Uterine rupture, child stillborn: $3.8M net award

AT 35 WEEKS' GESTATION, a woman went to the emergency department (ED) with abdominal pain, fast heartbeat, and irregular contractions. Her history included three cesarean deliveries, including one with a vertical incision. She was admitted, and a cesarean delivery was planned for the next day. After 8 hours, during which the patient's condition worsened, an emergency cesarean delivery was undertaken. A full rupture of the uterus was found; the baby's body had extruded into the mother's abdomen. The child was stillborn.

PARENTS' CLAIM The stillbirth could have been avoided if the nurses had communicated the mother's worsening condition to the physicians.

DEFENDANTS' DEFENSE After the hospital and physicians settled prior to trial, the case continued against the nurse in charge of the mother's care and the nurse-staffing group. Negligence was denied; all protocols were followed.

VERDICT A $2.9 million Illinois verdict was returned. With a $900,000 settlement from the hospital and physicians, the net award was $3.8 million.

Where did rare strep A infection come from?

A 36-YEAR-OLD WOMAN REPORTED heavy vaginal bleeding to her ObGyn. She underwent endometrial ablation in her physician's office.

The next day, the woman called the office to report abdominal pain. She was told to stop the medication she was taking, and if the pain continued to the next day, to go to an ED. The next day, the patient went to the ED and was found to be in septic shock. During emergency laparotomy, 50 mL of purulent fluid were drained and an emergency hysterectomy was performed. Three days later, the patient died from pulmonary arrest caused by toxic shock syndrome. An autopsy revealed that the patient's sepsis was caused by group A streptococci (GAS) infection.

ESTATE'S CLAIM The patient was not a proper candidate for endometrial ablation because of her history of chronic cervical infection. The ObGyn perforated the cervix during the procedure and tried to conceal it. At autopsy, bone wax was found in the rectal lumen that had been used to cover up damage to the cervix. The ObGyn introduced GAS bacteria into the patient's system. The ObGyn's staff failed to ask the proper questions when she called the day after the procedure. She should have been told to go directly to the ED.

DEFENDANTS' DEFENSE The ObGyn did not perforate the cervix or uterus during the procedure. GAS infection is so rare that it would have been difficult to foresee or diagnose. Potentially, the patient had a chronic cervical infection before ablation.

VERDICT A Texas defense verdict was returned.

During insertion, IUD perforates uterine wall; later found below liver

ON JULY 21, a 46-year-old woman went to an ObGyn for placement of an intrauterine device (IUD). Shortly after the ObGyn inserted the levonorgestrel-releasing intrauterine system (Mirena, Bayer HealthCare), the patient reported severe pelvic and abdominal pain. On July 26, the patient underwent surgical removal of the IUD.

She was discharged on July 29 but continued to report pain. She was readmitted to the hospital the next day and treated for pain. She was bed ridden for 3 weeks after IUD-removal surgery, and had a 3-month recovery before feeling pain free.

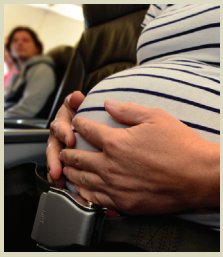
PATIENT'S CLAIM The ObGyn was negligent in perforating the patient's uterine wall during IUD insertion, causing the device to ultimately migrate under the patient's liver.

DEFENDANTS' DEFENSE Uterine perforation is a known complication of IUD insertion. The IUD escaped from the patient's uterus at a later time and not during the insertion procedure.

VERDICT A Florida verdict of $208,839 was returned; the amount was reduced to $161,058 because the medical expenses were written off by the health-care providers.

These cases were selected by the editors of OBG MANAGEMENT *from* Medical Malpractice Verdicts, Settlements & Experts, *with permission of the editor, Lewis Laska (www.verdictslaska.com). The information available to the editors about the cases presented here is sometimes incomplete. Moreover, the cases may or may not have merit. Nevertheless, these cases represent the types of clinical situations that typically result in litigation and are meant to illustrate nationwide variation in jury verdicts and awards.*

PHOTO: SHUTTERSTOCK



Was travel appropriate for this pregnant woman?

