

### FEATURED VERDICT

#### Medical Malpractice

Patient's size prevented detection of tumor, doc claimed

#### Defense Verdict

*DeMarco v. Emerson Medical P.L.L.C.*

Richmond County Supreme Court

**Plaintiff's Attorneys** Robert A. Sgarlato and Shaun Gregory White; Slater, Sgarlato & Cappello, P.C.; Staten Island, N.Y. (of counsel); Goldstein & Goldstein, P.C.; Brooklyn, N.Y.

**Defense Attorney** Michael S. Kelton; Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara & Wolf, LLP; New York

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**EDITOR'S NOTE** This report is based on information that was provided by defense counsel. Additional information was gleaned from court documents. Plaintiff's counsel did not respond to the reporter's phone calls.

—Gary Raynaldo

## RICHMOND COUNTY

# FEATURED VERDICT

### MEDICAL MALPRACTICE

Failure to Detect — Delayed Treatment — Cancer Diagnosis

## Patient's size prevented detection of tumor, doc claimed

#### VERDICT **Defense**

**CASE** Jasper DeMarco v. Emerson Medical P.L.L.C. and Natalya Chalik, M.D., No. 103411/11

**COURT** Richmond Supreme

**JUDGE** Alan C. Marin

**DATE** 8/20/2015

#### PLAINTIFF

**ATTORNEY(S)** Robert A. Sgarlato, Slater, Sgarlato & Cappello, P.C., Staten Island, NY, of counsel, Goldstein & Goldstein, P.C., Brooklyn, NY  
Shaun Gregory White, Slater, Sgarlato & Cappello, P.C., Staten Island, NY, of counsel, Goldstein & Goldstein, P.C., Brooklyn, NY

#### DEFENSE

**ATTORNEY(S)** Michael S. Kelton, Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara & Wolf, LLP, New York, NY

**FACTS & ALLEGATIONS** In October 2008, plaintiff Jasper DeMarco, 67, a retiree, was examined by an internist, Dr. Natalya Chalik. During the ensuing five months, Chalik performed three additional examinations of DeMarco.

In May 2009, DeMarco returned to Chalik. He claimed that he was experiencing fullness of the left side of his abdomen. Chalik detected distention of the abdomen, so DeMarco was referred to a specialist. The specialist performed a CT scan of DeMarco's abdomen, and the test revealed a retroperitoneal sarcoma whose size approximated that of a basketball. The tumor was removed in June 2009, but its size necessitated removal of DeMarco's adrenal gland, his left kidney, his spleen and a portion of his pancreas.

DeMarco claimed that his tumor should have been detected in October 2008. He claimed that prompt detection would have prevented growth that necessitated removal of surrounding organs.

DeMarco sued Chalik and her practice, Emerson Medical PLLC. DeMarco alleged that Chalik failed to detect his tumor, that her failure constituted malpractice, and that Emerson Medical was vicariously liable for Chalik's actions.

DeMarco's expert radiologist opined that DeMarco's tumor could have been detected in October 2008. The expert also opined that prompt intervention would have prevented growth that necessitated removal of surrounding organs. The expert contended that Chalik departed from an accepted standard of medical care.

Chalik claimed that DeMarco did not report a symptom that suggested the presence of a tumor. She claimed that discomfort was not reported until the examination that was performed in May 2009. She also claimed that the tumor was concealed by DeMarco's physique: His weight approximated 220 pounds, and his height measured 5 feet, 9 inches. The defense's expert surgeon opined that Chalik did not depart from an accepted standard of medical care.

**INJURIES/DAMAGES** *abdomen; kidney; needless removal of organ; pancreas; spleen; splenectomy*

In June 2009, DeMarco underwent surgical removal of a tumor that occupied his abdomen. The tumor's size necessitated removal of his adrenal gland, his left kidney, his spleen and a portion of his pancreas. DeMarco's expert internist opined that the organs' absence increased DeMarco's likelihood of developing pneumonia and other infections.

DeMarco sought recovery of a total of \$2 million for past and future pain and suffering.

The defense's expert internist opined that DeMarco's outcome would not have been altered by earlier detection of his tumor. The expert contended that an earlier extraction would have required removal of surrounding organs.

