



The Voice

And The Defense Wins

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DRI members [Robert L. Goldstucker](#) and [Laura D. Eschleman](#) of the Atlanta, Georgia, office of **Nall & Miller, LLP**, obtained a defense verdict for a surgeon and his practice in a medical malpractice case in Cedar Rapids, Iowa, on March 11, 2010. The plaintiff suffered an extremity amputation following the defendant's surgery to the extremity. Despite allegations that the surgeon caused not only the amputation, but also CRPS (Complex Regional Pain Syndrome) and phantom and chronic pain, the jury came back with a defense verdict for the surgeon and his practice.

The defendant performed surgery on the plaintiff's foot that ultimately failed. The plaintiff, a high school teacher and volleyball coach, suffered a long post-surgical course that included a revision surgery by another physician and a subsequent amputation of the extremity.

Subsequent treating physician records were unfavorable to the defendant surgeon and the plaintiff's expert testified that the defendant removed too much bone and should have stabilized the plaintiff's foot with internal fixation during the initial surgery.

The plaintiff asked for past and future medical expenses, past and future wage loss, and past and future pain and suffering, along with her husband's claim for loss of consortium.

Despite the trial court's adverse rulings, which limited the defense by ruling that it could not attack the credibility of the plaintiff's expert witness and could not examine the plaintiff on her workers' compensation claim based on a post-surgical injury to her surgical foot, the jury came back with a defense verdict based on the plaintiff's comparative negligence.

The defense presented two eyewitnesses who observed the plaintiff walking on her surgical foot at a bar the day after surgery, against the defendant surgeon's advice. The plaintiff presented rebuttal witnesses who refuted the testimony about walking and attempted to discredit the eyewitnesses presented by the defense. Nonetheless, the jury sided with the defense version of the facts and found no malpractice on the part of the surgeon or his practice.

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