

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT

HEIDI W ELLIS and
TIMOTHY ELLIS

Plaintiffs,

v.

JOHN O SCHORGE, MD,
PIETRO BORTOLETTO, MD,
ALEXANDER MELAMED, MD and
MASSACHUSETTS GENERAL PHYSICIANS
ORGANIZATION, INC.

Defendants

APR 28 P 3 54
CLERK'S OFFICE
SUPERIOR COURT
SUFFOLK COUNTY
REGISTRAR

Civil Docket # 20-0917C

COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COME the Plaintiffs, Heidi W. Ellis ("Mrs. Ellis") and Timothy Ellis ("Mr. Ellis") (collectively the "Plaintiffs"), by and through their attorneys, Hage Hodes, P.A., and complain against individual defendants, John O Schorge, MD ("Dr. Schorge"), Pietro Bortoletto, MD ("Dr. Bortoletto"), and Alexander Melamed, MD ("Dr. Melamed") (collectively the individual defendants are referred to as the "Defendants"), and Massachusetts General Physicians Organization, Inc. ("MGPO"), as follows:

1. Plaintiff Heidi W. Ellis is an individual who resides at 1781 Lafayette Road, Portsmouth, NH 03801.
2. Plaintiff Timothy Ellis is an individual who also resides at 1781 Lafayette Road, Portsmouth, NH 03801 and is Heidi W. Ellis' husband.

3. Defendant John O Schorge, MD is a doctor licensed to practice medicine in the Commonwealth of Massachusetts, with a specialty in Obstetrics & Gynecology. His current business address listed with the Board of Registration in Medicine is Tufts Medical Center, 800 Washington Street, Boston, MA 02111.

4. Defendant Pietro Bortoletto, MD is currently a Fellow in Reproductive Endocrinology & Infertility at Weill Cornell Medical College, Ronald O. Perelman and Claudia Cohen Center for Reproductive Medicine, 1305 York Avenue, 6th Floor, New York, NY 10021. At the times relevant to the Complaint, Dr. Bortoletto was a resident at Massachusetts General Hospital.

5. Defendant Alexander Melamed, MD is a doctor licensed to practice medicine in the Commonwealth of Massachusetts, with a specialty in Obstetrics & Gynecology and Gynecological Oncology. His current business address listed with the Board of Registration in Medicine is Massachusetts General Hospital, 55 Fruit Street, Founders 5, Boston, MA 02114.

6. Massachusetts General Physicians Organization, Inc. is a Massachusetts Nonprofit Corporation with a principal office of 55 Fruit Street, Boston, MA 02114.

FACTS COMMON TO ALL COUNTS

7. On or about July 27, 2017, Mrs. Ellis presented to Massachusetts General Hospital for a laparoscopic right salpingo-oophorectomy, laparoscopic left ovarian cystectomy, and diagnostic hysteroscopy with endometrial curettage and polypectomy.

8. Dr. Schorge, Dr. Bortoletto, and Dr. Melamed all assisted in the procedures.

9. Upon information and belief, at the time of Mrs. Ellis' surgery, the Defendants were all employees or agents of the Massachusetts General Physicians Organization, Inc.

10. An Endobag, which is a medical device used to catch and hold cysts, masses, or other specimens to facilitate extraction and removal during laparoscopic surgery, was inserted into Mrs. Ellis's abdominal cavity to retrieve the adnexa that was detached and dropped into the abdomen, but the Endobag could not be opened due to the preperitoneal extension.

11. When the Defendants attempted to remove the Endobag, it was cut and thought to have been left within Mrs. Ellis' abdominal cavity.

12. A second Endobag was inserted into Mrs. Ellis' abdominal cavity and the adnexa was retrieved.

13. The Defendants were unable to locate the initial Endobag and believed that it continued to be within Mrs. Ellis' peritoneal cavity.

14. The Defendants visualized the entire abdominal cavity by mobilizing the bowels and placing Mrs. Ellis in steep and reverse Trendelenburg in alternating fashion to review and confirm there was no portion of the Endobag within the peritoneal cavity.

