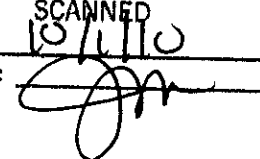


IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO. 02-14638 CA 08

SCANNED
Date: 10/11/10
Initials: 

OTIS J. McDUFFIE,
Plaintiff,
v.
JOHN W. URIBE, M.D.,
Defendant.

**ORDER GRANTING
DEFENDANT'S MOTION FOR NEW TRIAL**

THIS CAUSE came before the Court on August 2, 2010, on Defendant's Motion for Judgment in Accordance with his Motions for Directed Verdict and Alternative Motion for New Trial. The Court considered Defendant's Motion and Memorandum, Plaintiff's Memorandum in Opposition, relevant trial transcripts and case law, and argument made at a full day hearing on the Motion.

Defendant raised the following issues as grounds for granting a new trial:

1. **Plaintiff's improper use of a chapter in a medical textbook;**
2. **Plaintiff's references to steroid injections;**
3. **Plaintiff's late disclosure and use of a computer animation that did not accurately depict plaintiff's injury;**
4. **Plaintiff's counsel engaged in egregious misconduct during closing arguments requiring a new trial.**

As to each issue, the Court finds as follows:

1. As to the issue regarding the improper use of the chapter in the medical textbook, the Court finds that in accordance with the arguments made by the Defendant, the chapter in the textbook was improperly used and became a feature of the trial, permeating the entire trial.

2. In regard to the issue of steroid injections, the Court finds that without any evidence that Dr. Uribe injected Mr. McDuffie with steroids, the jury was allowed to hear and consider that the use of steroids was malpractice. The only evidence of steroid injections allegedly came

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from the plaintiff himself, who admitted on the witness stand that he did not know what was injected. Plaintiff now argues that his claim is based upon the fact that he should not have been injected at all. The Court finds this argument to be disingenuous as it was the Plaintiff who made the injection of steroids an issue in this case.

3. As to the issue regarding the computer animation, the Court finds that the use of the animation, which was disclosed at the last minute, was improper. However, any error was remedied by the Court's curative instruction which was formulated by the defense. As such, the defense motion is denied as to that issue.

4. Finally, the Court finds that Plaintiff's counsel's closing argument, which included approximately 28 improper comments, was harmful and prejudicial in its totality. Even absent objections, the Court finds that these comments were comparable to those for which the Third District has indicated a new trial would be warranted.

CONCLUSION

The Court finds that each of the three errors discussed *infra*, standing alone, warrants a new trial. Certainly their cumulative, highly prejudicial effect warrants a new trial. There is a reasonable probability that each of these errors and/or the cumulative effect of the errors affected the verdict.

Based on the singular and cumulative effect of the errors at trial, the Court vacates the judgment and grants a new trial on all issues.

DONE AND ORDERED in Chambers at Miami-Dade County Courthouse on this _____ day of _____, 2010.

Confirmed Copy
SEP 30 2010
MICHAEL A. GENDEN
CIRCUIT JUDGE

MICHAEL A. GENDEN
Circuit Court Judge

Copies Furnished to:

- | | | |
|---------------------------|---------------------------|----------------------------|
| Joel Eaton, Esq | Robert J. Borrello, Esq | Charles Michael Hartz, Esq |
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