# Firm Successfully Defends Family Medicine Doctor in Ozark

Fred W. Tyson and Ben C. Wilson successfully defended a family medicine physician in a medical malpractice/wrongful death case tried before the Honorable Thomas E. Head in the Circuit Court of Dale County, Alabama. The case involved the death of a patient who experienced a rupture of the ascending thoracic aorta approximately three days after being seen by the defendant physician. The plaintiff contended that the patient, who had a long-term history of high blood pressure and more recently back pain, was experiencing a dissection of the thoracic aorta at the time of the visit to the physician's office. The plaintiff further contended that the physician breached the standard of care by failing to address the patient's elevated blood pressure and failing to order tests that allegedly would have indentified an aortic abnormality. These allegations were vigorously disputed by the defense, who maintained that the patient's blood pressure was properly evaluated and addressed and that no aortic abnormality was present at the time of the care in question. The defense, primarily through the testimony of the state medical examiner, further maintained that the patient subsequently experienced a sudden, catastrophic rupture of the aorta that could have neither been detected nor prevented by the defendant physician. After a five-day trial, the jury rendered a defense verdict following approximately ninety minutes of deliberation. The Plaintiff was represented by Joel Williams of Troy, Alabama and Yvonne Gabrielson of Dothan, Alabama. The case number is CV-2003-80 (Circuit Court of Dale County).

# Firm Successfully Defends Hospital and Family Practitioner in Montgomery

William S. Haynes and L. Peyton Chapman, III successfully defended a hospital and family practitioner in a medical malpractice / wrongful death case which was tried before the Honorable Truman Hobbs in the Circuit Court of Montgomery County, Alabama. The case involved the death of a patient who was alleged to have aspirated Barium during an attempted upper GI study with small bowel follow through. The Plaintiff contended that the family practitioner breached the standard of care by ordering the upper GI study because the patient allegedly had a bowel obstruction which contraindicated the study. The Plaintiff further alleged that a radiology technologist employed by the defendant hospital failed to timely address the patient's deteriorating condition subsequent to the attempted upper GI. These allegations were vigorously disputed by the Defendants. During the five day trial of the case, a co-defendant radiology practice group was voluntarily dismissed by the Plaintiff, and the claims against the hospital were subsequently dismissed by way of a judgment as a matter of law which was granted by the Court at the close of the Plaintiff's evidence. The remaining case against the family practitioner defendant was resolved by way of a defense verdict which followed approximately ninety minutes of deliberations. The Plaintiff was represented by Rick Alvis, Esq., and Mary Leah Miller, Esq., of Alvis and Willingham, L.L.P., in Birmingham, Alabama.

# RSJG Obtains Excellent Result for Termite Company

RSJG attorney Paul James recently represented an Alabama termite company in a case tried in the Montgomery County Circuit Court. Prior to the trial, the plaintiffs' final demand exceeded $150,000. At the end of a four-day trial, the jury returned a verdict for $15,000, an amount that was further reduced by an offset successfully plead by Mr. James over the objection of the plaintiffs.

The case arose out of the sale of a home to a Montgomery couple. Prior to the purchase, the defendant prepared an Alabama Wood Infestation Inspection Report, known in layman's terms as a "termite letter." The firm conducted an inspection of the home and found no visible evidence of active or previous termites. The technician prepared the termite letter and sent the letter to the realtor who placed a copy in the mortgage closing file, which the plaintiffs allegedly reviewed.

After closing on the home, the plaintiffs discovered termite damage in their home just outside the 90-day period outlined in the Alabama Wood Infestation Inspection Report. The plaintiffs initiated legal action against the termite company on claims of fraud, misrepresentation, suppression, breach of contract, breach of warranty, negligence, and wantonness.

At summary judgment, James successfully argued that all claims for suppression and breach of contract should be dismissed. The case tried on the remaining issues.

The plaintiffs argued throughout trial that some evidence of active or previous termites was visible at the time of the

inspection because an insurance adjuster had identified termite damage three weeks prior to the termite company's inspection. The jury was told, and received documents supporting the plaintiffs' conclusions on this important issue. The plaintiffs contended that the short time period between the insurance adjuster's identification of termite damage and the preparation of the report made it clear that not only had the termite company and its technician intentionally defrauded the plaintiffs but it engaged in gross, wanton conduct that warranted the imposition of punitive damages. The plaintiffs asked for $150,000 in compensatory damages and an unspecified amount in punitive damages. After nearly a day of deliberations, the jury returned a verdict for $15,000, an amount that was reduced by a $3,500 settlement with a co-defendant. This amount was later to be reduced by a subrogation claim.

During post-trial proceedings, James successfully argued that the offset should apply to further reduce the amount owed by the termite company to the plaintiffs. The plaintiffs did not challenge any further issues in the case.

---

# RSJG Shareholders Elected to ABOTA

Dennis R. Bailey, William S. Haynes, and Frank J. Stakely, shareholders of Rushton, Stakely, Johnston and Garrett, P.A., have been elected into the American Board of Trial Advocates (ABOTA) and the Alabama Chapter of ABOTA. ABOTA membership is by invitation only and requires extensive experience as lead counsel in civil trials. The organization seeks attorneys who display skill, civility and integrity and who help younger

attorneys achieve a higher level of trial advocacy. Of the more than 12,000 licensed attorneys in the state of Alabama, only 85 Alabama lawyers have met the stringent requirements for admission and have been invited to join the membership of ABOTA. There are seven shareholders of Rushton, Stakely, Johnston & Garrett, P.A. who are now members of ABOTA.

