

Overlooked Breast Lump Leads to \$21.6M Miami-Dade Med-Mal Verdict

by Celia Ampel

When Hialeah emergency room nurse Marlande Lazard felt a lump in her left breast, she knew she needed to get it checked out.

An ultrasound taken at her hospital showed a mass, but the radiologist couldn't tell for sure if it was cancerous. Lazard asked for a second opinion at the radiology facility where she'd had pregnancy ultrasounds done—but it turned out the technologist never took an image of the mass in her breast, according to court records. Radiologist Dr. James Domesek said he didn't know there was an earlier study he needed to compare with the new ultrasound, and after looking at the film, he found no cancer.

It took nearly one more year and several other doctors' visits for Lazard to be diagnosed with breast cancer, at which point it was Stage 3, according to her lawyer Gary Alan Friedman.

"Her prognosis is very bad," said the Coral Gables attorney of Friedman & Friedman. "She's not going to survive the cancer at this point."

With doctors telling her she has less than two years to live, Lazard won a \$21.6 million verdict April 20 against Signet Diagnostic Imaging Services LLC and Domesek.

Other physicians who allegedly failed to diagnose Lazard's cancer settled earlier in the case, and the judge made a finding of liability against Signet. But Domesek never made a settlement offer, maintaining he did not know about the breast lump or the prior study, Friedman said.

The case went to trial before Miami-Dade Circuit Judge John Schlesinger. Domesek's attorneys, Ilisa Hoffman and Carlos Fabano



Gary Friedman, Zachary Friedman and John Seligman of Friedman & Friedman won a \$21.6 million verdict for their client against Signet Diagnostic Imaging Services and the radiologist.

of Ilisa W. Hoffman P.A. in Coral Gables, argued he read the images that were given to him correctly. Liability should fall 100 percent on Signet because its technologist failed to place the transducer over the breast lump to capture it on the ultrasound, the defense argued.

The defense attorneys also argued that when Lazard first felt the lump, the cancer was already so advanced that her prognosis would have been the same, Friedman said. Hoffman did not respond to requests for comment.

"The plaintiffs expert felt that it evolved and became very aggressive over time, and that there was in fact a window of opportunity to treat this patient and cure her without any reduction in life expectancy whatsoever," Friedman

said. "The defense expert was saying it never passed through Stage 1 or Stage 2, which would be curable ... and that she was basically doomed to die from the moment she had her first ultrasound."

Friedman, who tried the case with his son, Zachary, as well as John Seligman, argued electronic records from Signet showed the films from Lazard's first study were delivered to the facility a few days before her appointment. Those records, along with Lazard's testimony that she dropped off the images on a CD-ROM, contradicted the doctor's testimony that the films were not there and were not available for his review.

One sheet filled out by the technologist indicated there was no prior film, but other parts of Lazard's chart indicated there was, Friedman said.

A radiology expert testifying for the plaintiff said Domesek should have obtained the first study, and that the study he did have showed a lymph node abnormality that should have raised concerns. Lazard had also noticed thickening skin on her breast, which could be consistent with either cancer or mastitis, as she was still breastfeeding her younger

puzzle to know whether this was benign or cancerous. ... You can't say an ultrasound is benign when you have that type of finding, the skin thickening," Friedman said.

As for damages, the jury heard about Lazard's chemotherapy, mastectomy and daily pain. The pastor from her church testified she continued to serve others even as her cancer advanced.

"This was a very special lady," Friedman said. "She had come from basically nothing in Haiti. She got herself educated in the United States, became a registered nurse, took care of her children wonderfully, got them a great education. She was very involved in her church and went on medical missions to Haiti."

The jury awarded about \$21.6 million, including \$18 million for Lazard's pain and suffering. Signet was assigned 85 percent of the blame, with Domesek taking the remaining 15 percent, or about \$3.2 million.

Final judgment has not yet been entered, but Friedman said if the verdict is upheld, his firm will be entitled to significant prejudgment interest, fees and costs because the defense rejected the arbitration offer.

Case: Marlande Lazard v. Signet Diagnostic Imaging Services et al

Case No.: 2015-028411-CA-01

Description: Medical malpractice

Filing date: Dec. 8, 2015

Verdict date: April 20, 2017

Judge: Miami-Dade Circuit Judge John Schlesinger

Plaintiffs attorneys: Gary Alan Friedman, Zachary Friedman and John Seligman, Friedman & Friedman, Coral Gables

Defense attorneys: Ilisa Hoffman and Carlos Fabano, Ilisa