

DAILY REPORT

Georgia Jury Returns \$9.4M Med-Mal Verdict to Senior Patient

By Cedra Mayfield

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What You Need to Know

- Athens-Clarke County Superior Court jury returns \$9.4 million medical-malpractice verdict.
- Plaintiff counsel with Cash, Krugler & Fredericks obtained the outcome for an 80-year-old plaintiff permanently injured during a hysterectomy.
- Defense counsel with Huff, Powell & Bailey represented defendants Advanced Gynecology, P.C. and Dr. Robert Brian Raybon.

An Athens-Clarke County Superior Court jury has returned a \$9.4 million medical malpractice verdict against a gynecologist accused of performing a botched—and unnecessary—hysterectomy that left a senior patient with permanent injuries.

Plaintiff counsel with Cash, Krugler & Fredericks credit the seven-figure outcome to their ability to convey to jurors an underlying pattern of standard of care violations experienced by their 80-year-old client.

“We focused the case on the patient’s right to get full and complete information about their health and test results, and the doctor’s responsibility to disclose that information and educate their patients,” Andrew Cash told the Daily Report.

‘Should Never Have Undergone That Procedure’

Cash teamed with firm colleague David Krugler to represent Beth Dunn and her husband, Jimmy, in



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David Krugler (left) and Andrew Cash of Cash, Krugler & Fredericks.

bringing a medical malpractice complaint against Advanced Gynecology, P.C. and Dr. Robert Brian Raybon. What began with Dunn visiting Advanced Gynecology for routine care and mild urinary symptoms in March 2022 ended with a series of complications that forever altered the then 76-year-old’s quality of life, according to plaintiff counsel.

After an ultrasound conducted by a nurse practitioner detected a mildly thickened endometrium and fluid, plaintiff counsel said Raybon performed a biopsy to rule out cancer concerns. However, the procedure didn’t go to plan.

“Dr. Raybon, performed an outpatient procedure to obtain the biopsy but inadvertently burned

[and] damaged some of the tissue sample,” Cash said. “The pathology report noted some abnormal cells, which were likely from a benign polyp, but was inconclusive because the pathologist could not determine what the cells were because of the burn damage to the tissue. Plaintiff was never told about the damage to the tissue, but instead was told that the pathology results were abnormal, couldn’t rule out cancer and were inconclusive.”

Plaintiff counsel said the defendants informed Dunn that she could repeat the biopsy, but to avoid the potential for another inconclusive result and ensure she didn’t have cancer, she could “go ahead and have a hysterectomy.” Dunn opted for the latter, but again, the procedure did not go as planned.

During the hysterectomy, plaintiff counsel said the defendants nicked Dunn’s bowel. Plaintiff counsel deemed the issue “a known risk” rather than negligence, but noted the occurrence “led to a long and difficult course involving septic shock and multiple surgeries” for their client.

“Mrs. Dunn was hospitalized for almost four months. She had a trach for over a year and couldn’t speak until she had reconstructive surgery on her trachea,” Cash said. “She had a feeding tube in her abdomen and couldn’t eat for almost six months, and she has a permanent colostomy bag for the rest of her life.”

Having amassed \$1.4 million in medical bills, Dunn sued Advanced Gynecology and Raybon for health care expenses, physical and emotional injuries, pain and suffering, and past and future loss of consortium.

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Plaintiff counsel noted that despite being the only physician in the practice, Raybon rarely saw patients at the practice. Instead, plaintiff counsel said patients, including Dunn, often visited with a nurse practitioner at the office. Cash and Krugler contended Raybon’s failure to see his patients—and the general structure of his medical practice—led to

a number of specific breaches of the standard of care owed to Dunn.

“The most significant of which were failing to fully disclose and explain Mrs. Dunn’s pathology results and other findings and failing to advise Mrs. Dunn that she just needed a repeat biopsy, not a hysterectomy, which would very likely have answered the question of whether she had cancer or not,” Cash said. “We did not allege that Dr. Raybon was negligent in how he performed the hysterectomy. Our contention was that Mrs. Dunn should never have undergone that procedure in the first place.”

On at least three occasions spanning December 2023, February 2025 and January 2025, plaintiff counsel said they offered to resolve the medical malpractice complaint for the defendants’ \$3 million policy limits under *O.C.G.A. § 9-11-68*. However, the defendants rejected the settlement offer each time. With the parties unable to reach an agreement, the matter proceeded to trial before Western Judicial Circuit Superior Court Judge H. Patrick Haggard on Sept. 29.

‘No Breach’

At trial, plaintiff counsel said they centered their trial strategy on highlighting “the information that the patient was never actually told by the defendants about her test results and her real risk of having cancer.” In addition to reiterating Raybon’s disclosure failures, plaintiff counsel honed in on how the defendants’ burning of Dunn’s tissue resulted in the allegedly inconclusive biopsy result. The plaintiff duo pointed out for the jury that the defendants never informed Dunn they’d “performed a LEEP, which is what burned the tissue.”

“She didn’t find any of that information out until we got her medical records and told her,” Cash said. “The patient was simply told her ‘results were abnormal, they couldn’t rule out cancer and it was inconclusive.’ This was important because the patient had no reason to believe it was inconclusive because of a technical problem and understandably believed that the pathologist simply couldn’t tell what it was. It was also important because the

Courtesy photos



Daniel Huff and Sarah Akinosho of Huff, Powell & Bailey.

patient was given no reason to believe another biopsy would yield a more definitive result.”

Plaintiff counsel leveraged expert testimony to highlight Raybon’s alleged breach of the standard of care owed to Dunn. Cash and Krugler informed the jury that Raybon also failed to tell Dunn he’d seen a polyp during the biopsy, which would have explained both her abnormal ultrasound findings and the presence of abnormal cells on the biopsy.

