J. Evans Bailey Attains Shareholder Status in Rushton Stakely

Rushton, Stakely, Johnston & Garrett, P.A. is pleased to announce that J. Evans Bailey has been made a shareholder in the firm effective January 1, 2016.

Mr. Bailey joined the firm in 2008. His practice is devoted to civil litigation with a focus on commercial litigation, insurance defense, professional liability, collections, construction law, media law, and appellate practice. He has experience handling a variety of matters in all state trial and civil appellate courts, federal district court, bankruptcy court, and the 11th Circuit Court of Appeals.

Mr. Bailey obtained his undergraduate degree, cum laude, from the University of Georgia in 2005 and his juris doctor from the University of Alabama School of Law in 2008.

Rushton Stakely Lawyers Secure a Big Medical Malpractice Win in Mobile County

Rushton Stakely lawyers, Tommy Keene and Amanda Hines, successfully tried and won a pediatric cardiology case in Mobile County, a venue known to be dangerous for such cases. The case involved a high degree of emotion and sympathy as it

centered around the death of a three-month-old infant on Christmas Day. The child literally went limp and turned blue while the family was opening Christmas presents. She died that same day.

The case involved complex subjects starting with the birth of a child with a congenital heart defect known as tetralogy of Fallot. The Defendant, a pediatric cardiologist, diagnosed this condition and ultimately referred the patient to UAB where, at two months of age, surgery was performed to correct this defect. Failure to surgically correct this condition will almost certainly lead to death. On the other hand, surgery is generally 98% successful in producing a long and healthy life for the patient. The Defendant saw the patient both before and after the surgery. The case centered around the postoperative care which took place over approximately one month prior to the patient's unfortunate demise on Christmas Day.

The Plaintiff presented expert testimony from a well-known pediatric cardiologist who has written multiple chapters in texts and has served as head of the department at the Medical University of South Carolina, Ohio State University, and West Virginia University. He testified that, in his opinion, the Defendant gave excellent care overall, but failed the patient by not recognizing changes in chest x-ray findings on Christmas Eve. He opined that a proper interpretation of the chest x-ray should have led to a return of the patient to UAB for surgical correction of a condition known as pseudoaneurysm. The suggestion was even made that the Defendant failed to look at the chest x-ray that was ordered. A key admission by this expert on cross examination was that the chest x-ray was not even required by the standard of care, but once it was performed, he believed it should have been interpreted as a medical emergency.

The defense countered with outstanding witnesses from Vanderbilt and UCLA. A key theme of the defense was that a pseudoaneurysm was never found on autopsy and was only a product of post-litigation review of autopsy findings. The defense called a Vanderbilt pathologist who actually viewed the heart which had been preserved and gave the opinion that there was no evidence whatsoever of a pseudoaneurysm existing. A pediatric cardiologist from UCLA also opined that a

pseudoaneurysm did not exist in this case and that, therefore, there was nothing which could have been repaired or corrected on Christmas Eve to avoid this unfortunate death on Christmas Day. Both witnesses for the defense, along with the Defendant, gave the opinion that this child had a very rare rupture of the heart muscle itself which was brought about by the failure of the surgery at UAB to relieve the obstruction and resulting pressure in the heart, which conditions are brought about by the tetralogy of Fallot congenital defects. In short, the defense contended that not only did the Defendant meet the standard of care, but also that there was no way to predict or prevent such a rare, virtually unheard of complication.

The defense team was happy that the jury responded well to these logical defenses to overcome the Plaintiff's claim that this very rare condition of pseudoaneurysm existed and could have been repaired. The evidence simply did not support the existence of the pseudoaneurysm or that a Christmas Eve transfer to UAB would have altered the outcome. While the case was unfortunate, it was obvious that the verdict for the defense was abundantly supported by the evidence as the jury reported its verdict within less than twenty minutes of beginning deliberations. Mr. Keene and Ms. Hines were assisted by local counsel, Cliff Brady, in Mobile.

No post-trial motions or appeals were taken, and this verdict has now resulted in a final judgment.

James Obtains Summary Judgment for an Insurance Agent and His Agency

Paul James received another Summary Judgment on behalf of an insurance agent and the agency for whom he worked in a recent matter filed in north Alabama. The Plaintiff asserted a claim for a "failure to procure" insurance against the agent and his

agency, arguing that repeated requests for insurance were sufficient to place the agency on notice of a need to procure property insurance. James successfully argued that under the facts presented to the Trial Court, there was no issue of fact concerning the Plaintiffs' claims. Specifically, the Trial Court held that Summary Judgment was appropriate because the agent and agency had breached no duty owed to the Plaintiff and that under current Alabama law, the agency could not be liable for failing to procure property damage insurance on a building in advance of a fire that ultimately destroyed the building at issue.

