

IN THE SUPREME COURT OF MISSISSIPPI

No. 2010-CA-1137

**SHIRLEY BULLOCK, individually
and o/b/o all wrongful death beneficiaries of
LARRY BULLOCK**

APPELLANTS

V.

**DR. MICHAEL PATTERSON, SOUTHERN BONE &
JOINT SPECIALISTS, P.A., WESLEY MEDICAL
CENTER**

APPELLEES

BRIEF OF APPELLANTS

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Certificate of Interested Persons

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this Case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Honorable R. I. Prichard, III, Jefferson Davis County Circuit Court Judge
2. Appellants: Shirley Bullock, Delois Kimbra Smith, Jeffrey Bullock, the wrongful death beneficiaries of Larry Bullock
3. Attorneys for Appellants: Isaac K. Byrd, Jr. and Suzanne Keys, Byrd & Associates, PLLC
4. Appellees: Dr. Michael Patterson, Southern Bone & Joint Specialists and Wesley Medical Center
5. Attorneys for Appellees:

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STATEMENT OF ISSUES

- I. Whether the Trial Court erred in granting summary judgment for Dr. Michael Patterson and Southern Bone and Joint Specialists, and denying Appellant's Motion for Reconsideration.
 - II. Whether the Trial Court erred in granting summary judgment for Wesley Medical Center and denying Appellant's Motion for Reconsideration
-

PROCEDURAL AND FACTUAL BACKGROUND

I. Procedural Background

This case involves the medical negligence of the Defendants Dr. Michael Patterson, who was employed by Southern Bone & Joint Specialists, and that of staff at Wesley Medical Center, including Dr. Kurt Bruckmeier, when Mr. Bullock underwent neck surgery without being adequately weaned from his anticoagulant, Plavix, and then discharged with orders to immediately resume taking his Plavix. Within twelve hours of discharge, Mr. Bullock died when an expanding hematoma in his neck cut off his airway.

Mrs. Bullock on behalf of the wrongful death beneficiaries sent the Appellees the required Notice letters and then filed suit on or about October 17, 2008. Mrs. Bullock sued not only the Appellants, but also a local hospital, Jefferson Davis Hospital, the Emergency Room physician there, and AAA Ambulance Service for their failures that contributed to Mr. Bullock's death. Mrs. Bullock has settled with these other entities.

On or about May 21, 2010, Dr. Michael Patterson filed a Motion to Exclude the Testimony of Plaintiff's Proposed Expert and for Summary Judgment (R.117, RE 28). Wesley Medical Center also filed for Summary Judgment on that same day (R.22, RE 41). Plaintiff responded to both Motions on June 1 and June 7,

2010 (R.240, RE 58 and R.382 RE 75). On June 7, 2010, after argument on the Motions, the Trial Court verbally granted the Motions for Summary Judgment on the issue of lack of proof of causation. Orders were entered thereafter (R.424, RE 11 and R.430, RE 18). Within a day, Mrs. Bullock filed a Motion for Reconsideration, (R. 410, RE 89), which the Court denied (R. 434, RE 23). From these orders, Mrs. Bullock appealed on July 9, 2010 (R. 435, RE 25)

II. Facts

Mr. Larry Bullock, a fifty-three year old truck driver/pastor, was referred to Dr. Michael Patterson in July 2006 for neck and shoulder pain. (See portions of Dr. Patterson's Medical Records, R.307, RE 152). The records from Mr. Bullock's first visit with Dr. Patterson on July 24, 2006, reflect that they reported Mr. Bullock's daily use of Plavix and Aspirin for prophylactic care since a heart attack he had suffered five years earlier. However, Mrs. Bullock testified that she did not recall the doctor ever talking about this medication during his consultation. (Mrs. Bullock's deposition excerpts, R. 276, RE 146). She said that Dr. Patterson showed her and Mr. Bullock the findings of the MRI and stressed the severity of Mr. Bullock's condition, saying that even a trivial accident could result in paralysis. (R. 270, RE 145). Clearly, Dr. Patterson led the Bullocks to believe that his situation was an emergency, requiring immediate surgery. Her husband

consented and surgery which was scheduled for the next day.

