

At IAS Part 36 of the Supreme Court  
Of the State of New York, County of  
New York, at the courthouse thereof,  
New York County, New York, NY  
on the 26<sup>th</sup> day of July, 2011.

PRESENT: Hon. Doris Ling-Cohan, J.S.C.

-----X  
JOHNSON DEVADAS and SARAMMA DEVADAS,

Plaintiffs,

-against-

KEVIN NIKSARLI, M.D. and NEWSIGHT LASER  
CENTER, PLLC,

Defendants.  
-----X

Index No.: 107637/07


**THIRD PROPOSED  
COUNTER JUDGMENT**

JUL 28 2011  
CLERK OF SUPREME COURT

PL-10  
AZ  
C2

The matter captioned above having come on for trial on May 20, 2009, in the IAS Part 36, before the Hon. Doris Ling-Cohan, Justice of the Supreme Court, and a jury, and the plaintiffs and defendants having appeared by their respective attorneys, Todd J. Krouner, Esq. of the Law Office of Todd J. Krouner, and Neil H. Ekblom, Esq., of LeClairRyan, P.C., and the jury having found on June 10, 2009, in favor of the plaintiffs Johnson Devadas and Saramma Devadas, residing at 40 Knolls Drive, Manhasset Hills, New York, 11040, and against defendant Kevin Niksarli, M.D., and New Sight Laser Center, PLLC, residing at 10 East 55<sup>th</sup> Street, New York, New York, as set forth in detail hereinafter, and

1. WHEREAS the jury having awarded the sum of \$100,000 for past pain and Suffering of plaintiff, Johnson Devadas, and
2. WHEREAS the jury having awarded the sum of \$20,000 for past loss of services to plaintiff Saramma Devadas, and

3. WHEREAS, the jury having awarded the sum of ~~\$45,000~~ for past loss of earnings to plaintiff Johnson Devadas, and \$60,000 

4. WHEREAS, the jury having awarded the sum of \$3,000,000 for future pain and suffering for plaintiff Johnson Devadas and determined that the time over which such pain and suffering would be incurred would be 45 years, and

5. WHEREAS, pursuant to CPLR §5031, 35% of the present value of the award for future pain and suffering for plaintiff Johnson Devadas, shall be paid in a lump sum, as reduced by attorneys fees and disbursements and the remainder, in a stream of payments paid over 8 years, with a growth rate of 4% and a discount rate of 3.98%, and

6. WHEREAS, pursuant to CPLR §5031, the amount for past loss of earnings for plaintiff Johnson Devadas, shall be paid in a lump sum, as reduced by attorneys fees and disbursements, and

7. WHEREAS, the jury having awarded the sum of \$20,000 per year to plaintiff Johnson Devadas for future loss of earnings for a period of 37 years at an annual growth rate of 5.5%, and that such amount must be reduced for personal income taxes by 31.85%, yielding a stream of payments, as reduced by attorneys fees and disbursements, and

8. WHEREAS, pursuant to CPLR §5031, 35% of the present value, shall be paid in a lump sum, as reduced by attorneys fees and disbursements and the remainder, shall be paid over 37 years, in the form of an annuity yielding a stream of payments, and

9. WHEREAS, the jury having awarded the sum of \$100,000 for future loss of services of plaintiff Saramma Devadas, and

10. WHEREAS, pursuant to CPLR §5031, the award for past and future loss of services for plaintiff Saramma Devadas, shall be paid in a lump sum, as reduced by attorneys fees and disbursements, and

11. WHEREAS, pursuant to CPLR §5031, the litigation expenses of plaintiffs' attorney, shall be deducted proportionally from each of the items of such damage awards, including the several lump sums and present values of the payment streams set forth, and such expenses shall be paid in lump sum, and after such deductions, the aforesaid streams of payments, and their present values, shall be adjusted accordingly, and

12. NOW, upon motion it is hereby,

13. ORDERED AND ADJUDGED, Plaintiff Johnson Devadas, of 40 Knolls Drive, Manhasset Hills, New York 11040, have judgment and recover of Defendants Kevin Niksarli, M.D. and Newsight Laser Center, PLLC, 10 East 55<sup>th</sup> Street, New York, New York, the sum of \$1,131,617.55, for past pain and suffering, loss of earnings and lump sum future damages, after deduction for litigation expenses and attorney fees, and interest from June 10, 2009 in the sum of \$ 221,269.99 and costs and disbursements as taxed by the Clerk in the sum of \$ 1,505.00 making a total of \$ 1,354,392.54 and have execution therefore; and it is further,

14. ORDERED AND ADJUDGED, Plaintiff Saramma Devadas, of 40 Knolls Drive, Manhasset Hills, New York 11040, have judgment and recover of Defendants Kevin Niksarli, M.D. and Newsight Laser Center, PLLC, the sum of \$97,921.77, for past and future loss of services, after deduction for litigation expenses and attorney fees, and interest from June 10, 2009 in the sum of \$ 19,147.06 making a total of \$ 117,068.83 and have execution therefor; and it is further,

