

Unusual Adjustment Results in Breast Implant Rupture

Jury finds in favor of the defense in this case in which a patient developed complications with her breast implants after a nonstandard adjustment. NCMIC spends \$350,000 in legal expenses and expert fees in support of the DC who wanted to have her day in court but with a risk to her personally.

Posted in [Case Studies](#) on Wednesday, January 08, 2020

From the Desk of Jeffrey Whiting, NCMIC Claims Representative

The Situation

The patient, Laura Peacock, was not even six weeks post breast reconstruction surgery when Carol Donatello, DC, performed an unusual back-to-back standing thoracic adjustment on her on January 13, 2015. Dr. Donatello interlocked Ms. Peacock's arms, lifted her off the ground and provided a thrust to her lumbosacral area.

Ms. Peacock, who had a bilateral mastectomy for breast cancer two years earlier, filed a lawsuit against Dr. Donatello on November 13, 2015. The lawsuit contended the DC was negligent because the adjustment ruptured the wound along the surgical site of the patient's left breast. This, in turn, led to an infection; multiple, unsuccessful follow-up reconstructive surgeries; and the removal of the breast implants.

The Trial

Dr. Donatello was adamant she did nothing wrong, and that the rupture was caused by an underlying issue and not her treatment. However, defense attorney Anthony Price shared his concerns about the case's defensibility, which included:

- The doctor failed to take an appropriate clinical history, despite knowing the patient had undergone radiation treatment during breast cancer treatment. (The radiation treatment was significant because scarring in the breast tissue prolonged healing.)
- Dr. Donatello's adjustment was not taught in chiropractic colleges, and she had never rendered this adjustment on another patient.
- The adjustment put pressure on the chest wall, and there was a close temporal relationship between the adjustment and the reconstruction surgery, resulting in more than \$60,000 in medical bills.
- There was no evidence of an underlying condition that could have caused an incision to rupture.

Even so, Dr. Donatello made it clear she would not consent to settle this case—she wanted her day in court. Mr. Price estimated there was less than a 50 percent chance of a defense verdict—and he feared the judgment against Dr. Donatello could be \$750,000 or more.

Mr. Price advised his client that if she did lose the case and the verdict was above her policy limits, her refusal to settle the case would mean that any amount above the policy would not be paid by NCMIC. Therefore, she would be personally responsible for any amount in excess of her policy limits.

The Outcome

The case went to trial on May 7, 2018, with chiropractic and medical experts testifying for both sides during the course of several days. Fortunately, for Dr. Donatello, the plaintiff's experts came across as lacking in knowledge about chiropractic care. In contrast, the experts retained for defense had an in-depth understanding of the clinical aspects of chiropractic adjustments. Additionally, they were simply more personable and likeable than the witnesses for the plaintiff.

Consequently, the case ended in a defense verdict on May 11, 2018. NCMIC spent more than \$350,000 to defend Dr. Donatello.

Following the case's conclusion, Attorney Price told NCMIC that he couldn't recall another company that would provide every available resource to assist their doctors. He specifically mentioned retaining a witness specialist to assist Dr. Donatello with her trial testimony because it helped tone down her tendency to come across as self-righteous about her care.

Attorney Price also said Dr. Donatello appreciated NCMIC honoring her request that the case be tried, especially in light of the concerning facts about the case. Of course, she understood and was willing to assume the risk that if she lost, she was personally responsible for payment of the portion of the verdict above her policy. Dr. Donatello mentioned that NCMIC really does take care of its own.

Although this report is based on a real case, all names are fictitious to protect patient and doctor privacy.