On July 26, 2007, when they arrived at Wesley Medical Center for the surgery an anesthesiologist doing the pre-operative anesthesia check noted that Mr. Bullock was on Plavix and asked if Dr. Patterson was aware of this. (R.273, RE 147). The anesthesiologist left and returned saying that he said he had spoken to Dr. Patterson and then gestured, saying that it was either the platelets or paralysis. In other words, this anesthesiologist indicated to the Bullocks that Dr. Patterson had again stressed the emergency nature of the situation, saying that Mr. Bullock had two possible outcomes: taking a platelet treatment to counter the effects of the Plavix, or become paralyzed. Accordingly, Mr. Bullock was given ten units of Platelets at 1323 p.m. and underwent surgery at 1630 p.m. Mrs. Bullock said Dr. Patterson told her that the surgery was more complicated than he thought but he felt he got everything. Due to the late hour of the surgery, Mr. Bullock remained hospitalized overnight.

The next morning Dr. Patterson came by. Mrs. Bullock testified that Dr. Patterson came in, upbeat, pleased with the results, saying that the surgery was more complicated than he thought. He had to pick out bone fragments but that he got everything. Her husband asked for a neck collar and Dr. Patterson said that his neck was big enough and he didn't need it R.276, RE 149).

At the time of discharge, the nurse told them that Mr. Bullock could resume all his medications. However, Dr. Patterson testified that he told the Bullocks not to take the Plavix for two days (Patterson depo, R. 329, RE 165). It was this instruction that made Mrs. Bullock question the discharge nurse when they were told to resume the Plavix immediately. Mrs. Bullock wanted to be sure, (R. 265, RE 145) so the nurse faxed the medication list Dr. Kurt Bruckmeier, who served as a hospitalist for Dr. Patterson. In this particular case, all he did was review and sign off on the medication list at the time of discharge. He testified that basically Dr. Patterson wants him to look at the medicine list and see if it's appropriate, whether the doses are correct or anything just looks wrong. He had no conversations with Dr. Patterson and he never met Mr. Bullock (R. 300, RE 158). Dr. Bruckmeier testified that he approved the resumption of the Plavix and aspirin based on assumptions he made. (R.301, RE 159) Since Mr. Bullock was admitted on 7/26/07 and he got the fax the next day, he *deduced* that this was probably a patient who had neck surgery because these patients usually go home in 24 hours. He also knows that Dr. Patterson does either lower back or neck surgery, so with just an overnight stay, this was *probably* a neck surgery. He also *assumed* that Dr. Patterson had seen the patient, looked at the wound and decided that he was ready to be discharged. He looked at the faxed medication list (R. 307, RE 152), he

circles the Y's (yes's) and signed his name, and gave it to his receptionist to send back.

Because Dr Patterson had failed to communicate with Dr. Bruckmeier, Mr. Bullock was falsely assured and instructed that he could resume his Plavix immediately upon discharge. The Discharge Nurse, Nurse Kerr gave no instructions as to the specific signs and symptoms to look for now that the Plavix was continued (a breach of the standard of care per Nurse Ross's opinions, R. 96, RE 108).

Dr. Bruckmeier and Dr. Patterson agreed that the risk of possible post operative bleeding was increased by the resumption of the Plavix and Aspirin. (R. 302, Re 160). Mr. Bullock was discharged at 11 a.m. and went home. Later that evening, Mr. Bullock began to be hoarse, his neck started to swell and he started having some problems breathing. The Bullocks decided to go back to Wesley Medical Center, but when Mr. Bullock's breathing problems increased, they diverted to a local hospital to be checked out.

At Jefferson Davis hospital, Mr. Bullock was seen by Dr. James Lock who called Dr. Patterson and arranged for Mr. Bullock to be transported to Hattiesburg from Prentiss by ambulance. During the transport, Mr. Bullock's airway became so restricted from the neck swelling that the paramedic was unable to intubate him

in time to avoid his death. By the time he arrived back at Wesley Medical Center, he had died. When asked if she wanted an autopsy, Mrs. Bullock spoke to the Coroner who indicated that it was probably not necessary as the cause of death was clear. On the death certificate, he listed the cause of death as respiratory failure; probable expanding hematoma in neck, and status post cervical disc surgery airway.

Mrs. Bullock and the wrongful death beneficiaries contend that Mr. Bullock's death was unnecessary, avoidable, and resulted from the combination of the negligence of his medical providers, beginning with his surgeon, Dr. Michael Patterson who operated on Mr. Bullock without first weaning him from his Plavix, and continuing through the negligence of Dr. Bruckmeier in immediately resuming his Plavix post discharge.

