

O’Gorman v Sydney South West Area Health Service

In *O’Gorman v Sydney South West Area Health Service* [2008] NSWSC 1127, the plaintiff was successful in a claim against BreastScreen NSW for late diagnosis of breast cancer.

The plaintiff was diagnosed with breast cancer in January 2007. Prior to this, she had undergone screening mammograms regularly, the most recent one in February 2006.

Following her diagnosis, the plaintiff underwent chemotherapy but later that year was diagnosed with lung cancer and in 2008 with a brain tumour. It was accepted that the tumours had metastasised from the breast cancer.

As a result of the plaintiff’s severely reduced life expectancy, the proceedings were expedited.

Hoeben J accepted the evidence of the radiologist called on behalf of the plaintiff that the combination of signs in the 2006 mammogram, in particular the increased size of the mass when compared to the mammogram from 2004, raised a suspicion for malignancy and the plaintiff should have been recalled at that time for further testing.

His Honour found that the defence provided by section 50 of the *Civil Liability Act* 2002 (NSW) was not available. That section provides that a professional does not incur liability in negligence if they act in a manner widely accepted in Australia by peer professional opinion as competent professional practice. His Honour based this finding on the common evidence of the experts for both parties that had the mass significantly increased in size between 2004 and 2006 (which the defendant’s expert did not consider was the case), appropriate radiological practice would have been to recall the plaintiff.

His Honour further found that had the plaintiff been recalled in 2006 and an ultrasound performed, the breast tumour would have been diagnosed. The evidence was that as a result of the delayed diagnosis, the chance of the cancer metastasising had increased by 10%. His Honour applied the causation principal in *Chappel v Hart* and found that the defendant’s conduct caused the metastatic tumours by increasing the risk of them developing and did not consider that the loss of a chance principle applied.

The plaintiff was awarded \$247,500.00 for general damages and further amounts for special damages including loss of earnings.

The full judgment can be found at:

<http://www.lawlink.nsw.gov.au/scjudgments/2008nswsc.nsf/6ccf7431c546464bca2570e6001a45d2/da89437806bcf7daca2574ef000ed6cf?OpenDocument>