



Missed-finding Allegations and Hindsight Bias in Radiological Malpractice Suits

When a missed finding on an imaging scan is alleged, the finding can suddenly seem so obvious in the present that you or others believe it could have, or should have, been spotted immediately.

At Physicians Insurance, we know these allegations are never as obvious as they may seem. But how do you prove that? Here are takeaways from a recent radiology case in which we addressed this question head-on.

CASE SUMMARY

The problem

The Physicians Insurance member in the case was a radiologist who was alleged to have negligently missed an incidental finding on a low-dose lung-cancer screening CT. While the insured radiologist correctly found no signs of lung cancer, he missed a lesion growing on the patient's spine, resulting in the delayed diagnosis of recurrent breast cancer.

For background, the patient had a remote history of breast cancer and had previously undergone a double mastectomy. The provider who ordered the lung-cancer screening did not think that breast cancer was the likely cause of her complaint at the time the lung CT was ordered.

Leveraging Cleareview

Even though the missed finding seemed obvious in hindsight—and though the insured radiologist felt very badly about the impact on the patient—the radiologist also believed that many of his peers would also have missed the lesion because of certain factors in the case.

To gain more insight, the Physicians Insurance team utilized a method called Cleareview to objectively assess how other radiologists would review the same case.

This method removes the bias of knowing that a particular outcome is present in the image by providing consulting radiologists with several sets of de-identified images. The image in question is among the sets, but the reviewing radiologists (1) don't know which image is part of the case, and (2) are not told there is anything inherently wrong in the images. They are asked to simply review all of the images and give their impressions.

In this Cleareview study, the two board-certified radiologists who were consulted missed the finding that was the subject of the litigation, demonstrating that it was not as clear and obvious as it might seem.

The defense focus: process, not perfection

In devising a legal strategy, the Physicians Insurance team focused on this key question: At the time the insured radiologist was reviewing the study, did he exercise reasonable care?

In other words, the case wasn't about whether he missed the finding or didn't miss it, or whether the finding was there or wasn't there, explains Scott O'Halloran, JD, lead defense counsel.

"The issue is whether he used a reasonable process," O'Halloran says. "We know that radiologists can't guarantee that they're going to find everything, and that's not their job. Their job is to use a good process every time."

What role did hindsight bias play?

In missed-finding cases that go to trial, a plaintiff's attorney wants to convince a jury that because we can see the finding now, a radiologist should naturally have seen it, too.

For the defense, addressing and removing hindsight bias was a major hurdle to overcome in the case. Along with sharing the evidence of the Cleareview study, the defense implemented a multifaceted strategy to help the jury better understand the context of the missed finding and ultimately reach a defense verdict.

How did Physicians Insurance defend against the allegation?

One of the key strengths in the defense strategy was the defendant radiologist himself. He was a doctor who cared about his patients, about the work he does, and about helping the jury understand his professional commitment to meeting the standard of care.

Working together with his defense team, he prepared diligently for the deposition and every step of the trial in order to bring the jury into his world and help them understand the full context of the case. Key elements of the defense strategy included the following.

Framing the issue

In line with the defense focus, a primary component of the strategy was to remind the jury that while radiologists, like all providers, strive for perfection, that is not the legal requirement. The requirement is that the physician act in a reasonably prudent manner, consistent with the behavior of others in their field.

Contextualizing the defendant physician's role

Another key element of the defense strategy was to show the jury that the insured radiologist was part of a team of providers working to give the best possible care to a patient, and that other providers could also have impacted the outcome. For example, should a different imaging modality have been ordered for the study? Would this have been better suited to examine a particular set of symptoms?

To ensure a strong defense presentation, Physicians Insurance regularly utilizes trial consultants and focus groups or mock juries to test both concepts and clarity of presentation. This additional effort has proven to be impactful in defending cases, including this one.

Explaining the radiological interpretation process

A primary objective of describing the radiological review process was to remind the jury that a radiologist's job is never clear-cut or easy. It's not a case of "Where's Waldo?"—you're not trying to find something wrong in every scan you review. Instead, you're following a standard of care-driven process to maximize your chance of answering the question asked of you when reviewing radiological scans.

In firsthand testimony, the insured radiologist walked the jury through a detailed day in his life at work and the specific processes he follows. As part of this narrative, he was able to show the jury that he is aware of the most common places where one would likely find something incidental. He explained—with supporting data—that the likelihood of a finding in the spine, as in this case, was extremely low. It didn't excuse the fact that he didn't find it, O'Halloran says, but it showed that what happened was highly unlikely.

As the defendant radiologist spoke to the jury, O'Halloran recalls that he could see the interest on the jurors' faces. "They were leaning forward because they wanted to hear from him why he did what he did, and how he went through the steps," he says. "It was a very key part."

CONCLUSION

While this case proved successful for the Physicians Insurance member and demonstrated the importance of educating and informing the jury, it also highlighted the challenges that physicians can face in radiology cases. Missed-findings allegations may make you question your abilities, especially when hindsight bias makes the missed finding seem all the more obvious.

With Physicians Insurance, you get support from claims professionals who are skilled in defending against these claims—and reminding you that what seems obvious now was likely not so obvious at the time.

