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MEDICINE

Her Breast Lost in Vain

Jury awards $2.25 million for a famous mastectomy

By MICHAEL D. LEMONICK

JOANNE MOTICHKA HAD BEEN EXpecting bad news. Her mother died of breast cancer, and she knew that she herself had a high risk of getting the disease. So she had regular mammograms, saw her gynecologist frequently and began seeing a breast-cancer specialist too. "I was cancer phobic," says the 45-year-old artist and photographer who goes by the professional name Matuschka. It was no surprise, therefore, when the lump she found in her right breast in 1991 turned out to be cancerous. On the advice of her surgeon, Motichka had a modified radical mastectomy: the breast was removed less than two weeks after the initial diagnosis.

The story might have ended there, except for two things. First, Motichka, who specialized in nude self-portraits, continued to take them; she became a symbol of the disfiguring effects of breast surgery, and a photo of her scarred chest wound up on the cover of the New York *Times* Magazine. Second, it turned out that the surgery she so vividly publicized may not have been necessary. Her tumor, she believes, could have been handled by a much simpler procedure that would have left her breast intact. Late last month a New York jury agreed, awarding Motichka $2.25 million in a suit she filed against her doctor.

"The verdict reflects a growing understanding that breast cancer doesn't always require the most severe treatment," said Motichka's attorney, John W. Baldante, Esquire of Philadelphia. A study released in 1996 showed that for small tumors that haven't spread, removal of the tumor and some surrounding tissue (a lumpectomy) followed by radiation is just as effective as taking off the entire breast. Thanks to women's increasing vigilance, some 85% of the 175,000 cases diagnosed in the U.S. each year are found early enough to avoid radical surgery.

MATUSCHKA

SCARRED FOR LIFE: Matuschka's self-portrait became a vivid symbol of the disfiguring effects of cancer surgery

While the evidence was far less conclusive in 1991, when Motichka was diagnosed, many doctors already believed that less invasive treatments could be effective, and were advising their patients to consider that option. According to Motichka, her physician, Dr. Hiram Cody of New York's Memorial Sloan-Kettering Cancer Center, recommended a mastectomy anyway.

Radical mastectomy is inevitably traumatic, a disfigurement of a part of the body that our culture sees as the focus of a woman's femininity and sexual appeal. Motichka turned that trauma into both therapy and art; the pictures made her famous. Still, she says, the fame and exposure could not make up for the fact that she had lost a breast. "All was good on the surface," she says, "but that didn't mean I didn't have difficulty walking down the street." Beyond that, active involvement with oncologists and advocacy groups was educating Motichka about treatment options, and she began to wonder if her disfigurement was a mistake. She went back to Dr. Cody, who insisted that based on the kind of cancer she had, she had never been a good candidate for a lumpectomy.

But she had, she insists. Motichka got a copy of her original pathology report, showed it to other physicians and learned that her tumor was not a fast-growing type after all. Moreover, it was small – about the size of a peanut – and did not seem to have spread. In fact, the biopsy that retrieved a sample of the tumor for testing may have removed the whole thing. She feels she had had all the surgery she needed – before the mastectomy. In 1994 Motichka filed the suit that she finally won two weeks ago. Dr. Cody's attorney maintains that his client discussed lumpectomy with her, but that based on Motichka's family history and her emotional reaction to her mother's death, mastectomy made more sense. Although Motichka denies it, Cody says at one point she was thinking about a double mastectomy, and he talked her down to one. He plans to appeal the verdict.

"I'd rather have my breast than the money," says Motichka. She hopes, though, that her case will encourage other women to question their doctors. She claims that "if screening methods, education and prevention techniques were fully put in play, there would be no reason for women to have their breast removed, period."

Not necessarily. There are situations in which mastectomies still make sense. An estimated 1 in 2 women diagnosed with breast cancer, many of whom could be treated with a lumpectomy, nonetheless choose a mastectomy, either for added reassurance or to avoid radiation's side effects. And some women at high risk for breast cancer reduce the odds by having their breast removed protectively, even before they get the disease. That doesn't bother Motichka. At least, she says, "they're making their own decisions."

