



September 2, 2016

Defense Developments

Horstman and Dakich Obtain Appellate Decision Upholding Circuit Court's Decision to Terminate Physician Respondent in Discovery Due to the Expiration of Time Provided by the Statute

James K. Horstman and **Melissa Dakich** of Cray Huber Horstman Heil & VanAusdal LLC's appellate department won a victory on behalf of its client physician when the First District Appellate Court upheld the circuit court's denial of the plaintiff's motion to convert the physician from a respondent in discovery to a defendant. Michael D. Huber and Aimee K. Lipkis represented the respondent in discovery physician in the trial court and had him terminated as a respondent in discovery. The Appellate Court ruled that the circuit court had no authority to grant extensions past the time period specified in section 2-402 of the Illinois Code of Civil Procedure. Although not precedential, the Rule 23 Order provides sound guidance on the application of the statute governing respondents in discovery. Under the statute, a plaintiff has six months to convert a respondent in discovery to a defendant. The statute allows for one 90-day extension for good cause. After that, a court may grant additional extensions only "for a failure or refusal on the part of the respondent to comply with timely filed discovery."

The plaintiff argued the circuit court had previously granted an extension beyond the statutorily imposed time limit because, at the time of the plaintiff's additional extension request, there was outstanding discovery "as to" the respondent physician. According to the plaintiff, an extension was proper based on the failure of other respondents in discovery to comply with discovery. The Appellate Court rejected that argument and held that the statute specifically stated that a court could grant additional reasonable extensions under the statute only for a failure or refusal on the part of "the respondent" to comply with timely filed discovery. The record revealed that the respondent physician had timely responded to all discovery requests well within the statutory time frame.

Cray and Beringer Obtain Defense Verdict in \$40 Million Quadriplegic Medical Malpractice Case

Daniel Cray and **Benjamin Beringer** of Cray Huber Horstman Heil & VanAusdal LLC successfully defended the actions of a neurologist and his employer in a medical malpractice suit brought on behalf of a patient rendered a quadriplegic by post-surgical complications. The injured plaintiff's wife also sued after giving up her job to be her husband's 24 hour a day attendant care giver.

Plaintiffs argued the neurologist failed to appreciate and act upon an emergency situation where plaintiff's blood pressure was not perfusing his spinal cord. The Cray Huber attorneys argued that the lower blood pressure was not an emergency and was due to medications, including two narcotics. The defense also argued that the proximate cause of plaintiff's quadriplegia was a rare and unpredictable reperfusion injury occurring after the acute decompression of the laminectomy.

The jury deliberated nine hours before rendering its verdict. Plaintiffs asked for \$40,000,000, including almost \$10,000,000 in past and future medical and \$2,000,000 in future salary and benefits.