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VerdictSearch New York Reporter

Irina and Burton Miller v. Anita LaSala; No. 112084/99

Verdict Date: 01/19/2000

Topic: Medical Malpractice - Diagnosis of Cancer; Failure to Timely Diagnose Uterine Cancer

Result: \$ 1,288,000 for Irina M. (6/0). Breakdown: \$ 100,000 for past pain and suffering; \$ 13,000 for past lost earnings; \$ 1,000,000 for future pain and suffering; \$ 175,000 for future lost earnings.

Disbursement: Award Total: \$ 6,488,000

Injury: Pltf., a 44-year-old lecturer at Marymount College, presented to Def. for general treatment in January 1996. She had been previously diagnosed with uterine fibroids. Def. asked Pltf. to return in November 1996, at which time she underwent an ultrasound. It revealed possible necrosis. Pltf. was asked to return in 1 year. In June 1998, she presented to Def. with complaints of changes in her menstrual cycle. Def. sent her for an ultrasound, which showed an increase in the size of the uterus and fibroids. Pltf. experienced increasing heavy bleeding and pain in November 1998. She underwent a complete hysterectomy in February 1999, and the pathology study revealed leiomyosarcoma. A follow-up CAT scan revealed extensive metastasis to the lungs and subsequently to the liver. Pltf. claimed that Def.'s delay in diagnosis allowed the cancer to metastasize, and that the uterine sarcoma should have been part of Def.'s differential diagnosis in June 1998. Pltf. contended that she should have been tested by an MRI and/or exploratory surgery in June 1998. She also claimed that if the diagnosis was timely, her cancer would have been diagnosed at Stage I or II and she would have had a significantly better prognosis. She is expected to live 10 months.

Def. argued that a leiomyosarcoma is a very rare form of cancer, that Pltf. did not have any symptoms different from those caused by a large fibroid, and that there was no immediate indication for surgical intervention in June 1998. Def. claimed that even if she had diagnosed the cancer sooner it had already metastasized and Pltf.'s prognosis would have been the same.

State: New York

Court: New York Supreme

Judge: Karla Moskowitz

Plaintiff Attorney: Mark M. Basichas; Sherman& Basichas; Manhattan, NY (Irina and Burton Miller)

Defendant Attorney: Joan S. Levin; Schwartz, Levin& Milano; Manhattan, NY (Anita LaSala)

Facts: Pltf., a 44-year-old lecturer at Marymount College, presented to Def. for general treatment in January 1996. She had been previously diagnosed with uterine fibroids. Def. asked Pltf. to return in November 1996, at which time she underwent an ultrasound. It revealed possible necrosis. Pltf. was asked to return in 1 year. In June 1998, she presented to Def. with complaints of changes in her menstrual cycle. Def. sent her for an ultrasound, which showed an increase in the size of the uterus and fibroids. Pltf. experienced increasing heavy bleeding and pain in November 1998. She underwent a complete hysterectomy in February 1999, and the pathology study revealed leiomyosarcoma. A follow-up CAT scan revealed extensive metastasis to the lungs and subsequently to the liver. Pltf. claimed that Def.'s delay in diagnosis allowed the cancer to metastasize, and that the uterine sarcoma should have been part of Def.'s differential diagnosis in June 1998. Pltf. contended that she should have been tested by an MRI and/or exploratory surgery in June 1998. She also claimed that if the diagnosis was timely, her cancer would have been diagnosed at Stage I or II and she would have had a significantly better prognosis. She is expected to live 10 months.

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1998. Deft. claimed that even if she had diagnosed the cancer sooner it had already metastasized and Pltf.'s prognosis would have been the same. No offer; demand: \$ 750,000.

Other Demonstrative Evidence: medical chart; diagrams of the pelvis area

Plaintiff Experts: Dr. Cynthia Wu; Obstetrics Nursing
Dr. Fred Shapiro; Oncology
Dr. Gary Schwartz; Oncology

Defendant Experts: Dr. Laurence Alpert; Pathology
Dr. Mark Fialk; Oncology
Dr. Maureen Killackey; Obstetrics Nursing

Insurance: MLM

Issue: VOLUME XVII/39-3