15. Because the Defendants believed that the Endobag remained within Mrs. Ellis' peritoneal cavity, she underwent a more serious surgical procedure than she would have otherwise required as the Defendants searched for the Endobag.

16. After the intended procedures had been completed, the Defendants performed a second visualization of the peritoneal cavity and performed a transverse incision in the lower abdomen with a dissection through the subcutaneous tissue.

17. The Defendants performed a preperitoneal dissection, intraoperative sonography, and further blunt dissection at all likely locations of the retained Endobag without any confirmation of a presence of a foreign body.

18. Following Mrs. Ellis' surgery, the sponge and instrument counts were correct minus the Endobag.

19. Mrs. Ellis underwent further imaging, including on July 28, 2017 in an attempt to identify the location of the Endobag that was believed to still be within her peritoneal cavity.

20. Dr. Schorge believed that the CT Scan that Mrs. Ellis underwent on July 28, 2017 identified the location of the Endobag as being with her lower right quadrant.

21. Mrs. Ellis underwent a second surgery on July 28, 2017 during which the Defendants attempted to locate the missing Endobag.

22. Mrs. Ellis' second surgery included an incision to the right lateral position near where the Defendants believed the sonography indicated the presence of a foreign body and dissection of subcutaneous tissues of all layers overlaying the fascia.

23. The Endobag was not located during the second surgery.

24. It remains unknown whether the Endobag continues to be left in Mrs. Ellis or if the Defendants had discarded the Endobag during surgery and did not account for it.

25. Leaving or losing any surgical item in a patient's abdominal cavity is a departure from standard and accepted medical care.

26. Failure to continually visualize the Endobag to prevent its loss is a departure from standard and accepted medical care.

27. Failure to reconstruct and/or evaluate the Endobag to make sure a piece was or was not lost is a departure from standard and accepted medical care.

28. Not knowing whether or not the Endobag was in fact lost and remains within Mrs. Ellis' abdominal cavity is a breach of standard and accepted medical care.

29. Mrs. Ellis has suffered undue anxiety, fear, and uncertainty as a result of the potentially retained surgical item and because she had to undergo a second surgical procedure and exposure to additional radiographs that would have otherwise been unnecessary as the Defendants searched for the Endobag.

30. Mr. and Mrs. Ellis live with fear and uncertainty that she may develop an infection from the retained Endobag, which could lead to serious complications and even death.

PROCEDURAL ALLEGATIONS

31. The Court has jurisdiction over this action pursuant to G. L. ch. 212, §4.

32. Venue is proper in Suffolk County pursuant to G.L. ch. 223, §1 because Defendant MGPO and Dr. Schorge and Dr. Melamed have usual places of business within Suffolk County.

33. Because this action is filed within six months of the statute of limitations expiring Plaintiffs do not need to prove compliance with M.G.L. c. 231 § 60L.

COUNT I

Negligence Mrs. Ellis v. Defendants

34. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 33 and incorporate them by reference as if fully set forth herein.

35. A doctor-patient relationship existed between Mrs. Ellis and each of the Defendants at all times relevant to this Complaint.

36. The Defendants owed a duty of care to Mrs. Ellis to exercise the degree of care and skill of the average qualified practitioner in their specialty, taking into account the advances in the profession and the medical resources available to them.

37. The Defendants breached their duty of care to Mrs. Ellis when they failed to exercise the degree of care and skill of the average qualified practitioner in their specialty, taking into account the advances in the profession and the medical resources available to them.

38. The Defendants' breaches of the standard of care include but are not limited to:

- a. Leaving or losing any surgical item in Mrs. Ellis' abdominal cavity;
- b. Failing to continually visualize the Endobag to prevent its loss;
- c. Cutting the Endobag before it was extracted from Mrs. Ellis' abdominal cavity;
- d. Failing to locate and account for the missing Endobag prior to introducing a second Endobag into the patient's abdominal cavity; and
- e. Failing to reconstruct and/or evaluate the Endobag to make sure a piece was or was not lost.

