

# GEORGIA

## LAURA ESCHLEMAN AND MOLLY McCALL OBTAIN DISMISSAL IN MEDICAL MALPRACTICE CASE WHEN MASKED JURY CAME BACK 11-1 FOR THE DEFENSE

**Nall & Miller** LLP

Laura and Molly conducted voir dire via Zoom and tried an in-person case on behalf of their client, an OB-GYN, in a socially distanced courtroom where everyone was masked, including the jury, which was seated in the gallery, 18 feet behind the parties and counsel, where the public would normally sit. The jury box remained empty to allow for social distancing. At the 2021 trial, one of the first to go forward since COVID-19 hit Georgia, the plaintiffs alleged the defendant OB-GYN was responsible for a retained sponge following an urgent Cesarean section despite overwhelming evidence that two hospital employees negligently executed the safety measure for which they were responsible: the hospital employees miscounted sponges and told the OB-GYN the count was correct at the end of surgery. The plaintiffs' case fell apart when their expert failed to offer any legitimate standard of care criticism against the OB-GYN on cross-examination other than to say, "there was a bad outcome, and thus the OB-GYN was

responsible." After several days of deliberation, 11 jurors found in favor of the OB-GYN but were prevented from returning a defense verdict by 1 hold-out juror, and the trial court declared a mistrial. A second trial was scheduled to occur within one month, but the plaintiffs knew they would never win and dismissed the suit against OB-GYN before the next jury was impaneled.



**MOLLY McCALL**

678.608.1726  
[mmccall@nallmiller.com](mailto:mmccall@nallmiller.com)



**LAURA ESCHLEMAN**

678.608.1712  
[leschleman@nallmiller.com](mailto:leschleman@nallmiller.com)