---

# RSJG Achieves Top Rankings in Chambers USA 2009

Rushton, Stakely, Johnston and Garrett, P.A. is pleased to announce that the Firm ranked 2 in Litigation: General Commercial and ranked 3 in Real Estate for the state of Alabama in *Chambers USA* 2009. In addition, several RSJG shareholders achieved top rankings in the publication. These shareholders include: Thomas H. Keene – ranked 1 in Litigation: Medical Malpractice Defense (Alabama); Jeffrey W. Blitz – ranked 3 in Real Estate (Alabama); Robert C Brock – ranked 4 in Litigation: General Commercial – (Alabama). Robert C Brock – ranked 5 in Products Liability (National). Each year, *Chambers and Partners* publishes updated guides to the World's leading law firms and lawyers. Rankings are based on an extensive research process which includes interviews of thousands of lawyers and their clients.

---

# RSJG Selected as Counsel in Rice Chapter 11 Case

Rushton, Stakely, Johnston and Garrett, P.A. has been selected as counsel to the Official Committee of Unsecured Creditors in the Rice Financial Corporation, and its wholly owned subsidiary, Rice Acceptance Company, Inc. Chapter 11 case. Rice, and its subsidiary, filed for Chapter 11 on April 15, 2009, listing combined liabilities of $13.7 million and assets of $12 million. The engagement is being led by Bowdy J. Brown.

---

# RSJG Among Top 70 Insurer Defense Law Firms

May’s edition of Best’s Review, a referral guide for insurance professionals, featured an article entitled “Standing the Test of Time.” This article highlighted sixty-nine law firms that have been recommended by their clients for at least 75 years, including Rushton, Stakely, Johnston & Garrett, P.A. The Firm is pleased to be recognized in this prestigious publication. Best’s Review utilizes feedback from insurance companies to determine which firms are to be listed in the review. As the lists are compiled based on client feedback, selection for Best’s Review is an honor and a reward for the hard-working insurance defense counsel at RSJG.

---

# RSJG Makes List of Most Prolific Trial Law Firms

For the seventh consecutive year, Rushton, Stakely, Johnston & Garrett makes the list of "Most Prolific Trial Law Firms in Alabama." The *Alabama Jury Verdict Reporter* has tracked state and federal jury verdicts in Alabama since 2002. For the seventh consecutive year, the firm is at or near the top of that list. Since 2002, Rushton, Stakely, Johnston & Garrett has tried more Alabama civil jury cases to jury verdicts than any other full-service law firm in the state of Alabama. In 2008, the firm is first on the list among the major law firms in Alabama. The 2008 statistics continue to show that Rushton, Stakely, Johnston & Garrett has the most broad civil trial practice in Alabama. Not included in these trial statistics are the many jury cases that the firm handles in state and federal courts throughout the United States.

In 2009, Rushton, Stakely, Johnston & Garrett will have another very active trial year. The firm has already tried several cases to jury verdict in 2009, with many more expected to go to trial during the remainder of the year.

---

# Eight RSJG Shareholders Selected for Inclusion in Alabama Super Lawyers 2009

Rushton, Stakely, Johnston and Garrett, P.A. is pleased to announce that eight of its lawyers have been selected for inclusion in the 2009 edition of the *Alabama Super Lawyers*

publication. The lawyers selected include: Jeffrey W. Blitz (Real Estate; Ronald G. Davenport (Business Litigation and Civil Litigation: Defense); Richard B. Garrett (Alternative Dispute Resolution and General Litigation: Professional Liability); Robert A. Huffaker (Appellate and Business Litigation); Thomas H. Keene (Healthcare, Personal Injury Defense: Medical Malpractice and Professional Liability Defense);F. Chadwick Morriss (Business Litigation, Civil Litigation: Defense, and Personal Injury Defense: Products); Fred W. Tyson (Personal Injury Defense: Medical Malpractice and Healthcare); and Helen C. Wells (Estate Planning and Probate, Business, Corporate and Tax). In addition, Helen C. Wells was selected as one of the *Top 25 Women Super Lawyers in Alabama*. Lawyers are nominated by their peers and selected for inclusion in *Super Lawyers* after a rigorous evaluation of their background, experience and achievements in the legal field. The purpose of the selection process is to identify a diverse and comprehensive listing of attorneys within the State who have attained the highest level of professional achievement. This honor is awarded to only the top five percent of lawyers in the State.

---

# RSJG Attorney Chosen as President-Elect of Boys and Girls Club

Rushton, Stakely, Johnston & Garrett is pleased to announce Robert C. Ward, Jr. as the new president-elect of the Board of Directors for the Boys & Girls Club of Montgomery. This organization has served Montgomery county for over fifty years. The Boys & Girls Club aims to enrich the

lives of Montgomery’s youth, especially those from disadvantaged homes and circumstances. A “youth guidance” program, the Boys & Girls Club of Montgomery reaches an average of 2,500 youth each year. The program provides tutoring, sports, arts & crafts, and a wide variety of other activities.