

02-115-CD-
ROBERT A. TIMKO et ux "vs" SAMUEL B. BARLEY, M.D. et al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL SECTION

ROBERT A. TIMKO and *
MARY TIMKO, h/w *
209 Morrison Street *
DuBois, PA 15801 *

-vs-

* No. 02-115-C

SAMUEL B. BARLEY, M.D., *
145 Hospital Avenue, Suite 106 *
DuBois, PA 15801 and *
DUBOIS REGIONAL MEDICAL CENTER *
100 Hospital Avenue *
DuBois, PA 15801 *

Type of Pleading:

Praecept for Writ of Summons

FILED

JAN 22 2002

William A. Shaw
Prothonotary

Filed on Behalf of:

Robert A. Timko and
Mary Timko, h/w

Counsel of Record for this
Party:

SAMUEL COHEN, ESQUIRE
Supreme Court I.D. 27544

Katz, Cohen & Price, P.C.
117 South 17th Street
Suite 2010
Philadelphia, PA 19103
(215) 636-0400

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ROBERT A. TIMKO and	*
MARY TIMKO, h/w	*
209 Morrison Street	*
DuBois, PA 15801	*
	*
-vs-	*
	*
SAMUEL B. BARLEY, M.D.,	*
145 Hospital Avenue, Suite 106	*
DuBois, PA 15801 and	*
DUBOIS REGIONAL MEDICAL CENTER	*
100 Hospital Avenue	*
DuBois, PA 15801	*

PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY:

Please prepare and issue a Writ of Summons against Samuel B. Barley, M.D. and DuBois Regional Medical Center, the above named Defendants. A jury trial is demanded.

KATZ, COHEN & PRICE, P.C.



SAMUEL COHEN

Dated: 1/22/02

FILED

Atty Mignub

012-5204

pd. \$0.00

JAN 22 2002

3 cc Atty Mignub

By
William A. Shaw

Prothonotary

3 Summons to Mignub

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

COPY

SUMMONS

**Robert A. Timko and
Mary Timko h/w**

Vs.

NO.: 2002-00115-CD

**Samuel B. Barley MD, and
DuBois Regional Medical Center**

TO:

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 01/22/2002

**William A. Shaw
Prothonotary**

Issuing Attorney:

**Samuel Cohen
Suite 2010
Philadelphia, PA 19103-5020**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT A. TIMKO and MARY TIMKO,
h/w,

Plaintiff,

vs.

SAMUEL B. BARLEY, M.D., and DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 2002-00115-CD

PRAECIPE FOR APPEARANCE

Code:

Filed on behalf of defendants

Counsel of Record for this Party:

David R. Johnson, Esquire
PA I.D. #26409

Thomson, Rhodes & Cowie, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED

FEB 07 2002

William A. Shaw
Prothonotary

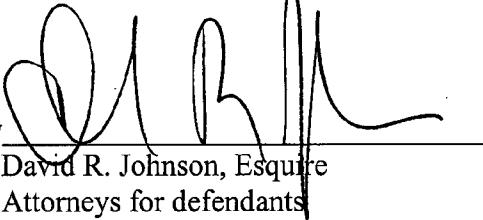
PRAECIPE FOR APPEARANCE

TO: WILLIAM A. SHAW, PROTHONOTARY

Kindly enter our appearance on behalf of defendants.

JURY TRIAL DEMANDED.

THOMSON, RHODES & COWIE, P.C.

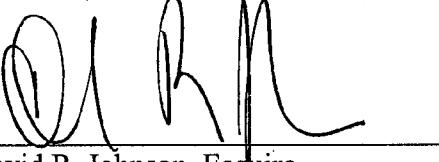
By 
David R. Johnson, Esquire
Attorneys for defendants

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within PRAECIPE FOR APPEARANCE has been served upon the following counsel of record and same placed in the U.S. Mails on this 5th day of February, 2002:

Samuel Cohen, Esquire
Katz, Cohen & Price, P.C.
117 South 17th Street, Suite 2010
Philadelphia, PA 19103

THOMSON, RHODES & COWIE, P.C.

By 
David R. Johnson, Esquire
Attorneys for defendants

FILED NO

cc

3112145
FEB 07 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT A. TIMKO and MARY TIMKO,
h/w,

Plaintiff,

vs.

SAMUEL B. BARLEY, M.D., and DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 2002-00115-CD

PRAECIPE FOR RULE FOR COMPLAINT

Code:

Filed on behalf of defendants

Counsel of Record for this Party:

David R. Johnson, Esquire
PA I.D. #26409

Thomson, Rhodes & Cowie, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED

FEB 07 2002

William A. Shaw
Prothonotary

PRAECIPE FOR RULE FOR COMPLAINT

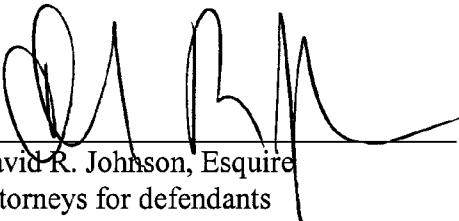
TO: WILLIAM A. SHAW, PROTHONOTARY

Kindly issue a rule on plaintiffs to file their complaint within twenty days.

THOMSON, RHODES & COWIE, P.C.

By

David R. Johnson, Esquire
Attorneys for defendants



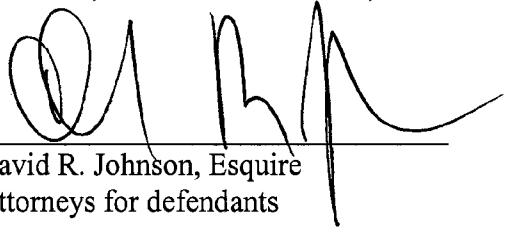
CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within PRAECIPE FOR RULE FOR
COMPLAINT has been served upon the following counsel of record and same placed in the U.S.
Mails on this 5th day of February, 2002:

Samuel Cohen, Esquire
Katz, Cohen & Price, P.C.
117 South 17th Street, Suite 2010
Philadelphia, PA 19103

THOMSON, RHODES & COWIE, P.C.

By


David R. Johnson, Esquire
Attorneys for defendants

FILED

cc

ml124684
FEB 07 2002, Rule issued to

William A. Shaw
Prothonotary

KEY *Atty Johnson*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

COPY

Robert A. Timko
Mary Timko

Vs.
Samuel B. Barley MD
DuBois Regional Medical Center

Case No. #2002-00115-CD

RULE TO FILE COMPLAINT

TO: Robert A. Timko and Mary Timko, h/w

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

William A. Shaw, Prothonotary

Dated: February 7, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA

ROBERT A. @ MARY TIMKO, h/w *

*

*

PLAINTIFF
VS
DEFENDANT

* NO. 2002-00115-CD

SAMUEL B. BARLEY, MD *

AFFIDAVIT OF SERVICE

FILED

FEB 21 2002

201252110CC

William A. Shaw
Prothonotary

COMMONWEALTH OF PENNSYLVANIA:

SS:

COUNTY OF CLEARFIELD

I, R. STUART AUBER, BEING FIRST DULY SWORN AND ACCORDING TO
LAW, DEPOSES AND SAYS:

1. THAT HE IS A CONSTABLE FOR THE COUNTY OF CLEARFIELD
AND THE STATE OF PENNSYLVANIA, AND NOT A PARTY TO THE
WITHIN ACTION.

2. THAT ON THE 24 DAY OF JAN, 2002, HE SERVED A
TRUE AND CORRECT COPY OF A WRIT OF SUMMONS UPON
SAMUEL B. BARLEY, MD, AT 145 HOSPITAL AVE. SUITE 106,
IN THE CITY, BORO, VILLAGE OF DUBOIS, TOWNSHIP OF
CLEARFIELD, COUNTY OF PENNSYLVANIA,
THE DEFENDANT NAMED IN SAID DOCUMENT, BY THEN AND THERE
AT THE PLACE AND AND ON THE DATE NOTED ABOVE, DELIVERED TO
MARY BENNETT (RECEPTIONIST) A TRUE AND CORRECT COPY OF THE
SAID STATED DOCUMENTS. TIME OF THIS SERVICE WAS AT 1130
HOURS.


