

## —VERDICTS & SETTLEMENTS—

### Metastatic cancer originally diagnosed as non-invasive

#### \$1,500,000 Settlement

In April 2009, the plaintiff noticed a lump in her right breast. She quickly presented to her gynecologist, who referred her to a surgeon for evaluation. Because of a suspicious finding in her biopsy, she then underwent a lumpectomy and sentinel node biopsy. All five nodes sampled were found to be cancer-free, indicating no metastasis had yet taken place. The histopathologic specimen was signed out by the defendant pathologist as ductal carcinoma in situ (DCIS), a non-invasive cancer that is exquisitely curable.

The plaintiff's surgeon and oncologist recommended that she undertake a brief course of radiation therapy and a regimen of Tamoxifen, a drug designed to prevent cancer cells from being fueled by estrogen. Everyone involved believed that she had "pre-cancer" and would be fine.

In December 2012, 44 months after her lumpectomy, the plaintiff detected an abnormal growth on her left chest wall. This tissue was ultimately sampled and found to be invasive ductal carcinoma. Her physicians were dumbfounded, as no one could explain how her non-in-



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vative cancer had metastasized. A second opinion regarding potential surgical therapy was sought and, as part of that consult, a second pathologist reviewed not only current histopathologic specimens from her left chest wall, but also the original lumpectomy specimen. Two of the 11 slides from 2009 demonstrated invasive ductal carcinoma, a diagnosis missed by the defendant pathologist.

Plaintiff argued that, had her oncologist known of her diagnosis in 2009, considering her age (46) and overall good health, aggressive courses of chemotherapy would have been recommended. With the help of expert oncologists, plaintiff learned that a genetic test called Oncotype would likely have been performed in 2009 to aid the clinicians in deciding which therapy to offer, and to help determine the disease susceptibility to chemother-

**Type of action:** Medical malpractice

**Injuries alleged:** Inoperable/incurable cancer due to a pathologic misdiagnosis

**Resolved by:** Mediation

**Date resolved:** Dec. 1, 2014

**Special damages:** More than \$600,000 in medical expenses

**Demand:** \$1,900,000

**Offer:** No offer was made before mediation

**Verdict or settlement:** Settlement

**Amount:** \$1,500,000

**Attorneys for plaintiff:** John Fletcher and Robert Moreland, Norfolk

**Plaintiff's experts:** Case was resolved 10 days before the date set for plaintiff's designation of experts

apy. After arrangements were made to test the original paraffin block tissue, that test yielded a score of 41, which tells the clinician that aggressive therapy would likely have led to an excellent chance of non-recurrence at both five and 10 years.

The plaintiff now lives with incurable, inoperable metastatic cancer. At mediation, the defendant pathologist offered a heart-felt, sincere apology. Thereafter, the case was resolved for \$1,500,000.