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## Verdicts & Settlements

### Medical Malpractice

#### **Failure To Diagnose Clot In Heart -- Discharged Without Proper Treatment -- Stroke, Paralysis -- Patient History -- Records Dispute -- \$3.025 Million Settlement**

**Brief Statement of Claim:** The Huetts, who live in Andrews, N.C. alleged that Dr. Humble and Memorial Hospital failed to diagnose a thrombus (blood clot) in Darryl's heart and discharged him from the hospital without appropriate treatment. Four days later Darryl, now age 53, suffered a stroke leaving him paralyzed on his right side and unable to speak.

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**Principal Injuries (in order of severity):** Stroke

**Special Damages:** n/a

**Tried or settled:** Settled after mediation

**County where tried or settled:**

Buncombe

**Case Name and number:** *Darryl and Pam Huett v. Dr. Theodore Humble, Memorial Mission Hospital et al* (Buncombe County Superior Court; 95 CvS 2268)

**Date Concluded:** January 1998

**Name of Judge:** n/a

**Amount:** Total of \$3.025 million: husband, \$2,722,500; wife, \$302,500

**Insurance Carrier:** n/a

**Expert Witnesses and areas of expertise:** Five surgeons, three cardiologists, an ER physician, life care plan expert and economist

**Attorneys for plaintiffs:** Don Beskind, Don Strickland and Jeff Essen of Twigg, Abrams,

Strickland & Trehy, P.A., Raleigh; Mark Melrose, Sylva

**Other Useful Info:** The result in this case is believed to be the largest medical negligence settlement or verdict in North Carolina in a case involving a stroke, according to the plaintiffs' counsel. The following is an extended account of the case supplied by the plaintiffs' attorneys.

Darryl, who had a history of a heart attack and heart disease, went to his local emergency room in June of 1993 with severe abdominal pains. He was referred to Memorial Mission in Asheville where he became Dr. Humble's patient. Dr. Humble's exploratory abdominal surgery revealed a dead bowel which was resected. As a part of his differential diagnosis Dr. Humble correctly identified emboli from a thrombus in the heart as a possible cause of Darryl's dead bowel.

To rule out the thrombus, Humble, who was leaving for a long weekend, asked his partner to order an echocardiogram. Returning from his trip on Monday, Dr. Humble called the hospital and learned that the test had not been ordered. He then gave the order for the test over the telephone. The nurse who took the order incorrectly recorded it as "rule out ischemia valve" instead of "rule out ischemic bowel," which is what Dr. Humble intended.

According to Dr. Humble, when he did his rounds on Tuesday, he noticed the error and crossed out the erroneous entry replacing it with the correct one. While he did initial his change, he neither dated it nor timed it. According to his testimony, however, the change was made on Tuesday after the Monday order had been taken off the chart and sent to the echocardiogram lab.

As originally ordered, the echocardiogram lab did the echocardiogram on Tuesday. The report itself was never located until this litigation began. However, when the report was found by Mark Melrose, not in the hospital but at the cardiologist's office, in the space where the reason for the test is inserted, the nurse's error is repeated: "rule out ischemia valve."

The body of the report, has two sections: impressions and interpretation. While the impressions section contained the key information, "increased density noted in left ventricle apex, cannot rule out apical mural thrombus," the interpretation section did not, presumably because it was not responsive to the reason the test was ordered.

Several days after the test was ordered, while Darryl was still in the hospital and when the echo report was not yet in the patient's chart, Dr. Humble had his physician's assistant call to get the results of the test. According to his note in the chart, he was told only that Darryl had left ventricle hypertrophy and an ejection fraction of 40%. Neither finding was responsive to the reason for the test, but the P.A. did not inquire about whether any thrombus was found.

Darryl made a good recovery from his bowel surgery and was scheduled for discharge on July 21, 1992. In his deposition, Dr. Humble testified that since the echocardiogram report was still not in the chart on the day he intended to discharge Darryl, he called the echocardiogram lab to get the results. No note to that effect appears in Darryl's chart for the hospitalization.

During the first day of his deposition, Humble initially answered questions which established that he had been told essentially everything in the echocardiogram report other than the one sentence referring to the possible apical mural thrombus. He began the second day of his testimony by announcing that his testimony on that point had been in error and that he had not been told some information he had already testified he had been told. When asked for the reason he had made the "mistakes," Humble could provide none.

