



The Voice

And The Defense Wins

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Todd W. Smyth and Joshua S. Whitley



DRI members [Todd W. Smyth](#) and [Joshua S. Whitley](#) of **Smyth Whitley LLC** in Charleston, South Carolina, recently obtained a verdict for the defense on behalf of an orthopedic surgeon in Charleston. The case was tried before the Honorable R. Markley Dennis, Jr. The lawsuit was brought by a 61-year-old patient, who had a sciatic nerve injury following hip replacement surgery. The surgeon did not see how or when the damage to the nerve occurred, but did repair the nerve upon noticing the damage.

The patient was left with a sciatic nerve palsy and resultant foot drop on her left side. The plaintiff is unable to dorsiflex or evert her left foot and claimed constant and permanent pain, paresthesia, weakness, and numbness, as well as advancing degenerative changes to her contralateral side, as a result of her antalgic gait. The plaintiff alleged that the surgeon exerted too much force and failed to protect the sciatic nerve while it was being retracted, resulting in permanent insult to the nerve.

In response, the defense argued the surgeon acted appropriately, that he was forced to retract the nerve carefully because of an unusual anatomic location of her sciatic nerve, which put it at risk if it was not retracted. Defense counsel further contended that the injury is a known complication, which can and does occur in the absence of negligence. The defense also presented evidence that the plaintiff's sciatic nerve had been compromised by years of nerve root compression in her lower spine and that the plaintiff's pain and activity limitations were also attributable to the significant degenerative changes in her cervical and lumbar spine.

The case was tried over four days, and the jury returned a unanimous verdict in less than an hour.

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DRI members [Todd W. Smyth](#) and [Joshua S. Whitley](#) of **Smyth Whitley, LLC** in Charleston, South Carolina, recently obtained a defense verdict on behalf of an orthopedic surgeon and his medical practice in Laurens, South Carolina. The case was tried before the Honorable Edward G. Welmaker. The case was brought by a 49-year-old female patient who experienced a deep vein thrombosis and pulmonary embolus following arthroscopic knee surgery.

The plaintiff alleged that because she had experienced a prior pulmonary embolism 15 years earlier while on oral contraceptives, was overweight, over 40 years old and inactive, she should have received anti-coagulation following the surgery and/or other prophylactic measures to reduce the risk of forming blood clots. She further alleged that the physician was negligent in not diagnosing her blood clot sooner. The plaintiff claimed that as a result of the incident, she required the insertion of a Greenfield filter in her vena cava, lifetime usage of Coumadin, and was disabled. In closing statements, plaintiff's counsel asked for \$1,400,000, plus punitive damages.

In response, the defense countered that it is not the standard of care to place patients on prophylaxis following arthroscopic knee surgery and that because the surgery also involved the use of the microfracture technique to treat her arthritis, that anti-coagulation was contraindicated, due to the greater risk of bleeding. The defense also presented evidence that the plaintiff's prior pulmonary embolus did not change her risk factors for developing a clot, and that, following the surgery, it was determined that the plaintiff had a genetic mutation, which caused her blood to clot more readily than normal. The defense also challenged the plaintiff's claim that she was disabled as a result of this incident by presenting evidence that she had multiple other co-morbidities, including ankylosing spondylitis, fibromyalgia, obesity, diabetes, and degenerative arthritis, which constituted the true cause of her debility.

The case was tried over four days and the jury of 12 returned a unanimous verdict in favor of the physician and his medical practice.

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