

# DAILY REPORT

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## DeKalb Jury Awards \$6.5M in Birth Defect Med-Mal Case

The verdict came after the defense rejected a \$1 million settlement offer.

By Greg Land | November 04, 2019



**Marc Howard (from left), Geoff Pope and Darren Summerville. (Courtesy photos)**

*Update appended below:*

A DeKalb County jury awarded more than \$6.4 million to a child and her parents over claims that an obstetrician-gynecologist allowed the mother to keep taking a blood pressure medication after she became pregnant despite the drug's well-known risk of causing fetal and neonatal side effects.

The little girl, now 8, suffered brain damage and other injuries including skull abnormalities, intestinal problems and kidney failure, according to court filings.

Kendyl Gorman "has two main, long-term injuries," said plaintiffs' attorney Geoffrey Pope of Pope & Howard. (<https://popehoward.com>) "She has a very serious kidney problem that will mean a replacement kidney surgery in six to eight years."

"The other long-term injury is that she had a stroke in utero, so she had cognitive issues, neurodevelopment issues. She's in a normal school now, but she's a year behind everybody else in second grade, and she's very tiny, even though she's older than everybody else," said Pope, who tried the case with partner Marc Howard and Darren Summerville of The Summerville Firm (<http://www.summervillefirm.com>).

The mother's primary care physician, who initially prescribed the medication, was a co-defendant until just before trial, when he resolved those claims confidentially.

Because the defendant OB/GYN turned down an offer to settle the claims against him for his \$1 million MAG Mutual Insurance policy limit, the plaintiffs will also seek attorney fees under Georgia's offer of judgment statute, Pope said.

The defendant doctor and his practice are represented by Wayne McGrew III and Gabe Banks of Weathington McGrew (<https://weathingtonmcgrew.com>). They did not respond to a request for comment.

According to Pope and court filings, Terry Franklin, then 28, suffered from high blood pressure, and her primary care doctor prescribed Benicar in 2009.

The medication's prescribing information warns that its use during the second and third trimesters has been associated with fetal and neonatal injuries including kidney failure, hypotension, skull and limb deformities, and advises that "female patients of childbearing age should be told about the consequences of exposure to Benicar during pregnancy."

The plaintiffs' filings said the doctor, Lonnie Jenkins, did not tell Franklin about the risks of taking Benicar, even after she saw him in early 2010 and told him she'd been pregnant but miscarried.

She became pregnant again later that year and began seeing OB/GYN Alvin Sermons.

Sermons knew she was taking Benicar, and his notes said she should discontinue the blood pressure medication, but "he did not inform Terri that she should stop taking Benicar and did not inform her of the dangers Benicar posed to Kendyl," the complaint said.

Franklin continued to take Benicar for 33 weeks, it said.

According to defense filings, Sermons told Franklin to stop taking the medication on her first visit to his office "because of the severe risks to her unborn child. Dr. Sermons documented his instruction to Ms. Franklin in his chart."

Kendyl was born in March 2011, and the following year Franklin and Kendyl's father, Komarta Gorman, filed suit in DeKalb County State Court.

"We made a number of policy limit demands, and they were never accepted," said Pope. "When they rejected the earlier settlements they'd say the doctor refused to consent to settle. Then they stopped saying that."

A mediation before Gino Brogdon Sr. at Henning Arbitration & Mediation Services failed, and trial began before Judge Johnny Panos on Oct. 21 against Sermons and his practice, Dunwoody Obstetrics & Gynecology.

“Our case turned on the first OB/GYN visit,” said Pope. “The doctor claimed he gave her a very stark warning to stop taking the medication because it could kill her baby. The mother and father said that didn’t happen.”

“The defense made a big deal about all the package inserts and Internet information making it clear that Benicar is a problem during pregnancy,” he said. “We said, ‘Yes, but they all say consult your doctor, and that’s what she did.’”

“We said the best evidence is that they immediately went out after her first appointment [with Sermons] and refilled the prescription,” he said.

Sermons was a very likable defendant, Pope said.

“Dr. Sermons had a very good appearance, kind of a ‘Marcus Welby’ type,” said Pope, harking back to a 1970s TV program about a genial, avuncular physician. “He comes across as very caring. He was a real challenge.”

Pope said the key plaintiffs’ expert was Mark Landon, chair of the OB/GYN department at Ohio State University’s Wexner Medical Center, who testified via video. The defense’s expert was Daniel Eller of the Maternal Fetal Diagnostic Center of Atlanta.

In closing, Pope said he asked the jury to award \$26 million in damages.

Evidence closed on Wednesday, and the jury deliberated until Friday—including a short day on Thursday, when Panos excused the panel early for Halloween—before returning a verdict about 11 a.m. Friday morning.

The panel awarded \$1 million to the parents for Kendyls’ medical expenses prior to her 18th birthday, and \$11 million to Kendyl for her damages after she turns 18, for total damages of \$12 million.

But the panel apportioned 46% of the liability to Franklin, reducing the total award to \$6.48 million.

“The jurors told us their damages were based solely on the life care plan for Kendyl and didn’t include anything on lost income,” Pope said. “I think part of the compromise was not including anything for pain and suffering.

McGrew and Banks “are real gentlemen, and they did a great job for their client,” he said.

*This story has been changed to indicate that the entire \$12 million verdict is subject to apportionment.*

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