39. As a direct and proximate result of the Defendants' breaches of the standard of care, Mrs. Ellis suffered substantial temporary and permanent injuries and damages, including but not limited to, being required to undergo more serious and additional surgical procedures and radiological studies, permanent disfigurement, impairment of bodily functions, extreme pain and suffering, severe emotional distress, embarrassment, loss of enjoyment of life, and loss of income.

WHEREFORE, Mrs. Ellis demands judgment against the Defendants on Count I of this Complaint in an amount that will justly compensate her for her damages, together with interest, costs and attorneys' fees, and such other and further relief as the Court deems just, equitable, and proper.

COUNT II

Negligent Infliction of Emotional Distress Mrs. Ellis v. Defendants

40. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 39 and incorporate them by reference as if fully set forth herein.

41. The Defendants owed a duty of care to Mrs. Ellis.

42. The Defendants caused Mrs. Ellis extreme emotional distress, including by being unable to state whether Mrs. Ellis continues to have an Endobag in her abdominal cavity, which puts Mrs. Ellis at risk for serious complications including death.

43. Mrs. Ellis suffered physical harm manifested by objective symptomatology.

44. A reasonable person would have suffered emotional distress under the circumstances of this case.

45. This severe and lasting emotional distress continues today, and as Mrs. Ellis experiences any abdominal pain, she becomes concerned that she is suffering a complication from a surgical item that was not properly removed and accounted for.

WHEREFORE, Mrs. Ellis demands judgment against the Defendants on Count II of this Complaint in an amount that will justly compensate her for her damages, together with interest, costs and attorneys' fees, and such other and further relief as the Court deems just, equitable, and proper.

COUNT III

Vicarious Liability Plaintiffs v. MGPO

46. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 45 and incorporate them by reference as if fully set forth herein.

47. At all times relevant to this Complaint, the Defendants acted as the employees, agents, apparent agents, or ostensible agents and/or providers of MPO.

48. All medical care provided to Mrs. Ellis as set forth herein was in furtherance of MPGO's corporate purpose and in furtherance of its business operations.

49. The Defendants provided Mrs. Ellis medical care during the course of and in the scope of their employment or agency with MPGO.

50. Accordingly, MPGO is vicariously liable to the Plaintiffs for the negligent acts and damages caused by the individual Defendants as stated herein.

WHEREFORE, the Plaintiffs demand judgment against MPGO on Count III of this Complaint in an amount that will justly compensate them for her damages, together with interest, costs and attorneys' fees, and such other and further relief as the Court deems just, equitable, and proper.

COUNT IV

Loss of Consortium Mr. Ellis v. Defendants

51. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 50 and incorporate them by reference as if fully set forth herein.

52. Mr. Ellis is the husband of Mrs. Ellis and was her husband at all times relevant to this Complaint.

53. As the direct and proximate result of the Defendants' negligence, Mr. Ellis has been and will be deprived of his wife's full society, care, comfort, consortium and social relations.

54. In particular, Mr. Ellis was required to take care of the household tasks for a much longer period of time than he would have been required to if the Endobag had not been lost as a result of the more serious and additional surgeries that Mrs. Ellis underwent.

55. Mr. Ellis has also been caused extreme emotional distress due to being uncertain whether Mrs. Ellis may ultimately suffer a serious complication from the missing Endobag if it in fact remains in her abdominal cavity.

56. The Defendants' actions and inactions have negatively impacted Mrs. Ellis and Mr. Ellis' relationship, including by causing Mr. Ellis to suffer a loss of physical intimacy, social relations, companionship, and other services that a wife provides to a husband.

WHEREFORE, Mr. Ellis demands judgment against the Defendants on Count IV of this Complaint in an amount that will justly compensate him for his damages, together with interest, costs and attorneys' fees, and such other and further relief as the Court deems just, equitable, and proper.

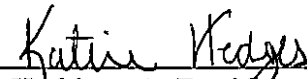
PLAINTIFFS DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Respectfully submitted,
HEIDI W. ELLIS AND TIMOTHY ELLIS

By and through their attorneys
HAGE HODES, P.A.

Date: April 22, 2020

By:


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