

DAILY REPORT

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In Trump Documents Probe, U.S. Seeks to Pierce Privilege, Re-Question Lawyer

Justice Department prosecutors investigating the mishandling of classified documents at Donald Trump's Florida estate are seeking to pierce the attorney-client privilege and want to again question one of the former president's lawyers before a grand jury, a person familiar with the matter said Tuesday night.

The privilege protects lawyers from having to tell prosecutors about confidential conversations their clients have with them. But prosecutors can get around that privilege if they can convince a judge that the communications they want information about were made in furtherance of a crime—a principle known as the crime-fraud exception.

Prosecutors have already questioned M. Evan Corcoran before a grand jury, but he repeatedly invoked attorney-client privilege in declining to answer certain questions, according to the person who spoke with The Associated Press and insisted on anonymity to discuss an ongoing investigation. They're seeking to question him again, and want to be able to move past attorney-client privilege, the person said.

The request from prosecutors working with special counsel Jack Smith is expected to lead to closed-door arguments before the chief judge of the District of Columbia federal court about whether prosecutors can compel Corcoran to answer their questions about his conversations with Trump.

It is not the first time during the investigation prosecutors have raised the specter of criminal conduct in connection with the Mar-a-Lago investigation. Last August the Justice Department revealed in a search warrant affidavit that it had probable cause to investigate the unlawful retention of national defense information as well as efforts to obstruct that probe.

It remains unclear whether Trump or anyone else will be charged, though the move is a notably aggressive act by Smith's team.

—Associated Press



James E. Carter of Carter Cromwell Law Firm (from left) and Caitlyn Clark and Steve Lowry of Harris Lowry Manton represented the family in the suit against the heart center and a cardiologist.

Jury Awards \$4.3M for Athens Singer's Death After Heart Test

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AFTER THREE DAYS of deliberations, a Clarke County State Court jury has awarded a \$4.36 million verdict against a physician named in the wrongful death of a popular Athens singer.

Plaintiff counsel credit the seven-figure outcome to their use of demonstratives at trial to illustrate and explain the physician's medical breaches.

But the case might not be over, as defense counsel indicate their client

intends to challenge the verdict on appeal.

'Take Corrective Action'

What began with Juan Molina arriving at St. Mary's Hospital in Athens for a diagnostic heart procedure on the morning of Aug. 25, 2017, ended hours later with his unexpected death, per a complaint filed by Molina's father as the initial executor of his estate.

Savannah attorneys Steve Lowry and Caitlyn Clark of Harris Lowry Manton

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Judge OK Lawsuit / Christian Tosses Er Distress,

MASON LAWLOP

A LAWSUIT ALLEGING a student endured racial harassment can proceed against a school, minus claims for punitive damages.

Judge Clay D. Land of the Middle District of Georgia ordered Feb. 10 denying a motion for judgment on the merits.

However, Land ruled that the school's failure to take corrective action and punitive damages are barred by the Rehabilitation Act of 1973.

Jaketra Bryant filed the suit on behalf of her son, who is Black and has autism and attention deficit hyperactivity disorder.

See



Judge Clay Land of the U.S. District of Georgia is allowing the lawsuit against Columbus Christian school.

Two Judges Join Ga. Commission on Dispute Resolution, Aim to Save Court Resources

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THE SUPREME COURT of Georgia Commission of Dispute Resolution swore two new members into their ranks during their Feb. 8 meeting. The commission exists to offer expedited alternatives to traditional litigation, like mediation, nonbinding arbitration and case evaluation.

ing the vacancy of the Fulton County Superior Court's 9th Judicial Circuit's seat, which was vacated by the retirement of Judge Andrew Fuller in December 2022.

"I believe the commission is going to help in clearing backlogs and saving resources for this Commission. We are scarce through the pandemic."

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teamed with Madison lawyer James E. Carter to serve as plaintiff counsel in the Molina family's quest to hold Athens Heart Center P.C. and Dr. Subodh Agrawal liable for the local singer and restaurant owner's death.

Plaintiff counsel said Molina underwent the diagnostic cardiac catheterization to determine how well his heart had been working.

"You have this catheter that's going into your ventricle, and then they spray radio-contrast dye in there so that they can measure how effective the ventricle is," Lowry explained.

But while conducting the procedure, plaintiff counsel alleged "Dr. Agrawal tore and perforated Molina's left ventricle wall" upon inserting the catheter into the ventricle wall and injecting the radiocontrast into the wall of Molina's heart.

