

Ulrich v Neumann

2008 NY Slip Op 31847(U)

June 20, 2008

Supreme Court, Nassau County

Docket Number: 6803-06/

Judge: Kenneth A. Davis

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SCAW

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. KENNETH A. DAVIS,

Justice

TRIAL/IAS, PART 3
NASSAU COUNTY

RHONDA ULLRICH and REYES RODRIGUEZ,

Plaintiff,

SUBMISSION DATE: 5/29/08
INDEX No.: 16803/06

-against-

PETER NEUMANN, M.D. and NASSAU PLASTIC,
SURGICAL ASSOCIATES, P.C.,

MOTION SEQUENCE # 3

Defendants.

The following papers read on this motion:

- Notice of Motion/ Order to Show Cause..... X
- Answering Papers..... X
- Reply..... X
- Briefs: Plaintiff's/Petitioner's.....
- Defendant's/Respondent's.....

This motion by defendants Peter Neumann, M.D. and Nassau Plastic Surgical Associates, P.C., for an order pursuant to CPLR 3212 granting them summary judgment dismissing the complaint is denied.

This is an action to recover damages for medical malpractice. The plaintiffs allege that the defendant Dr. Neumann, a plastic surgeon, failed to timely diagnose plaintiff Rhonda Ullrich's breast cancer. More specifically, plaintiffs allege in their Bill of Particulars that the defendants failed to appreciate the signs and symptoms of breast cancer, including the plaintiff's complaint of a persistent, palpable left breast lump; failed to refer her for a sonogram and/or breast biopsy; failed to refer her to a breast surgeon; diagnosed her lump as due to an implant valve rather than a cancerous mass; gave the cancer an opportunity to spread and metastasize; and, failed to recommend a short interval follow up regarding her complaint of a breast lump. Plaintiffs claim that as the result of the delay in diagnosis, Ms. Ullrich suffered infiltrating ductal carcinoma, requiring left breast lumpectomy and axillary lymph node dissection, metastasis to three lymph nodes, chemotherapy and radiation. The plaintiffs maintain, *inter alia*,

that Dr. Neumann erroneously diagnosed Ms. Ullrich's lump in her breast on November 11, 2004 as the valve of an implant, which, plaintiffs maintain, was actually a breast cancer lump that did not get diagnosed until nearly one year later in October, 2005.

The defendants seek summary judgment dismissing the complaint.

"On a motion for summary judgment pursuant to CPLR 3212, the proponent must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." Sheppard-Mobley v King, 10 AD3d 70, 74 (2d Dept. 2004), aff'd. as mod., 4 NY3d 627 (2005), citing Alvarez v Prospect Hosp., 68 NY2d 320, 324 (1986); Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). "Failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers." Sheppard-Mobley v King, supra, at p. 74; Alvarez v Prospect Hosp., supra; Winegrad v New York Univ. Med. Ctr., supra. Once the movant's burden is met, the burden shifts to the opposing party to establish the existence of a material issue of fact. Alvarez v Prospect Hosp., supra, at p. 324. The evidence presented by the opponents of summary judgment must be accepted as true and they must be given the benefit of every reasonable inference. See, Demishick v Community Housing Management Corp., 34 AD3d 518 (2d Dept. 2006), citing Secof v Greens Condominium, 158 AD2d 591 (2d Dept. 1990).

The requisite elements of proof in a medical malpractice action are a deviation or departure from accepted practice and evidence that such departure was a proximate cause of injury or damages. Ramsay v Good Samaritan Hosp., 24 AD3d 645 (2d Dept. 2005); see also, Roca v Perel, ___ AD2d ___, 2008 WL 2066080 (2nd Dept. 2008); DiMitri v Monsouri, 302 AD2d 420, 421 (2d Dept. 2003); Holbrook v United Hospital Medical Center, 248 AD2d 358, 359 (2d Dept. 1998). In a medical malpractice action, a defendant doctor or hospital moving for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law by showing the absence of a triable issue of fact as to whether it was negligent. Taylor v Nyack Hospital, 18 AD3d 537, 538 (2d Dept. 2005), citing Alvarez v Prospect Hospital, 68 NY2d 320, 324 (1986). More specifically, "[o]n a motion by a defendant for summary judgment in a medical malpractice action, the defendant has the initial burden of establishing, *prima facie*, that he or she did not depart from good and accepted medical practice, or if there was such a departure, that it was not a proximate cause of the plaintiff's injuries." Rosenman v Shrestha, 48 AD3d 781, 783 (2nd Dept. 2008) citing Rebozo v Wilen, 41 AD3d 457, 458 (2nd Dept. 2007); Thompson v Orner, 36 AD3d 791, 792 (2nd Dept. 2007); Williams v Sahay, 12 AD3d 366, 368 (2nd Dept. 2004).