R. STUART AUBER, CONSTABLE
215 1/2 STATE STREET
CURWENSVILLE, PA 16833
(814) 236-1407

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA

ROBERT A. @MARY TIMKO@h/wMK

*

*

不

2

*

*

PLAINTIFF
VS
DEFENDANT

NO. 2002-00115-CD

DRMC

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA:

SS-

COUNTY OF CLEARFIELD

I, R. STUART AUBER, BEING FIRST DULY SWORN AND ACCORDING TO LAW, DEPOSES AND SAYS:

1. THAT HE IS A CONSTABLE FOR THE COUNTY OF CLEARFIELD
AND THE STATE OF PENNSYLVANIA, AND NOT A PARTY TO THE
WITHIN ACTION.

2. THAT ON THE 24 DAY OF JAN 2002, HE SERVED A
TRUE AND CORRECT COPY OF A WRIT OF SUMMONS UPON
DRMC, AT 100 HOSPITAL AVE.
IN THE CITY, BORO, VILLAGE OF DUBOIS, TOWNSHIP OF
_____, COUNTY OF CLEARFIELD, PENNSYLVANIA,
THE DEFENDENT NAMED IN SAID DOCUMENT, BY THEN AND THERE
AT THE PLACE AND AND ON THE DATE NOTED ABOVE, DELIVERED TO
ROBERT MSKEE(DIR. HUMAN RE~~A~~ TRUE AND CORRECT COPY OF THE
SAID STATED DOCUMENTS. TIME OF THIS SERVICE WAS AT 1145
HOURS.

R. STUART AUBER, CONSTABLE
215 1/2 STATE STREET
CURWENSVILLE, PA 16833
(814) 236-1407

FILED

500
FEB 21 2002
01252100
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT A. TIMKO and MARY TIMKO,
h/w,

Plaintiff,

vs.

SAMUEL B. BARLEY, M.D., and DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 2002-00115-CD

AFFIDAVIT OF SERVICE OF RULE FOR
COMPLAINT

Code:

Filed on behalf of defendants

Counsel of Record for These Parties:

David R. Johnson, Esquire
PA I.D. #26409

Thomson, Rhodes & Cowie, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED

FEB 25 2002

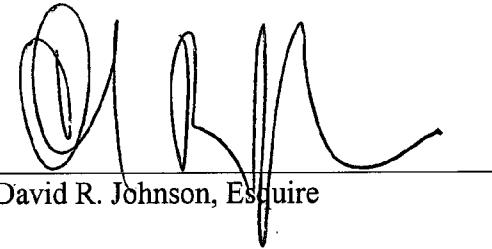
11:30 a.m.

William A. Shaw
Prothonotary

AFFIDAVIT OF SERVICE

Before me, the undersigned authority, personally appeared David R. Johnson, Esquire, who, being duly sworn, deposes and says that a true and correct copy of the Rule to File a Complaint in the above-captioned case was served upon plaintiff's counsel, Samuel Cohen, Esquire, Katz, Cohen & Price, P.C., 117 South 17th Street, Suite 2010, Philadelphia, PA 19103, by certified mail, return receipt requested, and that the same was received on his behalf on February 11, 2002 as shown by the return receipt attached hereto.

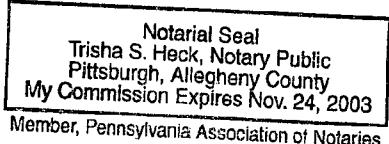
Respectfully submitted,



David R. Johnson, Esquire

Sworn to and subscribed before me
this 21st day of February, 2002.

Trisha S. Heck
Notary Public



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

Robert A. Timko
Mary Timko

Vs.
Samuel B. Barley MD
DuBois Regional Medical Center

Case No. #2002-00115-CD

RULE TO FILE COMPLAINT

TO: Robert A. Timko and Mary Timko, h/w

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.



William A. Shaw

William A. Shaw, Prothonotary

Dated: February 7, 2002

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Samuel Cohen, Esquire
Katz, Cohen & Price, P.C.
117 South 17th Street,
Suite 2010
Philadelphia, PA 19103

COMPLETE THIS SECTION ON DELIVERY	
A. Received by (Please Print Clearly)	B. Date of Delivery <i>M. Wray</i> <i>2/11/02</i>
C. Signature <i>X</i> <i>M. Wray</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
1. Article Addressed to:	
2. Article Number (Copy from service label) 7099 3220 0004-2147-9009	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

2. Article Number (Copy from service label)
7099 3220 0004-2147-9009

PS Form 3811, July 1999 Domestic Return Receipt **12502 - Timko** 102598-00 M-0932

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

- Sender: Please print your name, address, and ZIP+4 in this box •

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
10th Floor, Two Chateau Center
Pittsburgh, PA 15219

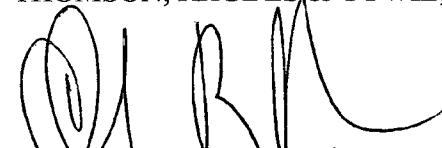
CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within AFFIDAVIT OF SERVICE OF RULE FOR COMPLAINT has been served upon the following counsel of record and same placed in the U.S. mails on this 21st day of Sept, 2002:

Samuel Cohen, Esquire
Katz, Cohen & Price, P.C.
117 South 17th Street, Suite 2010
Philadelphia, PA 19103

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.


David R. Johnson, Esquire
Attorneys for defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ROBERT A. TIMKO and : CIVIL DIVISION
MARY TIMKO, h/w :
vs. : NO. 2002-00115-CD
SAMUEL B. BARLEY, M.D. : Type of Pleading: COMPLAINT
and : Filed on Behalf of: Plaintiffs
DUBOIS REGIONAL MEDICAL : Counsel of Record for these Parties:
CENTER : Samuel Cohen, Esquire
: Attorney I.D. #27544
: Katz, Cohen & Price, P.C.
: 117 South 17th Street, Suite 2010
: Philadelphia, PA 19103
: (215) 636-0400

FILED

APR 08 2002

William A. Shaw
Prothonotary Cohen
L. Kell

KATZ, COHEN & PRICE, P.C.
By: SAMUEL COHEN, ESQUIRE
ATTORNEY I.D. NO.: 27544
117 SOUTH 17th STREET
SUITE 2010
PHILADELPHIA, PA 19103
(215) 636-0400

ATTORNEY FOR PLAINTIFFS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT A. TIMKO and
MARY TIMKO, h/w

CIVIL DIVISION

vs.

NO. 2002-00115-CD

SAMUEL B. BARLEY, M.D.
and
DUBOIS REGIONAL MEDICAL
CENTER

CIVIL ACTION COMPLAINT
NOTICE

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por teléfono a la oficina cuya dirección se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

LAWYER REFERRAL SERVICE
Pennsylvania Bar Association
P. O. Box 186
Harrisburg, Pennsylvania 17108
(800) 692 7375

KATZ, COHEN & PRICE, P.C.
By: SAMUEL COHEN, ESQUIRE
ATTORNEY I.D. NO.: 27544
117 SOUTH 17th STREET
SUITE 2010
PHILADELPHIA, PA 19103
(215) 636-0400

ATTORNEY FOR PLAINTIFFS

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

ROBERT A. TIMKO and : CIVIL DIVISION
MARY TIMKO, h/w :

vs. : NO. 2002-00115-CD

SAMUEL B. BARLEY, M.D. :
and :
DUBOIS REGIONAL MEDICAL :
CENTER :

:

COMPLAINT IN CIVIL ACTION

COMES NOW, Plaintiff, Robert A. Timko, by his counsel, Katz, Cohen & Price, P.C. and desiring to recover compensation for the injuries, losses and damages sustained by him as a result of the negligence and carelessness of Defendants aver in support thereof the following:

1. Plaintiff, Robert A. Timko is an adult individual who is a citizen and resident of the Commonwealth of Pennsylvania residing therein at 209 Morrison Street, DuBois, Pennsylvania (15801).
2. Defendant, Samuel B. Barley, M.D. is an adult individual who is a citizen and resident of the Commonwealth of Pennsylvania having at all times material hereto a regular place of business at the DuBois Medical Arts Building, 145 Hospital Avenue, DuBois, Pennsylvania.
3. Defendant, DuBois Regional Medical Center is a corporation organized and existing

under law of the Commonwealth of Pennsylvania having a principal place of business at 100 Hospital Avenue, DuBois, Pennsylvania.

