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Unnecessary mastectomy yields multimillion-dollar verdict

Lab mix-up results in misdiagnosis

Verdicts & Settlements Plus

By Molly F. Dilbeck, Esq.

Undergoing a mastectomy is traumatic, even when it's life-saving.

Enduring a needless one, however, is nothing short of tragic, according to a Washtenaw County jury.

In April 2003, Jane Doe, a University of Michigan Hospital nurse, noticed a thickening in her left breast, and was tested at her employer's facility to determine if the condition was cancerous. When the results came back positive for cancer cells, Doe went through the pain and trauma of a

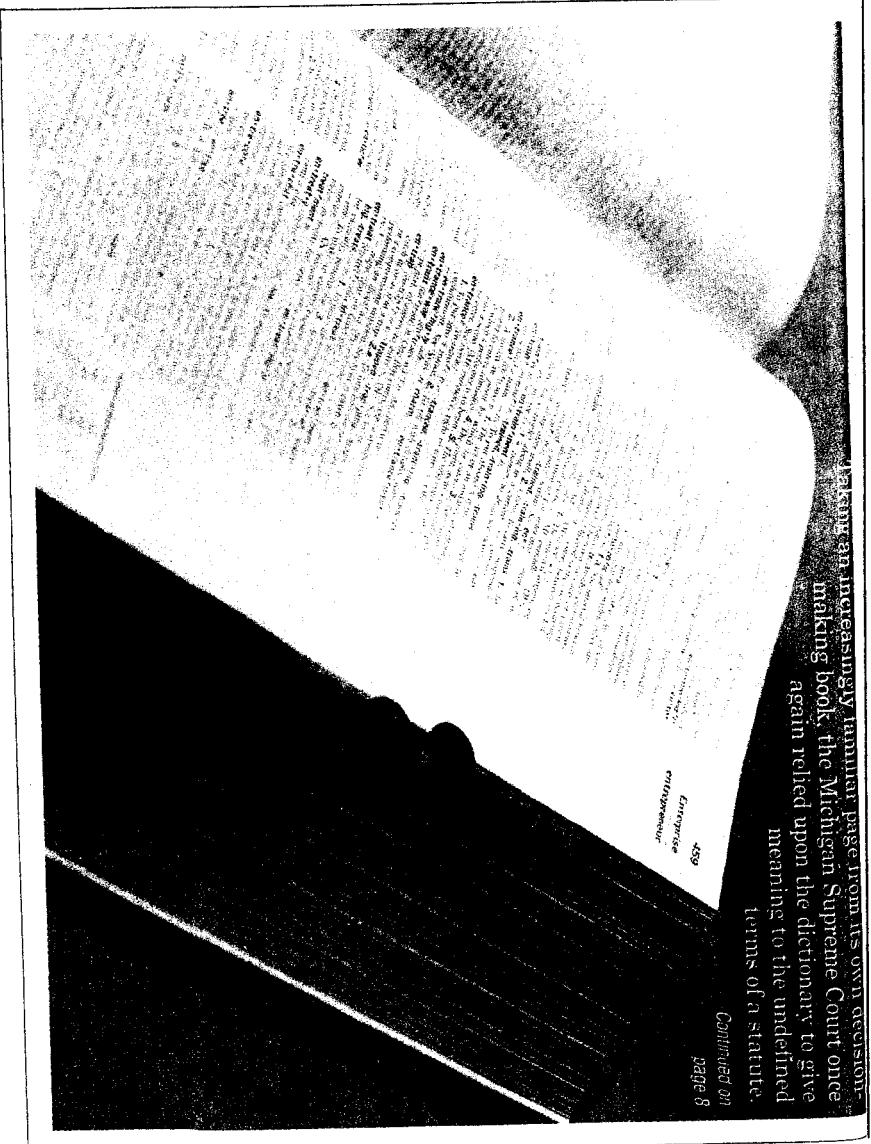
partial mastectomy.

Upon examination of the tissue and lymph nodes removed during the surgery, no cancer cells were found. Doe, confused by the disconnect between the two test results, pressed the pathology lab for answers, and finally discovered that her condition had been misdiagnosed due to a lab mix-up.

Specifically, the results of her first test were switched with those of another patient.

Though Doe was relieved that she did not have cancer, her troubles were far from over. After the mastectomy and lymph node removal, she developed lymphedema, which can occur following such a procedure because the body cannot move lymph fluids normally. This condition causes severe

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Facing an increasingly familiar page from its own decision-making book, the Michigan Supreme Court once again relied upon the dictionary to give meaning to the undefined terms of a statute.

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Mistaken cancer diagnosis garners \$3M verdict for plaintiffs

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swelling and, as in Doe's case, requires physical therapy to keep the inflammation and pain under control.

Though Doe came back to work at the University of Michigan Hospital, she found that her persistent pain and disability increasingly difficult to perform her duties. As such, she began working part-time at the hospital and seeing a psychologist to help her cope with her diagnosis of post-traumatic stress syndrome. However, Doe was eventually declared disabled by her doctor and never returned to work at the hospital.

With her mental and physical health declining, Doe and her husband brought suit against the University of Michigan Hospital and the lab clerk who mislabeled her original test results, claiming she was entitled to past and future damages and medical expenses, as well as non-economic compensation.

And, though they admitted they were responsible for Doe's misdiagnosis,

subsequent unnecessary surgery, the hospital argued that Doe was overstating her damages because she was merely seeking retaliation against her former employer.

Ultimately, the jury sided with Doe, awarding her a total of \$3,042,448 for past and future non-economic damages, lost earning capacity, medical expenses, and loss of consortium for her husband.

A Verdicts & Settlements Report of the case, *Doe, et al. v. University of Michigan Hospital, et al.*, can be found on our website, www.mlawyersweekly.com.

Shouldering blame

According to Ann Arbor attorney Michael J. Garriss — who represents the Does — this case came down to one simple thing: Owning up to fault.

"Our theory for the jury was that this was a case about accepting full responsibility for your mistake," he said. "[T]he defendants attacked the plaintiffs throughout the trial" and "argued that the

And, this trial tactic did not work well for the defense, said Lansing attorney Kitty L. Groh, who also represents the plaintiffs.

"When a plaintiff has serious injuries which the defense admits to causing, it is not helpful to the defense to unfairly minimize the injuries or the emotional response to [those] injuries," she explained, adding that the defense's "harsh attitude" failed to sway the jury because it was not "appropriately sympathetic" to the trauma and loss her client experienced.

Convincing production

Additionally, Garriss and Groh both believed the case's presentation helped the jury fully comprehend the extent of Doe's mental and physical injuries.

"The most innovative aspect of the [case] was the use of PowerPoint in the closing argument" because the presentation "included documents and video clips from the video deposition of [Doe's] treating physician," Groh said.

"Our theory for the jury was that this was a case about accepting full responsibility for your mistake."

— Ann Arbor attorney
Michael J. Garriss

showcased the "doctor providing commentary on what lymphedema was and how the lymphatic system worked," which helped to "demonstrate ... the severe effect of [Doe's] injuries on her life."

Bloomfield Hills attorney Suzanne T. Hall — who represents the defendants — did not respond to a request for comment.

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