

Realmuto v Pizzarello
2012 NY Slip Op 32767(U)
November 15, 2012
Supreme Court, Suffolk County
Docket Number: 07-29715
Judge: Arthur G. Pitts
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 43 - SUFFOLK COUNTY

PRESENT:

copy

Hon. ARTHUR G. PITTS
Justice of the Supreme Court

MOTION DATE 7-17-12
ADJOURN DATE 10-11-12
Mot. Seq. # 005 - MD

-----X
FRANK REALMUTO, JR., As Executor of the
Estate of MARIE REALMUTO, deceased, and
JANE ALWORTH, as Guardian of FRANK
REALMUTO, an incapacitated person,

Plaintiffs,

- against -

LOUIS D. PIZZARELLO, M.D., PECONIC
OPHTHALMOLOGY, PLLC, SOUTHAMPTON
HOSPITAL, STEVEN L. GOLDMAN, M.D.,
BARRY R. ARMANDI, JR., M.D., and
SOUTHAMPTON RADIOLOGY, P.C.,

Defendants.
-----X

KRAMER, DILLOF, LIVINGSTON & MOORE
Attorney for Plaintiffs
217 Broadway
New York, New York 10007

LAWRENCE WORDEN & RAINIS & BARD
Attorney for Defendants Pizzarello and Peconic
Ophthalmology
225 Broad Hollow Road, Suite 105E
Melville, New York 11747

BARTLETT, MCDONOUGH, & MONAGHAN
Attorney for Defendant Southampton Hospital
170 Old Country Road, 4th Floor
Mineola, New York 11501

GEISLER & GABRIELE & MARANO, LLP
Attorney for Defendant Goldman, M.D.
100 Quentin Roosevelt Boulevard
Garden City, New York 11530

CHARLES X. CONNICK, PLLC
Attorney for Defendants Armandi, M.D., and
Southampton Radiology
114 Old Country Road, Suite 208
Mineola, New York 11501

Upon the following papers numbered 1 to 45 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers (005) 1 - 29; Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers 30-37; Replying Affidavits and supporting papers 38-42; Other sur-reply 43 - 45; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that motion (005) by the defendant, Southampton Hospital, pursuant to CPLR 3212 for summary judgment dismissing the complaint and any cross claims asserted against it is denied.

The gravamen of this action is premised upon the alleged medical malpractice and negligent departures from the standards of care by the defendants in failing to timely and appropriately diagnose and treat the plaintiff's decedent, Marie Realmuto, for lung cancer, causing her to suffer metastasis, severe injuries, complications, and death. Marie Realmuto died on May 12, 2008. Causes of action are premised upon negligence, wrongful death, lack of informed consent, negligent hiring by Southampton Hospital, and a derivative cause of action on behalf of the decedent's spouse, Frank Realmuto. The plaintiff's decedent was admitted on July 24, 2006, to Southampton Hospital by Dr. Pizzarello for a penetrating keratoplasty corneal transplant due to deterioration of her left cornea. A pre-operative chest x-ray was taken on July 24, 2006, at Southampton Hospital to ascertain that the decedent was healthy prior to general anesthesia and surgery. It is claimed that chest x-ray was interpreted by the radiologist, Dr. Barry Armandi, at Southampton Hospital, as revealing a non-specific density in the medial right upper lobe of the decedent's lung for which a CT scan with contrast was recommended as follow-up. It is alleged that the decedent was never told of this finding or the need for the follow-up CT scan until June 2007, at which time the lung cancer had metastasized, causing the decedent's injuries and death. Frank Realmuto, Jr., is the executor of the decedent's estate, duly appointed on March 11, 2009, by decree of the Surrogate's Court, Suffolk County. On August 27, 2009, Jane Alworth was appointed Guardian of the Incapacitated Person, Frank Realmuto, by the Supreme Court, Suffolk County.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (*Sillman v Twentieth Century-Fox Film Corporation*, 3 NY2d 395, 165 NYS2d 498 [1957]). The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v N.Y.U. Medical Center*, 64 NY2d 851, 487 NYS2d 316 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v N.Y.U. Medical Center, supra*). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form...and must "show facts sufficient to require a trial of any issue of fact" (CPLR 3212[b]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). The opposing party must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (*Castro v Liberty Bus Co.*, 79 AD2d 1014, 435 NYS2d 340 [2d Dept 1981]).