4. At all times material hereto, Defendant, Samuel B. Barley, M.D. acted individually and by and through his authorized agents, servants, workmen and/or employees, each of whom was acting within the course and scope of their agency and/or employment with said Defendant.

5. At all times material hereto, Defendant, DuBois Regional Medical Center acted by and through its authorized agents, servants, workmen and/or employees, each of whom was acting within the course and scope of their agency and/or employment with said Defendant.

6. At all times material hereto, Defendant, Samuel B. Barley, M.D. was a physician licensed to practice medicine and surgery in the Commonwealth of Pennsylvania.

7. At all times material hereto, Defendant, Samuel B. Barley, M.D. held himself out to the public in general and to Plaintiff in particular as a skilled and competent physician specializing in the field of orthopaedic surgery.

8. At all times material hereto, Defendant, DuBois Regional Medical Center held itself out to the public at large and to Plaintiff in particular, as a hospital providing health care employing skilled and competent medical personnel for pay.

9. On or about March 15, 2000, Plaintiff sustained a fracture of the distal shaft of the left tibia and fibula.

10. On or about March 15, 2000, Plaintiff was seen in the emergency room of the Defendant, DuBois Regional Medical Center where he was examined, treated and referred to Defendant, Samuel B. Barley, M.D. for further treatment.

11. On or about March 21, 2000, Defendant, Samuel B. Barley, M.D. undertook the

care and treatment of Plaintiff with regard to the aforementioned fracture.

12. On or about March 21, 2000, Defendant, Samuel B. Barley, M.D. applied a long leg cast to the left leg of Plaintiff.

13. Defendant, Samuel B. Barley, M.D. removed the aforementioned long leg cast on or about May 2, 2000 and replaced it with a short leg cast.

14. On or about May 30, 2000, Defendant, Samuel B. Barley, M.D. again changed the cast.

15. On or about June 22, 2000, Defendant, Samuel B. Barley, M.D. removed the cast and placed Plaintiff in a cast boot.

16. Subsequent thereto, Plaintiff noted that he had pain, swelling, deformity and disfigurement of his left lower extremity which, upon information and belief were caused as a result of the negligence and carelessness of Defendants.

17. The negligence and carelessness of Defendant, Samuel B. Barley, M.D. consisted of some or all of the following:

- a) In failing to recognize the severity of Plaintiff's fracture of the distal shaft of the tibia and fibula;
- b) In failing to properly take and evaluate the history of Plaintiff's injury;
- c) In failing to properly administer medical and/or surgical care;
- d) In failing to properly reduce the Plaintiff's fracture of the distal shaft of the tibia and fibula;
- e) In failing to properly treat Plaintiff's fracture of the distal shaft of the tibia and fibula;

- f) In failing to apply a proper cast to the fracture site;
- g) In failing to properly treat the Plaintiff's fracture of the distal shaft of the tibia and fibula;
- h) In failing to ascertain that Plaintiff's fracture of the distal shaft of the tibia and fibula was not healing properly;
- i) In failing to discover that Plaintiff's fracture of the distal shaft of the tibia and fibula was not healing properly;
- j) In failing to properly treat a spiral fracture of the distal shaft of the tibia and fibula;
- k) In allowing the fracture bones to set in a non-anatomical position;
- l) In allowing Plaintiff to be weight bearing on his left lower extremity at an improper time;
- m) In failing to discover the deformity of Plaintiff's left lower extremity in improperly setting the fracture of Plaintiff's distal shaft of his left tibia and fibula;
- n) In failing to perform an open reduction of the fracture;
- o) In failing to perform an internal fixation of the fracture;
- p) In failing to use proper and appropriate medical judgment in the treatment of Plaintiff's fracture of the distal shaft of the tibia and fibula.

18. The injuries, losses and damages sustained by Plaintiff were caused as the result of the conduct of Defendant, DuBois Regional Medical Center in some or all of the following respects:

- a) In allowing an individual, to wit, Samuel B. Barley, M.D. to perform procedures

on the premises of the hospital without proper and appropriate credentials;

b) In allowing the person without proper skills to perform procedures on the premises of the hospital;

c) In failing to properly monitor the activities of Defendant, Samuel B. Barley, M.D.;

d) In being responsible for the conduct of Defendant, Samuel B. Barley, M.D. as set forth in paragraph 17 under a theory of Respondeat Superior, said allegations being incorporated herein by reference as fully as if same were set forth at length.

e) In failing to act or promulgate, or if enacted or if promulgated in failing to enforce sufficient rules and regulations relating to the treatment and care of patients in the condition of this Plaintiff as described above; and

f) In failing to provide adequate supervision of Defendant, Samuel B. Barley, M.D. to insure that proper hospital practices and procedures were followed.

19. By reason of the said wrongful acts of Defendants, Plaintiff has suffered various injuries, including, but not limited to, pain, swelling, deformity and disfigurement of the left lower extremity together with a severe shock to his nerves and nervous system, an aggravation and activation of pre-existing and dormant conditions and he was otherwise injured some or all of which injuries are, or may be serious or permanent.

20. As a further result of the aforementioned negligence, carelessness and recklessness of Defendants, Plaintiff has sustained great physical pain, mental suffering and humiliation and will continue to endure said pain, suffering, mental anguish and humiliation for an indefinite time in the future.

21. As a further result of the aforementioned negligence, carelessness and recklessness of Defendants, Plaintiff has been obliged and will in the future be obliged to expend various sums of money for medicine and medical attention in and about endeavoring to treat and cure his injuries much to his financial damage and loss.

22. As a further result of the aforementioned negligence, carelessness and recklessness of Defendants, Plaintiff has been unable to follow his usual occupation and will be unable to follow same for an indefinite time in the future, has lost the emoluments which would have come to him through his employment and has suffered an impairment of his earning capacity and power, all of which losses are or may be serious and permanent in nature.

23. As a further result of the aforementioned negligence, carelessness and recklessness of Defendants, Plaintiff has suffered a loss of the enjoyment of his usual duties, life's pleasures and activities, all to his great detriment and loss and will continue to do so for an indefinite time in the future.

24. As a further result of the aforementioned negligence, carelessness and recklessness of Defendants, Plaintiff sustained sever deformity and disfigurement to his left lower extremity much to his great humiliation and loss.

25. As a further result of the aforementioned negligence, carelessness and recklessness of Defendants, Plaintiff has or may hereinafter incur various other expenses or losses and may continue to incur same for an indefinite time in the future.

WHEREFORE, Plaintiff, Robert A. Timko demands judgment in his favor and against Defendants for a sum in excess of Twenty Thousand Dollars (\$20,000.00).

KATZ, COHEN & PRICE, P.C.

By:


SAMUEL COHEN

VERIFICATION

I, Robert A. Timko, verify that I am the Plaintiff in this matter and that the averments of fact set forth in the foregoing Civil Action Complaint are true and correct to the best of my personal knowledge, information and belief. I understand that this Verification is made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Robert A. Timko
ROBERT A. TIMKO

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT A. TIMKO and MARY TIMKO,
h/w,

Plaintiffs,

vs.