If a defendant meets his burden, to defeat the application, a "plaintiff [is] obligated to submit competent, rebuttal medical evidence establishing that defendants deviated from the applicable standard of care, as well as a causal nexus between their conduct and her injuries." Hoffman v Pelletier, 6 AD3d 889, 890 (3rd Dept. 2004), citing Schuller v Martinelli, 304 AD2d 967 (3rd Dept. 2003); lv den., 100 NY2d 509 (2003); Rossi v Arnot Ogden Med. Ctr., 268 AD2d 916 (3rd Dept. 2000), lv den., 95 NY2d 751 (2000). Thus, "[i]n opposition, 'a plaintiff must submit a physician's affidavit of merit attesting to a departure from accepted practice and containing the attesting doctor's opinion that the defendant's omissions or departures were a competent producing cause of the injury.'" Thompson v Orner, *supra*, at p. 792, quoting Domaradzki v Glen Cove Ob/Gyn Assocs., 242 AD2d 282 (2nd Dept. 1997).

"To establish proximate cause, the plaintiff must demonstrate 'sufficient evidence from which a reasonable person might conclude that it was more probable than not that' the defendant's deviation was a substantial factor in causing the injury." Flaherty v Fromberg, 46 AD3d 743, 745 (2nd Dept. 2007), citing Johnson v Jamaica Hosp. Med. Ctr., 21 AD3d 881, 883 (2nd Dept. 2005); Holton v Sprain Brook Manor Nursing Home, 253 AD2d 852 (2nd Dept. 1998). Evidence must be presented "from which the jury may infer that the defendant's conduct diminished the plaintiff's chance of a better outcome or increased [her] injury." Flaherty v Fromberg, *supra*, at p. 745, citing Barbuto v Winthrop Univ. Hosp., 305 AD2d 623, 624 (2nd Dept. 2003); Wong v Tang, 2 AD3d 840, 840-841 (2nd Dept. 2003); Jump v Facelle, 275 AD2d 345, 346 (2nd Dept. 2000), lv dismiss., 95 NY2d 931 (2000), lv to app den., 98 NY2d 612 (2002). "Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions . . . Such credibility issues can only be resolved by a jury." Roca v Perel, *supra*, at p. 2, quoting Feinberg v Feit, 23 AD3d 517, 519; Graham v Mitchell, 37 AD3d 408 (2nd Dept. 2007).

The pertinent facts are as follows:

Ms. Ullrich first saw Dr. Neumann on March 9, 2000 when she consulted with him regarding breast augmentation surgery. At her examination-before-trial, Ms. Ullrich testified that she told Dr. Neumann that she had a history of cystic breasts and that she had a history of cancer in her family, i.e., that her maternal grandmother had died of breast cancer and that she had other family members with cancer; her mother died of endocrine cancer and her grandfather had lung cancer. However, Dr. Neumann's records only reflect Ms. Ullrich's maternal grandmother's history of breast cancer. Dr. Neumann's medical records for Ms. Ullrich do not reflect that a breast exam was performed or that preoperative mammographies were ordered. His only note pertaining to Ms. Ullrich's breasts was "Grade 1 ptosis, hypoplasia upper pole."

Dr. Neumann performed the surgery without incident on May 5, 2000. The unfilled implants were inserted through incisions and once placed in Ms. Ullrich's chest, were inflated with saline via a tube connected to a valve on the implant. In fact, the valves enabled the implants to be inflated and deflated post-surgery. The valves were supposed to be located behind the nipple area underneath the muscle where they are not palpable. Post-operative visits on May 8, May 18, and June 8, 2000 were uneventful. When Dr. Neumann saw Ms. Ullrich on July 25, 2000, he noticed that her left breast appeared slightly smaller than her right breast and so he discussed a procedure whereby the fluid in her left breast implant would be increased. That procedure was performed on September 29, 2000 at which time 50 ccs of additional saline was added via a filling tube inserted in the valve in the implant. While the valve was not palpable, Dr. Neumann knew where it had been placed so he was able to access it. Follow-up visits on October 2 and November 9, 2000 were uneventful.