–Reported by Alice Park/New York

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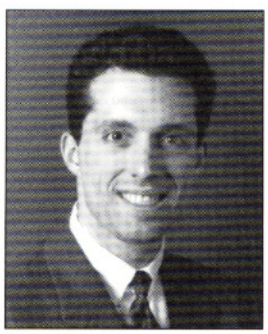
Philly Lawyer Wins $2.25 Mil. In N.Y. Case

Woman had Mastectomy Instead of Lumpectomy

By Lori Litchman
Of the Legal Staff

After deliberating for four days, a New York jury yesterday awarded $2.25 million to a breast cancer survivor and national breast cancer advocate represented by a Philadelphia lawyer, agreeing that a doctor failed in informing the woman of the option of lumpectomy before performing a mastectomy.

John W. Baldante, a principal partner at Levy Angstreich Finney Baldante Rubenstein & Coren, won the case after a two-week trial in New York Supreme Court in Manhattan.


BALDANTE

"[The doctor] misread the pathology report and had advocated a mastectomy because he thought she had multicentric disease, which means a cancer that is in every quadrant throughout the breast," Baldante said.

Baldante said defendant Dr. Hiram Cody, a well-known breast cancer surgeon at Memorial Sloan-Kettering Cancer Center in New York, denied any error on his part.

Cody's lawyer, David E. Richman, partner at the New York firm Parker Chapin Flattau & Klimpl, said the case is not closed.

"I'm confident on appeal that the verdict will be overturned both on the facts and the law," Richman said.

SURGERY AND SUSPICION

After Joann Motichka, 45, underwent a mastectomy in 1991, she became a spokeswoman for breast cancer survivors, campaigning across the country.

"Initially, after Joann had the operation done, part of her message was mastectomy was something that should not be shunned by society, but that it should be embraced and not viewed as an unsightly disfigurement."

Motichka was a photographer by trade and after the surgery photographed herself with her surgery scar. One of her pictures appeared on the cover of the *New York Times Magazine* in August 1993.

According to Baldante, that issue of the magazine has sold the most copies of the publication's issues to date.

Shortly before appearing in the magazine, Baldante said Motichka started to get suspicious that her surgery could have been avoided. He said because she had become so involved in the cause she had become more aware and educated in breast cancer issues and started looking at the circumstances surrounding her own surgery.

Baldante said that almost by accident Motichka got hold of her pathology report, finding the cancerous mass in her breast was a half a centimeter, and that she could have had a lumpectomy to remove it rather than a mastectomy.

"So Joann, who up until that point did not feel badly about mastectomy, became horrified by the reality of her circumstances and became embarrassed that she may have unintentionally encouraged women who didn't need a mastectomy to get one," Baldante said.

She then decided to file the informed consent lawsuit against Cody, claiming she was not rightly informed of the lumpectomy option.

Motichka has since become a different kind of advocate, now telling women that most cases of breast cancer can be treated with a lumpectomy rather than a mastectomy, according to Baldante.

THE CASE

Baldante said he got involved in the lawsuit, initially filed by a New York lawyer, about three years ago.

Baldante said he concentrates much of his law practice in medical malpractice, specifically involving cancer and delayed diagnosis, and through that practice, he has a lot of interaction with breast cancer prevention groups.

He said he can't recall who, but one of the doctors in one of these prevention groups gave Motichka Baldante's number.

At first, he wasn't even sure he would take the case.

"When I try a case out of the Philadelphia and New Jersey areas, [the case] usually has to meet a certain threshold with respect to damages, and I wasn't sure at first that this case met that," Baldante said.

He said although the case was an interesting one academically, Manhattan juries generally don't rule for plaintiffs.

"Manhattan is a very defense oriented venue because it's kind of yuppified," Baldante said.

THE JURY

Baldante had a chance to speak with several of the jurors after they rendered their verdict. He said the general consensus was that they didn't like his client's "strong personality," but were able to look beyond that to view the case intellectually.

During the trial Baldante presented a local breast cancer surgeon who testified it is the doctor's duty to inform patients about the option of lumpectomy.

Baldante said the jury evidently believed Cody did misread the pathology report.

He said the two strongest advocates for his client were two nurses on the jury, and he thinks the jury saw this case as a chance to make a statement.

"I believe the jurors also felt that this case could serve as an example to say that lumpectomy is a viable treatment option over mastectomy in the vast majority of breast cancer diagnoses."

Baldante said when delay damages are added to the award, the verdict will be well over 2.5 million.

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