15. ORDERED AND ADJUDGED, Plaintiff Johnson Devadas have judgment and recover of Defendants Kevin Niksarli, M.D. and Newsight Laser Center, PLLC, for attorney fees in

X the sum of \$493,196.65, and litigation expenses in the sum of \$180,139.35, and interest from June 10, 2009 in the sum of \$ 131,660.25 making a total of \$ 804,996.25 and have execution therefor; and it is further,

X 16. ORDERED AND ADJUDGED, Plaintiff Saramma Devadas have judgment and recover of Defendants Kevin Niksarli, M.D. and Newsight Laser Center, PLLC for attorney fees in the sum of \$16,171.58, and litigation expenses in the sum of \$5,906.65, and interest from June 10, 2009 in the sum of \$ 4,317.05 making a total of \$ 26,395.28 and have execution therefor; and it is further,

X 17. ORDERED AND ADJUDGED, Plaintiff Johnson Devadas have judgment against the defendants Kevin Niksarli, M.D. and Newsight Laser Center, PLLC for the present value of the award for future pain and suffering, after deduction for litigation expenses and attorney fees, in the sum of \$1,564,169.14, and for the present value of the award for future loss of earnings, after deduction for litigation expenses and attorney fees, in the sum of \$290,605.56, for a total of \$1,854,774.70, and recover interest upon said total from June 10, 2009 in the sum of \$ 362,671.97 and have execution therefor; and it is further,


X 18. ORDERED AND ADJUDGED, Defendants Kevin Niksarli, M.D. and Newsight Laser Center, PLLC be and hereby are directed to offer, purchase and guarantee payment to the Plaintiff, Johnson Devadas of an annuity contract by an insurance carrier rated A+ or better, designated as qualified by the Superintendent of Insurance, for the awards of future pain and suffering and future loss of earnings, after deduction for litigation expenses and attorney fees, having a present value of \$1,854,774.70, for the following annual payments in equal monthly installments as follows:

(a) For future pain and suffering, \$198,903.60, per annum, in equal monthly installments and commencing retroactively as of June 10, 2009 in the amount of \$16,575.30, per month and increased by 4% per year and compounded annually and extending for eight years or the life of Johnson Devadas, and

(b) For future loss of earnings, \$7,229.48, per annum, in equal monthly installments and commencing retroactively as of June 10, 2009 in the amount of \$602.46, per month and increased by 5.5% per year and compounded annually and extending for thirty-seven years; and it is further,

ORDERED AND ADJUDGED, Plaintiffs Johnson Devadas and Saramma Devadas have judgment against the defendants Kevin Niksarli, M.D. and Newsight Laser Center, PLLC for the total present value of the awards in the sum of \$3,779,728.26, and interest from June 10, 2009 in the sum of \$ 739,066.32 <sup>\*v</sup> and costs and disbursements as taxed by the Clerk in the sum of \$ 1,505.00 making a total of \$ 4,520,299.58.

Dated:  
7/28/2011 \*

  
J.S.C.

**FILED**

**DORIS LING-COHAN**  
J.S.C.

AUG 12 2011

COUNTY CLERK'S OFFICE  
NEW YORK

*Norman Goodman*  
Clerk

\* The court notes that it received the  
with proposed counter judgment & second amended  
notice of judgment from the clerk's office  
after the judgment clerk's review on 6/23/2011.  
(~~Interest~~ to be computed by clerk.)  
Cost/Disbursement

AFFIDAVIT OF SERVICE  
BY OVERNIGHT DELIVERY SERVICE  
PURSUANT TO CPLR 2103(b)(6)

STATE OF NEW YORK            )  
  : ss.:  
COUNTY OF WESTCHESTER    )

MICHELE De MARIA, being duly sworn, deposes and says: that deponent is not a party to this action, is over 18 years of age and resides in Westchester County, New York.

That on the 6<sup>th</sup> day of June 2011, deponent served the within Notice of Third Proposed Counter Judgment upon:

Todd J. Krouner, Esq.  
Law Office of Todd J. Krouner  
Attorneys for Plaintiffs  
93 North Greeley Avenue  
Chappaqua, New York 10514  
(914) 238-5800

at the address(es) designated by said party for that purpose, by depositing a true copy of same enclosed in a properly addressed wrapper, into the custody of an overnight delivery service (Federal Express Overnight Delivery) for overnight delivery prior to the latest time designated by the overnight delivery service for delivery.

*Michele De Maria*  
MICHELE De MARIA

Sworn to before me this  
6<sup>th</sup> day of June, 2011

*Judith Anne O'Malley*  
Notary Public

JUDITH ANNE O'MALLEY  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 4773084  
QUALIFIED IN PUTNAM COUNTY  
COMMISSION EXPIRES DEC. 31, 2014

**FILED**

AUG 12 2011

COUNTY CLERK'S OFFICE  
NEW YORK

---

JOHNSON DEVADAS and SARAMMA DEVADAS,

Plaintiffs,

-against-

KEVIN NIKSARLI, M.D. and NEWSIGHT LASER  
CENTER, PLLC,

Defendants.



