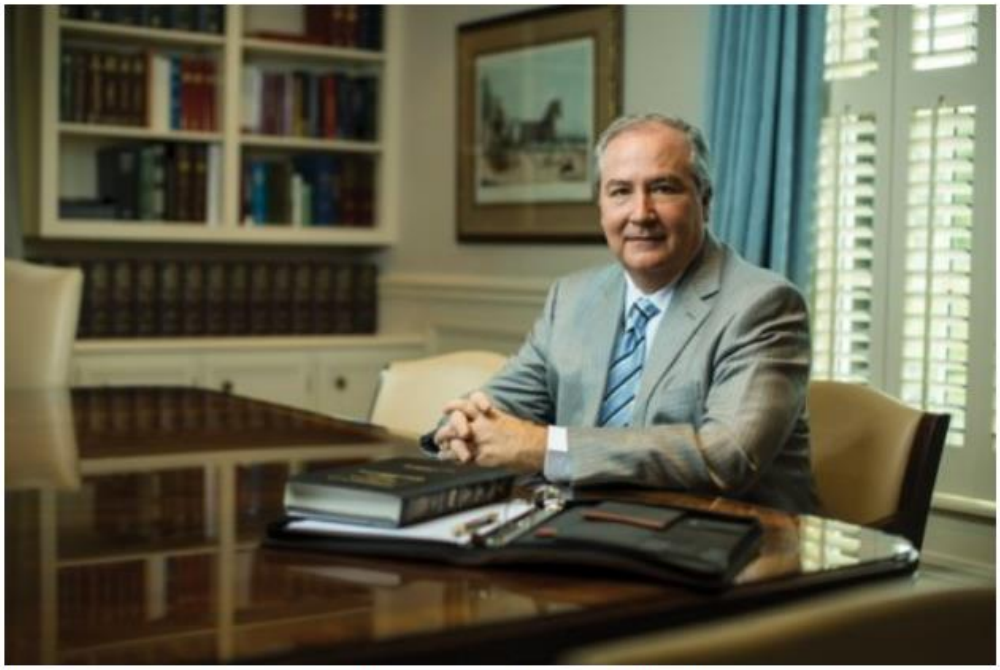
Top Dollar Jury Awards

From medical records to steel slabs to electronic bingo

TEXT BY CARA CLARK // PHOTO BY MATTHEW COUGHLIN



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1. Estate of Juno v. Thomas Hospital; Medusind; Precyse

George "Skip" Finkbohner, of Cunningham Bounds LLC in Mobile, secured the top Alabama verdict in a wrongful death case, in which a patient died as a result of a medical transcription error. The $140 million verdict, delivered by a Baldwin County jury, was double the amount Finkbohner recommended to jurors.

Sharron Juno, a patient at Thomas Hospital in Fairhope, was discharged to Mercy Rehabilitation after being treated for dialysis-related complications. When her physician's discharge summary was transcribed, it contained three critical errors, including the dosage of insulin, which was written incorrectly as 80 units rather than eight.

Finkbohner contended that the mistake occurred because the hospital authorized its transcription vendor, Precyse Solutions LLC, to use unqualified transcriptionists in India. Through a trail of contractors and subcontractors, Finkbohner spent four years following the threads of the case. Ultimately, he found the work was performed by a shell company that subcontracted with Medusind Solutions in Mumbai and Sam Tech Datasys in New Delhi. Six former Precyse Solutions employees testified about the inferior quality of the transcriptions.

Finkbohner received the case after it was filed initially as a medication error in which the patient was given 10 times the correct dosage.

“It looked like a fumble,” Finkbohner says. “Somebody messed up on the administration of medication. When we looked at it, 80 units was way out of line. I looked at where the transcription error came from.”

As Finkbohner followed the trail, the case was something akin to pulling a thread and watching an entire sweater unravel.

When Finkbohner insisted on deposing the transcriptionist who misheard the instructions, he was repeatedly thwarted. Persisting, he learned the work was outsourced to Sam Tech in India, and a team of investigators was dispatched to locate the two transcriptionists.

