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Chamblee & Ryan, P.C., Continues Courtroom Successes

Since Texans passed numerous tort reform provisions in 2003 affecting medical malpractice and other personal injury litigation, plaintiff lawyers have not been filing as many lawsuits, and many defense litigation law firms have suffered. The Dallas-based law firm of Chamblee & Ryan, however, has been fortunate to continue its successes in the courtroom by demonstrating the skill and expertise necessary to prepare and try cases involving millions of dollars in controversy. Since 2004, **VerdictSearch Texas**, a trusted source for verdict and settlement news and research for over 40 years, has reported most of Chamblee & Ryan's victories. A few of these recent victories are reported herein.

One of the reasons that Chamblee & Ryan has had success in the courtroom is that its lawyers are actually in the courtroom trying lawsuits. **Since the beginning of 2004, Chamblee & Ryan has averaged one jury trial victory per month** — an average most litigation law firms could only hope to achieve. These recent yearly totals are:

- 2004 – 12 jury trial victories
- 2005 – 14 jury trial victories
- 2006 – 13 jury trial victories
- 2007 – 5 jury trial victories (through June 30th)

TOTAL: 44 jury trial victories in 3 1/2 years

Many of these victories came in medical malpractice cases involving complex medical issues and catastrophic injuries and damages, while others came in cases involving premises liability, automobile accidents, discrimination, and non-subscriber injuries. In addition to its successes in the courtroom, Chamblee & Ryan also represents physicians before the Texas Medical Board where it has a strong winning record on behalf of its physician clients.

Shareholders Bill Chamblee, Jeff Ryan, Jeff Kershaw, Peter Anderson, Todd Allen, David Walsh, Brandee Todd and Doug Lewis devote much of their time developing, preparing and trying lawsuits. In addition to their litigation specialty, these shareholders and their associates offer a full array of legal services including family law, wills and estate planning, transactional matters, employment issues with the Texas Workforce Commission, and appellate law. Chamblee & Ryan has demonstrated success in handling these non-litigation matters by using the same skill, expertise, and preparation that has worked so well in litigation matters. Whatever your legal need — Chamblee & Ryan will fight for you to obtain the best possible result.



TARRANT COUNTY

EMPLOYMENT

Age Discrimination – Wrongful Termination – Mitigation

Man discharged after 36 years on job cited age discrimination

VERDICT CASE

DEFENSE

Gary Watters v. Central Freight Lines, Inc.,
No. 210609-05

VENUE JUDGE DATE

Tarrant County District Court, 153rd, TX
Ken C. Curry
09-28-2006

PLAINTIFF ATTORNEY(S)

Marc F. Gault; Law Office of Marc F. Gault; Fort Worth, TX, for Gary Watters
Richard Lee Griffin; Law Office of Richard Lee Griffin; Fort Worth, TX, for Gary Watters

DEFENSE ATTORNEY(S)

Brandee Todd; Chamblee & Ryan; Dallas, TX, for Central Freight Line Inc.

FACTS & ALLEGATIONS On Oct. 17, 2003, plaintiff Gary Watters, 55, lost his job as a dispatch supervisor for Central Freight Lines in Tarrant County. He had been with the company for more than 36 years.

Watters sued Central Freight Lines Inc., Waco, alleging wrongful termination based on age discrimination.

Central Freight Lines denied that age was a motivating factor in its decision to discharge Watters. Rather, the defense argued, it terminated him as part of an ongoing reduction in work force. In the preceding year, Central Freight Lines had discharged a supervisor and a number of hourly workers. In October 2003, it discharged another supervisor besides Watters, leaving only five supervisors, one of whom was older than Watters and two of whom were also in their 50s. The other two remaining supervisors were in their 30s.

INJURIES/DAMAGES Watters claimed \$300,000 in economic damages, calculating lost wages, including anticipated raises and job benefits, since the date of his termination. He subtracted from that total the amount of his compensation from a job he found about seven months after his termination as a jailer for the Tarrant County sheriff's department, which position paid less than his job at Central Freight Lines had. He also sought an unspecified amount of damages for pain and suffering.

Central Freight Lines contended that Watters failed to mitigate his damages in that he did not search hard enough for a new job following his termination.

RESULT The jury found that age was not a motivating factor in the decision to discharge Watters.

POST TRIAL Defendant's motion for attorney fees was denied.

