

THE CONNECTICUT LAW TRIBUNE

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ALM

VERDICTS & SETTLEMENTS

Brain-Injured Mom Sues Daughter; Wins \$2.475M

Fall down flight of stairs could have been averted with nightlight

Nancy Bayard v. James Whitcomb, et al.:

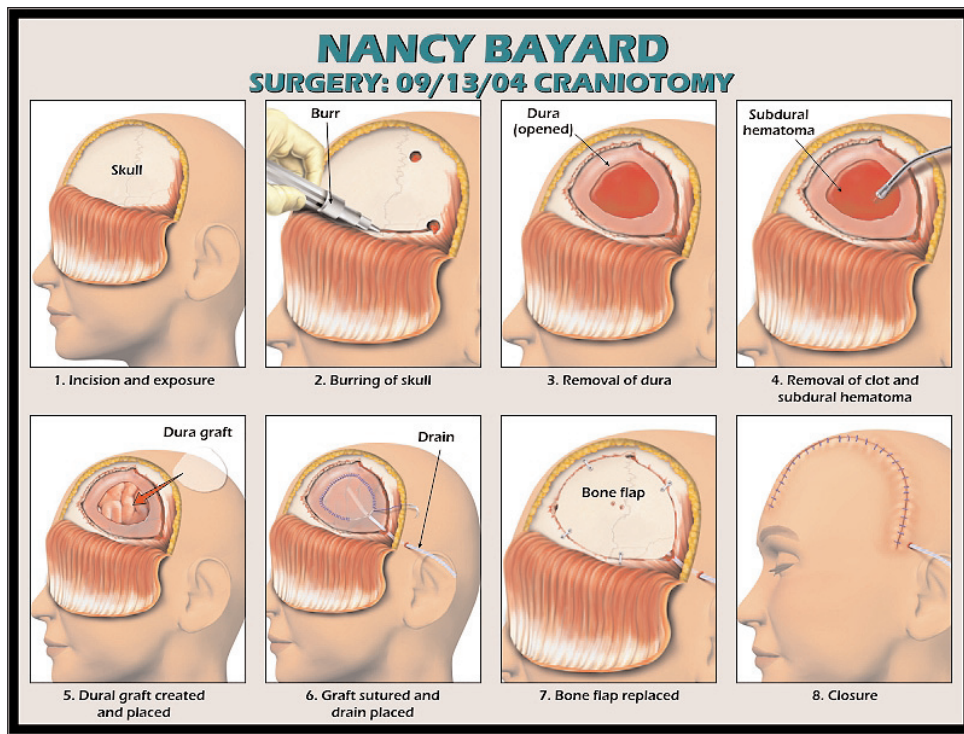
Though what prompted plaintiff Nancy Bayard to get up in the middle of the night is still somewhat of a mystery, the most likely reason, her lawyers argued at trial, is that she needed to go to the bathroom. The 74-year-old Texas woman was visiting her daughter and son-in-law, Haviland and James Whitcomb of Southport.

In the dark, Bayard apparently thought she was entering the bathroom. Tragically, she was at the top of a steep set of stairs. Her subsequent fall resulted in severe brain injuries, a fractured pelvis and other broken bones. She now requires around-the-clock care, including a home health aid to help her get bathed and dressed, according to her attorneys, **Stewart M. Casper** and **Jeremy C. Virgil**, of Stamford's **Casper & de Toledo**.

After a two-and-a-half week trial, a Stamford jury in mid-December awarded Bayard \$4,125,000 (\$2,250,000 in economic damages and \$1,875,000 in noneconomic damages), though the award was reduced by 40 percent due to Bayard's comparative negligence.

Joseph M. Musco, of the **Law Offices of Brian J. Farrell Jr.** in New Haven, represented the Whitcombs.

One of the main questions raised at trial was whether Bayard was at fault for not flicking on a light switch as she ventured in the dark from the home's new wing where she was sleeping to the original structure that housed the guest bathroom. Bayard's



The graphic above was used by the plaintiff's lawyers to illustrate the medical procedure the brain-injured woman underwent.

lawyers contended that, even if she found a light switch in the dark, the available lighting in the new wing would not have come close to sufficiently illuminating her path to the bathroom in the old wing. A hallway nightlight would likely have spared the family of the resulting tragedy, the lawyers asserted.

Though Bayard isn't bedridden, the injuries turned her from a "dynamic fun

lady" into someone all but robbed of her quality of life, Casper said. Still, given the risk she took walking around the house in near total darkness, "a case like this could have been a total loss," Casper acknowledged.

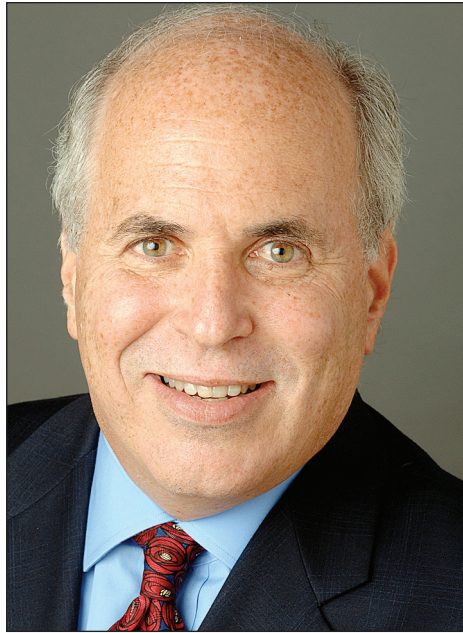
Stamford Superior Court Judge **Taggart D. Adams** presided over the trial. The jury deliberated for a day and a half. "My suspicion is there was a couple of jurors who

didn't want a plaintiff's verdict," Casper said of the panel's comparative negligence finding. "... Juries do things to reach compromises."

In addition to a neurosurgeon and other medical experts, Casper called human factors expert Stephen Rosen, of New York, N.Y., to testify to the minimal lighting needed for someone to navigate inside a home at night.

The suit was brought on Bayard's behalf by another daughter, Alexia Dauterive, also of Austin, Texas, who is Bayard's court-appointed guardian.

"The tragedy of this case," Casper said in a written statement, "was compounded by the fact that two insurance companies that together had sold \$3 million of liability insurance protection to the Whitcombs refused to even offer more than \$500,000 to resolve this claim when it was clear that Ms.



STEWART M. CASPER

Bayard's healthcare costs would exceed \$1 million."

The result, he added, "was a prolonged trial that on its face pitted one sister against another when in reality the sisters have a wonderful relationship. ... It is truly unfortunate when the greed of insurance companies trumps the real and legitimate needs of their customers and family members, and forces them into a courtroom for justice."

In its own written statement, the defense responded: "The case was well-tried and well-prepared by the lawyers on both sides of the issues. The jury verdict was less than Mr. Casper's last demand. In addition, the verdict fell within the parameters of the high-low agreement entered into by the parties before the commencement of jury deliberations."

—By Scott Brede