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# VERDICTS, SETTLEMENTS & TACTICS

A PERSONAL INJURY LITIGATION REPORTER

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## Video Shoot

### **\$27.6 Million Verdict In Suit Alleging Negligence In Shooting Promotional Video For Artificial Knee**

On June 27, 2006, Dr. Robert Booth performed a total knee revision arthroplasty on both of Margo Polett's knees. As part of the surgery, Dr. Booth implanted a medical device manufactured by Zimmer—an artificial knee known as the Gender Solutions Knee that Dr. Booth himself created—into Mrs. Polett's right knee. On July 21, 2006, Dr. Booth gave Mrs. Polett a prescription for physical therapy. She used the prescription to secure physical therapy with William Deuber, R.P.T.

Approximately seven weeks later, on August 16, 2006, plaintiff returned to Dr. Booth for a follow-up visit. Dr. Booth was pleased with plaintiff's recovery and asked her to consider participating in a promotional film about Zimmer and its Gender Solutions Knee products.

Defendant PCI is a public communications firm hired by Zimmer to create the promotional video on the Gender Knee. One of PCI's employees, Cheryl Terhost, contacted plaintiff to secure her participation in the video shoot. Plaintiff signed medical authorization forms giving defendants access to plaintiff's medical records and authorizing them to speak with Dr. Booth and other medical care providers. Although plaintiff authorized this communication, PCI never contacted Dr. Booth, Mr. Deuber or any other medical provider to assess what activities plaintiff could perform safely for the promotional video.

On August 23, 2006, plaintiff arrived at Pennsylvania Hospital to participate in the filming of the video. The video shoot consisted of four components: (1) an interview with Dr. Booth and plaintiff in Dr. Booth's office; (2) an interview with plaintiff; (3) plaintiff walking through a garden with her daughter; and (4) plaintiff performing physical exercise, including riding an exercise bike and walking on a treadmill.

Cheryl Terhost developed and planned the video shoot for PCI on behalf of Zimmer. In the final portion of the video shoot, Terhost instructed plaintiff to ride an exercise bike and walk on a treadmill for several minutes. These activities were captured on camera and intended to be used for the promotional video. However, PCI had not discussed with Dr. Booth whether plaintiff could perform these activities, and failed to discuss with plaintiff whether she otherwise had been cleared by Dr. Booth. Plaintiff told Terhost on camera that she had not ridden a bicycle since her surgery. Terhost nevertheless instructed plaintiff to ride the bicycle.

On September 20, 2006, plaintiff returned to Dr. Booth for a follow-up visit. She informed Dr. Booth that she had been experiencing pain in her knees since the filming of the video. Dr. Booth suggested that she remain active. On October 23, 2006, plaintiff returned to Dr. Booth. She complained of persistent discomfort in both knees. Dr. Booth noted that this dated from the time of her ride on the exercise bike for the video.

On November 22, 2006, plaintiff again returned to Dr. Booth, emphasizing that she was still experiencing pain and swelling in her knee. Dr. Booth ordered X-rays, which revealed that she had a right knee patellar fracture. On November 28, 2006, Dr. Booth performed surgery to repair the extensor in her right knee. He performed two additional surgical procedures on January 19, 2007, and on September 11, 2007, to repair the rupture of plaintiff's extensor mechanism. On February 19, 2008, Dr. Booth performed another surgery on plaintiff's right knee, a revision arthroplasty with extensive mechanism and allograft.

Plaintiff alleged that PCI and Zimmer were negligent in conducting the video shoot.

**General Injury:** Patellar fracture, torn extensor pollicis longus tendon, torn patellar tendon. She has undergone four unsuccessful surgeries to restore her knee to the condition it was in prior to the filming. Plaintiff uses a walker and there is no viable prospect that she will ever be able to walk again without assistance. Additionally, there was a claim for loss of consortium.

**Result:** \$27.6 million jury verdict.

**Plaintiff's Expert Witness:** Robert E. Booth, M.D., treating orthopedic surgeon, Philadelphia, PA

**Defendant's Expert Witness:** Charles R. Clark, M.D., orthopedic surgery

**Plaintiff's Attorneys:** Shanin Specter (lead) and Carl E. Jones, Jr. of Kline & Specter, Philadelphia, PA

**Defendant's Attorneys:** William Conroy and Kurt Stichter

*Polett v. Public Communications, Inc., et al.*, No. 0808-02637 (Philadelphia Cty. Ct. of Common Pleas, PA Nov. 22, 2010)