

# The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843 - 2021

PHILADELPHIA, TUESDAY, NOVEMBER 16, 2021

VOL 264 • NO. 97 \$5.00 An **ALM** Publication

## Jury Awards \$9.7M Verdict in Suit Over Botched Brain Surgery

BY ALEEZA FURMAN  
*Of the Legal Staff*

A man who suffered long-term neurological injuries from a medical mistake in brain surgery has been awarded a \$9.7 million verdict in the Philadelphia Court of Common Pleas.

Neurosurgeon Kevin Judy and Thomas Jefferson University Hospital were found to be 43% and 15% liable, respectively, for the injury that Michael Brassloff sustained while undergoing surgery to remove a benign brain tumor.

Co-lead plaintiffs counsel Shanin Specter of Kline & Specter said, in addition to presenting evidence that the operation was not performed correctly, he and co-counsel Kila Baldwin argued that Judy did not obtain informed consent for the nontraditional procedure.

In 2015, Judy conducted laser induced thermal therapy on Brassloff to treat radiation necrosis in his brain left over from a previous



**SPECTER**



**BALDWIN**

treatment. His injury occurred when the tip of the now-recalled Neuroblate 2.2 mm SideFire broke off and caused pressurized carbon dioxide to release into his brain.

Following the procedure, Brassloff remained in a coma for several days. He slowly regained consciousness and movement, but continues to suffer cognitive and mobility impairments and seizures.

The maker of the Neuroblate device, Monteris Medical Inc., was found 42% liable but had settled for \$12.75 million earlier in the case.

*Verdict continues on 11*

## Verdict

*continued from 1*

Specter said the device was only on the market for a year before being recalled for its tendency to break. Brassloff's procedure happened about halfway through that period, and was the only instance of the Neuroblate device breaking while in use on a patient.

Specter said that the treatment for Brassloff's condition would typically be a craniotomy, but instead, the surgeon opted to use a new, experimental procedure.

"The evidence was very strong that the neurosurgeon failed to obtain a properly informed consent, because he did not explain that this was a new procedure with no medical literature reporting on its success rate, and there was also very strong evidence that the procedure was performed incorrectly, including by putting the probe in the wrong place in the brain," Specter said.

Brassloff and his wife would not have consented to the procedure if they had known at the time that it was not a well-established course of treatment, said Specter.

"We hope that this verdict will cause Dr. Judy and Jefferson to exercise greater care when utilizing new modalities of treatment," he said.

The defendants contend in their pre-trial memo that Judy appropriately treated Brassloff with the laser induced thermal therapy and could not have known that the device had malfunctioned.

According to the memo, "Brassloff had an unexpected and unpredictable complication from the NeuroBlate procedure that was not due to any action by Dr. Judy, but rather due to a defect in the NeuroBlate probe."

The jury awarded \$5 million for noneconomic damages, \$1.6 million to Brassloff's wife for loss of consortium, and \$3.1 million for future medical expenses.

Attorneys with O'Brien & Ryan represented the defendant.

Neither defense counsel nor a spokesperson for Jefferson Health responded to requests for comment by press time.

The case is captioned *Brassloff v. Judy*. Aleeza Furman can be contacted at [afurman@alm.com](mailto:afurman@alm.com). •