

Montco Jury Awards \$3 Mil. For Delayed Cancer Diagnosis

By Danielle N. Rodier
The Legal Intelligencer
July 15, 2003

The logo for 'The Legal Intelligencer' is displayed in a stylized, gothic font. The text is set against a light beige background with a dark red horizontal line underneath.

A Montgomery County jury has awarded more than \$3 million for a claim of delayed diagnosis of breast cancer, in a verdict that the winning lawyer said could shed light on how suburban juries will react to such complaints in the wake of recent changes in the venue rules, according to the plaintiff's attorney.

Thomas R. Kline of Kline & Specter said the case, captioned Lackman v. Hauser, was a good test of how a jury outside the city of Philadelphia would value a case. In medical malpractice, much wrangling over venue has been driven by the widely-held belief that suburban juries are less likely to hand down large awards than city juries.

"It's an object lesson, as more and more cases under the new venue rules will be tried in Montgomery, Delaware, Chester and other counties," Kline said. "Suburban juries will respond."

According to the complaint, the decedent, Dagmar Lackman, underwent a routine mammogram on Feb. 14, 1995, from Norman Hauser, M.D., a now-retired radiology specialist, who owned Abington Radiology Associates Inc.

Hauser interpreted the mammogram as showing no signs of malignancy. The complaint alleged that what Hauser failed to see was increased breast density and architectural distortion in Lackman's left breast, which may be signs of carcinoma.

Lackman underwent another routine mammogram on April 1, 1996. Sharon Weiss, a doctor from Radiology Group of Abington, interpreted the results and recommended further evaluation and possible biopsy, the complaint said.

Lackman was diagnosed with a stage-four malignancy in her left breast on May 10, 1996, the complaint said.

The complaint said the defendants' negligence caused a delayed diagnosis and treatment, "allowing her disease to progress undiagnosed and untreated, and directly lead to the spread of her disease, rendering her disease incapable of cure." Lackman died of the disease on May 2, 1998, Kline said.

Lackman, who was 58 when she died, was a mother of four now-adult children, Kline said. She had worked as a vision therapist, earning approximately \$20,000 per year. The wage loss claim was \$100,000, Kline said.

The trial before Montgomery County Common Pleas Judge Bernard Moore and a 12-member jury lasted three days, ending last Thursday. Kline said it was important to note that the jury was "highly educated and sophisticated," composed of individuals such as a restaurant owner and a dean of women at a local college. "Almost every juror was college educated," Kline said.

Lackman's husband, Thomas W. Lackman, stated claims for wrongful death and survival. The defense "vigorously" contested liability up until the time of trial, Kline said. "At the time of jury selection, the defense admitted liability, and the case proceeded to trial," he said.

Kline, who was assisted by the firm's Amy Guth, said that at that point, the focus turned to damages for a "58-year-old low-wage earner."

Kline said he presented a "compelling" videotaped deposition of Dagmar Lackman, conducted about 10 months before her death. In the video, Kline said, Lackman spoke of her endeavors after her diagnosis to educate other women about the problems of misdiagnosis of breast cancer.

In addition, Kline said he presented testimony from Lackman's husband and her four children, each of whom testified on a different aspect of their relationship with their mother in the last two years of her life. Kline also presented expert testimony from a nurse who explained the content of the medical records and an actuary who documented claimed economic damages.

Michael E. McGilvery of Young & McGilvery was defense counsel. He was in trial and could not be reached for comment yesterday.

"The defense argued the real villain in the case was the cancer itself but presented no evidence at trial," not even from Hauser, Kline said.

An offer of \$500,000 was made before trial, Kline said. The Medical Professional Liability Catastrophe Loss Fund and the Pennsylvania Property and Casualty Insurance Guaranty Association made a \$1.2 million offer on the second day of trial that was rejected, he said. Both Kline and the CAT Fund viewed the case as a "test of the compensatory value of a claim like this in front of a Montgomery County jury," Kline said.

"The CAT Fund valued the case at \$1.2 million, and we had an honest difference of opinion, after liability was admitted, as to how a Montgomery County jury would value damages in a cancer case of that type," Kline said.

"I believed wholeheartedly that a jury could not reasonably or fairly evaluate the case at such a low offer. The jury obviously agreed."

The jury awarded \$1.3 million on the wrongful death claim and \$1.7 million on the survival action, as well as \$110,000 for past medical bills, and economic damages of about \$600,000, Kline said.

Because two layers of CAT Fund coverage are available, one for Hauser and one for Abington Radiology Associates, as well as a layer from PPCIGA, there is \$2.2 million in coverage collectible, Kline said.

A motion for \$1.3 million in delay damages also is pending, Kline said.

* This article is republished with permission from American Lawyer Media, Inc. Copyright 2003. ALM PROPERTIES, Inc. All Rights Reserved. Further Duplication Without Permission is Prohibited.