



The Voice

And The Defense Wins

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DRI member [Scott Bentivenga](#), a partner in the Chicago office of **Lewis Brisbois Bisgaard & Smith LLP**, successfully defended Advocate Lutheran General Hospital and five of its employees in a medical malpractice/wrongful death case during a jury trial in Cook County, Illinois, last fall that lasted three and a half weeks. The 84-year-old plaintiff was admitted to the hospital with a presumed bowel obstruction and a host of preexisting chronic medical problems.

When plaintiff's respiratory condition and chronic congestive heart failure began to worsen, his primary care physician ordered a medicated nebulizer treatment. When the hospital's respiratory therapist administered the nebulizer treatment, she reportedly left the unmonitored room for 10 minutes, during which time the plaintiff suffered a cardiorespiratory arrest. When the respiratory therapist returned to the room and found the plaintiff in arrest, she called a Code Blue. The Code team revived the plaintiff, but he unfortunately suffered an anoxic brain injury and died three months later.

At trial, plaintiff for the estate alleged that the plaintiff/decedent should have been placed in an ICU or other monitored room when his respiratory condition began to deteriorate, that the respiratory therapist negligently left plaintiff's room at a time when she should have been closely monitoring the plaintiff, that the medicated nebulizer treatment caused the arrest, and that closer monitoring would have resulted in an immediate response and revival of the plaintiff, thereby preventing plaintiff's anoxic brain injury and death.

The defense argued that the medicated nebulizer treatment did not cause the arrest, and that the plaintiff would have had the same outcome even if he were in an ICU with a respiratory therapist present at the time of the arrest, based on statistics for elderly patients with chronic medical problems. The defense obtained a dismissal of a nurse and a nurse care technician during motions in limine at trial. The defense obtained a directed verdict in favor of the respiratory therapy supervisor at the close of the plaintiff's case.

The case against the hospital went to the jury, based on claims of negligence against the respiratory therapist and a surgical resident who was following the patient the evening of the arrest. After four and a half hours of jury deliberations, the jury rendered a not guilty verdict in favor of all defendants. Plaintiff's demand before trial was \$1 million. Plaintiff asked the jury for approximately \$2.8 million. The hospital offered \$350,000 to settle the case, but pulled the offer just minutes before the jury rendered its verdict in favor of all the defendants.

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