Ms. Ullrich went to Nassau County Medical Center Breast Imaging Center on August 27, 2003 for a screening mammography. Extra views called EKUND views were performed because the presence of implants can obscure breast tissue making interpretation of the films difficult. The report noted nodular tissue and extremely dense breasts which made the mammography less sensitive. With those limitations noted, the report concluded that there was no evidence of any malignancy.

Ms. Ullrich returned to Dr. Neumann on September 30, 2003 because she had injured her left breast in a motor vehicle accident. Dr. Neumann's reports do not reflect a breast exam being done. He simply noted "on exam small amount of blood in capsule, some movement. Breast implants intact, no problems, massage and return as needed."

Ms. Ullrich again returned to Dr. Neumann on March 2, 2004 complaining of the appearance of her left breast. Dr. Neumann noted nodular breast tissue in the left axillary area, i.e., "lymph node or fibrous breast tissue," which he attributed to the accident trauma. No referrals were made nor was any further history recorded, i.e., whether Ms. Ullrich was having her OB-GYN exams annually, including mammographies. At that appointment and again on May 4, 2004, Dr. Neumann discussed revision and excision of scar tissue and decreasing fluid in the implants. That surgery was performed by Dr. Neumann on June 21, 2004 at North Shore Hospital in Manhasset. Fluid was removed from Ms. Ullrich's right breast implant without removing it, however, the left breast implant itself was removed so that fluid could be drained from it. The scar tissue in the left implant's pocket or capsule was cauterized and the implant was reinserted behind Ms. Ullrich's chest muscle. Significantly, when Ms. Ullrich's left breast implant was

reinserted, Dr. Neumann placed the valve underneath Ms. Ullrich's areola. He examined the breasts and found no evidence of cysts or masses. The breast tissue he was able to visualize was normal. Post-operative visits on June 24, July 1 and July 23, 2004 were uneventful.

Ms. Ullrich underwent a breast exam at Long Island Women's Health Care Group on August 12, 2004 and no abnormalities were detected. She also went to Nassau University Medical Center Breast Imaging Center on August 27, 2004. A clinical breast exam conducted by a nurse that day was normal. The mammography was negative, however, the report again noted the decreased sensitivity of the exam due to the density of Ms. Ullrich's breasts and the presence of implants.

On September 29, 2004, Ms. Ullrich saw Dr. Glickman, a plastic surgeon, in regard to her motor vehicle accident. His report noted more fullness in the upper pole of Ms. Ullrich's left breast. No evidence of breast masses or ongoing breast pathology was noted.

Ms. Ullrich presented at Long Island Women's Health Care Group in November, 2004, complaining of a lump in her breast. She described it as located to the left of her nipple and areola at the four or five o'clock position. Because her sister had been diagnosed with breast cancer, Ms. Ullrich was very concerned. Her doctor, Dr. Nodelman, referred her to a surgeon, Dr. Monteleone. In his November 10, 2004 report, Dr. Monteleone noted that both Ms. Ullrich's grandmother and sister had breast cancer. He noted that Ms. Ullrich felt a mass in her left breast around the four o'clock area. Upon examination, Dr. Monteleone noted palpable nodules at the four o'clock area of the left side of Ms. Ullrich's left areola. He noted that it was .5 in diameter and appeared to be attached to the implant. Dr. Monteleone referred Ms. Ullrich for a sonogram as soon as possible and to facilitate that, he gave her several prescriptions for different offices. When Ms. Ullrich was unable to get an appointment immediately, she went to see Dr. Neumann.

Ms. Ullrich testified at her examination-before-trial that when she returned to Dr. Neumann on November 11, 2004 complaining of a lump in the four o'clock position of her left breast, he told her that it was the valve of her implant which had shifted from front to back and he manipulated it, which Ms. Ullrich understood as repositioning it. At his examination-before-trial, Dr. Neumann recalled the valve being at the six or seven o'clock position of Ms. Ullrich's breast within the areola area. He testified that the valve could not have been at the four o'clock position. Both Dr. Neumann and Ms. Ullrich testified at their examinations-before-trial that after Dr. Neumann flipped the implant, the lump could no longer be felt. Ms. Ullrich testified that she asked Dr. Neumann

whether she should go for an ultrasound as Dr. Monteleone had advised but Dr. Neumann told her not to worry about it. While Ms. Ullrich testified at her examination-before-trial that she told Dr. Neumann that her sister had been diagnosed with Stage IV breast cancer which amplified her fears, Dr. Neumann denies this. An update of Ms. Ullrich's family history is not reflected in Dr. Neumann's records. His notes simply read: "Feeling valve, no problems, RT."