Finkbohner sent subpoenas by way of the Hague, while his investigators finally located a cinderblock building said to be Sam Tech offices.

“The transcripts were supposed to be routed through Mumbai and reviewed by higher-ups for quality assurance, and sent to Atlanta and then back to Thomas Hospital,” Finkbohner says. “The problem is, no one complied with those procedures.”

To follow through, Finkbohner flew to New Delhi. When he and his team showed up at the Sam Tech office with a court order, an order from the Hague and an Indian magistrate, they were denied the access they needed. Undeterred, Finkbohner insisted on convening the deposition just outside on the dirt road.

“We’re going to do this just like we would in my office in Mobile if a witness didn’t show up,” he says. “We had a video of the building and recounted what happened when we tried to take depositions.”

Several American transcriptionists were able to shed light on what happened in the case. The hospital chose to use foreign transcriptionists, making U.S. transcriptionists quality assurance managers and trainers, who were to train the new staff online and review their work. Immediately the U.S. employees began complaining to their supervisors about the quality of transcriptions. One transcriptionist with more than 25 years of experience was fired after her complaints.

“I said, who else knows about this?” Finkbohner says. “We got six or eight people’s names and called them. We started talking to the folks in Montana, Georgia, Louisiana, who were the quality assurance and saw the horrible errors.”

The consensus was that the hospital made the decision to save money with the new service.

“The doctor in the case, Mercy Medical, the nurse and the nursing supervisor were all aghast at this,” Finkbohner says. “Six months before the trial, an adjuster for Precyse offered a very conservative figure — a few hundred thousand — to let it go. I said that was not going to happen.”

Finkbohner went to trial with a video of his attempts to convene depositions, 47 depositions from people in eight states and with the groundwork from Alabama to Mumbai and New Delhi.

“The whole thing was astonishing,” Finkbohner says. “I tried the case for two weeks, and in the closing arguments, suggested $70 million. They came back with $140 million. Some of the defendants tried to settle early, but I wouldn’t let anybody out of the case until the end.”

Finkbohner says the key to the large verdict was outrage by the jury and by everyone who heard the case — more than 20 attorneys were in the courtroom.

“It made you mad,” he says. “At first we thought we were dealing with normally upstanding human beings who maybe had a bad day and messed up, but that’s not what happened here. I think they said, ‘Surely he won’t go to India,’ but I said ‘Hell, yes.’”

“I was relieved for the family, relieved for the doctors and nurses and relieved that all of this came out,” Finkbohner says. “It was a deep level of satisfaction that something that needed to be exposed had been.”

Precyse Solutions Inc. and Precyse International, along with Thomas Hospital and Medusind Solutions, later settled confidentially. Sam Tech did not contest the verdict.

2. O’Neal Steel and Leeco Steel v. General Purpose Steel; World Wide Steel Unlimited Inc., Chatkins, Argyle, Adelstein

Crawford McGivaren, of Cabaniss Johnston Gardner Dumas O’Neal LLP, represented O’Neal Steel and its subsidiary, Leeco Steel, when they won $117 million in damages against two companies that had sold them inferior steel. In June 2014, a jury came back with the verdict in favor of O’Neal Steel.

The defendants were David Chatkin, Lance Chatkin, Bruce Adelstein, Ryan Chatkin, Von Argyle, General Purpose Steel Inc. and World Wide Steel Unlimited Inc.

As soon as O’Neal Steel became aware of the misrepresented steel, the company traced it back to the purchasers, no easy feat, and replaced the steel.

O’Neal and Leeco had claimed violations of the Racketeer-Influenced and Corrupt Organizations Act (RICO), conspiracy to violate RICO, and, under Alabama law, fraud, wantonness and conspiracy to commit wantonness, according to court records.

The jury awarded $17 million to O’Neal and Leeco for compensatory damages and $100 million in RICO punitive damages.

