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PRESS RELEASE - FOR IMMEDIATE RELEASE

Johnson Devadas and Saramma Devadas v. Kevin Niksarli, M.D.,
Manhattan LASIK Center, PLLC, and NewSight Laser Center, PLLC
*New York County, Supreme Court of the State of New York
Index # 107637/07*

PROTECTIVE ORDER GRANTED IN LASIK MALPRACTICE ACTION. In a LASIK malpractice case scheduled for trial in New York, in January 2009, the trial judge, the Honorable Joan B. Carey, Justice of the Supreme Court of the State of New York, County of New York, granted plaintiffs' motion for a protective order, shielding the identify of plaintiffs' LASIK malpractice expert. In a decision dated December 8, 2008, Judge Carey held:

When viewed collectively, the evidence submitted by plaintiffs demonstrates a concrete risk that the expert ophthalmologist would be subjected to annoyance, expense, embarrassment, and disadvantage, if identified before trial. The culture of the LASIK industry, as described in plaintiffs' various submissions, coupled with the fact that plaintiffs' expert has already "personally born the brunt of antagonistic comments from colleagues for representing patients in LASIK malpractice claims," leads the Court to find that a protective order is warranted.

Judge Carey was persuaded by plaintiffs' submission which included an article in Ophthalmology News, reference to internet websites, and a recent slander action brought against a LASIK expert in Florida.

As a separate matter, plaintiffs' recently filed a cross motion to amend their complaint to seek punitive damages as a result of Dr. Kevin Niksarli's alteration of the treating records. Plaintiffs' forensic expert, Albert Lyter, III, Ph.D., found that:

- (1) the last line on Dr. Niksarli's treating note for Johnson Devadas, namely "R/B/A/ of LASIK Sx explained to pt including -> ", which treating note was purportedly created on March 25, 2004, was created at a time different than the rest of the notations on that page (Exhibit A-1);
- (2) the last line in his treating note for Saramma Devadas, namely, "R/B/A of LASIK expl. to pt. incl. but not limited ->", which treating note was purportedly created on March 24, 2004, was created at a time different than the rest of the notations on that page (Exhibit B-1);
- (3) the addendum to Saramma Devadas's note (Exhibit B-1) is missing, and by letter dated September 10, 2008, defendants' counsel state "there isn't a handwritten addendum after the page indicating 'R/B/A of LASIK expl. To pt incl. but not limited to'. The chart you were given is the complete chart in Dr. Niksarli's possession";
- (4) the addendum to Mr. Devadas's treating note (Exhibit A-1) was artificially aged in a manner that is not consistent with the normal storage of medical records (Exhibit A-2); and

That motion is still pending before the court.

A copy of Judge Joan B. Carey's Order is available at www.krounerlaw.com. A full set of plaintiffs' motion papers are available at www.krounerlaw.com. For further information, please contact Todd J. Krouner, Esq. at tkrouner@krounerlaw.com or at (914) 238-5800.