

March 5, 2018

An ALM Publication

TEXAS**FEATURED VERDICT****SMITH COUNTY****MEDICAL MALPRACTICE**

Failure to Treat — Delayed Treatment — Hospital

Gastroenterologist didn't have hospital privileges**VERDICT** \$43,327,246
ACTUAL \$9,000,000**CASE** Billy Pierce v. East Texas Medical Center dba East Texas Medical Center Tyler, East Texas Medical Center Regional Healthcare System dba East Texas Medical Center Tyler, East Texas Medical Center dba ETMC Digestive Disease Center, Gastroenterology Associates of Tyler, Gary Boyd, MD, David Lundy, MD, Elias I. Fanous, Jr., MD, No. 16-0853-C
COURT Smith County District Court, 241st, TX
JUDGE Jack Skeen Jr.
DATE 1/30/2018**PLAINTIFF**
ATTORNEY(S) Reid Wm. Martin, Martin Walker P.C., Tyler, TX
John F. (Jack) Walker, Martin Walker P.C., Tyler, TX
Marisa M. Schouten, Martin Walker P.C., Tyler, TX
Kirk L. Pittard, Kelly, Durham & Pittard, Dallas, TX**DEFENSE**
ATTORNEY(S) Clayton H. Haley, Fairchild, Price, Haley & Smith, Nacogdoches, TX (David Lundy, Gary Boyd, Gastroenterology Associates of Tyler)
Vernon L. Krueger, Krueger Law Group, LLP, Dallas, TX (Elias I. Fanous Jr.)
Stan Thiebaud, Thiebaud Remington Thornton Bailey LLP, Dallas, TX (East Texas Medical Center, East Texas Medical Center Regional Healthcare System)
Russ Thornton, Thiebaud Remington Thornton Bailey LLP, Dallas, TX (East Texas Medical Center, East Texas Medical Center Regional Healthcare System)**FACTS & ALLEGATIONS** On April 21, 2014, plaintiff Billy Pierce, 61, a senior vice president of a chemical company, was admitted to East Texas Medical Center, in Tyler, with stomach pain and vomiting, and

Dr. Gary D. Boyd was his gastroenterologist of record. He diagnosed stones in the bile duct, acute pancreatitis and cholangitis. Boyd determined that the stones could not be removed because a duodenal diverticulum was blocking the way. Over the next few weeks, Pierce developed sepsis and multi-organ failure. On May 26, another gastroenterologist evaluated him and found that the diverticulum was not where Boyd had said it was. This doctor successfully removed the stones, but Pierce eventually underwent a liver transplant.

During Boyd's treatment of Pierce, Boyd was working while he was suspended. His privileges at East Texas had been under automatic suspension since June 2013, when the Texas Medical Board publicly reprimanded him in connection with an unrelated matter. He was then suspended pursuant to the hospital's bylaws.

Dr. David Lundy is a gastroenterologist and associate of Boyd's. Both doctors were employed by Gastroenterology Associates of Tyler. Dr. Elias I. Fanous Jr. is another gastroenterologist at the hospital. Both he and Lundy would provide coverage for Boyd when Boyd was unavailable.

Pierce sued East Texas Medical Center Tyler, East Texas Medical Center Regional Healthcare System, ETMC Digestive Disease Center; Boyd; Lundy; and Fanous, for medical malpractice.

Boyd, Lundy, Fanous and Gastroenterology Associates settled before trial for confidential amounts.

The case went to trial against the hospital defendants only.

Plaintiff's counsel argued that the hospital was grossly negligent for allowing Boyd to practice medicine at the hospital without privileges. The hospital's chief executive officer rejected an express demand in June 2013 by medical staff that action be taken against Boyd or that his standing at the hospital be evaluated, according to plaintiff's counsel. Shortly after the June 2013 public reprimand of Boyd by the state Medical Board, there was a meeting of the hospital's medical executive committee. At this meeting, the president of the committee, who was also the chief of the hospital's medical staff, demanded action from the CEO, who refused to allow any action to be taken. The president of the committee tried to follow up numerous times through the fall of 2013, but "no action was allowed and the matter was buried," according to plaintiff's counsel.

