

CONFIDENTIAL SETTLEMENT OF \$1,200,000
Medical Malpractice; Failure to Diagnose Melanoma

In this medical malpractice case, *John Doe v. John Roe, M.D.*, which was filed in the Superior Court and then transferred to the Complex Litigation Docket, the parties reached an agreement to settle for \$1,200,000.00 following mediation with the Honorable Antonio C. Robaina. The settlement required confidentiality of the parties.

The plaintiff presented to the defendants' dermatology practice in October 2003 with a persistent blister on his right thumb. The defendant physician's assistant examined the lesion, performed a biopsy, and informed the plaintiff that her clinical impression was that the lesion was a squamous cell carcinoma. Thereafter, the defendant dermatologist, who was not a pathologist, undertook a pathological examination of the biopsied skin specimen and confirmed the diagnosis of squamous cell carcinoma. The defendant dermatologist thereafter performed a MOHS Micrographic excisional surgery, removing the lesion.

Approximately two years after this 2003 surgery, during a routine physical examination, the plaintiff's primary care physician found a lump under his arm and referred him to a surgeon and an oncologist. A CT scan revealed several enlarged left axillary adenopathy. Then, on January 3, 2006, the plaintiff underwent a left radical axillary node dissection which resulted in a diagnosis of malignant metastatic spindled cell neoplasm, Stage III C. His oncologist then secured the pathology slides from the defendant dermatologist of the thumb tissue taken in 2003 and determined that the lesion had been a malignant melanoma, not squamous cell carcinoma. It was concluded that the primary cancer was his thumb lesion, which had metastasized to his lymph nodes and other organs during the period from October of 2003 to January of 2006.

During the deposition of the defendant dermatologist, another pathology report was discovered in the plaintiff's original medical chart. This report was prepared by respected pathologist in Boston, who had reviewed the plaintiff's pathology slides in May, 2005, at the request of the defendant dermatologist and concluded that the thumb lesion was likely a malignant melanoma, not a squamous cell carcinoma. A malignant melanoma is a life-threatening form of cancer, whereas a carcinoma is less serious. The

defendant never informed the plaintiff of his receipt of this this pathology report, even though it was received eight months before the plaintiff was finally correctly diagnosed with a melanoma. Upon discovery of this pathology report, the plaintiff added a Count of Fraud to his complaint.

The experts retained by the plaintiff all agreed that failure to diagnose the melanoma and its subsequent management represented a deviation from the standard of care for the practice of dermatology. In addition, the plaintiff's experts further opined that the deviations substantially decreased the plaintiff's chance of survival. Indeed, the plaintiff's oncology expert opined, to a reasonable degree of medical certainty, that the plaintiff would have likely had Stage I non-metastasized cancer had he been diagnosed properly and treated in 2003 and the plaintiff's prognosis for full recovery, after treatment, would have been 80 to 90%, rather than the 20% chance that he is now left with.

At the time of his diagnosis, the plaintiff was 60 years old and a shift manager at the Mohegan Sun Casino. He is now undergoing experimental cancer therapy. After mediation with Judge Antonia Robaina on April 28, 2008, the parties agreed to settle the case for \$1,200,000.00, representing the policy limit of the defendant doctor's only malpractice policy and \$200,000.00 paid by the insurance carrier for the defendant physician's assistant.

Submitted by Robert I. Reardon, Jr., Esq. of The Reardon Law Firm, P.C., of New London, Connecticut.