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## Chamblee & Ryan, P.C., Can Handle The Truth

Most claims or lawsuits are settled before they ever see the courtroom. Many of those cases have merit and may expose defendants to significant risk. Many cases, however, are petty, frivolous, or simply seek to hold a defendant responsible for not being perfect or simply making a mistake. The truth of the matter is that human beings are not perfect and are not required to be perfect. The lawyers at Chamblee & Ryan understand the truth of human behavior and decision making and know that all mistakes are not breaches of the applicable standards of care. The lawyers at Chamblee & Ryan can find the truth in a case, develop an honest and solid defense, and then try the case to verdict with an overwhelming record of success.

Clients who seek to have a jury decide their case know where they can come for the skill and expertise to try a lawsuit. Although the stakes are often so high in lawsuits that individuals and companies are often not willing to bear the risk of a trial, Chamblee & Ryan still finds the way to get into the courtroom and fight for the truth. Simple numbers will tell you that their accomplishments in the courtroom are based on experience, preparation, and devotion. **Just in the past five years, since the beginning of 2005, Chamblee & Ryan has prevailed in fifty trials.** Although most of these cases are tried in the north Texas area, Chamblee & Ryan has also tried and prevailed in cases in other venues in Texas as well as in other states. Simple numbers tell you that these lawyers know how to try cases that need to be tried.

In addition to its courtroom successes, Chamblee & Ryan also has a strong winning record on behalf of physicians in matters before the Texas Medical Board. Its partners and associates also handle a wide variety of employment matters, contractual issues, family law cases, and other civil law matters requiring legal advice. Their courtroom experience and track record is essential in helping clients keep out of lawsuits and the courtroom. **The key has always been finding the truth and fighting for it.** Clients need and deserve lawyers who can handle the truth. Examples of some of Chamblee & Ryan's recent successes are reported herein.



## MCLENNAN COUNTY

### MOTOR VEHICLE

#### Bicycle — Negligent Entrustment

## Bicyclist failed to pay attention to traffic, driver contended

#### VERDICT

#### CASE

#### VENUE

#### JUDGE

#### DATE

#### Defense

Bennard McGee v. Peter Cong Nguyen, Ngoc C. Nguyen and Hong Nguyen, No. 2006-3284-5

McLennan County District Court, 414th, TX

Vicki Menard

8/11/2009

#### PLAINTIFF

#### ATTORNEY(S)

**John T. Kirtley III**, Ferrer, Poirot & Wansbrough, Dallas, TX

#### DEFENSE

#### ATTORNEY(S)

**Thomas E. Gavigan**, Chamblee & Ryan, Dallas, TX

**FACTS & ALLEGATIONS** On Oct. 30, 2004, plaintiff Bennard McGee, 49, a construction worker, was on his bicycle in the driveway of a Jack in the Box restaurant located on the northeast corner of South Valley Mills Drive and Bagby Avenue in Waco. Peter Nguyen was driving a 1996 Toyota Camry, owned by his parents Ngoc C. Nguyen and Hong Nguyen, north on South Valley Mills. He was going approximately 40 mph when he entered the intersection of South Valley Mills and Bagby under a green light. McGee attempted to cross four lanes of northbound traffic to reach the median that separated the north and southbound lanes; Nguyen attempted to brake and swerved to the right to avoid striking McGee. However, Nguyen was unsuccessful and struck McGee's bicycle. McGee was thrown onto the windshield and roof of the vehicle. He then fell off the right side of the car and landed on the roadway.

McGee sued Peter Nguyen, Ngoc C. Nguyen and Hong Nguyen. He claimed Peter Nguyen was negligent for failing to control his speed, keep a proper lookout, apply his brakes, yield the right of way, and for entering the roadway when it was unsafe to do so. McGee also asserted a negligent entrustment claim against Nguyen's parents.

The defendants claimed the accident was caused by McGee's negligence in failing to keep a proper lookout, attempting to cross the roadway at a time and location when it was unsafe to do so, failing to yield the right of way to the defendants' vehicle, and attempting to cross the roadway in violation of the traffic control signal for his direction of travel. The defendants also argued argued sudden emergency.

**INJURIES/DAMAGES** *blunt force trauma to the head; chiropractic; leg; neck; road rash; shoulder; soft-tissue injuries; strains and sprains*

McGee was transported to hospital via ambulance. He sustained abrasions (road rash) to his head, neck, shoulders and legs. He was discharged with a diagnosis that included blunt trauma to his head, right shoulder and right leg. In addition, a rotator cuff injury could not be ruled out.

