

CASE INFORMATION SHEET
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COUNTY AND COURT: Lee County, Circuit Civil

NAME OF CASE:

CAROLE CALANDRUCCI, as Personal Representative of the Estate of THOMAS CALANDRUCCI v. ALBERT G. ALESSI, D.O. and ALESSI FAMILY CARE, P.A.

CASE DOCKET

NO.: 10-CA-004506

JUDGE:

The Honorable
Alane Laboda

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL:

Craig Stevens, Esquire
Dan Sheppard, Esquire
Morgan & Morgan, P.A.
12800 University Drive
One University Park
Suite 600
Ft. Myers, FL 33907

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:

Richard B. Mangan, Jr., Esquire
Eric F. Ochotorena, Esquire
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Rissman, Barrett, Hurt,
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1 North Dale Mabry Highway
11th Floor
Tampa, FL 33609
Attorneys for Albert G. Alessi, D.O. and Alessi Family
Care, P.A.

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:

Thomas Calandrucci was between the ages of 61 and 66 years old during the time frame in which he sought care from Dr. Albert Alessi. Mr. Calandrucci was retired during that time frame. His wife, Carole Calandrucci, brought the claim on behalf of her deceased husband.

FOR WRONGFUL DEATH CASES, PLEASE GIVE AGE AND RELATIONSHIP OF SURVIVORS:

Mr. Calandrucci was survived by his wife, Carole Calandrucci (age 65) as well as his daughter, Kim Calandrucci (age 43) and two sons, Thomas Calandrucci, Jr. (age 41) and Stephen Calandrucci (age 39).

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

Dr. Albert Alessi provided care and treatment to Thomas Calandrucci between June 4, 2004 and May 15, 2009 at Alessi Family Care, P.A. in Bonita Springs, Florida.

NATURE OF INJURY:

Initially, Mr. Calandrucci began treating with Dr. Alessi on June 3, 2004 when he presented to Dr. Alessi's office to establish as a new patient. The defense argued Dr. Alessi's chart reflected that a colonoscopy was recommended on that date.¹ Mr. Calandrucci did not obtain a colonoscopy following this visit.

At that first visit, Dr. Alessi noted that Mr. Calandrucci's EKG was "a little bit abnormal." As such, Dr. Alessi's plan included having Mr. Calandrucci undergo an echocardiogram and stress test, which Mr. Calandrucci initially refused.

While treating with Dr. Alessi, Mr. Calandrucci was concurrently treating with F. Desmond Hussey, M.D., a pain management neurologist that Mr. Calandrucci had been treating with since January 2002 for numbness in his arms and back due to a work-related fall. During Mr.

¹At trial, Plaintiff's counsel disputed that a colonoscopy was offered on this visit, or any other visit, by arguing that the word "colonoscopy" only appeared on the back of the chart for each visit which Plaintiff referred to as the "super bill" and never in the plan or recommendation section.

Calandrucci's December 20, 2004 visit with Dr. Hussey, Mr. Calandrucci indicated that he was continuing to experience shooting neuropathic pain in his arms when he lifted anything. In order to attempt to address this issue, Dr. Hussey ordered a blood screening to determine if there was any diffuse arthritic condition.

Thereafter, Mr. Calandrucci saw Dr. Hussey again on January 6, 2005 wherein his blood work showed a hemoglobin of 13.9, hematocrit of 41.6 and platelets of 203. Dr. Hussey's impression was that Mr. Calandrucci had mild anemia with slightly low iron and intermittent rectal bleeding. Dr. Hussey then referred Mr. Calandrucci to Anchor Health to undergo a GI work-up with Ms. Elizabeth Diamond, ARNP.

Mr. Calandrucci underwent a GI work-up with Ms. Diamond on January 26, 2005, wherein he denied any history of anemia. He did, however, indicate a history of intermittent rectal bleeding, while still denying constipation or change in bowel habits. He acknowledged to Ms. Diamond that he had no prior colonoscopy. During this visit with Ms. Diamond, Mr. Calandrucci declined to have a rectal exam, despite being informed of the risks and benefits.

Ms. Diamond requested that Mr. Calandrucci get "cleared" to undergo a colonoscopy, due to his cardiac issues as noted in Dr. Alessi's chart. Nurse Practitioner Diamond testified she expected Dr. Alessi to "clear" Mr. Calandrucci for the colonoscopy. Dr. Alessi received this request and brought the patient back for "clearance."

