

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Foreign Objects Left In Patient's Body: US Court Sees Grounds For Patient's Lawsuit.

During exploratory surgery in 2013 for abdominal pain, heavy menstrual bleeding and vaginal discharge, the surgeon found two thin 8x6 cm pieces of plastic in the patient's uterus.

The patient believed they had to be related to her cesarean in 2009 for delivery of her third child. Heavy menstrual bleeding and intense pelvic pain associated with the start of her periods began after that procedure.

The US District Court for the Northern District of Illinois saw sufficient grounds for the patient's case to go forward against the US government which employed one of the physicians who performed the 2009 cesarean, the private hospital where it was performed and a private physician who assisted with the procedure.

Both physicians and the perioperative nurses testified they did not recognize the plastic pieces recovered from the patient's body or know where they came from or how they got there.

The nurses were also able to testify that all their counts of countable items were 100% accurate and complete.

### *Res Ipsa Loquitur*

The court can apply the rule of *res ipsa loquitur* ("It speaks for itself.") in a case involving a faulty outcome that generally does not occur in the absence of negligence.



***There is no question that leaving pieces of plastic in the uterus during a c-section is a breach of the standard of care.***

***The only question is who left them there.***

***The patient's expert traced them to a plastic containment pouch meant to be attached to the drapes to collect fluids during the procedure.***

UNITED STATES DISTRICT COURT  
ILLINOIS  
April 20, 2016

An injured patient can rely successfully on *res ipsa loquitur* in a retained-object case from the operating room with no testimony or documentation as to how, why or by which member of the surgical team an object was left inside.

However, for the court to apply *res ipsa loquitur* it is essential that the instrumentality which injured the patient was in the sole custody and control of the defendant healthcare providers.

That essential element was problematic in this case because the patient had a history of several prior abdominal and gynecological surgeries.

Something gone wrong specifically during the 2009 cesarean was possible due to the onset of symptoms after that procedure, but not conclusive.

More compelling evidence for the patient came from one of the patient's medical experts who examined the pieces of plastic. He found they were from a fluid containment pouch that came with the drapes used in the 2009 cesarean, which may have been defective and even if not defective should not have been brought onto the sterile field.

Keeping pieces of any item from the sterile field from being left inside the patient is the physicians' and nurses' responsibility. ***McAlester v. US***, 2016 WL 1581855 (N.D. Ill., April 20, 2016).

Inside this month's issue...

May 2016

[New Subscriptions](#)  
See Page 3

Perioperative Nursing/Retained Foreign Objects/Res Ipsa Loquitur  
Dehydration/Malnutrition/Substandard Nursing Care - Nurse Juror  
Patient's Fall/Nursing Negligence - Abandonment Of Employment  
Nurse/Knee Injury/Disability Discrimination - Nurse/Whistleblower  
Flu Vaccination/Religious Discrimination/Reasonable Accommodation  
Substandard Skin Care/Punitive Damages - EMTALA/Discharge  
Nurses/US Customs/Illegal Search And Seizure - Cardiac Cath  
Fair Labor Standards/Hospital Attire - CDC/Vaccine Information