The requisite elements of proof in a medical malpractice action are (1) a deviation or departure from accepted practice, and (2) evidence that such departure was a proximate cause of injury or damage (*Holton v Sprain Brook Manor Nursing Home*, 253 AD2d 852, 678 NYS2d 503[2d Dept 1998], *app denied* 92 NY2d 818, 685 NYS2d 420). To prove a prima facie case of medical malpractice, a plaintiff must establish that defendant's negligence was a substantial factor in producing the alleged injury (*see, Derdiarian v Felix Contracting Corp.*, 51 NY2d 308, 434 NYS2d 166 [1980]; *Prete v Rafla-Demetrious*, 221 AD2d 674, 638 NYS2d 700 [2d Dept 1996]). Except as to matters within the ordinary experience and knowledge of laymen, expert medical opinion is necessary to prove a deviation or departure from accepted standards of medical care and that such departure was a proximate cause of the plaintiffs' injury (*see, Fiore v Galang*, 64 NY2d 999, 489 NYS2d 47 [1985]; *Lyons v McCauley*, 252 AD2d 516, 517, 675 NYS2d 375 [2d Dept 1998], *app denied* 92

NY2d 814, 681 NYS2d 475; *Bloom v City of New York*, 202 AD2d 465, 465, 609 NYS2d 45 [2d Dept 1994]).

To rebut a prima facie showing of entitlement to an order granting summary judgment by the defendant, the plaintiff must demonstrate the existence of a triable issue of fact by submitting an expert's affidavit of merit attesting to a deviation or departure from accepted practice, and containing an opinion that the defendant's acts or omissions were a competent-producing cause of the injuries of the plaintiff (see, *Lifshitz v Beth Israel Med. Ctr-Kings Highway Div.*, 7 AD3d 759, 776 NYS2d 907 [2d Dept 2004]; *Domaradzki v Glen Cove OB/GYN Assocs.*, 242 AD2d 282, 660 NYS2d 739 [2d Dept 1997]).

A hospital generally cannot be held liable, other than derivatively, for another's malpractice. Thus, where there is no vicarious liability, the plaintiff must establish that the hospital, through its own agents, was guilty of malpractice or other tort concurring in causing the harm (*Fiortino v Wenger*, 19 NY2d 401, 280 NYS2d 373 [1967]; *Belak-Redi v Bollengier*, 74 AD3d 1110, 903 NYS2d 508 [2d Dept 2010]; *Welch v Scheinfeld*, 21 AD3d 802, 801 NYS2d 277 [1st Dept 2005]). A hospital or other medical facility is liable for the negligence or malpractice of its employees (see, *Birdell Hill v St. Clare's Hospital*, 67 NY2d 72, 499 NYS2d 904 [1986]).

In support of motion (005), Southampton Hospital has submitted, inter alia, an attorney's affirmation; the affidavits of James B. Banidich, M.D. and Marianne Wimmer; copies of the summons and complaint, amended summons and amended complaint, defendants' answers to the amended complaint, verified and amended verified bills of particulars; copies of the examinations before trial of Jane Alworth dated January 21, 2011, Frank Realmuto dated February 22, 2011, Louis D. Pizzarello dated April 28, 2011, Steven L. Goldman dated October 11, 2011, and of Barry R. Armandi, Jr. dated December 21, 2011 (which transcript is not in admissible form as it is neither signed nor certified pursuant to CPLR 3212, is not accompanied by an affidavit pursuant to CPLR 3116 (see, *Martinez v 123-16 Liberty Ave. Realty Corp.*, 47 AD3d 901, 850 NYS2d 201 [2d Dept 2008]; *McDonald v Maus*, 38 AD3d 727, 832 NYS2d 291 [2d Dept 2007]; *Pina v Flik Intl. Corp.*, 25 AD3d 772, 808 NYS2d 752 [2d Dept 2006]), and is not considered on this motion; a certified copy of the Southampton Hospital record; plaintiff's response to the discovery demand of Louis D. Pizzarello, M.D. and Peconic Ophthalmology; the uncertified copy of records from Dr. Goldman and an unauthenticated and unsigned copy of an Anesthesia Services Agreement dated May 1, 2002, which are not in admissible form (see, *Friends of Animals v Associated Fur Mfrs.*, supra). Expert testimony is limited to facts in evidence. (see, *Allen v Uh*, 82 AD3d 1025, 919 NYS2d 179 [2d Dept 2011]; *Marzuillo v Isom*, 277 AD2d 362, 716 NYS2d 98 [2d Dept 2000]; *Stringile v Rothman*, 142 AD2d 637, 530 NYS2d 838 [2d Dept 1988]; *O'Shea v Sarro*, 106 AD2d 435, 482 NYS2d 529 [2d Dept 1984]). Additionally, submitted in the Reply dated October 10, 2012 are affidavits which were not submitted by the defendant Hospital in the moving papers as required, depriving the plaintiff of the opportunity to respond to the same.

