

May 2017

An ALM Publication

## NEW JERSEY

## FEATURED VERDICT

### UNION COUNTY

### MEDICAL MALPRACTICE

Delayed Diagnosis — Failure to Diagnose — Failure to Detect

## Husband asserted delayed diagnosis caused wife's death

**SETTLEMENT \$4,750,000**

**CASE** Dmitriy Markov, as administrator of the Estate of Galina Volodina v. Kanta Davessar, M.D., Michael McGinnis, M.D., and Miraca Life Sciences Inc.No. UNI-L-3807-14

**COURT** Union County Superior Court

**JUDGE** Robert J. Mega

**DATE** 1/23/2017

#### PLAINTIFF

**ATTORNEY(S)** David A. Mazie, Mazie Slater Katz & Freeman, LLC, Roseland, NJ  
Matthew R. Mendelsohn, Mazie Slater Katz & Freeman, LLC, Roseland, NJ

#### DEFENSE

**ATTORNEY(S)** Kenneth M. Brown, Wilson Elser Moskowitz Edelman & Dicker LLP, Florham Park, NJ

#### PLAINTIFF

**EXPERT(S)** Kristin K. Kucsma, M.A., economics, Livingston, NJ

Murray Resnick, pathology, Providence, RI

Manish Shah, M.D., internal medicine, New Brunswick, NJ

#### DEFENSE

**EXPERT(S)** Seena Aisner, M.D., pathology, Newark, NJ

Steven Papish, M.D., oncology, Morristown, NJ



Kristin Kucsma  
Chief Economist  
Sobel Tinari Economics Group

**FACTS & ALLEGATIONS** In May 2012, plaintiff's decedent, Galina Volodina, 42, an office worker, was screened for stomach cancer after complaints of gastrointestinal pain, at the offices of Miraca Life Sciences, in Union. She had undergone treatment for breast cancer, which she believed to be in remission at the time of the screening. Her treating pathologist at Miraca Life Sciences, Kanta Davessar, concluded that a small lesion found through Volodina's stomach-cancer test was benign.

In September 2013, Volodina required a uterine biopsy of a lesion found in her uterus. The lesion was found to be malignant signet ring carcinoma, a type of cancer, and was believed to have spread from Volodina's stomach. Volodina attempted treatment but died on Aug. 27, 2014.

Dmitriy Markov, on behalf of his deceased wife's estate, sued Davessar and her employer, Miraca Life Sciences Inc., alleging negligence amounting to medical malpractice, and wrongful death. (Volodina's other treating doctor, Michael McGinnis, was also named as a defendant but was dismissed.)

Markov asserted that Davessar's failure to diagnose the malignant lesion resulted in delayed treatment for Volodina's cancer.

Markov's expert in internal medicine testified in a deposition that Volodina's condition was unrelated to her earlier breast cancer and that she would have had an 80 percent chance of survival if the carcinoma had been detected in 2012.

Markov's expert pathologist stated in a deposition that Davessar departed from the standard of care in failing to initially diagnose the carcinoma.

Counsel for the defendants disputed liability, arguing that Volodina's stomach lesion had been metastatic and had developed from her earlier breast cancer. Counsel further argued that Volodina's condition would have been advanced by the time of Davessar's initial diagnosis and that the delay in diagnosis did not significantly impact her chance of survival.

Markov successfully moved for summary judgment on liability during discovery.

**INJURIES/DAMAGES** *cancer, gastric; death*

Volodina initially received chemotherapy for her condition. Toward the end of her life, she received palliative care.

Volodina's husband, Dmitriy Markov, sought wrongful death damages on behalf of himself and the couple's two young children. He sought damages for conscious pain and suffering and for economic damages.

Markov's expert economist projected \$4.9 million in economic losses to the household.

Defense counsel disputed the value of the economic losses from Volodina's death.

The defense's expert economist projected the family's losses at \$762,000.

**RESULT** The parties agreed to a \$4.75 million pre-trial settlement. The sum was paid from the defendants' \$1 million primary policy with Evanston Insurance Co. and from an \$8 million excess policy with Markel Service Inc.

**INSURER(S)** Evanston Insurance Co. for Kanta Davessar, M.D., Michael McGinnis, M.D., and Miraca Life Sciences Inc.

Markel Service Inc. for Kanta Davessar, M.D., Michael McGinnis, M.D., and Miraca Life Sciences Inc.

**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' counsel. Defense counsel declined to contribute.

—Max Robinson

