

# The Legal Intelligencer

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## Family Wins \$15 Million From Jury

### *Suit Alleged Delay in Diagnosis of Baby's Eye Tumor*

BY APRIL WHITE

*Of the Legal Staff*

Like most parents, Chris and Mary Krzaczek filled many photo albums with pictures of their infant daughter, Kathryn. Those photographs were among the evidence that convinced a Philadelphia Court of Common Pleas jury that the tumor which forced the removal of Kathryn's right eye was evident months before its diagnosis.

The jury returned a \$15 million award Friday, holding Kathryn's pediatricians — Dr. Michael Slanina and Dr. Stuart Cooler — physician's assistant Patrick Ronan and their employer, the Police and Fire Medical Association in Northeast Philadelphia, responsible for the delay in diagnosis.

Kathryn, who is known to family and friends as Catie, is now 7 years old. She has a prosthetic right eye, but an alternative treatment of the retinoblastoma which affected both her eyes preserved full vision in her left eye, according to plaintiff's counsel David Kuritz of Wapner Newman & Wigrizer.

Retinoblastoma, a sporadic genetic disorder, affects one in every 15,000 to 20,000 births. The disease causes a tumor to form in the eye in front of the retina. It can be diagnosed with a simple light-reflex test, typically part of a well-baby examination. In the test, a doctor shines a bright light into the eye and

watches for a red reflection from the blood vessels of the retina.

It is this reflection of light which causes "red eye" in flash photographs. In her parents' photographs, a three-month-old Catie had "white eye" or "cat's eye." Light from the flash bounced off the growing tumor. But Catie's condition was not diagnosed until October 1993 when she was 10 months old. By that time, the problem was visible without a test. The tumor had swollen her right eye and caused retinal detachment.

After a trip to the emergency room, Catie was transferred to Wills Eye Hospital where she underwent enucleation — or removal — of her right eye, and later, cryosurgery to remove the less developed tumor in her left eye.

It was during a follow-up visit that Catie's parents noted a poster hanging in the waiting room of the eye hospital. The poster pictured a child with retinoblastoma; Catie's parents recognized the "cat's eyes." The poster was a catalyst for the Krzaczek.

"They realized that this [condition] was something that should have been picked up at well-baby visits," plaintiff's counsel Kuritz said. Erik Vogel, an associate with the firm, assisted in the trial.

Two days before Catie's emergency room visit, she underwent a well-baby exam at the Police and Fire Medical Association.

"Records indicated that light-reflex test was perfectly normal," Kuritz said. "But there was no way that the result could have been normal; the tumor was filling the eye."

"Our number one theory was lost opportunity," he said.

If diagnosed promptly, retinoblastoma can be treated through cryosurgery, radiation, laser therapy or other corrective treatment, Kuritz said.

The photographs of Catie as an infant were key for the jury, Kuritz said. Although the defense attempted to preclude the snapshots from evidence claiming a diagnosis could not be made from them, Judge C. Darnell Jones II allowed them to be introduced.

According to Kuritz, defense lawyers argued that Catie's eye would have been untreatable even if her condition had been diagnosed earlier.

C. Andre Washington of Post & Schell represented Slanina; Naomi A. Plakins of Plakins Rieffel represented Cooler; William L. Banton Jr. of Marshall Dennehey Warner Coleman & Goggin represented Ronan; and Dennis George of Dennis George & Associates represented the Police and Fire Medical Association.

The jury deliberated for 3 1/2 hours before returning its verdict, finding Slanina 60 percent responsible, Cooler 10 percent responsible and Ronan 30 percent responsible.