To support their case, Plaintiffs designated Dr. Raymond Vance, an orthopedic surgeon, in the field of orthopedic care and surgery and general pre and post operative medical care. Dr. Vance opined that the standard of care for surgeons treating patients such as Mr. Bullock, who was on a regimen of Plavix and aspirin for his heart condition, requires that the surgeon wean the patient from the drug approximately 5-7 days prior to surgery, except in cases of emergency surgery. Moreover, the surgeon should consult the patient's cardiologist to

determine the risks of discontinuing the Plavix for that period of time. Moreover, the standard of care for surgeons operating on patients on Plavix is to insure that their post operative use of Plavix is begun only when it is safe for them to do so. Dr. Patterson and Dr. Bruckmeier breached these standards of care. Since Mr. Bullock's surgery was not an emergency, the Plavix could have been discontinued for a few days, then surgery could have been done, without any of the risk of excessive bleeding and/or a prolonged time for clotting that Plavix can cause even post operatively. (See Plaintiff's Expert Designation R.86, RE 98)

With respect to causation, when deposed, Dr. Vance was asked whether Mr. Bullock's neck obstruction was due to general post operative swelling, to which he replied:

Q. In this particular case, especially in light of the fact that Mr. Bullock's trachea was found to be totally midline at the time of intubation, can you tell me whether you are able to a reasonable medical probability, able to rule out prevertebral edema as the potential cause for his acute airway obstruction on the evening of the 28th of July?

A. When you say rule out, it sounds like your looking for me answer yes

Q. More likely than not?

A. Oh, certainly more likely than not that he bled.

Q. And why is that? Because of the Plavix?

A. Sure.

(R. 140, RE 130)

Thus, Dr. Vance is testifying stating that Mr. Bullock bled *because of Plavix* causing his airway obstruction and ultimate death.

Appellants also designated Dr. Richard Zane, who agreed with this causation testimony. Dr. Zane, who testified to the negligence of the ER staff at Jefferson Davis Hospital, also testified that the bleed Mr. Bullock experienced came from the site of the incision and that this bleed caused an expanding hematoma, because he was post operative and on an anticoagulant. (Zane, RE140).

In opposition to this testimony, the Appellees secured an affidavit from Dr. Malcolm Taylor, a cardiologist, who indicated that the resumption of the Plavix did not contribute to Mr. Bullock's death. (R. 112, RE 167). However, he gave no opinion as to what did cause his death, and at most, this affidavit contradicting Dr. Patterson's own testimony and that of Dr. Vance and Dr. Zane, creates a genuine issue of material fact for the jury to decide.

Summary of Argument

The Trial Court erroneously determined that because Mr. Bullock survived

the immediate surgery with no bleeding problem, Dr. Patterson's decision to proceed with surgery did not cause him any damage. However, the events here cannot be viewed in sequential vacuums. That Mr. Bullock even had the surgery, which was not necessary, caused him to have an incision that bled post operatively. Dr. Patterson did nothing to insure that his anticoagulant that he himself said should not have been resumed was resumed. Because there is a dispute of fact as to whether the Plavix contributed to Mr. Patterson's death, Dr. Patterson's negligence and his contribution to Mr. Bullock's death was a question for the jury to decide. Dr. Patterson's antecedent negligent actions puts into motion an agency which continued in operation until his death, making them a second proximate cause, rather than remote and unactionable cause. *Blackmon v. Payne* 510 So. 3d 483 (Miss. 1987)

Moreover, with Respect to Dr. Bruckmeier, the Trial Court erroneously found that the ER and ambulance personnel's failure to intubate Mr. Bullock was a subsequent, superseding, intervening proximate cause of Mr. Bullock's death, insulating Dr. Bruckmeier and Wesley Medical Center from liability. However, in light of the dispute of facts concerning the cause of Mr. Bullock's death, Dr. Bruckmeier's negligence and whether it too contributed to Mr. Bullock's death, was a question for the jury to decide.

Standard of Review

This court reviews the Trial Court grant of summary judgment de novo. *Eckman v. Moore*, 876 So.2d 975, 988(43) (Miss.2004). Summary judgment shall be granted only where " the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." M.R.C.P. 56(c). The evidence is viewed in the light most favorable to the non-moving party, in whose favor all reasonable favorable inferences are drawn. *Brown v. Credit Ctr., Inc.*, 444 So.2d 358, 362 (Miss.1983). Summary judgment is improper where sufficient evidence exists for a reasonable jury to find for the plaintiff." *Strantz ex rel. Minga v. Pinion*, 652 So.2d 738, 741 (Miss.1995) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)).

