

CASE INFORMATION SHEET
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COUNTY AND COURT: CIRCUIT COURT, LEE COUNTY, FT. MYERS, FLORIDA

NAME OF CASE:

ARLINE SHAPIRO

Plaintiff,

v.

DANIEL APPELBAUM, M.D.,
RANDOLPH KNIFIC, M.D. and
RADIOLOGY REGIONAL CENTER, P.A.

Defendants

CASE DOCKET NO.: 04-CA-000554 - **JUDGE:** Alane Laboda
Div. H

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

Daniel E. Rhynhart, Esquire
Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998

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

RICHARD B. MANGAN, JR., ESQUIRE
R. CLIFTON ACORD, II, ESQUIRE
Rissman, Barrett, Hurt,
Donahue & McLain, P.A.
1 N. Dale Mabry Hwy
11th Floor
Tampa, FL 33609

AGE/SEX/OCCUPATION OF DECEDENT:

70 year old white female with a Ph.D. in Psychology.

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

January 3, 2001 as to Dr. Appelbaum. March 15, 2001 as to Dr. Knific.

CAUSE OF INJURY:

Plaintiff, Arline Shapiro, contended that defendant radiologist Dr. Daniel Appelbaum missed a 1.2 centimeter asymmetric density on her January 3, 2001 screening mammogram, he failed to advise her that dense breasts could obscure a malignancy and that he failed to recommend an ultrasound to evaluate the asymmetric density.

Plaintiff also alleged that defendant radiologist Dr. Randy Knific missed the same asymmetric density when he reviewed the films on March 15, 2001 as part of a comparison with earlier films. She also claimed that Dr. Knific failed to recognize interval changes from prior mammograms obtained in 1997-2000, he failed to recommend an ultrasound and that he failed to provide the results to Ms. Shapiro in a lay language letter as required by law and the American College of Radiology.

The defense argued that Mrs. Shapiro's January 3, 2001 mammogram was read correctly as showing no radiographic features suspicious for malignancy. The films showed no masses, areas of architectural distortion or micro-calcifications which would typically be seen if breast cancer was present. Also, while there were areas of increased density present on the mammogram, none of them rose to the level of "abnormal" findings requiring an ultrasound.

The breast cancer was diagnosed in June 2002 and Plaintiff alleged the 18 month delay in diagnosis caused her to go from stage 1 to stage 3 breast cancer. Plaintiff claimed this caused her to more likely than not die from the cancer in 5 years. The defense acknowledged that if there was a delay caused by negligence it resulted in the need for right breast mastectomy and chemotherapy but argued Ms. Shapiro had survived well past the time for expected recurrence, meaning the cancer was cured.

NATURE OF INJURY:

Delay in diagnosis of breast cancer leading to tumor growth, decreased chance of surviving breast cancer, the need for a mastectomy, chemotherapy and radiation therapy.

PLAINTIFF'S EXPERT WITNESSES:

Robert Bard, M.D. - Diagnostic radiology
New York, New York.

Dr. Bard opined that Dr. Appelbaum and Dr. Knific both fell below the standard of care in their interpretation of the January 3, 2001 mammogram. He also opined that Dr. Knific failed to appreciate interval changes when comparing the January 3, 2001 mammogram to mammograms from 1997 through 2000.

Dr. Bard's opinion was that there was an asymmetric density with straight lines (spiculations) present requiring follow-up by ultrasound. He also testified that the doctors failed to adequately advise the Plaintiff of the results of her mammogram.

Barry Singer, M.D. - Medical oncology
Philadelphia, PA.

Dr. Singer's opinion was that the alleged delay in diagnosis caused by the negligence of Dr. Appelbaum and Dr. Knific caused a decreased life expectancy/death, and that a mastectomy and chemotherapy would not have been required with an earlier diagnosis in January or March, 2001.

James Strauchen, M.D. - Pathology
Mt. Sinai Cancer Center
New York, New York.

Dr. Strauchen testified that Ms. Shapiro had a variant of invasive breast cancer known as pleomorphic lobular carcinoma which is more aggressive than non-pleomorphic forms of invasive lobular carcinoma and that it has a propensity to recur later when compared to other types of breast cancer. It was his opinion that Ms. Shapiro would likely develop a late recurrence resulting in decreased life expectancy/death.

DEFENDANT'S EXPERT WITNESSES:

Marc Homer, M.D. - Radiology
Boston, MA

Dr. Homer testified that Dr. Appelbaum and Dr. Knific both correctly interpreted the January 3, 2001 mammogram. He further testified that Dr. Knific properly compared prior mammograms and there were no interval changes. It was his opinion that the

area of asymmetry described by Dr. Bard was normal breast tissue and that the "straight lines" were Cooper's ligaments which was a normal finding.

He was also of the opinion that Dr. Appelbaum and Dr. Knific both discharged their reporting obligations by ensuring that Ms. Shapiro was aware of her mammogram results in the form of a lay language letter.

Arnold Blaustein, M.D. - Oncology
Miami, FL

Dr. Blaustein testified that Ms. Shapiro was clinically and radiographically free of disease as of the time of trial and that she has more likely than not survived breast cancer.

VERDICT:

For Defendants.

DATE OF VERDICT:

January 9, 2013

DATE OF FINAL JUDGMENT:

Pending.

DEFENDANT'S OFFER:

Zero.

PLAINTIFF'S DEMAND:

Plaintiff demanded approximately \$1.5 million dollars in economic damages consisting of past and future medical bills as well as life care expenses that would be required if a recurrence occurred. She also claimed approximately three years of lost wages.

Plaintiff's counsel asked the jury to award a fair amount in non-economic damages for loss of Ms. Shapiro's right breast, chemotherapy, hair loss and permanent lymphedema following radiation therapy and shorter life expectancy.

ATTORNEY'S COMMENTS:

In addition to the allegations of negligence against Drs. Appelbaum and Knific the Plaintiff included a count in her complaint for direct corporate negligence against Radiology Regional Center in which she alleged that the company did not have appropriate mammogram policies and procedures in place. During discovery Radiology Regional Center actually produced its policies and attempted to convince the Plaintiff to voluntarily dismiss the claim.

When it became apparent that a voluntary dismissal would not be filed and that the Plaintiff would continue to pursue a lack of policies theory of liability the defense served a nominal proposal for settlement as to only the corporate negligence count several years prior to the time of trial in order to set up a future claim for attorney's fees. The proposal for settlement was not accepted.

At trial the judge granted a directed verdict as to the corporate negligence claim thus entitling the defense to several years in attorney's fees.

Submitted

By: Richard B. Mangan, Jr., Esq. **Date:** March 4, 2013
R. Clifton Acord, II, Esq.

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RCA/mvm