TYPE OF ACTION: **Medical Malpractice – Failure to Timely Diagnose Lung Cancer**

CASE NAME: ***Joe v. *Koe, M.D., *et al.*,**

SETTLEMENT/ DATE: **$1,250,000.00 April 2012**

PLAINTIFF'S LAWYERS: **William E. Artz, Andrew J. Waghorn, Arlington, Virginia**

CASE SUMMARY:

An ER physician missed a mass in the left lung on a chest x-ray performed on 09/14/06. The reviewing radiologist saw the mass but failed to call the ER physician, or speak with her face to face, regarding his discrepant findings. Instead, the radiologist used routine methods to report the discrepancy through the hospital's computer system and by delivering a discrepancy form to the ER through hospital employees. The discrepancy report never reached the ER. As a result of the negligence of each defendant, the patient was misdiagnosed with a sore throat and/or bacterial pneumonia and treated with Zithromax. The sore throat resolved two days after the patient was discharged, so the patient did not follow-up with a doctor, who had been assigned to him by the hospital.

On 01/12/08, the patient returned to the hospital with severe shortness of breath and chest pain. A chest x-ray showed a mass in the left lung. Fluid was removed from the lung and tested under the microscope, which revealed cancer. A lung biopsy confirmed the diagnosis. A subsequent head CT indicated the cancer had metastasized to the brain. Despite aggressive treatment, including chemotherapy, radiation, and gamma-knife brain surgery, the patient died from complications of lung cancer at the age of 27, on 09/05/09. He is survived by his wife, also 27, and three children ages 9, 7, and 2.

The plaintiff's experts were prepared to testify that: (1) an ER physician has a duty to review final radiology reports before arriving at a final diagnosis for her patient; (2) a radiologist cannot report a missed lung mass through routine means, but must call the ER physician, or speak with her face to face, to report the discrepancy; and (3) hospital employees must timely deliver discrepancy reports when ordered to do so. They were also prepared to testify that as a proximate result of defendants' negligence, there was a 16 month delay in the diagnosis and treatment of decedent's lung cancer, during which time the tumor progressed from a curable (Stage I or Stage IIA) to an incurable stage (Stage IV).

The defense was that the delay did not change the outcome for the patient, who was likely to die of aggressive lung cancer, regardless of when his tumor was first diagnosed. Additionally, the defense was likely to argue that the patient failed to mitigate his damages by not following up with a doctor assigned to him at the time of his discharge from the hospital.

*****Names camouflaged