Argument

I. There was a genuine issue of material fact as to whether Dr. Patterson's negligence proximately caused or contributed to Mr. Bullock's death.

Plaintiff's expert, Dr. Vance, testified that Mr. Bullock's condition was not such an emergency that he needed an immediate operation the next day, precluding him from being weaned off his Plavix. However, Dr. Patterson led the

Bullocks to believe that without immediate surgery, Mr. Bullock could be paralyzed. In light of their agreement then to immediate surgery, Dr. Patterson scheduled and was prepared to perform surgery the next day, with no thought given to Mr. Bullock being on Plavix.¹ It was not until the anesthesiologist learned that Mr. Bullock had only been off of Plavix one day, and then alerted Dr. Patterson of this situation, that the decision was made to counteract the Plavix with pre-operative treatment with platelets.

When he was deposed, Dr. Patterson described Mr. Bullock's condition and that first meeting differently. First, he said that Mr. Bullock's back and neck condition was not an emergency, but rather an "urgent, emergent" situation as shown by this exchange:

Q. Did you ever suggest to them that they wait for a few days?

A. When I discuss surgery with patients, unless there is an absolute, for instance, an open fracture — if you slip in the office today and have an open fracture, that's emergency. You go straight from the curb here to the hospital and are operated on. Most situations don't call for

¹Dr. Patterson said he did consider Mr. Bullock's being on Plavix and testified that he intended to reverse the effects of the Plavix. However, his office records indicate no discussions with the Bullock concerning the Plavix, and no mention in Dr. Patterson's records that he planned to take steps to reverse the effects. Looking at Dr. Patterson's medical records, there is no documentation of any discussion or consideration of the Plavix at all.

that. If Mr. Bullock had shown up in the emergency room and was paralyzed, that can be an emergency situation where he goes immediately to the operative room. This is an urgent, emergent situation where he does need to have it take care of. If those cases, I discuss both sides of the issue. In other words, what are the benefits of not doing surgery? What are the risks and benefits of doing surgery? And then I rely on my patients who know their lives the best and who can assess what risks they can tolerate, whether it's operative or nonoperative. And they can make the decision, not me.

Q. So are you saying the Bullocks make the decision to have the surgery the next day?

A. Yes

Q. Did you discuss with them that they could wait a few days?

A. I discussed with them that they could avoid doing any surgery.

Deposition excerpts of Dr. Patterson, R. 326, RE 163

Further

Q. If he could wait from the 20th to the 25th or 26th to have surgery, could he have waited from the 25th to the 29th to have surgery?

A. As I mentioned earlier, he could wait the rest of his life to have

surgery. It's his decision and his family's decision as to how they can tolerate that risk. And that's a decision that only the person who's having the surgery can make.

*Dr. Patterson R. 328, RE 164*²

Thus, there was no need for Mr. Bullock to undergo surgery the next day. Dr. Vance, who was familiar with the standard of treating patients who are on Plavix specifically said that for Dr. Patterson to proceed with surgery, without weaning Mr. Bullock from his Plavix, constituted a deviation from and breach of the standard of care which proximately caused or contributed to Mr. Bullock death from postoperative bleeding which led to airway obstruction.

The second failure of Dr. Patterson surrounded Mr. Bullock's resumption of the Plavix post operatively. Dr. Patterson testified that he told the Bullocks to wait two days before resuming the Plavix (R. 329, RE 165); however, he failed to communicate this to Dr. Bruckmeier whom he had authorized to approve Mr. Bullock's take home medications. Dr. Patterson put nothing in the chart about waiting the resume the Plavix, and he and Dr. Bruckmeier had no conversations about Mr. Bullock.

²This is in direct contradiction with Mrs. Bullock's testimony that they were told Mr. Bullock would be paralyzed without the surgery and it was Dr. Patterson who scheduled it for the next day

