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Hospital Liabe in Retained Object Case

Jury awards patient \$375,000 for surgical sponge left in abdomen nearly 5 years.

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The failure to remove a surgical sponge from a patient's abdominal cavity proved to be a \$375,000 error for an Atlanta medical center.

In the case of *Tucker v. DeKalb Medical Center*, a jury [found](#) the hospital liable for negligently leaving a sponge inside Clara Tucker. It awarded \$375,000 to the 85-year-old patient, who underwent surgery at the facility nearly 8 years ago. The jury cleared her doctors of fault.

In January 2004, Ms. Tucker underwent an aortofemoral bypass at the hospital. For several years after the surgery, she complained of pain in the lower left quadrant of her abdomen, according to court documents.

On Dec. 17, 2008, Ms. Tucker was admitted to the facility with complaints of severe abdominal pain and a foul odor coming from her body. A CT scan found a mass near her colon that was determined to be a surgical sponge that hadn't been removed after the January 2004 procedure. On Dec. 21, she underwent surgery to remove the sponge, and was released from the hospital on Jan. 7, 2009.

In her lawsuit, Ms. Tucker alleged that the defendant's employees negligently failed to remove the surgical sponge, which resulted in pain and suffering. The defendant disputed the damages claim, and contended that the center's staff met the applicable standard of care, with the exception of performing a correct sponge count after the procedure. DeKalb Medical Center turned down a \$250,000 offer to settle prior to trial, instead making an offer of judgment for \$50,000.

The center's counteroffer was, in part, what motivated Ms. Tucker to go to trial, according to Louis Levenson, her Atlanta-based attorney.

"I expected at some point they would settle with her," says Levenson. "I knew the doctor wasn't going to settle, but if the hospital stepped up and paid a significant amount of money, they would have bought peace for themselves and for the doctor. But because they didn't ... the case ultimately went to trial.

"This was not a case where my client was permanently disabled, other than having a scar. [The defendant's] position was that she was pretty healthy beforehand, went through hell, and is pretty healthy now," says Levenson, noting that DeKalb did pay Ms. Tucker's medical bills for the additional surgery.

"The only thing the plaintiff was in a position to claim was how her life was thrown into havoc," says Levenson. "She had gone through hospitalization, fear, loss of work and time away from family, and [the defendant] didn't feel that was a significantly compensable component of her claim. I disagreed."

According to court records, the defendant has filed a motion for a new trial based on the "excessiveness of the verdict."

"The defendants conceded that [the sponge left in the patient] would cause pain and suffering," says attorney Timothy H. Bendin of Atlanta, who represented the defendants in the case. "The patient had a fairly routine recovery, was basically well and back to work within 2 or 3 months, and was back to herself completely in about 5 months. We thought the award the jury reached was far in excess, under the facts of the case. That's really the basis for the motion for the new trial."

[Mark McGraw](#)

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