

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

TIFFANY LAY, *et al.* :
 :
 Plaintiffs, :
 v. : Civil Action No.: 3:19-cv-188-KHJ-LGI
 :
 UNITED STATES OF AMERICA :
 :
 Defendant. :

**PLAINTIFFS’ SUPPLEMENTAL PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Plaintiffs have the burden of proof with respect to proving medical malpractice and causation.

The plaintiff establishes a prima facie case for medical malpractice by showing: (1) the defendant had a duty to conform to a specific standard of conduct for the protection of others against an unreasonable risk of injury; (2) the defendant failed to conform to that required standard; (3) the defendant’s breach of duty was a proximate [^{**26}] cause of the plaintiff’s injury. and; (4) the plaintiff was injured as a result. Cates v. Woods, 169 So. 3d 902, 906 (¶11) (Miss. Ct. App. 2014) (quoting McGee v. River Region Med. Ctr., 59 So. 3d 575, 578 (¶9) (Miss. 2022)). This Court has held that in most medical malpractice claims, “expert testimony must be used.” Posey v. Burrow, 93 So. 3d 905, 907 (¶8) (Miss. Ct. App. 2012) (quoting Barner, 605 So. 2d at 802).¹

Further, “not only must this expert identify and articulate the requisite standard that was not complied with, the expert must also establish that the failure was the proximate cause, or proximate contributing cause, of the alleged injuries.” *Id.* This Court has further held that

¹ An exception is made in certain cases “where a layman can observe and understand the negligence as a matter of common sense and practical experience.” Coleman v. Rice, 706 So. 2d 696, 698 (¶10) (Miss. 1997).

“unless the matter is within the common knowledge of laypersons, to establish a prima facie case of *medical* negligence against a physician, a plaintiff must present competent expert testimony as to the applicable *standard of care*, breach, and proximate causation.” *Haley v. Jurgenson*, 154 So. 3d 935, 938 (¶11) (Miss. Ct. App. 2015). “The expert opinion of a doctor as to causation must be expressed in terms of *medical* probabilities as opposed to possibilities.” *Univ. of Miss. Med. Ctr. V. Lanier*, 97 So. 3d 1197, 1202 (¶20) (Miss. 2012).

STATEMENT OF FACTS:

Plaintiffs proved the following facts, as supported by the evidence noted below each proposed statement of fact:

1. On April 14, 2014, Tiffany Lay gave birth via C-section to her daughter.

Evidence In Support:

- Exhibit J-9, Erica Ory, M.D. Medical Records, p. 1339

2. On April 19, 2014, during Tiffany Lay’s first post-delivery visit, she complained of back pain. After giving birth on April 14, 2014, Tiffany Lay never complained of any stress incontinence.

Evidence In Support:

- Exhibit J-9, Erica Ory, M.D. Medical Records, p. 1339, 1354
- Gayle Galan, M.D., Trial Transcript, p. 85, l. 25- p. 86, l.10
- Robert Lay Trial Transcript, p. 184, l. 4-7
- Bruce Janiak, M.D., Trial Transcript, p. 242, l. 13-19
- Carlos Bagley, M.D., Trial Transcript, p. 261, l. 23 – p. 262, l. 13
- Tiffany Lay, Trial Transcript, p. 417, l. 3-18
- Thomas A. Sweasey, M.D., Trial Transcript, p. 727, l. 2-15

3. During the ensuing months, Tiffany Lay underwent conservative treatment for the pain to include chiropractic treatment, physical therapy, and the use of various medications.

Evidence In Support:

- **Exhibit J-4, Medical records from NewSouth NeuroSpine, Exhibit 2 to Deposition of Eric Amundson, M.D., p. 6**

4. Tiffany Lay's pain persisted and she underwent an MRI on her lumbar or lower spine on August 19, 2015.

Evidence In Support:

- **Exhibit J-1, VA Medical Records, p. 357-358**
- **Eric Amundson, M.D., Trial Transcript, p. 135, l. 17-p. 136, l. 1**

5. On September 23, 2015, Tiffany Lay underwent an extensive evaluation by Dr. Eric Amundson, a neurosurgeon.

Evidence In Support:

- **Exhibit J-4, Medical records from NewSouth NeuroSpine, Exhibit 2 to Deposition of Eric Amundson, M.D., p. 6-7**

6. As part of the September 23, 2015, evaluation, Tiffany Lay completed an extensive questionnaire to include a Review of Symptoms.

Evidence In Support:

- **Exhibit J-4, Medical records from NewSouth NeuroSpine, Exhibit 2 to Deposition of Eric Amundson, M.D., p. 11-12**
- **Gayle Galan, M.D., Trial Transcript, p. 124, l. 11-p. 125, l. 1**
- **Tiffany Lay, Trial Transcript, p. 415, l. 17-p. 416, l. 4**

7. The September 23, 2015, Review of Symptoms included multiple specific questions about genitourinary dysfunction, to include frequent urination, change in force of stream when urinating, and incontinence. Tiffany Lay indicated that she had never had any of these problems.

Evidence In Support:

- **Exhibit J-4, Medical records from NewSouth NeuroSpine, Exhibit 2 to Deposition of Eric Amundson, M.D., p. 11-12**
- **Gayle Galan, M.D., Trial Transcript, p. 124, l. 11-p. 125, l. 1; p. 86, l. 19-p. 87, l. 13**

- **Bruce Janiak, M.D., Trial Transcript, p. 242, l. 5-12**
- **Eric Amundson, M.D., Trial Transcript, p. 137, l. 19-p. 138, l. 1**

8. The September 23, 2015, Review of Symptoms also included a neurological abnormality section, to include questioning about numbness or tingling sensation. Tiffany Lay indicated that her pain was in only her back and that she had some numbness in the bottom of her left foot.

Evidence In Support:

- **Exhibit J-4, Medical records from NewSouth NeuroSpine, Exhibit 2 to Deposition of Eric Amundson, M.D., p. 11**
- **Gayle Galan, M.D., Trial Transcript, p. 87, l. 14-17**

9. As of September 23, 2015, Tiffany Lay's low back pain was well-controlled by her pain medication.

Evidence In Support:

- **Exhibit J-4, Medical records from NewSouth NeuroSpine, Exhibit 2 to Deposition of Eric Amundson, M.D., p. 6-7**

10. On September 23, 2015, Dr. Amundson, Tiffany Lay's neurosurgeon, reviewed all of the information that Tiffany Lay and provided and performed a medical examination on her. He determined that she had a L5-S1 disc herniation that was causing a radiculopathy and he recommended minimally invasive surgery and Dr. Amundson expected an excellent result.

Evidence In Support:

- **Exhibit J-4, Medical records from NewSouth NeuroSpine, Exhibit 2 to Deposition of Eric Amundson, M.D., p. 6-7**
- **Eric Amundson, M.D., Trial Transcript, p. 148, l. 1-15**
- **Carlos Bagley, M.D., Trial Transcript, p. 263, l. 9-23**

11. A radiculopathy is often referred to as a pinched nerve and occurs when the disc is pushing on a nerve root as it exits the vertebrae. This does not involve a herniation into the spinal canal.

Evidence In Support:

- **Eric Amundson, M.D., Trial Transcript, p. 141, l. 6-11**

12. From an anatomical standpoint, the spinal cord branches into a series of nerve roots in the upper level of the lumbar spine that continues along the spinal cord. This part of the spine is referred to as the Cauda Equina, which means horses tail in Latin and it is called this because it resembles a horse's tail.

Evidence In Support:

- **Carlos Bagley, M.D., Trial Transcript, p. 266, l. 7-20**

13. Cauda Equina Syndrome occurs when the nerve roots are compressed and disrupt motor and sensory function to the lower extremities and bladder.

