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VERDICTS & SETTLEMENTS

Necessity of spinal surgery at issue in med-mal action

\$1,121,364 Verdict

The plaintiff was a 32-year-old man who suffered a minor L-1 compression fracture as a result of an ATV accident. He was taken to the Loudoun Hospital emergency room where he came under the care of neurosurgeon Dr. Mudit Sharma, who prescribed pain medication and a back brace for the first six weeks following the fracture. The patient had decreasing pain, decreasing pain medication needs and was back to work full time as a construction superintendent when he attended his second post-fracture follow-up visit with Dr. Sharma. Because an intervening CT scan had shown "possibly slightly more compression" of the fracture, Dr. Sharma recommended that the patient undergo a spine sur-

gery called kyphoplasty in order to prevent kyphosis (hunchback) in the future. Kyphoplasty is a minimally invasive spine surgery during which cement is injected into the spinal bones through hollow needles in order to provide stability to the fracture and pain relief to the patient. Kyphoplasty is a procedure for patients with compression fractures caused by bone cancers, osteolysis or osteoporosis, and people with conditions that prevent normal healing of bones. According to published professional standards and guidelines, kyphoplasty was "absolutely contraindicated" for patients like the plaintiff, those patients with traumatic compression fractures and patients clearly improving on non-surgical management. During the surgery, the defendant misplaced razor sharp



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instruments and bone drills through the plaintiff's spinal canal bilaterally and injected hot cement, which tracked back through the misplaced instrument tracts depositing the cement into the patient's spinal canal.

Plaintiff alleged kyphoplasty was an unnecessary surgery for which he was an improper candidate. He also alleged that the surgery had been performed incorrectly. At the time of the surgery, the defendant was seven months out of his neurosurgery residency, had recently taken a one-day training course on the kyphoplasty procedure, and was in the process of gathering the 100 surgical cases he needed in order to complete the oral portion of his neurosurgical board certification. The plaintiff argued that this was a case of a surgeon needing a patient, not a patient needing a surgery. The defendant argued that the plaintiff was a proper candidate, and leakage of cement is just a known complication.

The jury deliberated two and a half hours before returning a verdict for the plaintiff.

[13-T-163]

Type of action: Medical malpractice

Injuries alleged: Permanent nerve damage causing chronic pain.

Name of case: Jacobs v. Mudit Sharma MD & James Melisi MD PLLC

Court: Fairfax County Circuit Court

Case no.:2011-11174

Tried before: Jury

Judge: Charles J. Maxfield

Special damages: \$145,000 in past medical expenses; future medical expenses of \$17,000 annually for pain medication & management

Demand: None

Offer: None

Verdict or settlement: Verdict

Amount: \$1,121,364.67

Attorneys for plaintiff: Donna Miller Rostant and Ann LaCroix Jones, Fairfax

Attorneys for defendant: Byron J. Mitchell and Lynne Kemp, Richmond

Plaintiff's experts: Mary Elizabeth Jensen, M.D.; Stanley Lee, M.D.

Defendant's experts: Wayne Olan, M.D.; David Goss, M.D.

Insurance carrier: The Doctors Company