

**SOUTHERN CALIFORNIA****LOS ANGELES COUNTY****MEDICAL MALPRACTICE****Negligent Treatment — Eye Surgery — Delayed Diagnosis****Patient contended she was left legally blind in her left eye**

<b>VERDICT</b>	<b>Defense</b>
<b>CASE</b>	Katie Fraijo v. Mark Kislinger, M.D., Foothill Eye Care Services and Foothill Eye Medical Group, No. KC053148
<b>COURT</b>	Superior Court of Los Angeles County, Pomona, CA
<b>JUDGE</b>	Dan T. Oki
<b>DATE</b>	10/30/2009
<b>PLAINTIFF ATTORNEY(S)</b>	<b>John K. Ciccarelli</b> , Law Offices of John K. Ciccarelli, Pasadena, CA <b>J. Grant Kennedy</b> , Law Offices of J. Grant Kennedy, Los Angeles, CA
<b>DEFENSE ATTORNEY(S)</b>	<b>Raymond L. Blessey</b> , Taylor Blessey LLP, Los Angeles, CA

**FACTS & ALLEGATIONS** On Sept. 13, 2005, plaintiff Katie Fraijo, 85, retired, visited ophthalmologist Mark Kislinger's office for evaluation. She had recently been unable to pass the Department of Motor Vehicles eye test due to her impaired vision. Dense cataracts were found by the examining ophthalmologist and it was recommended that Fraijo undergo surgery on both eyes.

On Dec. 12, Fraijo had the cataract in her right eye removed and a posterior chamber intraocular lens was placed without complications. Over the course of the next six months, her cornea cleared and testing revealed near normal visual acuity.

On June 16, 2006, Fraijo underwent cataract surgery to her left eye with Kislinger. During the emulsification of the cataract, the capsule ruptured. An attempt was made to place a posterior chamber lens in the posterior chamber, but due to the nature of the rupture, it could not be secured adequately. Kislinger took out that particular mode of the posterior chamber lens and placed a foldable posterior chamber lens in the anterior chamber.

Fraijo followed up with Kislinger for 17 months after the surgery on her left eye with the final visit occurring on Nov. 7, 2007. Fraijo was placed on anti-inflammatory medications

and followed with serial eye examinations. In November 2006, Fraijo was seen by an outside ophthalmologist. He recommended that Fraijo be seen by a retina specialist and undergo a fluorescein angiogram for further evaluation.

On Jan. 11, 2007 and Jan. 25, 2007, Fraijo was seen by a retina specialist who was an independent contractor with Kislinger's practice. He noted that her visual acuity was good and he did not appreciate cystoid macular edema clinically. As a result, he opined that the fluorescein angiogram was not necessary. Diagnostic testing to rule out CME was done in April 2007 and early May 2007 and found by the retina specialists to be negative for significant macular edema. However, during Fraijo's May, June and final November office visits with Kislinger, her visual acuity was significantly reduced.

Fraijo was seen by another outside ophthalmologist in December 2007 and ultimately referred to retina specialist Raghu Murthy after a fluorescein angiogram revealed severe CME.

On March 26, 2008, Murthy moved the posterior chamber lens in the posterior chamber and secured it in the intended location with sutures. In addition, he performed a vitreous membrane peel (removal of scar tissue). He felt that as long as the posterior chamber lens remained in the anterior chamber, it would continue to cause inflammation of the retina and damage to the anterior chamber structures which would result in impaired vision.

Fraijo's vision in her left eye continued to deteriorate. By trial, she was legally blind in that eye. In addition, she was having problems with headaches and eye pain.

Fraijo sued Kislinger, Foothill Eye Care Services and Foothill Eye Medical Group. She alleged that it was negligent to place a posterior chamber lens in the anterior chamber. Kislinger's practice was named because of the actions of the doctors that were related to his practice. Kislinger was thus vicariously liable for their actions, plaintiff's counsel stated.

