

Closed Claim Review: Fortitude Pays Off



By Grace Gilliland, J.D.

A lawsuit is often described as a marathon, not a sprint. In some cases, that marathon takes longer and includes more hills to climb than expected. The COVID-19 pandemic certainly emphasized the challenges faced in litigation and created the perfect storm of repeatedly delaying a case ready to go to trial. In this case, Dr. Bass faced numerous delays with tremendous fortitude, and she finished the trial marathon as a victor.

The patient was a 71-year-old male who had significant cardiac history and suffered complications from a laparoscopic hernia repair surgery. The patient's cardiac surgeries included a double coronary artery bypass, repair of an abdominal aortic aneurysm, and a balloon angioplasty of the renal artery. The patient was ultimately referred to Dr. Bass (*critical information has been altered to protect identities*) in early 2015 due to a right inguinal hernia in the area of the previous reduction of the femoral artery.

At the time of the 2015 examination with Dr. Bass, the patient did not have acute cardiac

issues. However, the patient was prescribed both Plavix and Aspirin. Dr. Bass recommended surgery due to the hernia being symptomatic, and she decided to keep the patient on anti-coagulants due to his extensive cardiac issues. She performed the hernia repair with no noted complications.

The patient went to recovery shortly after completion of the surgery, and a nurse reported a hematoma at the incision sites. Dr. Bass ordered ice to be applied to the incisions, and the patient was discharged the same day. Later that evening, the patient's wife reported that he was having pain and had only taken ½ of a tablet of hydrocodone. She was instructed to have the patient take the remainder of the tablet and go to the ER if there was no improvement. Just after midnight, the patient went to the ER in respiratory distress and was intubated by EMS. The patient had a CT of his abdomen which showed blood around his spleen. The patient continued to deteriorate with additional bleeding and labs confirming cardiac arrest. The patient expired about a week later.

The patient's estate filed a lawsuit in 2016 against Dr. Bass and her clinic alleging negligence and wrongful death, claiming the hernia surgery was optional given the patient's underlying health issues, and that it should not have been performed without stopping the anti-coagulant medication. The lawsuit initially progressed as any other suit through the lengthy discovery process of depositions and expert testimony. However, the COVID-19 pandemic struck soon after the case was first set for trial in 2020.

The case was initially set for trial in November 2020. All experts in the case had been deposed at that point – with a “frequent flyer” Dr. Archibald being the sole expert for the plaintiffs. Dr. Archibald had many criticisms of Dr. Bass's care. Nonetheless, the defense prepared several experts to address those criticisms and stood ready to go forward with the trial. Unfortunately, the trial was continued because the docket was overbooked with other trials set for the same dates.

With her case ready, Dr. Bass eagerly awaited her next trial date. Her eagerness to proceed, however, was met with a court order suspending trials until late 2021. The court order prolonged the case to its next setting, September 2021. Then, the trial was continued two more times as the COVID virus infected essential parties in the case. Although disheartening, the date for trial was pushed once more to early 2023. Dr. Bass surely thought she would finish the trial marathon in early 2023, but Mother Nature had other plans. The trial date was moved – again – due to inclement weather.

Between crowded dockets, pandemic protocols, and harsh weather, the trial finally commenced in late 2023 – over eight years after the patient died.. Through all the litigation challenges, continuances, and circumstances beyond her control, Dr. Bass patiently waited until she had her day in court. She tirelessly stayed the course of litigation from start to finish, and it paid off. She was successful in defending her decision to keep the patient on his anti-coagulant medication and to move forward with the hernia surgery. After just twenty-nine minutes of deliberation, the jury returned a verdict in favor of Dr. Bass.

The process of litigation is never easy, but it can be worth it. It can be quite draining for

physicians to remain steadfast in defending their case, especially with many unforeseen circumstances. Although Dr. Bass's case was significantly impacted by the COVID-19 effect on conducting court business, most cases are now moving faster and will not face as many roadblocks on the path to trial. A well-prepared case still requires stamina and fortitude throughout litigation. Ultimately, it is that stamina and fortitude that pays off when cresting the hill of trial and crossing the finish line with a favorable defense verdict.

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