

The Tennessee Jury Verdict Reporter

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Statewide Jury Verdict Coverage

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Medical Negligence - During an ENT procedure to correct a Zenker's diverticulum (a condition of the pharynx), the doctor perforated the plaintiff's esophagus leading to a variety of complications including permanent swallowing deficits – the doctor argued that the injury was a recognized complication of the surgery and the ongoing problems were similar to those the plaintiff had before the surgery

Foster v. Hafner, 3:19-24

Plaintiff: Jon E. Jones, Cookeville and Patrick Shea Callahan, *Callahan & Binkley*, Cookeville

Defense: C.J. Gideon, Jr. and J. Blake Carter, *Gideon Essary Tardio & Carter*, Nashville

Verdict: Defense verdict on liability

Federal: **Knoxville**

Judge: Charles E. Atchley, Jr.

Date: 4-6-22

Marilyn Foster, age 69, had a history of problems with swallowing and with her throat since 2014. She treated with several doctors who determined she suffered from a Zenker's diverticulum condition – it is common in older persons and is characterized by a herniation of the pharynx. The treatment is generally (either endoscopically or by open surgery) to sever the muscle and thereby remove the condition causing the Zenker's diverticulum.

Ultimately Foster came under the care of Dr. Jonathan Hafner, an ENT with East Tennessee Ear, Nose and Throat. He proposed (as others before

him had suggested) an endoscopic repair. Foster agreed. The procedure was performed on 1-12-18 at Methodist Medical Center in Oak Ridge, TN. It seemed uneventful initially.

However the next day a problem developed. Testing revealed there was free air in Foster's chest. Upon further investigation it was determined that in repairing the Zenker's diverticulum, Hafner had also perforated Foster's esophagus with a harmonic scalpel. Hafner called in a partner and they made a surgical repair. Despite that intervention Foster developed an infection at the site of the perforation.

Foster was later transferred to Richmond, VA for a higher level of care. She underwent a complex surgical repair. While the infection resolved and the perforation healed, Foster continues to have difficulty swallowing. The condition is permanent.

Foster sued Hafner and alleged medical error by him in several ways. The first was in injuring her esophagus in the first place, Foster citing that because her Zenker's diverticulum was so small, Hafner (who was not experienced with one so small) should have done an open procedure or referred her to an ENT with more specialized experience.

Foster's theory was also critical of Hafner for not using appropriate prophylactic antibiotics to minimize the infection risk. Then once the injury