Jonathan C. Abel

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With nearly 38 years of experience as a trial lawyer, Jonathan Abel, a partner in Conroy Simberg's Hollywood office, leads the firm's medical malpractice and health care divisions. He represents a wide spectrum of clients, ranging from hospitals, physicians, and nursing homes to medical device and pharmaceutical manufacturers. He also handles cases involving dental malpractice as well as health care providers in administrative proceedings. Jonathan is admitted to practice in all Florida U.S. District Courts and has been inducted as a Fellow in the Litigation Counsel of America, a trial lawyers honorary society.

Practice Areas:

- Medical Malpractice
- Pharmaceutical and Medical Devices
- Dental Malpractice
- Nursing Home Litigation
- COVID-19: Nursing Home And Healthcare Defense
- Products Liability
- Administrative Law
- Automotive Litigation

Admitted to Practice:

- Florida Bar, 1983
- U.S. District Court, Northern District of Florida
- U.S. District Court, Southern District of Florida
- U.S. District Court, Middle District of Florida

Education:

- University of Florida School of Law, Juris Doctorate, 1983
- University of Florida, Bachelor of Arts, *magna cum laude*, 1980

Professional Affiliations:

- Dade County Bar Association
- Broward County Bar Association
- Florida Defense Lawyers Association
- Defense Research Institute
- American Society for Health Care Risk Management
- International Association of Defense Counsel
- Claims and Litigation Management

Honors & Awards:

- Recognized as a "Top Lawyer" by *South Florida Legal Guide* since 2004
- Inducted as a Fellow in the Litigation Counsel of America, a Trial Lawyers Honorary Society, 2011

Publications:

- "Psychiatrists and Prevention of Patient Suicide: Legal Duties in Medical Negligence Claims." 1st Quarter Edition of Physician Insurer Magazine, 2011

Speaking Engagements:

- “When Safe and Effective Meets the Standard of Care: Defending the Hybrid Medical Device/Medical Malpractice Claim,” Co-Presenter, Conroy Simberg Webinar, April 2021
- "COVID-19: Current Liability and Immunity Implications for Florida Health Care Providers," Co-Presenter, Conroy Simberg Webinar, June 2020
- "It’s my Privilege” – Litigation Immunity for Healthcare Providers," Co-Presenter, Conroy Simberg Webinar Series, May 2020
- "Out of Control! – Liability of Mental Health Professionals for Criminal Acts of Patients," Co-Presenter, Conroy Simberg Webinar Series, April 2019
- "Informed Consent for Physicians – What you Need to Know About Florida Law and Standard of Care," Florida Medical Center, March 2019
- Annual Conroy Simberg Claims Management Seminar
- Physician Liability for Suicide, Annual Medical Professional Liability Association Claims and Risk Management Workshop, Chicago, Ill, September 2018
- "Show Me the Data – EHRs Effect on Malpractice Claims," Crittenden Medical Insurance Conference in Miami, FL, April 2015
- “Advanced Strategies for Avoiding and Managing Catastrophic Claims,” Crittenden Medical Insurance Conference in San Diego, CA, March 2014

Representative Experience:

- In the early 2000's, our client designed and manufactured thin-film bioabsorbable implants used to separate tissue during certain surgical procedures. In 2004, that company sold the entire product line, including intellectual property, to a subsequent purchaser (SP), via an Asset Purchase Agreement (APA). The APA provided for indemnification and contained an arbitration clause. In 2008, a woman underwent gynecological surgery in a Miami hospital. According to the surgical record two implants were used, one being identified as manufactured by SP, and one identified as manufactured by our client. In 2011, the woman sued the hospital and both manufacturers, alleging that the implants did not properly absorb and caused significant complications. Based on the lot number and the expiration date contained in the Complaint, the client recognized immediately that the implant listed in the operative record was not their product. A demand for indemnification and defense of the action were filed and were refused. At one point an offer was made to assume the defense of the client, but SP refused to appropriately reimburse the client for all attorney fees incurred, offering only $16,000. Discovery included the testimony of the hospital's nursing IT representative, who explained how our client was erroneously listed on the operative record. SP position remained unchanged. During the defense of the underlying litigation, our client triggered the arbitration clause of the APA, and a two-day binding arbitration was held in San Francisco. The three-person panel concluded that the client proved the implant in question was manufactured by SP. Our client was entitled to a defense and indemnification, and awarded the sum of $383,000, an amount in excess of the fees and costs actually incurred by the client's insurance carrier.

- A 45-year-old male went to the hospital with headaches, dizziness, and

blurred vision. A CAT scan diagnosed hydrocephalous, and our client, a neurosurgeon, placed a shunt. During the next two months, follow-up CT scans were performed and read by two radiologists. Two months post-surgery, a brain abscess was diagnosed, and an infectious disease physician was consulted. The brain abscess was surgically removed by the neurosurgeon, and any evidence of infection eliminated. Two months later, the patient met with his neurologist. Although the area of the abscess shows no evidence of infection, the patient developed a mid-brain syndrome. The patient declined neurologically and died approximately two years later.

A medical malpractice/wrongful death action was brought by the surviving spouse and two sons of the decedent against the neurosurgeon, two radiologists, and the infectious disease physician. It was alleged that the physician delayed in the diagnosis of the abscess, and the neurosurgeon was negligent in performing the removal of the abscess. The defendants contended that the abscess was timely diagnosed, and the abscess resolved and bore no relationship to the mid-brain syndrome that caused the patient's death. Following a five-week trial, all defendants received a defense verdict in Miami-Dade County Circuit Court.

- The plaintiff, age 31, went to our client's hospital emergency room complaining of suicidal thoughts and provided a history of having overdosed on oxycontin, oxycodone, and cocaine. The patient was noted to be at substantial risk for suicide and was admitted to the hospital's psychiatric unit for involuntary commitment by the Baker Act. Later that day he was seen and evaluated by a staff psychiatrist who noted the patient was anxious and depressed and was maintained for observation. The patient was seen by the psychiatrist and staff at the hospital on several additional occasions and was discharged two days later by a residential drug treatment facility. At the time of his discharge, he was found to have no acute depression and no suicidal ideation. After five days as a resident at the treatment facility, the patient eloped and hanged himself from a tree. An action was brought against the hospital, the attending psychiatrist and the residential facility alleging medical negligence in failing to prevent the patient's death. The action was brought on behalf of the couple's wife and their autistic son. A motion for summary judgment was filed on behalf of the hospital contending that Florida law provides that due to the foreseeability of suicide, the healthcare provider does not owe a legal duty to the plaintiff to prevent such suicide. On the morning the summary judgment was scheduled to be heard, the plaintiffs accepted a nominal amount in a confidential settlement from the hospital and the attending physician.

- A seven-passenger SUV with nine passengers was traveling southbound on Interstate 75 in Bradenton, Florida when the left rear tire sustained a tread separation, in response to which the driver, according to defense accident reconstruction, over-corrected and caused the vehicle to roll multiple times. The accident resulted in the death of a pregnant 38-year-old woman (whose five children were in the vehicle), the death of the driver's 14-year-old son and caused the incomplete quadriplegia of a 13-year-old girl.

  An action was brought against the vehicle manufacturer, tire manufacturer, and automotive retailer, who was the firm's client. It was alleged that the placement of two new tires on the front, as opposed to the rear of the vehicle was a proximate cause of the accident. Defense accident reconstruction and analysis determined that due to the excessive driver input, the accident was likely to have occurred regardless of whether the tire that failed was on the rear versus the

front of the vehicle. A confidential settlement was reached with all parties.