Evidence In Support:

- **Gayle Galan, M.D., Trial Transcript, p. 63, l. 18-p. 64, l. 3**
- **Carlos Bagley, M.D., Trial Transcript, p. 266, l. 7-p. 267, l. 9; p. 267, l. 21-p. 268, l. 23**

14. As of the morning of September 25, 2015, Tiffany Lay had no signs or symptoms of Cauda Equina Syndrome.

Evidence In Support:

- **Eric Amundson, M.D., Trial Transcript, p. 138, l. 24-p. 139, l. 7; p. 144, l. 23-p. 145, l. 2**
- **Carlos Bagley, M.D., Trial Transcript, p. 264, l. 4-12**

15. The nerve roots that comprise the Cauda Equina control bladder function, bowel function, sexual function, feeling in the saddle area of the body, and other functions related to the lower part of the body.

Evidence In Support:

- **Carlos Bagley, M.D., Trial Transcript, p. 266, l. 7-p. 267, l. 9; p. 267, l. 21-p. 268, l. 23**

16. It is known that a herniated disc can be unstable and can worsen over time and Tiffany Lay's herniated disc worsened over time.

Evidence In Support:

- Gayle Galan, M.D., Trial Transcript, p. 65, l. 11-17
- Bruce Janiak, M.D., Trial Transcript, p. 234, l. 16-21
- Eric Amundson, M.D., Trial Transcript, p. 149, l. 9-14; p. 154, l. 9-21; p. 157, l. 6-7; p. 158, l. 19-24

17. If a herniated disc worsens in the lumbar spine and starts to compress the spinal cord roots comprising the Cauda Equina, the patient can develop Cauda Equina Syndrome.

Evidence In Support:

- Bruce Janiak, M.D., Trial Transcript, p. 234, l. 22-25
- Eric Amundson, M.D., Trial Transcript, p. 151, l. 11-p. 152, l. 5; p. 152, l. 16-p. 153, l. 14

18. Cauda Equina Syndrome is a neurosurgical emergency and surgery must be performed emergently to relieve pressure on the spinal cord roots comprising the Cauda Equina.

Evidence In Support:

- Gayle Galan, M.D., Trial Transcript, p. 65, l. 18-23
- Eric Amundson, M.D., Trial Transcript, p. 151, l. 20-25
- Bruce Janiak, M.D., Trial Transcript, p. 240, l. 8-16
- Carlos Bagley, M.D., Trial Transcript, p. 259, l. 22-p. 260, l. 2
- Rachel A. Peery, M.D., Trial Transcript, p. 634, l. 20-22; p. 635, l. 19-23

19. The "Red Flag" symptoms of Cauda Equina Syndrome can include any of the following;

- A. Severe low back pain;
- B. Motor weakness, sensory loss, or pain in one, or more commonly both legs;
- C. Saddle anesthesia;
- D. Recent onset of bladder dysfunction, such as urinary retention or incontinence;

- E. Recent onset of bowel incontinence;
- F. Sensory abnormalities in the bladder or rectum;
- G. Recent onset of sexual dysfunction; and
- H. A loss of reflexes in the extremities.

These symptoms must be appropriately investigated.

Evidence In Support:

- Gayle Galan, M.D., Trial Transcript, p. 67, l 15-19; p. 74, l. 8-15
- Carlos Bagley, M.D., Trial Transcript, p. 136, l. 18-p. 139, l. 21
- Rachel A. Peery, Trial Transcript, p. 607, l. 3-10; p. 623, l. 10-24

20. Cauda Equina Syndrome is accompanied by a range of symptoms, the severity of which depends on the degree of compression of the nerve roots being compressed.

Evidence In Support:

- Carlos Bagley, M.D., Trial Transcript, p. 266, l. 7-p. 267, l. 9; p. 267, l. 21-p. 268, l. 23

21. Prior to and during Dr. Amundson's September 23, 2015, examination, Tiffany Lay did not suffer from any of the symptoms of Cauda Equina Syndrome and Dr. Amundson is confident that Tiffany Lay did not have Cauda Equina Syndrome on September 23, 2015. Had Tiffany Lay been leaking urine, Dr. Amundson would have ordered an MRI and performed a rectal exam.

Evidence In Support:

- Eric Amundson, M.D., Trial Transcript, p. 138, l. 24-p. 139, l. 21; p. 144, l. 23-p. 145, l. 2; p. 149, l. 9-14; p. 151, l. 11-19

22. Dr. Amundson concluded that Tiffany Lay's symptoms were related to a L5-S1 radiculopathy and he scheduled her for a microscopic discectomy surgery for November 9, 2015.

The surgery was going to be minimally invasive and include a one-inch incision. Ms. Lay would have been discharged to go home 1-2 hours after the surgery.

Evidence In Support:

- Eric Amundson, M.D., Trial Transcript, p. 135, l. 17-p. 136, l. 12; p. 147, l. 23-p. 148, l. 10

23. After the appointment of September 23, 2015, Tiffany Lay contacted her provider at the Jackson Veteran's Administration Hospital via secure messaging and informed them that she was having surgery at Baptist Medical Center on November 9, 2015, and that it was going to be performed by Dr. Eric Amundson.

Evidence In Support:

- Tiffany Lay, Trial Transcript, p. 419, l. 11-21
- Rachel A. Peery, M.D., Trial Transcript, p. 638, l. 23-p. 639, l. 10

24. At some point after the September 23, 2015, visit with Dr. Amundson, Tiffany Lay developed some increasing back pain.

Evidence In Support:

- Tiffany Lay, Trial Transcript, p. 419, l. 22-p. 420, l. 1

25. On the morning of September 25, 2015, Tiffany Lay was taken to the Jackson Veteran's Administration Emergency Department by her husband Robert Lay because of severe low back pain and leaking urine.

Evidence In Support:

- Exhibit J-1, VA Medical Records, p. 22-23
- Tiffany Lay, Trial Transcript, p. 420, l. 3-14

26. Tiffany Lay had been told by NP Kendrick to come to the Veterans Administration Hospital Emergency Room if her symptoms got worse and Tiffany Lay needed prior authorization to see a provider outside the Veterans Administration System.

Evidence In Support:

- Exhibit J-1, VA Medical Records, p. 357
- Tiffany Lay, Trial Transcript, p. 422, l. 24-p.423, l. 8; p. 491, l. 2-8

27. The triage assessment indicated that Tiffany Lay was complaining of increased back pain since Wednesday evening, that she had a herniated disc in the L5-S1 area and was scheduled for surgery, and that the pain “suddenly became worse with little relief from her home meds.”

Evidence In Support:

- Exhibit J-1, VA Medical Records, p. 21

28. The triage nurse, Heather Forler, testified that Tiffany Lay had a disc herniation in an area of her back that could cause Cauda Equina Syndrome if it worsened.

Evidence In Support:

- Heather Forler, Trial Transcript, p. 563, l. 11-17; p. 564, l. 6-9

29. The triage nurse, Heather Forler, testified that she put x-ray as a projected resource allocation on the triage note because she anticipated Tiffany Lay would get an x-ray or MRI because you cannot determine if someone is suffering for Cauda Equina Syndrome by looking at them.

Evidence In Support:

- Heather Forler, Trial Transcript, p. 564, l. l. 6-9; p. 564, l. 20-p. 565, l. 6; p. 567, l. 3-10

30. Tiffany Lay was seen by Dr. Rachel Peery, the doctor who was responsible for her evaluation and treatment.

Evidence In Support:

- Exhibit J-1, VA Medical Records, p. 22-23

31. During Tiffany Lay's evaluation, Dr. Peery learned that Tiffany Lay's back pain had very recently become much worse and that she had pain with walking. This was a change from the findings during the September 23, 2015, evaluation by Dr. Amundson. This new finding was a red flag symptom of Cauda Equina Syndrome.