McGee later consulted with an orthopedic surgeon for complaints of right shoulder pain and received chiropractic treatment for multiple soft-tissue sprains and stains.

McGee's past medical expenses were approximately \$12,000 and he claimed past lost wages of \$1,000. He also sought recovery of damages for future medical expenses and past and future mental anguish, physical pain and suffering, impairment and disfigurement. He sought approximately \$125,000 in total.

**RESULT** The jury returned a verdict for the defendants.

**DEMAND** \$20,000 (policy limits)

**OFFER** \$2,500

**INSURER(S)** Southern County Mutual Insurance Company

**TRIAL DETAILS** Trial Length: 2 days  
Trial Deliberations: 30 minutes  
Jury Vote: 12-0  
Jury Composition: 4 male, 8 female

**PLAINTIFF EXPERT(S)** **Craig Cernosek, D.C.**, chiropractic, Waco, TX (did not testify)

## DALLAS COUNTY

### MOTOR VEHICLE

**Multiple Impact—Multiple Vehicle—Tractor-Trailer—Rear-ender—Lane Change—Phantom Car Defense—Phantom Vehicle**

## Two couples were injured in multiple-impact collision

**VERDICT CASE** **Defense**  
Bobby Gene Powers, Fredna Horn Powers, William Dwain Dawson, and Deborah White Dawson v. Juan Antonio Rivera, Hernandez Cable Construction Inc., Charles Lee Johnson, RKM Utility Services Inc., Brian W. McCullough, and Stan Koch & Sons Trucking Inc., No. 08-01559  
Dallas County District Court, 44th, TX  
**VENUE JUDGE DATE** Carlos Cortez | Mary Burdin  
07/23-2009

**PLAINTIFF ATTORNEY(S)** **Anthony K. Bruster**, Nix, Patterson & Roach, Irving, TX (Deborah White Dawson, William Dwain Dawson, Fredna Horn Powers, Bobby Gene Powers)  
**Jason D. Christian**, The Corea Firm, P.L.L.C., Dallas, TX (Charles Lee Johnson as plaintiff)  
**Keith L. Langston**, Nix, Patterson & Roach, Irving, TX (Deborah White Dawson, William Dwain Dawson, Fredna Horn Powers, Bobby Gene Powers)  
**Todd Ramsey**, Payne Mitchell Law Group, L.L.P., Dallas, TX (Deborah White Dawson, William Dwain Dawson, Bobby Gene Powers, Fredna Horn Powers)

**DEFENSE ATTORNEY(S)** **Humberto G. Garcia**, Curney, Garcia, Farmer, Pickering & House, P.C., San Antonio, TX (Stan Koch & Sons Trucking Inc., Brian W. McCullough)  
**William H. Chamblee**, Chamblee & Ryan, P.C., Dallas, TX (Hernandez Cable Construction Inc., Juan Antonio Rivera)  
**M. Todd Allen**, Chamblee & Ryan, P.C., Dallas, TX (Hernandez Cable Construction Inc., Juan Antonio Rivera)

**FACTS & ALLEGATIONS** On Jan. 18, 2008, plaintiffs Bobby Gene Powers, 65, and Fredna Horn Powers, 63, who were retired, and plaintiffs William Dwain

*Just in the past five years, since the beginning of 2005, Chamblee & Ryan has prevailed in fifty trials.*

Dawson, 74, and Deborah White Dawson, 55, part-time teacher recruiters, were in a full-size sedan in heavy traffic on Interstate 635 in Garland, between Garland Road and Jupiter Road. An unknown vehicle, traveling in the same direction as the plaintiffs, cut in front of a Freightliner FL70 truck cab that was pulling a flatbed trailer. That truck went to the right and clipped a sedan. The unknown vehicle then moved to the right in front of the Freightliner, which swerved left, went out of control, and struck the plaintiffs. An 18-wheeler hit the Freightliner, which then flipped over. A different 18-wheeler then rear-ended the plaintiffs.

The driver of the Freightliner was Juan Rivera. The driver who cut him off did not stop and was not found. The driver who hit the Freightliner just before it flipped over was Charles Johnson. The driver who rear-ended the plaintiffs was Brian McCullough.

The owner of the Freightliner was Hernandez Cable Construction Inc., the owner of the Johnson truck was RKM Utility, and the owner of the McCullough truck was Stan Koch & Sons.

The Powerses and Dawsons sued Hernandez for allowing the Freightliner on the road with its left front brake out of adjustment, sued Rivera for operating a truck that was in such a condition, sued McCullough for rear-ending the plaintiffs, and sued Johnson for not keeping a proper lookout. In addition, the plaintiffs alleged respondeat superior against Hernandez, Koch & Sons and RKM.

