

Cook County & Illinois
JURY VERDICT REPORTER

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MEDICAL MALPRACTICE--DELAYED DIAGNOSIS OF COLON CANCER

(VV 5/3) *John Ruiz, Debra Ruiz v Dr. James J. Magee, Primary Health Associates P.C.* 02L-16115 Tried: Sep. 15-24, 2003 (12C)

Verdict: \$1,275,000 after 49% off \$2,500,000 to John v both defts; Not Guilty to Debra v both defts for loss of consortium.

Judge: Cheryl A. Starks (IL Cook-Law)

Pltf Attys: Terrence J. Lavin of *Lavin & Nisivaco* and Martin A. Dolan of *Dolan & Shannon* for John, Debra Demand: JR \$2,000,000 policy Asked: \$19,000,000 total

Deft Attys: James J. Stamos and Jenni L. Young of *Stamos & Trucco* for both defts (ISMIE) Offer: \$1,000,000 total

Pltf Medl: Dr. Daniel Pacella (General Surgeon) and Dr. Riaz Elahi (Oncologist) for John

Pltf Experts: Dr. Harvey Golomb (Oncologist), Dr. Michael M. Ramsey (Internist) and James L. Hayes (Document Examiner) for John

Deft Experts: Dr. Kevin C. McCune (Family Practice) and Dr. Kenneth Micetich (Oncologist) for both defts

Pltf M-44 began experiencing bowel symptoms in Feb. 2000, for which he saw deft Dr. Magee four times between March and August. Dr. Magee ordered a flexible sigmoidoscopy, which was scheduled for Oct. 7, 2000. Pltf called to reschedule the procedure because it was on his birthday, and claimed that the doctor's office was supposed to call him back with a date. Office nurse testified that pltf stated he would check his schedule and call back to set the date. The sigmoidoscopy was not performed. Pltf returned to Dr. Magee in March 2001 with continued symptoms. Pltf and his wife alleged that the sigmoidoscopy was discussed and deft said it was not needed. Dr. Magee testified that the issue did not come up because he mistakenly believed the scope had been performed and was negative. Pltf underwent a colonoscopy after self-referral in August 2001 and sigmoid colon cancer was diagnosed. The cancer was Stage D which is classified as incurable, and had metastasized to the liver. Pltf has survived 24 months post-diagnosis, which is beyond what would have been his life expectancy; he is presently terminally ill (\$107,000 medl., \$1,000,000 LT as UPS supervisor). Pltf contended that the cancer would have been Stage C with 50-60% chance of survival if it had been found anytime between Feb. and Oct. of 2000, standard of care required a follow-up system be in place in the office to be certain that tests are completed as ordered, and patient should have been told that cancer was a possibility which would have induced patient to respond. Pltf further maintained that Dr. Magee had altered his records and called a document examiner expert to testify that the documents were unreliable and inauthentic. Defense argued that Dr. Magee reasonably dealt with each visit in 2000 leading up to a diagnosis of diverticulitis supported by a CT scan in August, and patient was a very intelligent and responsible individual who would be expected to follow up on an examination even if there was confusion about who was to call back. Deft asserted that he considered cancer but felt it was very low in the differential diagnosis because patient had clear symptoms of infection and CT scan showed no evidence of colon cancer, and denied any documents had been changed or altered. Defense further contended that the cancer found in patient's liver in Aug. 2001 had been there at least 18 months, but did not appear on prior CT because it was microscopic at that time, so the cancer was therefore incurable before the first visit. Case was advanced for trial due to pltf's terminal condition.