

The Poppe Newsletter

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The Client, The Lawyer, The Jury -- The Verdict \$5.1 Million



Hans Poppe recently went to trial in a medical negligence case. The following summary was printed in the Kentucky Trial Court Review and is reprinted here with their permission.

Medical Negligence - During a complex but otherwise routine brain surgery, the plaintiff suffered a respiratory problem that proved fatal – his estate alleged error by his neurosurgeon and other anesthesia defendants for having bungled the response to the crisis.

Carroll v. Hornung et al, 04-2212

Plaintiff: Hans G. Poppe,
Poppe Law Firm, Louisville

Defense: Ronald Sheffer, *Sheffer Law Firm*,
Louisville for Barry, Wheelless and MCA
James P. Grohmann and Katherine Vesely,
O'Bryan Brown & Toner, Louisville for
Morassutti

Sean Ragland, *Phillips Parker Orberson &
Moore*, Louisville for Lowe

Richard P. Schiller and Kimberly S. Naber,
Schiller Osbourn Barnes & Maloney,
Louisville for Hornung

Verdict: \$5,096,632 for plaintiff assessed 60%
to Barry, 20% to Morassutti and 10% each to
Lowe and MCA; Defense verdict for Hornung
and Wheelless

Circuit: **Jefferson**,

J. McDonald-Burkman, 8-29-08

Norman Carroll, age 75 and a carpenter, was suffering from Parkinson's Disease. [He is the brother of former Kentucky Governor Julian Carroll.] A procedure known as deep brain stimulation has proven to frequently relieve symptoms. While it is a complex procedure, almost always it is safe.

Carroll's neurosurgeon, Dr. Dante Morassutti, has performed hundreds of these procedures without incident. Deep brain stimulation is accomplished by drilling directly into the brain and installing an electrical pacemaker of sorts that stimulates affected areas of the brain and relieves or eliminates Parkinson's symptoms. But because of the sensitive nature of the brain, before the drilling begins, the patient's head is literally bolted to a frame so that the head remains perfectly still. Except for local anesthesia, the patient is awake and fully conscious during the procedure.

However because of the abovementioned head-is-bolted-to-a-frame business, the patient is also immobilized.

This deep brain stimulation started at 11:15 or so in the morning on 1-28-03 at Jewish Hospital. While Morassutti handled the drilling, he was assisted by an anesthesiologist, Dr. Keith Hornung, who was supervising a CRNA, Carolyn Lowe. Hornung left at 1:30 in the afternoon and Dr. Atul Barry,

Anesthesia, took over for him. Later at 2:45 in the afternoon, a second CRNA,

Carson Wheelless, came to relieve Lowe. The final party in this action was Medical Center Anesthesia (MCA). It holds an exclusive contract to provide and assign anesthesia services at Jewish Hospital. Barry and Wheelless were employees of MCA – Hornung and Lowe were just temporary contract employees of MCA.

Three hours into the surgery at 2:15 in the afternoon (Hornung was long gone), Carroll began to complain of shortness of breath. He also had chest pain, increased blood pressure and decreased oxygen saturations. Lowe informed Morassutti. He instructed her to give medications to lower the blood pressure and to call for the now-supervising Barry.

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Areas of Practice

- Automobile Injuries
- Trucking Accidents
- Legal Negligence
- Nursing Home Neglect
- Unfair Insurance Denials
- Medical Negligence
- Personal Injury
- Professional Negligence

The first of several fact disputes began at this juncture. Lowe claimed that she did call Barry and he arrived at 2:30. A discussion ensued on whether to continue the surgery. A decision was made to go on and Barry administered Fentanyl to Carroll. [This drug has an effect of continuing to depress respiration.]

Barry for his part cont. on page 2

Poppe Advocates for Clients and Wins Millions (cont. from page 1)

denied that he came at 2:30 and thus as he wasn't there, he didn't order Fentanyl. However Lowe charted that he had come and a circulating nurse and other witnesses placed Barry as present. Barry continued to insist he had not arrived until 2:50.

Whether he was there or not, Carroll did not improve. At 2:45, Wheelless came to relieve Lowe. He described that it was immediately obvious to him that Carroll was in bad shape and needed to be intubated. Morassutti replied that he needed 45 more minutes according to Wheelless – Morassutti adamantly denied this.

