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MISSISSIPPI GENERAL LIABILITY NEWSLETTER

RECENT CASES AND NEWS

INTERVENING / SUPERSEDING CAUSE IS ALIVE AND WELL IN MISSISSIPPI

In a recent decision of the Mississippi Supreme Court, a jury verdict was overturned based on the trial court's denial of an intervening/superseding cause instruction requested by the defendant. In this medical malpractice action, the plaintiff, who had undergone a cervical spine surgery but suffered complications resulting in a severe brain injury, sought damages from her surgeon, Dr. Ohran Ilercil, and St. Dominic-Jackson Memorial Hospital. The plaintiff died during the pendency of the litigation and her representatives sought damages for her wrongful death.

In defense of the claims of medical negligence, Dr. Ilercil asserted that the recovery nurse had failed to follow his postoperative orders to notify him immediately if the patient showed any signs of shortness of breath, difficulty swallowing, or excessive swelling. Despite noting these conditions in the chart, the recovery nurse did not notify Dr. Ilercil until after the patient coded.



Dr. Ilercil's theory of the case at trial was twofold: (1) that the surgery was without complications; and (2) that the recovery nurse's failure to notify him of complications in the recovery room, in dereliction of his postoperative orders, deprived him of the opportunity to provide the patient with appropriate care that may have averted the tragic outcome. The hospital settled before trial, leaving an empty chair at the defense table.

Dr. Ilercil's defense team put on evidence to support his theory that the nurse's negligence was a superseding cause, which broke the chain of negligence, if any, by him, and which became the proximate cause of the patient's injuries and ultimate death. The trial court denied Dr. Ilercil's request for a jury instruction on intervening and/or superseding cause. The jury awarded damages at \$1.63 million and apportioned 15% fault to Dr. Ilercil, resulting in a \$205,800 judgment against him.

On appeal, the Supreme Court instructed, "a jury must be instructed on all material issues presented in evidence." Thus, "whenever a defendant offers evidence of acts or failures to act of another that cause a plaintiff's injuries, that defendant is entitled to an intervening/superseding cause instruction." The Court reversed and remanded for a new trial based solely on the trial court's refusal to allow the jury to consider the instruction on Dr. Ilercil's theory of the case.

This case is an important reminder that this defense is viable and, where evidence is presented to support the theory, a defendant is "entitled" to have the jury instructed accordingly. Many trial courts across Mississippi in recent history have been reluctant to give such an instruction. [Click here](#) to access the decision.

COURT FILINGS UPDATE:

The United States Bankruptcy Courts for the Northern and Southern Districts of Mississippi have reported that bankruptcy filings for the first quarter of 2021 are down nearly 50% from the first quarter of 2020.

In the Northern District, a total of 1454 cases were filed during January – March 2020, and only 682 were filed during these three months in 2021.

In the Southern District, during January - March 2020, 1876 cases were filed, while only 1001 cases were filed in the same three months in 2021.

Attorney Spotlight



Haley B. Mathis, Associate

Haley practices in our Jackson, Mississippi, office and primarily focuses on general liability and workers' compensation matters. After graduating Law School in 2016, she has enjoyed a diverse practice representing clients in personal injury, workers' compensation, domestic matters and criminal matters. She joined TWPD in 2017 and works with numerous employers, insurers, and TPAs to handle various types of personal, commercial, and employment claims. Haley has been a guest speaker at the MASI fall conference, and focuses her practice on creating strong relationships with both clients and colleagues. When not in the office, Haley enjoys judging Mock Trial Competitions and being involved in local professional groups. She is a proud Ole Miss Rebel and enjoys spending time with her husband, Ben, and dogs, Maverick, Nala, and Maple.



UNDERSTANDING MISSISSIPPI'S UNINSURED MOTORIST INSURANCE LAW

One of the most confusing and complex areas in Mississippi is understanding and correctly evaluating uninsured (“UM”) and underinsured (“UIM”) motorist claims. In Mississippi, if you are injured in a car accident involving an uninsured or underinsured motorist, there are special laws that apply to your injury claim. If you have UM insurance then you can collect from your UM policy. If you are hit by someone that is underinsured, there is another set of laws that apply to your UIM insurance. The state minimum limits in Mississippi for liability coverage are \$25,000 per person and \$50,000 per accident. This means that by law all drivers in Mississippi must have at least that much insurance.

One of the most important features of UM/UIM coverage is stacking. In Mississippi, you can generally stack coverage. There are some situations where you cannot stack coverage, which becomes complicated. Stacking works as follows: an insured has 4 vehicles on her auto insurance policy with \$25,000 per person/ \$50,000 per accident uninsured/underinsured motorist coverage. If the policies stack, then the insured actually has \$100,000 per person, \$200,000 per accident coverage.

Another important feature of uninsured/underinsured motorist coverage in Mississippi is the “set off.” The set off works as follows: You are hit by someone that has \$25,000 per person, \$50,000 per accident coverage. You have \$50,000 per person, \$100,000 per accident uninsured/underinsured coverage. You have \$50,000 in medical bills and pain and suffering. Your UM policy gets a credit or setoff for the \$25,000 per person coverage the at fault driver carried. Therefore, you only have \$25,000 UM coverage in this situation. Where this often becomes a problem is in the case where the at-fault driver carries \$25,000 per person liability coverage for bodily injuries and the injured individual/victim carries \$25,000 UM coverage. In that instance the injured individual has effectively no UM because the \$25,000 liability sets off the \$25,000 UM resulting in \$0.

TWPD’s attorneys have decades of experience evaluating and defending these claims in Mississippi. For a more in-depth analysis of the UM and UIM law in Mississippi, please [click here](#).



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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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