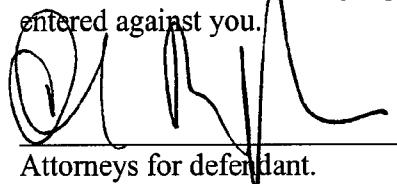
SAMUEL B. BARLEY, M.D., and DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

NOTICE TO PLEAD:

To: Plaintiff

You are hereby notified to file a written response to the enclosed ANSWER AND NEW MATTER within twenty (20) days of service hereof or a default judgment may be entered against you.



Atorneys for defendant.

CIVIL DIVISION

No. 2002-00115-CD

ANSWER AND NEW MATTER

Code:

Filed on behalf of DuBois Regional Medical Center

Counsel of Record for These Parties:

David R. Johnson, Esquire
PA I.D. #26409

Thomson, Rhodes & Cowie, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED

APR 25 2002
millsinck
William A. Shaw
Prothonotary

ANSWER AND NEW MATTER

NOW COMES, DuBois Regional Medical Center, by its attorneys, Thomson, Rhodes & Cowie, P.C., and files the following answer and new matter in response to plaintiffs' complaint.

ANSWER

1. Defendant is advised and therefore believes and avers that the Pennsylvania Rules of Civil Procedure do not require it to set forth its answers and defenses except as stated below.
2. If and to the extent that any factual averment in the complaint is not responded to in the paragraphs which follow, said allegation is denied for the reason that, after a reasonable investigation, this defendant lacks sufficient information or knowledge upon which to form a belief as to the truth of the averments therein.
3. Each of the paragraphs of this answer should be read so as to incorporate by reference each of the other paragraphs of this answer.
4. The following paragraph of the complaint is denied for the reason that, after a reasonable investigation, this defendant has insufficient information or knowledge to form a belief as to the truth of the averments therein: 1.

5. The following paragraphs of the complaint are admitted: 2, 6, 9, 10, 11, 14 and 15.

6. Paragraph 3 of the complaint is denied as stated. To the contrary, defendant is a non-profit healthcare institution located at the address specified in the complaint.

7. Paragraphs 4 and 5 of the complaint are denied for the reason that, after a reasonable investigation, this defendant has insufficient information or knowledge to form a belief as to the truth of the averments therein, because the identify of the alleged agents, servants and/or employees is not specified or disclosed.

8. Paragraphs 7 and 8 of the complaint are denied for the reason that neither defendant undertook any particular acts to "hold itself out" as specifically alleged in these paragraphs and, in particular, did nothing to "hold itself out" to plaintiff as specifically alleged in these paragraphs.

9. Paragraphs 12, 16, 17 (including sub-paragraphs (a) through (p)), 18 (including sub-paragraphs (a) through (f)), and 19 through 25 of the complaint are denied.

10. Paragraph 13 of the complaint is admitted insofar as it avers that Dr. Barley removed a long leg cast on or about May 2, 2000 and replaced it with a short leg cast.

WHEREFORE, plaintiffs' complaint should be dismissed and judgment should be entered in favor of this defendant.

NEW MATTER

11. Section 606 of the Healthcare Services Malpractice Act of Pennsylvania, 40 P.S. §1301.606 provides that in "the absence of a special contract in writing, a healthcare provider is neither a warrantor nor a guarantor of a cure." This provision is pleaded as an affirmative defense insofar as there was no special contract in writing in this case.

12. This defendant raises all affirmative defenses set forth or available as a result of the provisions in the Healthcare Services Malpractice Act of Pennsylvania, 40 P.S. §1301 et seq. and/or House Bill 1802 (2002).

13. This defendant pleads the applicability of the Pennsylvania Comparative Negligence Statute as an affirmative defense.

14. While denying all negligence and all liability, this defendant avers that if it is found to have been negligent in any respect, any liability resulting therefrom would be diminished or barred by operation of the Pennsylvania Comparative Negligence Statute.

15. Plaintiffs' complaint fails to state any cause of action against this defendant.

16. Defendant pleads the doctrines of intervening and superseding causes as affirmative defenses.

17. Defendant pleads "payment" as an affirmative defense to the extent that any amount less than the amount billed for medical services to the plaintiffs after the alleged incident was accepted as payment in full.

18. Defendant is not liable for any pre-existing medical conditions which caused the claimed injuries and/or damages.

19. To the extent that evidence develops during discovery to demonstrate the application of the two schools of thought doctrine, defendant pleads that doctrine as providing a complete defense for any alleged negligence and/or malpractice.

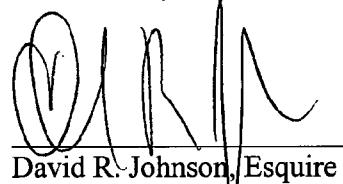
20. This defendant raises all affirmative defenses set forth or available as a result of the provisions of House Bill 1802 which became Pennsylvania law in 2002.

WHEREFORE, plaintiffs' complaint should be dismissed and judgment should be entered in favor of this defendant.

JURY TRIAL DEMANDED.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for DuBois Regional Medical
Center, one of the defendants.

VERIFICATION

I, Greg J. Volpe in the capacity of
Risk Manager at DuBois Regional Medical Center, have read the
foregoing ANSWER AND NEW MATTER. The statements therein are correct to the
best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.
§4904 relating to unsworn falsification to authorities, which provides that if I make
knowingly false averments I may be subject to criminal penalties.

Greg J. Volpe

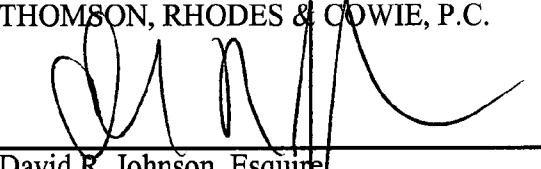
Date: 4-19-02

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within ANSWER AND NEW MATTER has been served upon the following counsel of record and same placed in the U.S. Mails on this 23rd day of April, 2002:

Samuel Cohen, Esquire
Katz, Cohen & Price, P.C.
117 South 17th Street, Suite 2010
Philadelphia, PA 19103

THOMSON, RHODES & COWIE, P.C.


David R. Johnson, Esquire
Attorneys for DuBois Regional Medical
Center, one of the defendants.

KATZ, COHEN & PRICE, P.C.
By: **SAMUEL COHEN**
ATTORNEY I.D. NO.: 27544
117 SOUTH 17th STREET
SUITE 2010
PHILADELPHIA, PA 19103
(215) 636-0400

ATTORNEY FOR PLAINTIFF

ROBERT A. TIMKO and
MARY TIMKO, h/w

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

NO.: 2002-00115-CD

SAMUEL B. BARLEY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER:

REPLY TO NEW MATTER OF DEFENDANT,
DUBOIS REGIONAL MEDICAL CENTER

11-20. Denied. The averments contained in these paragraph constitute conclusions of law for which no response is required under and pursuant to the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Plaintiff prays this Honorable Court enter judgment in their favor and against Defendant.

KATZ, COHEN & PRICE, P.C.


SAMUEL COHEN

Dated: 5/1/02

FILED

MAY 06 2002

111030 acc atty Cohen
William A. Shaw
Prothonotary

VERIFICATION

I, Samuel Cohen, verify that I am the attorney for Plaintiff's Robert A. Timko and Mary Timko, h/w, named herein, and that the averments of fact set forth in the foregoing Reply to New Matter of Defendant Dubois Regional Medical Center are true and correct to the best of my knowledge, information and belief. I understand that this Verification is made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.



SAMUEL COHEN

Dated: 5/1/02

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT A. TIMKO and MARY TIMKO,
h/w,

Plaintiffs,

vs.