Darryl was discharged by Dr. Humble without ever seeing a copy of the echocardiogram report and without Dr. Humble ever specifically asking the echocardiogram lab whether or not they saw any evidence of thrombus in Darryl's heart.

After his stroke, Darryl was rushed to Memorial Mission Hospital again. In his initial note, Dr. Humble mentions for the first time his "before discharge" call to the echocardiogram lab and again says that the echocardiogram report is still not in the chart. Another echocardiogram was ordered and it revealed a large gelatinous thrombus in the same location where the increased density was found during the first admission.

Darryl was immediately put on anticoagulants and has had no further strokes. Despite various attempts at rehabilitation, Darryl has not regained much use of the left side of his body nor has he been able to speak more than a few words. He can, however, write with his left hand.

Pam Huett, Darryl's wife, was a former sheriff's deputy and short order cook. After Darryl's stroke she had to give up her job to take care of Darryl and their nine year old son. The Huett family, who had little before the stroke, lost everything after it. The family survived on public assistance in public housing. Towards the end of the litigation, the family situation was so desperate that they took another family into their one bedroom apartment in order to share costs. Despite having their car repossessed and losing everything, the family was determined to see the case through to the end.

That determination was made easier by the refusal of the defendants to offer anything in settlement until mediation, which took place after virtually all discovery had been completed and the case was ready for trial.

Plaintiffs contended that Memorial Mission Hospital was negligent in failing to properly write down the order for the echocardiogram; failing to put the written report of the results of the echocardiogram in Darryl's medial chart within 24 hours as required by the hospital's own policies; and failing to properly communicate the contents of the echocardiogram report to Dr. Humble.

Plaintiffs contended that Dr. Humble was negligent in failing to correct the initial order for the echocardiogram once he learned it was written down in error and in discharging Darryl without getting an answer to the question he presented to the echocardiogram, i.e. whether Darryl had a thrombus in his heart. Dr. Humble, as well as his experts, agreed that it would have been a breach of the standard of care to have discharged Darryl if he had known the information contained in the echocardiogram report before discharge.

Dr. Humble's liability defense was that the hospital failed to provide him with the echocardiogram results. The hospital's defense was that even though Dr. Humble did not get a written report of the results of the echocardiogram, he was provided all of the information in the report when it was read to him by someone in the echocardiogram lab, and therefore the failure to provide the written report was not a proximate cause of Darryl's injury. Plaintiffs contended both were negligent and had nine experts who supported their position.

Most of Plaintiffs' experts were from highly regarded medical centers including Duke, Harvard, Stanford, and the Medical College of Virginia in Richmond. The others were prominent doctors in private practice. Co-counsel Don Strickland states that his firm advanced nearly \$80,000 in costs to pursue the case, mostly on experts witnesses.

Some of the most damaging testimony came from the defendants' own experts, according to the plaintiffs' counsel.

Under cross examination by Strickland, one of Dr. Humble's experts testified that: "Depending on your interpretation of who said what to whom and what was known by whom, somebody along the line didn't provide appropriate care for Mr. Huett...I think this lawsuit deserves someone to look at it, yeah."

The only expert for the hospital admitted that the hospital violated standards of care by not getting the echocardiogram report to Darryl's chart within 24 hours, but argued that Dr. Humble had other ways to get the information.

When asked by Strickland if he was there to make excuses for the hospital, he responded: "I was asked to make excuses for something and I'm not sure at the moment what it was. I'm willing to make excuses for whatever is necessary, but I'm not sure what is being asked of me at this point."

All defendants contended that even if Darryl had received anticoagulants before discharge from his first hospitalization, his stroke would have happened anyway since it would take several days for the anticoagulants (which are not a guarantee against stroke) to take effect. Defendants also contended that even if they were negligent, Darryl, who had already had one heart attack before his stroke, and continues to smoke, had a considerably shortened life expectancy. Thus, defendants claimed he was entitled to substantially less than his life care plan, which was based on a normal life expectancy and projected to cost approximately four million dollars.

At the first mediation, conducted by retired Judge Walter Allen, defendants' highest combined offer was \$650,000 for Darryl and \$25,000 for Pam. The case settled at the second mediation conducted a few weeks later by retired Judge Robert Kirby for \$3,025,000. Darryl received \$2,722,500 and Pam received \$302,500 for her loss of consortium claim.

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