

# Delay in Cancer Diagnosis Leads to \$2.8M Verdict

By Shannon P. Duffy  
Of the Legal Staff  
MARCH 16, 2004

## The Legal Intelligencer

A Philadelphia jury awarded \$2.8 million last week to a man who claimed his doctor's failure to order a diagnostic test allowed his stomach cancer to grow for five months and forced him to undergo a much more grueling regimen of treatments.

Plaintiff's attorney Andrew Stern of The Beasley Firm said the judgment is expected to increase to more than \$3 million when Common Pleas Judge Lisa M. Rau adds delay damages.

Stern said experts testified that if Charles Denning's cancer had been detected in January 1999, it would still have been in stage I and would have required only removal of the tumor.

Instead, Stern said, Denning's cancer was not detected until June 1999, by which point it had progressed to stage II and broken through the wall of his stomach. As a result, doctors were forced to remove two-thirds of Denning's stomach, and he was forced to endure months of radiation and chemotherapy.

Experts also testified that Denning now faces a much higher risk of recurrence due to the cancer's spread, Stern said.

According to court papers, Denning was 39 years old in January 1999 when he went to his family doctor, Dr. John Freehafer, complaining of abdominal pain and indigestion - symptoms consistent with peptic ulcer disease.

Freehafer ordered an upper GI test, which did not show any ulcer, the suit said.

But on another test - an H-pylori test that measures the level of bacteria in the blood - Denning measured 70, far above the normal value of 1.8.

Stern told the jury that the H-pylori test results clearly showed that Denning was at a greater risk of gastric cancer and that Freehafer immediately should have ordered an endoscopy test, which would have detected the cancer in its earliest stage.

Instead, Stern said, Freehafer prescribed only acid reduction medication that provided Denning with no relief.

Over the next few months, Stern said, Freehafer responded to Denning's continuing complaints by ordering an ultrasound of his gall bladder and a CAT scan.

Denning later learned from a member of his church about the endoscopy test, and Freehafer ordered it after Denning requested it.

"It was Mr. Denning who ultimately requested the type of test that should have been ordered from the very beginning," Stern said.

Freehafer referred Denning to Dr. Charles Scheurich who performed the endoscopy in mid June 1999 and discovered an aggressive, stage II gastric cancer.

Scheurich was also named as a defendant in the suit but was cleared by the jury despite an expert's testimony that he, too, had engaged in malpractice by not urgently ordering the endoscopy when he first learned of Denning's case in late May 1999.

Stern said the 12-member jury deliberated about two hours before voting 10-2 in favor of Denning on his claim against Freehafer.

Prior to the trial, Stern said, the defendants made no offer to settle the case. When the trial had concluded, but before the jury had returned, the defense offered \$600,000, but Stern said he rejected it.

Defense attorney Charles A. Fitzpatrick III of Mylotte David & Fitzpatrick could not be reached for comment.