“I’ve been trying cases for a long time and thought a jury, given the right evidence, would know what to do,” McGivaren says. “(The judge) gave a clear and understandable jury charge. They followed the evidence very intently, and they did what they needed to do.” U.S. District Court Judge Karon Bowdre, chief judge for the Northern District of Alabama, presided in the 12-day trial.

“O’Neal didn’t normally buy much steel from (the defendants), but on and off over the years, they purchased some,” McGivaren says.

The fraudulent seller bid on an O’Neal Steel order requiring the steel to include a mill test report, a certification of the chemical quality of the steel when it was melted and poured into slabs. The steel was sold at a high grade. Commonly, with a mill test report present, the steel isn’t retested.

“Steel sells on a very narrow margin,” McGivaren says. “This company took advantage of (the fact) that steel is entirely fungible, except for certain kinds. There are hundreds of grades of steel that just look like steel.”

While some of the steel being sold was verified in terms of steel grade, those verifications were not always accurate. When someone accidentally sent a mill test report in Excel format, the purchasing department reported the irregularity. The steel was tested and found to be a lower quality than it was represented to be.

“We did our best to track down the steel that was not what it was represented to be,” McGivaren says. “It was very expensive and took a long time.”

With the costs and damages involved, including researching and replacing steel — the company even went to Iraq and Afghanistan to replace steel the military had purchased — the objective was to put the wrongdoers out of business.

“We felt they had blackened the name of the industry,” McGivaren says. “It doesn’t take very many companies like that to ruin the reputation of the industry.”

McGivaren says his client was trying to right a terrible wrong, explaining that misrepresenting a product that could be used in essential construction could put lives at risk.

“The verdict was a lot larger than I expected,” McGivaren says. “I knew the jury did not like what had happened and didn’t like the defendants’ attitude about it. There were some defendants who did not show up in court. They got not an iota of mercy from that jury. And these judgments were non-dischargeable in bankruptcy.”

Instead of acknowledging wrongdoing, the principals insisted the paperwork had not been falsified. But they had kept meticulous records of their work in falsifying different batches of steel over many years.

As the verdicts were read, McGivaren maintained his decorum, but as he sat listening to the reading of the verdicts, he was as stunned as the defendants looked.

“They were at $70 or $80 million and just kept going,” he says. “I thought the jury had done a remarkable job staying with the case and knowing what it was about. (The defendants) made any right-thinking person angry, and you stayed angry when you found out they never were going to fess up to it. They maintained up until the reading of the verdict that they were entirely innocent, but we had broken the code in the computer system.”

Those coded records were organized as the defendants’ way of knowing which client got which steel, so they wouldn’t sell the same batch to a customer under a different grade. Computer records showed the practice went back 10 years, with multiple clients.

“The chart showed sales over a long period and how they changed the chemistry in the record to conform to a different grade of steel,” McGivaren says. “As you can imagine, they were pretty greedy. The jury looked at the chart and could see it was no mistake. They were schemers.”

“O’Neal Steel got the reward they were due for the righteousness of their cause and the corruptness of (the defendants’) behavior.”

After the verdict, reductions were made in the punitive damages as matter of statutory requirement. Otherwise, the verdict was completely upheld as awarded by the jury.

“As long as there is cheating and stealing, lawyers and trial lawyers are going to have plenty to do,” McGivaren says.

3. Hope for Family and Community Services Inc.; Lucky Palace, et al v. VictoryLand, et al

Steve Heninger, of Heninger Garrison Davis LLC, was lead attorney on the third largest verdict in the state in the last five years. From the beginning, he had a “gut feeling” the verdict would be a big one. Turns out, Heninger, a member of the Alabama Supreme Court Advisory Committee on appellate practice for the past 15 years, is a man who can trust his gut.

A federal jury in Montgomery handed down a $64 million verdict against VictoryLand greyhound racing park and its owner Milton McGregor in a civil lawsuit that claimed he conspired with Macon County’s sheriff to give the dog track a monopoly on electronic bingo in that county. The jury also found against Macon County Sheriff David Warren.

Under a confidentiality agreement, the two sides reached an agreement in 2012, settling all issues and vacating the judgment before any appeal was filed.