WOOD COUNTY

MOTOR VEHICLE

Single Vehicle — Workplace — Farm — Wrongful Death

Day laborer was run over, killed by tractor on chicken farm

VERDICT
CASE Apolonia Hernandez Luna, Individually and on Behalf of the Estate of Onesimo Hernandez Luna, Deceased v. Thong Le; Deere Co., d/b/a John Deere Co.; and Pilgrim's Pride, No. 2005-529

COURT Wood County District Court, 402nd, TX
JUDGE G. Timothy Boswell
DATE 5/24/2007

PLAINTIFF
ATTORNEY(S) **Mark A. Cantu (lead)**; Law Office of Mark A. Cantu, McAllen, TX
Juan Rocha; Law Office of Mark A. Cantu, McAllen, TX

DEFENSE
ATTORNEY(S) **Kirk Garner**; Winnsboro, TX for Thong Le
Richard A. Sayles; Sayles Werbner, Dallas, TX for Deere Co.
Jeff Ryan; Chamblee & Ryan, Dallas, TX for Pilgrim's Pride
Joe Clayton; Tyler, TX for Pilgrim's Pride

FACTS & ALLEGATIONS On July 20, 2004, plaintiff's decedent Onesimo Hernandez Luna, 23, a day laborer, was run over and killed by a John Deere hay cutter while working on a chicken farm owned by Thong Le. The farm was near Quitman. Luna had apparently fallen off the tractor while operating it. No one else was present at the time of the incident.

Le had a contract with Pilgrim's Pride to raise chickens.

Luna's mother sued Le for negligence and Deere Co., operating as John Deere Co., on a products liability theory, and sued Pilgrim's Pride on a theory of joint enterprise with Le.

The plaintiff alleged that Le failed to train Luna in the proper operation of the hay cutter; failed to maintain the tractor, which had a broken seat belt; and failed to warn employees of an unreasonably dangerous condition, in that the tractor did not have a kill switch to shut down the motor when the driver left the seat. The plaintiff alleged that this was a defect.

The defense denied negligence and product defect, and Pilgrim's Pride denied joint enterprise.

INJURIES/DAMAGES *Death*

Luna was dead when Le found him. He had sustained lacerations to his head, abdomen and all extremities; the tractor had a hay cutter attached to it. According to the plaintiff's attorneys, the estate sought no damages. According to Deere's attorney, the estate sought \$600,000.

Luna was survived by his mother, age 59, a widow living in Mexico. She claimed mental anguish and loss of her son's consortium. Her son had been in the U.S. for about 11 months, but she said they talked on the phone once a week for about an hour.

RESULT Deere settled after voir dire for an undisclosed nuisance value.

The jury found no negligence by Le or Luna. All other questions, including joint enterprise, were conditioned and not answered.

Chamblee & Ryan has averaged one jury trial victory per month since January 2004 — 44 victories in 3½ years.

DENTON COUNTY

MOTOR VEHICLE

Truck, Transportation – Trucking, Motor Vehicle – Dangerous Condition

Driver hit 55-gallon barrel that had fallen off flatbed onto road

MIXED VERDICT **\$800.00**
CASE Priscilla Mason, Rosalinda Munoz, Michael Padilla and Rhonda Briscoe, Individually and as next friend of Roy Donald v. Stiles Truck Lines, Inc., Howard Flowers, Mueller Supply Co., Inc. and Mark Sons, No. 2006-40043-362

VENUE Denton County District Court, 362nd, TX
JUDGE Bruce McFarling
DATE 04-12-2007

PLAINTIFF
ATTORNEY(S) **William Forteith**; Law Office of Ben Abbott, P.C.; Garland, TX, for Priscilla Mason, Rosalinda Munoz, Michael Padilla, Roy Donald, Rhonda Briscoe, individually and as next friend of Roy Donald

DEFENSE
ATTORNEY(S) **Jay R. Downs**; Downs Stanford, P.C.; Dallas, TX, for Stiles Truck Lines, Inc., Howard Flowers
M. Todd Allen; Chamblee & Ryan, P.C.; Dallas, TX, for Mueller Supply Co., Inc.
Jeremy Overbey; Chamblee & Ryan, P.C.; Dallas, TX, for Mueller Supply Co., Inc.
Joe E. Byrne; Byrne, Cardemas, Mead & Smitherman; Dallas, TX, for Mark Sons

FACTS & ALLEGATIONS On Aug. 12, 2004, plaintiff Priscilla Mason, 43, was traveling down the frontage road of I-35, north of Denton, accompanied by plaintiffs Rosalinda Munoz, 50, Michael Padilla, 16, Rhonda Briscoe, 24, and Roy Donald, 4. Mason hit a 55-gallon barrel that had fallen from a flatbed truck onto the road, causing Mason's vehicle to fly airborne into a ditch.

