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June 11, 2009

PRESS RELEASE - FOR IMMEDIATE RELEASE

Johnson Devadas and Saramma Devadas v. Kevin Niksarli, M.D.,
Manhattan LASIK Center, PLLC, and NewSight Laser Center, PLLC
*New York County, Supreme Court of the State of New York
Index # 107637/07*

\$5.6 MILLION LASIK EYE MEDICAL MALPRACTICE VERDICT. On Wednesday, June 10, 2009, a jury in New York City returned a verdict of nearly \$5.6 million against Kevin Niksarli, M.D., for LASIK malpractice. The verdict consisted of an award of: \$2,360,000 for the patient's loss of income; \$3,100,000 for the patient's pain and suffering, including loss of life's enjoyment; and \$120,000 for the patient's wife's claim for loss of her husband's services and consortium. This is the second largest verdict ever for LASIK malpractice.

The lawsuit, Devadas v. Niksarli, Index No. *107637/07* (Supreme Court New York County), was commenced on May 31, 2007. The trial began on May 20, 2009, and lasted 10 days. The jury of three men and three women deliberated for 2 and one-half days. The Honorable Doris Ling-Cohan presided over the trial.

The plaintiff, Johnson Devadas, is a pharmacist who lives and works in Queens, New York. On March 25, 2004, Dr. Niksarli concluded that Mr. Devadas was a suitable candidate for LASIK surgery. However, plaintiff's medical expert testified that he was not. Paul Donzis, M.D., and ophthalmologist and cornea specialist from Los Angeles, California, testified that

prior to the elective surgery, the plaintiff had a contraindication to LASIK surgery, forme fruste keratoconus. Dr. Donzis explained that forme fruste keratoconus was a stable or abortive form of keratoconus that would not likely progress without LASIK surgery. However, as a result of the LASIK surgery, it caused the cornea to develop post-LASIK ectasia, or a progressive thinning of the cornea. Ectasia causes problems with visual quality, including blurriness, halos, double vision, glare, contrast sensitivity, starbursts and a host of related phenomena involving the distortion of light as it passes through the diseased cornea.

In addition to Dr. Donzis, plaintiffs called Albert Lyter, Ph.D., from Raleigh, North Carolina. Dr. Lyter is a former federal agent trained in ink dating analysis. Dr. Lyter testified that Dr. Niksarli intentionally artificially aged a note in his chart concerning his purported conversation with the patient and his wife concerning the risks, benefits, and alternatives to LASIK surgery.

Anthony Gamboa, Ph.D., also testified as an expert in vocational economics concerning plaintiff's loss of income. Dr. Gamboa is from Miami, Florida.

Dr. Niksarli called Wing Chu, M.D., from New York City, to discuss his so-called independent examination of the plaintiff. On cross-examination, Dr. Chu testified that his version of the Hippocratic Oath, in part, translates to first do no harm to any ophthalmologist.

Dr. Niksarli also called Peter Hersh, M.D., from Teaneck, New Jersey, as his cornea expert. On cross-examination, Dr. Hersh indicated that he only testified for defendants' counsel, who had previously represented him in his own medical malpractice case.

The plaintiffs were represented by Todd J. Krouner, from Pleasantville, New York. In 2005, Mr. Krouner obtained the largest verdict for LASIK malpractice, in the amount of \$7.25 million. See Schiffer v. Speaker, Index No. 101191/03 (Supreme Court New York County 2005).

The defendants were represented by Neil H. Ekblom, of Clausen Miller, in New York, NY. Prior to this verdict, Mr. Ekblom's webpage boasted that he had obtained a string of 19 consecutive defense verdicts.

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