On March 1, 2005, Mr. Calandrucci underwent a stress test with Dr. Walther Evenhuis at Nuclear Medicine of Naples, which was abnormal. The abnormal stress test indicated that Mr. Calandrucci could not be cleared for a colonoscopy and needed further cardiac work-up. Thereafter, Mr. Calandrucci followed up with Dr. Alessi on March 7, 2005 to review the results of his abnormal stress test. Dr. Alessi's note indicated that he spent over 45 minutes with Mr. Calandrucci discussing in detail potential complications, including death should Mr. Calandrucci not seek further treatment for his cardiac condition.

Once again, on April 7, 2005, Dr. Alessi's office note indicated that he called Mr. Calandrucci to emphasize the need for Mr. Calandrucci to obtain a cardiology evaluation as soon as possible. Thereafter, on April 13, 2005, Mr.

Calandrucci sought a cardiac consult from Dr. Julian Javier to evaluate coronary artery disease, cardiomyopathy, and peripheral vascular disease.

Dr. Javier noted Mr. Calandrucci to be overweight and a heavy smoker with an abnormal EKG and an abnormal perfusion study. At that point, Dr. Javier recommended that Mr. Calandrucci undergo a cardiac catheterization and completely discontinue smoking. Mr. Calandrucci's cardiac work-up eventually led him to undergo a quadruple cardiac artery bypass graft at Naples Community Hospital in September of 2005.

Thereafter, Mr. Calandrucci continued to be closely followed by cardiologists both in Florida and New York for his ongoing cardiac issues. By November of 2006, Mr. Calandrucci developed rapid atrial fibrillation while in New York. While there, Mr. Calandrucci was admitted to the hospital on three separate occasions and underwent defibrillator placement.

On November 20, 2007, Mr. Calandrucci returned to see Dr. Alessi, following a two year stint without a visit. Thereafter, Dr. Alessi's chart again reflected that he recommended a colonoscopy and an endoscopy in February of 2008, and again recommended a colonoscopy in July of 2008. During this time frame, Mr. Calandrucci was noted to be slightly anemic. Mr. Calandrucci did not obtain a colonoscopy after either of these visits. Plaintiff disputed any order for a colonoscopy was made.

In January of 2009, anemia was again noted based on a review of Mr. Calandrucci's labs. Amy Delauderaty, P.A., Dr. Alessi's physician assistant, again recommended a colonoscopy and endoscopy on February 18, 2009 wherein she specifically indicated that the patient is "aware of risks of inappropriate follow-up, including death." Once again, Mr. Calandrucci did not obtain a colonoscopy after that visit.

Lab work was again obtained on April 16, 2009 revealing a hemoglobin of 9.5, which was the lowest it had been during the entire time that Dr. Alessi had treated Mr. Calandrucci. At that time, Mr. Calandrucci reported to Dr. Alessi that he had stopped taking his iron. Dr. Alessi recommended that Mr. Calandrucci resume iron supplements as

soon as possible and further recommended he undergo a CT of his abdomen and pelvis.

The CT of the abdomen and pelvis were performed on April 24, 2009 revealing a right colon mass approximately 5cm compatible with primary colon neoplasm and further revealed a 4.7cm mass in the liver suspicious for metastatic disease. Dr. Alessi immediately recommended a surgical consult with Dr. Lamon regarding the colon mass.

Shortly thereafter, Mr. Calandrucci was diagnosed with Stage IV metastatic colon cancer and underwent an evaluation with Dr. Mark Rubin at Florida Cancer Specialists and began chemotherapy. He subsequently underwent a colon resection on August 11, 2009 and then commenced chemotherapy for Stage IV colon cancer with liver metastases throughout the remainder of 2009 into the summer of 2010. Mr. Calandrucci passed away on October 17, 2010.

Mr. Calandrucci died as a result of his colon cancer, and at trial Plaintiff's experts estimated that he would have lived for another 13 years but for his colon cancer.

Plaintiff's past medical expenses totaled \$497,464.98, including a Medicare lien in the amount of \$145,247.75.

CAUSE OF INJURY:

Mr. Calandrucci was diagnosed with Stage IV colon cancer that had metastasized to his liver in April of 2009. Mr. Calandrucci died as a result of his colon cancer on October 17, 2010.

Plaintiff argued that defendant, Dr. Albert Alessi, failed to provide appropriate care and treatment to Mr. Calandrucci between June 4, 2004 and April, 2009, which resulted in an unnecessary delay in the diagnosis of Mr. Calandrucci's colon cancer, and which ultimately resulted in his death.