“The patient also was never told that the pathologist identified polyp-like cells on the tissue sample,” Cash said. “Our experts testified that defendant should have explained these findings to the patient and explained that a benign polyp was the most likely explanation for all of this—not cancer. The patient was never told that her actual risk of cancer was less than 1%.”

Across the aisle, Huff, Powell & Bailey litigators Daniel Huff and Sarah Akinosho argued on behalf of the defendants. Defense counsel did not respond to a Daily Report request for comment.

In a consolidated pre-trial order, defense counsel “den[ie]d that Raybon violated the standard of care in any way with respect to the care and treatment of Ms. Dunn” before disputing the plaintiffs’ entitlement “to any damages in this case.”

“On March 30, 2022, Dr. Raybon performed the hysterectomy procedure at Piedmont Athens Regional. During the procedure, Dr. Raybon

encountered significant adhesions and converted the procedure to an open surgery. Ms. Dunn’s sigmoid colon was significantly involved, so Dr. Raybon consulted general surgery intra-operatively. Dr. Russell Pruitt was the surgeon,” defense counsel briefed. “ Following this surgery, Ms. Dunn has had a long course of medical issues and complications including additional surgeries related to a mispositioned drain. The staff at Advanced Gynecology, including Dr. Raybon acted reasonably, appropriately, and in accordance with the standard of care during their care and treatment of Ms. Dunn and no breach of the standard of care by Dr. Raybon caused or contributed to Ms. Dunn’s outcome.”

READ: Consolidated Pre-Trial Order

At trial, plaintiff counsel deemed the defendants’ “well qualified, Board Certified experts” their biggest hurdle to overcome. To surmount the defense experts’ conflicting standard of care opinions, plaintiff counsel focused on demonstrating that a discrepancy existed between the defense experts’ support of the care provided by Raybon and the structure of his practice when compared to the care provided to their own patients.

“The defense experts themselves had to admit that unlike the defendant, they personally had office hours, saw their patients in the office, took histories and physicals, explained test results and discussed and explained surgical treatment options,” Cash said.

Plaintiff counsel then honed in on witness credibility. By leveraging inconsistent prior testimony, Cash said plaintiff counsel successfully impeached each defense witness and expert.

“None of the plaintiffs’ witnesses or experts were impeached,” Cash said. “We felt this was an important focus for the jury given the fact that the qualifications of all the experts were not in question.”

During closing arguments, Cash said plaintiff counsel asked the jury to award specific damages. In addition to requesting Dunn’s accumulated \$1.4 million in medical expenses, the duo sought \$5 million for their client’s past physical and mental

pain and suffering, \$10 million for her future physical and mental pain and suffering and \$3 million for her husband's loss of consortium claim.

Defense counsel, on the other hand, asked the jury to award Dunn expenses totaling \$3.5 million, according to plaintiff counsel.

9.4 Million Verdict

After four days of trial, plaintiff counsel said the jury deliberated for a total of four hours before reaching its decisions in the bifurcated case.

"Before the verdict even came back, our clients told me that we had already accomplished much of what they wanted from this lawsuit: answers," Krugler said. "There was so much that Beth was never told until we got involved and actually reviewed the medical records. The trial helped provide them not only with an explanation of what really happened, but why it happened."

Siding with the plaintiff, the Athens-Clarke County Superior Court jurors returned a two-phase verdict in favor of the plaintiff totaling \$9.4 million on Oct. 3. The jury awarded Dunn \$1.4 million in medical expenses, a combined \$7 million for past and future physical and mental pain and suffering, and \$1 million for her husband's loss of consortium claim.

"Of course, we were thankful that the jury understood the case and let both sides know very clearly that this should never have happened to this family," Krugler said. "Hopefully, things will change and it will not happen to someone else's wife or mother or grandmother. I'm grateful for how attentive the jury was and how seriously they took their responsibility."

For Cash, the outcome appeared bittersweet.

"We are grateful for the jury's verdict, but honestly this is a case that should have never been tried," Cash said. "The insurer was given multiple opportunities to resolve the case within their limits of insurance and declined to do so each time. Despite terrible facts

for the defense, the insurance company gambled that an Athens-Clarke County jury would not return a fair verdict against a local surgeon. That gamble was reckless and has now exposed their insureds to a significant verdict well in excess of their policy limits."

But the payout might not stop there.

Plaintiff counsel said their clients intend to seek attorney's fee and expenses of litigation pursuant to *O.C.G.A. § 9-11-68* based on their rejected December 2023 settlement offer.

"That same offer was also made under Georgia's Unliquidated Damages Interest Act, *O.C.G.A. § 51-12-14*," Cash said. "Plaintiffs will move the Court to add approximately \$581,000 of prejudgment interest to the jury's verdict in its judgment under that statute."

'A False Assumption'

The check in the win column marked a milestone for the Cash, Krugler & Fredericks litigators who've known each other since meeting at Emory Law School more than 30 years ago. In addition to being what Cash believed to be "the highest medical malpractice verdict in Athens-Clarke County history," Cash said the trial marked he and Krugler's first bifurcated trial.

Cash shared that when Gov. Brian Kemp signed SB 68 into law in April, «the general consensus seemed to be that this law would make trying cases more difficult for Plaintiffs and easier for the defense.»

"That may be a false assumption," Cash said. "The reality is that a bifurcated trial like this can be tried in the same amount of time, or perhaps less, and really allows the parties to focus on the essential elements of whether the defendants' conduct was negligent and whether that negligence proximately caused Plaintiff's injuries. The second phase, which focuses solely on the amount of compensatory damages that should be awarded for Plaintiff's injuries, takes relatively little time."