Evidence In Support:

- Exhibit J-1, VA Medical Records, p. 21-23
- Gayle Galan, M.D., Trial Transcript, p. 69, l. 2-18; p. 70, l. 3-9
- Eric Amundson, M.D., Trial Transcript, p. 149, l. 9-14; p. 180, l. 21-p. 181, l. 1
- Heather Forler, Trial Testimony, p. 563, l. 23-p. 564, l. 2
- Rachel A. Peery, M.D., Trial Testimony, p. 613, l. 24-p. 614, p. 7

32. During Tiffany Lay's evaluation, Dr. Peery learned that the back pain was present even though Tiffany Lay had taken double her pain medications.

Evidence In Support:

- Exhibit J-1, VA Medical Records, p. 22-23

33. During Tiffany Lay's evaluation, Dr. Peery learned that Tiffany Lay had the new onset of bladder dysfunction which was manifesting itself as "urine leakage when she coughed or sneezed and has mild bladder leakage." This bladder dysfunction was a change from the findings during the September 23, 2015, evaluation by Dr. Amundson. This new finding was a red flag symptom of Cauda Equina Syndrome.

Evidence In Support:

- Exhibit J-1, VA Medical Records, p. 22-23
- Gayle Galan, M.D. Trial Transcript, p. 74, l. 16-21; p. 97, l. 10-21; p. 99, l. 23-p. 100, l. 4, p. 102, l. 10-15; p. 120, l. 17-21
- Robert Lay Trial Transcript, p. 183, l. 21-p. 184, l. 3
- Bruce Janiak, M.D., Trial Transcript, p. 254, l. 6-16
- Carlos Bagley, M.D. Trial Transcript, p. 269, l. 22-p. 270, l. 10
- Tiffany Lay, Trial Transcript, p. 424, l. 8-22; p. 483, l. 18-p. 484, l. 1; p. 485, l. 1-3
- Rachel A. Peery, M.D., Trial Transcript, p. 646, l. 4-10; p. 649, l. 1-14

34. Dr. Peery testified that if Tiffany Lay had the recent onset of bladder dysfunction as of September 25, 2015, then the Standard of Care required her to perform an MRI.

Evidence In Support:

- Rachel A. Peery, M.D., Trial Transcript, p. 613, l. 6-19

35. Dr. Peery is not an Emergency Room doctor by training.

Evidence In Support:

- Rachel A. Peery, M.D., Trial Transcript, p. 571, l. 11-17; p. 622, l. 4-9

36. Dr. Peery's September 25, 2015, note does not list urinary stress incontinence as a diagnosis.

Evidence In Support:

- Exhibit J-1, VA Medical Records, p. 23
- Rachel A. Peery, M.D., Trial Transcript, p. 621, l. 15-25

37. During Tiffany Lay's evaluation, Dr. Peery learned that she had the new onset of numbness in her upper left leg. This new onset of numbness in the upper left leg was a change from the findings during the September 23, 2015, evaluation by Dr. Amundson. This new finding was a red flag symptom of Cauda Equina Syndrome.

Evidence In Support:

- Exhibit J-1, VA Medical Records, p. 23
- Tiffany Lay, Trial Transcript, p. 462, l. 18-21
- Rachel A. Peery, Trial Transcript, p. 614, l. 8-21; p. 615, l. 21-24

38. Had Dr. Peery asked, she would have learned that Tiffany Lay had not had a bowel movement for many days. This constitutes bowel dysfunction and may have been yet another sign of Cauda Equina Syndrome.

Evidence In Support:

- Exhibit J-3, Mississippi Baptist Medical Center Medical Records, p. 42
- Tiffany Lay, Trial Transcript, p. 483, l. 1-8

39. An average patient does not understand the relationship between a herniated disc and back pain and bowel and bladder dysfunction.

Evidence In Support:

- Gayle Galan, M.D. Trial Transcript, p. 71, l. 8- p. 72, l.6; p. 73, l. 6-19; p. 73, l. 24-p. 74, l. 4

40. Both Tiffany Lay and Robert Lay were present during the emergency medicine visit and testified that Dr. Peery was told about the sudden increase of back pain, the recent onset of bladder dysfunction, and numbness (all red flag symptoms) during the Emergency Room visit of September 25, 2015.

Evidence In Support:

- Exhibit J-1, VA Medical Records, p. 22-23
- Robert Lay, Trial Transcript, p. 186, l. 9-14
- Tiffany Lay, Trial Transcript, p. 420, l. 2-4; p. 420, l. 19-25; p. 421, l. 3-18; p. 425, l. 3-16

41. Dr. Peery testified in deposition that she did not recall if Tiffany Lay told her that the bladder dysfunction was new.

Evidence In Support:

- Gayle Galan, M.D., Trial Transcript, p. 61, l. 10-p. 62, l. 3
- Rachel A. Peery, M.D., Trial Transcript, p. 669, l. 10-19

42. Dr. Peery testified in deposition that she has only a vague recollection of the appointment and only recalls that Tiffany Lay had a pregnancy and came to the hospital with back pain.

Evidence In Support:

- Rachel A. Peery, M.D., Trial Transcript, p. 608, l. 5-13; p. 609, l. 3-11; p. 612, l. 7-23; p. 656, l. 14-p. 657, l. 2

43. Dr. Peery testified that the description of Tiffany Lay's urinary complaints are as recorded in the September 25, 2015, Emergency Room note are more consistent with Tiffany Lay's trial testimony than with her own testimony.

Evidence In Support:

- Rachel A. Peery, M.D., Trial Transcript, p. 661, l. 9-21

44. Dr. Peery did not mention Cauda Equina Syndrome in the medical record.

Evidence In Support:

- Exhibit J-1, VA Medical Records, p. 22-23
- Rachel A. Peery, M.D., Trial Transcript, p. 626, l. 10-13

45. Dr. Peery did not mention Cauda Equina Syndrome to Tiffany or Robert Lay and gave them no explanation or education as to how the bladder dysfunction, severe low back pain, and sensory loss or numbness related to her condition.

Evidence In Support:

- Exhibit J-1, VA Medical Records, p. 22-23
- Tiffany Lay, Trial Transcript, p. 427, l. 3-10

46. There were additional exams (rectal tone, post-void residual, and MRI) that Dr. Peery could have obtained to evaluate Tiffany Lay for Cauda Equina Syndrome, but Dr. Peery performed none of those tests.

Evidence In Support:

- Rachel Peery, M.D., Trial Transcript, p. 662, l. 15-p. 663, l. 7

47. Patients with Cauda Equina Syndrome will oftentimes suffer from decreased tone in their anal sphincter and from decreased sensation in the saddle area. A rectal exam is necessary to evaluate decreased rectal tone and a pin-prick evaluation is necessary to determine whether there has been any loss of sensation in the saddle area. This is especially true with early

onset of Cauda Equina Syndrome because a patient may not notice subtle changes. Dr. Peery performed neither of these evaluations.

Evidence In Support:

- Gayle Galan, M.D. Trial Transcript, p. 62, l. 14- p. 63, l. 1; p. 64, l. 4-8; p. 64, l. 9-13
- Bruce Janiak, M.D., Trial Transcript, p. 235, l. 21-24
- Carlos Bagley, M.D., Trial Transcript, p. 270, l. 21-p. 271, l. 2; p. 271, l. 14-17
- Rachel A. Peery, M.D., Trial Transcript, p. 651, 6-14

48. Had a rectal exam been performed on September 25, 2015, it likely would have been abnormal.

Evidence In Support:

- Bruce Janiak, M.D., Trial Transcript, p. 236, l. 18-23
- Carlos Bagley, M.D., Trial Transcript, p. 271, l. 3-13
- Rachel A. Peery, M.D., Trial Transcript, p. 653, l. 7-19
- Thomas Sweasey, M.D., Trial Transcript, p. 730, l. 3-9

49. Dr. Peery testified that a change in rectal tone is the “canary in the coal mine” and a harbinger or warning sign that things are about to change but she failed to assess Tiffany Lay’s rectal tone.