Agrawal's failure "to recognize the severity and danger of the perforation to Molina's left ventricle wall," coupled with his failure "to take corrective action in light of the perforated ventricle," resulted in the 58-year-old's death hours later, alleged plaintiff counsel.

Seeking to hold the physician and his practice accountable for Molina's 2017 death, his family sued the defendants for professional negligence, but it'd be more than five years before a jury would hear the case.

'Lots of Demonstratives'

When the trial kicked off Jan. 30 before Clarke County State Court Judge Charles E. Auslander III, plaintiff counsel said they had to overcome a common medical-malpractice hurdle with the jury.

"Asking them to hold a doctor, who's in their community, responsible is always a challenge," Lowry said.

To overcome the obstacle, he said the plaintiff team centered its case around illustrating a series of breaches by Agrawal regarding the standard of care owed to Molina that, if honored, could have prevented his death.



Five-and-a-half years later, it's been a long road for them. Juan Molina was a remarkably talented musician and local business owner who was loved by the Athens community and had a bright future. We were honored to represent Juan's family in this case and sincerely hope this verdict sends a clear message about the important responsibility physicians have to provide the quality of care required by law to every patient."

— Steve Lowry of Harris Lowry Manton, Savannah

"We used lots of demonstratives," Lowry said. "We used lots of models of the heart, of catheterization, of what happens during a catheterization. We essentially showed the jury what a normal ventriculogram looks like versus what our ventriculogram looked like, so that they could see ... there was a huge problem that happened right at the very first ventriculogram."

Lowry said plaintiff counsel backed the courtroom show-and-tell strategy with expert witness testimony that supported their argument that the defendant either ignored or hadn't recognized the ultimately fatal perforation he'd created during the procedure.

"It was helpful in the case that we had two people that were in the lab with the doctor at the time, who both testified that they saw this abnormal staining to the heart wall that was obvious," Lowry said. "They made sure to point it out to the doctor."

Plaintiff counsel also leveraged testimony from an interventional cardiologist. Lowry said the witness testified that, when he saw the staining to the heart wall, "he immediately thought there was a perforation" warranting "an emergency that needed to have action taken right away."

'Acted Quickly'

Across the aisle, Atlanta attorneys Terrell W. "Chip" Benton III and Sheila K. Kazemian of Hall Booth Smith handled the defense of Athens Heart Center P.C. and Agrawal, but declined to detail their trial strategy when reached for comment by the Daily Report Tuesday.

According to plaintiff counsel, the defense team first argued the perforation had been a known risk of the diagnostic cardiac catheterization.

Defense counsel then contended that Molina had been stable following the procedure, because "his blood pressure didn't drop [and] his heart rate didn't go up," plaintiff counsel said. Once Molina began showing signs of a perforation by "grabbing his chest and gasping for air," Lowry said defense counsel argued their clients "acted quickly" to treat the plaintiff.

But plaintiff counsel challenged the arguments. Lowry drew attention to "a 30-minute gap" in which plaintiff counsel argued the defendant's dispute of the perforation being an emergency stalled the potential deployment of a cardiothoracic surgeon capable of treating it.

"The evidence was that there had been a call from Dr. Agrawal to a cardiothoracic surgeon, and the cardiothoracic surgeon reported, according to the notes, that he had been told that this was 'just a small lesion' and not emergent," Lowry said. "The only evidence in the record was Dr. Agrawal talked to him."

Appellate Counsel Retained

After six days of trial and 16 hours of jury deliberation, Clarke County State Court jurors returned a \$4.36 million verdict in favor of the plaintiff. The jury awarded \$3.8 million for the value of Molina's life, \$500,000 for pain and suffering and \$60,000 in medical and funeral expenses.

Plaintiff counsel said the outcome provided them relief and their clients joy.

"Five-and-a-half years later, it's been a long road for them," Lowry said. "Juan Molina was a remarkably talented musician and local business owner who was loved by the Athens community and had a bright future. We were honored to represent Juan's family in this case and sincerely hope this verdict sends a clear message about the important responsibility physicians have to provide the quality of care required by law to every patient."

Meanwhile, defense counsel issued a statement indicating their client would soon challenge the verdict.

"We were disappointed with the result, but we were proud to represent an excellent cardiologist in this case who provided excellent care in a very difficult situation when a complication occurred during a procedure," Benton emailed. "Appellate counsel has been retained, and we cannot comment further at this time." ®