Mason, Munoz, Padilla and Briscoe, individually and as next friend of Donald, sued Stiles Truck Lines Inc., the trucking company from whose truck the barrel had fallen; Howard Flowers, the truck driver; and Mueller Supply Co. Inc., which loaded the truck. They also sued Mark Sons, another driver on the frontage road, who had parked his truck in the road with the lights on to alert oncoming traffic upon discovering the objects in the road.

Plaintiffs counsel claimed that Mueller Supply was negligent in loading and securing the barrel of clips. Counsel further argued that Stiles Truck Lines neg-

lignently transported the load and that Mark Sons was negligent for shining his lights on the barrel and blinding Mason.

The defense argued that the flat bed, which Mueller Supply loaded in Ballinger with various steel products, including the 55-gallon barrel containing 1,000 purlin clips, was secured by two straps and under a tarp. Flowers claimed that he stopped to check the load and straps before leaving Ballinger and stopped to check two more times before reaching Denton. When the barrel and purlin clips fell from the truck, Flowers was not aware of this, he alleged. He continued driving to Sherman and did not realize he had lost the barrel until the following day.

Mark Sons, who lived nearby, was driving home from the gym when he ran over one or more of the clips. He then turned his truck facing into traffic on the frontage road with his bright lights on to alert oncoming traffic of the situation while he proceeded to clean up the clips on the road.

The defense argued that Mason was driving too fast, did not keep a proper lookout and did not slow down despite seeing Sons' truck with its headlights.

Several months after the case was filed, at that time against Stiles and Flowers only, Stiles and Flowers filed a counterclaim against Mason for contribution. Mason's insurer for her personal vehicle hired counsel to represent her as a counter-defendant. According to the plaintiffs, to resolve "conflict" issues, Mason and her insurer settled with the other four plaintiffs for the total sum of \$3,500 with each taking \$875. The fact, but not the amount, of the settlement between Mason and the other plaintiffs was brought up at trial as impeachment to the plaintiffs' positions that they did not fault Mason for the accident.

INJURIES/DAMAGES Donald, Padilla, Mason, Munoz and Briscoe claimed that they sustained various soft tissue injuries in the accident.

None of the plaintiffs sought emergency medical care immediately after the accident, but Padilla and Donald presented to the emergency room the next day, with Padilla complaining of a sore back and Donald of a bruised stomach, diarrhea, and a cut lip. All the plaintiffs were referred to chiropractic care after seeking legal counsel and started treatment within one week after the accident. Mason, Munoz and Briscoe underwent multiple treatment sessions over several months, and Donald and Padilla had two chiropractic sessions each. Also, more than two months after the collision, Mason claimed chondromalacia in her right knee for which she underwent arthroscopic surgery.

For medical expenses, Mason claimed \$13,818.98, Munoz claimed \$2,551, Padilla claimed \$1,129.98 and Donald claimed \$989.07. Each plaintiff also claimed an unspecified amount of money for past and future pain and suffering, past and future mental anguish and past and future impairment.

Defense counsel disputed the plaintiffs' injuries, arguing that their attorney referred chiropractic care due to a letter of protection tab and that Mason's knee surgery was not proximately caused by the accident because she received no treatment for the knee until over two months after the accident. Defense counsel further contended that with the exception of Donald's cut lip, none of the plaintiffs sustained any permanent injuries.

RESULT The jury found Mason 52% at fault, Flowers 24% and Mueller Supply 24%. The jury awarded \$800 to Donald, but the award was offset by a settlement credit of \$875 from prior settlement with Mason.

