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## News Story

# Vague Biopsy Slides Key In \$1.5 Million Settlement

A Charlotte businessman who claimed a dermatologist should have told him that his negative biopsy results didn't rule out melanoma has recovered \$1.5 million.

The plaintiff's attorney, Joe Dozier of Charlotte, said settling the case would have been a "slam dunk" if the biopsy slides showed active melanoma.

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"Instead, the results from this suspicious mole only showed that something had been there that was killed, leaving scar tissue," he said. "The body had fought something off, but you couldn't tell if it was benign or malignant from the biopsy slides.

"We argued that because the defendant didn't know that, melanoma should have been part of his differential diagnosis," said Dozier. "Because if you're wrong, the patient dies. This is a deadly disease but if you catch it early there's a 50 percent

chance of survival. After that, your chances drop dramatically."

The case is *Terrence C. Forrest v. Gary D. Waldman and Gary D. Waldman, M.D., P.A.* (00-CvS-19190; Mecklenburg County).

The plaintiff, a 46-year-old business consultant with no wife or children, alleged the dermatologist's staff told him that everything was fine after samples were taken in 1997 from a mole on his forearm.

Eighteen months later he discovered a mass under his armpit which proved to be metastatic melanoma, a usually fatal disease.

The plaintiff's malpractice suit alleged, among other things, that the dermatologist:

- \* Failed to interpret his biopsy results correctly.
- \* Failed to send out the slides to a specialist, who could have read them properly.
- \* Failed to conduct another biopsy that would have been more definitive.

\* Failed to tell the plaintiff that he should check himself for suspicious lumps and get follow-up tests on his condition.

"The defendant should have told my client to monitor it and look for any signs that it had spread," said Dozier. "Instead, the nurse told him not to worry about anything and the doctor sent a letter to another one of the plaintiff's physicians basically saying that everything was okay.

"So 18 months went by without the plaintiff having any warning to be on the lookout or having any tests to see if cancer was there."

According to Dozier, his experts said one problem with the biopsy slides was that they didn't have "clean margins."

"Without clean margins, a suspicious growth goes to the margin of the slide so you can't know what's on the other side," he said. "Until you get those clean margins, you can't rule out melanoma. Our expert said the standard of practice required bringing the patient back in and re-excising the site, and warning him that melanoma couldn't be ruled out, it could be in transit to his lymph nodes, so he should check under his arm and get his butt in for tests every three or four months. One of his treating physicians said he liked to believe that he could find a lump faster than a patient, but he wanted the patient looking as well. My client lost that opportunity."

Another problem was that the defendant read the biopsy slides himself rather than sending them out to a specialist in dermatopathology, Dozier said.

"There is some debate among medical experts as to who should be reading slides, dermatologists or dermatopathologists," he said. "However, the apparent standard of care is still to let the dermatologist do the reading instead of sending them to a specialist. The experts will have to work that out, but our position was that in this particular case, where you have an unusual slide that showed something that could be benign or malignant, a dermatopathologist would be in a better position because of his training to interpret it.

"I don't want to say that dermatologists can't read their own slides, but that's what dermatopathologists do all the time."

Dozier said the defendant might have had a credibility problem if the case went to trial. The reason: the plaintiff alleged the defendant altered his medical records. According to Dozier, the defendant sent three different biopsy reports — all purporting to be the original — to him and two other doctors in the case.

"It's the kind of thing that could make credibility a big issue," he said.

The biggest hurdle in malpractice cases involving fatal diseases is the "so what" defense, according to Dozier.

"I've handled a number of failure-to-diagnose cases and find that you're always faced with the defense that 'My negligence didn't cause it, and even if it did, the patient would have died anyway.'

"That was a difficult defense to overcome until I got some information from the commission on cancer staging and saw that it was clear that 18 months was a significant amount of time and could have given the plaintiff a more likely chance of survival."

Dozier said the \$1.5 million recovery was "slightly less" than the defendant's policy limits.

"The reason we settled was so the plaintiff could get some money and enjoy it during the few years he has left," said Dozier. "That's the tough decision you face in these cases — whether to fight for the last dollar or get some money for the client while he's still alive."

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