

# DAILY REPORT

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## Verdicts and Settlements: Boutique firm wins back-to-back cases

Pair of Henry Spiegel Milling cases nets more than \$5 million

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The five-lawyer plaintiffs' boutique Henry Spiegel Milling is off to a good start this year, toting up more than \$5 million in back-to-back verdicts within recent weeks.

On Jan. 31, a Fulton County jury awarded the survivors of a woman who died several weeks after surgery more than \$1.4 million; four days later, a Chattooga County panel awarded the widows of two car-accident victims more than \$3.7 million.

"It was a very good four days for us," said R. Clay Milling who, along with partner Harvey Spiegel, represented the children and estate of Myrna Daly in a medical malpractice case against two doctors who performed surgery to repair several hernias at the Atlanta Medical Center in 2005.

According to Milling, Daly, 56, had long suffered from asthma and a variety of gastric problems. Numerous medical procedures for those and other ailments had left her with a "hostile abdomen."

"The more you operate on somebody's stomach, the more they develop 'adhesions,' which are essentially scars," said Milling. The adhesions can cause bowel



Phil Henry

blockage and increase the risk of subsequent surgeries, he said.

Daly consulted with Dr. Titus Duncan, described by Milling as "a real pioneer in the use of laparoscopic surgery," about treating her gastric reflux, said the lawyer.

They decided against that, said Milling, but did decide to perform surgery to repair several hernias.

On Friday, Aug. 19, 2005, the surgery was performed "without incident," and Duncan discussed the procedure with another doctor, Larry Hobson, who would be the covering physician over the weekend.

On Sunday, another doctor checked Daly and noticed a drop in blood pressure and became concerned about a possible bowel injury. Tests were ordered to determine whether her white blood count was normal, and the results indicated an infection.

According to Milling, the test results were available by early afternoon, but Hobson became involved in an emergency appendectomy on another patient, and he was in the midst of that procedure when he was informed that the tests indicated that Daly had a tear in her bowel.

He completed the appendix surgery and immediately began surgery on Daly, joined in the operating room by Duncan, according to the order.

The procedure was successful, but Daly nonetheless "deteriorated and followed a downhill course until the time of her death on Oct. 22, 2005," says the order.

"Everyone admitted that it was a high-risk surgery," said Milling. At trial, Duncan testified "that the incidence of rupture could be as high as 50 to 70 percent," he said.

Even so, he said, Duncan scheduled the surgery on a Friday, when his associate would be left to mind the patient. A key point, he said, was that the results of the Sunday tests were available early that afternoon and that the several hours between their completion and the doctor's becoming aware of the results may have cost Daly her life.

"She suffered tremendously for two months before dying," Milling said.

In May 2007, Daly's children filed suit in Fulton County Superior Court. Atlanta Medical Center settled prior to trial, but the doctors pursued the case.

Following a four-day trial before Fulton County Superior Court Judge T. Jackson Bedford, the jury deliberated over a two-day period before returning a verdict

on Jan. 31, awarding \$1 million in pain and suffering damages and \$437,738 in economic damages. The award was apportioned, with 70 percent of the liability going to Hobson and 30 percent to Duncan.

Although the \$1 million non-economic judgment exceeds Georgia's damage caps, the parties had reached an agreement earlier and there will be no appeal, said both Milling and defense attorney Alan Herman of Hawkins and Parnell.

"The case did involve a very nice family and two very fine doctors," said Herman in response to an e-mail query. "The jury deliberated quite a long time over a two day period before reaching their verdict."

The Chattooga County case involved a head-on collision in which a father and son were killed on Oct. 2, 2007. Glenn Allen Martin, 47, and his son, Michael Allen Martin, 25, were on their way to work as millwrights at Georgia Power's Plant Bowen when an Acura SUV driven by Tracy Johnson crossed the center line and crashed into the Martins' Mercury Cougar, killing both men.

"She had been down to Rome to stay overnight with her mother in the hospital and didn't get much sleep," said Phil Henry, who represented the men's wives along with associate Marla Eastwood. "She just fell asleep at the wheel."

There was no argument as to liability, he said, so the case involved assessing the value of the men's lives and whether they suffered pre-collision.

