

# DAILY REPORT

A SMART READ FOR SMART READERS

[dailyreportonline.com](http://dailyreportonline.com) | An ALM Publication

## DeKalb Jurors Award \$38.6M Against Emory After Teen Death

CEDRA MAYFIELD | [cmayfield@alm.com](mailto:cmayfield@alm.com)

DEKALB COUNTY State Court jurors have awarded \$38.6 million in damages to the mother of an 18-year-old who died following a heart transplant conducted by a surgeon employed by Emory Healthcare Inc.

Plaintiff counsel credit the eight-figure outcome to their ability to “keep the case simple” for jurors, while also “impeaching many of Emory’s experts” during the medical-malpractice trial.

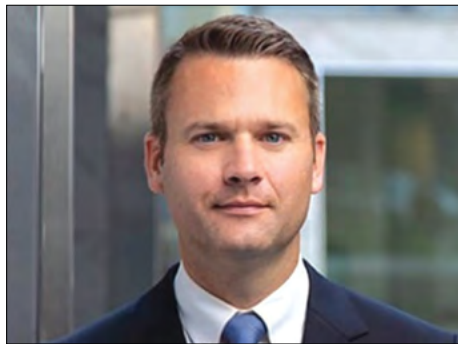
### ‘14 Minutes Into the Surgery’

Lead plaintiff counsel Lee Gutschenritter of Finch McCranie in Atlanta teamed with law partner Richard Hendrix and Hanson & Fuller litigator David Hanson to represent Barbara Brown following the 2017 wrongful death of her son, Trèvon Falson.

Plaintiff counsel contend Falson’s death resulted from Emory Healthcare Inc. providers’ failure to test the condition of a heart pump installed in 2016 before Dr. Duc Q. Nguyen proceeded with Falson’s heart transplant surgery a year later.

According to plaintiff counsel, with the installation of the pump comes “a risk [that] patients will develop scar tissue inside the chest and that important structures like the heart [and] aorta ... may migrate postoperatively,” rendering them “stuck directly to the back of the sternum.”

Despite a 13-month window between the time of Falson’s mechanical heart



COURTESY PHOTO

Lee Gutschenritter of Finch McCranie was the lead plaintiff attorney in the case.

pump installation and heart transplant surgeries, plaintiff counsel said, “Emory never obtained a simple chest CT [or Computed Tomography] scan to see whether there were structures adhered to the back of the chest.”

“When a donor heart finally became available, 14 minutes into the start of the surgery, while the defendant surgeon was using an oscillating saw to cut through the patient’s chest, he immediately encountered massive bleeding which caused Trèvon to lose two-thirds of the blood in his body,” Gutschenritter told the Daily Report. “Unknown to the defendant surgeon or anyone else at Emory, the outflow graft had become adhered, or stuck, to the back of the chest. Trèvon was immediately placed on life support, and the providers at that point had no choice but to go forward with the transplantation. Due to the cascade of problems that resulted from the massive bleed, the donor heart was unable to function. Trèvon was placed

on life support where he remained for six weeks until he passed away on Christmas day, December 25, 2017.”

Per the subsequent plaintiff complaint filed by Brown in November 2018, “the posttransplantation complications suffered by Trèvon and his ultimate death were a direct result of the massive bleed caused by the laceration to the outflow graft during the transplant surgery on November 2, 2017.”

Rusty McCain and Joselyn Hughes of Bendin Sumrall & Ladner in Atlanta led the Emory co-defendants’ defense but did not respond to a Daily Report request for comment.

Opposing counsel’s clients proved equally unresponsive to plaintiff counsel’s attempts to negotiate what Gutschenritter considered to be “a reasonable settlement value” to resolve the medical-malpractice matter.

“For nearly five years, Emory refused to offer anywhere close to the amount of the outstanding medical lien,” Gutschenritter said.

Unable to reach a resolution, the case proceeded to a jury trial five years later on Oct. 30.

### ‘The Lines Were Drawn’

Gathered before DeKalb County State Court Judge Mike Jacobs, Gutschenritter said plaintiff counsel centered its trial strategy on trying “an efficient and simple case.”

“The crux of the case was the failure to obtain a chest CT after the placement of the mechanical heart pump and

before the heart transplant over a year later,” Gutschenritter told the Daily Report. “It is undisputed that, if Emory would have ordered this imaging study, it would have shown that a portion of the mechanical heart pump called the outflow graft, which connects to the aorta, was stuck directly to the back of Trévon’s chest. If they had known this information, a number of safety measures could have been implemented to mitigate the extent of the injury or avoid it altogether.”