Evidence In Support:

- Rachel Peery, M.D., Trial Transcript, p. 651, l. 24-p. 652, l. 7, p. 653 l. 7-19; p. 656, l. 19-p. 657, l. 12
- Tiffany Lay, Trial Transcript, p. 426, l. 5-11

50. Patients with Cauda Equina Syndrome may be unable to empty their bladder completely although they will not be able to sense this. A test called a post-void residual is a non-invasive test using an ultrasound device to determine if a patient is unable to completely empty their bladder. Dr. Peery could have performed a post void residual but did not do so.

Evidence In Support:

- **Bruce Janiak, M.D., Trial Transcript, p. 236, l. 24-p. 237, l. 13; p. 237, l. 16-17**
- **Carlos Bagley, M.D., Trial Transcript, p. 270, l. 21-p. 271, l. 2; p. 271, l. 18-p. 272, l. 4**
- **Rachel Peery, M.D., Trial Transcript, p. 644, l. 1-24; p. 645, l. 7-11**

51. A post-void residual would likely have been abnormal.

Evidence In Support:

- **Carlos Bagley, M.D., Trial Transcript, p. 272, l. 5-17**
- **Rachel A. Peery, M.D., Trial Transcript, p. 644, l. 10-24; p. 645, l. 4-11**

52. Dr. Peery could have, but did not, order an MRI so it could be compared to the one from August 19, 2015, to see if there had been any worsening of the disc herniation.

Evidence In Support:

- **Gayle Galan, M.D., Trial Transcript p. 64, l. 14- p. 65, l.10**
- **Rachel Peery, M.D., Trial Transcript, p. 663, l. 25-p. 664, l. 7**

53. Dr. Peery testified that an anal sphincter exam, a post-void residual, or an MRI would have given her a clearer picture of Tiffany Lay's condition on September 25, 2015, but she performed none of these tests.

Evidence In Support:

- **Rachel Peery, M.D., Trial Transcript, p. 663, l. 19-p. 664, l. 3**
- **Eric Amundson, M.D., Trial Transcript, p. 139, l. 8-21**

54. Dr. Peery knew the identity of Tiffany Lay's neurosurgeon or could have obtained it from Tiffany Lay but she did not contact the neurosurgeon or ask for another neurosurgeon to come into the emergency room to consult on the case.

Evidence In Support:

- **Exhibit J-1, VA Medical Records, p. 25**
- **Gayle Galan, M.D. Trial Transcript, p. 90, l. 8-18; p. 90, l. 24-p. 91, l. 6**
- **Rachel Peery, M.D., Trial Transcript, p. 641, l. 7-19**

55. Dr. Amundson would have ordered an emergent MRI had he been informed of Tiffany Lay's condition on September 25, 2015.

Evidence In Support:

- Eric Amundson, M.D., Trial Transcript, p. 139, l. 8-21; p. 177, l. 4-13

56. The greater the degree of compression of the nerve roots and the longer the compression of the Cauda Equina, the greater the likelihood that the injury will be permanent.

Evidence In Support:

- Carlos Bagley, M.D. Trial Transcript, p. 260, l. 3-8
- Rachel A. Peery, M.D., Trial Transcript, p. 634, l. 23-25
- Eric Amundson, M.D., Trial Transcript, p. 150, l. 21-p. 153, l. 4

57. Urinary dysfunction is on a continuum and gets worse (mild leakage, stress incontinence, complete incontinence) as the degree of compression on the Cauda Equina increases.

Evidence In Support:

- Eric Amundson, M.D., Trial Transcript, p. 138, l. 2-17
- Bruce Janiak, M.D., Trial Transcript, p. 252, l. 18-p. 253, l. 2
- Carlos Bagley, M.D., Trial Transcript, p. 261, l. 9-22; p. 268, l. 13-23; p. 274, l. 4-16; p. 274, l. 21-p. 275, l. 14
- Rachel A. Peery, M.D., Trial Transcript, p. 642, l. 7-17
- Thomas Sweasey, M.D., Trial Transcript, p. 722, l. 19-p. 723, l. 3; p. 723, l. 9-19

58. In spite of new red flag symptoms complaint with Cauda Equina Syndrome, of suddenly increasing back pain not amenable to normal pain medications, sensory loss or numbness, and the recent onset of bladder dysfunction as manifested by urinary dysfunction, Dr. Peery performed no anal sphincter exam, no pin-prick sensation exam, no post void residual test, and no MRI. In addition, she did not ask for a neurosurgical consult nor did she contact Tiffany

Lay's neurosurgeon or recommend that Tiffany Lay return to her neurosurgeon for an additional evaluation.

Evidence In Support:

- **Carlos Bagley, M.D., Trial Transcript, p. 260, l. 23-p. 261, p. 8; p. 268, l. 24-p. 269, l. 4**

59. Dr. Peery did not explain to Tiffany or Robert Lay how her various symptoms may have been related to Cauda Equina Syndrome and did not explain the seriousness of any change in those symptoms or that they may constitute a neurosurgical emergency and that time was of the essence in addressing them.

Evidence In Support:

- **Tiffany Lay, Trial Transcript, p. 427, l. 3-10**
- **Rachel Peery, M.D., Trial Transcript, p. 631, l. 4-10; p. 634, l. 17-19**

60. Dr. Peery prescribed oxycodone, a heavy-duty narcotic, as well as a Medrol dose pack, ice and heat for her back for comfort, and told Tiffany Lay to come back as needed.

Evidence In Support:

- **Exhibit J-1, VA Medical Records, p. 23**

61. Dr. Peery violated the Standard of Care in her care and treatment of Tiffany Lay on September 25, 2015.

Evidence In Support:

- **Gayle Galan, M.D., Trial Transcript p. 60, l. 8-14; p. 79, l. 15-p. 80, l. 11**
- **Bruce Janiak, M.D., Trial Transcript, p. 233, l. 11-19; p. 238, l. 19-25; p. 254, l. 17-p. 255, l. 6**
- **Carlos Bagley, M.D., Trial Transcript p. 260, l. 21-22; p. 272, l. 6-18**

62. On September 26, 2015, Tiffany Lay woke up, was still leaking some urine, still had difficulty walking, and had some increased numbness. These were symptoms that she had

reported to Dr. Peery. Tiffany Lay thought that the increased numbness and difficulty walking were related to the oxycodone that she was taking.

Evidence In Support:

- Tiffany Lay, Trial Transcript, p. 430, l. 23-p. 431, l. 4

63. On September 26, 2015, Tiffany Lay called Brandi Bingham, a close friend, to come over and help take care of Tiffany Lay's young daughter. Tiffany Lay remained on her couch most of the day, slept, and did not move much. She still had a pad under her because she continued leaking urine.

Evidence In Support:

- Tiffany Lay, Trial Transcript, p. 429, l. 3-23

64. At about 5-6 PM on September 26, 2015, Tiffany Lay tried to urinate but could not. During the evening hours of September 26, 2015, and into the early morning hours of September 27, 2015, Tiffany Lay tried to urinate multiple times but could not. In addition, the numbness in her legs got worse.

Evidence In Support:

- Tiffany Lay, Trial Transcript, p. 431, l. 7-p. 432, l. 8

65. Tiffany Lay was able to sleep, but when she woke up on September 27, 2015, she had completely urinated her bed and she could not feel her legs or saddle area. She called her husband who was sleeping in a different room and they decided to go back to the emergency room.

Evidence In Support:

- Tiffany Lay, Trial Transcript, p. 433, l. 4-10

66. On September 27, 2015, Tiffany and Robert Lay returned to the Jackson Veterans Hospital Emergency Room.

Evidence In Support:

- **Exhibit, J-1, VA Medical Records, p. 10-12**

67. On September 27, 2015, Tiffany Lay was attended to by Dr. Fernando Daniels, who diagnosed her with Cauda Equina Syndrome and facilitated her transfer to Baptist Medical Center for emergency surgery.

