

# DAILY REPORT

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## Med-Mal Insurer Agrees to Cover \$4.9M Judgment Despite Clinic's Policy Limits

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GEORGIA'S LARGEST provider of medical-malpractice insurance has agreed to pay a \$4.9 million judgment rendered against a metro Atlanta physician and his medical clinic, even though the clinic's insurance policies had a combined \$2 million ceiling, according to the medical-malpractice lawyer who secured the winning verdict.

On Tuesday, attorneys for Georgia MAG Mutual Insurance finalized the agreement to pay nearly \$3 million above the medical malpractice policies' ceiling to the family of 78-year-old Ok Hui Smith, said the Smith family's attorney, David Krugler. The agreement followed a



DAEMON BAIZAN

**Andy Cash (left) and David Krugler represented the family of a woman who died of medication side effects.**

June 29 jury verdict that awarded Smith's husband, Thomas Smith Sr., \$4.7 million in damages stemming from the death of his wife

from the side effects of Nizoral, a powerful and potentially toxic drug that caused her liver and kidneys to fail, Krugler said.

U.S. District Judge Richard Story on Monday increased the jury's June 29 award to \$4.9 million with an order directing that the final judgment against physician William H. Van Laar and his clinic, McDonough Primary Care, also include an additional \$200,000 in prejudgment interest. Under Georgia law, Smith is entitled to prejudgment interest in addition to the jury award because his lawyers had made offers to settle the case that were rejected.

Krugler said that MAG Mutual lawyers agreed to cover the entire judgment, despite policy limits that would otherwise have

left Van Laar and his clinic on the hook for nearly \$3 million, because MAG Mutual repeatedly turned down Krugler's offers to settle the case for \$2 million—the combined limit of two malpractice policies held by Van Laar's clinic that also covered the physician.

"It is extraordinarily unusual," Krugler said of the agreement. "I honestly can't tell you if this has happened before in Georgia. MAG Mutual is pretty tough in settling and defending cases. Med-mal cases are some of the hardest cases to pursue. MAG has been very successful in defending these cases."

Krugler—who tried the case with co-counsel Andrew Cash—said the insurance company had incentive to pay the full judgment, despite the policies' limits, because otherwise MAG Mutual could be vulnerable to a bad faith claim by Van Laar for failing to settle the case for the policy limits and exposing his practice and his personal assets to a large judgment he could not afford to pay.

Attorney Nathan Cronic, retained by MAG Mutual to defend Van Laar and the clinic, could not be reached for comment. He told the Daily Report before

Story increased the final award that his clients believed the jury verdict was "excessive."

Ok Hui Smith, who died Jan. 24, 2014, from liver failure, was 78 when she went to Van Laar, her primary care physician, for treatment of a toenail fungal infection, Krugler said. The physician prescribed Nizoral, even though the U.S. Food and Drug Administration has said it is not to be used for minor nail fungi and that it is potentially toxic to the liver. Smith remained on the drug for four-and-a-half months before her liver failed, during which time Van Laar checked her liver function once, Krugler said.

Van Laar eventually admitted that the care he provided had been both inadequate and negligent, Krugler said, and when the case went to trial the jury was asked only to ascertain damages. Krugler said that defense lawyers argued that, because of her advanced age, Smith's remaining life was valued at far less than the clinic's insurance policy limits because life expectancy tables suggested she only had an estimated 11 years left to live.

But Krugler said Cash argued to the jury that Smith—a refugee of

the Korean War who had lost her entire family and met her husband when he was a 19-year-old member of the U.S. Army—had a compelling life story and continued to lead a unique and enriching life, despite her age.

"Mrs. Smith was an extraordinary person," he said. "She learned English, became a U.S. citizen, became a master seamstress, gardener, cook. ... We believed strongly in the family and the case. We knew the jury would get the value of this woman's life and that the loss of that life was really tremendous. They got it." ®