



# Lewis v. Shackelford/Ashland Hospital v. Lewis, 581 S.W.3d 572 (Ky. 2019)

Topics Covered: Abusive Litigation Against Physicians

## Outcome: Very favorable

### Issue

The issue in these consolidated appeals was whether expert witness testimony should be required to show that delayed treatment caused or exacerbated the injuries the plaintiff suffered from a stroke.

### AMA Interest

The AMA opposes abusive lawsuits against physicians.

### Case Summary

David Shackelford presented at a hospital because of his complaints of chronic headaches. Dr. Paul Lewis, an interventional radiologist, gave Shackelford an angiogram to ascertain the cause of the headaches. While Shackelford was in the recovery room, he complained to the nurses of white spots in his field of vision. Nevertheless, he was discharged and sent home. On the way home, he appeared confused. The next day, Shackelford returned to the hospital and was diagnosed as having had a stroke and suffering serious brain injury.

Shackelford sued Dr. Lewis and the hospital for medical malpractice. During his deposition, Shackelford's expert witness testified that the defendants had breached the standard of care by failing to order a diagnostic MRI before discharging Shackelford. However, the expert witness said he was unable to testify that the substandard care substantially contributed to Shackelford's injury. In fact, the expert testified that it was "impossible to tell" if the damage to Shackelford's brain "had been any different had he been hospitalized versus going home." The defense experts similarly testified that Shackelford's treatment did not amount to a substantial factor in causing his injury, although the defense experts acknowledged that stroke treatments "need to be given quickly."

Based on Shackelford's failure to prove that the substandard care caused his brain injury, the trial court granted summary judgment to the defendants.

Shackelford appealed to the Kentucky Court of Appeals, which found that it was common knowledge, known to laymen, that strokes must be treated promptly and "time lost is brain lost." It based this understanding on public service advertisements of "several national health organizations, including the American Heart Association and the American Stroke Association." If Shackelford had received a diagnostic MRI while still in the hospital, this would have shown he had had a stroke and would have received immediate treatment. This, in turn, would have

lessened his injury. Therefore, Shackelford did not require an expert to prove the causation element of his claim. The Court of Appeals reversed.

The defendants appealed to the Kentucky Supreme Court, which reversed the Court of Appeals and affirmed the trial court. It held that the delay in treating Shackelford's stroke did not necessarily cause him injury. Shackelford needed expert testimony to rule out the possibility that he would have suffered the same injury even if the stroke had been detected earlier.

### **Litigation Center Involvement**

The Litigation Center, along with the Kentucky Medical Association, filed an *amicus* brief in the Supreme Court. The brief argued that the summary judgment should be affirmed, because expert testimony was needed to ascertain whether the delay in diagnosing Shackelford's stroke caused or contributed to his brain injury. To rule otherwise would invite jury prejudice and "defensive medicine." Physicians would then be incentivized to order unnecessary tests as a means of protecting themselves from spurious lawsuits.

Kentucky Supreme Court brief (Lewis v. Shackelford)

Kentucky Supreme Court brief (Ashland Hospital v. Lewis)