PLAINTIFF'S EXPERT WITNESSES:

1. Finley W. Brown, M.D.
Logan Square Medical Group
2511 N. Kedzie Boulevard
2d Floor
Chicago, IL 60647

Dr. Brown offered testimony as Plaintiff's main standard of care expert, as a family practice physician. Dr. Brown obtained his medical training at Northwestern University and received his degree in 1969. He is licensed in Illinois and has an inactive license in California. Dr. Brown is board certified by the American Board of Family Practice in family practice.

Dr. Brown rendered opinions that Dr. Alessi deviated from the prevailing standard of care in a number of ways, including opining that Dr. Alessi failed to perform a rectal exam, a prostate exam or perform any fecal occult blood testing on Mr. Calandrucci. Dr. Brown further opined that Dr. Alessi did not comply with the prevailing standard of care by failing to refer Mr. Calandrucci to a gastroenterologist for a colonoscopy and failing to refer Mr. Calandrucci to a hematologist for a work-up of his anemia.

Dr. Brown opined that not only was Mr. Calandrucci of the appropriate age where screening for colon cancer should begin via tests such as rectal exams, FOBT x3 and colonoscopies, but he also opined that Mr. Calandrucci exhibited symptomatology, including long-standing anemia, rectal bleeding and constipation, all of which indicated that Mr. Calandrucci needed to undergo a *diagnostic* colonoscopy.

Finally, Dr. Brown offered life expectancy opinions. Dr. Brown opined that were it not for the untimely diagnosis of Mr. Calandrucci's colon cancer, he would have lived approximately another 13 years.

2. Philip Grossman, M.D.
1321 Northwest 14th Street
Suite 101
Miami, FL Suite 101

Dr. Grossman is a board certified gastroenterologist in Miami who presented at trial to address causation, and damages. Dr. Grossman obtained his medical degree from the New Jersey Medical School and performed his residency and internship at the Bronx Municipal Hospital Center at the Albert Einstein College of Medicine.

In Dr. Grossman's opinion, Dr. Alessi's failure to refer Mr. Calandrucci for a colonoscopy or otherwise work up his "long-standing" anemia led to the delay in diagnosis of Mr. Calandrucci's Stage IV metastatic colon cancer and ultimately his death.

3. Gerald H. Sokol, M.D.
Florida Cancer Institute - New Hope
7651 Medical Drive
Hudson, FL 34667

Dr. Sokol testified at trial for Plaintiff offering causation and damages opinions. Dr. Sokol practices internal medicine with a specialty in radiation oncology. He is board certified and has been licensed to practice in Florida since 1972. Dr. Sokol also maintains a license in a number of other states and possesses impressive educational and professional credentials.

Some of the highlights of Dr. Sokol's CV include a residency in internal medicine at Johns Hopkins University, a fellowship at Harvard Medical School in radiation oncology, a 10 year stint as the Vice-Chair of Radiation Therapy at Tampa General Hospital and his current position is as the Director of Oncology at New Hope Cancer Center.

Much like Dr. Grossman, Dr. Sokol offered testimony that if Dr. Alessi breached the prevailing standard of care in failing to get Mr. Calandrucci appropriately worked up for his "long-standing anemia," then such a delay led to a further progression of the disease process and ultimately Mr. Calandrucci's death.

Dr. Sokol opined that had Mr. Calandrucci been diagnosed with colon cancer as late as August of 2008, eight months earlier than the diagnosis was actually made, then the cancer would have been treatable and he would have survived.

DEFENDANT'S EXPERT WITNESSES:

1. Kevin Inwood, M.D.
641 University Boulevard
Suite 202
Jupiter, FL 33458

Dr. Inwood obtained his undergraduate degree at the University of Florida and is licensed to practice in Florida and Pennsylvania. Dr. Inwood is board certified by the American Board of Internal Medicine and has been since September of 1988. Dr. Inwood is currently an assistant professor at Nova Southeastern University and is the medical director of Heartland Nursing Home.

Dr. Inwood testified at trial that upon his review of the medical record, he saw no failure on the part of Dr. Alessi to comply with the prevailing standard of care with regard to the care and treatment he provided to Mr. Calandrucci as his primary care physician at any time between June of 2004 and April of 2009.

