

DBR DAILY BUSINESS REVIEW

VERDICTS & SETTLEMENTS

Attorneys win \$2.88 million malpractice judgment for twins

Case: Thelma Leon, as personal representative of the estate of Clementina Brown v. Jose R. Martinez-Alba Jr., M.D.

Case no: 07-09865CA31

Description: Medical malpractice

Filing date: April 5, 2007

Trial dates: Oct. 26-30, 2009

Judge: Miami-Dade Circuit Judge John Schlesinger

Judgment: \$2.88 million

Plaintiff attorneys: John M. Perez Jr., Law Offices of J.M. Perez, Miami Lakes; Brett Alan Panter, David Sampedro and Joshua Wintle, Law Firm of Panter Panter & Sampedro, Miami

Defense attorneys: Gilbert Valdes Alba Jr. and Geoffrey Valdes, Alba Law, Miami



A.M. HOLT

From left: David Sampedro, Brett Alan Panter, John Perez and Joshua Wintle represented the family of a woman who died in 2007.

Details: Clementina Brown, an auto-dealer title clerk, went to Palmetto

General Hospital in Hialeah by ambulance with severe abdominal pain before dawn May 6, 2005. The single mother of 11-year-old twin boys was admitted and seen by several doctors. She received pain medication and later went into shock. A surgeon saw her for the first time more than 50 hours after she arrived. Brown went into cardiopulmonary arrest during preparations for exploratory surgery on Mother's Day, May 8. The Miami woman was resuscitated, and surgery was performed for a twisted bowel, but she never regained consciousness. She died in a nursing home Feb. 13, 2007. Thelma Leon, Brown's sister, cares for the twins, Anthony and Bryan Fontalvo. Bryan testified for about 10 minutes on the loss of his mother.

Four other doctors and a medical group reached confidential settlements before trial. Another doctor filed for bankruptcy protection on the last court day before trial. Dr. Jose R. Martinez Alba Jr., a surgeon, went to trial as the lone defendant.

Plaintiff case: Brown's attorneys said she went without oxygen for more than 20 minutes, based on nurses' notes and statements. Dr. Michael Hickey, a surgeon, testified on the standard of care, and economist Ronald Missun testified about Brown's financial losses.

Defense case: Alba estimated Brown was without oxygen for 13 minutes. His attorneys, his nephews, argued hospital policy let him take up to 24 hours after being called to see a non-emergency patient for a surgical consultation. They maintained Alba left orders to be notified if Brown's condition changed, and he should have been called after her condition deteriorated. Dr. Roberto Comperatore, Palmetto chief of surgery, testified on the examination time window.

Outcome: The jury, which deliberated for four hours, set damages of \$8.5 million and spread the blame among doctors and nurses. Alba was found 30 percent liable, which made his portion of the award \$2.55 million.

Quote: "Families depend on doctors and specialists to come in and see the patient," Perez said. "Everybody dropped the ball on this one. It's just a shame."

Post-verdict: Schlesinger entered a final judgment of \$2.88 million Tuesday based on the application of general tort law. The defense argued for a \$794,000 award. Perez said Alba was uninsured. State law makes doctors financially responsible for up to \$250,000 of any malpractice judgment. Plaintiff attorneys are seeking fees and costs. The defense asked for a new trial.

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