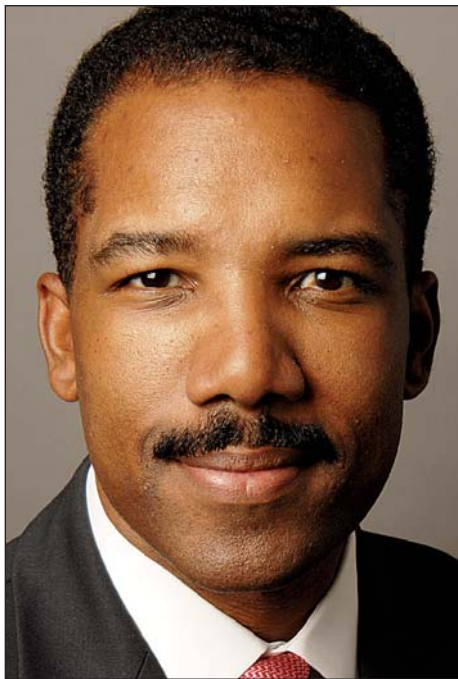


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Shipman & Goodwin partner Robert R. Simpson and associate Ami V. Gadhia were able to convince a jury that the woman suing their client for dental malpractice was suffering from a condition akin to intense hypochondria.



PLAINTIFFS DISCOVER JURY TRIALS ARE

A Make-Or-BREAK Proposition

In The End, Defendant Dentist Left Smiling

By **THOMAS B. SCHEFFEY**

Stratford plaintiffs' lawyer James M. Connolly, listed in the "Connecticut Super Lawyers" annual magazine, has come up with big verdicts for his clients in long-shot cases. The dental malpractice action of *Louise L. Mayne v. Allen H. Hindin DDS* was not one of them.

After four years of litigation, 217 motions and other pleadings, and a three-month trial in Danbury Superior Court, a jury recently awarded Connolly's client Louise Mayne just \$2,600 in economic damages—and no pain-and-suffering damages at all—for what she claimed was a bad root canal, leading to a fear of cancer.

The defense turned the case around and convinced the jury that Mayne was suffering from "undifferentiated somatoform disorder"—a condition akin to intense hypochondria.

Danbury dentist Allen H. Hindin was represented by Robert R. Simpson, of Shipman & Goodwin's Hartford office. Hindin's happy now, but at the beginning of the case he felt the outlook was bleak.

His doctor friends warned him that dealing with malpractice insurers and the courts could be a nightmare. They warned he would be pressured to settle, and that, if he wanted a topnotch legal defense, he might have to hire his own attorney.

"I was surprised my insurance company was willing to spend many times the value of the policy to defend my reputation," Hindin said in an interview last week. His dental malpractice insurer, Eastern Dentists Insurance Corp., of Westboro, Mass., prides itself in aggressively protecting dentists' reputations, and waged a defense that turned out to be a worst-case-scenario for a plaintiff's lawyer.

Connolly, through his partner Wilfred J. Rodie Jr. at Stratford's Rodie & Connolly, declined all comment on the case and the jury verdict.

No Way Out?

"I was very impressed by my lawyer, Bob Simpson," said Hindin. "He wasn't the insurance company's lawyer, he was my lawyer. It was exhausting. I feel like I've just had an advanced course in the litigation process."

Even though Connolly grilled him on the witness stand for more than seven days, Hindin had a touch of sympathy for his tormentor: "I would bet that the claimant's attorney never realized how complex this case was when he took it on, and once he got in, he had no way out," Hindin said. "I can't imagine that a plaintiff's attorney would spend what it cost him to do this case."

Richard T. Meehan Jr., of Bridgeport's Meehan, Meehan & Galvin, is a criminal defense lawyer who also focuses on dental malpractice cases for plaintiffs. He said the three-month trial is most likely a Connecticut record for a dental malpractice case, and certainly for one that doesn't involve a death.

"Most dental malpractice cases don't even go to trial," said Meehan, before adding, "Jim Connolly is a lawyer who is willing to go the distance—you can't just abandon the client."

