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October 2020



# TWPD OBTAINS SUMMARY JUDGMENT

Jeremy Hawk and Ginny Deliman successfully won summary judgment in favor of their client, 21st Century Insurance Company, in September 2020. TWPD's client, 21st Century, was sued as an underinsured motorist carrier in the U.S. District Court for the Southern District of Mississippi. The plaintiff also sued Celadon Trucking and Coca Cola Bottling Company and their drivers for negligence arising from a collision.

RECENT CASES AND NEWS

MISSISSIPPI GENERAL  
LIABILITY NEWSLETTER

Under Mississippi's UM law, in order to have a claim for UM/UIM benefits, the claimant must establish that the at-fault motorist is either uninsured or underinsured. To be "uninsured" within the meaning of the statute requires a showing that the other motorist has no liability insurance coverage or that the liability carrier has legally denied coverage for the accident. The definition of uninsured also includes an unidentified motorist when there has been contact that caused an accident. For a motorist to be "underinsured" requires a comparison of all the tortfeasors' liability limits applicable to the accident, with to the limits of coverage under the plaintiff's own UM/UIM policy. Mississippi law allows the limits for each insured vehicle under the plaintiffs' policy to be aggregated or "stacked" for purposes of this limits-to-limits analysis. Thus, in order to trigger a claim for underinsured motorist coverage under Mississippi law, as the plaintiffs did in this case, the insured plaintiffs must have UM/UIM coverage with limits of liability greater than the tortfeasors' combined coverage.

In this case, each of the alleged tortfeasors, Celadon Trucking and Coca Cola Bottling Company, had liability limits that far exceeded the UM/UIM limits under the 21st Century policy. Because the plaintiffs were unable to satisfy their burden of establishing that the other motorists were "underinsured," Judge Keith Starrett granted 21st Century's motion for summary judgment.

[ORDER GRANTING DEFENDANT 21ST CENTURY INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT](#)

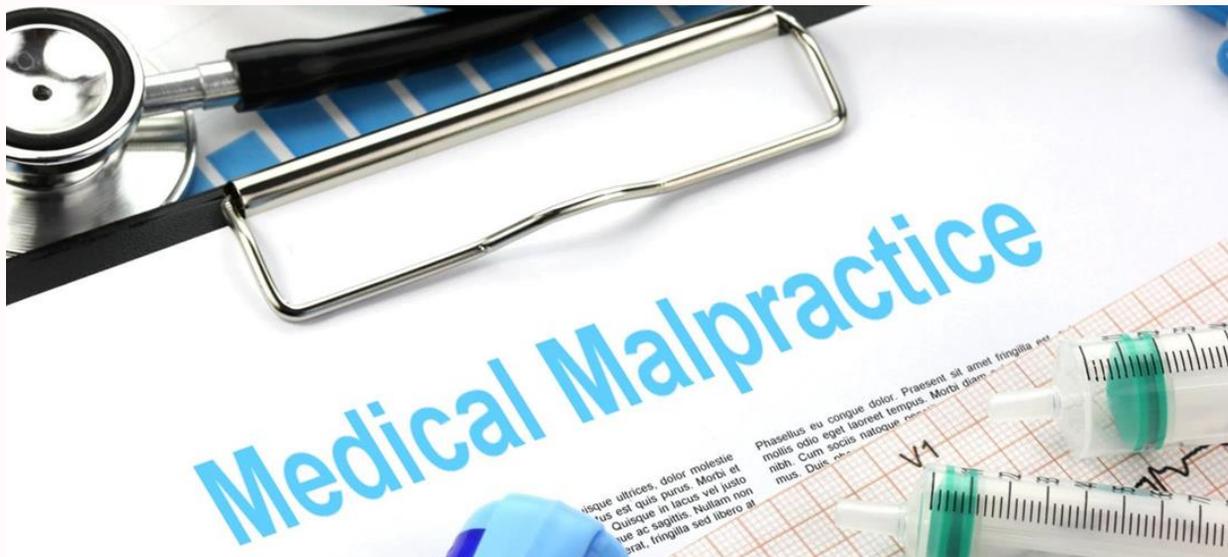
## Attorney Spotlight



### Jill R. Miller, Partner

With a keen eye for detail and an endless drive to obtain results, Jill has spent her twelve-year career expanding TWPD's footprint into Mississippi, where she has developed a successful workers' compensation practice second to none.

Jill and her team are now often sought out by insurance companies and employers across the nation to assist with their workers' compensation needs in Mississippi. Each day, Jill focuses on going the extra mile to obtain the best results for her clients



## **COURT OF APPEALS AFFIRMS MOTION FOR SUMMARY JUDGMENT IN MEDICAL MALPRACTICE ACTION**

The Plaintiff, Edward Stuart, was injured in a car accident in 1997, which left him permanently disabled. He began having increased muscular issues and weakness in July of 2010, and was admitted to St. Dominic's Hospital, where a CT was ordered. According to Stuart, during the CT scan, the hospital technician forcibly pulled his arms over his head, causing Stuart to suffer from full-body spasms. Just days later, Stuart underwent a CT with contrast. Before the dye was injected into Stuart's spine, Stuart claims to have informed the physician, Dr. Crawford, that he was suffering from full body muscle spasms, however, Dr. Crawford proceeded with the injection. Immediately upon injection, Stuart claims to have suffered an uncontrollable muscle spasm and was immediately and permanently paralyzed.

Both St. Dominic's and Dr. Crawford filed summary judgment motions, claiming the testimony of Stuart's expert was inadmissible, thus no genuine issue of material fact existed. The trial court, after reviewing the motions and deposition testimony, granted both motions for summary judgment and Stuart appealed.

In partially affirming the decision, the Court found that neither of Stuart's expert witnesses testified as to how Dr. Crawford breached the applicable standard of care in performing the injection. However, finding Stuart's experts' opinions were based on reliable facts and data, and were not speculative, the Mississippi Court of Appeals found Stuart's experts' testimony created a genuine issue of material fact, and thus, the trial court erred in granting St. Dominic's summary judgment motion.

<https://courts.ms.gov/Images/Opinions/CO147584.pdf>



## **RECENT BENCH TRIAL VERDICT IN MEDICAL MALPRACTICE ACTION**

A medical malpractice case was recently tried in Jackson County Circuit Court located in Pascagoula, Mississippi. This was a bench trial pursuant to the Mississippi Tort Claims Act. A verdict amounting to \$499,169.00 for the Plaintiff was entered by the Court. The Plaintiff was having a variety of symptoms in 2011 and she saw a physician who diagnosed her with multiple sclerosis. The Plaintiff underwent treatment for MS for many years and, in 2016, several other doctors at Singing River Hospital began to question the diagnosing physician's pattern. This group of doctors believed that the diagnosing physician was improperly diagnosing patients with MS. The hospital completed its investigation and separated from the diagnosing physician.

The Plaintiff was seen by another neurologist and it became clear that she never had MS and her diagnosis was a mistake. This rendered her resulting five years of treatment for MS as being unnecessary. The Plaintiff sued the diagnosing physician and the hospital concerning the diagnosis error. The main question during trial was associated with what actual damages the Plaintiff sustained as a result of the misdiagnosis. At the end of the trial, the Judge entered a judgment for the Plaintiff in the amount of \$479,169.00 and a \$20,000.00 award was made to her husband for a separate loss of consortium claim.

<http://juryverdicts.net/TingleJo.pdf>



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The success we have seen is because of the way we built our practice. It's about more than routine strategies. It's about creative resolutions to difficult legal questions. It's about how we treat our clients and each other and how we work together to build the best possible defense for every single case. It's

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