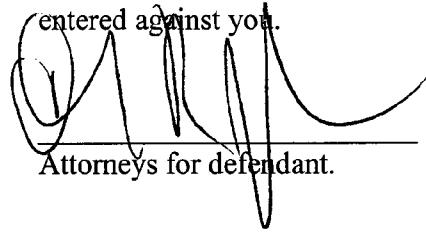
SAMUEL B. BARLEY, M.D., and DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

NOTICE TO PLEAD:

To: Plaintiff

You are hereby notified to file a written response to the enclosed ANSWER AND NEW MATTER within twenty (20) days of service hereof or a default judgment may be entered against you.



Attorneys for defendant.

CIVIL DIVISION

No. 2002-00115-CD

ANSWER AND NEW MATTER

Code:

Filed on behalf of Samuel B. Barley, M.D.

Counsel of Record for These Parties:

David R. Johnson, Esquire
PA I.D. #26409

Thomson, Rhodes & Cowie, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED

MAY 06 2002

M11431ncl

William A. Shaw
Prothonotary

E
KOB

ANSWER AND NEW MATTER

NOW COMES, Samuel Barley, M.D., by his attorneys, Thomson, Rhodes & Cowie, P.C., and files the following answer and new matter in response to plaintiffs' complaint.

ANSWER

1. Defendant is advised and therefore believes and avers that the Pennsylvania Rules of Civil Procedure do not require him to set forth his answers and defenses except as stated below.
2. If and to the extent that any factual averment in the complaint is not responded to in the paragraphs which follow, said allegation is denied for the reason that, after a reasonable investigation, this defendant lacks sufficient information or knowledge upon which to form a belief as to the truth of the averments therein.
3. Each of the paragraphs of this answer should be read so as to incorporate by reference each of the other paragraphs of this answer.
4. The following paragraph of the complaint is denied for the reason that, after a reasonable investigation, this defendant has insufficient information or knowledge to form a belief as to the truth of the averments therein: 1.

5. The following paragraphs of the complaint are admitted: 2, 6, 9, 10, 11, 14 and 15.

6. Paragraph 3 of the complaint is denied as stated. To the contrary, defendant is a non-profit healthcare institution located at the address specified in the complaint.

7. Paragraphs 4 and 5 of the complaint are denied for the reason that, after a reasonable investigation, this defendant has insufficient information or knowledge to form a belief as to the truth of the averments therein, because the identify of the alleged agents, servants and/or employees is not specified or disclosed.

8. Paragraphs 7 and 8 of the complaint are denied for the reason that neither defendant undertook any particular acts to "hold itself out" as specifically alleged in these paragraphs and, in particular, did nothing to "hold itself out" to plaintiff as specifically alleged in these paragraphs.

9. Paragraphs 12, 16, 17 (including sub-paragraphs (a) through (p)), 18 (including sub-paragraphs (a) through (f)), and 19 through 25 of the complaint are denied.

10. Paragraph 13 of the complaint is admitted insofar as it avers that Dr. Barley removed a long leg cast on or about May 2, 2000 and replaced it with a short leg cast.

WHEREFORE, plaintiffs' complaint should be dismissed and judgment should be entered in favor of this defendant.

NEW MATTER

11. Section 606 of the Healthcare Services Malpractice Act of Pennsylvania, 40 P.S. §1301.606 provides that in "the absence of a special contract in writing, a healthcare provider is neither a warrantor nor a guarantor of a cure." This provision is pleaded as an affirmative defense insofar as there was no special contract in writing in this case.

12. This defendant raises all affirmative defenses set forth or available as a result of the provisions in the Healthcare Services Malpractice Act of Pennsylvania, 40 P.S. §1301 et seq. and/or House Bill 1802 (2002).

13. This defendant pleads the applicability of the Pennsylvania Comparative Negligence Statute as an affirmative defense.

14. While denying all negligence and all liability, this defendant avers that if it is found to have been negligent in any respect, any liability resulting therefrom would be diminished or barred by operation of the Pennsylvania Comparative Negligence Statute.

15. Plaintiffs' complaint fails to state any cause of action against this defendant.

16. Defendant pleads the doctrines of intervening and superseding causes as affirmative defenses.

17. Defendant pleads "payment" as an affirmative defense to the extent that any amount less than the amount billed for medical services to the plaintiffs after the alleged incident was accepted as payment in full.

18. Defendant is not liable for any pre-existing medical conditions which caused the claimed injuries and/or damages.

19. To the extent that evidence develops during discovery to demonstrate the application of the two schools of thought doctrine, defendant pleads that doctrine as providing a complete defense for any alleged negligence and/or malpractice.

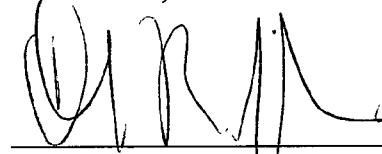
20. This defendant raises all affirmative defenses set forth or available as a result of the provisions of House Bill 1802 which became Pennsylvania law in 2002.

WHEREFORE, plaintiffs' complaint should be dismissed and judgment should be entered in favor of this defendant.

JURY TRIAL DEMANDED.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for Samuel Barley, M.D., one of
the defendants.

VERIFICATION

I, Samuel Barley, M.D., have read the foregoing ANSWER AND NEW MATTER. The statements therein are correct to the best of my personal knowledge or information and belief.

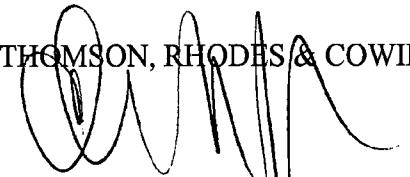
This statement and verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Samuel B. Barley
Date: 4/29/02

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within ANSWER AND NEW MATTER has been served upon the following counsel of record and same placed in the U.S. Mails on this 3rd day of May, 2002:

Samuel Cohen, Esquire
Katz, Cohen & Price, P.C.
117 South 17th Street, Suite 2010
Philadelphia, PA 19103

THOMSON, RHODES & COWIE, P.C.


David R. Johnson, Esquire
Attorneys for Samuel Barley, M.D., one of
the defendants.

KATZ, COHEN & PRICE, P.C.
By: SAMUEL COHEN
ATTORNEY I.D. NO.: 27544
117 SOUTH 17th STREET
SUITE 2010
PHILADELPHIA, PA 19103
(215) 636-0400

ATTORNEY FOR PLAINTIFF

ROBERT A. TIMKO and : COURT OF COMMON PLEAS
MARY TIMKO, h/w : CLEARFIELD COUNTY
vs. :
SAMUEL B. BARLEY, M.D. and : NO.: 2002-00115-CD
DUBOIS REGIONAL MEDICAL CENTER:

PRAECLPICE TO SUBSTITUTE VERIFICATION

TO THE PROTHONOTARY:

Kindly substitute Samuel Cohen's Verification with that of Plaintiffs , Robert A. Timko and Mary Timko h/w to Plaintiffs' Reply to New Matter of Defendant, Court of Common Pleas, County of Clearfield which was filed with the Court on May 6, 2002.

FILED

MAY 28 2002

m11053bm/ncc
William A. Shaw
Prothonotary

KATZ, COHEN & PRICE

SAMUEL COHEN

DATED: 5/22/02

VERIFICATION

I, Robert A. Timko, verify that I am the Plaintiff in this matter and that the averments of fact set forth in the foregoing Reply to New Matter of Defendant Dubois Regional Medical Center are true and correct to the best of my personal knowledge, information and belief. I understand that this Verification is made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.



ROBERT A. TIMKO

Dated: 5-6-2

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT A. TIMKO and MARY TIMKO,
h/w,

Plaintiff,

vs.

