

COOK COUNTY
JURY VERDICT REPORTER

Cook County Jury Verdict Reporter

November 23, 2012

Issue 6

Volume EEE

MEDICAL MALPRACTICE--FUNGAL INFECTION MISDIAGNOSED AS CARCINOMA

(EEE 6/1) *Dawn G. Kostal v Dr. Darius Mehregan, Pinkus Dermatopathology Laboratory P.C.* 09L-4036 (refiled from 03L-4391) Tried Sep. 14-25, 2012 (12F)

Verdict: \$3,249,822 (\$500,000 past and future loss of normal life; \$1,300,000 past and future pain & suffering; \$200,000 disfigurement; \$519,950 past medical expenses; \$729,872 past and future loss of earnings).

Judge: Deborah M. Dooling (IL Cook-Law)

Pltf Attys: Craig P. Mannarino and Amanda L. Brasfield of *Kralovec, Jambois* Demand: \$2,000,000

Deft Attys: Mark J. Smith and Caitlin E. Ewing of *Lowis & Gellen* for both defts (Doctor's Company) Offer: none

Pltf Medl: Dr. Stephen Ruby (Pathologist), Dr. Raymond DiPasquo, D.O. (Family Practice), Dr. Bhagavatula Ramakrishna (Infectious Disease), Dr. Michael F. Schafer (Orthopedist), Dr. Robert Signore (Dermatologist) and Dr. Matthew D. Hepler (Orthopedist)

Deft Medl: Dr. Jeffrey Melton (Dermatologist) for both defts

Pltf Experts: Dr. Wayne Duke, 759 Chestnut Street, Springfield, MA (413-794-4500) (Dermatopathologist) and Dr. John Segreti (Infectious Disease)

Deft Expert: Dr. Timothy McCalmont, University of California, UCSF School of Medicine, 1701 Divisadero Street, #280, San Francisco, CA (415-353-7537) (Dermatopathologist) for both defts

On Nov. 20, 2001, pltf Dawn Kostal saw her primary care physician, Dr. Raymond DiPasquo, for two skin lesions which had recently developed. She then consulted a dermatologist, Dr. Robert Signore, who biopsied the lesion on her right lateral thorax on Dec. 3, 2001. Dr. Signore sent the biopsy specimen to deft Pinkus Dermatopathology Laboratory, where it was interpreted by deft Dr. Darius Mehregan, a dermatopathologist. On Dec. 10, 2001, Dr. Mehregan read and reported the specimen as squamous cell carcinoma of the keratoacanthoma type. Upon receipt of this diagnosis, Dr. Signore referred the patient to Dr. Jeffrey Melton, a Mohs surgeon (Mohs surgery is a specialized chemosurgery technique for excision and removal of skin tumors). After Dr. Melton removed the lesions, he advised Dawn to get a full physical examination. She returned to Dr. DiPasquo, who obtained a chest x-ray which showed pneumonia, for which he prescribed antibiotics. On Jan. 28, 2002, Dawn F-43 complained of migraine-like pain in her forehead as well as back pain. Her back pain increased over the next week, so she presented to the emergency room at Palos Community Hospital on Feb. 5, 2002. At Palos, an MRI was performed which showed destruction of her spine. Initially it was thought that her squamous cell carcinoma had metastasized, but cultures of the eroded vertebrae revealed fungal organisms consistent with blastomycosis. An infectious disease physician was consulted, Dr. Bhagavatula Ramakrishna, who began antifungal treatment for blastomycosis. A pathologist at Palos, Dr. Stephen Ruby, requested the biopsy slides from Pinkus Lab to determine whether the patient actually ever had squamous cell carcinoma or if the blastomycosis was missed on the Dec. 2001 specimen. Upon review, Dr. Ruby determined that the carcinoma diagnosis was incorrect and the correct diagnosis should have been blastomycosis. Dr. Signore, also on staff at Palos, contacted Dr. Mehregan at Pinkus and requested that a special PAS stain (periodic acid-Schiff stain) be performed. After performing the special stain, Dr. Mehregan wrote an addendum to his 2001 report, confirming the diagnosis of blastomycosis. As a result of the significant bony erosion in Dawn's spine, she required a spinal fusion from T4-L1 utilizing a rib graft and instrumentation, leaving her unable to return to work following the surgery (\$519,950 medl., \$729,872 lifetime LT as a produce clerk). Pltf asserted Dr. Mehregan, as an agent of Pinkus, was negligent for incorrectly diagnosing the biopsy specimen and failing to perform the special PAS stain in Dec. 2001. The defense contended that while Dr. Mehregan incorrectly diagnosed the biopsy specimen, he had complied with the standard of care. The defense further argued that Dawn had been experiencing back pain as early as Oct. 2001, which was evidence that the fungal infection had already begun to erode her spine, thereby eliminating the erroneous pathology diagnosis as the cause of her injuries.