A WOMEN WITH A HISTORY of two premature deliveries and one miscarriage became pregnant again. She received prenatal care at an Army hospital. She traveled to Spain, where the baby was born at 31 weeks' gestation. The baby required treatment in a neonatal intensive care unit (NICU) for 17 days. The child has cerebral palsy, with tetraplegia of all four extremities. She cannot walk without assistance and suffers severe cognitive and vision impairment.

PARENTS' CLAIM The ObGyn at the Army hospital should not have approved the mother's request for travel; he did so, despite knowing that the mother was at high risk for premature birth. The military medical hospital to which she was assigned in Spain could not manage a high-risk pregnancy, didn't have a NICU, and didn't have specialists to treat premature infants.

DEFENDANTS' DEFENSE The ObGyn argued that he did not have access to the medical records showing the mother's history. The patient countered that the ObGyn did indeed have the patient's records, as he had discussed them with her.

VERDICT A $10,409,700 California verdict was returned against the ObGyn and the government facility.

Triple-negative BrCa not diagnosed until metastasized: $5.2M

AFTER FINDING LUMPS in both breasts, a woman in her 30s saw a nurse practitioner (NP) at an Army hospital. A radiologist reported no mass in the right breast and multiple benign-appearing anechoic lesions in the left breast after bilateral mammography and ultrasonography (US) in July 2008. The Chief of Mammography Services recommended referral to a breast surgeon, but the patient never received the letter. It was placed in her mammography file, not in the treatment file.

In November 2008, the patient returned to the clinic. Bilateral diagnostic mammography and US were ordered, but for unknown reasons, cancelled. US of the left breast was interpreted as benign in January 2009.

After imaging in March 2010, followed by a needle biopsy of the right breast, a radiologist reported finding intermediate-grade infiltrating ductal carcinoma.

The patient sought care outside the military medical system at a large university hospital. In April 2010, stage 3 triple-negative invasive ductal carcinoma (IDC) was identified. The patient underwent chemotherapy, a double mastectomy, removal of 21 lymph nodes, and breast reconstruction. She was given a 60% chance of recurrence in 5–7 years.

PATIENT'S CLAIM It was negligent to not inform her of imaging results. Biopsy should have been performed in 2008, when the IDC was likely at stage 1; treatment would have been far less aggressive. Electronic medical records showed that the 2008 mammography and US results had been "signed off" by an NP at the clinic.

DEFENDANTS' DEFENSE While unable to concede liability, the government agency did not contest the point.

VERDICT A $5.2 million Tennessee federal court bench verdict was returned, citing failures in communication, poor and improper record keeping and retention, failure to follow-up, and an unexplained cancellation of a medical order.

Woman dies from cervical cancer: $2.3M

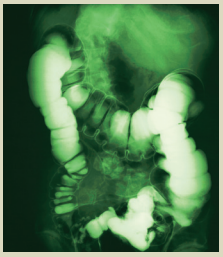
IN 2001, a 41-year-old woman had abnormal Pap smear results but her gynecologist did not order more testing. The patient was told to return in 3 months, but she did not return until 2007—reporting abnormal bleeding, vaginal discharge, and pain. Her Pap results were normal, however, and the gynecologist did not order further testing. In 2009, the patient was found to have advanced cervical cancer. She died 2 years later.

ESTATE'S CLAIM Further testing should have been ordered in 2001, which would have likely revealed dysplasia, which can lead to cancer. The laboratory incorrectly interpreted the 2007 Pap test; if the results had been properly reported, additional testing could have been ordered.

DEFENDANTS' DEFENSE The laboratory and patient's estate settled for a confidential amount before trial. The gynecologist denied negligence.