SAMUEL B. BARLEY, M.D., and DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 2002-00115-CD

MOTION TO COMPEL

Code:

Filed on behalf of defendants

Counsel of Record for These Parties:

David R. Johnson, Esquire
PA I.D. #26409

Thomas B. Anderson, Esquire
PA I.D. #79990

Thomson, Rhodes & Cowie, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED

SEP 13 2002

M 13210cc atty Anderson
William A. Shaw
Prothonotary

MOTION TO COMPEL

NOW COME the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following Motion to Compel and in support thereof state as follows:

1. On April 4, 2002, defendants served interrogatories and a request for production of documents upon plaintiffs' counsel.
2. To date, no responses have been received.
3. Plaintiffs' answers to interrogatories and responses to requests for production of documents are necessary in order for the defendants to properly defend against the instant action.

WHEREFORE, the defendants respectfully request that this Honorable Court issue an order compelling plaintiffs to file full and complete answers to interrogatories and responses to requests for production of documents within twenty (20) days or suffer such sanctions as this court may impose.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Thomas B. Anderson, Esquire
Attorneys for the defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the MOTION TO COMPEL has been served by United States, postage pre-paid mail, this 10th day of September, 2002, upon the following:

Samuel Cohen, Esquire
Katz, Cohen & Price, P.C.
117 South 17th Street, Suite 2010
Philadelphia, PA 19103

THOMSON, RHODES & COWIE, P.C.

Thomas B. Anderson
David R. Johnson, Esquire
Thomas B. Anderson, Esquire
Attorneys for the defendants.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT A. TIMKO and MARY TIMKO, CIVIL DIVISION
h/w,
No. 2002-00115-CD
Plaintiff,

vs.

SAMUEL B. BARLEY, M.D., and DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

ORDER OF COURT

AND NOW on this _____ day of _____, 2002, it is hereby
ORDERED, ADJUGED and DECREED that oral argument on defendants' motion to compel is
scheduled for the _____ day of _____, 2002, at _____ a.m./p.m.
before Judge _____ in Courtroom No. _____ of the Clearfield County
Courthouse.

BY THE COURT:

J.

CX

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT A. TIMKO and MARY TIMKO,
h/w,

Plaintiffs,

vs.

SAMUEL B. BARLEY, M.D., and DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 2002-00115-CD

MOTION TO COMPEL

Code:

Filed on behalf of defendants

Counsel of Record for These Parties:

David R. Johnson, Esquire
PA I.D. #26409

Thomas B. Anderson, Esquire
PA I.D. #79990

Thomson, Rhodes & Cowie, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED

MAY 24 2004

William A. Shaw
Prothonotary/Clerk of Courts

MOTION TO COMPEL

NOW COME DuBois Regional Medical Center and Samuel B. Barley, M.D., defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following motion to compel plaintiffs to answer expert interrogatories and/or produce expert reports, averring as follows:

1. This is a professional liability action which was initiated by the plaintiff in January 2002.

2. In April 2002, defendants directed interrogatories and requests for production to the plaintiff, which requested that they provide to the defendants any expert testimony which they have. The questions regarding experts were interrogatories 58 through 61. The pages of the interrogatories (22 through 24) containing these questions is attached hereto as Exhibit "A".

3. On August 30, 2002, plaintiffs responded to the interrogatories. With regard to interrogatory 58, inquiring about experts, plaintiff stated: "This has not yet been determined by counsel." All other questions pertaining to the experts reference the answer to interrogatory 58. A copy of plaintiffs' answers to interrogatories is attached hereto as Exhibit "B".

4. Plaintiffs have not supplemented their answers to interrogatories nor provided any expert reports to the defendants.

5. Depositions of the defendant physician and of the plaintiffs were taken long ago.

6. Plaintiffs' failure to provide full and complete responses to defendants' outstanding expert interrogatories place plaintiffs in direct violation of Pa. R.C.P. 4003.5 and 4007.4.

7. The general rule relating to the discovery of experts and their testimony, and more specifically the discovery of the facts and opinions underlying such testimony, is contained at Pa. R.C.P. 4003.5, which provides, in pertinent part, as follows:

(a) Discovery of facts known and opinions held by an expert, otherwise discoverable under the provisions of Rule 4003.1 and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:

(1) A party may through interrogatories require

(a) Any other party to identify each person whom the other party expects to call as an expert witness at trial **and to state the subject matter on which the expert is expected to testify and**

(b) The other party to have each expert so identified by him state **the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.** The party answering the interrogatories may file as his answer **a report of the expert or have the interrogatories answered by his expert.** The answer or separate report shall be signed by the expert.

...

(b) **If the identity of an expert witness is not disclosed in compliance with subdivision (a)(1) of this rule, he shall not be permitted to testify on behalf of the defaulting party at the trial of the action.** However, if the failure to disclose the identity of the witness is the result of extenuating circumstances beyond the control of the defaulting party, the court may grant a continuance or other appropriate relief.

See Pa. R.C.P. 4003.5 (emphasis added).

8. Pa. R.C.P. 4007.4 places an **affirmative and automatic obligation** on plaintiffs to seasonably supplement all responses to discovery requests seeking expert information and/or reports such as that at issue herein.

9. In Sindler v. Goldman, 309 Pa. Super. 7, 454 A.2d 1054 (1982), the Superior Court discussed the policy notions underlying the rules relating to the discovery of expert information as follows:

"The purpose of the discovery rules is to prevent surprise and unfairness and to allow a trial on the merits. When expert testimony is involved, it is **even more crucial** that surprise be prevented, since the attorneys will not have the requisite knowledge of the subject on which to effectively rebut unexpected testimony. By allowing for early identity of expert witnesses and their conclusions, the opposing side can prepare to respond, appropriately instead of trying to match years of expertise on the spot. **Thus, the rule serves as more than a procedural technicality; it provides a shield to prevent the unfair advantage of having a surprise witness testify."**

See Sindler, supra, 454 A.2d at 1056 (emphasis added).

10. Because of plaintiffs' failure to provide responses to the expert interrogatories, defendants are unduly prejudiced in their ability to prepare a defense to plaintiffs' claims.

11. Pursuant to Pennsylvania Rule of Civil Procedure 4019(a)(1), the court may make an appropriate order if: "(i) a party fails to serve answer, sufficient answers or objections to written interrogatories under Rule 4005", or "(vii) a party fails to respond to a request for production made under Rule 4009."

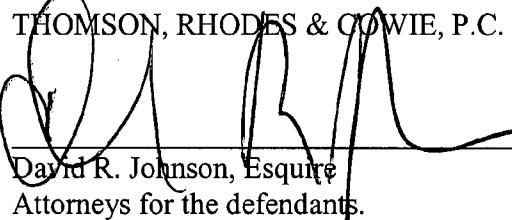
12. When acting under Pa. R.C.P. 4019(a), the court may make "an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or **prohibiting him from introducing into evidence designated documents, things or testimony**, or from introducing testimony of physical or mental condition." See Pa. R.C.P. 4019(c)(2) (emphasis added).

13. Moving defendants respectfully request this Honorable Court issue an order requiring plaintiffs to provide full and complete supplemental responses to the outstanding discovery requests and/or produce any and all expert report(s) (medical and non-medical) that plaintiffs intend to utilize at the trial of this matter within 30 days, or be precluded from producing, utilizing and/or mentioning any expert reports (or other information) against moving defendants at the trial of this matter.

WHEREFORE, moving defendants respectfully request this Honorable Court to enter an order attached to this motion.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.


David R. Johnson, Esquire
Attorneys for the defendants.

56. Identify by name and present address any witnesses, or any persons who possess facts or knowledge, or who are believed by you to have information relevant to the occurrence of the matter which forms the basis for the complaint in this case.

ANSWER:

57. Provide a summary of the information believed to be known by each person listed in the preceding interrogatory.

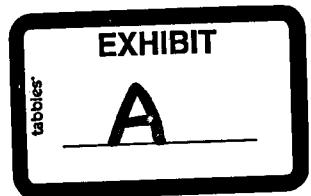
ANSWER:

58. State the name and present address of any person who you or your attorneys expect to call as an expert, opinion or custom witness at time of trial on any subject.

