

TYPE OF ACTION: **Medical Malpractice – Failure to Timely Diagnose Breast Cancer**

CASE NAME: ***Moe v. *Coe, M.D., et al.,**

SETTLEMENT/ DATE: **\$2,000,000.00 August 31, 2012**
(FOLLOWING \$2.65 M VERDICT BY JURY)

PLAINTIFF’S LAWYER: **William E. Artz, Arlington, Virginia**

CASE SUMMARY:

The plaintiff alleged that defendant radiologist missed a left breast abnormality on a screening mammogram performed on 9/15/08. The plaintiff further alleged that the defendant failed to order follow-up imaging studies and/or a referral to a surgeon for biopsy, which would have revealed the breast cancer in time for curative treatment.

On 10/23/09, the plaintiff returned to the defendant for her annual screening mammogram. The defendant interpreted the films four days later, finding that a focal asymmetry in the left breast appeared more prominent. The plaintiff was recalled for a diagnostic mammogram and ultrasound, which were completed on 11/2/09. Two masses were found in the left breast. On 11/4/09, the plaintiff underwent a left breast biopsy, which revealed Stage IIIA breast cancer. The plaintiff underwent neo-adjuvant chemotherapy, a left quadrantectomy with reconstruction, radiation, and hormone therapy. At the time of trial there was no evidence of metastasis.

As a result of the defendant’s negligence, there was a 13 month delay in the diagnosis and treatment of the plaintiff’s breast cancer. The plaintiff alleged that the delay allowed the cancer to progress from a curable (Stage IIA or IIB) to an incurable stage (Stage IIIB or IIIC).

The defendant conceded she was negligent in all ways enumerated in the Complaint. However, she defended this case on the issue of proximate causation. According to the defense experts, the 13 month delay in diagnosis did not change the outcome for the plaintiff. The defense experts argued that the breast cancer was slow-growing with no evidence of metastasis at the time of trial. They relied, in part, on Adjuvant Online, a computer database used by oncologists to determine a patient’s likely 10-year prognosis with chemotherapy after initial treatment. According to defense experts the plaintiff has a 10-year survival rate of up to 70-percent. The plaintiff’s experts estimated her 10-year survival rate at 35-percent.

The plaintiff continued to work, despite her cancer diagnosis, so there were no past lost wages. Since the plaintiff would have required the same treatment if her cancer had been timely diagnosed, there were no past medical bills. The verdict was based solely on mental anguish and future medical expenses. The jury deliberated for an hour and a half. Settlement occurred after Defendants Post Trial Motions were denied with the exception of reducing the verdict to the applicable cap of \$2 million. The accrued interest was waived in exchange for giving up right of appeal and payment within three days.

*Names camouflaged