

# Missouri Lawyers

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## WEEKLY

### DEFENSE JUDGMENT

## Defense experts 'tipped the scale' in med mal case

### MEDICAL MALPRACTICE

■ **Venue:** U.S. District Court for the Eastern District of Missouri

■ **Case number/date:** 1:12-CV-136/June 17, 2014

■ **Judge:** Carol E. Jackson

■ **Plaintiffs' experts:** Dr. Charles W. Stratton IV, Vanderbilt University, Nashville, Tenn. (clinical microbiology); Dr. David Kennedy, St. Louis (orthopedic surgery); Dr. Patricia Hurford, Orthopedic Sports Medicine and Spine Care Institute, Kirkwood (physical medicine/rehabilitation)

■ **Defendants' experts:** Dr. Alan Alfano, HealthSouth Rehabilitation Hospital, Charlottesville, Va. (physical medicine/rehabilitation); Dr. Kristine Johnson, Johns Hopkins University School of Medicine, Baltimore, Md. (infectious diseases); Dr. John Luce, University of California at San Francisco (clinical medicine)

■ **Last demand:** \$1.9 million

■ **Caption:** Michael and Laurie Morgan v. Bernard Burns D.O. and Orthopedic Associates of Southeast Missouri.

■ **Plaintiffs' attorney:** Douglas P. Dowd, Dowd & Dowd, St. Louis

■ **Defendants' attorneys:** Joseph C. Blanton Jr. and John E. Cozean, Blanton, Rice, Nickell, Cozean & Collins, Sikeston

BY ALAN SCHER ZAGIER

*Special to Missouri Lawyers Media*

A federal judge in southeast Missouri rejected the medical malpractice claims of a 61-year-old man who sued a pair of physicians and the doctors' employers after developing an infection following spinal fusion surgery.

In a 19-page ruling issued June 17, U.S. District Judge Carol E. Jackson of the Eastern District of Missouri found that Dr. Bernard Burns and Orthopaedic Associates of Southeast Missouri were not negligent in treating Michael Morgan of Elkville, Ill. Jackson's order followed a three-day bench trial in January.

Morgan had initially sued his surgeon, Dr. Sonjay Fonn, as well as Fonn's employer, Midwest Neurosurgeons, in 2011 along with Burns, an osteopathic physician, and Burns' employer. Burns and Orthopaedic Associates were dismissed from the original suit, which was settled confidentially with Fonn and Midwest Neurosurgeons, said plaintiff's attorney Douglas Dowd.

Morgan then sued Burns and the orthopedic center in 2012 related to complications from surgery at St. Francis Medical Center in Cape Girardeau three years earlier. He alleged that Burns didn't diagnose and respond to his post-operative infection.

According to stipulated facts in the ruling, Morgan worked for a decade as a cable TV installer in southern Illinois before developing severe back pain in November 2008. He was referred by a chiropractor to Fonn, an osteopathic neurosurgeon in Cape Girardeau. When steroid injections failed to alleviate his pain, Morgan had four-level spinal fusion surgery.

Morgan was transferred to an in-patient rehab unit at St. Francis five days after surgery, where he was treated by Burns. On the patient's sixth day in rehab, a nurse noticed drainage from Morgan's surgical incision. He was discharged from the hospital the following afternoon but developed a fever that evening. The next day, a home health nurse reported drainage from the wound, which Fonn responded to with a prescription for an antibiotic ointment.

Morgan returned to the hospital March



Joseph C. Blanton Jr.



John E. Cozean

20 and was diagnosed with sepsis, acute renal failure and a lumbar wound infection. He had the wound drained by Fonn the following day and remained at the hospital for several weeks. He was then transferred to Barnes-Jewish Hospital in St. Louis at his wife's request, spending 10 days there and another four weeks in rehab.

The day before his transfer, doctors found another fractured vertebra that had not been previously identified. The injury has caused Morgan to have a bent spine that requires him to walk with a cane, his attorney said.

Jackson determined that the case hinged on each side's expert witnesses. She ultimately found that the defendants' medical experts, who included a University of Virginia spinal rehabilitation specialist and a Johns Hopkins University expert on infectious diseases, "tipped the scale of credibility in defendants' favor."

"Without any other signs of infection, the appearance of a wound was simply not enough to alert Dr. Burns to the presence of something as serious as a deep wound infection," the judge wrote.

Defense attorney Joseph Blanton Jr. of Blanton, Rice Nickell, Cozean & Collins in Sikeston concurred.

"We do think we had excellent experts," he said.

Dowd said Morgan, whose wife was also named as a plaintiff before she died when the case had not yet gone trial, has no plans to appeal the decision.

"It was very much of a call on the expert," Dowd said. "That's the way it goes sometimes." **MO**