At her examination-before-trial, Ms. Ullrich testified that in July, 2005 she thought that the implant had flipped again as she felt the lump in the same area. However, in light of Dr. Neumann's prior assurances, she did not worry. Ms. Ullrich went to Nassau University Medical Center Breast Imaging Center for her yearly mammography on September 7, 2005. A nurse's examination revealed no masses but the Ecklund mammography views could not be done because the left implant could not be displaced. The mammographies were once again reported as limited in sensitivity because of Ms. Ullrich's breast density. She was urged to return to Dr. Neumann for evaluation of the implant.

Ms. Ullrich returned to Dr. Neumann on September 12, 2005. No further history is reflected in Ms. Ullrich's records. It reads "small cyst left lateral breast ?? 4 o'clock." Dr. Neumann told Ms. Ullrich that he believed she had a small cyst in her left lateral breast at four o'clock. Ms. Ullrich testified at her examination-before-trial that he told her that he had previously felt this cyst in November 2004 but it was smaller then. Dr. Neumann testified that he recalled the cyst detected at his September 12, 2005 examination as a hard firm nodule approximately 2.5 centimeters from the edge of the areola at the four o'clock position. He testified that it could not have been the valve.

Ms. Ullrich testified at her examination-before-trial that Dr. Neumann advised her to leave it alone but in light of her family history, she refused. Dr. Neumann, however, testified at his examination-before-trial that he encouraged her to see a breast surgeon. Dr. Neumann did refer Ms. Ullrich to Dr. Heimowitz, a hematologist, for an ultrasound and a mammogram. Dr. Heimowitz performed an ultrasound on September 27, 2005 and found an eight millimeter cystic lesion at the four o'clock position of her left breast. He felt that this could be a cyst containing hemorrhagic material or debris and opined that aspiration be considered. Ms. Ullrich testified that Dr. Heimowitz told her that it was "nothing evil." Dr. Neumann and Dr. Ullrich discussed the results of the sonogram on September 29, 2005. Ms. Ullrich testified at her examination-before-trial that Dr. Neumann told her to leave the cyst alone and warned her that surgery would cause scarring. However, Dr. Neumann testified at his examination-before-trial that he referred Ms. Ullrich to a breast surgeon but she wanted him to

do the biopsy because the cyst was near her implant. Ms. Ullrich denies being referred to a breast surgeon.

Dr. Neumann performed a biopsy on October 11, 2005. He removed a 20 x 10 x 08 millimeter piece of tissue. He received the pathology report which indicated that the biopsy was positive for invasive ductal carcinoma on October 14, 2005. He informed Ms. Ullrich of these results that day and met with her, her husband and her sister to further discuss the results on October 18, 2005. Dr. Neumann referred Ms. Ullrich to a breast surgeon and never saw her again.

Dr. Axelrod performed two surgeries to remove the tumor and clear the tissue margins. The first surgery revealed three positive lymph nodes at the four o'clock position, evidencing metastatic cancer, which was where the mass was detected in November, 2004 by Ms. Ullrich and Dr. Monteleone. A later test of Ms. Ullrich revealed her risk for cancers, including breast and ovarian cancer.

In support of their motion, the defendants have submitted the Affirmation of a Board Certified Plastic Surgeon, Dr. Scot Glasberg. In formulating his opinion regarding the care rendered by Dr. Neumann, Dr. Glasberg reviewed Ms. Ullrich's medical records maintained by the defendants and her records from Nassau University Medical Center Radiology Department, Dr. Laurence Glickman, Dr. Howard Heimowitz and Long Island Women's Health Group, as well as portions of her subsequent treatment records contained within those records. He has also reviewed the Bills of Particulars and deposition transcripts.