Before trial, Johnson and RKM settled the claims against them for \$42,500. Johnson, 57, a truck driver, then asserted claims against the other defendants for his own bodily injuries.

At trial, the plaintiffs did not dispute that an unknown driver cut Rivera off; rather, they argued that an inoperable brake on the Freightliner caused the accident by making the truck move more to the right than Rivera intended.

The defense argued that the unknown driver's negligence — in changing lanes when unsafe and braking suddenly — was the sole proximate cause of the accident and a sudden emergency that left Rivera virtually no time to react. Rivera's swerve to the right was intentional and reasonable, according to the defense, and the brake being out of adjustment had little or no effect.

The defense also argued that the plaintiffs' accident reconstructionist was unable to perform a full reconstruction because that highway is so busy. He also could not say that the brake problem caused Rivera to lose control.

In addition, the defense argued, the Freightliner and its trailer were in compliance with Federal Motor Carrier Safety Regulations because all the other brakes were operable.

The investigating officer concluded that the main contributing factor in the accident was the actions of the unknown driver. Although the officer did not reconstruct the accident, his opinions came in without objection at trial.

The defendants' accident reconstructionist opined that the brake problem played no causative role in Rivera's loss of control. He used a computer simulation and said that the brake problem would have required a negligible degree of over-correction, if any, by Rivera.

Rivera could not identify the vehicle that cut him off, but an independent eyewitness said he talked to two Hispanic women and a Hispanic girl about 12 years old in a minivan, past where the accident happened. According to the witness, the windshield had a crack, and the girl was not wearing a seat belt and had a bloody forehead. The minivan occupants would not speak to the witness and left while he was trying to point out their vehicle to police, he said.

**INJURIES/DAMAGES** Bobby Powers and William Dawson were in the front seat, and their wives were in back. The men sustained minor injuries, mostly bruises, and were treated at the emergency room and released. Bobby Powers' past medical bills were \$14,800, and William Dawson's were \$17,034.

Deborah Dawson sustained a broken femur, with damage that extended into the knee. Fredna Powers broke her left wrist, left ankle, right femur and right hip. Both women were hospitalized for several days, and they underwent physical therapy and other treatment for several months after their release from the hospital. Powers' treatment ended four or five months after the incident. Dawson treated actively for six to eight months, followed by monitoring by an orthopedic surgeon. She also claimed neck pain. Dawson's past medical bills were \$63,064, and Powers' were \$171,119.

Deborah Dawson claimed past lost wages of \$141,648 and a life care plan of \$537,481.22. Fredna Powers treated until June 13, 2008, and claimed a life care plan of \$413,539.24. Both women also claimed past and future pain and suffering and physical impairment.

The plaintiffs deposed an economist but did not offer his testimony at trial. The Dawsons and the Powerses testified that the wives were unable to perform household services for a while, causing the husbands to do more around the house. Each couple hired a maid for a time.

The Powerses and Dawsons sought a total of about \$2.6 million.

Johnson said he did not treat at the scene because he thought he was unhurt, but he later claimed neck, shoulder, and back sprains and strains. He sought chiropractic treatment several days after the accident and treated for several months. His past medical bills were \$8,583. Including past pain and suffering, he sought a total of about \$25,000.

The past medical bills for all five plaintiffs were \$266,017.

The defense argued that Deborah Dawson's neck complaints were unrelated to the accident. Her neck was checked and cleared during her initial hospitalization, and no neck complaints appeared in her medical records until seven months later.

The defense also noted that, although the life care plans were prepared about seven months before trial, neither woman obtained any of the treatment recommended in the plans.

In addition, the defense called a physiatrist, who critiqued the life care plans line by line as to what care was related to the accident. He said the total reasonable cost for both women would be about \$80,000.

**VERDICT INFORMATION** During trial, Koch & Sons and McCullough reached a high/low agreement with the Powerses and Dawsons. The low was \$50,000, and the high was \$300,000.

Just before the case was submitted to the jury, Hernandez and Rivera reached a high/low agreement with the Powerses and Dawsons, with parameters of \$200,000 and \$800,000.

The jury found only the unknown driver of the unknown vehicle negligent. It found no negligence by any defendant.

Jurors told counsel that the occurrence was "an accident" and that they could not say they would have reacted any differently or better than Rivera did, under the same circumstances.

Several jurors told counsel that they were very impressed with the defense medical expert and that they felt that the life care plans were extremely exaggerated.

