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MEDICAL MALPRACTICE--DELAYED DIAGNOSIS AND TREATMENT OF LUNG CANCER

(13 S/1) *Estate of Joan Mossberger, deceased v Dr. Amar Garapati, Midwest Respiratory Ltd.* 09L-577 Tried Sep. 3-10, 2013 (12C)

Verdict: \$1,000,000 v Midwest Respiratory Ltd. (\$150,000 pain & suffering; \$100,000 loss of normal life; \$150,000 medical expenses; \$600,000 loss of society); Not Guilty v Dr. Amar Garapati.

Judge: Susan T. O'Leary (IL, Will 12th Jud Cir)

Pltf Attys: Craig P. Mannarino and Amanda L. Brasfield of *Kralovec, Jambois* (Chicago) Asked: \$3,650,000

Deft Atty: Robert R. Gorbold of *Kavanagh, Grumley* (Joliet) for both defts (Doctor's Company) Offer: none

Pltf Medl: Dr. Janet Chin (Oncologist) and Dr. Sandeep Chunduri (Oncologist)

Deft Medl: Dr. Clarence Abella (Family Practice) for both defts

Pltf Experts: Dr. John Scott Ferguson, University of Wisconsin Pulmonary Medicine Clinic, 600 Highland Ave., Madison, WI (608-263-7203) (Pulmonologist) and Dr. Mark Iannettoni (Thoracic Surgeon)

Deft Experts: Dr. Guy Dugan (Pulmonologist) and Dr. William H. Gros (Family Practice) for both defts

In the summer of 2007, F-64 Joan Mossberger was being worked up for upcoming cataract surgery. Her primary care physician, Dr. Clarence Abella, ordered blood work, an EKG, a chest x-ray, and also referred her for a pulmonology consult with deft Dr. Amar Garapati due to her longstanding history of heavy smoking and presumed COPD. Joan saw Dr. Garapati on July 13, 2007, and he cleared her for surgery from a pulmonology standpoint. The chest x-ray performed the next day, July 14, at Silver Cross Hospital in Joliet, identified a suspicious 2-cm nodule in the upper lobe of her right lung. The report was timely sent to Dr. Abella, the ordering physician, but was not sent to Dr. Garapati. When Dr. Abella received the report, he noted the abnormal results but did not inform the patient or Dr. Garapati and cleared her for the cataract surgery. Joan followed up with Dr. Garapati in Aug. 2007, at which time a pulmonary function test was ordered. The pulmonary function test was performed on Sept. 17, Joan saw Dr. Garapati on Sept. 19 to discuss the results, and she was advised to return for another follow-up visit in Dec. 2007. Two days before the scheduled Dec. 19 appointment, a copy of the July chest x-ray report was faxed to Dr. Garapati's office, Midwest Respiratory Ltd., which acknowledged receipt and attached it to the outside of Joan's chart for the doctor to review at the time of the office visit. However, Joan failed to appear for the scheduled appointment, and her chart with the x-ray report was filed in a drawer by Midwest's staff without ever being given to Dr. Garapati to review. Midwest's staff did advise Joan that she had missed the appointment and should reschedule if she wished another visit. Joan subsequently saw Dr. Abella in April and Aug. 2008, but was still not informed about the abnormal x-ray. On Sept. 5, 2008, Joan returned to Dr. Garapati's office, at which time he first saw the x-ray report from 14 months earlier and ordered an immediate workup. Tests revealed the mass had grown to more than 7 cm and Stage 3 non-small cell squamous carcinoma. Joan was deemed to not be a candidate for surgery and underwent several rounds of chemotherapy and radiation, but died from the cancer at age 66 on July 29, 2009 (\$147,262 medl., survived by five adult children). The estate asserted defts were negligent in failing to communicate the abnormal test result to the patient when they received the report in Dec. 2007, Midwest's office staff failed to follow their own written policies for physician review of incoming test results, Joan likely had surgically resectable Stage 1 cancer in Dec. 2007, surgery would have successfully cured her at that time, and the nine-month delay from Dec. 2007 to Sept. 2008 allowed the cancer to grow, spread and progress to an inoperable state. Dr. Abella was a federal government employee at the Will County Community Health Center; a separate lawsuit was filed in federal court against the United States for his acts/omissions, and that case settled earlier in 2013. The defense contended Dr. Garapati correctly treated the patient as soon as he saw the abnormal x-ray report, Midwest did not have an obligation under the applicable standard of care to give Dr. Garapati the report when the patient failed to appear for a scheduled visit to review other test results, defts had no responsibility to keep or respond to the x-ray report since they had not ordered it, Dr. Abella was the sole proximate cause of any delay, and it was possible that she already had Stage 3 cancer in Dec. 2007. The jury in this case was originally impaneled in May 2013, but the trial had to be postponed after a witness was hospitalized, so trial of the case was continued to Sept. 2013 with the same jury. Pltf's last demand was reported as \$345,000 by pltf's counsel, \$1,000,000 by defense counsel. Deft Midwest has filed a post-trial motion.