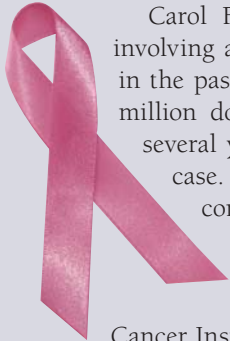


Failure to Diagnose Breast Cancer



Carol Forte has handled several dozen cases involving a delay in the diagnosis of breast cancer in the past ten years, recently settling one for two million dollars. We last wrote in this newsletter several years ago about this type of malpractice case. Since then, breast cancer has been and continues to be the second leading cause of cancer death in women (the most common is lung cancer). The American Cancer Society and The National Cancer Institute estimate that over 182,000 women will be diagnosed with breast cancer in the United States this year, and over 40,000 will die from the disease. In New Jersey, there will be an estimated 6,310 new cases of breast cancer in 2008. Receiving the diagnosis of breast cancer is traumatic; learning that it should have been found sooner is even more devastating.

There are numerous ways in which diagnosis can be delayed. Most often, the reason is a misread of the mammogram. There are several signs on a mammogram that can lead to the suspicion of cancer. Unfortunately, sometimes these findings are missed by the radiologist looking at the study, and the patient is told that the study is negative, only to discover much later that there was cancer there all along. Carol has also handled cases in which a patient felt a lump or a thickening, reported it to a physician, and was reassured on the basis of a physical examination alone that it was nothing to worry about. The fact is, nobody can tell whether a lump is cancer or not just by feeling it; the cells need to be examined under a microscope in order to know for certain. An error may also occur when a patient with a lump is sent for a mammogram, and the mammogram does not show any abnormality; some women have been told that no further follow-up is required. That is wrong, since it is well known that ten to fifteen percent of cancers do not show up on a mammogram, and a lump requires further evaluation even when the mammogram is negative.

Regardless of the way in which the delay occurred, the patient may be harmed if the cancer continued to grow and to spread during the time it remained undiagnosed, resulting in a worsened prognosis and an increased risk of death. In addition, the treatment for the cancer may have been more radical than it would have been had it been found sooner, as in the case of a woman who required a mastectomy when a

lumpectomy would have been appropriate at an earlier point in time.

Carol has obtained settlements in these types of medical malpractice cases for \$3.5 million, \$2.2 million, \$2 million, \$700,000 and many others as well.

The firm also handles cases involving delays in the diagnosis of other cancers including lung, cervical, colon, leukemia and others.

If you or someone you know suspects that their cancer was not diagnosed when it should have been, please feel free to call to discuss your concerns.



\$8,225,000 Jury Verdict ~ Improper Prenatal Testing Leading to Wrongful Birth Claim

After more than 4 weeks of trial, Daryl L. Zaslow won a \$8,225,000 verdict on behalf of a 4 year old boy with Down Syndrome and his parents. Daryl argued that because the mother was 42 years old, she had an increased risk of having a child with medical problems, and therefore required a specialized prenatal screening test called a "targeted ultrasound." This test was not ordered by her obstetrician. This special ultrasound test can detect the presence of markers for birth defects and genetic disorders, including Down Syndrome. In addition, the basic ultrasound that was done was misinterpreted by the defendant radiologist. The evidence showed that if the correct testing had been performed, a marker for Down Syndrome would have been seen, the mother would have undergone amniocentesis which would have diagnosed the Down Syndrome, and the family would have had an opportunity to decide whether to continue the pregnancy.

Victims of Violent Crime

John Blume recently participated in a seminar sponsored by the National Center for Victims of Crime. The purpose of the seminar was to create awareness of the availability of services for violent crime victims, and the use of the civil justice system to pursue damages for victims. People who might bring a lawsuit as a victim of a violent crime include those assaulted at shopping malls, restaurants, ATM machines and other commercial establishments; persons struck by stolen cars; children abused by counselors, teachers, clergymen, and health care providers, and others. Blume Goldfaden has successfully recovered substantial money damages for victims of rapes and assaults, including those that Dennis Donnelly represented reported on page 3 of this newsletter.



\$1,050,000 Settlement ~ Failure to Diagnose Diabetes/Wrongful Death

Kenneth Berkowitz negotiated a \$1,050,000 settlement on behalf of two surviving children whose mother died following a failure to diagnose her gestational diabetes. Their mother was 25 weeks pregnant when she went to the labor and delivery room of a local hospital because of decreased fetal movement and contractions. Although a urine analysis revealed sugar levels above normal, she was discharged with instructions to follow up with her own obstetrician for a scheduled blood sugar test 2 days later. Within 24 hours of discharge, the woman was admitted to another area hospital with seizures and in a diabetic coma. Both she and her infant fetus died later that day.

