

Who Can Go the Distance? We'll Find Out in the Long Run

By John T. Ryman, JD

On a hot summer day in 2002, 55-year-old Mr. Adams^[1] was working on his farm. When dismounting from the back of his truck, Mr. Adams fell and injured his left leg. He presented to the local ER later that day with complaints of left knee and ankle pain. Mr. Adams had a history of bilateral knee replacements. He told Dr. Jones that he had dislocated and reduced his left knee after the fall. An exam by Dr. Jones showed moderate swelling and tenderness. The radiographic studies were unremarkable. Dr. Jones contacted Mr. Adams' orthopedist, Dr. Smith, who recommended that the patient see him in the office the next day. Mr. Adams was discharged with instructions to follow up with Dr. Smith the next day.

Two days later, Mr. Adams already had a foot drop when he saw Dr. Smith, who diagnosed a peroneal nerve palsy and impending failure of the total knee replacement. The patient was placed in a brace to protect the knee temporarily with the plan to do a total knee revision in the future. Mr. Adams called Dr. Smith's office two days later to report ongoing leg pain and was told that the pain was to be expected with this injury. Three days later Mr. Adams presented to another ER, where he was diagnosed with compartment syndrome and underwent fasciotomies that day. In the following days, Mr. Adams had additional surgery for resection of necrotic tissue. He developed permanent foot drop.

Mr. Adams filed a lawsuit against Dr. Jones and Dr. Smith in July 2004. The case went to trial against Dr. Jones only in June 2014. After a five-day trial, the jury found in favor of Dr. Jones. Why did it take ten years for this case to go to trial and what happened during that decade? What happened to the lawsuit against Dr. Smith?

Within days of the lawsuit being filed, both Dr. Jones and Dr. Smith reported it to SVMIC. We retained an experienced local attorney to defend the doctors. Defense counsel met with the doctors, gathered the medical records and started the process of discovering the facts and putting together a defense plan. The defense attorney contacted potential experts and found supportive physicians who were willing to serve as expert witnesses. Written discovery of the relevant facts was completed and the parties were deposed. Trial of the case was set for the first week of March 2008. Shortly before trial, the plaintiff asked the court for a continuance, which was granted. A new trial date was scheduled for March 2009.

In February of 2009, the plaintiff voluntarily dismissed his case without prejudice, allowing for the possibility of re-filing the case within one year. Mr. Adams re-filed the lawsuit in January 2010. The court set the case for trial to start in June 2014. In March 2012, the plaintiff asked the court to order the parties to meet with a mediator to discuss possible settlement of the case. The court granted the Order for mediation and the parties met with a mediator in June 2012 in accordance with the court's Order. Believing that the care provided was appropriate, and within the standard of care, neither doctor gave consent to settle the case. SVMIC did not make any settlement offer. About two weeks before the scheduled start of the trial, Mr. Adams dismissed his lawsuit against Dr. Smith, the orthopedist, and proceeded to trial against only Dr. Jones, the ER physician. The jury returned a defense verdict for Dr. Jones following a five-day trial in June 2014.

These cases can, and often do, have an incredibly long lifecycle. The doctors and their defense attorney would have been ready to defend the case at trial at the first opportunity in March 2008, already nearly four years after the lawsuit was filed. Unfortunately, the plaintiff's actions and a backlog of cases on the Court's docket delayed the outcome for several more years. The purpose of this article is not to delve deeply into the details of the medical care or specifically how this case was successfully defended. We can summarize those details by saying that the care was appropriate, the doctors did an excellent job in their defense, and defense counsel was outstanding. The lesson here is to be prepared for the possibility of a long fight. Cases will often move more quickly to a resolution, but situations such as this are fairly common. The good news is that we are here with you for the long run.

[1] All names have been changed for confidentiality

*Article title directly quoted from "The Long Run", Henley & Frey, 1979.

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