Plaintiff's counsel stated that it was below the standard of care and contrary to the FDA guidelines to place a posterior chamber lens in the anterior chamber because it could not be adequately secured. However, the judge would not allow this argument to be made at trial, plaintiff's counsel stated.

During the course of Kislinger's 17 months of follow-up, the lens continued to cause chafing and irritation of the iris, cornea and the anterior chamber which ultimately resulted in CME of the left and right eye, plaintiff's counsel argued.

Plaintiff's counsel stated that Fraijo's vision in the left eye did not return to her pre-operative baseline by eight weeks after the surgery in June 2006. Plaintiff's counsel stated that the outside ophthalmologist in November 2006 did not note that Fraijo had mild, diffuse CME. Plaintiff's counsel also stated that the diagnostic testing completed in April 2007 and May 2007 was not the standard of care.

Kislinger negligently placed a posterior chamber intraocular lens (IOL) in the anterior chamber of Fraijo's eye during a cataract surgery after experiencing a rupture of the capsule, the plaintiff retinal specialist testified. Kislinger could have placed an anterior chamber lens in the anterior chamber

## SOUTHERN

or he could have sutured the posterior chamber lens in the posterior chamber, using either the ciliary bodies or the iris as the anchoring point, an expert testified. Third, Fraijo could have been left without a lens and provided with a contact lens to aid her vision, the expert testified. The expert testified that although all of these options have some risk, any one of them would have been preferable to the placement of a posterior chamber IOL in the anterior chamber.

Finally, Kislinger was negligent due to his failure to timely diagnose retinal inflammation due to the misplacement of the lens and the failure to refer Fraijo to a retina specialist for removal and relocation of the posterior chamber IOL, the plaintiff retinal specialist testified.

The defense stated that Fraijo's vision in the left eye returned to her pre-operative baseline by eight weeks after surgery. However, as time went on, her visual acuity fluctuated, seemingly related to her compliance with the prescription for anti-inflammatory medications. Defense counsel also stated that the outside ophthalmologist in November 2006 felt that Fraijo had evidence of mild, diffuse CME and therefore, he recommended that Fraijo be seen by a retina specialist and undergo a fluorescein angiogram for further evaluation.

Defense counsel argued that Kislinger's surgical approach for the left eye was reasonable under the circumstances and that Fraijo's post-operative impaired vision was due to age-related changes in the eye.

Kislinger's approach to the complication of the capsule rupture, that is, placing the posterior chamber IOL in the anterior chamber, was reasonable and well within the standard of care, given the inability to secure the lens in the posterior chamber and the risks associated with the other surgical options, the defense anterior chamber specialist testified.

**INJURIES/DAMAGES** *blindness, one eye; headaches; vision impairment; vision, partial loss of*

Fraijo contended that she was legally blind in her left eye and the prognosis for her vision in her right eye was guarded. She also claimed that she had persistent eye pain and headaches, as well as the feeling of a foreign body in her left eye after Kislinger's surgery.

Plaintiff's counsel asked the jury for at least \$250,000 for the lost vision in the left eye and the associated pain and suffering.

As to the issue of causation, Fraijo's decreased vision was due to age-related problems of macular degeneration, epiretinal membrane (scarring of the retina) and cystoid macular edema unrelated the position of the lens, a defense expert testified.

**RESULT** The jury found for the defense.

**OFFER** CCP 998 offer to waive costs in exchange for dismissal

**TRIAL DETAILS** Trial Length: 4 days  
Trial Deliberations: 30 minutes  
Jury Vote: 12-0

**PLAINTIFF  
EXPERT(S)**

Don Mills, M.D., anesthesiology,  
Newport Beach, CA  
Raghu Murthy, M.D., ophthalmology,  
Beverly Hills, CA (retina specialist)

**DEFENSE  
EXPERT(S)**

James J. Salz, M.D., ophthalmology,  
Beverly Hills, CA

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel and defense counsel.

—Jaclyn Stewart