\$950,000 Settlement ~ Medical Malpractice/Brachial Plexus Birth Injury

Ken also represented a little girl who sustained a severe brachial plexus injury at the time of her birth. Despite surgery to repair the nerve damage, the child, now almost 5 years old, has only moderate use of her right arm. Following a 10-day trial, during which the insurance carrier for the defendants offered just \$350,000 to settle the matter at the start of the trial, Ken secured a \$950,000 settlement while the jury was deliberating.



\$700,000 Settlement ~ Motor Vehicle Accident

Jeffrey Zenna represented a passenger in a vehicle that was struck by a cable television company's van. Our client sustained arm and ankle fractures, both of which required surgery and physical therapy. Jeffrey settled this case for \$700,000.

\$800,000 Settlement ~ Medical Malpractice/Brachial Plexus Birth Injury

David M. Fried represented a young girl and her family in a case of a mismanaged shoulder dystocia at birth. "Shoulder dystocia" occurs when a baby's shoulder gets trapped behind the mother's pubic bone during delivery. A doctor or midwife must use certain maneuvers to free the stuck shoulder and avoid the use of excessive force in attempts to deliver the child. In this case, the doctor failed to utilize the proper maneuvers, and used too much force on the baby's head and neck, injuring the nerves of the arm. The child has had two surgeries to treat the injury, and still has limitations in the use, mobility and strength of her arm. David settled this case for \$800,000 with \$530,000 going into an annuity that will pay almost \$2,000,000 over time.

Super Lawyers



Super Lawyers names New Jersey's top lawyers as chosen by their peers and through independent research. The list of New Jersey Super Lawyers is based upon surveys of the more than 35,000 lawyers across the state who have been licensed to practice for five years or more. The goal was to select as Super Lawyers the top 5 percent of New Jersey attorneys in more than 60 practice areas. Blume Goldfaden has 12 lawyers who have been designated as "Super Lawyers" (with 2 in the top 10 and 2 in the top 100 in the state for 2008), and 3 other attorneys who have been recognized as "rising stars" in personal injury, medical malpractice and/or product liability litigation. Only 2.5% of the attorneys in the state are designated as "rising stars" due to exceptional abilities in their fields of law. The list of New Jersey Super Lawyers is published annually in the May issues of *New Jersey Monthly Magazine* and *New Jersey Super Lawyers*.

Blume Goldfaden has 14 Certified Civil Trial Attorneys



The New Jersey Supreme Court designates lawyers "certified" only after they have completed the mandatory number of trials, submitted peer and Judicial references, and passed a written exam.

For additional information on these and many other Blume Goldfaden settlements and verdicts, please visit our website at www.njatty.com

\$1,700,000 Settlement ~ Inadequate Hotel Security: Shooting/Wrongful Death

Dennis Donnelly represented the estate and wife of a 55 year old oncologist. The couple, who were leaving on vacation in March 2002, intended to stay at a hotel near the airport the evening before their early flight out of Newark International. After checking in, the doctor parked his car in the hotel parking lot while his wife waited in the hotel. In the parking lot, the doctor was robbed, shot in the head, and died. Dennis established that the hotel failed to provide adequate security on the hotel premises, and that the hotel's general manager had ignored the recommendations of its own on-site director of security. Dennis settled this case for \$1,700,000 after jury selection.



\$345,000 Settlement ~ Motor Vehicle Accident/Wrongful Death

John E. Molinari, represented a 70 year old woman with a history of chronic pulmonary disease. The woman was driving out of the parking lot of a hospital when the defendant driver ran a stop sign and struck her. The woman suffered a fractured rib which caused a host of complications, further compromising her respiratory condition, ultimately resulting in her death. The defense argued that her pre-existing condition would have significantly shortened the woman's life span, and therefore that the damages surrounding her premature death were limited. John worked with a medical expert to establish that with proper treatment of her disease, she could have lived much longer than the defense claimed. John settled this case for \$345,000.



\$275,000 Settlement ~ Emergency Room Negligence/ Testicular Torsion

Mitch Makowicz represented a 14 year old boy, who was taken to the emergency room by his parents with complaints of intense lower left abdominal pain. The defendant emergency room pediatrician ordered x-rays and performed only an abdominal exam. He did not examine the boy's scrotum and did not order a testicular scan, as required under these circumstances. The doctor diagnosed constipation and discharged him. The boy's pain continued, and the next day his pediatrician found he had testicular torsion, or twisting of the testicle. A pediatric urologist performed emergency surgery; but it was too late to save the testicle. Mitch settled this case for \$275,000.