PLAINTIFF EXPERT(S) **John Quinlan D.C.;** Chiropractic; Coppell, TX called by: William Forteith
Zubin Khubchandani M.D.; Orthopedic Surgery; Dallas, TX called by: William Forteith
INSURERS Crum & Forster Mueller Supply Co., Inc.
Deep South Insurance Stiles Truck Lines, Inc., Howard Flowers
St. Paul Mark Sons

JOHNSON COUNTY

WRONGFUL DEATH

Medical Malpractice – Prescription and Medication – Survivorship Action – Failure to Communicate

Patient died from mix of OxyContin, other pain pills

VERDICT CASE

DEFENSE

Jeff Johnson, Individually and On Behalf of the Estate of Pene Badgero Johnson, Deceased, and as Next Friend of Christina Johnson and Chad Smith, minor children; and Wesley Badgero and Rosea Lee Badgero, natural parents of Pene Badgero Johnson, Deceased v. Burleson Family Medical Center, P.A.; Burlyn Craig Nelon, D.O.; William A. Thomas, Jr., D.O.; Jackie Reynolds, Medical Assistant; Amanda Patterson-Wickson, Physician Assistant; Psychiatric Medicine Associates; Peter Kowalski, M.D., P.A.; Peter Kowalski, M.D. and Louis M. Caldwell, Individually and d/b/a Joshua Dependon Pharmacy, No. C200300105 Johnson County District Court, 413th, TX

VENUE JUDGE DATE

William Bosworth | Dan Marley
11-01-2006

PLAINTIFF ATTORNEY(S)

Mark S. Stewart; Law Offices of Mark S. Stewart; Fort Worth, TX, for Jeff Johnson, Estate of Pene Badgero Johnson, Christina Johnson, Chad Smith, Wesley Badgero, Rosea Lee Badgero

DEFENSE ATTORNEY(S)

William H. Chamblee; Chamblee & Ryan, P.C.; Dallas, TX, for Burleson Family Medical Center P.A., Burlyn Craig Nelon, D.O., William A. Thomas, Jr., D.O., Jackie Reynolds, Medical Assistant
David M. Walsh IV; Chamblee & Ryan, P.C.; Fort Worth, TX, for Burleson Family Medical Center P.A., Burlyn Craig Nelon, D.O., William A. Thomas, Jr., D.O., Jackie Reynolds, Medical Assistant
Jean Siska; Williams, McClure & Parmalee; Fort Worth, TX, for Louis M. Caldwell, Joshua Dependon Pharmacy
Tom B. Renfro; Brackett & Ellis; Fort Worth, TX, for Psychiatric Medicine Associates, Peter Kowalski, M.D., P.A., Peter Kowalski, M.D.
Tom Fox; for Amanda Patterson-Wickson, Physician Assistant

FACTS & ALLEGATIONS Plaintiff Pene Johnson, 35, a homemaker, had a history of chronic back pain, including two prior surgeries on her lower back. On Jan. 31, 2001, she presented at the Burleson Family Medical Center clinic with complaints regarding her neck. With the approval of a physician, a physician assistant prescribed Johnson a Medrol dose pack, Darvocet, Soma and Phenergan. The next day, Johnson called the clinic, complaining that the medicine was not sufficiently strong. She was given a prescription for Lortab.

On Feb. 5, Johnson filled prescriptions for Paxil and Restoril from another doctor, Peter Kowalski. The next day, Burlyn Nelon, a doctor at the clinic, approved prescription refills for Soma, Phenergan and Lortab. On Feb. 7, she requested a refill of the Darvocet, but it was denied by William Thomas, another doctor at the clinic, who indicated that Darvocet and Lortab would not be filled at the

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same time. The Soma, Phenergan and Lortab were refilled on Feb. 9 with approval from the clinic. Johnson requested refills again on Feb. 12 but was given only a limited supply because she had missed her appointment for an MRI. The phone nurse at the clinic learned from the pharmacy that Kowalski's office was also prescribing medication to Johnson and attempted to coordinate care with Kowalski. He responded that care could not be coordinated because Johnson refused to authorize release of such information.

Johnson also missed her appointment for an MRI on Feb. 19. When her refill request was denied on Feb. 23, Johnson went into the clinic for an MRI that day. The MRI revealed several lesions which the physicians believed to be operative. Johnson presented again to the clinic on Feb. 28 and complained that the medication was not strong enough. Nelon noted, "Darvocet does not help. OxyContin does help." He prescribed OxyContin, a long-acting pain medication that is time-released into the body, and an appointment was made with a local neurosurgeon for May 26.

On March 1, Johnson called the clinic, complaining that the OxyContin was not working. The physician assistant, with Thomas' approval, approved a refill of Darvocet for breakthrough pain. On March 5 at about noon, Johnson died from a mixed drug overdose.