Because of the hospital's gross negligence, Pierce did not receive proper care in a timely fashion. Such care would have included immediate removal of the stones in the bile duct or, if necessary, draining and decompression of the infected duct,

plaintiff's counsel argued. With treatment, he would have had only a brief hospital stay and would have been back to his normal life within a week, counsel argued.

According to Pierce's hospital administration expert, the hospital violated its bylaws, specific policies and Joint Commission standards by allowing Boyd to practice without privileges and failing to evaluate his standing after the automatic suspension. The Joint Commission is a non-profit, non-governmental organization that accredits hospitals in the U.S.

After wrongly deciding that nothing could be done for Pierce's bile duct stones, Boyd abandoned the patient for more than a month, plaintiff's counsel argued.

Plaintiff's counsel argued that the hospital was 99 percent responsible for Pierce's injuries.

The hospital denied negligence. Defense counsel argued that Pierce was very ill when he first arrived at the ER. His condition deteriorated rapidly through no fault of Boyd's, but nevertheless the hospital's doctors and nurses were able to save his life.

They also emphasized that the state Medical Board had not placed Boyd on probation or suspended his license.

INJURIES/DAMAGES *bile duct; liver; organ failure; pancreatitis; sepsis*

Pierce had acute pancreatitis, cholangitis and stones in his bile duct for more than a month and developed sepsis and multi-organ failure. He initially recovered after removal of the stones, but developed secondary sclerosing cholangitis. This condition required Pierce to undergo a liver transplant.

The plaintiff's life care planning expert opined that Pierce will be under the care of liver specialists for the rest of his life, and he'll have to take large doses of anti-rejection medication that will have debilitating side effects.

Pierce's economics expert opined that the present value of the future care that he would need within reasonable medical probability was \$2.5 million.

The life care planner also opined about future care that Pierce may or may not need, which the economist said would have a present value of \$1 million.

Pierce was earning about \$900,000 a year at the time of his treatment at ETMC. The economist also opined that the present value of Pierce's past and future lost earning capacity was \$1.5 million and \$6 million, respectively.

Pierce sought \$1,327,245.74 for past medical expenses; \$2.5 million for future medical expenses; \$1.5 million for past lost earning capacity; and \$6 million for future lost earning capacity.

He also sought a minimum of \$1 million in each of the following eight categories: past physical pain, future physical pain, past mental anguish, future mental anguish, past physical impairment, future physical impairment, past disfigurement and future disfigurement.

He also sought \$20 million in punitive damages.

RESULT The jury found negligence and comparative responsibility of 90 percent on the hospital and 10 percent on Boyd. It found the hospital grossly negligent. Only the hospital and settling defendant Boyd were submitted to the jury. The jury awarded Pierce \$43,327,245.74. During trial, Pierce and the excess insurance carrier for the hospital entered into a high-low agreement with parameters of \$4 million and \$9 million. As a result, the excess carrier for the hospital must pay \$9 million within 30 days of the verdict, and any post-verdict motions and appeals are waived.

BILLY PIERCE \$1,327,246 past medical cost
\$3,500,000 future medical cost
\$1,000,000 past physical impairment
\$1,000,000 future physical impairment
\$25,000,000 punitive damages
\$1,000,000 future mental anguish
\$1,000,000 past physical pain
\$1,500,000 past lost earning capacity
\$1,000,000 future physical pain
\$6,000,000 future lost earning capacity
\$1,000,000 past mental anguish
\$43,327,246

DEMAND \$10,000,000
OFFER \$500,000

INSURER(S) CNA for the hospital defendants (excess)

TRIAL DETAILS Trial Length: 6 days
Trial Deliberations: 4.5 hours
Jury Vote: 11-1
Jury Composition: 6 male, 6 female

PLAINTIFF
EXPERT(S) David J. Altman, M.D., CLCP, life care planning, San Antonio, TX
Thomas Bojko, M.D., J.D., hospital administration & procedures, Tenafly, NJ
Gary Kronrad, Ph.D., economics, Nacogdoches, TX

DEFENSE
EXPERT(S) None reported

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

—John Schneider