

III. Preliminary Statement

This is a medical malpractice case in which it is alleged that the medical staff at defendant The Ohio State University Wexner Medical Center (“OSUWMC”) failed to remove a surgical retractor during plaintiff’s decedent James Thaxton’s abdominal surgery. The retractor was removed approximately four weeks later during a subsequent surgery at OSUWMC. Mr. Thaxton passed away from his underlying comorbidities in June, 2015 – unrelated to the retained object – and his daughter opened an estate to maintain the lawsuit.

On August 14, 2014, doctors at OSUWMC performed a very complicated esophageal surgery (Ivor Lewis Esophagectomy) on Mr. Thaxton to remove a cancerous tumor. He remained in the hospital for ten days and then was discharged to the Franklin Medical Center on August 24, 2014. On September 15, 2014, OSUWMC surgeon Dr. John Howard performed another surgery on Mr. Thaxton to remove the surgical retractor. Mr. Thaxton appeared to have recovered from the foreign body. However, Mr. Thaxton continued to be treated for his cancer, including significant radiation treatment. Mr. Thaxton died in June, 2015, apparently from his underlying esophageal cancer.

Because Mr. Thaxton was an inmate serving a life sentence at the time of these surgeries, the estate is not seeking lost wages or medical costs. The damages in this case would only be for pain and suffering. It is not clear who on behalf of Plaintiff will testify regarding Mr. Thaxton’s pain, especially attempting to distinguish between expected post-surgical pain from his esophagectomy surgery versus pain – if any – from the retained object. Now that Mr. Thaxton has died, it may very well be impossible for any other person to attempt to distinguish between these two types of pain.

In addition, defendant respectfully requests that if damages are awarded to Plaintiff, certain stated-owed debts should be paid out of the award. Defendant is currently aware of the following debts owed by Mr. Thaxton and/or his estate: unpaid child support out of Montgomery County, and unpaid court costs out of Auglaize County.

IV. Legal & Factual Issues

- a. Did OSUWMC breach the standard of care?
- b. Was the alleged breach of the standard of care the proximate cause of any pain suffered by Mr. Thaxton?
- c. Was a non-party responsible for any delay in detecting the retained object, and if so, what is the appropriate percentage of negligence attributable to non-parties?
- d. Do the Rules of Evidence allow another person to testify regarding Mr. Thaxton's pain following the surgeries in question?
- e. Is plaintiff required to file an affidavit of merit, as required by Civ. R. 10(D)(2), prior to trial?

V. Witnesses

- a. Dr. John Howard, OSUWMC, surgeon.
- b. Dr. Carl Schmidt, OSUWMC, surgeon.
- c. Other witnesses necessary to rebut evidence presented by plaintiff at the trial.

VI. Exhibits

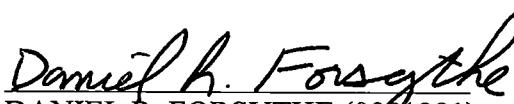
- a. James Thaxton – Certified convictions in Auglaize County Court of Common Pleas, Case Nos. 2006 CR 0055, 2005 CR 0147.
- b. OSUWMC Medical records of patient James Thaxton.

- c. Documents showing unpaid court costs owed by James Thaxton and/or his estate.
- d. Documents showing unpaid child support owed by James Thaxton and/or his estate.
- e. Any document exchanged in discovery or introduced during depositions in this matter.

Defendant reserves the right to amend its witness and exhibit lists as may become necessary to rebut evidence presented by plaintiff at the trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Pre-Trial Statement was sent by regular U.S. mail, postage prepaid, this 4th day of April, 2016, to

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