

Philly Jury Awards \$9.7M In Med Mal Trial Over Brain Injury

By **Matthew Santoni**

Law360 (November 12, 2021, 6:29 PM EST) -- A Philadelphia jury awarded a \$9.7 million verdict against Thomas Jefferson University Hospital and one of its neurosurgeons Friday, finding the surgeon had been negligent for using an allegedly defective laser tool on a patient without fully informing him of the risks.

Jurors said 42% of the blame lay with Monteris Medical Inc., the maker of the "NeuroBlate Sidefire" probe that broke during a surgery on Michael Brassloff and blasted his brain with pressurized carbon dioxide, but the company had already settled. The remaining percentage was split, 43-15, between Dr. Kevin Judy and the hospital, respectively.

"The Brassloffs are gratified by the unanimous jury verdict and hope this causes Jefferson and Dr. Judy to exercise greater care when utilizing new modalities of treatment," said Shanin Specter of Kline & Specter PC, representing the plaintiffs, in a statement Friday.

The jury awarded Brassloff and his wife \$5 million for pain, suffering and other noneconomic losses, \$3.1 million for his future medical expenses, and \$1.6 million for loss of companionship.

According to the lawsuit, Judy had failed to warn the Brassloffs in October 2015 that the NeuroBlate laser hadn't been used before in the kind of surgery Michael Brassloff was about to undergo for a benign brain tumor, nor did the doctor tell them that he had not done that type of treatment before.

During the surgery, the outer tip of the probe broke off, allowing carbon dioxide, which was supposed to be cooling the laser, to be released in two eight-second blasts "directly into Mr. Brassloff's brain ... apparently causing a spike in Mr. Brassloff's intracranial pressure and causing him to be comatose," the suit said.

Brassloff's suit also said Judy had only used the device in one other surgery, had used a narrower, more fragile tip instead of a thicker one, and had ignored messages from the NeuroBlate device's software that should have caused him to stop.

The jury's verdict sheet said Judy had failed to get proper informed consent from Brassloff, and his omissions were material to Brassloff agreeing to the surgery with the NeuroBlate. The jury found that Judy and the hospital were negligent, and that the defect in the device was a cause of Brassloff's injuries.

Monteris had agreed to settle with the Brassloffs in February 2020, court records show, and paid them \$12.75 million. The NeuroBlate 2.2 mm Sidefire was recalled following Brassloff's surgery due to the alleged defect, the plaintiffs' firm said at the time of the settlement.

With Monteris out of the suit, Judy was apportioned to pay about \$4.2 million of the verdict, and the hospital will pay about \$1.5 million.

Counsel and representatives for the hospital and the surgeon did not immediately respond to requests for comment Friday.

Michael and Mona Brassloff are represented by Shanin Specter, Kila Baldwin, Eleanor Aldous, Jillian Casarella and Garabet Zakeosian of Kline & Specter PC.

Thomas Jefferson University Hospital and Kevin Judy are represented by Daniel F. Ryan III, Carolyn M. Bohmueller and Lisa J. Peters of O'Brien & Ryan LLP.

The case is Brassloff et al. v. Judy et al., case number 160803335, in the Court of Common Pleas for Philadelphia, Pennsylvania.

--Editing by Marygrace Anderson.