**RESULT** The jury rendered a defense verdict.

**DEMAND** \$2,000,000

**OFFER** None

**INSURER(S)** Physicians' Reciprocal Insurers for both defendants

**TRIAL DETAILS** Trial Length: 3 weeks  
Trial Deliberations: 10 minutes  
Jury Vote: 5-1  
Jury Composition: 4 male, 2 female

#### PLAINTIFF

**EXPERT(S)** Henry Ferstenberg, M.D., general surgery, Brooklyn, NY  
Richard J. Hirschman, M.D., oncology, New York, NY  
William D. Matuozzi, M.D., radiology, Berkeley Heights, NJ

**DEFENSE**

**EXPERT(S)** Mark A. Fialk, M.D., oncology,  
Scarsdale, NY  
Mark E. Ginsburg, M.D., thoracic surgery,  
New York, NY

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's and defense counsel.

—Jacqueline Birzon

**GREATER METRO AREA****NASSAU COUNTY****MOTOR VEHICLE**

No-Fault Case — Rear-ender — Parked Car — Multiple Vehicle

## Deliveryman claimed accident caused disabling spinal woes

**VERDICT** \$2,387,500  
**ACTUAL** \$300,000

**CASE** John Lofano v. Geico General Insurance Company, No. 14436/12  
**COURT** Nassau Supreme  
**JUDGE** R. Bruce Cozzens Jr.  
**DATE** 4/20/2015

**PLAINTIFF**  
**ATTORNEY(S)** Mia-Laine Martinez, Morici & Morici LLP,  
Garden City, NY

**DEFENSE**  
**ATTORNEY(S)** Robert Levitt, Law Office of Gail S. Lauzon, Woodbury, NY

**FACTS & ALLEGATIONS** On Nov. 29, 2010, plaintiff John Lofano, a deliveryman in his 40s, was driving on Northern Boulevard, in Syosset. Lofano parked near Cold Spring Road and entered the cargo area of his truck. While he was sorting cargo, the truck's rear end was struck by a vehicle that was being driven by Brittany Salese. Lofano claimed that he sustained injuries of his back.

Salesse's insurer tendered its policy, which provided \$100,000 of coverage. Lofano sought further recovery via the supplementary-underinsured-motorist provision of his own insurance policy, which was administered by Government Employees Insurance Co. The claim was rejected. The insurer contended that Lofano was not injured as a result of the accident.

Lofano sued Government Employees Insurance. He alleged that his claim was wrongly denied.

Defense counsel did not contest liability for the accident. The matter proceeded to a summary jury trial that addressed damages.

**INJURIES/DAMAGES** *aggravation of pre-existing condition; annular tear; bulging disc, lumbar; epidural injections; herniated disc at T12-L1; physical therapy; radiculopathy; stenosis*

Lofano's wife arrived at the scene of the accident, and she provided transportation to Plainview Hospital, in Plainview. Mr. Lofano claimed that he was suffering pain that stemmed from his back and neck. He underwent X-rays and minor treatment.

Lofano ultimately claimed that he sustained a herniation of his T12-L1 intervertebral disc, a tear of the annular tissue of his L2-3 disc, and trauma that produced bulges of his L1-2, L3-4, L4-5 and L5-S1 discs. He also claimed that the accident aggravated a prior fusion of his spine's L5-S1 level. He further claimed that he developed radiculopathy and stenosis, which is a narrowing of the spinal canal.

Lofano underwent about 14 weeks of physical therapy that was typically rendered two or three times a week. He also underwent administration of three epidural injections of steroid-based painkillers and two painkilling nerve-block injections.

Lofano claimed that, as a result of his injuries, he was unable to work during the 10 days that followed the accident. Upon resuming work, he performed only light duties. He stopped working entirely after some two months had passed. He claimed that his injuries prevented his performance of his job's duties. He was granted disability benefits, and he has not resumed work.

Lofano further claimed that his pain persists, that he cannot endure prolonged periods in which he is seated or standing, and that his pain interrupts his sleep. He also claimed that he requires use of a prescribed painkiller, Vicodin. One of Lofano's treating orthopedists, Dr. Charles Goodwin, opined that Lofano must undergo additional fusion of his spine's lumbar region.

Lofano sought recovery of \$100,000 for past pain and suffering, and he sought recovery of \$300,000 for future pain and suffering.

Defense counsel contended that Lofano did not sustain a serious injury, as defined by the no-fault law, Insurance Law § 5102(d).

The defense's expert orthopedist opined that Lofano sustained nothing more than an aggravation of a pre-existing injury. The expert contended that Lofano suffered a partial disability prior to the accident. The defense's expert radiologist opined that Lofano's injuries were degenerative conditions.

**RESULT** The jury found that Lofano sustained a serious injury. It determined that Lofano's damages totaled \$2,387,500, but Lofano recovered \$300,000, which represented the limit of his insurance's coverage.