Repeat Patient

When Simpson began Hindin's defense, the strategy was simply to show that the dentist's actions were well within the standard of care.

Mayne, a former Danbury schoolteacher, claimed Hindin overfilled the root canal hole through her tooth, causing some amalgam to ooze out the end of the root. Through her own Internet research, Mayne came to believe the silver filling material could give her cancer. She claimed she had headaches, sinus problems, tooth pain, infection, an inability to eat due to nausea and "intense pressure" to the left side of her face. Hindin referred her to an oral surgeon, who operated and told Mayne he removed anything that might be a problem.

Aided by Shipman & Goodwin associate Ami V. Ghadia, Simpson started building a basic case to show that Hindin's root canal work and his referral to the oral surgeon were well within the normal standard of care.

Many of the depositions were videotaped. As the discovery documents mounted, Simpson said he realized a different kind of defense was warranted. Mayne had filed a workers' compensation claim against the Danbury school system, claiming that a student infected her with a virus. "[H]er workers' comp claim settlement portion referenced headaches, nausea, tooth pain, etc.—components of her claim against Dr. Hindin in this dental malpractice case," said Simpson.

And as discovery progressed, Simpson found out that Maynes had been to more than 100 health care professionals for a wide range of medical issues. "I realized a large number of these providers—doctors, dentists, nurses—said there were these subjective complaints she had that were not consistent with the clinical findings," he said. "I thought, there's something beyond this."

The defense turned to Hartford psychiatrist Adrienne L. Bentman,

who practices at The Institute for Living. Mayne refused to be examined, and Danbury Superior Court Judge Douglas C. Mintz denied a motion to compel an examination by an independent medical examiner, telling Simpson he could bring up her refusal to be examined at trial.

Bentman had a stack of Mayne's medical records that were six feet tall when stacked in a single pile. Even without interviews, Bentman was able to view Mayne's responses to questions in the video depositions. The condition Bentman diagnosed, undifferentiated somatoform disorder, is one of the few psychiatric conditions that psychiatrists are allowed to find without having face-to-face interviews, Simpson explained.

The dentist said he lost 15 pounds from the stress of the trial, sleepless nights, and months of lost income.

Sleepless Nights

The trial judge, Dan Shaban, did not allow treating physicians to testify about why they thought Mayne's symptoms and physical conditions didn't match up, unless they were specifically listed as expert witnesses—rulings that Hindin said might have been grounds for appeal had he lost.

The basic biological defense was strong, said Hindin. "The [expert] pathologist clearly indicated to the jury that there wasn't any evidence of any kind of pathology at all. The overfilling did not cause harm, or represent an infected agent, an allergen or an irritant of any kind," he said. "The material itself was benign. To quote the

pathologist, Dr. Ellen Eisenberg, 'It's used in America a gazillion times a day.'"

Hindin claimed that there is "no evidence anywhere in science that suggests root canal sealer, AH26, is mutagenic. The issue really is ... that the patient is cancer-phobic," he said. "She's had a history of breast cancer. To believe it is one thing, to have it is another. The belief drove her further and further along the lines of treatment. Each of the physicians' opinion was that the treatment might be worse than the problem and the problem might still persist, which relates to whether they had questions about where the actual problems were."

The dentist said he lost 15 pounds from the stress of the trial, sleepless nights, and months of lost income. "The message I got out of it was, when a company will stand behind you at a cost that's a significant multiple of the claim, that's a great thing," said Hindin.

"We in practice need to know that; that we don't get thrown under the bus because it's a small claim. If we feel we're correct, and haven't done what we're charged with, the greatest fear is that we'll be abandoned."

Simpson said his closing message to the jury was that the plaintiff "didn't need treasure, she needed treatment. This was about an injury that never happened. The injury that she suffered is in her mind, for which she should not be compensated."

One of the challenges of the case, Simpson added, was to undermine the woman's claims without appearing to unfairly attack a plaintiff who had clearly experienced other serious medical problems. "[W]e were able to walk the tightrope without falling off," Simpson said. ■