Wheelless then put out two calls for anesthesia, the second being STAT. Barry arrived at 2:50. [Lowe too was still present.] By the arrival at 2:50, Wheelless explained that in his judgment, Carroll had gone from bad to horrible. It was clear to all now that Carroll needed an immediate intubation.

However that was made difficult as the head frame could not be removed. This took several minutes (some suggested as many as ten) to accomplish and the head frame was only partially removed. Wheelless then jumped on top of Carroll and achieved an apparently successful intubation. He called to Lowe who was manning a C02 machine – she said there was no reading. Morassutti then completed an emergency tracheotomy and again the report from Lowe was that there was no C02. [In the process of this tracheotomy, Morassutti struck the jugular vein and blood was everywhere.] At this juncture, Wheelless took a closer look at the C02 machine it wasn't turned on. During this entire process, Carroll was fully conscious. Finally a code was called and other medical professionals came to the room and performed a proper tracheotomy.

However for some indeterminate period, Carroll was oxygen-deprived. He went into a coma and stayed in that condition for six days before he died. Carroll was survived by his wife, Retha. The irony of the case was the ultimate cause of the respiration depression. Carroll had developed a complication during the surgery, a venous air embolism. It was simply not detected.

Had it been noted, the embolism could possibly have been relieved by simply tilting the surgical table. No one thought to do this at the time and the intubation circus ensued.

From these facts, Carroll's estate sued the medical defendants as already introduced. In order from appearance,

Hornung was blamed for not having a plan in place to respond to a respiratory emergency, especially as Carroll's head was in the frame. He

was also blamed for missing signs of the C02 that would have revealed the venous embolism.

As to Lowe, the estate blamed her for (1) not monitoring the C02, (2) not understanding how the head frame worked, (3) not calling Barry at 2:15 (if Barry is to be believed), and (4) failing to turn on the monitor during the intubation.

Then to Morassutti, the estate was critical of him for not conversing about anesthesia issues before the surgery.

Then it took too long when the emergency began to get the head frame off, there being a



suggestion that at one point, Morassutti was manipulating the screws the wrong way. Finally he was also blamed for not stopping immediately as asked by Wheelless at 2:45.

Barry too was blamed for not stopping the surgery when he arrived at 2:15 or alternatively, if there was a call and he didn't come (Barry said he didn't), it was a deviation to not come to the room. Then as the intubation was begun, he didn't see that the C02 monitor was turned on.

Wheelless was implicated for not turning on the monitor and as well, if Morassutti was believed, he had not secured an airway quickly enough.

Finally as to MCA, it was involved in two ways, (1) vicariously as the employer of Wheelless and Barry, and then independently, (2) for assigning an inexperienced team (with head frames) to a deep brain stimulation procedure.

Experts for the estate were Dr. Elizabeth Frost, Anesthesia, New York, NY, Dr. Ronald Alterman, Neurosurgery, New York, NY, Michael Kremer, CRNA, Chicago, IL and Dr. George Nichols, Pathology, Louisville. If the estate prevailed, it sought Carroll's medicals of \$96,632, plus \$5,000,000 for his conscious suffering. His wife sought \$3.5 million more for

her consortium interest in the intervening six days until he passed.

In the same order as the criticisms were presented, Hornung defended that he was gone by 1:30 and thus thereafter, any error that occurred rested with Barry. He also replied to the planning criticism that Lowe was competent and he had a right to rely upon her. His expert was Dr. Richard Dutton, Anesthesia, Maryland.

Lowe defended that she made the call of anesthesia at 2:15 and thereafter, Carroll's care was supervised by both Barry and Morassutti.

The doctors were fully alerted, Lowe explaining in a sense, that she was too far down the food chain to question their judgment or control

Carroll's care. She did not have an expert. Lowe died before the case came to trial, but her testimony was preserved when this case was first mistried in May of 2007.

Morassutti too defended that he acted appropriately. He did not have an expert. Barry for his part also denied any error and blamed Lowe for not turning on the monitor. His expert was Dr. Keith Ruskin, Anesthesia, Yale.

Finally Wheelless painted himself as the hero, the situation being bad when he arrived, he taking efforts in an attempt to save Carroll. In this case and as developed in this report, there were numerous fact disputes regarding the conduct of the defendants.

