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'Skewered' Nerve Leads To \$904,000 Verdict

During spinal fusion procedure, woman permanently injured by misplaced screw

Carolyn Costello v. Neurological Associates: Glastonbury homemaker Carolyn Costello was hoping to get relief from leg and back pain on her left side when she agreed to a spinal fusion procedure in 2002.

Dr. Bruce Chozik recommended the treatment. But, according to Costello's lawyer, another doctor assisted in the surgery and installed a bone screw that was supposed to secure a plate to stabilize a portion of the woman's spine. Instead, said **Paul T. Edwards** of **Stratton Faxon** in New Haven, the screw "skewered" a spinal nerve.

When Costello awoke from the anesthesia, she had severe pain in her right leg and could not move her right foot.

On the following day, Chozik performed a second operation to remove the screw, but by that time the nerve damage was permanent. Costello experienced a neurological condition known as foot drop, and was forced to use a walker, and later, a cane and



JOEL FAXON

a leg brace.

Costello filed a malpractice suit. On June 15, after a trial that took four days, the jury deliberated for three hours before returning a verdict of \$904,000, most of it for pain and suffering. Edwards said he requested \$45,000 for medical damages, but that the defense contended she would have incurred hospital costs for her

surgery anyway. "Evidently the jury bought that, and only awarded her \$19,000 in actual damages," said Edwards.

He credited the jury for its "keen attention during trial and evaluation of the complex medical evidence."

Katherine C. Callahan, of Hartford's **Updike, Kelly & Spellacy**, defended Neurological Associates, which was the lone defendant by the time the trial concluded. She said the insurer,

Medical Protective Co. of Fort Wayne, Ind., is currently considering whether to appeal and has not decided which, if any, post-verdict motions to submit. "Other than that, I really can't comment," she said.

Joel T. Faxon, a name partner at Stratton Faxon, was co-counsel. Faxon and Edwards said they were willing to settle the case, but that the insurance company never made an offer. The doctors' defense was that the

nerve damage was a risk which Costello had been warned of, and which fell within the acceptable standard of care.

But, Faxon said, "they were so far off in the location of this screw that it was negligence to place the screw in such a haphazard fashion. It's very difficult to prevail in these cases of surgical error, because you don't have a video camera taping the surgery. In this case, we

were able to rely on X-rays and other images taken after the surgery."

—By Thomas B. Scheffey



PAUL T. EDWARDS