

The Legal Intelligencer

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Phila. Jury Awards \$27.6 Million for Promo Video Injury

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A Philadelphia jury returned a \$27.6 million verdict Monday in favor of a woman and her husband who said she was injured while taking part in a promotional video for an artificial knee implant. Philadelphia Common Pleas Court Judge



SPECTER

Frederica A. Massiah-Jackson presided over the trial in *Polett v. Public Communications, Inc.* The judge confirmed that the jury awarded \$26.6 million to plaintiff Margo Polett and \$1 million to plaintiff Dan Polett for loss of consortium. The jury apportioned 36 percent negligence to public relations company Public Communications Inc., the Chicago firm hired to make the artificial knee video, 34 percent negligence to orthopedic medical device manufacturer Zimmer, and 30 percent negligence to Margo Polett, the judge confirmed.

The plaintiffs' recovery may be reduced by \$8.28 million to \$19.32 million because of the finding of negligence on the part of Polett.

Polett, 71, of Gladwyne, Pa., now must use a walker and she has had four surgeries that have failed to improve her condition, the plaintiffs' memorandum said.

Plaintiffs' counsel Shanin Specter, of Kline & Specter in Philadelphia, said Polett's injury was catastrophic because she went from being active in many charitable activities and in her family's life to needing a walker to be

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(continued) able to get around.

The jury deliberated for 10 hours over three days, Specter said.

Polett had knee replacements in both of her knees June 27, 2006, according to the plaintiffs' complaint.

During a follow-up visit with her physician, Dr. Robert Booth asked Polett to participate in a promotional video for Gender Solutions Knee, an artificial knee created by Booth and manufactured by Zimmer, the plaintiffs' pretrial memorandum said.

Polett agreed to participate in filming the video Aug. 21, 2006, the complaint said. But the video firm never contacted any of her medical providers to find out what activities Polett could perform safely for the promotional video, the plaintiffs' memorandum said.

"Polett was caused by defendants to continue using an exercise bike and treadmill for several minutes during the filming of the video, despite informing defendants ... that she was tired," the complaint said.

Public Communications and Zimmer were negligent for not having any medical professionals available to oversee the filming of Polett doing the rehabilitation exercises and for not verifying with Booth and her other health care providers what level of activity would be safe for Polett to undertake, the Poletts argued in court papers.

Cheryl Terhost, Public Communications' director of the film, testified that she failed to ask Polett if she had been medically cleared to participate in the film, Specter said.

Lola Yoder, the Zimmer executive overseeing the production of the video, said she expected that Terhost would verify if Polett could participate in the film and that she was concerned that Polett said she had not been on a bicycle since the surgery, Specter said. But Yoder said her concern was allayed when Polett was willing to get on the exercise bicycle anyway, Specter said.

Polett assumed that Yoder or Terhost had talked to her surgeon and gotten clearance for the activities she was asked to perform, Specter said.

During follow-up visits over the next several months after the promo shoot, Polett told Booth she had been experiencing pain in both of her knees since the filming. Polett was diagnosed with an injury in her right knee cap and an injury to the muscle that affects knee extension, according to the plaintiffs' papers.

Booth testified for the plaintiffs, while Dr. Charles Clark, an Iowa City, Iowa, orthopedist, testified for the defense via videotape deposition, Specter said.

The defendants denied negligence, according to their answers.

Polett had further surgeries on her right knee in 2006, 2007 and 2008, the complaint said.

Specter said he did not talk to the jury.

Defense lawyers William J. Conroy, of Campbell Campbell Edwards & Conroy in Wayne, Pa., and Kurt Stitcher, of Baker & Daniels in Chicago, did not respond immediately to e-mails requesting comment Monday afternoon.

Plaintiffs' co-counsel included Carl E. Jones Jr.

Other defendants, including Pennsylvania Hospital; University of Pennsylvania Health System; Booth; 3B Orthopaedics; Video Track Productions Inc., a Philadelphia-based business; Steven Rhyker, owner of Video Track Productions; New City Productions, a Wilmington, Del., firm; and Marcel Franck, owner of New City Productions; were dismissed by stipulation this spring.

The plaintiffs did not sue Booth, and he was brought into the case by a counterclaim, Specter said.

The Poletts demanded at least seven figures, and no offers were extended, the plaintiffs' memorandum said.

Polett is a board member at Rosemont College, and Dan Polett owns Wilkie Lexus, the regional Lexus dealer, according to a news release