Dr. Glasberg opines with a reasonable degree of medical certainty that the care and treatment rendered by Dr. Neumann was at all times "within the standards of care." As for Ms. Ullrich's November 11, 2004 visit, he notes that "the valve of a breast implant has a very distinctive feel, and an experienced plastic surgeon, such as Dr. Neumann, is able to distinguish a valve from a lesion." In that regard, Dr. Glasberg notes that when he examined Ms. Ullrich in September, 2005, Dr. Neumann immediately diagnosed a cyst. Thus, there is a different of which Dr. Neumann was astutely aware. Dr. Glasberg notes that Ms. Ullrich testified at her examination-before-trial that after Dr. Neumann manipulated her breast, "the lump appeared to go away" and that she "did not feel anything unusual" and that she testified that she "was relieved at that point." Dr. Glasberg notes that the lump Ms. Ullrich felt in November, 2004, could not have been cancer since Dr. Neumann was clearly able to manipulate it and a cancerous mass or lesion does not change position within breast tissue and cannot be made to go away via manipulation. Dr. Glasberg states that under these circumstances, there was no need for any further testing or follow-up. He further opines that even Ms. Ullrich's family history did

not dictate a different result since Dr. Neumann conducted breast exams on each visit and Ms. Ullrich was seeing other doctors for breast care and undergoing routine mammograms. Dr. Glasberg opines that "[t]he lesion felt by Dr. Neumann in November 2004 at the 6 o'clock area was the same lesion as Dr. Monteleone felt at 4 o'clock. This is because a breast implant is not fixed, and the implant, and therefore the valve, can rotate and move." He concludes that "[i]t is [his] opinion that Dr. Neumann and Nassau Plastic Surgical Associates, P.C. did not deviate in any way from the standards of accepted medical and surgical practice in the care of this patient. It is further [his] opinion that any alleged deviation by Dr. Neumann and Nassau Plastic Surgical Associates, P.C. was not the proximate cause of any injuries claimed by the plaintiff.

The defendants have met their burden of establishing their entitlement to summary judgment thereby shifting the burden to plaintiff to establish the existence of a material issue of fact.

In opposition, the plaintiff has submitted the affirmations of a plastic surgeon and a hematologist/oncologist, both of whom opine that the care and treatment rendered by Dr. Neumann did not comply with the generally accepted standards prevalent in the medical field.

Ms. Ullrich's board certified plastic surgeon states that he was reviewed Dr. Neumann's records; plaintiff's gynecological records; Dr. Monteleone's records; Nassau University Medical Center Breast Imaging Center's records; Dr. Heimowitz's records; and, Dr. Axelrod's records, as well as the examinations-before-trial and Dr. Neumann's expert Dr. Glasberg's affirmation. He opines that Dr. Neumann deviated from the generally accepted medical standards in his care and treatment of Ms. Ullrich as follows: A failure to obtain an accurate and complete history of familial cancers throughout the course of his treatment of Ms. Ullrich to facilitate his assessment and reassessment of her risk of breast cancer and a concomitant failure to recognize her increased risk; a failure to perform and document a complete and accurate breast examination on November 11, 2004, including the 4 o'clock area of her left breast and to determine the source of the nodules there; assuming that the only concern on November 11, 2004 was the location of the implant valve which was the result of a flipped implant; advising Ms. Ullrich not to have the ultrasound which was firmly recommended by Dr. Monteleone; and, an overall failure to take adequate actions to rule in or out breast cancer at the November 11, 2004 visit by referring Ms. Ullrich to a breast surgeon and pursuing the ultrasound, or, in the alternative, undertaking responsibility to monitor Ms. Ullrich closely.

The plaintiff's expert plastic surgeon notes that a thorough

history of Ms. Ullrich's familial history of cancers was not obtained by Dr. Neumann nor were preoperative mammographies ordered. While Dr. Neumann's records reflect that Ms. Ullrich described her breasts as cystic, there is no record of a complete breast examination being done. Plaintiff's expert plastic surgeon notes that there is no record of a complete breast examination being done when Ms. Ullrich returned to him on September 30, 2003, either. Similarly, there is no record of Dr. Neumann's monitoring Ms. Ullrich's breast care such as yearly mammographies or updating her family history when she returned to him on March 2, 2004.