VERDICT A New Jersey jury found the gynecologist 40% at fault for his actions in 2007. The jury found the laboratory 50% at fault, and the patient 10% at fault. A gross verdict of $2.33 million was returned.

PHOTO: SHUTTERSTOCK



Bowel injury after cesarean delivery; mother dies of sepsis

AT 40 4/7 WEEKS' GESTATION, A 37-YEAR-OLD WOMAN gave birth to a healthy child by cesarean delivery. The next day, the patient had an elevated white blood cell (WBC) count with a left shift, her abdomen was tympanic but soft, and she was passing flatus and belching. The ObGyn ordered a Fleet enema; only flatus was released. A covering ObGyn ordered an abdominal radiograph, which the radiologist reported as showing postoperative ileus and mild constipation. The patient was given a second Fleet enema the next day, resulting in watery stool. She vomited 300 mL of dark green fluid.

After a rectal tube was placed 2 days later, one hard brown stool and several brown, pasty, loose, and liquid stools were returned. She vomited several times that day, and was found to have hypoactive bowel sounds with continued tympanic quality in the upper quadrants. Laboratory testing revealed continued elevated WBC count with left shift. The next day, she had hypoactive bowel sounds with brown liquid stools. Later that morning, she was able to tolerate clear liquids. The ObGyn decided to discharge her home with instructions to continue on a clear liquid diet for 2 more days before advancing her diet.

The day after discharge, she was found unresponsive at home. She was taken to the hospital, but resuscitation attempts failed. She died. An autopsy revealed that the cause of death was sepsis.

ESTATE'S CLAIM The ObGyn was negligent in failing to diagnose and treat a postoperative intra-abdominal infection caused by bowel perforation. A surgical consult should have been obtained. The woman was prematurely discharged. The radiologist failed to report the presence of free air on the abdominal x-ray.

DEFENDANTS' DEFENSE The case was settled during trial.

VERDICT A $1 million Maryland settlement was reached.

Right ureter injury detected and repaired

DURING LAPAROSCOPIC-ASSISTED vaginal hysterectomy, the ObGyn detected and repaired an injury to the right ureter. The patient's recovery was delayed by the injury.

PATIENT'S CLAIM The ObGyn was negligent in using a Kleppinger bipolar cauterizing instrument to cauterize the vaginal cuff. Thermal overspray from the instrument or the instrument itself damaged the ureter. The ObGyn was also negligent in not performing diagnostic cystoscopy to confirm patency of the ureter after the repair was made.

PHYSICIAN'S DEFENSE Ureter injury is a known risk of the procedure. All procedures were performed according to protocol.

VERDICT A Florida defense verdict was returned.

Failure to detect inflammatory BrCa; woman dies

A 42-YEAR-OLD WOMAN UNDERWENT a mammography in February 2002 after reporting pain, discoloration, inflammation, and swelling in her left breast. The radiologist who interpreted the mammography suggested a biopsy for a differential diagnosis of mastitis or inflammatory carcinoma. The biopsy results were negative.

The patient's symptoms persisted, and she underwent US in late May 2002. Another radiologist interpreted the US, noting that the patient could not tolerate compression, which led to less than optimal evaluation. The radiologist suggested that mastitis was the likely cause of the patient's symptoms.

The patient then consulted a surgeon, who ordered mammography and magnetic resonance imaging (MRI) followed by biopsy, which indicated cancer. The patient underwent a mastectomy but metastasis had already occurred. She died at age 50 prior to the trial.

ESTATE'S CLAIM If the cancer had been diagnosed earlier, the outcome would have been better. Both radiologists misinterpreted the mammographies.

DEFENDANTS' DEFENSE The mammographies had been properly interpreted. Any missed diagnosis would not have impacted the outcome due to the type of cancer. The scans had been released to the patient, but were subsequently lost; an adverse interference instruction was given to the jury.

VERDICT A New York defense verdict was returned.

PHOTO: SHUTTERSTOCK