

TOP (7) TEN JURY VERDICTS OF 2012

\$140 MILLION

Anger over outsourced medical transcription errors yields \$140M

By Correy E. Stephenson
Staff Writer

Sharron Juno died because of a typo.

A lifelong diabetic, Juno had her insulin dosage dictated by her doctor in Alabama but transcribed by an outsourced sub-contractor in India, who wrote "80" instead of "8."

Juno passed away after receiving a dose ten times what it should be.

The jury's anger at the defendants – Thomas Hospital in

Wheeler Trigg in Denver, who represented Thomas Hospital, said the jury's anger at the Indian transcription companies left the hospital too close to the fire – and it got burned.

"The verdict is so out of proportion with the hospital's actions, it will be reduced without question," he said.

Ten times the correct dosage

A lifelong insulin-dependent diabetic, Juno was admitted to Thomas Hospital to have her dialysis port cleared of a blood clot in March 2008. She was discharged on March 17 and went home. But Juno and her family realized she needed skilled nursing care and she decided to go to an interim rehabilitation facility as her doctor had initially recommended, Finkbohner said.

A nurse at the hospital was asked to transfer Juno's information to Mercy Medical, the rehab facility. The nurse was supposed to get Juno's medication reconciliation document, which contained her dosage information, as well as her patient transfer order, both documents that her doctor had

reviewed and signed.

But when the nurse couldn't get her hands on the documents because Juno's chart was being scanned, she decided not to wait and printed out a copy of the doctor's dictated discharge summary instead.

The summary was different than the other two documents, Finkbohner said. It had been dictated by Juno's doctor, then routed to India to be transcribed and returned to the hospital within 24 hours. But the transcribed document had not been reviewed by the doctor and it "contained multiple critical errors," Finkbohner said.

Most importantly, instead of stating that Juno's dosage of Levemir insulin was 8 units, the dosage was written as 80 units.

Juno received the incorrect dosage at Mercy Medical on March 19, 2008. The overdose caused an irreparable brain injury and cardiopulmonary arrest.

Juno never regained consciousness and died on March 27, 2008.

Contractors and sub-contractors

To figure out what went wrong, Finkbohner spent four



Plaintiff's attorney Skip Finkbohner

years following the trail of the transcribed documents, which led him around the country – for depositions in Arizona, Florida, Louisiana, Pennsylvania and Texas – and beyond, with a visit to India.

He learned Thomas Hospital had originally outsourced its transcription work to Precyse Solutions, a United States-based company.

But in 2007, the hospital agreed to the company's use of its international arm to perform some work. That international arm is a shell company with no employees that in turn sub-contracted with two Indian compa-

Personal Injury

Fairhope, Ala. and the outsourcing companies it contracted with – drove the \$140 million verdict, said Skip Finkbohner, who represented the plaintiff's family.

"In any trial, the plaintiff has peaks and valleys but in this case, there didn't ever seem to be a valley," said Finkbohner, a partner at Cunningham Bounds in Mobile, Ala. "Sharron Juno died a needless death."

Joseph A. Farchione of

nies, Medusind Solutions in Mumbai and Sam Tech Datasys in New Delhi.

The deal “saved the hospital 2 cents per line,” on its transcripts, Finkbohner said.

Finkbohner traveled to India to depose the individuals who transcribed Juno’s information, but Sam Tech refused to make its employees available, in violation of court orders from both the United States and India.

The company did not appear at trial in its defense.

More than 30 witnesses appeared during the two-week trial, mostly on the plaintiff’s side. Six former Precyse Solutions employees told jurors about the “awful quality” of the Indian transcription companies, Finkbohner said.

Precyse said it required all of its subcontractors to follow the quality standards of the American Association of Medical Transcriptionists. But Medusind argued they were not told to follow the standards and never received them, Finkbohner said.

Instead, he said, they followed a different set of standards that a plaintiff’s expert testified was “one-half to one-twelfth of the U.S. standards, while still delivering transcripts to hospitals in the United States for United States patients.”

The plaintiff also presented testimony from a former FBI special agent who testified about his efforts to track down the various employees of the Indian subcontractors.

Angry jurors

The defendants engaged in a “we didn’t do it, somebody else did” game of finger-pointing, Finkbohner said. “The transcription defendant said it wasn’t their fault because the document was just a draft and should have been reviewed before it was used. The hospital defendant said it wasn’t their fault

because they had hired a professional company and their work was supposed to be accurate.”

