



# Geesaman v. St. Rita's Medical Center, 124 OhioSt.3d 1472 (Ohio 2010)

Topics Covered: Professional Liability, Loss of Chance

## Outcome: Unfavorable

### Issue

The issue in this case was whether the trial court properly refused a jury instruction that would have allowed liability under a "loss-of-chance" theory of recovery (more properly, a "loss of less-than-even chance" theory of recovery) in a medical liability suit.

### AMA Interest

The AMA strives to avoid the expansion of professional liability theories against physicians, which can lead to abusive malpractice litigation.

### Case Summary

Jeffrey Geesaman sought emergency medical care at St. Rita's Medical Center. He had been experiencing dizziness, loss of balance, slurred speech, vomiting, and problems with his vision. He also indicated that his mother had died of a stroke at age 45.

The attending emergency physician suspected that Mr. Geesaman might have suffered a stroke. He consulted with other physicians, ordered a number of medical tests, including a brain MRI, and performed his own examination. Jon Cox, D.O., a neurologist, read the MRI and found it normal. Based in part on Dr. Cox's reading of the MRI, the various physicians ultimately concluded that Mr. Geesaman had not had a stroke. Several days later, they discharged him from the hospital with five prescriptions and detailed treatment instructions. However, they did not advise him to take aspirin or another anti-coagulant.

Three days later, Mr. Geesaman returned to the St. Rita's emergency room. Further tests were conducted, and at this point it became clear that he had had a stroke. Mr. Geesaman's treating doctors also concluded that the first MRI had shown that he had had a stroke prior to his earlier visit, but Dr. Cox had misread the results. As a result of his strokes, Mr. Geesaman suffered brain damage, leaving him permanently disabled.

Mr. Geesaman and his wife then sued St. Rita's and various physicians, including Dr. Cox. During discovery, Dr. Cox admitted that he had breached the standard of care by misreading the MRI. Prior to the trial, Dr. Cox filed a motion *in limine* asking that the Geesamans be prohibited from introducing evidence or arguing to the jury as to a loss-of-chance or loss of a less-than-even chance of recovery, and the trial court granted this motion.

During the trial, the evidence showed that even if Dr. Cox had read the MRI correctly and Mr. Geesaman had been correctly diagnosed and treated for stroke on his first emergency visit, he

would still probably have suffered from the second stroke. The Geesamans tendered a jury instruction that would have allowed the jury to find liability against Dr. Cox, because his negligence had caused Mr. Geesaman to lose the less-than-even chance of avoiding the second stroke. However, the trial court rejected that instruction.

The jury returned a verdict in favor of all the defendants, including Dr. Cox. They found that his negligence, although conceded at trial, had not proximately caused injury to Mr. Geesaman. The Geesamans appealed the judgments in favor of Dr. Cox and one of the co-defendant physicians. On appeal, the Geesamans claimed that the trial court erred by refusing to allow evidence of or a jury instruction concerning a loss-of-chance theory of recovery. The Court of Appeals agreed with the Geesamans, reversed the judgment and ordered that the case be remanded.

Dr. Cox petitioned the Ohio Supreme Court for discretionary review, and the Ohio Supreme Court granted his petition. Oral argument was heard on October 12, 2010.

On December 9, 2010, the Supreme Court *sua sponte* dismissed the appeal, finding that its prior decision to grant discretionary review had been improvidently granted.

### **Litigation Center Involvement**

The Litigation Center, along with the Ohio State Medical Association, filed an *amicus curiae* brief asking the Ohio Supreme Court to grant discretionary review. The Litigation Center and the OSMA also filed an *amicus* brief on the merits of the case.

Ohio Supreme Court brief supporting the petition for discretionary review

Ohio Supreme Court brief on the merits