Defendant Southampton Hospital seeks summary judgment dismissing the complaint and any cross claims asserted against it on the bases that it is not vicariously liable for the acts an/or omissions of Dr. Goldman, Dr. Pizzarello, or their respective practices; that the staff and employees at Southampton Hospital followed the orders of the private attending physicians; that it was not responsible for providing informed consent to the decedent; and that its employees possessed the necessary qualifications, competence, capacity, capabilities and abilities, and it did not fail to properly supervise the care and treatment rendered to the decedent.

Based upon consideration of the records and the evidentiary submissions, it is determined that Southampton Hospital has not demonstrated prima facie entitlement to summary judgment.

Marianne Wimmer avers in her affidavit that in July 2006, she was, and is currently, the assistant director of radiology at Southampton Hospital. She did not indicate, however, who her employer is. She stated in a conclusory and unsupported statement that Southampton Radiology, P.C. is an independent corporate entity, and employs the radiologists that interpret diagnostic studies, including chest x-rays that are performed at Southampton Hospital. She continued that the radiologists are independent contractors and are not employed by or compensated by Southampton Hospital. Though not supported with evidentiary proof, she stated that Barry A. Armandi, Jr., M.D. was a radiologist employed by Southampton Radiology, P.C. and he was not employed by Southampton Hospital and did not receive compensation from the hospital for his interpretation of the chest x-ray performed on Marie Realmuto. She further stated that a copy of the chest x-ray results was forwarded to Dr. Pizzarello's office on July 25, 2006 at 3:56 p.m., but does not state the basis for that statement, or the mode or method of transport, whether or not it was noted to be received by Dr. Pizzarello, and who transported it. While she stated that the nurses, radiology technologists and/or other employees of Southampton Hospital were not responsible for communicating the radiological interpretations and findings of the radiologist employed by Southampton Radiology, P.C. to the patient's private physician or to the patient, she does not indicate who is responsible for providing the same or for providing a copy of the written report. Moreover, Ms. Wimmer does not set forth the procedure or protocol for timely interpretation and reporting of preoperative films, and does not indicate that the hospital employees had no responsibility in ascertaining that the report was timely placed in the decedent's medical record and timely provided to the surgeon prior to surgery. Thus, multiple factual issues are raised in Wimmer's affidavit which preclude summary judgment.

James B. Naidich, M.D., the moving defendant's expert, set forth his education and training and stated that he is board certified in radiology. However, he does not aver that he is licensed to practice medicine in New York or any state, thus, has not established himself as an expert to offer his opinion in this matter. However, even if his report is considered, it is determined that he has not established prima facie that Southampton Hospital is entitled to summary judgment dismissing the complaint asserted against it. Dr. Naidich offers his opinion to a reasonable degree of medical certainty that the doctors, nurses and staff of Southampton Hospital did not deviate from the accepted standard of care in connection with the care and treatment rendered to Marie Realmuto, and that their care and treatment did not proximately cause the decedent's alleged injuries, lung cancer, or metastatic disease to the lymph nodes, adrenal glands and colon, need for surgical procedures, confinement to bed, reduced life expectancy, emotional distress, pain and suffering, inability to perform usual activities, loss of enjoyment of life, or premature death. He also stated that his affidavit is intended to make no criticism of the care and treatment rendered by Louis D. Pizzarello, M.D., Peconic Ophthalmology, PLLC, Steven Goldman, M.D., Barry R. Armandi, Jr., M.D., and Southampton Radiology, P.C.

