

# FLORIDA

## FEATURED VERDICT

### PALM BEACH COUNTY

#### MEDICAL MALPRACTICE

Prescription and Medication — Foot Surgery — Physician’s Assistant

## Surgeon missed risk of blood clots, alleged patient’s estate

**VERDICT** **\$1,035,000**  
**ACTUAL** **\$949,000**

**CASE** Williams Marks, Individually and As Personal Representative of the Estate of Jeanne Marks, deceased v. Brian Coleman, M.D., Justin Bartl, PA-C, South-Palm Orthopedics, P.A., and Delray Medical Center, Inc., No. 2015CA-13574 (AI)

**COURT** Palm Beach County Circuit Court, 15th  
**JUDGE** Meenu Sasser  
**DATE** 5/11/2017

**PLAINTIFF**  
**ATTORNEY(S)** Bonnie Navin, Kelley/Uustal, PLC, Fort Lauderdale, FL  
 Peter K. Spillis, Kelley/Uustal, PLC, Fort Lauderdale, FL

**DEFENSE**  
**ATTORNEY(S)** Jonathan C. Abel, Conroy Simberg Ganon Krevans & Abel P A, Hollywood, FL (Delray Medical Center Inc.)  
 Hector R. Buigas, The Law Offices of Keith J. Puya, P.A., Palm Beach Gardens, FL (Brian Coleman, Justin Bartl, South-Palm Orthopedics, P.A.)  
 Keith J. Puya, Law Offices Of Keith J. Puya, P.A., Palm Beach Gardens, FL (Brian Coleman, Justin Bartl, South-Palm Orthopedics, P.A.)

**PLAINTIFF**  
**EXPERT(S)** Kristin K. Kucsma, M.A., economics, Livingston, NJ

Kenneth R. Lippman, M.D., orthopedics, Baltimore, MD  
 Adam Weschler, M.D., cardiothoracic surgery, Philadelphia, PA



Kristin Kucsma  
 Chief Economist  
 Sobel Tinari Economics Group

**DEFENSE**  
**EXPERT(S)** Alan S. Routman, M.D., orthopedics, Fort Lauderdale, FL

**FACTS & ALLEGATIONS** On May 28, 2014, plaintiff’s decedent Jeanne Marks, 60, presented to Delray Medical Center, at Delray Beach, where she had reconstructive surgery of her right forefoot. The surgery was performed by orthopedic surgeon Brian Coleman.

Prior to surgery, Coleman ordered a surgical clearance examination, which was done by an internal medicine physician. The physician issued a 15-page report based on the exam. The report stated that Marks was taking the medication Evista (raloxifene hydrochloride), a post-menopausal estrogen treatment. Evista has an FDA “black box” warning that usage coupled with prolonged immobilization could significantly increase the risk of blood clots and pulmonary embolism (a blood clot in the leg that breaks loose and travels to the lungs). However, Coleman did not read the report, since he generally delegated that duty to his surgical coordinator. The coordinator read the report in order to find the word “cleared” (for surgery), in line with her training. Therefore, she did not focus on the report’s warning that Marks’ ongoing use of Evista, combined with her prolonged immobilization after surgery, could lead to blood clots and pulmonary embolism. Coleman and the surgical

team ordered Marks to resume her use of Evista immediately after surgery.

A little more than one month after the surgery, on July 3, 2014, Marks died from a pulmonary embolism.

Marks' husband, Williams Marks, individually and as representative of his wife's estate, sued Coleman and his assistant, Justin Bartl, alleging negligence amounting to medical malpractice. Also sued was Coleman's employer, South-Palm Orthopedics, P.A., alleging vicariously liability. (Delray Medical Center Inc. was named as a defendant but was dismissed prior to trial.)

William Marks claimed, with support from an orthopedics expert, that Coleman's failure to read the surgical clearance and its warnings was below the standard of care and that the breach caused Marks to continue taking the Evista, tripling the likelihood that she would develop blood clots. The expert opined that taking Evista and not being fully ambulatory caused Marks' death.

In addition, counsel for Marks claimed that Coleman breached the standard of care by failing to recognize that Marks was a high-risk patient for deep vein thrombosis and a pulmonary embolism based on her obesity, prior cancer treatment, immobilization and use of Evista.

The estate further contended that Coleman failed to obtain a review of systems and vitals of Marks during post-operative visits; failed to recognize the symptoms of possible deep vein thrombosis; and failed to order a Doppler ultrasound to detect any clots and anticoagulation, given Marks' complaints.

The estate's expert cardiothoracic surgeon opined that Marks began to form clots in her lower extremities three weeks after surgery, which then began to travel to her lungs and heart, causing shortness of breath. He said that Marks then suffered a massive saddle embolus (a clot that obstructed both pulmonary arteries), making it impossible to adequately oxygenate blood, ultimately causing her death.

The defense counsel, with support from an orthopedic expert, argued that Marks was contributorily negligent. The expert opined that Marks had superior knowledge of being placed on Evista and that she disobeyed the instructions of her prescribing doctor, who suggested Marks call her before resuming the medication. He opined that Marks should have known about the risks of Evista.

**INJURIES/DAMAGES** *death; deep vein thrombosis; embolism; pulmonary/respiratory*

Jeanne Marks' husband, William Marks, sought to recover damages for loss of his wife's support and services as a result of her death. He also sought damages for his own pain and suffering caused by the death of his wife of 36 years. The estate further sought to recover medical and funeral expenses.

Defense counsel did not actively dispute damages.

**RESULT** The jury found Brian Coleman was 57 percent liable, Justin Bartl was 8 percent liable, and Jeanne Marks was 35 percent liable.

The Marks estate was awarded damages of \$1,460,000, which was reduced to \$949,000 to account for Jeanne Marks' negligence.

#### ESTATE OF

**JEANNE MARKS** \$630,000 medical and funeral expenses

#### WILLIAMS

**MARKS** \$405,000 loss of support and services  
\$425,000 pain and suffering  
\$830,000

**DEMAND** \$250,000 (from Bartl); \$250,000 (from Coleman)

**OFFER** None reported

**INSURER(S)** Doctors Co. for Bartl, Coleman and South-Palm Orthopedics

**TRIAL DETAILS** Trial Length: 9 days  
Trial Deliberations: 9 hours

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel and counsel of Bartl, Coleman and South-Palm Orthopedics.

—Gary Raynaldo

