

Medical VERDICTS

NOTABLE JUDGMENTS AND SETTLEMENTS

Delayed diagnosis of breast cancer: \$15M award

A WOMAN IN HER MID-50S had been seen by a breast surgeon for 16 years for regular mammograms and sonograms. In May 2009, the breast surgeon misinterpreted a mammogram as negative, as did a radiologist who re-read the mammogram weeks later. In December 2010, the patient returned to the breast surgeon with nipple discharge. No further testing was conducted. In October 2011, the patient was found to have Stage IIIA breast cancer involving 4 lymph nodes. She underwent left radical mastectomy, chemotherapy, radiation therapy, and breast reconstruction. At time of trial, the cancer had invaded her vertebrae, was Stage IV, and most likely incurable.

PATIENT'S CLAIM: Although the surgeon admittedly did not possess the qualifications required under the Mammography Quality Standards Act, he interpreted about 5,000 mammograms per year in his office. In this case, he failed to detect a small breast tumor in May 2009. He also failed to perform testing when the patient reported nipple discharge. A more timely diagnosis of breast cancer at Stage I would have provided a 90% chance of long-term survival.

DEFENDANTS' DEFENSE: The defense held the radiologist fully liable because the surgeon was not a qualified interpreter of mammography, therefore relying on the radiologist's interpretation. The radiologist was legally responsible for the missed diagnosis.

VERDICT: A \$15M New York verdict was reached, finding the breast surgeon 75% at fault and the radiologist 25%. The radiologist settled before the trial (the jury was not informed of this). The breast surgeon was

responsible for \$11.25M. The defense indicated intent to appeal.

Alleged failure to evacuate uterus after cesarean delivery

A 37-YEAR-OLD WOMAN underwent cesarean delivery (CD) performed by 2 ObGyns. After delivery, she began to hemorrhage and the uterus became atonic. Hysterectomy was performed but the bleeding did not stop. The ObGyns called in 3 other ObGyns. During exploratory laparotomy, the bleeding was halted.

PATIENT'S CLAIM: She and her husband had hoped to have more children but the hysterectomy precluded that. She sued all 5 ObGyns, alleging that the delivering ObGyns failed to properly perform the CD and that each physician failed to properly perform the laparotomy, causing a large scar. The claim was discontinued against the 3 surgical ObGyns; trial addressed the 2 delivering ObGyns.

The patient's expert ObGyn remarked that the hemorrhage was caused by a small placental remnant that remained in the uterus as a result of inadequate evacuation following delivery. The presence of the remnant was indicated by the uterine atony and should have prompted immediate investigation. The physicians' notes did not document exploration of the uterus prior to closure.

PHYSICIANS' DEFENSE: The defense's expert contended that atony would not be a result of a small remnant of placenta. The patient's uterus was properly evacuated, the hemorrhage was an unforeseeable complication, and the ObGyns properly addressed the hemorrhage.

VERDICT: A New York defense verdict was returned.

Alleged bowel injury during hysterectomy

TWO DAYS AFTER a woman underwent a hysterectomy performed by her ObGyn, she went to the emergency department with increasing pain. Her ObGyn admitted her to the hospital. A general surgeon performed an exploratory laparotomy the next day that revealed an abscess; a 1-cm perforation of the patient's bowel was surgically repaired. The patient had a difficult recovery. She developed pneumonia and respiratory failure. She underwent multiple repair surgeries for recurrent abscesses and fistulas because the wound was slow to heal.

PATIENT'S CLAIM: The ObGyn's surgical technique was negligent. He injured the bowel when inserting a trocar and did not identify the injury in a timely manner. The expert witness commented that such an injury can sometimes be a surgical complication, but not in this case: the ObGyn rushed the procedure because he had another patient waiting for CD at another hospital.

PHYSICIAN'S DEFENSE: The ObGyn denied negligence and contended that the trocar used in surgery was too blunt to have caused a perforation. It would have been obvious to the ObGyn during surgery if a perforation had occurred. The perforation developed days after surgery within an abscess.

VERDICT: A Mississippi defense verdict was returned. ●

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