The lawsuit was filed in 2006 in Montgomery federal court by a business consortium called Lucky Palace, that wanted to set up a rival operation, and the 15 charities that would benefit from the bingo operation. The county’s bingo regulations were issued and amended twice to ensure that no rival could get into the bingo business, according to the lawsuit.

The charities hired Robert Spotswood, of Spotswood Sansom & Sansbury LLC, to represent them. In turn Spotswood went to Heninger to serve as lead counsel and attorney for Lucky Palace. It was Heninger’s decision to bring in a Chicago consulting firm, and three mock juries were presented the case before the trial.

“We spent an entire day feeding them evidence and watching them on closed circuit TV,” Heninger says. “Each one of the juries awarded more than $50 million in damages, so we could tell we were on the right track.”

The trial lasted three weeks, a costly 21-day stretch on the heels of a focus group that alone costs $100,000. Heninger believes that cost is a wise investment for the information conveyed.

“It shows where your strengths are and shows weaknesses where the jury is being distracted,” Heninger explains. “It shows areas that you have not put enough flesh on.”

Watching mock jurors on closed circuit also gave Heninger insight into the questions they were asking and the information they were giving to one another. With the study group of jurors from the same area as the real jurors, the concerns raised were valid issues.

A prosecutor in the Army during the Vietnam era, Heninger knew he wanted to attend law school and stand in front of juries, a dream fulfilled with close to 400 jury trials in his career.

“We had clear evidence that McGregor had manipulated the system and changed the rules through the sheriff so that my clients couldn’t get a bingo license because it would be competitive,” Heninger says. “We had several gaming experts who testified it would have enhanced McGregor’s business.”

Heninger likened the proximity to Chrysler and General Motors having automotive dealerships across the street from one another.

“It helps everyone by having selection,” he says. “With Lucky Palace across the street from VictoryLand, people might play in one place, get tired, go to supper and then go to the other. It would be more of a one-stop selection like Vegas. McGregor got greedy. We had the numbers on how much that cost us and how much that made him. That was enormous. The figures were just mind boggling. That was the fraud concept that grabbed me, and I knew the jury would just be wide-eyed when they saw how much money the investors at VictoryLand were making.”

In 2016, the Alabama Supreme Court twice affirmed that electronic bingo is illegal, putting VictoryLand out of that business four years following settlement of the Hope for Family and Community Services suit. The Poarch Band of Creek Indians operates electronic bingo in Alabama under the federal Indian Gaming Regulatory Act.

More than 20 charities were involved in the case. Charities were assigned to sponsor each session of bingo, and a stipulated amount was given to such causes as fighting prostate cancer, funding children’s education and several churches.

“Several of the leaders of the charities testified at trial about how important the money was to them,” Heninger says, mentioning a charity representative who discussed how the funds could have been used to launch a mobile testing unit for prostate cancer, potentially saving lives.

Heninger says the linchpin of the case was the importance of free competition.

4. Estate of Rush v. Volcano Enterprises Inc., dba Club Volcano

Coming in at fourth in top verdicts in the state in the last five years was a case in Jefferson County brought by Hare Wynn Newell and Newton, in which a wrongful death suit against a nightclub yielded $40 million.

The suit was filed by the widow of Derric Rush, who was killed in a drunk driving accident involving an off-duty Birmingham police officer driving with a blood alcohol almost double the legal limit after drinking at Club Volcano. Defendants were ordered to pay a total of $40.25 million, including $27 million in damages to Rush’s wife and child and $13.25 million to his estate.

5. Jane Doe, et al v. Kevin Golden, et al

The fifth largest verdict, $25 million in August 2013 in Lee County, involved a sexual assault case set forth by Slocumb Law Firm. A jury awarded a family $25 million in a lawsuit against a convicted child pornographer. Damages were to be paid to the family of an 11-year-old girl.

Cara Clark and Matthew Coughlin are freelance contributors to Business Alabama. She is based in Birmingham and he in Pensacola.