

Jury awards \$5.2 million for wrongful death due to medical malpractice

Multiple misdiagnoses, delayed and negligent treatment resulted in years of suffering and eventual death.

In March 2017, Ernie (not his real name) was in his mid-60's, retired, and living with his wife Carol (not her real name) in Fort Lauderdale, Florida. Concerned about persistent throat pain, difficulty swallowing, and ringing in his ears, Ernie visited otolaryngologist Dr. Walter M. Fingerer. Ernie was a former longtime smoker. Dr. Fingerer's initial diagnosis was inflamed tonsils. In May 2017, after obtaining no relief for his discomfort, Ernie sought a second opinion from otolaryngologist Dr. Ignacio Rodriguez. Dr. Rodriguez noted that Ernie had a hypopharyngeal mass that he assumed was previously biopsied as negative. Dr. Rodriguez saw Ernie twice but never confirmed any biopsy nor considered cancer despite Ernie's past medical history. He ultimately diagnosed spastic dysphonia, sending Ernie for a barium swallow test which was abnormal and speech therapy. After several more months, Ernie, who was told he did not have cancer, returned to Dr. Fingerer who performed a tonsillectomy in October.

The mass identified earlier continued to grow. In December 2018, Ernie had a neck scan and biopsy. Shortly thereafter, he was diagnosed with Stage 4 squamous cell carcinoma. Seeking accountability for the doctors' failure to properly and timely diagnose his cancer, Ernie was referred by a South Florida attorney to Searcy Denney attorney **Jordan Dulcie** who specializes in medical malpractice to represent him. On Ernie's behalf, attorney Jordan Dulcie brought legal action against both doctors and their respective practices alleging that they had negligently failed to provide a timely biopsy and diagnosis of his cancer. Unfortunately, Ernie died in 2021, during litigation, from complications of his cancer treatment. Carol, acting as personal representative of his estate, continued the legal action.

The claims against Dr. Fingerer and his practice were resolved prior to trial, but Dr. Rodriguez only offered \$250,000 right before trial. In preparation for trial, Searcy Denney attorney **Jack Hill** was added to the trial team that would present Ernie and Carol's case to a Broward County jury. The case proceeded against Dr. Rodriguez and his practice. Dr. Fingerer remained on the verdict form as a Fabre defendant. Attorneys Dulcie and Hill argued that Dr. Rodriguez never performed a biopsy and had falsely assumed that Dr. Fingerer had done a biopsy that had come back negative. Dr. Rodriguez failed to confirm any prior biopsy, and the negligence of both doctors



had led to Ernie's death from a cancer that might have been treated successfully. By the time cancer was diagnosed, the only viable treatment was a complicated throat reconstruction surgery. He underwent this procedure in March 2019, was hospitalized for over a month, and endured multiple readmissions. While the surgery eliminated the cancer, he suffered from an inability to speak, smell, or taste, and had to breathe through an opening in his neck. These complications ultimately led to his death. The estate sought recovery of past medical and funeral expenses, damages for Carol's loss of support, and past and future pain and suffering damages for Carol's loss of her husband.

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The defense tried to argue that any negligence on the part of the doctors did not contribute to Ernie's death, or that Ernie died from an unrelated acute myocardial infarction. An autopsy found no significant evidence of this.

After a ten-day trial, the jury awarded Carol and the estate a total of \$5,183,957 in damages. The jury apportioned Dr. Fingerer 65% of the liability and Dr. Rodriguez 35% of the liability. After nearly five years of litigation, Carol and Ernie finally received the accountability and justice they deserved. ♦