

The Check Came In- A Cardiac Nightmare
by Gerry Oginski, Esq.

This is a true story

The long-awaited check finally came in. It sat on my desk along with a cover letter saying "Here is your check." I stared at it. It had a lot of zeros. Where it said "Pay to the order of," it had my name there. It had my client's name also on that line. That check represented the culmination of a long and hard-fought battle against a doctor and a hospital in the New York metropolitan area. I had seen checks of that size before, but that check was only partial payment for this case. I was looking for another check that my secretary told me was in my mail pile.

Then, underneath that check, I saw another letter with another check for the same case. That's the check I was looking for. That check was even bigger than the first. Much bigger. By a multiple of five. I couldn't take my eyes off of it. It was from a different bank. On the line where it said "Pay to the order of," my name was on that line too along with my clients. The amount took my breath away. I had never actually seen a check with that amount before. It was exciting. I couldn't believe this day had come.

Thinking about these two checks made me realize how unfortunate my client was and how badly I felt for him. This young man was a superstar salesman. He worked selling mortgages at the height of the mortgage business. He was the top producer in a large company. He had awards, plaques, certificates, honors and recognition among his peers for his excellent sales ability. His bosses noticed. He got incentives, bonuses and was a leader at his company.

He was 34 years old.

One day he developed severe chest pain. The pain didn't go away. Two days later, he went to his local emergency room. They did all the right tests. They did all the right things. They kept him for the weekend and then told him he was fine and should just follow up with a cardiologist. That's exactly what he did. He went to a cardiologist the hospital recommended and saw him each month following his discharge from the emergency room.

The only problem was that he still complained to the doctor of intermittent chest pain. The doctor did more tests and told him he was fine. "Just exercise and eat right," was what he was told. He was only 34 years old.

A few days after the third follow-up visit to the cardiologist, he developed severe chest pain. Bad pain. Excruciating pain. Difficulty breathing pain. An ambulance arrived and rushed him back to his local emergency room.

Needles were put in his arm. Blood was drawn out. Fluids were put in. EKG wires were attached to his chest and an oxygen mask was placed over his face. Tests revealed he

had suffered a massive heart attack. Once he was stabilized he was immediately rushed out of the local hospital and taken to a large university-affiliated hospital in New York City where they had better cardiac and surgical services for his condition.

He was only 34 years old.

He didn't know it at that time, but that massive heart attack killed off 70% of his heart function. Tests done later at this New York City hospital revealed that to be true.

His doctors tried to project hope. They knew that keeping his confidence high would yield more benefits than having a defeatist mentality. Days turned into weeks. Weeks into months. He was sent to rehab. He couldn't walk. He had no energy. He lacked strength. His heart wasn't pumping enough blood to his body to sustain the muscles and functions his body required. His body was shutting down and there was nothing he or any of the doctors could do to reverse it. The muscle damage to the heart was permanent.

He learned that the only hope of survival would be to get a heart transplant.

He was only 34 years old.

He took a total of 40 pills per day; each one with nasty side effects. There was a pill to get rid of excess water. A pill to calm his stomach from all the medications he was taking. A pill to go to the bathroom. His life was miserable. His wife had to map out a litany of medications for him at breakfast, lunch and dinner.

He couldn't walk more than a few steps. To go from the couch to the dining room took five minutes and was exhausting. I know. I watched this first hand. He was upbeat but restless. He couldn't sleep because every time he lay down, the fluid in his lungs would prevent him from breathing normally. His life was hell.

Turns out the he wasn't eligible for a heart transplant because of his co-morbid conditions. That meant because his kidneys were not functioning well and his lungs were deteriorating, he was no longer a viable candidate since he was too sick. Transplant patients are ones who are sick, but not too sick so that when they get a transplant, there's a good chance they'll live. If they believe that your chances are low for survival following a transplant, they say "Sorry, we can't help you."

So, he had to live his life 'as is'. In hell. Unable to walk very much. Unable to exercise. Unable to do all the things everyone else does without any thought. Not him.

He was only 34 years old. He had his whole life ahead of him. A beautiful wife, a young child and life was good. Until it wasn't.

He and his wife called me one day. They thought that maybe one of the doctors who were treating him before his heart was destroyed, didn't do what they were supposed to.

They didn't know for sure, but had a sense that something went wrong. That's when I got involved.