Evidence In Support:

- **Exhibit, J-1, VA Medical Records, p. 10-12**
- **Exhibit, J-3, Mississippi Baptist Medical Center Medical Records, p. 421**

68. On September 27, 2015, Tiffany Lay underwent an MRI at Baptist Memorial Center that showed a massive enlargement of the disc herniation and fragments of the disc compressing the spinal canal. Because Dr. Amundson was out of town at a conference, surgery was performed by Dr. Edward Collum.

Evidence In Support:

- **Exhibit, J-3, Mississippi Baptist Medical Center Medical Records, p. 435-436**
- **Eric Amundson, M.D., Trial Transcript, p. 158, l. 19-24**
- **Tiffany Lay, Trial Transcript, p. 439, l. 20-25**

69. On September 27, 2015, Dr. Collum performed surgery and decompressed the spinal canal. He found a “massive disc herniation” and removed a “tremendous amount of disc material.”

Evidence In Support:

- **Exhibit, J-3, Mississippi Baptist Medical Center Medical Records, p. 435**

70. Had Tiffany Lay been diagnosed with early onset of Cauda Equina Syndrome on the morning of September 25, 2015, by Dr. Peery, the Standard of Care required an immediate referral for emergent surgery.

Evidence In Support:

- **Bruce Janiak, M.D., Trial Transcript, p. 239, l. 8-18**
- **Carlos Bagley, M.D., Trial Transcript, p. 272, l. 6-18; p. 273, l. 19-p. 274, l. 3; p. 277, l. 2-5**
- **Rachel Peery, M.D., Trial Transcript, p. 650, l. 13-18**

71. Dr. Peery's failure to refer Tiffany Lay for emergency neurosurgery on September 25, 2015, delayed Tiffany Lay's treatment for her Cauda Equina Syndrome and allowed the condition to persist for a longer period of time and for the severity of her condition to worsen.

Evidence In Support:

- **Carlos Bagley, M.D., Trial Transcript, p. 277, l. 2-5**

72. Had Tiffany Lay been timely diagnosed by Dr. Peery on September 25, 2015, her neurosurgeon would have performed emergency surgery on September 25, 2015.

Evidence In Support:

- **Gayle Galan, M.D., Trial Transcript p. 81, l. 4-12; p. 83, l. 22-p. 84, l.14**
- **Eric Amundson, M.D., Trial Transcript, p. 141, l. 12-21; p. 151, l. 1-5**
- **Carlos Bagley, M.D., Trial Transcript, p. 273, l. 19-p. 274, l. 3**
- **Exhibit P-8, Dr. Cullom Deposition Transcript, p. 7, l. 20-p. 8, l. 12**

73. Had the emergency surgery been performed on September 25, 2015, the pressure on the nerve roots in the Cauda Equina would have been relieved and Tiffany Lay would have more likely than not recovered.

Evidence In Support:

- **Gayle Galan, M.D., Trial Transcript, p. 103, l. 12-21; p. 118, l. 7-22**
- **Carlos Bagley, M.D., Trial Transcript, p. 276, l. 5-19; p. 279, l. 17-23; p. 281, l. 6-13; p. 281, l. 17-20; p. 281, l. 25-p. 282, l.3, p. 282, l. 6-9; p. 282, l. 10-11, p. 282, l. 12, 14**

- Exhibit P-8, Dr. Cullom Deposition Transcript, p. 7, l. 20-p. 8, l. 12

74. Had an MRI been performed on September 25, 2015, it more likely than not would have shown an abnormality and led to prompt surgery.

Evidence In Support:

- Gayle Galan, M.D. Trial Transcript p. 75, l. 17-p. 76, l. 7; p. 103, l. 12-21; p. 118, l. 7-22
- Carlos Bagley, M.D., Trial Transcript, p. 278, l. 27-p. 279, l. 5
- Eric Amundson, M.D., Trial Transcript, p. 141, l. 12-21; p. 151, l. 1-5 (testified as treating physician – limited to immediate surgery)
- Exhibit P-8, Dr. Cullom Deposition Transcript, pg. 19, l. 2-9

75. As a result of the failure of Dr. Peery to timely diagnose the Cauda Equina Syndrome, Tiffany Lay has suffered permanent damage to the nerve roots in the Cauda Equina region of her spine.

Evidence In Support:

- Gayle Galan, M.D. Trial Transcript p. 60, l. 15-17
- Carlos Bagley, M.D., Trial Transcript, p. 281, l. 6-13 p. 281, l. 25-p. 282, l.3, p. 282, l. 6-9; p. 282, l. 10-11, p. 282, l. 12-14; p. 282, l. 19-22; p. 302, l. 12-25; p. 308, l. 16-p. 309, l. 3
- Exhibit, P-8, Dr. Cullom Deposition Transcript, p. 18, l. 17-p. 19, l. 9
- Exhibit, J-4, Medical records from NewSouth NeuroSpine, Exhibit 2 to Deposition of Eric Amundson, M.D., p. 3-4, 15-16 (Review of Symptoms)
- Exhibit, J-8, E. Thomas Cullom, M.D. Medical Records, p. 37

76. The damage to the nerve roots in the Cauda Equina have resulted in a neurogenic bladder causing permanent urinary incontinence. As a result, Tiffany Lay had to be treated by an urologist following the surgery of September 27, 2015.

Evidence In Support:

- Exhibit, J-4, Medical records from NewSouth NeuroSpine, Exhibit 2 to Deposition of Eric Amundson, M.D., p. 3-4; p. 15-16
- J-10, MS Urology Clinic Medical Records, p. 1438-1439; p. 1482

77. Tiffany Lay has had to undergo multiple surgeries to implant an Interstim device to help control her bladder function. The dates of these surgeries were March 24, 2017, for the trial implant, and April 7, 2017, for the permanent implant. Because Tiffany Lay had to undergo a subsequent MRI, the device had to be removed on October 10, 2018, and re-implanted on December 3, 2018.

Evidence In Support:

- **Exhibit, J-10, MS Urology Clinic Medical Records, p. 1452; p. 1474; p. 1488; p. 1490; p. 1492**
- **Tiffany Lay, Trial Transcript, p. 441, l. 19-p. 442, l. 7; p. 442, l. 8-11; p. 541, l. 20-25**

78. As a result of the failure of Dr. Peery to timely diagnose the Cauda Equina Syndrome, Tiffany Lay suffers from bowel incontinence.

Evidence In Support:

- **Exhibit J-4, Medical records from NewSouth NeuroSpine, Exhibit 2 to Deposition of Eric Amundson, M.D., p. 3-4, 15-16**
- **Carlos Bagley, M.D., Trial Transcript, p. 281, l. 6-13; p. 282, l. 6-9**

79. Tiffany Lay has had to take a number of medications on a daily basis to help with bowel function. Tiffany Lay has to use enemas on a regular basis and has had to digitally disimpact herself due to bowel dysfunction. In addition, Tiffany Lay suffers from bowel incontinence and has had difficulty controlling bowel movements and has soiled herself on a number of occasions. Tiffany Lay cannot defecate without the use of powerful laxatives and enemas, but taking them causes fecal incontinence because Tiffany Lay has decreased anal sphincter control as a result of Dr. Peery's failure to diagnose Tiffany Lay's Cauda Equina Syndrome.

Evidence In Support:

- **Robert Lay Trial Transcript, p. 194, l. 10-20; p. 195, l. 2-7**

- **Tiffany Lay, Trial Transcript, p. 440, l. 10-19; p. 444, l. 19-p. 445, l. 2; p. 445, l. 7-11; p. 446, l. 2-10; p. 446, l. 23-p. 447, l. 20**

80. Tiffany Lay has consulted a specialist for the bowel incontinence and that specialist gave her the option of undergoing the removal of her entire large bowel to help with bowel function. This would require a permanent colostomy bag to collect feces.