As for Ms. Ullrich's November 11, 2004 visit, plaintiff's expert plastic surgeon notes that Dr. Neumann's notes are devoid of any details regarding the lesion, including how long it had been present, its location, size, mobility, association with pain, the presence or absence of skin changes, and nipple discharge, and that there is no documentation of the last time the patient had a mammography or a breast exam or that her sister had been diagnosed with Stage IV cancer, which Ms. Ullrich testified she related to him and which, the expert opines, he should have learned by questioning her even if she did not volunteer it. In addition, plaintiff's expert notes that there is no mention of Ms. Ullrich's having seen Dr. Monteleone. Plaintiff's expert plastic surgeon opines "[i]t is clear that on this date the issue was one that involved assessing a complaint of a lump in the left breast. Cancer had to be considered and ruled in or out. Dr. Neumann had an obligation to reassess his patient's risk for breast cancer. He deviated from accepted standards of care in this regard." He further opines that "[s]imply because manipulation of the implant made what Dr. Neumann claimed was the valve and the prominent area noticed by Ms. Ullrich appear to go away, this did not relieve Dr. Neumann of his obligation to have the area further evaluated. This area was clearly an abnormality and should not have been assumed to be a valve." He explains that knowing Ms. Ullrich's family history, her dense breasts, and that he felt a cyst in November, 2004, Dr. Neumann deviated from prevailing standards by not further assessing her and confirming that the valve was the entire problem. He explains "[a] plastic surgeon knows that he cannot know with certainty the location and placement of an implant placed under the pectoralis muscle by simply palpating it. There is too much at risk to assume that what is felt is part of the implant, as this case evidences." As for Ms. Ullrich's testimony that she did not feel the lump after Dr. Neumann manipulated her breast, plaintiff's expert plastic surgeon opines that "[t]he movement of the implant may have effected its prominence but this did not in any way lessen the importance of having the ultrasound and following it closely with examinations. . . ." Thus, it is his opinion that "[t]he tumor, albeit smaller in size, was in Ms. Ullrich's breast eleven months before and capable of diagnosis with ultrasound and/or MRI screening. Careful serial screening by a breast surgeon, or even

Dr. Neumann, would have revealed an increase in its size and this would have led to earlier diagnosis." Simply put, he opines that he:

"disagrees with Dr. Glasberg that an experienced plastic surgeon can palpate an implant valve placed under the pectoralis muscle. [He] disagrees that rotation of a round implant will cause a suspicious abnormality that a plastic surgery [sic] upon examination, and nothing more, can rule out as cancer. It is [his] opinion that it is arrogant to claim that a plastic surgeon can determine that there is no need for further testing or follow up examination based on one examination alone."

Plaintiff's expert plastic surgeon opines that had Dr. Neumann performed a detailed and complete examination, he would have realized, like Dr. Monteleone, that this area needed further evaluation, especially in light of Ms. Ullrich's breast cancer risk and dense nodular breasts: She should have been referred to a breast surgeon for further testing including a sonogram and maybe an MRI, or Dr. Neumann could have undertaken to monitor Ms. Ullrich more closely himself. And, plaintiff's expert plastic surgeon opines that Dr. Neumann was negligent in telling Ms. Ullrich to forego an ultrasound and stop worrying. Plaintiff's expert plastic surgeon notes that Dr. Neumann's records of Ms. Ullrich's September 12, 2005 appointment lack details, which is a deviation from the standard of care. He also notes that where Dr. Neumann found the nodule that day was precisely where Ms. Ullrich said it was and where Dr. Monteleone found it nearly a year earlier.

Plaintiff's expert Board Certified hematologist and oncologist attests to having also reviewed the pertinent medical and legal records. He, too, opines to a reasonable degree of medical certainty that Dr. Neumann failed to completely assess Ms. Ullrich's cancer risk. He agrees with plaintiff's expert plastic surgeon that "Dr. Neumann deviated from accepted care by assuming that the lump he felt was the implant valve, solely determined by his examination and manipulation of the implant. It was a deviation to rely on one examination alone in this woman with dense nodular breasts who was at risk for cancer." He also believes to a reasonable degree of medical certainty that Ms. Ullrich's cancer could have been diagnosed in November, 2004. He states that an ultrasound would have revealed the lesion before the cancer metastasized to her lymph nodes. He states that "[a]s a result of the delay in the diagnosis of M. Ullrich's cancer she has suffered a decrease in her chances for surviving her cancer by approximately 30%."