Individually and on behalf of her estate, the decedent's husband Jeff Johnson, 35, an electrician; minor children Christina Johnson, 8, and Chad Smith, 12; and parents Wesley Badgero and Rosea Lee Badgero, both 70; sued Burleson Family Medical Center P.A. in Burleson; Burlyn Craig Nelon, D.O.; William A. Thomas, Jr., D.O.; Jackie Reynolds, medical assistant; Amanda Patterson-Wickson, physician assistant; Psychiatric Medicine Associates; Peter Kowalski, M.D., P.A.; Peter Kowalski, M.D. and Louis M. Caldwell, individually and operating as Joshua Dependon Pharmacy, alleging wrongful death, survivorship, medical malpractice and negligence. Plaintiffs alleged that the Burleson Family Medical Center defendants and Patterson-Wickson were negligent in not properly supervising Johnson's medication use and for combining powerful narcotics to be taken at the same time, i.e., Soma, Darvocet and OxyContin. Plaintiffs alleged that Kowalski was negligent because he was or should have been aware of drug abuse potential based on Johnson's past medical consumption in his office and that he should have warned the Burleson Family Medical Center providers. Plaintiffs alleged that Caldwell was negligent in filling the Darvocet prescription at the same time that Johnson was on OxyContin.

The defendants argued that both Kowalski and Nelon asked Johnson to authorize the physicians to share medical information. She refused to give Kowalski an authorization. Nelon testified that when he discussed the authorization with Johnson, she told him she did not want the two doctors discussing her care with one another.

Patterson-Wickson, Psychiatric Medicine Associates, and Kowalski settled for confidential amounts.

At trial, the defendants denied negligence, contending that Johnson's death was caused by intentional consumption of medication well in excess of the instructions given by her physicians, reiterated by pharmacists and clearly indicated on the prescription bottles. The defendants also asserted that their prescription patterns were consistent with what other providers would do for a similar patient who was waiting to be seen by a neurosurgeon.

Plaintiffs' expert Richard Morrissett, Ph.D. was found in contempt of court and sentenced to five days in jail with a \$500 fine. He was released after serving two days and paying the fine. According to a pretrial court ruling, Morrissett was not qualified to offer his opinions regarding whether the defendants' conduct violated the standard of care because he was not practicing medicine, teaching medical students or residents or teaching community pharmacy management on standards of care at the time of the events in question or at the time of his testimony. Morrissett took offense to that ruling as an affront to his "life's work" and allegedly displayed contempt of court. After at least three warnings to stop, Judge William Bosworth found him in contempt of court and struck all of his testimony.

INJURIES/DAMAGES Johnson died from a mixed drug overdose. Plaintiffs sought wrongful death and survival damages, including mental anguish, loss of consortium, loss of earning capacity and loss of household services. Plaintiffs' economics expert valued Johnson's lost earning capacity and household services at about \$1 million.

Defendants challenged the expert's valuation because Johnson had not worked out of the home for the past eight years, did little around the house, and was not expected to be able to do much around the house in light of her problems.

RESULT At the close of plaintiffs' case, the court granted a directed verdict in favor of the defendants.

Post-trial jury interviews indicated that they felt that the defendants did nothing wrong and that Johnson caused her own death.

**PLAINTIFF
EXPERT(S)**

Richard Morrissett Ph.D.; Drug Toxicology; Austin, TX called by: Mark Stewart
Gerald Casenave Ph.D.; Vocational Assessment; Dallas, TX called by: Mark Stewart
William Kendall; Pain Management; Houston, TX called by: Mark Stewart

**DEFENSE
EXPERT(S)**

Rick Richey R.Ph.; Pharmacology; Aledo, TX called by: Jean Siska
Edgar Nace M.D.; Psychiatry; Dallas, TX called by: Tom Renfro
Paul Orsulak Ph.D.; Drug Toxicology; Dallas, TX called by: Tom Renfro
Helen Reynolds Ph.D.; Economics; Dallas, TX called by: Tom Renfro
James Harvey M.D.; Family Medicine; Fort Worth, TX called by: William Chamblee, David Walsh IV
Bruce Goldberger Ph.D.; Drug Toxicology; Gainesville, FL called by: William Chamblee, David Walsh IV
Bruce Beasley P.A.; Family Medicine; Mansfield, TX called by: William Chamblee, David Walsh IV
Jay Poupko Ph.D.; Drug Toxicology; San Antonio, TX called by: Jean Siska