Dr. Naidich stated that the decedent first came under the care and treatment of Dr. Pizzarello in September 2004, and on October 19, 2004, Dr. Pizzarello performed a cataract extraction of the left eye with lens implantation at Southampton Hospital. On July 24, 2006, Dr. Pizzarello admitted the plaintiff's decedent to Southampton Hospital for a penetrating keratoplasty corneal transplant due to deterioration of her left cornea. A surgical booking form sent from Dr. Pizzarello's office to Southampton Hospital on July 19, 2000, checked off the need for a CVR or CXR preoperatively, as requested by Dr. Goldman, decedent's medical doctor, to clear

the decedent for anesthesia and surgery. The chest x-ray was taken on July 24, 2006 at 12:17 p.m. at Southampton Hospital. The decedent was transported to the operating room at 1:45 p.m. The chest x-ray was interpreted by radiologist, Dr. Barry Armandi, Jr., on July 24, 2006, whose interpretation was transcribed on July 24, 2006 at 11:26 p.m., then electronically signed by him. Dr. Nadich stated that Dr. Pizzarello and Dr. Armandi are the only two physicians whose names appear on the chest x-ray report. He continued that Dr. Pizzarello agreed that the chest x-ray report was received at his office on the afternoon of July 25, 2006, however, while it Dr. Armandi's custom and practice to contact the referring physician himself, or to notify the technologists to call the referring physician's office with the findings, there is no evidence in the record to suggest that Dr. Armandi contacted the referring physician or asked the radiology technologists to call the referring physician's office with the findings.

Dr. Nadich stated that the body of the transcribed chest x-ray report set forth Dr. Armandi's interpretation that included "There is asymmetric rounded density identified at the medial aspects of the right upper lobe." Dr. Nadich stated that this is an important finding, suggesting a lung cancer, however, the remainder of the report suggested no active disease process. Dr. Armandi's impression was "[n]on-specific density of the medial right upper lobe, of which neoplasm cannot be excluded. Recommend chest CT with intravenous contrast, for further evaluation." Dr. Nadich opined that Dr. Armandi identified a potential neoplasm and recommended a CT for further evaluation, and such impression was accurate, as was the recommendation for the CT with contrast follow-up evaluation. Dr. Nadich stated that the significance of the chest x-ray was appreciated when interpreted at Southampton Hospital, and thus the allegation that Southampton Hospital failed to appreciate the significance of the patient's chest x-ray is without merit. However, this opinion conflicts with the statement by Marianne Wimmer who stated that Dr. Armandi was not employed by Southampton Hospital, thus the opinion that Southampton Hospital appreciated the interpretation of the films raises factual issue. Notably, he does not indicate when Southampton Hospital appreciated such interpretation.

Dr. Nadich stated that the allegation that Southampton Hospital failed to timely interpret the chest x-ray, taken on July 24, 2006 at 12:17 p.m., is without merit as it was promptly interpreted by Dr. Armandi. However, Dr. Nadich does not set forth that Dr. Armandi's interpretation was made on July 24, 2006 at 11:24 p.m., after the surgery was completed, and after the decedent had been discharged home at 5:00 p.m. This raises factual issue in the moving papers concerning whether this pre-operative exam was timely interpreted, whether the decedent was properly cleared for surgery, and whether the decedent and Dr. Pizzarello were timely notified of the abnormal reading. Dr. Nadich does not comment on whether the x-ray should have been interpreted prior to the decedent receiving anesthesia and undergoing surgery, and he does not comment as to whether or not Dr. Goldman should have been notified of the findings in the chest x-ray as he was the physician providing medical clearance for the surgery.

Dr. Nadich stated that it is the physician's responsibility to order the follow-up CT scan, and not the responsibility of the hospital. He continued that referring a patient to an oncologist prior to a biopsy being performed is unwarranted, however, this statement is conclusory as the accepted standard of care has not been set forth. He continued that Southampton Hospital was only a venue for the decedent's ambulatory eye surgery, and that the hospital had no role in making a decision as to the performance of a lung biopsy as the CT scan had not yet been done. Dr. Nadich does not set forth the standard of care and does not opine whether or not surgery should have been cancelled, and the CT scan performed, prior to conducting the eye surgery.