For over twenty years, James has represented insurance agencies, insurance agents/brokers, broker dealer representatives, and insurance companies directly in fraud related litigation throughout the state of Alabama. James maintains an active practice in representing agents, brokers, dealers, insurance agencies, and insurance companies directly in cases throughout Alabama, the Federal Court within the 11th Circuit, as well as FINRA Arbitration proceedings.

Chapman Chosen for Induction Into American Board of Trial Advocates

Rushton Stakely is proud to announce that the American Board of Trial Advocates has selected shareholder L. Peyton Chapman, III for induction into membership at the Alabama Chapter's Annual Meeting on November 19, 2015.

Membership into the American Board of Trial Advocates is by invitation only following a rigorous nominaton and voting process. There are approximately 7,300 members of ABOTA in the United States; only 109 attorneys in Alabama are members.

ABOTA is a national association of experienced trial lawyers and judges dedicated to the preservation and promotion of the civil jury trial right provided by the Seventh Amendment to the U.S. Constitution. ABOTA works to uphold the jury system for educating the American public about the history and value of the right to trial by jury. To be considered for participation in the Alabama Chapter, one must have tried to conclusion a minimum of 10 civil jury trials, be nominated by an existing member, and be approved by 75% of those members voting on membership. Criteria evaluated includes exceptional jury trial skills, civility, professionalism, and integrity.

Bailey Inducted into Trial Masters

Dennis R. Bailey, shareholder at Rushton Stakely, has been inducted as a member of Trial Masters. Trial Masters is one of the most exclusive accreditations a trial lawyer in the United States can receive. Membership is strictly limited to attorneys who have tried to verdict 35 or more trials in their career. Mr. Bailey has tried over 50. He has been practicing law since 1979 and specializes in civil litigation for the defense.

Although there are Trial Masters members in all 50 states and Washington D.C., fewer than one-half of 1% of U.S. lawyers are members. Trial Masters membership acknowledges a rare advocate that is consistently willing to take their clients' cases to the courthouse to obtain the best results for them.

James Obtains Summary Judgment for Logistics Company

Paul James recently obtained summary judgment in favor of a Montgomery based logistics company sued as a result of a significant leg injury suffered by the Plaintiff at a local manufacturing facility. The Plaintiff alleged that the logistics company failed to properly protect him from injury associated with his activities in driving to and from the logistics company and a local manufacturing facility. The defense argued correctly that the company did not breach any duty owed to the Plaintiff and that arguably, the Plaintiff's action constituted contributory negligence as a matter of law. The trial court granted summary judgment for James' client.

Jackson Appears on Legal Panel for the Annual Electricity Generation and Transmission Lawyers Seminar

On November 6, 2015, J. Theodore Jackson appeared on a legal panel in Seattle, Washington at the annual Electricity Generation and Transmission Lawyers Seminar. The panel was

entitled “General Counsel to General Counsel” and dealt with how to prevent and resolve disputes between a generation and transmission electric cooperative and its members. Mr. Jackson has served as General Counsel to PowerSouth Energy Cooperative for 36 years. PowerSouth Energy generates electricity at its generating plants and transmits that electricity at wholesale to its twenty electric distribution members. Those members include sixteen rural electric cooperatives and four cities who provide electricity at retail to approximately one million consumers in central and south Alabama and the panhandle of Florida.

Alabama Supreme Court Affirms Summary Judgment for Davenport and Johnston

This case involved an accident between an automobile and a pedestrian in downtown Montgomery. The Montgomery County Circuit Court granted summary judgment in favor of Rushton Stakely’s client under the theory of contributory negligence per se and the Alabama Rules of Civil Procedure. The Alabama Supreme Court affirmed summary judgment with no opinion.

Alabama Court of Civil

Appeals Affirms Summary Judgment

The appellee initiated the action by filing a Complaint to recover possession of property subject of a foreclosure. Appellants responded, seeking to enjoin the eviction action based on unsubstantiated claims of hardship. Summary judgment was granted, giving possession of the property to appellee. Appellants appealed the action, but their appeal was dismissed in part and affirmed in part, due to appellants' unauthorized practice of law and new allegations on appeal not raised with the trial court. *Fuller v. Green Tree Servicing, LLC*, No. 2140269, 2015 WL 5511462 (Ala. Civ. App. Sept. 18, 2015)

James Obtains Dismissal of Claims Against CPA

Paul James recently presented a Motion to Dismiss in Alabama Circuit Court on behalf of a CPA sued for fraud arising out of a business transaction. Specifically, the Plaintiff accused the CPA of negligence for allowing the Plaintiff's mortgage on certain properties to become in jeopardy of being taken for its use and as collateral in a business transaction. The CPA was also accused of conspiracy in working with certain parties and non-parties to obtain the property in question.

Despite multiple claims of fraud, deceit, suppression, negligence, and conspiracy, the trial court granted the Motion to Dismiss in favor of the CPA and dismissed the case with prejudice. The Plaintiff's filed not one but two separate Motions to Reconsider which were both denied by the trial

court. The Plaintiff declined to pursue an appeal.