---

**NOTICE OF THIRD PROPOSED COUNTER JUDGMENT**

---

**EDWARD J. GUARDARO, JR.**

Appellate Counsel to LeCLAIRRYAN  
A Professional Corporation  
Attorneys for Defendants

81 Main Street, 4<sup>th</sup> Floor  
White Plains, New York 10601  
(914) 448-0200

1-2  
**FILED AND  
DOCKETED**  
AUG 12 2011  
AT 4:37 P M  
N.Y. CO. CLK'S OFFICE

---

PLEASE TAKE NOTICE that an Order of which the within is a true copy will be presented for settlement to the Hon. Doris Ling-Cohan, one of the judges of the within-named Court, at the New York County Courthouse, 60 Centre Street, New York, New York on June 20, 2011 at 9:30 a.m.

Dated: June 6, 2011

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
JOHNSON DEVADAS and SARAMMA  
DEVADAS,

Plaintiffs,

-against-

KEVIN NIKSALI, M.D., and NEWSIGHT  
LASER CENTER, PLLC,

Defendants.  
-----X

**BILL OF COSTS**

Index No. 107637/07

**Costs for:**

Proceedings before Note of Issue is filed (\$200) - CPLR 8201(1).....	\$200
Proceedings after Note of Issue is filed (\$200) – CLPR 8201(2).....	\$200
Trial (\$300) – CPLR 8201(3) .....	\$300
SUBTOTAL.....	\$700

**FEES and DISBURSEMENTS for:**

Index Number of County Clerks – CPLR 8018 .....	\$210
Request for Judicial Intervention.....	\$95
Filing of Note of Issue – CPLR 8020(a) .....	\$65
Filing Demand for Jury Trial – CPLR 8020(c).....	\$30
Witnesses – CPLR 8301(a)(1).....	\$75
Stenographers – CPLR 8301(a)(9).....	\$250
Entering and docketing the Judgment – CPLR 8301(a)(7).....	\$25
Service of Summons and Complaint – CPLR 8301(d) and 8011(h).....	\$98 80.00
Service of Subpoenas – CPLR 8301(d) and 8011(h).....	\$277

SUBTOTAL.....\$1,125 *805.00*  
TOTAL.....\$1,825 *# 1505.00*

I HEREBY CERTIFY THAT I HAVE  
ADJUSTED THIS BILL OF COSTS AT

\$ *1,505.00*

AUG 12 2011

*Momon Goodman*  
CLERK

**FILED**

AUG 12 2011

COUNTY CLERK'S OFFICE  
NEW YORK

**ATTORNEY'S AFFIRMATION**

STATE OF NEW YORK                    )  
  ) ss:  
COUNTY OF WESTCHESTER        )

The undersigned, Todd J. Krouner, an attorney duly admitted to the practice of law in the Courts of the State of New York, hereby affirms the following under penalty of perjury: I am Todd J. Krouner, attorney for plaintiffs, and as such, am fully familiar with the facts and circumstances of the above captioned case; that the foregoing costs are correct and were necessarily incurred in this action and are reasonable in amount; and that the services for which these fees have been charged were actually and necessarily performed and are reasonable in amount.

Dated: July 20, 2010  
Pleasantville, New York

By: Todd J. Krouner  
Todd J. Krouner  
Law Office of Todd J. Krouner  
Attorney for Plaintiffs  
140 Bedford Road  
Pleasantville, New York 10570  
(914) 769-8700

**FILED**  
AUG 12 2011  
COUNTY CLERK'S OFFICE  
NEW YORK

Costs are taxed in the amount of \_\_\_\_\_  
And are included in the judgment.

Dated: July \_\_\_, 2010

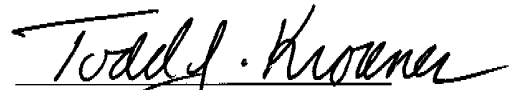
\_\_\_\_\_  
Clerk of the Court

**NOTICE OF TAXATION**

PLEASE TAKE NOTICE that the within is a true copy of the items of costs, fees, and disbursements in the within action which will be taxed by the Clerk of the within Court on \_\_\_\_\_ and the amounts of same inserted in Judgment.

Dated: July 20, 2010  
Pleasantville, New York

By:



Todd J. Krouner  
Law Office of Todd J. Krouner  
Attorney for Plaintiffs  
140 Bedford Road  
Pleasantville, New York 10570  
(914) 769-8700

Index No. 107637/07

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---

JOHNSON DEVADAS and SARAMMA DEVADAS,

Plaintiffs,

-against-

KEVIN NIKSARLI, M.D., MANHATTAN LASIK CENTER,  
PLLC, and NEWSIGHT LASER CENTER, PLLC,

Defendants.

---

**BILL OF COSTS**

---

LAW OFFICE OF TODD J. KROUNER  
Attorney for Plaintiff  
140 Bedford Road  
Pleasantville, New York 10579  
(914) 769-8700

**FILED**

AUG 12 2011

COUNTY CLERK'S OFFICE  
NEW YORK