**PLAINTIFF  
EXPERT(S)**

**Adam Starr M.D.**, Orthopedic Surgery, Dallas, TX  
**John Painter**, Accident Reconstruction, Granbury, TX  
**Alex Willingham M.D.**, Life Care Planning,  
San Antonio, TX  
**Kent Gilbreath Ph.D.**, Economics, Waco, TX

**DEFENSE  
EXPERT(S)**

**Lance Bruce M.D.**, Physical Medicine, Dallas, TX  
**Danny Phillips**, Accident Reconstruction, Dallas, TX  
**A. Crockett**, Accident Investigation, Garland, TX

**INSURERS**

**RLI** for Koch & Sons and McCullough  
**Bituminous Insurance** for RKM and Johnson  
**The Republic Group** for Hernandez and Rivera

## TARRANT COUNTY

### MEDICAL MALPRACTICE

#### Surgical Error—General Surgery—Hospital

## Plaintiff claimed his aorta was lacerated during surgery

**VERDICT**

**Defense**

**CASE**

Miguel Gomez v. Adolfo Gonzales, D.O. and Columbia Plaza Medical Center of Fort Worth, Subsidiary, L.P. d/b/a Plaza Medical Center of Fort Worth, No. 067-2238107-07 Tarrant County District Court, 67th, TX

**COURT**

**JUDGE**

Don Cosby

**DATE**

03/13/2009

**PLAINTIFF**

**ATTORNEY(S)**

**Ken Kraatz**, Wells, Purcell, Kraatz & Brookman, Fort Worth, TX

**Davis Purcell**, Wells, Purcell, Kraatz & Brookman, Fort Worth, TX

**DEFENSE**

**ATTORNEY(S)**

**David E. Olesky**, Cooper & Scully, P.C., Dallas, TX

**Doug R. Lewis**, Chamblee & Ryan, P.C., Dallas, TX

**Maria I. Ganson**, Cooper & Scully, P.C., Dallas, TX

**Oralia Guzman**, Chamblee & Ryan, P.C., Dallas, TX

**FACTS & ALLEGATIONS** On April 3, 2006, plaintiff Miguel Gomez, 38, went to the Plaza Medical Center of Fort Worth for an emergency arthroscopic appendectomy. The procedure was performed by second-year resident Jamie Wagner, who was supervised by Dr. Adolfo Gonzales. Gomez claimed that his aorta was lacerated during the placement of a trocar.

Gomez sued Plaza Medical Center and Gonzales, alleging medical malpractice. Wagner was not a party to the suit. Gomez claimed that Gonzales and Plaza Medical were liable for the surgical error.

The plaintiff's general surgery expert testified that Gonzales and the hospital were negligent.

The defendants denied the allegations. Their general surgery expert testified that the procedure was done correctly. He also opined that the surgical plan was within the standard of care, as was Gonzales' performance.

Injuries/Damages Gomez claimed that there was significant injury to his abdomen area and that the subsequent removal of his gall bladder was related to the April 2006 incident. According to court documents, he claimed that he required a total of eight additional surgeries, including plastic surgery on his abdomen, and several months of hospitalization due to the defendants' actions.

Gomez underwent several months of physical therapy. He claimed he was unable to work for 13 months.

He asked the jury for an unspecified amount for medical expenses, pain and suffering and lost wages.

**VERDICT INFORMATION** The jury found that the defendants were not negligent.

**PLAINTIFF**

**EXPERT(S)**

**Brian Camazine M.D.**, General Surgery, Henderson, TX

**DEFENSE**

**EXPERT(S)**

**Mark Watson M.D.**, General Surgery, Dallas, TX

**EDITOR'S COMMENTS** This report contains information that was gleaned from court documents and provided by defense counsel. Plaintiff's counsel did not respond to the reporter's phone calls.

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## WICHITA COUNTY

### MEDICAL MALPRACTICE

#### Birth Injury—OB-GYN—Childbirth

# Parents said doctor used excessive traction during delivery

<b>VERDICT</b>	<b>Defense</b>
<b>CASE</b>	Brad D. and Sandra D. Mitchell, as parents and next friends of Brenley Mitchell, a minor v. Viren D. Mehta, M.D., No. 168,651-C
<b>VENUE</b>	Wichita County District Court, 30th, TX
<b>JUDGE</b>	Robert Brotherton
<b>DATE</b>	04/01/2009
<b>PLAINTIFF</b>	
<b>ATTORNEY(S)</b>	<b>Jacquelyn C. Gregan</b> , Haskins & Gregan, Houston, TX
<b>DEFENDANT</b>	
<b>ATTORNEY(S)</b>	<b>William H. Chamblee</b> , Chamblee & Ryan, P.C., Dallas, TX, for Viren D. Mehta, M.D. <b>M. Todd Allen</b> , Chamblee & Ryan, P.C., Dallas, TX, for Viren D. Mehta, M.D.