Dr. Nadich continued in a conclusory statement that the only other physician involved in the decedent's care and treatment was the anesthesiologist, and that he saw no basis for the claim that the decedent's medical conditions were not managed by the anesthesiologist or other hospital staff. He added that the decedent suffered no injury during the twelve hour delay in interpreting the films, which contradicts his opinion that the films were timely read and interpreted. However, Dr. Nadich's opinion is conclusory and unsupported as he does not indicate whether the anesthesiologist was an employee of the defendant hospital, and what the standard of care is for the anesthesiologist in reviewing the chest-x ray report prior to the administration of anesthesia. He does not opine that had the results been reported and made available prior to the commencement of surgery, that the physicians would have done anything differently. He continued that it is alleged that Southampton Hospital, by its employees, failed to ensure that the chest x-ray was timely reviewed, and the report timely placed in the decedent's record prior to surgery, thus depriving the treating medical providers from becoming aware of the results, is without merit. He continued that it was Dr. Pizzarello who was the appropriate party to receive the x-ray report, however, he does not set forth the standard of care to be followed by the hospital staff, nursing staff, and employees in timely providing such report and whether the report was placed on the decedent's chart and made available prior to surgery.

Dr. Nadich continued that the decedent consented to the surgical procedure and that informed consent was demonstrated. He added that there were no injuries related to the anesthesia administered and no claim of a failure to provide informed consent for anesthesia. However, he does not set forth the standard of care for the anesthesiologist prior to the administration of anesthesia with regard to evaluating the laboratory and diagnostic testing ordered by the attending physician prior to administering anesthesia, and had the anesthesiologist been apprised of the chest x-ray report, whether that the surgery would have been postponed to fully evaluate the decedent's medical condition prior to surgery.

Dr. Nadich opined that there is nothing in the record to support that the hospital failed to interpret the film, and that no nurse interpreted the chest x-ray film or issued a report. However, this opinion is conclusory and unspecific as he does not set forth the standard of care for those employees, including the nursing and clerical staff, to provide the complete pre-operative test results to the attending physician and anesthesiologist prior to the decedent's surgery, and to provide a complete medical chart. While Dr. Nadich stated that radiology technologists are not responsible for conveying the imaging results to a patient or treating physician, he does not set forth whose responsibility it is and does not comment as to the responsibility of the clerical or nursing staff.

In the defendant's reply, the affidavit of nurse Kathy Buschor, R.N. has been submitted. However, she does not set forth the standard of care or responsibility of the nursing staff to provide the chest x-ray report in the chart prior to the patient going to the operating room, or alerting the physician to any abnormal interpretation by the radiologist, thus raising factual issues. Likewise, Sean Kosinski, R.T. set forth in his affidavit that he reviewed the hospital chart and noted that it did not contain an entry generated by him or any other technologist regarding communications with the patient's physician concerning the findings of the subject chest x-ray. He concluded, therefore, that Dr. Armandi did not ask him or any other technologists to convey his interpretation and findings to any medical care provider. Such affidavits are deemed to be self-serving and conclusory and unsupported by any evidentiary proof. Additionally, Marianne Wimmer stated that the hospital record does not indicate that the anesthesiologist, nurse, or anyone from the operating room reviewed the chest x-ray report.

The affirmation of defendant's expert is silent as to the standard of care and hospital protocol concerning the duties and responsibilities of the anesthesiologist, nurses, or other hospital personnel to review and/or obtain a report or reading prior to surgery, and the protocol for acting upon any abnormal reports.

The plaintiff's expert, a physician duly licensed to practice medicine in New York and Connecticut, and board certified in radiology, set forth the materials and records reviewed in rendering opinions limited to the medical care and treatment provided by Southampton Hospital and its staff. It is the plaintiff's expert's opinion to a reasonable degree of medical certainty that Southampton Hospital, by its employees and staff, and radiology department, departed from good and accepted standards of care and caused the decedent's lung cancer to go undiagnosed for almost an additional year, allowing the cancer to metastasize and ultimately cause her death.