The defense offered "nothing substantial" prior to trial, said Henry. On Feb. 3, after a day-and-a-half trial before Lookout Mountain Circuit Superior Court Judge Kristina Cook Connelly, the jury deliberated for an hour and a half before awarding \$1,072,546 to Paula Martin, wife of Glenn Martin, and \$2,607,290 to Melanie Martin, wife of Michael Martin.

The award is believed to be largest in county history, said the lawyers.

Defense attorney F. Gregory Melton did not respond to requests for comment.

The cases are *Daly v. Duncan*, No. 2007CV134321, Fult. Sup. Ct.; and *Martin v. Johnson*, No. 2008-CA33,329, Chattooga Sup. Ct.

The parent company of Atlanta Gas Light said it is considering an appeal in the case of a Suwanee woman awarded

more than \$1 million in Fulton County State Court after being rear-ended by a company van.

Vickie A. Flippen, now 56, was trying to merge onto Interstate 285 from an exit ramp off of Ga. 400 when a Chevrolet Astro belonging to AGL Resources struck her from behind about noon on Dec. 8, 2003, according to court documents.

Both Flippen's Toyota 4-Runner and the van that hit her suffered "extensive" damages, according to plaintiff's arguments cited in the pre-trial order. But Flippen did not seek immediate help, instead visiting her doctor the next day for pain in her lower back and neck.

"She was on her way to the dentist, and she went on to that appointment," said Jonathan Pope of Canton's Hasty Pope. "She called her primary care doctor that day and went in the next day after having pain in her neck and lower back."

Pope represented Flippen along with his brother, Tom Pope III; the two are the sons of former Georgia Court of Appeals Chief Judge Marion T. Pope, who retired from the bench in 2002 and is also a firm member.

They said Flippen was reluctant to seek treatment despite worsening pain over the next year or so; on Dec. 5, 2005, with just three days left to meet a filing deadline, she filed a rush complaint against AGL.

Flippen underwent non-surgical treatment for her soft-tissue injuries, but nonetheless eventually required surgery.

"She had neck surgery three years later, and five years later had lower-back surgery," said Tom Pope, explaining that the length of time between the wreck and surgeries was an issue at trial for both Flippen and the defense.

"Our whole thesis of the trial was that she had tried every conceivable means to relieve it without having surgery," he said.

The defense countered that, while Flippen may have suffered some injury in the wreck, the problems that led to her eventual surgeries were unrelated to the collision.

AGL's attorney, Blake Frye of Hill Kertscher & Wharton, did not respond to phone or e-mailed requests for comment, but the defense argued in the pre-trial order that, while Flippen "sustained soft-tissue back injuries," scans of her spine "several months after the accident revealed

degenerative disc disease that began long before the motor vehicle accident."

The defense, it said, "contends that Plaintiff's surgeries, as well as her continued symptoms and disability and much of her other medical treatment, were unrelated to the motor vehicle accident."

"At trial, they also said she was not an ideal candidate for lower-back surgery," said Tom Pope."

The defense offered to settle for \$350,000 prior to trial, he said, "but they never accepted responsibility at all."

After a three-day trial before Fulton County State Court Judge John R. Mather, the jury deliberated about five hours before awarding Flippen \$1,017,836, including \$600,000 for pain and suffering, on Jan. 22.

In a prepared statement, AGL said it is considering its options.

"We are disappointed in the verdict in this case," said a statement provided by spokeswoman Tami Gerke. "From the outset, the company acknowledged fault in the accident and it has been willing to compensate Ms. Flippen for her injuries. This was a low-speed rear-end collision, and we believe that the plaintiff sought compensation for injuries and treatment that were not caused by the accident. We believe that the amount that the jury reached was not proper given the facts of this case, and we are exploring our options for appeal."

Tom Pope said the verdict was welcome news, but that he was somewhat distracted in the case's final days, and was unable to attend closing arguments.

"We presented all our arguments in two days," he said, "and went home to prepare for closing."

But early the next day, his wife, Meredith, went into labor, so brother Jonathan had to take over.

"At the same time closing began, Meredith was giving birth," he said.

At 9 a.m., Olivia Pope came in to the world. "A million-dollar baby," said her father.

The case is *Flippen v. AGL Resources*, No. 05VS090809G, Ful. St. Ct.