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Regional News

\$2.19 MILLION IS AWARDED IN CANCER DEATH

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Of the Legal Staff

The wife of a patient whose fatal cancer went undiagnosed for nearly a year was awarded \$2.19 million by a jury of the Philadelphia Court of Common Pleas yesterday.

The patient, Dimitrios Markakis, was 45 when he was diagnosed with stomach cancer. More than two years before the diagnosis, Markakis suffered a heart attack. When Markakis began complaining of bloating, digestion difficulties and severe fatigue not long after the heart attack, his longtime physician, Rafael Lopez, attributed the ailments to side effects of Markakis' heart medication.

Eventually, Markakis' symptoms worsened, and he underwent a GI series of the upper body at Montgomery Hospital under the care of physician Paul Angstadt. According to Angstadt, the tests were normal and did not show evidence of masses on Markakis' internal organs.

Markakis was treated for his stomach symptoms, but his health continued to fail. Six months after the GI series, a diagnosis of stomach cancer was made.

Markakis' treatment included removal of his stomach, the removal of 27 lymph nodes, 25 of which were cancerous, two eight-week chemotherapy treatments and 25 days of radiation.

In September 1999, Markakis had a stroke, which plaintiff's attorney Lisa Schwartz of Anapol Schwartz Weiss Cohan Feldman & Smalley hypothesized could have been caused by signet cells, a type of cell present in cancer, that increase the risk of stroke. Two months later, Markakis learned that the cancer had returned. He died in early January 2000.

At trial, Schwartz had to convince the jury that Lopez's extended treatment of Markakis without administering tests for cancer delayed diagnosis for long enough that Markakis' quality of life and chance of recovering from the disease were diminished.

An oncologist testified for the plaintiff that the delayed diagnosis made a difference in the quality and length of Markakis' life and also reduced his chances of survival.

In addition, according to Schwartz, Lopez's notes of Markakis' visits were deficient.

"Although we can't say for sure, it was likely that Markakis visited Dr. Lopez and no notes were taken. There were no notes taken on days where there

were bills [for treating Markakis] and notes taken on days when there were no bills," Schwartz said.

Schwartz argued that the "overall negligence" in the way Lopez billed his patients ultimately showed that he was negligent in his standard of care.

At trial, Schwartz said, Angstadt acknowledged that he misread Markakis' GI series and that this was a deviation from the expected standard of care. However, the defense then presented two experts who said the six months between the misread test and the actual diagnosis made no difference in the outcome for Markakis.

The jury apparently disagreed, delivering its verdict after a day's deliberation. Lopez, who died during the litigation, was found 32 percent liable and Angstadt 68 percent liable.

Judge C. Darnell Jones oversaw the trial.

Schwartz said that the defendants made three settlement offers -- one halfway through the one-week trial, one toward the end and one just before the jury reached its verdict. However, Schwartz said the Pennsylvania Medical Professional Liability Catastrophe Loss Fund was to blame for the case not settling.

"The CAT Fund did not evaluate the case realistically despite recommendations that it do so," she said. "It's a case that should have settled. Defense counsel was in favor of this, but the CAT Fund was not realistic at all."

Schwartz said she does not expect an appeal of the verdict. "There does not appear to be appealable issues. All counsel agreed on many of the issues ... and the judge made very prudent decisions," she said.

Schwartz's co-counsel was Alan Schwartz, also of Anapol Schwartz.

William Banton of Marshall Dennehey Coleman & Goggin represented Angstadt and Montgomery Hospital.

Angelo L. Scaricamazza of Naulty Scaricamazza & McDevitt represented Lopez.

Neither defense attorney returned telephone calls seeking comment by press time yesterday.