Tried for two weeks, the verdict was mixed on fault. It found fault with Morassutti, Barry, MCA and Lowe. Hornung and Wheelless were exonerated. In apportioning fault, it was assigned 60% to Barry, 20% to Morassutti and 10% each to both Lowe and MCA.

Then to damages, the estate took the medicals as claimed, plus \$3.5 million for Carroll's suffering. His wife took \$1.5 million more for her consortium interest. The verdict totaled \$5,096,632 and was assessed consistently in the court's judgment.

During the course of this trial, the individual jurors asked numerous factbased questions. However none were asked during deliberations. There was also interesting voir dire practice. So many jurors were struck for cause (several explaining they would hold the plaintiff to a higher standard than a preponderance of the evidence), that to impanel twelve and an alternate, the plaintiff had to agree to withdraw a peremptory challenge. The estate did so and jury selection was completed.



Téa Sophia Poppe

Ever Changing Poppe Law Firm

It has been a very exciting few months at the Poppe Law Firm since the last newsletter. Since then, my wife and I had our first child on July 29. Her name is Téa Sophia Poppe. She was 6 lbs 9 oz and 20 inches long. She is already sleeping through the night and has been for several weeks. We are so blessed to have this perfect new addition to our family.

Next up was Warner Wheat, my law clerk. Warner has been clerking with our office for over a year and recently finished law school at the University of Louisville. In July he sat for the Kentucky bar exam and received

his results in early October. Naturally he passed. Warner

has decided to stay on at the firm and we made special arrangements to have him sworn in early since the formal swearing in ceremony in Frankfort was during his honeymoon. Warner and Caroline Carlross were married on October 11, 2008 and we wish them all the best.

Oh, and did I mention that right after my daughter was born and Warner finished the bar exam, we decided to throw a two-week medical malpractice trial in the middle. From August 17-29th we tried a case involving a surgical procedure called a Deep Brain Stimulation. The jury rendered a verdict in favor of our clients for \$5,100,000. It is probably the largest verdict of its kind in Kentucky. We are proud, not only of the result, but also proud to have represented such wonderful people. We are certain this result brings some closure to them following a five-year ordeal.

- Hans G. Poppe

Behind the Scenes with Barbara

I've been asked if I'd like to write an article for the newsletter, and I thought right away it was the perfect opportunity to let you know what happens behind the scenes in The Poppe Law Firm and to help you get to know the people who work there and little interesting tidbits about each of us.

A lot of you haven't been to our office, so I'll try to give you a mental picture of the layout. We work in a two-story office condominium. The first floor has a lobby, two conference rooms, a small office, a bathroom, and a kitchen. The second floor has three offices, a supply room, a bathroom, and a large open area where there are two desks for staff and the copy and postage machines. The second floor is where all the case files are and where we do the physical work. There are five of us working for The Poppe Law Firm: two attorneys, Hans and Warner; two paralegals, Barbara and Heather; and Paula, our part-timer.

There being just five of us, we are a very small office. We work very hard, and every day time flies by, but still we have a lot of fun while we work. We get along with each other so well, we will sometimes get together after work for dinner, go to a movie, or just have a get-together at one of our homes to relax and have fun.

So now that you have an image in your mind of our office, let's talk about what work goes into our cases. Hans has several different types of cases, which keeps everybody's job interesting. He's passionate about his cases and clients, and it's important to him to be accessible to his clients. It may take him a day or two to return a call but that's because he's in the middle of a task and doesn't want to lose focus, he's in court, he's in a meeting, he's in a deposition, but he will always return a call.

Our clients and their cases are important to all of us. We work hard, and frequently work overtime. We like contact with the clients and we like working on their cases. Among the many tasks we do on each case, we request records, and then make sure the files and records are organized to make Hans's and Warner's job easy. And believe me, organizing some records can seem like an endless task

when we receive thousands of pages in our many cases. So sometimes when you call in and we seem hurried, it may be because we're under a mound of papers or we're trying to meet a deadline.

Fun news: The Poppe Law Firm has sponsored a Little League baseball team for the past three years, both Spring and Fall seasons, so that's six sponsorships. On the scoreboard as The Cardinals, "Poppe Law Firm" is stenciled on their backs. When the young men started playing together three years ago, they were young enough that they played on the smaller fields. Now they've grown and they've moved up to the larger fields. It has been fun to learn from either their coach or other attorneys that The Poppe Law Firm team frequently beats those teams sponsored by other attorneys or beat teams that other attorneys' sons play on. It's a very friendly and fun rivalry. Almost every season, the team plays so well they win a trophy, which they give to Hans for his sponsorship. He has quite a collection that he proudly displays with the team's picture.

