

G E O R G I A

RADIOLOGY

Surgical Error

Injection of dye using needle knife led to duodenal damage

MIXED VERDICT \$3,556,000

CASE	Donna G. Reese v. Kyriako Michael Michaelides M.D., Digestive Care Associates P.C., J. Becker Burns M.D., Quantum Radiology Northwest P.C. and Wellstar Health System Inc., d/b/a Wellstar Cobb Hospital, No. 22CV8583
COURT JUDGE DATE	DeKalb County, Superior Court, GA Hilton M. Fuller 7/6/2005
PLAINTIFF ATTORNEY(S)	William L. Ballard, Scheffius, Ballard, Still & Ayres, LLP, Atlanta, GA Jeffrey R. Harris, Scheffius, Ballard, Still & Ayres, LLP, Savannah, GA
DEFENSE ATTORNEY(S)	D. Gary Lovell, Carbeck, Copeland, Semler & Stair, LLP, Atlanta, GA (Digestive Care Associates, Kyriakos Michael Michaelides M.D.) Jonathan C. Peters, Love, Willingham, Peters, Gilleland & Moryak, Atlanta, GA (J. Becker Burns M.D., Quantum Radiology Northwest P.C.)

FACTS & ALLEGATIONS On Aug. 17, 2003, plaintiff Donna Reese, 42, disabled, had her gallbladder removed. She returned 18 days later, complaining of abdominal pain. Her surgeon, Mark Wyatt, ordered a HIDA scan (a special radiograph to check for a bile duct leak). J. Becker Burns, a radiologist, read the scan and found it consistent with a bile duct leak. Wyatt then referred Reese to K. Michael Michaelides, a gastroenterologist, who agreed to take over her care to confirm that she had a leaking bile duct.

Michaelides determined that Reese needed an endoscopic retrograde cholangiopancreatography (ERCP) procedure (gallbladder, bile ducts and pancreatic ducts are injected with dye and X-rays are taken). If the X-rays show any obstruction, it can be treated in the same procedure. In Reese's case, Michaelides would place a stent in her bile duct to facilitate the healing of the leak. When, during the ERCP procedure, he didn't find evidence of a bile duct leak, he continued to try to enter the duct. Finding entry difficult, he used a tool called a needle knife to cut his way in, perforating the duodenum in the process. Michaelides ultimately determined that Burns had misread the HIDA scan and there never was a bile duct leak.

Claiming that the perforation led to a raft of complications, Reese sued Michaelides and Burns and their respective employers Digestive Care Associates P.C. and Quantum Radiology Northwest P.C., for negligence and respondeat superior. She also brought a claim against Wellstar Cobb Hospital but dismissed it long before trial.

Plaintiff counsel argued that Burns misread the scan and the ERCP never should have been performed. He argued that Michaelides never should have used the needle knife. Plaintiff's radiology expert David Wymer opined that Burns misread the scan and its gastroenterology expert Peter Cotton testified that a needle knife procedure is very rare and that not many gastroenterologists do it, and that Michaelides deviated from the standard of care both by doing it and doing it improperly.

Burns contended that the language in his report never indicated that there was a bile duct leak; he only stated that what he saw was consistent with a leak.

Michaelides argued that the ERCP was necessary, that use of the needle knife was appropriate and that perforation of the duodenum is a recognized complication of the procedure.

INJURIES/DAMAGES *perforated duodenum*

The perforated duodenum allowed bile to empty into her stomach cavity. The acidic fluid ate away at her organs and caused scarring. This led to hospitalization for five months, in which doctors left open her stomach cavity to drain the fluid, followed by repeated subsequent hospitalizations. Doctors also had to put in a feeding tube during these hospitalizations. Reese, a diabetic, claimed that these injuries exacerbated her condition. In all, the ongoing medical care and home health care treatment lasted for a year. She claimed past medical expenses of about \$540,000. She also claimed that, every four months for the rest of her life, she will need a stent in one of her urethras to be replaced. She claimed future medical expenses of

The plaintiff's counsel asked the jury to consider past and fut ure pain and suffering at a range of \$1.5 million to \$3.5 million. Her counsel noted that the defense experts were paid \$400 an hour to testify at trial and be made uncomfortable. Her attorney suggested that his client may be entitled to \$400 for every hour that she's been uncomfortable from the date of injury up until she recovered a year later, which when calculated, comes to about \$3.5 million.

RESULT The jury found that Michaelides was 100% negligent. It awarded Reese a lump sum of \$3,556,000.

INSURER(S)	MAG Mutual Ins. for Burns and Michaelides and their employers
TRIAL DETAILS	Trial Length: 4 days Trial Deliberations: 6 hours
PLAINTIFF EXPERT(S)	David Wymer, M.D., radiology, Gainesville, FL Peter Cotton, M.D., gastroenterology, Charleston, SC
DEFENSE EXPERT(S)	Jerome Siegel, M.D., gastroenterology, New York, NY

EDITOR'S NOTE The defense counsel for Michaelides did not respond to a faxed draft of this report or a phone call.

-Jeff Skerach

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