

\$10.5M Settlement Reached Over New Jersey Lawyer's Death

A cancer expert testifying for the deceased man's estate opined that Sills Cummis attorney Brian Coven had an 85% to 90% chance of survival, if doctors had taken appropriate action after the first signs of cancer.

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Brian Coven was an attorney at Sills Cummis. Courtesy photo

A physician's group whose alleged failure to detect signs of lung cancer that led to the death of a partner at Sills Cummis & Gross has agreed to a \$10.5 million settlement in an Essex County medical malpractice suit.

Brian Coven, a transactional lawyer who spent his entire career at Sills Cummis, died from lung cancer at age 68 in 2024.

In January 2019, and again in February 2020, Coven saw doctors at Summit Medical Group with complaints of pneumonia. Doctors ordered X-rays of his lungs both times, and twice they observed infiltrates, which are opacities in lung cells that sometimes indicate cancer, according to the suit.

But there were allegedly no follow-up tests or further inquiry about the infiltrates, and Coven was later diagnosed with cancer after experiencing unexplained weight loss, said David Mazie of Mazie Slater Katz & Freeman in Roseland, who represents Coven's estate.

A cancer expert testifying for the dead lawyer's estate opined that Coven had an 85% to 90% chance of survival if the doctors had taken appropriate action after the first signs of cancer.



David A. Mazie of Mazie Slater Katz & Freeman. Courtesy photo

The settlement calls for Summit Medical Group to pay \$10.5 million on behalf of the four physicians who were involved in Coven's case.

The suit named Summit Medical Group and physicians Lisa Marie Campanella, Alison Kole, Erika Berman and Peter Colucio as defendants.

When Coven had his first X-ray, Berman, a radiologist, did not see the infiltrate, the suit alleges. But two months later, when Coven saw pulmonologist Kole for sleep apnea, she spotted the infiltrate on the X-ray from the consultation with Berman, the suit alleges.

Kole allegedly did not order a follow-up X-ray but mentioned the infiltrate in a multipage letter she sent to Colucio, who was Coven's primary physician. However, Kole allegedly did not include the infiltrate in her findings and summary at the end of the letter, and Colucio said he read through the letter but did not see the mention of any infiltrate, the suit claims.

Colucio allegedly "admitted at his deposition that a lung infiltrate could be evidence of cancer; the standard of care required him to ensure that a follow-up radiologic study was ordered in order to ascertain whether the infiltrate was in fact cancer, or just an infectious process; the standard of care required him to read the full note sent to him by Kole regarding Coven; and that he read the entirety of the note but he failed to follow the standard of care and order a follow-up radiologic study, thereby failing to catch the early stage cancer in Mr. Coven's lung," according to a document filed in court by Mazie.

The following year, Coven returned to Summit Medical Group with symptoms of pneumonia and was seen by defendant Lisa Campanella-Coppo, an urgent care physician. Campanella-Coppo ordered a chest X-Ray, which was again interpreted by Berman. This time, Berman identified an infiltrate in Mr. Coven's lung, documented it in her report, and expressly recommended follow-up, according to the suit.

However, Campanella-Coppo allegedly did not understand that an infiltrate can be evidence of cancer and disregarded Berman's recommendation for follow-up. She allegedly never advised Coven that the infiltrate could represent cancer or that he should undergo additional imaging to determine its cause, the suit claims. She also failed to notify Coven's primary care physician, Colucio, the suit alleged.

The physician defendants pointed fingers at each other, with Colucio asserting that Kole was at fault for burying the information about the infiltrate in the body of her letter, but not putting it in the summary, Mazie said. Berman said the infiltrate was "too subtle of a finding and most radiologists would miss it," according to Mazie.

Damages were difficult to prove in the case, which had \$5.9 million in economic loss, Mazie said.

The family lost the attorney's income, which was diminished because he was nearing the end of his career, his legal counsel said. Coven was planning to work into his 70s. The damages included loss of his comfort, care, support and advice and his nighttime security, which is the value of having one's spouse sleep next to them, Mazie said.

Proving damages for a patient who died of cancer is difficult because under a 1990 New Jersey Supreme Court case, *Scafidi v. Seiler*, in cases with independent contributing causes, damages should be apportioned to account for the defendant's share of fault, even if the defendant is not the sole proximate cause.

So potential damages were reduced by the potential for Coven to die, even if the doctors had not made any errors, Mazie said.

Laurel Koffler O'Neill of MacNeill, O'Neill & Riveles represented Kole. Justin Johnson at Marshall Dennehey represented Berman.

David Donohue at Farkas & Donohue represented Summit Medical and Campanella-Coppo.

Philip Mattia of Lyons & Associates represented Colucio.

None of the defense lawyers responded to calls about the case.

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