Hans and his wife of four-plus years, Jeri, who is also an attorney, gave birth to their first baby, Téa Sophia, two weeks before he started a medical malpractice trial in August. He took a week off work to become acquainted with his daughter, and he still achieved a great jury verdict. Hans is smitten with Téa, and she has

him wrapped around her heart and tiny hands.

This Fall, Warner experienced the best two weeks of his life—he passed the Bar, four days later he was sworn in as an attorney, four days later he married Caroline, and then they spent a week on their honeymoon. He'll have wonderful and exciting things happen to him in his life, but it will be hard to top what happened in those few days.

Paula joined us in late August, and we really welcomed her. She works Tuesdays through Thursdays every week. Among her duties, she answers the phone, so say "hi" to her when you call in.

Heather and Finis adopted a dog, Shelby, who had been run over by a car and was healing from a broken leg. Their hearts melted when they saw her on the adoption block at a local store, and Shelby found herself taken into a happy and loving home.

I have shared my home with four cats for 14 years—Jazz, Hawk, Byeune, and Sebby—or, rather, they allow me to live with them.



In Light of the Recent Election, We Thought You Might Like to Know...

1. Eight Presidents were born British subjects: Washington, J. Adams, Jefferson, Madison, Monroe, J. Q. Adams, Jackson, and W. Harrison.
2. Nine Presidents never attended college: Washington, Jackson, Van Buren, Taylor, Fillmore, Lincoln, A. Johnson, Cleveland, and Truman. Presidents who would be considered "Washington outsiders" (i.e., the 18 presidents who never served in Congress) are: Washington, J. Adams, Jefferson, Taylor, Grant, Arthur, Cleveland, T. Roosevelt, Taft, Wilson, Coolidge, Hoover, F. Roosevelt, Eisenhower, Carter, Reagan, Clinton, and G. W. Bush.
3. The tallest president was Lincoln at 6'4"; at 5'4", Madison was the shortest.
4. Fourteen Presidents served as vice presidents: J. Adams, Jefferson, Van Buren, Tyler, Fillmore, A. Johnson, Arthur, T. Roosevelt, Coolidge, Truman, Nixon, L. Johnson, Ford, and George H.W. Bush.
5. Vice Presidents were originally the presidential candidates receiving the second-largest number of electoral votes. The Twelfth Amendment, passed in 1804, changed the system so that the electoral college voted separately for president and vice president. The presidential candidate, however, gradually gained power over the nominating convention to choose his own running mate.
6. For two years the nation was run by a president and a vice president who were not elected by the people. After Vice President Spiro T. Agnew resigned in 1973, President Nixon appointed Gerald

- Ford as vice president. Nixon resigned the following year, which left Ford as president, and Ford's appointed vice president, Nelson Rockefeller, as second in line.
7. Four Presidents won the popular vote but lost the presidency: Andrew Jackson won the popular vote but lost the election to John Quincy Adams (1824); Samuel J. Tilden won the popular vote but lost the election to Rutherford B. Hayes (1876); Grover Cleveland won the popular vote but lost the election to Benjamin Harrison (1888); Al Gore won the popular vote but lost the election to George W. Bush (2000).
8. The term "First Lady" was first used in 1877 in reference to Lucy Ware Webb Hayes. Most First Ladies, including Jackie Kennedy, are said to have hated the label.
9. Presidents Lincoln, Garfield, McKinley, and Kennedy were assassinated in office.
10. Assassination attempts were made on the lives of Jackson, T. Roosevelt, F. Roosevelt, Truman, Ford, and Reagan.
11. Eight Presidents died in office: W. Harrison (after having served only one month), Taylor, Lincoln, Garfield, McKinley, Harding, F. Roosevelt, and Kennedy.
12. Kennedy and Taft are the only presidents buried in Arlington National Cemetery.
13. Lincoln, Jefferson, F. Roosevelt, Washington, Kennedy, and Eisenhower are portrayed on U.S. coins.
14. Washington, Jefferson, Lincoln, Jackson, Grant, McKinley, Cleveland, Madison, and Wilson are portrayed on U.S. paper currency.

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