I got the hospital records, the cardiologist's records, the EKG's, the echocardiogram results, the stress test and all the lab work. I read every page of every record. I too got the sense that something went wrong in the emergency room the very first time he presented with chest pain.

Remember, he was only 34 years old.

I sent the records to a world-class cardiologist for an expert opinion. I couldn't believe what he had to say. I then sent the records to another expert cardiologist for another opinion. He too said the same thing. I still didn't believe it. I located one of the top cardiac experts on the East Coast and sent him the records. He confirmed exactly what the two other medical experts said: "You have a valid case and here's why."

It turns out that the stress test that was performed in the hospital the very first time was done correctly. However, there is a computer that interprets the stress test and prints out the interpretation. The computer repeatedly interpreted the stress test as abnormal. The cardiologist who interpreted the test read it as normal and disregarded the computer's interpretation.

Each one of my cardiac experts pointed to specific parts of the stress test that were clearly abnormal. There was no grey area. It was black and white. Simple really. Each one asked why this wasn't detected. Once it was pointed out to me, I asked the same thing. I even asked the cardiologist who interpreted that stress test. His answer: "We commonly disregard what the computer interprets and use our own clinical judgment."

"Ok," I thought. That sounds reasonable. Except it wasn't. I asked the cardiologist to interpret the sections of the stress test that all three of my experts said were abnormal and required action. This doctor repeatedly stated this was "Normal" and not of any concern. I left those answers alone since I knew that was a fantastic answer for our case.

During a break in the question and answer session, also known as a deposition, one of the attorneys said quietly that the cardiologist who I was questioning had no idea what I'd just done. He was right. The doctor had no clue that I just blew their defense apart.

If this stress test had been interpreted correctly, the patient would have had an angiogram to evaluate why the stress test was abnormal. An angiogram is a test where doctors look to see if any of the arteries that feed the heart are clogged or closed. That's known as ischemic heart disease. If an artery is choked off, then the heart muscle cannot get the blood needed to survive and that portion of the heart will die.

If this young man had an angiogram, it would have shown that three of the major blood vessels that fed his heart were clogged. He would have had elective coronary artery

bypass surgery done also known as “CABG” (pronounced ‘cabbage’). This would have been a triple bypass surgery. Had the surgery been done before he suffered his heart attack, he would have gone on to live a relatively normal, healthy life.

Despite having no defense, the attorneys fought this case till we were about to schedule a trial date. Then negotiations started. This was a very difficult negotiation. There were lost earnings. There were future lost earnings and bonuses and incentives. There were medical bills and expenses. There was health insurance to pay. If he lost his health insurance he would never be insured by any other company again since he was medically uninsurable. There was suffering, agony and pain from the time of the negligence until now and for the rest of his life. There was the inescapable loss of enjoyment of life. Loss of services to his wife and the immeasurable loss of a normal dad to a little child.

This man would never be the same. He’d never be able to work again. He was going to be on medications for the rest of his life. His life expectancy was called into question by the defense. “If he’s as bad as you say he is, then he cannot be expected to live much longer. Therefore, we should not have to pay as much as someone who would be expected to live a long life.”

“Ahh, I get it now. You want to benefit for killing him off early, and don’t want to accept financial responsibility for the fact that your client’s carelessness caused him to be in that position,” I replied.

I continued to stare at the checks on my desk for a few more moments before going to the bank to deposit them. I filled out the deposit slip, checking to make sure that it had the correct number of places for all those zeros. I wondered what the bank teller would think as I deposit those two checks. Would she ask for identification? Would she call the bank manager over for approval? I was a long-standing client of this bank for over twenty years. How long would such a check take to clear so I could pay my clients their settlement?

I walked up to the teller and handed over the two checks along with my deposit slip. The teller was good. She was trained not to over-react. She was professional. But when she first saw the amount, I saw her eyebrows go up. A clear indication she was stunned. She processed the checks without a word, gave me my deposit slip and said “Have a nice day Mr. Oginski.” I couldn’t help but wonder what she was thinking as she saw the first check for \$1,000,000. Her facial expression gave her away when she saw the second check for \$5,000,000.

On the walk back to my office I couldn’t help but think how awful my client and his family must feel with all of the medical problems he’ll have for the rest of his life. He was only 34 years old.