**FACTS & ALLEGATIONS** Plaintiff Brenley Mitchell was born on April 4, 2000, and delivered by Dr. Viren D. Mehta in a hospital in Wichita Falls. During delivery, Brenley sustained a permanent brachial plexus injury.

Brenley and her parents, Brad and Sandra Mitchell, sued Mehta for medical malpractice, alleging excessive traction in response to shoulder dystocia during delivery of the head.

According to the plaintiffs, the permanence of the injury indicated negligence by Mehta. A video recording of the delivery came into evidence, and the Mitchells argued that, although the video showed Mehta from behind and did not show his hands or the baby's head, it did show him bending at the knees and flexing his elbows.

The Mitchells had two liability experts. One focused on the permanence of the injury, and the other focused on the video. The plaintiffs argued that Mehta not only applied excessive traction, but applied it too jerkily and rapidly.

The defense argued that Mehta used standard, textbook techniques for dealing with shoulder dystocia, including the McRoberts maneuver, suprapubic pressure, and a partial rotational maneuver; that he was assisted by a very capable and qualified labor and delivery nurse; that applicable medical literature overwhelmingly states that injuries can and do occur without negligence by the obstetrician; and that, by quickly and efficiently alleviating the shoulder dystocia and completing delivery of the body about 1 minute after the head, Mehta avoided potential further complications, such as brain injury and death.

Regarding the video, which was made without Mehta's knowledge and contrary to hospital policy, the defense denied that it showed traction or what techniques Mehta used.

Mehta has practiced in Wichita Falls for almost his entire medical career and delivered thousands of babies there.

**INJURIES/DAMAGES** Brenley sustained a brachial plexus injury affecting her left arm and shoulder. Treatment included five operations, with varying degrees of success. She underwent nerve grafts in October 2000, secondary surgery (a "mod quad" procedure) in August 2001, left shoulder capsulodesis in July 2003, and a triangle tilt in August 2006. One of the procedures involved shaving bone and was very painful, said her attorney. According to the attorney, even if more surgery is recommended, Brenley says that she will not go through it again.

At birth, the arm was flaccid. At trial, Brenley still could not fully raise her left arm or bear weight on it and that she had trouble with most tasks requiring full use of both arms or both hands.

The plaintiffs argued that, although Brenley is active in school and some sports and is an attractive, well-rounded child, her parents have worked hard to help her adapt, and that her being a bright child does not diminish her injuries.

Brenley's medical care was presented mostly through her medical records and a life care planner. Her treating doctors did not testify.

Because they sued more than two years after the incident, the parents' claims for Brenley's past and future medical bills were barred.

The life care planner testified about services and medical care that Brenley would need throughout her life, including surgeries, physician monitoring, medications, and assorted "essential services." The plan was more than \$800,000.

The plaintiffs did not claim lost earning capacity for Brenley at trial. At the time of Brenley's birth, Brad Mitchell was a police officer and Sandra Mitchell was a homemaker. At the time of trial, he was a state trooper in Oklahoma, and she was an airline hostess.

Brenley was present for the entire trial, although her parents were emotional when testifying about her injuries and asked that she be excused during their testimony.

The defense argued that very few items in the life care plan were recommended by a treating doctor and that it was uncertain exactly which items and how much of each Brenley would need.

The defense also noted that Brenley was missing school to attend trial.

<b>PLAINTIFF</b>	
<b>EXPERT(S)</b>	<b>Edith Gurewitsch M.D.</b> , OB-GYN — See also Gynecology, Baltimore, MD <b>Dan Bagwell BSN, R.N.</b> , Life Care Planning, San Antonio, TX <b>Scott Farhart M.D.</b> , OB-GYN — See also Gynecology, San Antonio, TX

<b>DEFENDANT</b>	
<b>EXPERT(S)</b>	<b>Richard Joseph M.D.</b> , OB-GYN — See also Gynecology, Dallas, TX

<b>INSURERS</b>	<b>Texas Medical Liability Trust</b>
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**VERDICT INFORMATION** The jury found no negligence by Mehta.

According to defense counsel, the jury felt that Mehta followed textbook maneuvers to deal with shoulder dystocia, that his actions were supported by the medical literature, and that Mehta's quick and efficient alleviation of the shoulder dystocia avoided potential further injury or death.



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