

New York Law Journal

VOLUME 261—NO. 99 \$4.00

WWW.NYLJ.COM

THURSDAY, MAY 23, 2019

Serving the Bench and Bar Since 1888

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IN BRIEF

DFS Creates First-In-Nation Cybersecurity Division

New York's financial regulatory agency has created a first-in-the-nation cybersecurity division to place special focus on protecting the state's consumers and industries from digital threats, the regulator announced on Wednesday.

Acting Superintendent Linda Lacewell of the state Department of Financial Services said the division is the first of its kind to be established by a banking or insurance regulator.

The move comes more than two years after the agency promulgated the country's first wide-reaching cybersecurity regulations to protect the state's financial services industry and consumers from digital vulnerabilities.

With the constant progression of technology, Lacewell said the division was a must for the agency. "As technology changes the financial services industry, regulation must evolve, and DFS is evolving to meet the challenges and opportunities of the new landscape, to protect consumers, safeguard the industry, and encourage innovation," Lacewell said.



Justin Herring

currency, which DFS regulates.

One such case that he prosecuted as a member of the unit involved a Ukrainian man who was convicted of hacking into business newswires and stealing nonpublic financial information. The hacker sold that information for approximately \$30 million in illegal profits and was sentenced to more than two years in prison.

Herring will now serve as executive deputy superintendent of the newly created division, which will work with the consumer protection and financial enforcement division to conduct cyber-related investigations, issue regulatory guidance, offer counsel, and enforce the agency's cybersecurity regulations.

The division will also send trends and threat information to the state's financial institutions about cyberattacks to help the industry prevent future breaches.

"Increasingly today, counterterrorism is about cybersecurity, our biggest threat and our biggest challenge, and Justin's extraordinary background as a prosecutor and cyber and economic crimes expert positions him well to lead this new division, bringing together DFS's longstanding leadership in cybersecurity and cyber policy," Lacewell said.

Herring was previously a

Jury Awards \$110M to Woman Who Went to Hospital for Asthma Attack, Left With Brain Damage

BY JASON GRANT

A BRONX jury has awarded \$110.6 million to a woman who was admitted to St. Barnabas Hospital for an asthma attack, and who just 10 days later was found to have severe, irreversible brain damage, allegedly because of mistakes made by her critical care and other doctors.

At the conclusion of an eight-week medical malpractice trial that featured testimony from the

woman, and from 10 expert witnesses, Keimoneia Redish cried in the courtroom as the verdict and award were announced, her lawyer told the Law Journal.

"She was numb," said Richard Gurfein of Gurfein Douglas. "She was overjoyed that the jury understood what she has been going through, and that their verdict reflected that."

"When we did summations and we were waiting for the verdict," he said, "all of her five children and a grandchild, they were" » Page 6



Keimoneia Redish is surrounded by her five sons, her partner, Clarence Darden, and her grandson. They are, from left, Keenen, Keimonie, Kayvon, Clarence with her grandson Kashous, Keon and Kane.

SDNY Judge, Too, Finds Congress May Subpoena Banks in Probe of Trump's Finances

BY COLBY HAMILTON

PRESIDENT Donald Trump's efforts to slow, if not defeat, multiple U.S. House of Representative probes in federal court faced another setback Wednesday in Manhattan, where U.S. District Judge Edgardo Ramos of the Southern District of New York declined to issue a preliminary injunction blocking Deutsche Bank and Capital One from responding to congressional subpoenas.

Reading his opinion from the bench, Ramos said that while the subpoenas issued to the banks from the Democrat-controlled House intelligence services were "undeniably broad," they were also "clearly pertinent" to the "facially legitimate" investigations the U.S. Supreme Court has ruled is in Congress' purview

also denied Trump's attempts in were "highly unlikely" to succeed on the Constitutional claims before the court.

Ramos' decision largely echoed that of U.S. District Judge Amit Mehta of the District of Columbia, who



The Deutsche Bank AG twin tower headquarters in Frankfurt, Germany

ALEX KRAUS/BLOOMBERG

Brain Damage

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all in court. I gotta tell you, I got choked up seeing them all there.”

“What a wonderful woman she is to have raised the five boys to be like that. She was the glue that held the family together. She was the one they all called for advice,” he said.

Much of the Bronx Supreme Court trial and its outcome, which at least one defense lawyer says will be challenged by post-trial motions—hinged on how the jury viewed the failure of doctors to transfer Redish to a nearby hospital that had a heart-lung machine on site, Gurfein said. (The other defense lawyers, including for St. Barnabas, did not respond to multiple requests for comment. The hospital and four treating doctors were sued.)

Redish's condition was worsening as she spent days in intensive care at St. Barnabas, after walking into the hospital on Dec. 4, 2010.

A mother of five boys—two of them in elementary school—she had come to St. Barnabas for asthma attacks some 15 or 20 times before, said Gurfein, adding that on nine of those occasions she had been admitted to the ICU.

But this time was different. As doctors and nurses treated her, nothing was working.

For three days in the ICU, the then-40-year-old Redish was given an array of asthma medications, including inhaled steroids and nebulizer treatments. But they kept failing to open her bronchial tubes. As a result, she was building up dangerous carbon dioxide in her body, said Gurfein, citing trial transcripts and evidence from the lawsuit, which was brought in 2011.