Evidence In Support:

- **Tiffany Lay, Trial Transcript, p. 446, l. 2-10**
- **Exhibit, J-5, GI Associates & Endoscopy Medical Records - throughout record**
- **Exhibit, J-9, Erica Ory, M.D. Medical Records, p. 1372-1373**

81. As a result of the failure of Dr. Peery to diagnose Cauda Equina Syndrome on September 25, 2015, Tiffany Lay suffers from widespread numbness in her legs and has neuropathic pain syndrome. Over time, Tiffany Lay has taken morphine, pregabalin, Lyrica and fentanyl for her pain syndrome.

Evidence In Support:

- **Carlos Bagley, M.D., Trial Transcript, p. 281, l. 6-13; p. 282, l. 6-9**
- **Tiffany Lay, Trial Transcript, p. 440, l. 4-9**
- **Exhibit, J-4, Medical records from NewSouth NeuroSpine, Exhibit 2 to Deposition of Eric Amundson, M.D., p. 2-4; p. 15-16**
- **Exhibit, J-8, E. Thomas Cullom, M.D. Medical Records, p. 37**

82. The bladder dysfunction, bowel dysfunction, nerve pain syndrome, and numbness are permanent and were caused by the failure of Dr. Peery to diagnose Cauda Equina Syndrome on September 25, 2015.

Evidence In Support:

- **Exhibit, P-8, Dr. Cullom Deposition Transcript, p. 18, l. 17-p. 19, l. 1**
- **Carlos Bagley, M.D., Trial Transcript, p. 281, l. 6-13**
- **Howard Katz, M.D., Trial Transcript, p. 328, l. 15-p. 331, l. 3**
- **Philip J. Blount, M.D, Trial Transcript, p. 810, l. 7-p. 811, l. 1 (although he does not fully blame all of the injuries only on CES)**

- **Exhibit, J-4, Medical records from NewSouth NeuroSpine, Exhibit 2 to Deposition of Eric Amundson, M.D., p. 3-4; p. 15-16**

83. As a result of Cauda Equina Syndrome, Tiffany Lay suffers daily from bladder dysfunction, bowel dysfunction, neuropathic pain syndrome, and widespread numbness.

Evidence In Support:

- **Tiffany Lay, Trial Transcript, p. 440, l. 4-9; 450, l. 19-p. 451, l. 2; p. 451, l. 5-p. 452, l. 9; p. 452, l. 13-20; p. 452, l. 23-p. 453, l. 14**
- **Exhibit, J-4, Medical records from NewSouth NeuroSpine, Exhibit 2 to Deposition of Eric Amundson, M.D., p. 3-4; p. 15-16**

84. Prior to September 27, 2015, Tiffany Lay enjoyed an active life and enjoyed many outdoor activities without no limitations.

Evidence In Support:

- **Robert Lay, Trial Transcript, p. 183, l. 5-12**
- **Tiffany Lay, Trial Transcript, p. 410, l. 23-p.411, l. 23; p. 454, l. 21-p. 455, l. 3**

85. Tiffany Lay’s education includes an undergraduate degree in Health Information and Information Management and a Master’s Degree in Health Science.

Evidence In Support:

- **Tiffany Lay, Trial Transcript, p. 408, l. 1-22**

86. Tiffany Lay served in the Armed Forces and has an honorable discharge.

Evidence In Support:

- **Tiffany Lay, Trial Transcript, p. 407, l. 2-15**

87. From 2009-2019, Tiffany Lay was employed at the Montgomery Veterans Administration Medical Center as a medical coder and auditor. From 2009 to 2015, she was able to perform her job without any accommodations. Because of the permanent injury that Tiffany Lay sustained as a result of the failure to diagnose Cauda Equina Syndrome by Dr. Peery, Tiffany Lay needed work accommodations after September 2015, and was initially given a “light

duty” accommodation and performed her duties from late 2015 to 2019 mostly working from home.

Evidence In Support:

- Robert Lay Trial Transcript, p. 180, l. 7-11; p. 195, l. 10-20
- Tiffany Lay, Trial Transcript, p. 409, l. 8-p. 410, l. 5; p. 411, l. 15-23; p. 412, l. 20-p. 413, l. 19; p. 538, l. 14-p. 539, l. 18

88. In 2019, Tiffany Lay’s employer wanted her to return to the office full time, but she was unable to do so. She could not perform her duties at work because she was unable to sit or stand for long periods of time, was in constant pain, and had to take narcotic medication for the pain, which altered her mental status. In addition, Tiffany Lay’s frequent bowel dysfunction required medication and caused leakage and fecal incontinence, and she suffered from bowel incontinence when she took laxatives because of decreased anal sphincter control. In addition, Tiffany Lay suffered from unpredictable urinary incontinence and, at times, had to wear adult diaper or a heavy liner.

Evidence In Support:

- Robert Lay Trial Transcript, p. 193, l. 18-p. 194, l. 6
- Tiffany Lay, Trial Transcript, p. 444, l. 9-p. 451, l. 16; p. 456, l. 4-p. 459, l. 11; p. 541, l. 1-p.542, l. 20

89. Tiffany Lay has significant work limitations and is not fully employable and has suffered a diminution in earning capacity.

Evidence In Support:

- Exhibit, P-14, Life Care Plan and Vocational Rehabilitation Report of Dr. Brawner
- Howard Katz, M.D., Trial Transcript, p. 331, l. 7-p. 332, l. 22; p. 352, l. 21-p. 353, l. 5
- Tiffany Lay, Trial Transcript, p. 456, l. 4-p. 459, l. 11; p. 529, l. 13-p. 530, l. 8; p. 541, l. 1-p. 542, l. 20
- Philip J. Blount, M.D., Trial Transcript, p. 847, l. 20-p. 848, l. 2

90. Prior to her Cauda Equina Syndrome injury, Tiffany Lay had a long and consistent record of being employed.

Evidence In Support:

- **Exhibit, P-14, Life Care Plan and Vocational Rehabilitation Report of Dr. Brawner, p. 4-6**
- **Tiffany Lay, Trial Transcript, p. 408, l. 23-p. 410, l. 9**

91. After her CES injury, Tiffany Lay was able to continue working for the veterans administration because they allowed her to work from home and made other accommodations until her job description changed.

Evidence In Support:

- **Tiffany Lay, Trial Transcript, p. 456, l. 1-p. 457, l. 22; p. 538, l. 14-p. 541, l. 14**

92. Tiffany Lay has reached maximum medical improvement.

Evidence In Support:

- **Philip J. Blount, M.D., Trial Transcript, p. 798, l. 9-12**
- **Howard Katz, M.D., Trial Transcript, p. 329, l. 4-12**

93. The physical medicine and rehabilitation experts who examined Tiffany Lay addressed her ability to work and testified that it is possible that she can work but that she can only perform sedentary to sedentary/light duty activities with modifications and adaptations.

Evidence In Support:

- **Exhibit, P-14, Life Care Plan and Vocational Rehabilitation Report of Dr. Brawner**
- **Philip J. Blount, M.D., Trial Transcript, p. 847, l. 20-p. 848, l. 2**
- **Howard Katz, M.D., Trial Transcript, p. 352, l. 21-p. 353, l. 5**

94. Ability to work is based on risk of harm or injury in returning to work and not on capacity to work or tolerance. The physical medicine and rehabilitation experts who examined Tiffany Lay were only able to discuss whether she has the physical capacity to perform work, but

could not address employability. They could not discuss other factors related to Tiffany Lay's ability to work, to include capacity and tolerance.

Evidence In Support:

- Philip J. Blount, M.D., Trial Transcript, p. 847, l. 8-15; p. 850, l. 6-19; p. 818, l. 15-18
- Howard Katz, M.D., Trial Transcript, p. 333, l. 17-p. 344, l. 11; p. 357, l. 15-p. 358, l. 5

95. A vocational rehabilitation expert is the proper expert to determine if a person is employable and in what capacity and to what extent they are employable.

Evidence In Support:

- Philip J. Blount, M.D., Trial Transcript, p. 850, l. 20-p. 851, l. 2; p. 851, l. 18-p. 852, l. 7
- Howard Katz, M.D., Trial Transcript, p. 333, l. 17-p. 344, l. 11; p. 357, l. 15-p. 358, l. 5

96. Tiffany Lay has a number of residual problems related to the CES that impact her ability to be employed. These include neuropathic pain, bowel incontinence, bladder incontinence, stamina, and anxiety.

