

# The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

May, 2006

Statewide Jury Verdict Coverage

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*Unbiased and Independently Researched Jury Verdict Results*

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### **Medical Negligence - A woman died after undergoing a laparoscopic gallbladder removal procedure; the woman's estate blamed her death on multiple errors by her health care providers**

*Estate of Rodriguez v. Almase Surgical Corporation, et al.*, 45D11-0405-CT-96

Plaintiff: Daniel B. Vinovich and

Benjamin D. Fryman, *Hilbrich*

*Cunningham Schwerd Dobosz &*

*Vinovich*, Highland

Defense: Robert J. Dignam and James

L. Hough, *Spangler Jennings &*

*Dougherty*, Merrillville, for Almase and

Legaspi; David C. Jensen and Michael

P. Mulchay, *Eichhorn & Eichhorn*,

Hammond, for Santos, Kheirbek,

Kudaimi, and Javate

Verdict: \$1,300,000 for plaintiff against Almase, Santos, and Legaspi; defense verdict for Kheirbek, Kudaimi, and Javate

County: **Lake**, Superior  
Court: J. Dywan, 3-14-06

On 3-8-00, Micaela Rodriguez, age 66, was admitted to St. Catherine's Hospital in East Chicago with acute dehydration, recurrent vomiting, and abdominal pain. She was diagnosed with an inflammation of the gallbladder, gallstones, chronic renal failure, and peripheral vascular blockage.

The next day, on 3-9-00, Rodriguez underwent a laparoscopic gallbladder removal. The procedure was performed by Dr. Rodolfo Almase of the Almase

Surgical Corporation and Dr. Rafaelito Legaspi. Although the procedure seemed to have been a success, Rodriguez continued to complain of abdominal pain.

On 3-15-00, Rodriguez underwent an endoscopic examination performed by Dr. M. Mazen Kudaimi. That procedure revealed a bile leak in Rodriguez's right hepatic duct. The procedure also included the insertion of a biliary stent. Plaintiff would later claim the insertion of the stent was performed negligently.

Rodriguez's condition continued to deteriorate. She was finally transferred to Rush-Presbyterian St. Luke's Hospital in Chicago in the evening of 3-21-00. She died the following morning on 3-22-00 of peritonitis due to the bile duct leak. According to plaintiff, Drs. Almase and Legaspi severed Rodriguez's right hepatic duct during the initial gallbladder removal procedure.

Rodriguez's estate submitted the matter to a medical review panel and claimed her medical team's care either led to her death or reduced her chances of survival. In addition to Drs. Almase, Legaspi, and Kudaimi, the estate also criticized the treatment Rodriguez received from several of her other health care providers.

They included Rodriguez's primary care physician, Dr. Napoleon Santos, and her nephrologist, Dr. Ali Kheirbek. The estate also named Dr. Rosita Javate, the doctor who temporarily took over as Rodriguez's primary care physician while Dr. Santos was on vacation.

The panel members were Dr. Jeann Rowe, Internal Medicine, Fort Wayne; Dr. Mary Aaland, General Surgery, Fort Wayne; and Dr. Samuel Heiser, General Surgery, Noblesville. Dr. Rowe expressed the opinion that the only defendants who breached the standard of care were Drs. Javate, Kheirbek, and Legaspi. However, she went on to say the breach only minimally reduced Rodriguez's chances of survival.

Drs. Aaland and Heiser both thought St. Catherine's Hospital, Almase Surgical Corporation, and Drs. Almase

and Legaspi did not breach the standard of care. Aaland and Heiser pronounced themselves unqualified to render an opinion regarding the remaining defendants.

Rodriguez's estate filed suit against St. Catherine's Hospital, Almase Surgical Corporation, and Drs. Almase, Santos, Legaspi, Kheirbek, Kudaimi, and Javate. However, the court later granted St. Catherine's a summary judgment and dismissed the hospital from the case.

The litigation then proceeded against the remaining defendants with the estate citing multiple errors. The estate's retained expert, Dr. Samuel Feinberg, Surgery, Champaign, IL, thought that if Dr. Almase had done a cholangiogram (a radiological procedure designed to examine the gallbladder) at the time of the initial surgery, Rodriguez's injury would never have happened.

In addition, the estate criticized Almase for not converting to an open procedure and for failing to request appropriate assistance from other doctors. Also, the estate claimed the antibiotics prescribed for Rodriguez were inappropriate and not sufficiently monitored.

Defendants denied having breached the standard of care. They also pointed out that Rodriguez suffered from a number of pre-existing conditions. Among them were renal failure, diabetes, heart disease, hypertension, gallbladder disease, cirrhosis of the liver, and hepatitis C.

The identified defense experts included Dr. James Millis, Surgery, Chicago, IL; Dr. Lee McHenry, Jr., Gastroenterology, Indianapolis; Dr. Jeffrey Justice, Surgery, Fort Wayne; and Dr. John Fitzgerald, Internal Medicine, Indianapolis. Defendants also called Dr. Samuel Heiser, a member of the medical review panel, to testify on their behalf.

The case was tried for nine days in Crown Point. The jury returned a complex verdict in which Drs. Kheirbek, Kudaimi, and Javate were exonerated. However, the jury found for the estate against Almase Surgical Corporation, and Drs. Almase, Legaspi,

and Santos. Against these defendants, the estate was awarded damages of \$1,300,000. If the court entered a judgment, it was not in the record at the time the IJVR reviewed it.

### **Auto Negligence - Defendant admitted fault for a rear-end crash, and plaintiff was awarded slightly less than twice his incurred medical expenses**

*Miller v. Eller*, 49D12-0303-CT-521

Plaintiff: Betsy K. Greene, *Greene & Schultz*, Bloomington

Defense: Jeffrey V. Crabill, *State Farm Litigation Counsel*, Indianapolis

Verdict: \$25,000 for plaintiff

County: **Marion**, Superior

Court: J. Moberly, 4-5-06

In the late evening of 3-23-01, Kerry Miller, then age 41 and a realtor, was riding as a passenger in a 1999 Honda Accord being driven by Sharon Cosby. The two were traveling south on North Pennsylvania Street in Indianapolis when they stopped in traffic. An instant later, they were rear-ended by a 1996 Chevy Blazer being driven by Jodi Eller.

Miller did not seek medical treatment until approximately three weeks after the crash. He then presented to Ortho Indy with complaints of pain in his shoulder. Miller was diagnosed with right rotator cuff tendonitis and impingement that he attributed to the accident.

Approximately eight months after the accident, Miller underwent a corrective surgery. His medical expenses came to \$13,937. However, \$5,373 of those expenses were subsequently written off by her medical providers. Miller subsequently made a complete recovery.

In this lawsuit, Miller blamed Eller for crashing into him. In addition to his immediate injuries, Miller claims the incident and subsequent surgery have left him with permanent scarring.

Eller initially defended the case, denied Miller suffered any injuries at all, and blamed the collision on non-party Crosby. As the litigation progressed, however, Eller's defenses began to dwindle.

By the time the trial date drew near, Eller admitted negligence and had dropped the non-party defense. Instead, the case went to trial with Eller