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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

RECORD VERDICT OF \$3.1 MILLION FOR PAIN AND SUFFERING UPHELD IN
LASIK MALPRACTICE CASE. By decision and order dated July 9, 2010, the Honorable Doris
Ling-Cohan, Justice of the Supreme Court, New York County, upheld the jury's record award of
\$3.1 million for a patient's claim for past and future pain and suffering in a LASIK malpractice
case, Devadas v. Niksarli, Index No. *107637/07* (Supreme Court New York County). On June 10,
2009, after a nine day trial, the jury awarded Queens pharmacist, Johnson Devadas, and his wife,
Saramma Devadas: \$3,100,000 for the patient's pain and suffering, including loss of life's
enjoyment; \$120,000 for the patient's wife's claim for past and future loss of her husband's
services and consortium; \$60,000 for the patient's past loss of income; and \$20,000 per year for
37 years, for the patient's future loss of earnings, at a growth rate of 5.5%. Plaintiffs valued this
verdict at approximately \$5.6 million, stated in future value, or approximately \$3.9 million
discounted to present value, and adjusted for income tax on lost wages.

The jury's award of \$3.1 million to Mr. Devadas, for the pain and suffering element of damages, is the largest award known for any LASIK malpractice case.¹

In his post-trial motion, Dr. Niksarli sought to over turn the jury verdict. In her 19-page decision, Justice Ling-Cohan rejected each of Dr. Niksarli's arguments.

In upholding the \$3.1 million award for pain and suffering, the Court ruled:

Based on the trial testimony, defendants' motion to reduce plaintiffs' damages as excessive is denied.

Johnson Devadas testified at length concerning how his visual impairment negatively affects his ability to carry out household and professional responsibilities, how it causes him severe discomfort, and how he has had trouble coping with post-LASIK keratoconus. Saramma Devadas also testified as to her husband's visual impairments and the additional duties she has had to take on because of them.

The total amount awarded by the jury to plaintiffs (without taking into account the growth rate and discount rate to arrive at a present value of the award) is \$4,020,000; when each component of the award is reviewed, no individual piece is extreme, in light of the testimony presented at trial.

July 9, 2010 Order, p. 13. (citations omitted).

The Court further observed that the jury's award for future pain and suffering was \$3,000,000, for 45 years, or approximately, \$66,000 per year. It concluded that this amount was reasonable in view of other awards in ectasia cases.

Mr. Devadas was diagnosed with post-LASIK ectasia, which involves a progressive thinning of the cornea. As a result, he complained that his vision: "has been significantly impaired and diminished by halos, blurred vision, double vision, glare and starbursts." July 9, 2010 Order, p. 2.

¹ In 2005, plaintiff's counsel, Todd J. Krouner, obtained the largest total verdict in a LASIK malpractice case of \$7.25 million, for a Wall Street executive, in Schiffer v. Speaker, Index No. 101191/03 (Supreme Court New York County 2005).

While the Court found no merit to defendants' criticism of plaintiffs' experts, it found the jury had ample reason to reject the testimony of defendants' experts, Wing Chu, M.D., and Peter Hersh, M.D.

Dr. Chu had testified that his version of the Hippocratic Oath, in part, means first harm no doctor. Dr. Hersh testified in this case that measurements of the cornea only mattered for a 2 millimeter radius, even though he had previously testified in another case that he generally focused on a 3 millimeter radius.

New York law requires such awards to be discounted to present value, and to be adjusted for income taxes. As adjusted, plaintiffs expect to submit to the Court a Judgment with a present value of approximately \$3.9 million, plus interest of approximately \$380,000 for 13 months since the verdict.

Plaintiffs were represented by Todd J. Krouner, who currently practices in Pleasantville, New York. For additional information, please contact Todd J. Krouner at tkrouner@krounerlaw.com or at (914) 769-8700, or for a copy of the Court's decision, please visit www.krounerlaw.com.