



# 2008 Million-Dollar Verdicts & Settlements

## #10

### Man's death stems from swallowing BBQ bristle

#### Estate says second X-ray should have been performed on esophagus

The plaintiff's decedent, a 41-year-old married male with two daughters, went to an area hospital's emergency room complaining of a bristle from a barbecue brush being lodged in his throat while eating. AP and lateral X-rays of the neck disclosed the presence of a linear metallic foreign body 3 centimeters in length in the distribution of the cervical esophagus.

A staff surgeon performed an esophagoduodenoscopy with polypectomy to remove the esophageal body. The foreign body was not found, and it was assumed it had likely traveled through the digestive tract and had been, or would be, excreted. No follow-up X-rays were obtained to prove this.

Two months later, the decedent told the hospital he was experiencing a syncopal episode, vomiting episodes and headaches over the previous four to five days, and that Tylenol 4 would not bring relief.

Lab tests suggested an infectious process. A brain CT for a possible intracranial bleed disclosed several round masses in the left front, left temporal and left parietal regions with minimal mass effect. Differential diagnosis included metastatic disease versus infectious etiology.

A neck CT was performed, and a linear metallic foreign body in the upper cervical esophagus was found. It was removed by laryngoscopy esophagostomy by an ENT specialist.

The following day, the decedent's blood pressure elevated, as did his heart rate, respiration rate, temperature and head pain. He also developed mental status changes, and an emergency craniotomy with evacuation of a brain abscess was performed. Intraoperative cultures were positive for bacterial infection of the brain.

Two days later, the decedent died from brain edema, hemorrhage and herniation secondary to multiple left-sided cerebral abscesses. Autopsy indicated brain infection was widely disseminated, likely from brain abscess, increased intracranial pressure, rupture and seeding of the meninges.

The defendant surgeon claimed he was entitled to assume that because he couldn't find the metallic foreign body that had been seen on the X-ray study, it had passed

**Type of action:** Medical malpractice

**Type of injuries:** Wrongful death

**Name of case:** Confidential

**Court/Case no./Date:** Confidential; confidential; April 9, 2008

**Settlement amount:** \$1,575,000

**Attorney for plaintiff:** Sheldon D. Erlich

**Attorney for defendant:** Withheld

into and/or through the digestive tract.

The plaintiff's estate argued that the standard of care required a repeat X-ray study of the cervical spine to confirm that the foreign body was no longer present and had passed through the digestive tract.

The plaintiff also argued that the higher cap applied because the decedent had lived in an unresponsive comatose condition without brain function for several days before his death. The defendant, however, argued that such a short period of total physical and mental incapacity was too short a period of time to qualify for a higher cap.

The matter settled for \$1,575,000.