Farchione said that Thomas Hospital was unaware that Precyse Solutions’ international arm had no employees and that it sub-contracted transcription work to other companies, which violated the contract between the parties.

In addition, because Juno had been discharged and was no longer a patient at the hospital, there were no protocols in place to get her paperwork to Mercy Medical, he said. The hospital staff was conscientiously doing what they could to get Juno into the rehab facility, he said. “This wasn’t just carelessness.”

In speaking with the jurors after the trial,

Farchione said they were “very angry” at the Indian transcription companies. The Indian companies “didn’t follow the U.S. standards [for transcription.] One of the companies refused to appear and defend itself or allow the plaintiff to depose its employees and filed a false affidavit with the court,” Farchione said. “You start adding those things together and all of a sudden you can see where a jury would become angry.”

With “all the makings of a bonfire, the flames went up and [Thomas Hospital] ended up getting burned,” he said.

\$140 million in punitive damages

The original complaint named seven defendants,

including Mercy Medical, one of its nurses and Juno’s doctor. Although these defendants were dismissed voluntarily by the plaintiff at the close of evidence, Finkbohner included them when he suggested a verdict amount to the jury.

“Given how bad and aggravating the facts were, we felt like \$10 million per defendant seemed reasonable, so I asked the jury to return a \$70 million verdict,” he said. “They doubled it.”

The 12-person jury deliberated just over an hour before returning the unanimous \$140 million verdict.

Alabama law only allows punitive damages in a wrongful death suit, not compensatory damages. Jurors were not even permitted to see a picture of the plaintiff, Finkbohner said, which stripped the case of any sympathy factor.

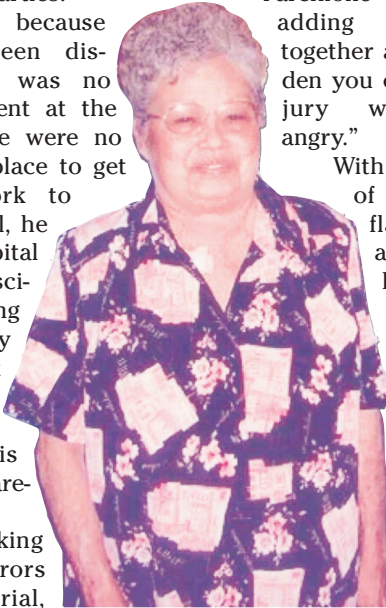
Instead, the trial focused on the “egregiousness of the defendant’s wrongs,” he said. For jurors to award \$140 million, “the conduct of the defendant must be as bad as you can imagine – or worse.”

Just minutes prior to the jury’s verdict, Finkbohner reached a confidential settlement with Precyse and Medusind. And the possibility of an agreement between the plaintiff and the hospital remains, both parties acknowledged.

Regina Cash, a partner at Luther, Collier, Hodges & Cash in Mobile, Ala. who represented Precyse Solutions, declined to comment on the case because her client settled prior to the verdict.

Counsel for Medusind, Rodney Cate of Hand Arendall in Mobile, Ala., did not respond to a call requesting comment.

Questions or comments can be directed to the writer at: correy.stephenson@lawyersusaonline.com



Sharron Juno

AT-A-GLANCE

Verdict: \$140 million in punitive damages

State: Alabama

Type of case: Medical malpractice and medical transcription negligence

Status: The plaintiff reached confidential settlements with the three defendants who appeared at trial (Thomas Hospital, Medusind and Precyse Solutions). The verdict still stands against Sam Tech Datasys of India.

Case name: *Juno v. Amare*

Date: Dec. 13, 2012

Plaintiff’s attorneys:

Skip Finkbohner, Toby Brown, Brian Duncan and David Wirtes of Cunningham Bounds LLC in Mobile, Ala.

Defense attorneys:

Joseph A. Farchione of Wheeler Trigg in Denver, Colo. and Russell C. Buffkin of Helmsing, Leach, Herlong, Newman & Rouse in Mobile, Ala. for Thomas Hospital; Rodney Cate and Michael C. Niemeyer of Hand Arendall in Mobile, Ala. for Medusind; Regina Ford Cash and Danny Collier of Luther, Collier, Hodges & Cash in Mobile, Ala. and Julian B. “Buddy” Brackin of Brackin, McGriff and Johnson in Mobile, Ala. for Precyse Solutions.