Specifically, Dr. Inwood noted the severity of Mr. Calandrucci's other co-morbidities including abnormal cardiac issues that Dr. Alessi was attempting to manage for Mr. Calandrucci until early in 2008 clearly took precedence over other testing until at least the beginning of 2008, when Dr. Alessi again ordered colonoscopies for Mr. Calandrucci.

Further, Dr. Inwood testified that Dr. Alessi noted in his medical chart on at least three occasions that he had recommended that Mr. Calandrucci get a colonoscopy. Further, Dr. Inwood pointed out that Dr. Alessi's physician assistant, Amy Delauderaty, had recommended that Mr. Calandrucci undergo a colonoscopy in February of 2009, and further pointed out that the note specifically had indicated that she had recommended a colonoscopy and had informed Mr. Calandrucci of all risks, including death, and that he had still refused.

Dr. Inwood testified that this note in and of itself confirmed that multiple colonoscopies had been recommended to Mr. Calandrucci and that he simply did not comply. Dr. Inwood also explained that Dr. Alessi was sufficiently addressing Mr. Calandrucci's anemia throughout his care and treatment of Mr. Calandrucci.

CHECK APPROPRIATE SPACE: ___X___ Verdict

DATE OF VERDICT:

December 4, 2012

VERDICT:

Defense verdict for Dr. Albert Alessi and Alessi Family Care, P.A.

COMPARATIVE NEGLIGENCE:

Plaintiff's counsel requested that he be allowed to argue the negligence of Mr. Calandrucci. Mr. Calandrucci was placed on the verdict form at Plaintiff's request.

JUDGMENT:

Final judgment for Dr. Albert Alessi and Alessi Family Care, P.A.

DATE OF JUDGMENT:

December 10, 2012

DEFENDANT'S OFFER:

Zero.

PLAINTIFF'S DEMAND:

\$1.9 million.

ATTORNEY'S COMMENTS:

By Eric Ochotorena:

During the discovery phase of litigation, defendants moved for a summary judgment, arguing that the claim was barred by the applicable statute of repose, as Plaintiff was alleging negligence beginning on June 3, 2004 and the claim was not filed until November 29, 2010. Defendants argued that it is immaterial when a plaintiff discovered that medical negligence may have occurred and that the "discovery" component applies only to arguments concerning

the statute of limitations, not the statute of repose. The defense argued that Florida Supreme Court case law supported the proposition that the statute of repose begins to run at the "discreet act" of negligence. **See Kush v. Lloyd**, 616 So. 2d 415 (Fla. 1993).

In response, Plaintiff argued that either the continuing tort doctrine applied or, alternatively, each and every individual visit that Dr. Alessi had with Mr. Calandrucci should constitute a distinct and independent act of negligence. The trial court denied Defendants' motion for summary judgment holding that genuine issues of material fact remained.

At trial, Plaintiff's counsel argued that Plaintiff should be entitled to **apportion time** on the verdict form in order to distinguish between the individual office visits that might be potentially barred by the statute of repose and those individual office visits that were not barred. The trial court denied Plaintiff's request for an apportionment of time on the verdict form.

Prior to trial, Defendants withdrew their comparative negligence affirmative defense. Plaintiff then requested that the trial court allow her to amend her complaint to allege the negligence of Mr. Calandrucci himself. The trial court granted Plaintiff's motion to amend the complaint and allowed Plaintiff to place Mr. Calandrucci on the verdict form.

During the trial, Plaintiff argued that Dr. Alessi failed to order appropriate testing, including ordering a colonoscopy, and failed to work up Mr. Calandrucci for his "long-standing" anemia, which ultimately led to his death. In closing, Plaintiff argued that not only was Dr. Alessi responsible, but that Mr. Calandrucci himself may have been comparatively negligent.

Plaintiff's counsel asked the jury to award Plaintiff the full amount of Mr. Calandrucci's medical expenses, funeral expenses, past and future pain and suffering and up to \$100,000 per year for Mr. Calandrucci's full life expectancy (82.3 years) had he not died as a result of colon cancer.

Defense counsel argued that the only appropriate verdict was one for Dr. Alessi finding that his care and treatment

of Mr. Calandrucci was appropriate. The defense did not argue Mr. Calandrucci's own negligence nor did they ask the jury to apportion any fault whatsoever to Mr. Calandrucci. The defense did not address the issue of damages during closing.

The jury returned a defense verdict for Dr. Alessi and Alessi Family Care after approximately 45 minutes of deliberation.

Submitted **Richard B. Mangan, Jr. and** **Date: December 28, 2012**
By: **Eric F. Ochotorena**

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