

## Verdicts & Settlements

### Widow of former smoker wins after second trial in wrongful death case

*Suit was filed against University Internists of St. Louis, doctors*



Mary Coffey



Genevieve Nichols

#### \$750,000 verdict

A wrongful death case brought by the widow of a 64-year-old former smoker ended in her favor when a second jury was asked to measure damages without guessing percentages of fault.

"This is an example of where using per-

centages to measure damages is a short-coming," said plaintiff's lawyer Mary Coffey.

Coffey said that Patrick Downey had been a cigarette smoker for a good portion his life, although he had quit the habit approximately 20 years before dying of lung cancer.

In March 2003, Downey's widow, Betty, brought a lost chance of survival claim against University Internists of St. Louis and Dr. Robert Brinkman for failure to work up a solitary pulmonary nodule on the X-ray reports of the past smoker, a procedure Downey claimed might have saved her husband's life.

A jury at that time found for the surgeon and the internist involved, yet awarded no damages to Downey.

The judgment was reversed in October 2004 by the Missouri Eastern District Court of Appeals, with the panel saying the verdict was inconsistent. The case was sent back to St. Louis County Circuit Court, where a jury June 16 awarded past non-economic damages totaling \$750,000.

Coffey explained that the difference in the trial results might be tracked to having

juries attempt to determine a percentage chance of survival in lost chance cases. "That really confuses juries. The second time we tried it as a wrongful death case and didn't do that percentage [method] of trying to determine his chance of survival. Either he would have survived or he wouldn't have. It is just too hard to put a percentage on that," Coffey said.

Coffey said that she thought the second trial was "much more straightforward" and that the less involved procedure of a wrongful death over a lost chance of survival helped the jurors understand what they were to do.

Defense lawyer Tad Eckenrode did not return telephone calls.

— Mike Nixon

#### Facts of the Case

**Type of Action:** Medical malpractice

**Type of Injuries:** Wrongful death

**Court/Case Number/Date:** St. Louis Circuit Court/002-891/June 16, 2006

**Caption:** Betty Downey v. University Internists of St. Louis Inc. and Robert Brinkman, M.D.

**Judge, Jury or ADR:** Jury

**Name of Judge:** Steven Ohmer

**Verdict or Settlement:** \$750,000 verdict

**Special Damages:** \$150,000

**Allocation of Fault:** N/A

**Last Demand:** \$600,000

**Last Offer:** \$50,000

**Attorneys for Plaintiff:** Mary Coffey and Genevieve Nichols, Coffey & Associates, St. Louis

**Attorney for Defense:** Tad Eckenrode, Eckenrode & Maupin, St. Louis

**Insurance Carrier:** Medical Assurance

**Plaintiff's Experts:** Raymond Weiss, M.D., (internist oncologist) Washington; Erica Friedman, M.D., (internist) New York

**Defendants' Experts:** Patricia Cole, M.D., (cardiologist) St. Louis; Michael Bolger, M.D., (oncologist) St. Louis