The Trial Court seemed to find Plaintiff's showing of the breach of duty on Dr. Patterson's part sufficient, but rather concentrated on the element of causation – did Dr. Patterson's failures cause or contribute to Mr. Bullock's death. The Trial Court framed the issue, however, as whether Dr. Patterson's failures caused Mr. Bullock to bleed post operatively. This is not the issue –the issue is whether Dr. Patterson's premature surgery and failure to insure that Mr. Bullock did not resume his Plavix for two days contributed to Mr. Bullock's death. In this case, the parties do not dispute the death certificate cause of death as “as respiratory failure; probable expanding hematoma in neck, and status post cervical disc surgery airway”. In other words, it is undisputed that Mr. Bullock had an expanding hematoma (blood clot) at his surgical site – expanding because he continued to bleed. So the issue is not whether the Plavix caused the bleed because Plavix does not cause bleeding; Plavix only increases the risk of unstoppable bleeding if one occurs because Plavix inhibits coagulation. Thus, from the mere fact that Mr. Bullock had an *expanding hematoma*, it follows that he was bleeding and his blood was not coagulating because of his Plavix. Thus the question is where in the record did Plaintiffs establish, through expert testimony that Plavix caused or contributed to the uninhibited bleeding which caused the expanding hematoma.

Appellants pointed the Trial Court to the deposition testimony of **Dr. Vance** (R. 140, RE 130) where Dr. Vance states that Mr. Bullock bled because of the Plavix. Dr. Vance is clearly saying that in his opinion, to a reasonable degree of medical probability that Mr. Bullock's expanding hematoma was due to a bleed that would not stop because he was taking Plavix at the time.

Mr. Ramsey asked again about whether Mr. Bullock's swelling was due to simple edema and Dr. Vance again indicated it was a bleed taken after Plavix was administered:

Q. As a practical matter, as we sit here today, could one reasonably rule out with reasonable medical probability, pharyngeal or laryngeal edema.

A. Yes

Q. How?

A. I think simply on the basis of the probabilities, you know. I mean, if you were to say what's the most likely cause of airway obstruction in someone who 28 hour before had had an operation on his anterior cervical spine, **demonstrated no problem until Plavix was administered**, and several hours later then began to experience respirator difficulty, on a statistical basis alone, the likelihood would

be high that it was a bleed into the upper airway.

(Dr. Vance, R. 420, RE 133)

Again, Dr. Vance included in his causation chain, the administration of Plavix leading to the bleed, causing the swelling which obstructed the airway and caused Mr. Bullock's death.

Dr. Zane also testified as follows:

A. I think more likely than not he was bleeding from the site of surgery, and the swelling was likely to be a hematoma or a collection of blood.

Q. Okay

A. Which is a hematoma.

Q. ...Tell me factually what you base the conclusion that he had an expanding hematoma?

A. The fact that he was recently postoperative; **that he was on an anticoagulant**, and that he had rather precipitous onset of the swelling make me believe that he had post operative hemorrhage as the cause of the airway obstruction.

(Dr. Zane, R.141, RE 131)

Again, at R.188, RE139, Dr. Zane states:

"The differential diagnosis for neck swelling post-operatively is broad. *The*

most likely cause in the context of the precipitousness of the onset in the context of taking anticoagulant is some type of bleeding, most likely leading to a hematoma which causes swelling”.

Therefore, Dr. Zane testified as well that the Plavix was involved in causing the hematoma that expanded and compromised Mr. Bullock’s airway. There would have been no hematoma had there been no surgery and it is Dr. Patterson’s performing immediate surgery without adequate pre and post operative consideration of his Plavix regimen that began the domino effect that resulted in Mr. Bullock’s death. “But for” Mr. Bullock’s having this surgery under these circumstances, he would not have died.

The Trial Court erroneously limited the causation chain to the failure to intubate that Appellants faulted the ER doctor, hospital and ambulance service for, excluding the prior actions of Dr. Patterson and Dr. Bruckmeier that created the conditions for the expanding hematoma. This Court has long recognized that there may be more than one proximate cause of an accident. *Monroe County Electrical Power Ass’n v. Pace*, 461 So.2d 739, 746 (Miss.1984); *Hankins v. Harvey*, 248 Miss. 639, 160 So.2d 63 (1964); *Mississippi Power & Light Co. v. Walters*, 248 Miss. 206, 252, 158 So.2d 2, 20 (1962). There can be remote proximate contributing causes as well as immediate contributing proximate

causes. There may also be independent intervening causes of an injury. If there is an independent intervening cause, then claims against the remote contributors are not viable.

In *Mississippi City Lines, Inc. v. Bullock*, 194 Miss. 630, 640, 13 So.2d 34, 36 (1943), this Court indicated that in deciding whether a defendant's negligence is an independent intervening cause "the question is, did the facts constitute a succession of events so linked together as to make a natural whole, or was there some new and independent [and reasonably unanticipated] cause intervening between the alleged wrong and the injury?" *Blackmon v. Payne*, 510 So.2d 483 (Miss. 1987). When an antecedent negligent act puts in motion an agency which continues in operation until an injury occurs, then there may be more than one proximate cause. The question, for a jury to determine, is did the facts constitute a succession of events so linked together as to make a natural whole or was there some new and independent cause intervening between the alleged wrongs or injury.

