



The Voice

And The Defense Wins

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[Beth McMasters](#) and [Sara Clark Davis](#) of **McMasters Keith Butler, Inc.**, in Louisville, Kentucky, received a defense verdict in Jefferson County on June 29, 2016, in the case of *Estate of Glenda Thomas, et al. v. University Medical Center, Inc. d/b/a University of Louisville Hospital, et al.*

In 2008, Glenda Thomas underwent an anterior cervical discectomy and fusion procedure at the University of Louisville Hospital, which was performed by a chief neurosurgical resident and attending neurosurgeon. Shortly after the procedure, the JP drain inserted at the end of the surgery became inadvertently dislodged during a postoperative X-ray. The PACU nurse notified the chief neurosurgical resident, who approved the patient's discharge to the medical-surgical floor. That evening, Mrs. Thomas began to complain of some shortness of breath. The nursing staff called the 5th year neurosurgical resident on call, as well as the chief neurosurgical resident, to the floor. The physicians examined the patient and noted neck swelling and a small hematoma centered on the surgical incision. They ordered steroids and obtained a post-operative X-ray of the cervical spine. When the 5th year neurosurgical resident on call checked on Mrs. Thomas shortly thereafter, it was determined that Mrs. Thomas had clinically worsened, and that her trachea was now possibly deviated (whereas it had not been before). A decision was made to return to the OR for surgical evacuation of the hematoma. Before the patient could be taken to surgery, she suddenly lost her airway and coded. The hematoma was evacuated at bedside but attempts at intubation were unsuccessful. Mrs. Thomas was emergently taken to surgery where an airway was established. She subsequently died a few days later.

Suit was filed against University of Louisville Hospital, the two neurosurgical residents, and the attending neurosurgeon from the cervical fusion procedure. Mrs. McMasters and Mrs. Davis defended the case on behalf of the hospital facility. The plaintiffs' legal representation at trial included Don Keenan of Atlanta, Georgia, as lead counsel. Mr. Keenan is one of the co-authors of *REPTILE: The 2009 Manual of the Plaintiff's Revolution*. The plaintiffs sought in excess of \$5 million in damages, including past medical expenses, pain and suffering, and loss of spousal consortium. Following the plaintiffs' presentation of their case, the court entered a directed verdict in favor of the hospital with regards to the plaintiffs' claim for punitive damages, as well as the plaintiffs' claim that the resident physicians were the ostensible agents of the hospital. After an eight-day trial, the jury returned a unanimous defense verdict in favor of University of Louisville Hospital. The jury returned a unanimous verdict in favor of the attending neurosurgeon, and a 9-3 defense verdict in favor of the two resident physicians.

Mrs. McMasters and Mrs. Davis are members of the DRI Medical Liability and Health Care Law Committee.

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