Evidence In Support:

- Exhibit, P-14, Life Care Plan and Vocational Rehabilitation Report of Dr. Brawner, pages 7-8
- Howard Katz, M.D., Trial Transcript, p. 330, l. 5-p. 331, l. 3
- Philip J. Blount, M.D., Trial Transcript, p. 810, l. 7-p. 811, l. (Although he does not fully blame the injuries only on CES.)
- Tiffany Lay, Trial Transcript, p. 458, l. 12-p. 459, line 11

97. Dr. Bruce Brawner prepared and extensive vocational analysis and determined that although Tiffany Lay could work, she has suffered a donation or decrease in earning capacity. He conducted vocational testing and assessed capacity to work, tolerance to work, and access to the labor market given Tiffany Lay's residual limitations related to CES.

Evidence In Support:

- **Exhibit, P-14, Life Care Plan and Vocational Rehabilitation Report of Dr. Brawner, p. 15-20**

98. Mr. Bruce Brawner assessed Tiffany Lay's placeability in the job market and relied on literature in the vocational rehabilitation expert field informing his opinions.

Evidence In Support:

- **Exhibit, P-14, Life Care Plan and Vocational Rehabilitation Report of Dr. Brawner, p. 21-24**

99. Mr. Bruce Brawner, plaintiff's vocational rehabilitation expert, performed an analysis of Tiffany Lay's ability to perform work based upon her CES limitations and determined that, due to her ongoing injuries related to CES, she has suffered a diminution or decrease in her earning capacity of \$27,438.74 per year.

Evidence In Support:

- **Exhibit, P-14, Life Care Plan and Vocational Rehabilitation Report of Dr. Brawner, p. 24-25**

100. George Carter, Ph.D., plaintiff's economist, testified that Tiffany Lay's lost wage claim reduced to present value is \$463,017. This analysis relies on the report of Mr. Brawner, Plaintiff's vocational rehabilitation expert.

Evidence In Support:

- **George Carter, Ph.D., Trial Transcript, p. 370, l. 10-21**

101. The defense vocational rehabilitation expert agrees that Tiffany Lay has suffered an earnings loss, but they do not value it as significantly as plaintiffs' vocational rehabilitation expert. In essence, there is agreement that Tiffany Lay has sustained lost wages as a result of the injuries related to her CES, but disagreement over the extent of that loss. The defense economist testified that using the defense life care planner's vocational rehabilitation report, he prepared 2

lost wage estimates for Tiffany Lay. Scenario 1 was \$78,777 and scenario 2 was \$237,340 and these are losses based on the defense vocational rehabilitation expert's opinions.

Evidence In Support:

- Mr. Koerber, Trial Transcript, p. 874, l. 15-22; p. 875, l. 19-p. 876, l. 3

102. The defense economist testified that if Tiffany Lay was not able to return to work in any capacity, her total lost income reduced to present value would be \$1,341,351.

Evidence In Support:

- Mr. Koerber, Trial Transcript, p. 872, l. 24-873, l. 4

103. Tiffany Lay and Robert Lay have been married since 2013.

Evidence In Support:

- Robert Lay Trial Transcript, p. 179, l. 3-7
- Tiffany Lay, Trial Transcript, p. 410, l. 10-12

104. Tiffany Lay and Robert Lay had a normal sex life prior to Tiffany Lay's Cauda Equina Syndrome.

Evidence In Support:

- Robert Lay Trial Transcript, p. 183, l. 2-14
- Tiffany Lay, Trial Transcript, p. 453, l. 22-p. 454, l. 4

105. As a result of the failure of Dr. Peery to timely diagnose Cauda Equina Syndrome, Tiffany Lay suffers from sexual dysfunction due to numbness and pain and Tiffany Lay and Robert Lay have had an almost complete cessation of any sexual intimacy as a result.

Evidence In Support:

- Robert Lay Trial Transcript, p. 195, l. 21-25; p. 218, l. 18-22; p. 218, l. 23-p. 219, l. 12
- Tiffany Lay, Trial Transcript, p. 454, l. 6-8
- Philip J. Blount, M.D., Trial Transcript, p. 798, l. 1
- Exhibit, J-4, Medical records from NewSouth NeuroSpine, Exhibit 2 to Deposition of Eric Amundson, M.D., p. 3-4; p. 15-16

106. With respect to sexual intimacy, Tiffany Lay and Robert Lay have attempted to be intimate on a few occasions, since 2015, but their intimacy had to be discontinued because Tiffany Lay involuntarily soiled herself or was in pain.

Evidence In Support:

- Robert Lay, Trial Transcript, p. 196, l. 3-7
- Tiffany Lay, Trial Transcript, p. 454, l. 9-20

107. As a result of Dr. Peery's failure to timely diagnose Cauda Equina Syndrome, Robert Lay has suffered a loss of consortium.

Evidence In Support:

- Robert Lay, Trial Transcript, p. 196, l. 3-7
- Tiffany Lay, Trial Transcript, p. 454, l. 9-20

108. As a result of Dr. Peery's failure to timely diagnose Cauda Equina Syndrome, Tiffany Lay will require future medical care to address her permanent injuries. The parties stipulated that the cost of the future medical care reduced to present value is \$1,028,009.

Evidence In Support:

- Howard Katz, M.D., Trial Transcript, p. 332, l. 23-p. 334, l. 4
- Phillip J. Blount, M.D., Trial Transcript, p.
- Trial Transcript, p. 871, l. 5-11; p. 879-880 (Agreement upon Stipulation)
- Exhibit, P-14, Vocational Rehabilitation Report of Dr. Brawner
- Exhibit, D-5, Defendant's Life Care Plan

109. As a result of Dr. Peery's failure to timely diagnosis Cauda Equina Syndrome and the permanent injuries that this failure caused, Tiffany Lay has not been able to perform the household services that she performed in the past and has not been able to fully interact with her husband or young daughter. In addition, Tiffany Lay has had to drastically curtail her physical activities and change her lifestyle.

Evidence In Support:

- Robert Lay Trial Transcript, p. 192, l. 16-25; p. 193, l. 1-10; p. 196, l. 8-15; p. 196, l. 16-p. 197, l. 16; p. 219, l. 21-p. 220, l. 4
- Tiffany Lay, Trial Transcript, p. 455, l. 4-20; p. 459, l. 12-23

110. Although the care in question included Emergency Medicine care and Emergency Room standard of care, the Defendant did not call an Emergency Medicine doctor to defend the care rendered by Dr. Peery.

Evidence In Support:

- Thomas Sweasey, M.D., Trial Transcript, p. 708, l. 12-18

111. Defendant called a neurosurgeon, Dr. Thomas Sweasey, to testify on Dr. Peery's behalf.

Evidence In Support:

- Thomas Sweasey, M.D., Trial Transcript, p. 708, l. 12-18; p. 712, l. 13

112. Dr. Sweasey admitted that in Dr. Peery's deposition testimony, she testified that she did not recall the Emergency Room visit details and only recollected that Tiffany Lay had given birth and that she had back pain.

Evidence In Support:

- Thomas Sweasey, M.D., Trial Transcript, p. 702, l. 24-p. 703, l. 4

113. Dr. Sweasey is aware of the Red Flag symptoms related to Cauda Equina Syndrome.

Evidence In Support:

- Thomas Sweasey, M.D., Trial Transcript, p. 698, l. 20-24; p. 700, l. 12-20; p. 707, l. 18-p. 708, l. 3

114. Dr. Sweasey was impeached at trial concerning his standard of care opinions with his deposition as follows:

Q. I'm going to show you your deposition, page 101. Do you remember having your deposition taken in this case?

A. I do.

Q. Do you remember being put under oath and swearing to answer the questions truthfully?

A. Yes, sir.

Q. I asked you right here on this page: I'm not saying you jump and take the person to the operating room, but if some comes in and the disk herniation is in the right place, they have, you know, the onset of incontinence, and they tell you I've never had this before, I'm leaking -- when I cough and sneeze, I'm leaking, that would be a pretty big piece of information with respect to making -- or going down the road to thinking about cauda equine syndrome --

THE COURT: Slow down.