This defense applies in medical negligence cases as well, *Eckman v. Moore*, 876 So.2d. 975 (Miss.2004). In *Eckman*, a doctor ordered nurses to do neurological assessments every two hours, which they did not do. However, the doctor also saw the patient prior to, during and after the time these should have

been done. The Supreme Court said that the doctor was entitled to a superseding intervening cause instruction which both Dr. Patterson and Dr. Bruckmeier could request at trial. However, it remains a jury question to sort out whether these were a succession of events so linked in this case or if any one of the Defendants is a remote and non-actionable cause. There is sufficient medical testimony that this is the case of linked events to establish causation or contribution of all and to warrant a denial of these Defendants' Motions for Summary Judgment

II. There was sufficient evidence in the record as to Dr. Bruckmeier's negligence and its contribution to Mr. Bullock's death to deny Summary Judgment to Wesley Medical Center.

As stated above, Dr. Bruckmeier was primarily responsible for Mr. Bullock's immediate resumption of his anticoagulant. Without seeing Mr. Bullock, speaking to Dr. Patterson or even reviewing Mr. Bullock's file, he approved all his medications on discharge. Dr. Bruckmeier did agree that the risk of possible post operative bleed was aggravated by the resumption of the Plavix, but put the responsibility on Dr. Patterson, saying that had Dr. Patterson said he didn't want Mr. Bullock to take certain drugs, then he would not have approved it.

In the expert designation, Dr. Vance's opinions concerning Dr. Bruckmeier's negligence were as follows:

Moreover, the records reflect the Dr. Kurt Bruckmeier reinstituted Mr. Bullock's Plavix therapy at a time when the patient was vulnerable to issues

of postoperative hemorrhage and at a time when the patient could not be closely monitored for this complication, since he was being discharged from the hospital. The standard of care for physicians approving post operative medications on patients they have not personally treated, includes consultation with the treating physician as well as a review of the medical chart of the patient. Dr. Bruckmeier approved Mr. Bullock's immediate resumption of Plavix without ever seeing Mr. Bullock, reviewing his chart, or conversing with the surgeon, anesthesiologist or Mr. Bullock's cardiologist. Instead he "assumed" facts (such as the type of surgery, the course of Mr. Bullock's hospital stay, and his condition at the time of discharge). Dr. Bruckmeier assumed but did not confirm that Dr. Patterson had checked the post op wound and found no problems. Further, Dr. Bruckmeier assumed the reason for Mr. Bullock's being on Plavix without confirming that either.

Dr. Bruckmeier's breaches of the standard of care also proximately caused or contributed to the death of Mr. Bullock from postoperative bleeding which led to airway obstruction and death.

At his deposition, Dr. Vance confirmed that these were his opinions.

Again, the Trial Court found that there was insufficient proof of causation, basically the same finding as Dr. Patterson's. Appellants reiterate and refer the Court back to the preceding argument on causation, and urge the Court to find that there was sufficient evidence in the record for a reasonable jury to have concluded that Dr. Bruckmeier's authorization of the resumption of Plavix contributed to Mr. Bullock's death.

Conclusion

Appellants have shown that there is sufficient expert testimony in the record for the issue of causation and the negligence of Dr. Patterson and Dr.

Bruckmeier (Wesley Medical Center) to have gone to the jury. It is the jury's province to determine whether the facts of this case constitute a succession of events so linked together as to make a natural whole or was there some new and independent cause intervening between the alleged wrongs of Dr. Patterson and Dr. Bruckmeier and Mr. Bullock's death. Thus, the Trial Court erred in making that factual determination, when the evidence showed a dispute of facts on the issue, precluding summary judgment.

RESPECTFULLY SUBMITTED, this the 17th day of November,
2010.

**SHIRLEY BULLOCK, etal
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CERTIFICATE OF SERVICE

I, Suzanne Keys, Attorney for Appellant, do hereby certify that I have this day served a copy of this Brief of Appellant by United States mail, postage pre-paid, and to the Trial Court and the following counsel of record:

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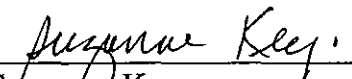
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