Plaintiff's expert noted that the x-ray report was not transcribed until 11:24 p.m., after the surgery. He stated that Dr. Armandi testified that he did not know when he reviewed the x-ray and might have dictated the report that night. He continued that Dr. Armandi testified that for films which required immediate follow-up, such as the decedent's, he would either contact the referring physicians or have one of the techs do it, but he had no recollection of whether it was done and there was nothing in the record about the abnormal chest x-ray findings being reported. While Dr. Armandi could order follow-up tests and conduct a CT scan, he did not do so. Thereafter, stated the plaintiff's expert, Dr. Pizzarello, who stated his office received a fax of the report, never saw it or informed the patient about it. In June, 2007, when the decedent was finally apprised of the result, and a PET scan was done, it was discovered that her cancer had already metastasized from her lung to her abdomen, liver, lymph nodes, both lungs, and possibly her bones and colon. She died on May 12, 2008 from metastatic lung cancer.

Plaintiff's expert opined with a reasonable degree of medical certainty that Southampton Hospital radiology department, Dr. Armandi, and the radiology technologists, departed from good and accepted medical and radiological practices in a number of ways which proximately caused the decedent's lung cancer to go undiagnosed, and permitted it to metastasize and ultimately caused her death. This is so, the expert continued, in that the chest x-ray was not reviewed and reported until after the decedent's surgery, and after she was discharged from the hospital. Good and accepted standards of care require that the film, which purpose is to determine that the plaintiff is healthy before surgery, be reviewed before a patient is taken to the operating room for surgery, prior to the procedure. Due to the delay in reviewing, dictating, and transcribing the report until about 11:30 p.m., Dr. Armandi did not review the films in a timely manner prior to the surgery. The expert continued that Southampton Hospital is required to have a procedure in place ensuring that preoperative films are reviewed and reported in advance of the patient's procedure, which was not done here. This failure resulted in a critical opportunity being missed to inform the decedent and Dr. Pizzarello, when they were all in the hospital, about the worrisome findings on the films. Had the decedent or Dr. Pizzarello been advised about the chest x-ray results, then the decedent would have had immediate follow up and her cancer would have been diagnosed nearly eleven months earlier, averting the ensuing metastasis and death therefrom.

The plaintiff's expert stated that the defendant's expert completely ignored Dr. Armandi's testimony in concluding that the film was timely reviewed. In that it was a preoperative film, and a report was not given until the next day, and after the decedent was discharge home, it was not a timely review or a timely report. He continued that, granted, although the report was provided by facsimile, Dr. Pizzarello did not become aware of the report until June 2007. Had Dr. Pizzarello been timely apprised of the findings prior to the surgery, he and

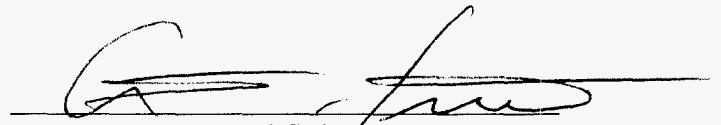
Realmuto v Pizzarello
Index No. 07-29715
Page No. 8

the patient would have known the same day. The plaintiff's expert further opined that the failure of Dr. Armandi or the technologist to call Dr. Pizzarello on the telephone and speak to him about the findings, caused a delay of approximately one year in diagnosing the lung cancer. While Dr. Armandi testified that he could have ordered the CT scan himself on July 24, 2006, prior to the surgery, he offered no reason for failing to do so. Had he done so, the cancer could have been diagnosed and treated and the year long delay and metastasis would have been avoided. The plaintiff's expert further stated that Dr. Nadich, a board certified radiologist, explicitly averred that he did not offer any opinion as to the care rendered by the radiologist, Dr. Armandi, and thus, there is no dispute about Dr. Armandi's departures from good and accepted medical practices that resulted in the decedent's injuries and death.

Based upon the foregoing, even if the defendant's expert had established prima facie entitlement to summary judgment dismissing the complaint, the plaintiff's expert has raised factual issues to preclude summary judgment from being granted to Southampton Hospital.

Accordingly, motion (005) by Southampton Hospital for summary judgment dismissing the complaint and cross claims is denied.

Dated: November 5, 2012


J.S.C.

___ FINAL DISPOSITION ___X___ NON-FINAL DISPOSITION