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Attorneys get expert witnesses on stand in winning \$15.8 million LabCorp lawsuit

Case: John Wisekal as personal representative of the estate of Darian Wisekal v. Laboratory Corp. of America Holdings et al.

Case no.: 12-80806

Description: Medical negligence

Filing date: July 30, 2012

Judge: Senior U.S. District Judge Daniel T.K. Hurley

Plaintiff attorneys: Sean Domnick, Domnick & Shevin, Palm Beach Gardens; and Stephen Rosenthal, Podhurst Orseck, Miami

Defense attorney: Carol A. Hogan, Jones Day, Chicago

Verdict amount: \$15.8 million

Details: Darian Wisekal, mother of two young girls, had a routine Pap smear in August 2008. The results were read by Burlington, N.C.-based Laboratory Corp. of America Holdings, better known as LabCorp, which reported back to Wisekal's doctor that her slide was "negative for intraepithelial lesion and malignancy." In fact, Wisekal was suffering from cervical cancer that her gynecologist diagnosed in 2010.

Wisekal underwent a radical hysterectomy but could not stem the spread of the cervical cancer. She died Nov. 30, 2011.

Wisekal's husband, John, filed suit on behalf of himself and his daughters in Palm Beach Circuit Court against LabCorp and the LabCorp employee who read the slide, Glenda C. Mixon. LabCorp removed the case to federal court in July 2012.

Plaintiffs case: Domnick discovered the 2008 Pap smear contained pre-invasive cancer cells. Because of a vaginal infection, Wisekal did not have a Pap smear in



J. ALBERT DIAZ

Sean Domnick and Stephen Rosenthal showed jurors family videos of their client's wife, who died of cervical cancer in 2011.

2009, but in 2010 another Pap smear read by LabCorp was reported clear despite a doctor finding a large cervical tumor.

At trial, Domnick humanized Wisekal by showing 25 minutes from family videotapes made of her and her children.

"We weren't just talking about somebody in the abstract," he said. "I think it was very powerful."

John Wisekal testified about his wife and how integral she was to the family, contradicting a defense claim that mental illness left her in a depressive state.

But the heart of Domnick's case was dissecting Mixon on the stand.

Mixon testified that she read about 60

slides a day for a company that was purchased by LabCorp. She said her quota then rose to a minimum of 80 slides a day.

"She was so busy she was unable to take a full hour for lunch," Domnick said. "This is what is going on in big-box medicine."

He also put on testimony that Mixon should have been able to easily determine that the slide had pre-invasive cancer cells. "Our pathologist said it wasn't even close," he said.

Rosenthal handled legal challenges to the expert witnesses. Plaintiffs preserved their experts, noting in another case in Georgia that LabCorp won a case by

knocking out such key plaintiff testimony. LabCorp failed to keep Mixon from testifying.

"If we don't have any experts, we don't get to go to trial," Rosenthal said. "It was really an integral part of what we were doing."

Defense case: Hogan had no comment on the case.

Domnick described LabCorp's trial strategy as "scorched earth." LabCorp focused on Wisekal's diagnosis of clinical depression, he said.

"They kept trying to use that stuff to try to cast doubt on how important she was to the family," Domnick said. "As if someone with clinical depression is incapable of loving or incapable of being loved."

Hogan was successful in keeping out the second misread Pap smear since it did not delay treatment. LabCorp also argued to the jury that Pap smears are not definitive diagnostic tools, and the pre-invasive cells are hard to detect on slides.

"They made a very interesting, calculating decision in choosing not to call their own experts, which was something of a risky strategy," Rosenthal said.

Outcome: After about two days of deliberations, the jury returned April 17 with a \$20.1 million verdict. They found Wisekal 25 percent liable for not getting a Pap smear in 2009, reducing the award to \$15.8 million.

Quotes: "It's such a clear case of them putting their profits ahead of patient safety," Domnick said.

Post-verdict: LabCorp has indicated it plans to appeal, Domnick said.

— John Pacenti