# Retained Sponge Lawsuits A Real Head-Scratcher

The Texas Supreme Court has ruled that a San Antonio woman could not sue her doctor over a surgical sponge left inside her body because she waited too long to file suit. The patient failed to file the suit less than 10 days after the surgery, which conflicts with a tort reform law.

Lawyers for the patient argued that the statute of repose violates the Texas Constitution's open courts provision, which guarantees access to the legal system for those with a valid claim, because she did not have a legitimate chance to discover the cause of her chronic illnesses until exploratory surgery revealed an old sponge lodged in her abdomen. The Supreme Court disagreed, saying the proper legal test is not whether the patient was treated unreasonably by the law, but whether the Legislature enacted the law in a reasonable manner.

Other states have exempted sponge cases from statutes of repose because the problem is hard to discover and there is no question of malpractice. The Texas Legislature, however, did not include a sponge exception.

In a related case, the court ruled that a Houston-area woman may proceed with her suit over a sponge discovered nine years after her surgery. The associated doctors and hospital tried to void her lawsuit for violating a separate legal deadline, the statute of limitations. That rule gives patients two years to sue after a disputed treatment unless they can prove they did not have a reasonable opportunity to discover the problem within the time limit.

The Texas Constitution grants foreign-object claimants a reasonable opportunity to discover their injuries and file suit, even if the two-year period has expired.

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