



VERDICTSEARCH

NEW YORK

RICHMOND COUNTY

MEDICAL MALPRACTICE

Surgeon — Negligent Treatment

Surgeon removed too much tissue for biopsy, patient alleged

VERDICT **Defense**

CASE John Pollina v. Josianne Lederman M.D. Leon Kircik, M.D., David C. Hoffman, M.D. and Cary Goldsman, M.D., No. 10432/01

COURT Richmond Supreme
JUDGE Philip G. Minardo
DATE 2/17/2004

PLAINTIFF
ATTORNEY(S) Gary A. Lichtman, trial counsel to Efrom Gross, New York, NY

DEFENSE
ATTORNEY(S) **Paul DeCarlo, Amabile & Erman,** Brooklyn, NY (Cary Goldsman, M.D.)
Christine E. Fernandez, Garbarini & Scher P.C., New York, NY (Josianne Lederman, M.D., Leon Kircik, M.D.)
Lawrence W. Mumm, McAloon & Friedman P.C., New York, NY (David Hoffman, M.D.)

FACTS & ALLEGATIONS In May 1999, plaintiff John Pollina, a security consultant in his 40s, had a biopsy taken of a recurring basal cell carcinoma on his nose. The procedure was performed by Dr. Cary Goldsman. Despite a positive biopsy, it was believed that Pollina was cancer free. Several months later, the carcinoma became larger and Pollina was examined by Dr. Josianne Lederman. Lederman recommended a Mohs micrographic surgical procedure. On Sept. 25, the procedure was performed by Dr. Leon Kircik at Lederman's Staten Island office. During the surgery, the first layer of tissue tested positive for malignancy, thus a second layer was removed, which was negative.

Pollina sued Lederman, Kircik, Hoffman and Goldsman. He claimed the Lederman and Kircik departed from standard of care by removing too much tissue. He claimed that the excessive tissue removal resulted in him having reconstructive surgery by Hoffman. Pollina argued that Lederman was liable for his injuries under respondeat superior because she had scheduled too many procedures on that day. Hoffman and Goldsman were let out prior to jury selection.

The defendants claimed that the procedure was performed properly. They claimed that a second excision was necessitated after the first excision showed to be cancerous. The defendants claimed they removed the appropriate amount of tissue, based on the extent of cancerous tissue found.

INJURIES/DAMAGES *face; scar and/or disfigurement, facial*

Pollina claimed that the defendants removed an excessive amount of tissue from his nose, leaving him with a facial scar and disfigurement. Pollina claimed that he will need future corrective surgery.

Pollina presented a loss-of-earnings claim and testified that the injury resulted in a loss of business income for his security company.

Pollina's expert pathologist testified that too much tissue had been removed. He opined that the presence of a pathologist during the surgery would have prevented the removal of too much tissue. He testified that the removal of the second layer of tissue was unnecessary, and that both stages were excessive.

The defendants' expert Mohs micrographic surgeon testified that the defendants did not depart from the standard of care. He opined that the appropriate amount of tissue was removed. He testified that a pathologist was not needed during surgery because Kircik, like all Mohs surgeons, is a qualified pathologist.

RESULT The jury rendered a defense verdict. It found that the defendants did not depart from the standard of care.

DEMAND \$275,000

OFFER None

INSURER(S) Medical Liability Mutual Insurance Co. for all defendants

TRIAL DETAILS Trial Length: 6 days
 Jury Deliberations: 2 hours
 Jury Poll: 6-0

PLAINTIFF
EXPERT(S) Stephen McCormack, M.D., pathology, New York, NY

DEFENSE
EXPERT(S) Perry Robins, M.D., plastic surgery/reconstructive surgery, New York, NY

POST-TRIAL Judge Philip Minardo denied Pollina's motion to set aside the verdict. Pollina has appealed.

EDITOR'S NOTE Counsel for Goldsman and Hoffman were not asked to contribute to this report.

—Peter Hayes