**“Primary graft failure is a dreaded consequence of heart transplant surgery and happens in up to 30% of heart transplant surgeries based on reported studies and is associated with significant mortality. Mr. Falson had multiple risk factors for primary graft failure, which could not be avoided, and the donor heart was also at risk for primary graft failure. Hence, it is Defendants’ position that the injury to the outflow graft during Mr. Falson’s heart transplant surgery did not cause or contribute to the donor heart not functioning.”**

— Defendant brief

Gutschenritter said plaintiff counsel had to overcome litigation and causation defenses presented by opposing counsel. In order to do so, the plaintiff team called standard-of-care and causation experts to the stand.

Across the aisle, Gutschenritter said defense counsel countered with a half-dozen experts of its own, “including four Emory physicians and the director of the Emory Heart Transplant program.”

As argued in a consolidated pre-trial brief, defense counsel contended the healthcare co-defendants lacked liability for Falson’s death.

Rather than the patient dying as a result of “the injury to the outflow graft,” defense counsel argued Falson’s donor heart failed to function following transplantation because of “primary graft failure, where the donor heart simply fails to work for unknown reasons even

when there are no complications whatsoever with the transplant surgery.”

“Primary graft failure is a dreaded consequence of heart transplant surgery and happens in up to 30% of heart transplant surgeries based on reported studies and is associated with significant mortality. Mr. Falson had multiple risk factors for primary graft failure, which could not be avoided, and the donor heart was also at risk for primary graft failure. Hence, it is Defendants’ position that the injury to the outflow graft during Mr. Falson’s heart transplant surgery did not cause or contribute to the donor heart not functioning,” the defense brief read. “Moreover, Defendants deny that Mr. Falson’s subsequent death was related in any way to the injury to the outflow graft in this case. Accordingly, Defendants deny that they are liable to Plaintiffs for any amount whatsoever.”

To help overcome liability and causation defenses, Gutschenritter said plaintiff counsel leveraged peer-review articles collected over the course of the five years of litigation to support its position. When opposing counsel refrained from doing the same, plaintiff counsel brought it to the jury’s attention.

“I pointed out in closings that a large institutional hospital like Emory, that does a substantial amount of medical research, never offering a single article in support of their case spoke volumes about the credibility of their defenses,” Gutschenritter said.

Plaintiff counsel led the jury to further question the credibility “of Emory’s paid experts and employee physicians” who’d testified under oath by highlighting stated discrepancies. According to Gutschenritter, Emory’s final expert testified he “absolutely never orders chest CTs in these circumstances,” after deeming it “totally unnecessary.”

“He was on direct examination offering this testimony for an hour and a half,” Gutschenritter told the Daily Report. “My cross [examination] lasted less than three minutes, and I impeached him with a peer-reviewed article that he authored in April 2010 specifically advising that a chest CT should be ordered in these circumstances.”

Gutschenritter said plaintiff counsel succeeded at impeaching three more of Emory’s six expert witnesses during trial.

But before the jury could hear defense

counsel’s final witness and closing arguments, plaintiff counsel said the proceeding took an unexpected turn when a juror tested positive for COVID-19 on the trial’s last day.

With the juror excused and an alternate in place, litigators rested their arguments on Nov. 9.

“We put up our case in two days. It took Emory four days to put up their portion of the case,” Gutschenritter said. “I think the lines were drawn, and the jury had a clear understanding of the issues very early on in the case.”

### ‘Awarded Exactly What I Asked for’

After two weeks of trial and about seven hours of deliberations, DeKalb State Court jurors returned a verdict awarding \$38.6 million in damages to the plaintiff.

They awarded \$6 million for pre-death pain and suffering, \$30 million for the wrongful-death value of Falson’s life and \$2.6 million for outstanding medical bills amounted to “the largest medical malpractice verdict ever against Emory,” according to Gutschenritter.

“We were told after the fact that, when the jury took their initial vote, it was 10-2 in our favor.” Gutschenritter said. “The full day of deliberations was largely centered on liability issues. Once all 12 jurors agreed on liability and causation, they awarded exactly what I asked for in damages during closings.”

Gutschenritter said the verdict filled him with a sense of gratitude, noting it’d been “a hard-fought five years of litigation.” Plaintiff counsel said the matter could have been resolved sooner, had opposing counsel engaged in “a reasonable effort to resolve the case when it was mediated two years ago during the height of COVID.”

“This case could have been settled for a very small fraction of the overall verdict,” Gutschenritter said. “For the jury to vindicate everything we had been saying for that period of time was immensely satisfying, and we were incredibly happy for our client. Our client, Trévon’s mother, told me the verdict finally brought her a sense of closure six years after the death of her son.”