



VERDICTSEARCH

NEW JERSEY

MORRIS COUNTY

MEDICAL MALPRACTICE

Failure to Treat — Failure to Monitor

Parents blamed doctor oversight for infant's blindness

VERDICT (P) **\$6,045,098**

NET **\$5,600,000**

CASE Michael Vincent Puzio, an infant by his guardian ad litem Michele Puzio and Michael Puzio and Michele Puzio v. Arnold Finkle, Gaines Mimms, Lawrence Skolnick, Calvin Shen, Andrew Schenkman, Jay Bernstein, M.D., and Morristown Memorial Hospital, No. MRS-L-11391-01

COURT Morris County Superior Court, NJ

JUDGE W. Judge Dumont

DATE 5/7/2004

PLAINTIFF

ATTORNEY(S) John Collins, Bongiovanni, Collins & Warden, Denville, NJ

DEFENSE

ATTORNEY(S) **Burke Giblin**, Giblin & Combs, Morristown, NJ (Jay Bernstein, M.D., Pediatric Ophthalmology Associates)
Frank Leanza, McDermott & McGee, Millburn, NJ (Arnold Finkel, M.D.)
Thomas M. Walsh, Parker, McCay & Criscuolo, Marlton, NJ (Andrew Schenkman, M.D., Calvin Shen, M.D., Gaines Mimms, M.D., Lawrence Skolnick, M.D., Morristown Memorial Hospital)

FACTS & ALLEGATIONS On June 23, 1993, plaintiff Michael Puzio was born eight weeks premature at Morristown Memorial Hospital. He was discharged on July 3. While at the hospital, he

was seen by neonatologists Gaines Mimms, Andrew Schenkman, Lawrence Skolnick and Calvin Shen. Ophthalmologist Jay Bernstein also examined the infant during that time.

Michael and Michele Puzio, the infant's parents, claimed that the neonatologists did not tell them that their son should be monitored for retinopathy of prematurity (ROP), which leads to abnormal blood-vessel growth in the eye and can cause blindness. They also claimed that Bernstein had recommended a two week follow-up exam but the child was then discharged before the exam could take place.

Pediatrician Arnold Finkel saw Michael on Aug. 4, but also failed to advise of the risk of ROP. A month later, Michele noticed that Michael's eyes were not focusing and consulted Finkel. He referred her to an eye doctor but did not indicate urgency. By the time an eye doctor saw Michael on Oct. 14, he had lost his vision.

Michael's parents sued Finkle, the hospital, the neonatologists, Bernstein and his association, Pediatric Ophthalmology Associates in Philadelphia. The plaintiffs alleged that the physicians breached the standard of care by failing to inform them of the risk of ROP and the need for their son to be monitored.

The defense maintained that it was their regular practice to advise parents of the need for follow-up eye exams and that they therefore did so in this case.

The Puzios voluntarily dismissed Bernstein and his association before trial. Finkel settled before trial for \$3 million. During the course of the trial, Schenkman was dismissed on a motion.

INJURIES/DAMAGES *blindness, total; emotional distress; glaucoma; physical therapy*

Michael lost total vision. He also developed glaucoma in the left eye as a result of retina detachment and requires monitoring for that condition so that he does not lose his eye. He suffers from developmental problems and needs occupational and

physical therapy.

The plaintiffs claimed \$990,000 in lost wages assuming he would have a college degree, but would have difficulty in the job market do to his blindness.

He experiences severe frustration and emotional distress associated with being blind.

His parents claimed loss of services, companionship and contributions to the age of, and after the age of, 21.

RESULT The jury awarded the Puzios \$6,045,098 in damages. It found Finkel 66% liable, equating about \$3,990,000, and Mimms and the hospital were 34% liable, to the tune of about \$2,050,000. Skolnick and Shen were found not negligent.

Finkel had settled before trial for \$3 million, making the net recovery with prejudgment interest about \$5.6 million.

MICHAEL PUZIO	\$986,543 future lost earnings \$2,500,000 pain and suffering, disability, disfigurement, loss of enjoyment of life <u>\$2,058,555 life care expenses</u> \$5,545,098
M. PUZIO	\$250,000 future loss of services
M. PUZIO, SR.	\$250,000 future loss of services
DEMAND OFFER	\$10,000,000 \$1,000,000 from hospital and the neonatologists
INSURER(S)	Self-insured for hospital, Mimms, Schenkman, Skolnick and Shen MIIX for Finkel and Bernstein Zurich for hospital, Mimms, Schenkman, Skolnick and Shen (excess)
TRIAL DETAILS	Trial Length: 10 days Jury Deliberations: 13 hours Jury Poll: 6-1 Jury Composition: 5 male, 2 female
PLAINTIFF EXPERT(S)	Graham Quinn, M.D. , pediatric ophthalmology, Philadelphia, PA Marcus Hermansen, M.D. , neonatology, Nashua, NH

Frank D. Tinari, Ph.D., economics, South Orange, NJ
Edmond A. Provder, life care planning, Hackensack, NJ

DEFENSE

EXPERT(S)

James Reynolds, pediatric ophthalmology, Buffalo, NY
Jeffrey Whitsett, M.D., pediatric neurology, Cincinnati, OH

POST-TRIAL The plaintiff filed a motion for addittur. Plaintiff attorney John Collins said that he did not think that the verdict was adequate specifically because the jury awarded essentially nothing for the loss of the child's services, companionship and contributions after he reached the age of 21. He also asked for addittur on the \$2.5 million verdict for pain and suffering, loss of enjoyment of life, disability and disfigurement.

EDITOR'S NOTE Defense counsel did not respond to a phone call or faxed draft of this report.

—Peter Scoolidge