\$2,000,000 Settlement ~ Police and EMT Negligence

Ken Elwood represented the estate of a 35 year old immigrant worker from the Dominican Republic in a claim against the Township of Bloomfield. The Bloomfield police and EMTs were called to the factory where he worked after he had a seizure. They later claimed that the man's violent and combative behavior required them to use force and restrain him with handcuffs, which led to respiratory arrest. The man died later at the hospital. An autopsy confirmed that his death was due to mechanical asphyxia with restraint. Ken asserted that the police and EMTs were improperly trained, unfamiliar with how to treat a post seizure patient, and used unnecessary and excessive force resulting in death. Ken settled this case for \$2,000,000.

\$1,950,000 Settlement ~ Anesthesia Error During Minor Surgical Procedure/ Wrongful Death

Michael Zerres represented the family of a woman who suffered a loss of oxygen following a minor surgical procedure, and subsequently died. The family agreed to accept a recovery in the amount of \$1,950,000 for malpractice committed by her anesthesiologist. The woman, who required hemodialysis to treat a kidney disorder, was having a catheter inserted. After the procedure was completed, her blood pressure began to drop. The anesthesiologist delayed in providing proper medication, and she had a cardiac arrest. Had medication been given to reverse the low blood pressure in a timely manner, the cardiac arrest would never have occurred.

Legislative Corner

At one time, the Medical Inter-insurance exchange, also known as MIIX, was one of the largest insurers of health care professionals in the state. Recently, it was declared to be insolvent, which cancels the insurance coverage that many doctors bought. Many of those policies provided coverage of one million dollars. Now, the Property Liability Insurance Guaranty Fund (PLIGA) will pay those claims instead, but only up to a limit of \$300,000, leaving many physicians severely underinsured and personally responsible for the balance of any settlement or verdict over \$300,000. There are bills being considered by the state legislature to increase the PLIGA coverage, and to provide protection to the insured from personal liability above that amount. Any person wishing to support the legislation to increase the amount that the fund will pay in medical malpractice cases can contact their state representatives.

www.njleg.state.nj.us/members/legsearch.asp

www.njleg.state.nj.us/members/abcroster.asp

For additional information on these and many other Blume Goldfaden settlements and verdicts, please visit our website at www.njatty.com



Every case that an attorney handles contains difficulties or obstacles that can hurt the claim. The difference between a successful or unsuccessful outcome often comes down to how well the attorney addresses those problems. I recently tried an automobile accident case in Middlesex County where my client sustained serious injuries while a passenger in a car that was struck in the rear by a tractor trailer. Although

the case should have been settled for around \$750,000, the defendant's insurance company refused to offer more than \$533,000. It was clear to me that this position was due to the fact that the plaintiff was born in Pakistan and was a Muslim. The insurer may have gambled that a jury would be prejudiced against my client and not likely to give him the award he deserved. One of my client's complaints was pain upon kneeling in prayer at his local Mosque; this was not something the insurer expected jurors would be sympathetic to.

I knew that I had to address these issues directly with the jury. During jury selection I requested the judge ask each juror if the fact that my client was born in Pakistan and was Muslim would affect their ability to be fair and impartial. Although I was aware that some jurors might not answer this question truthfully, I felt that their body language would help me determine which jurors to excuse. Getting a response to this question from each juror would also allow me in summation to remind the jurors of their promise not to let these factors prejudice their verdict.

My next consideration was to try to select a jury that was as diverse as possible. To my delight, I was able to seat a jury that included 1 observant Jew, 2 Asian women, 1 African American and 3 Caucasians. I hoped that a diverse jury would be far less likely to let ethnic and religious differences enter into their deliberations than one that was not.

I also discussed with the plaintiff whether he could proceed without an interpreter, and reminded him to stress his problems in skiing, rollerblading, and rafting, activities with which the jurors could more readily identify.

During my summation, I tried to tie together all of the evidence and remind the jurors that their verdict should not be the product of sympathy, passion or prejudice. I told the jury that they were participating in the greatest system of justice in the world; one that is not perfect, but one in which any person could seek justice no matter their wealth, ethnicity, skin color, or religion. I pointed to the visiting judge from Japan who was observing the trial (and to whom they had been previously introduced) and told them that our system was one that people from around the world traveled to observe and emulate. I told them that they needed to look no further than our courtroom to see the great diversity of our country: the judge who was African American, her clerk who was Asian, and their fellow jurors. "Surely the fact that the plaintiff was Pakistani would play no role in their verdict", I said.

The jury returned a verdict in less than two hours. With pre-judgment interest it totaled \$1,563,749.01. So much for the insurer's cynical view of our jury system! The moral of the story though is not that we win all of our cases; rather, it is a reminder that you must always anticipate the weaknesses of your case and try to turn them into an advantage.

QUESTIONS?

If you'd like to make an inquiry of one of our attorneys, please e-mail us by logging on to: www.njatty.com/contact-us.htm

Blume Goldfaden has numerous attorney affiliations nationwide. We can refer you to qualified attorneys to handle your case in any state.

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