ANSWER:

59. For each person named in response to the preceding interrogatory, supply the following information:

- (a) State the subject matter on which the person is expected to testify;
- (b) State the substance of facts and opinions to which the person is expected to testify;
- (c) State a summary of the grounds for each opinion which the person is expected to express.



Note: Answers to this interrogatory should be signed by each named person or answered in a report signed by the named person in accordance with the Pennsylvania Rules of Civil Procedure.

ANSWER:

60. For each person identified in responding to the preceding two interrogatories, supply the following information:

- (a) Describe with particularity all information and documents submitted to the named person for the purpose of preparing that person to express opinions concerning the subject matter of this litigation;
- (b) Describe with particularity all information and documents relied upon by the named person in forming his opinion concerning the subject matter of this litigation which have not been identified in response to the preceding sub-interrogatory;
- (c) Furnish a curriculum vitae or equivalent statement of the educational background, professional activities and employment, if any, of each such person;
- (d) If the person is a medical practitioner, provide the following information:
 1. State the individual's medical specialty, if any;
 2. If the following information has not been provided in response to the preceding sub-interrogatories, state whether the individual has been certified for practice in any medical specialty and, if he has, identify

each board or other organization which has certified the individual;

3. If the following information has not been provided in response to the preceding sub-interrogatories, identify each hospital staff affiliation of the individual and describe the character of the affiliation (e.g., courtesy, active, emeritus, etc.). Also, supply the address of each hospital;

(e) List all publications by the named person upon subjects pertinent to the subject matter of this litigation and his expected testimony.

ANSWER:

61. Identify by date and author any reports issued to you, your attorney or representatives by any person identified in response to the preceding three interrogatories.

ANSWER:

62. State whether you have been a party plaintiff or a party defendant to any lawsuits or to any arbitration proceedings or to any government agency actions, other than the instant case. If you have, supply the following information with respect to each such action:

(a) The name and address of the original parties;

48. See attached medical records, reports and bills. Investigation continuing

1) Record from Dubois Regional Medical Center for admission 3/15/00; Medical records from BuBois Regional Medical Center for admission 7/02/00; Records from Orthopedic Clinic of DRMC (undated); Records from DRMC for admission 6/25/01; Records from DRMC for admission 1/12/02, Office notes from Dr. Barley dated 3/21/00; 4/4/00, 5/2/00 and 6/20/00; X-ray records from DRMC dated 3/15/00, 4/04/00, 5/2/00 and 5/30/00; Records from DRMC dated 3/21/00; Hospital charge slip from Dr. Barley dated 3/16/00; Emergency Department record dated 3/16/00, Physician Access Face Sheet dated 3/16/00; Barley Clinic records dated 6/20/00, 5/30/00, 5/02/00, 4/04/00 and 3/21/00; Return to work notice dated 3/21/00 from Dr. Barley; DRMC records dated 3/15/00; DRMC record dated 8/20/98; Records from DuBois Regional Medical Center dated 9/7/96; Records from DuBois Regional Medical Center 1/16/96; Records from DuBois Regional Medical Center for treatment rendered 12/05/92; Records from DuBois Regional Medical Center for treatment rendered 3/8/92.

49. Plaintiff has x-rays which were provided by Defense Counsel

50. No

51. Not applicable

52. None known to Plaintiff

53. Not applicable

54. None

55. Not applicable

56. See medical records

57. See medical records

58. This has not yet been determined by counsel



59. See 58

60. See 58

61. See 58

62. No

63. None known at this time; investigation continuing

64. See 63

65. Counsel does not understand this question

66. See 65

67. No

68. Not applicable

69. (a) 2001

(b) Plaintiff believes it was in Altoona

(c) Yes

(d) Somewhere between \$700.00 or \$800.00

(e) Advance Auto Parts 626 Liberty Boulevard DuBois PA

(f) Plaintiff was laid off

(g) There was a factual dispute after which it was learned the Plaintiff had not done anything wrong and he was rehired

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the document has been served by United States, postage pre-paid mail, this 1947 day of May, 2004, upon the following:

Samuel Cohen, Esquire
Katz, Cohen & Price, P.C.
117 South 17th Street, Suite 2010
Philadelphia, PA 19103

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for the defendants.

FILED acc

10 AM
MAY 24 2004

Att'y Johnson

William A. Shaw
Prothonotary/Clerk of Courts

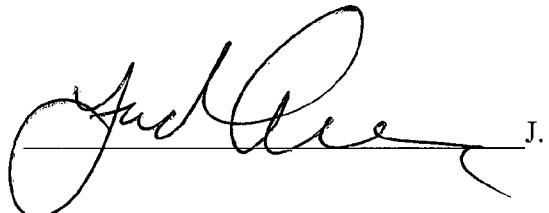
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT A. TIMKO and MARY TIMKO,) CIVIL DIVISION
h/w,)
Plaintiff,) No. 2002-00115-CD
vs.)
SAMUEL B. BARLEY, M.D., and DUBOIS)
REGIONAL MEDICAL CENTER,)
Defendants.)

ORDER OF COURT

AND NOW, this 26 day of May, 2004, upon consideration of defendants' motion to compel, it is hereby ORDERED that plaintiffs shall produce and serve on the defendants, within 60 FTA days from the date hereof, full and complete answers or expert reports to defendants' expert interrogatories or be barred from producing expert testimony at the time of trial.

BY THE COURT:



J.

Order
change

FILED

MAY 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

• 6

FILED 2cc
MAY 3 2004 BY Amy Johnson
MAY 26 2004 ER
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT A. TIMKO and MARY TIMKO,) CIVIL DIVISION
h/w,)
Plaintiff,) No. 2002-00115-CD
vs.)
SAMUEL B. BARLEY, M.D., and DUBOIS)
REGIONAL MEDICAL CENTER,)
Defendants.)

ORDER OF COURT

AND NOW on this _____ day of _____, 2004, it is hereby
ORDERED, ADJUGED and DECREED that oral argument on defendants' motion to compel is
scheduled for the _____ day of _____, 2004, at _____ a.m./p.m.
before Judge _____ in Courtroom No. _____ of the Clearfield County
Courthouse.

BY THE COURT:

J.

KATZ, COHEN & PRICE, P.C.
By: **SAMUEL COHEN**
ATTORNEY I.D. NO.: 27544
117 SOUTH 17th STREET
SUITE 2010
PHILADELPHIA, PA 19103
(215) 636-0400

ATTORNEY FOR PLAINTIFF

ROBERT A. TIMKO and
MARY TIMKO, h/w

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

NO.: 2002-00115-CD

SAMUEL B. BARLEY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER:

FILED

JUN 03 2004

PLAINTIFF'S REPLY TO MOTION TO COMPEL

William A. Shaw
Prothonotary

COME NOW Plaintiffs Robert A. Timko and Mary Timko, by their counsel, Katz, Cohen & Price and desiring to oppose the Motion to Compel filed on behalf of Defendants DuBois Regional Medical Center and Samuel B. Barley, M.D. aver in support thereof the following:

1-4. Admitted.

5. Denied. Depositions of Defendant physician and of Plaintiff were taken on

June 5, 2003. Plaintiff denies the characterization being "long ago". Strict proof of Defendants' averments is demanded if deemed relevant at trial.

6. Denied. It is denied that Plaintiffs have failed to file full and complete

responses to Defendants' outstanding expert Interrogatories. To the contrary, Plaintiffs have supplied that information which is currently in their possession. Plaintiffs do not have additional material responsive to Defendants' discovery requests presently. Upon receipt of additional information, the discovery responses will be supplemented. To the extent that the averments contained in this paragraph contained in this paragraph constitute conclusions of law, no response is required under and pursuant to the Pennsylvania Rules of Civil Procedure.

7-9. Denied. The averments contained in this paragraph were based upon a language which speaks for itself. Strict proof of Defendants' averments is demanded if deemed relevant at trial.