MR. PROTIL: Sorry.

BY MR. PROTIL:

Q. -- where you may say it's time to get some imaging. Let's see what's going on. Fair?

Your answer: I mean, as hypothetical, I mean, again, I mean, you're putting kind of more definitive words on this case than what there were -- than what are there, but if you're going to go to that extreme a hypothetical, then the answer would be, yeah, you go to imaging.

Did I read that correctly, Doctor?

A. Yes, I think you did.

Evidence In Support:

- **Thomas Sweasey, M.D., Trial Transcript, p. 719, l. 9-p. 720, l. 3**

115. Dr. Sweasey testified under oath in deposition that once Cauda Equine Syndrome is in the differential diagnosis, the Standard of Care requires an MRI.

Evidence In Support:

- **Thomas Sweasey, M.D., Trial Transcript, p. 720, l. 10-16**

116. Cauda Equina Syndrome was in Dr. Peery's differential diagnosis.

Evidence In Support:

- **Rachel Peery, M.D., Trial Transcript, p. 649, l. 1-5**
- **Thomas Sweasey, M.D., Trial Transcript, p. 720, l. 17-24**

117. Dr. Sweasey testified that Tiffany Lay's medical record prior to Dr. Peery's visit, to include the OB/GYN record, and Dr. Amundson's record, do not contain the words "stress incontinence."

Evidence In Support:

- Thomas Sweasey, M.D., Trial Transcript, p. 727, l. 2-15
- Eric Amundson, M.D., Trial Transcript, p.
- Rachel Peery, M.D., Trial Transcript, p.
- Any other testimony to support?
- Exhibit, J-4 Medical records from NewSouth NeuroSpine, Exhibit 2 to Deposition of Eric Amundson, M.D.
- Exhibit, J-9, Erica Ory, M.D. Medical Records

118. Tiffany Lay never suffered from any form of urine leakage or stress urinary incontinence prior to September 25, 2015.

Evidence In Support:

- Gayle Galan, M.D., Trial Transcript, p. 70, l. 3-9
- Eric Amundson, M.D., Trial Transcript, p. 149, l. 9-14; p. 150, l. 21-p. 151, l. 1; p. 164, l. 6-17
- Robert Lay, Trial Transcript, p. 183, l. 21-p. 184, l. 3
- Tiffany Lay, Trial Transcript, 424, l. 8-p. 425, l. 9
- Rachel Peery, M.D., Trial Transcript, p. 646, l. 4-10
- Philip J. Blount, M.D., Trial Transcript, p. 839, l. 16-p. 840, l. 8
- Exhibit, J-1, VA Medical Records
- Exhibit, J-4, Medical records from NewSouth NeuroSpine, Exhibit 2 to Deposition of Eric Amundson, M.D., p. 6-7; 12
- Exhibit, J-9, Erica Ory, M.D. Medical Records, p. 1339; 1353-1354

CONCLUSIONS OF LAW

1. Dr. Peery was an employee of the United States acting within the scope of employment at all times related to her treatment of Tiffany Lay.
2. Dr. Peery had a doctor-patient relationship with Tiffany Lay on September 25, 2015.

3. The issue in the case is whether Dr. Peery violated the standard of care for an emergency medicine physician.

4. During the trial, the plaintiffs called and qualified two board-certified emergency medicine physicians who testified that Dr. Peery violated the standard of care and that these violations in the standard of care caused injury to Tiffany Lay.

5. Although the standard of care in question involved an emergency medicine physician, the defendant did not call an emergency medicine physician to testify on the standard of care.

6. During the trial, the plaintiff presented evidence, through expert testimony, that Dr. Peery's violations in the standard of care caused the Cauda Equina Syndrome injuries to Tiffany Lay.

7. During the trial, the defendant presented no evidence to contest any of the causation opinions that were testified to by plaintiffs' experts and by the treating physicians, Dr. Amundson and Dr. Cullom. The sole defense standard of care expert witness offered no opinions regarding causation.

8. Both the plaintiff and the defendant are in agreement that Tiffany Lay will require long term medical care and treatment as a result of her injuries. At the conclusion of trial, the parties stipulated that they would use the defense life care plan and the defense cost estimate of that life care plan.

9. Both the plaintiff and defense agreed that Tiffany Lay suffered a loss of income as a result of her injuries. The plaintiffs' experts testified that Tiffany Lay's loss of income reduced to present value is \$436,017 and the defense expert testified that if Tiffany Lay is unable to return to work, her lost income reduced to present value is \$1,341,351.

10. This is a case pursuant to the Federal Tort Claims Act and Mississippi substantive law applies. The burden of proof is by a preponderance of the evidence.

11. Dr. Peery violated the standard of care in her care and treatment of Tiffany Lay on September 25, 2015 by:

- A. Failing to diagnose Tiffany Lay with the early onset of Cauda Equina Syndrome;
- B. Failing to take a complete history;
- C. Failing to perform a rectal exam to assess the anal sphincter tone;
- D. Failing to perform a pin prick examination to assess numbness or loss of sensation;
- E. Failing to perform a post void residual to assess bladder function;
- F. Failing to order an MRI;
- G. Failing to call for a neurosurgical consult or to contact Tiffany Lay's neurosurgeon;
- H. Failing to appropriately educate Tiffany Lay about the signs and symptoms of Cauda Equina Syndrome; and
- I. Discharging Tiffany Lay from the hospital.

12. Dr. Peery's violations in the standard of care caused Tiffany Lay to suffer the following non-economic injuries, to include;

- A. Bladder dysfunction or a neurogenic bladder;
- B. Bowel dysfunction;
- C. Permanent nerve injury causing neuropathic pain;
- D. Permanent numbness or loss of sensation;
- E. Permanent sexual dysfunction; and

F. Unnecessary pain, suffering and loss of enjoyment of life.

13. Dr. Peery's violations in the standard of care caused Tiffany Lay to suffer the following economic injuries, to include;

A. Past medical care and expenses;

B. Future medical care and expenses;

C. Past lost wages; and

D. Future lost wages.

14. These violations in the standard of care caused Robert Lay to suffer damages due to a permanent loss of consortium.

15. As a result of these permanent injuries, Tiffany Lay has suffered a diminution in her earning capacity of \$463,017 in past and future lost wages.

16. The parties stipulated that the cost of Tiffany Lay's future medical care reduced to present value is \$1,028,009.

17. As a result of these permanent injuries, Tiffany Lay has sustained non-economic injuries, in the amount of \$1,000,000.

18. As a result of these permanent injuries, Robert Lay has sustained damages for loss of consortium, in the amount of \$500,000.

Respectfully submitted,

CORBAN GUNN, PLLC

By: s/ Corban Gunn
Corban Gunn, (MSB #101752)
P.O. Box 1466
Biloxi, Mississippi 39533
Tel: (228) 284-6805
Fax: (228) 284-6806
Email: corban@corbangunn.com

SHULMAN, ROGERS, GANDAL,
PORDY, & ECKER, P.A.

By: s/ Karl J. Protil, Jr.
Karl J. Protil, Jr. (*Pro Hac Vice*)
12505 Park Potomac Avenue, Sixth Floor
Potomac, Maryland 20854
Tel: (301) 230-6571
Fax: (301) 230-2891
Email: kprotil@shulmanrogers.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Corban Gunn, do hereby certify that I have this day filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing and a true and correct copy to all counsel for record.

So, Certified, this the 8th day of June, 2021.

s/ Corban Gunn
CORBAN GUNN, (MSB #101752)