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Jury awards \$12M for failure to diagnose lung cancer

By Jordyn Reiland
Law Bulletin staff writer



John J. Perconti



Michael F. Bonamarte



Cari F. Silverman

Cook County jurors awarded \$12 million to the family of a woman who died from lung cancer three years after a chest X-ray revealed an abnormality doctors never told her about.

Renee Chiero sued several of the doctors who treated her mother, Doris Newberry, contending they failed to diagnose and treat the cancer she had leading up to her death in September 2013.

The verdict is higher than any previously reported cancer-related wrongful-death verdict or settlement, according to John L. Kirkton editor of the Jury Verdict Reporter, a product of Law Bulletin Media.

The last similar case with a large award was a \$5.25 million verdict from 2003 involving a delayed cervical cancer diagnosis, Kirkton said.

Chiero's suit named Alexian Brothers Medical Group, St. Alexius Medical Center, her mother's primary care physicians Wanda Iza and Jeffrey Lindahl of Alexian Brothers, radiologist Jeffrey Chung of Radiological Consultants of Woodstock LLC and St. Alexius emergency room physician Michael Frumkin.

On July 24, 2010, Newberry went to St. Alexius Medical Center emergency room in Hoffman Estates because she was experiencing shortness of breath.

Frumkin ordered a chest X-ray, initially read it as "normal," decided to prescribe Newberry with antibiotics and sent her home.

Chung also read the X-ray, but he found an abnormality in her lung. He put a note in Newberry's chart recommending a follow-up X-ray in three months but Newberry was never told to do so, according to Chiero's attorney John J. Perconti of Levin & Perconti.

Three weeks later, Newberry followed up with Iza on her own. Although Iza had the chart with Chung's note, neither she Lindahl, whom Newberry saw after Iza left the practice, told Newberry about the abnormality or to seek a follow-up X-ray, Perconti said.

Newberry was diagnosed with lung cancer in December 2012 by another physician and she died from Stage Four lung cancer on Sept. 9, 2013.

The verdict was reached Thursday after a Daley Center trial before Circuit Judge Thomas V. Lyons II.

Iza, Chung, and Lindahl were found liable but Frumkin was not.

A series of deals brokered before the verdict will affect how the defendants split up the damages.

Chiero's attorneys entered into a high-low agreement with Frumkin. The high was \$700,000 and the low was \$250,000, Perconti said. As a result of the verdict in his favor, Frumkin will owe \$250,000 of the \$12 million.

Frumkin's attorney, Robert L. Nora of Nora & Partners LLP, said his client's care was not what was at issue, rather the jury had to determine whether he had an obligation to follow-up on Chung's recommendation and radiological analysis of the patient's X-ray.

"The jury correctly found that the obligation did not exist," he said.

Frumkin was also represented by Taylor V. Nora of Nora & Partners LLP.

Perconti also entered into a high-low agreement with Chung — the high was \$2 million and the low was \$500,000. He'll owe \$2 million of the \$12 million in damages.

Iza and Lindahl's attorneys offered a \$100,000 low and \$1 million high agreement, which was rejected, Perconti said. They'll be left to cover the amount not paid through the settlements.

Chiero is also represented by Michael F. Bonamarte IV and Cari F. Silverman of Levin & Perconti.

"We trust doctors to figure out what's wrong and to begin treatment right away, to give patients the best possible chance at survival, or, at the very least, the best possible quality of life in the time they have. When doctors don't live up to the trust we put in them, they have to face consequences," Bonamarte said in a press release.

Chung is represented by Amy L. Anderson of Brenner Monroe Scott & Anderson Ltd. She could not be reached for comment.

Iza and Lindahl are represented by Michael E. Prangle and Elizabeth M. Neidig of Hall Prangle & Schoonveld LLC. They could not be reached for comment.

The case is *Renee Chiero v. Wanda Iza, M.D., et al.*, 14 L 7734.