10. Denied. Defendants have not been prejudiced in any respect as there is no supplemental presently in possession of Plaintiff and the matter has not yet been listed for trial. Defendant has not set forth any prejudice but merely makes a boilerplate averment.

11-12. Denied. The averments contained in this paragraph are based upon a writing language which speaks for itself. Strict proof of Defendants' averments is demanded if deemed relevant at trial.

13. This paragraph does not require a response as it sets forth Defendants' request for relief.

WHEREFORE PLAINTIFFS pray this Honorable Court deny Defendants' Motion.

NEW MATTER

14. Plaintiffs Robert A. Timko and Mary Timko incorporate herein by reference each and every averment contained in paragraphs 1-13 as though same were fully set forth herein at length.

15. Plaintiffs have supplied responses to Defendants' discovery requests to the full extent as possible as of this date.

16. Plaintiffs intend to continue to supply supplemental responses to Defendants' requests as discoverable information becomes available to Plaintiffs.

17. Plaintiffs have not withheld any discoverable material from Defendants in this matter and have provided full and complete responses to discovery to the extent possible as of this date.

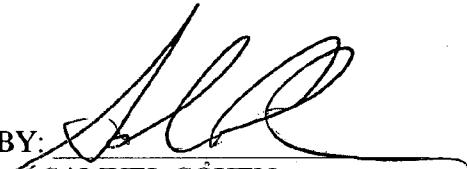
18. In view of Plaintiffs' compliance with all of the Pennsylvania Rules of Civil Procedure regarding discovery, sanctions should not be entered.

19. Plaintiffs have not violated any discovery Orders in this matter and, this is the first Motion pertaining to discovery filed in this matter.

20. Defendants have not identified any prejudice which they have suffered as a result of any conduct of the parts of Plaintiffs as there is none.

WHEREFORE, Plaintiffs pray this Honorable Court deny the Motion to Compel filed on behalf of Defendants.

KATZ, COHEN & PRICE, P.C.

BY: 
SAMUEL COHEN

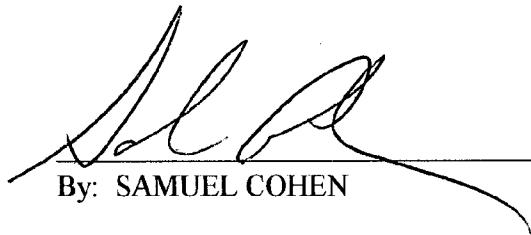
DATED: 6/1/04

CERTIFICATION OF SERVICE

I, Samuel Cohen, certify that a true and correct copy of the within Plaintiffs' Reply to Motion to Compel was forwarded via regular mail through the United States Postal Service on June 1, 2004:

To: David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

KATZ, COHEN & PRICE, P.C.



By: SAMUEL COHEN

FILED

M 1:45 PM
JUN 03 2004
EAS

William A. Shaw
Prothonotary

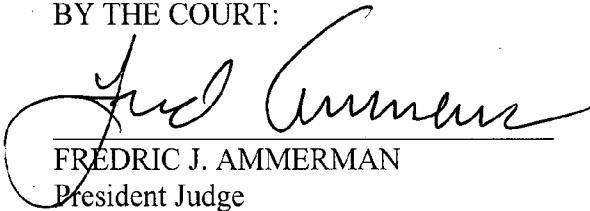
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

ROBERT A. TIMKO and MARY :
TIMKO, h/w :
vs. : No. 02-115-CD
SAMUEL B. BARLEY, M.D. and :
DUBOIS REGIONAL MEDICAL :
CENTER :
:

O R D E R

AND NOW, this 8 day of June, 2004, upon consideration of Plaintiff's Reply to Motion to Compel in the above matter, it is the ORDER of the Court that argument on said Motion has been scheduled for the 8 day of July, 2004, at 2:30 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED

JUN 08 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED
of 3:50-cv-01254
JUN 08 2004
William A. Shaw
Prothonotary/Clerk of Courts
3cc & Service memo
cc: Amy Cohen
FEC

KATZ, COHEN & PRICE, P.C.
By: SAMUEL COHEN
ATTORNEY I.D. NO.: 27544
117 SOUTH 17th STREET
SUITE 2010
PHILADELPHIA, PA 19103
(215) 636-0400

ATTORNEY FOR PLAINTIFF

ROBERT A. TIMKO and	:	COURT OF COMMON PLEAS
MARY TIMKO, h/w	:	CLEARFIELD COUNTY
vs.	:	
SAMUEL B. BARLEY, M.D. and	:	NO.: 2002-00115-CD
DUBOIS REGIONAL MEDICAL CENTER	:	

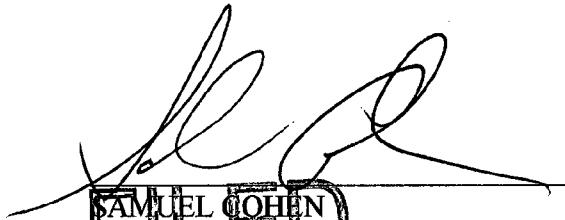
PRAECIPE TO WITHDRAW WITH PREJUDICE

TO THE PROTHONOTARY:

Kindly withdraw the captioned matter without prejudice upon payment of your costs only.

KATZ, COHEN & PRICE, P.C.

Dated: 2/9/05


SAMUEL COHEN
FILED
M 2/08/05 1014 Card of
Due to court
Copy to CJA
FEB 11 2005

William A. Shaw
Prothonotary

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

CIVIL DIVISION

**Robert A. Timko
Mary Timko**

**Vs. No. 2002-00115-CD
Samuel B. Barley MD
DuBois Regional Medical Center**

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on February 11, 2005, marked:

Discontinued, Settled and Ended with Prejudice

Record costs in the sum of \$80.00 have been paid in full by Attorney Cohen.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 11th day of February A.D. 2005.

William A. Shaw, Prothonotary

THE HOPKINS LAW FIRM

900 Beaver Drive, DuBois, Pennsylvania 15801
VOICE: (814) 375-0300 FAX: (814) 375-5035

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

SCOTT KRISE and NATALIE KRISE, :

Plaintiffs :

vs. :

No. 02-120 C.D.

RICHARD HERR, JEAN M. HERR,
CARL F. HEITMEYER and WANDA K.
HEITMEYER, and any heirs, persons
claiming, or who might claim title
title under the aforesaid defendants;
and any other person, persons, firms,
partnerships, or corporate entities who
might claim title to the premises
herein described,

ACTION TO QUIET TITLE

Defendants :

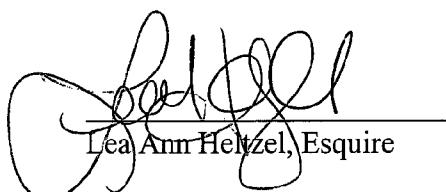
FILED

Sealed
JAN 23 2002
011541 no cc
William A. Shaw
Prothonotary

MOTION FOR PUBLICATION

AND NOW, this 23 day of January, 2002, an Affidavit having been executed and filed
on behalf of Scott Krise and Natalie Krise and that the whereabouts of Richard Herr, Jean M.
Herr, Carl F. Heitmeyer and Wanda K. Heitmeyer, their accumulative heirs, devisees,
administrators, executors, assigns, and all other person, persons, firms, partnerships, or corporate
entities in interest, are unknown.

The Plaintiffs, by their counsel, Lea Ann Heltzel, Esquire, requests the Court for leave to
serve the Complaint on the above mentioned Defendants, their heirs, devisees, administrators,
executors, assigns, and all other person, persons, firms, partnerships, or corporate entity in
interest, or their legal representatives, generally, by publication in such manner as the Court shall
direct and as provided by the Pa. R.C.P. Rule 410, and Pa.R.C.P. Rule 430.



Lea Ann Heltzel, Esquire