Doctors then began giving Redish anesthesia, which Gurfein said was a “salvage therapy, when all else fails,” for the critical care physicians treating her.

During an early anesthesia treatment, her blood pressure suddenly dropped and so the anesthesia was discontinued and she was taken back to the ICU. There, residents started administering fluids to her because of low blood pressure. And one of the named defendants, Dr. Darryl Adler, allegedly wrote in an order note “fluid bolus PRN” without conditions and without limitations.

Over the next 5½ days, as the fluids continued to be pumped, Redish was given 10 gallons in all, and she gained 80 pounds.

The fluids, like the carbon dioxide, were both dangers to her brain, said Gurfein, because each can help cause swelling in the brain—called edema—which eventually occurred.

As her brain injury set in, she also had a seizure, he said.

But it was the decisions of Redish's critical care doctors after the anesthesia treatments hadn't worked—or, more specifically, the doctors' failure to act—that became a major issue at trial.

Gurfein said one of his experts,

Dr. Henry Silverman, testified that after the treating doctors' other efforts had failed, they should have quickly transferred Redish to a hospital with a heart-lung machine, so that she could receive from it extracorporeal membrane oxygenation. The machine, he said the experts explained, would have performed the job of her lungs, removing carbon dioxide from her blood and pumping oxygen into it.

In fact, said Gurfein in the Law Journal interview, he recalled a defense expert, Dr. Peter Dicpin-gaitis, testifying that Montefiore Medical Center in the Bronx had a heart-lung machine on site.

Conversely, Redish's ICU doctors testified that while they were aware of extracorporeal membrane oxygenation, the treatment was not within the standard of care for treating asthma.



Richard Gurfein of Gurfein Douglas

Therefore, they never considered it, recalled Gurfein of their testimony.

A defense expert also testified, he said, that a doctor does not have to apply all of his or her knowledge to patient treatment when the doctor doesn't have a mode of treatment—such as extracorporeal membrane oxygenation—available at their hospital.

Gurfein said he believes the jury may have turned strongly in Redish's favor on that point of disagreement between experts.

“The jury couldn't understand why any doctor would ever say, ‘You don't have to use all you know to help a patient,’” he said.

After the trial, he said that he was able to interview one juror, the foreman, who led a jury of three women and three men.

However, why they had found liability was not talked about much, he said. Instead, “what I remember was how concerned the jury was that they provide for Ms. Redish. ... They wanted to make sure that she was taken care of.”

Today, Redish, who uses a wheelchair, has extensive motor deficits that physicians say are lifelong. She recovered amazingly from brain damage and being in a coma, said Gurfein, but she lacks coordination of her arms and legs and of her speech. She also can't dress herself or walk unassisted and she requires help for daily activities, from putting toothpaste on a brush and getting out of her wheelchair, he said.

Redish's partner of 26 years, Clarence Darden, cares for her around the clock now and the children pitch in. But her spirits have remained strong overall, Gurfein said.

She fought during the trial, once she took the stand.

“Is there anything that you were able to do before December of 2010 that you can do now?” Gurfein had asked her, according to a trial transcript reviewed by the Law Journal.

“Now, I can't walk. I can't barely talk and I can't do laundry. I can't cook,” she answered. “I can't do nothing but watch TV.”

The jury on April 12 returned damages of \$60.7 million for Redish's past medical expenses and pain and suffering, and \$49,940,958 for the future cost of care, alterations to her Bronx rental apartment, one-time care cost and future pain and suffering, Gurfein said.

Kevin Ryan, a senior counsel at Marshall Dennehey Warner Coleman & Goggin, represented three defendant doctors in the suit: Adler; Dr. Richard Stumacher, a critical care physician; and the estate of Ronald Ciubotaru by the Public Administrator of Westchester County. (Ciubotaru, a critical care physician, has since died, Gurfein noted.)

In response to a request for comment, Ryan said only that “post-trial motions are being prepared and depending on how they are decided, appeals may be filed.”

Edward Dondes, a partner at Gordon & Silber, represented Dr. Abdurhman Ahmed, a nephrologist defendant in the case.

Christine Rockwell, a partner at Garbarini & Scher, represented St. Barnabas.

Gurfein, a 48-year veteran lawyer who handles “catastrophic” injury cases, noted that the physician defendants were contracted by St. Barnabas to provide services and were not on staff there.

A former president of the New York State Trial Lawyers Association, he also said that, as is normal course when high verdict amounts are returned by juries, he expects that defendants will challenge the award as excessive and seek reductions.

He also noted that he was “shocked” that no defendant has made an offer to his side to settle for less.

“It is, in defense terms, a dangerous case,” he said. “Dangerous because damages are so great.”

“Even though they believed that liability was questionable,” he said, “they [the defendants] should have weighed this more carefully because I certainly would have recommended to my client a settlement of far less than \$110 million.”

During the lengthy trial at the massive Bronx courthouse, Redish at one point had talked about battling depression, as well, after the brain damage took hold.

She also said, simply, “I have dreams about walking.”

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