

02-340-CD
BRIAN M. ELIAS, DPM "vs" BRADLEY J. MAGILL et al

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIAN M. ELIAS, DPM,
Plaintiff

vs.

BRADLEY J. MAGILL, individually
and as President of MAGILL &
ASSOCIATES, and
TERESA MAGILL, individually
and as Vice-President of
MAGILL & ASSOCIATES,
Defendants

CIVIL ACTION - AT LAW

No. 02-340-CD

Type of Pleading:

COMPLAINT

Filed on Behalf of:

PLAINTIFF

Counsel of Record for This
Party:

Christopher E. Mohney, Esq.
Supreme Court No. 63494
Blakley, Jones and Mohney
90 Beaver Drive
DuBois, PA 15801

(814) 371-2730

FILED

MAR 06 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

BRIAN M. ELIAS, DPM,
Plaintiff

vs.

BRADLEY J. MAGILL, individually
and as President of MAGILL &
ASSOCIATES, and
TERESA MAGILL, individually
and as Vice-President of
RICE, MAGILL & ASSOCIATES,
Defendants

No.

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 defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed 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.

Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 Ext. 1303

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

BRIAN M. ELIAS, DPM,
Plaintiff

vs.

BRADLEY J. MAGILL, individually
and as President of MAGILL &
ASSOCIATES, and
TERESA MAGILL, individually
and as Vice-President of
RICE, MAGILL & ASSOCIATES,
Defendants

No.

COMPLAINT

AND NOW, comes Plaintiff, Brian M. Elias, by his attorneys,
Blakley, Jones and Mohney, and hereby brings the within cause of
action averring as follows:

1. Plaintiff is Brian M. Elias, an adult individual having a
business address of 90 Beaver Drive, Building D, DuBois, Clearfield
County, Pennsylvania 15801.

2. At all times relevant hereto Plaintiff was a duly
licensed doctor of podiatric medicine.

3. Defendant is Bradley J. Magill, a licensed doctor of
podiatry, an individual whose last known business address is 229
North Main Street, Punxsutawney, Pennsylvania.

4. At all times relevant hereto, Defendant was the
President and principal decision making officer of Rice, Magill &
Associates, a Pennsylvania business corporation and its successor
Magill & Associates.

5. Defendant is also Teresa Magill, at all times relevant hereto was a decision making officer of Rice, Magill & Associates and its successor Magill & Associates.

6. At all times relevant hereto, Defendants were the employer of Plaintiff.

7. On November 1, 1998, Defendants entered into a contract of employment with Plaintiff whereby Defendants employed Plaintiff as a doctor of podiatric medicine. A copy of that Employment Agreement is attached hereto as Exhibit "A".

8. The Employment Agreement provides for a salary structure whereby Plaintiff was paid a "flat" salary of \$52,000.00 per annum and included a liquidated bonus structure as set forth in paragraph 3(b)(i) of the Agreement.

9. Plaintiff was employed by Defendants from November 8, 1998 through October 31, 2000 at which time his employment was terminated.

10. At or prior to the commencement of Plaintiff's second year of employment, the Employment Contract was assumed by Defendant successor corporation Magill & Associates.

11. At all times Plaintiff complied with all terms and conditions of his Employment Agreement.

12. The Employment Agreement provides for payment of all bonuses within sixty (60) days of the anniversary date of the Agreement.

13. Plaintiff has generated monies which have been collected by Defendants and for which he is owed bonuses.

14. Despite repeated requests, Defendants have failed or refused to pay bonuses properly owed to Plaintiff.

15. The bonus monies owed to Plaintiff are classified as "wages" under the terms of the Pennsylvania Wage Payment and Collection Law.

16. The documentation necessary to calculate Plaintiff's bonuses is within the sole custody and control of Defendants, and therefore rightfully owing bonuses cannot currently be calculated with accuracy.

17. Plaintiff believes and verily avers that the bonuses owed are approximately \$12,500.00.

18. Plaintiff brings this claim under the terms and conditions of the Pennsylvania Wage Payment and Collection Law as set forth at 43 P.S. §260.1, et seq.

19. At all times relevant hereto, Defendants were the "employer" of Plaintiff as defined in Pennsylvania Wage Payment and Collection Law §260.2(a).

20. Under the terms of the Wage, Payment and Collection Law, Defendants are personally liable for all wages due and owing.

21. The Bureau of Labor Law Compliance has investigated Plaintiff's claim and has assigned the Wage, Payment and Collection Law action to Plaintiff as set forth in letter of April 23, 2001, copy of which is attached hereto as Exhibit "B". Plaintiff has proper standing to bring this action.

22. In addition to wages due and owing, Defendants are liable for a penalty of 10% of all wages as set forth in the Wage Payment and Collection Law at 43 P.S. §260.9(a)(c).

23. In addition to wages and penalties due, Defendants are liable to Plaintiff for reasonable attorney's fees as set forth in accordance with Wage Payment and Collection Law at 43 P.S. §260.9(a)(f).

24. In addition to wages, penalties and attorney's fees due and owing, Defendants are liable to Plaintiff for liquidated damages in the amount of 25% of the total wages due or \$500.00, whichever is greater as set forth in 43 P.S. §260.10.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount less than \$25,000.00, plus attorney's fees and costs and such other relief as may be granted by the Court.

BLAKLEY, JONES and MOHNEY

By

Christopher E. Mohney

VERIFICATION

I, BRIAN M. ELIAS, do hereby verify that I have read the foregoing COMPLAINT. The statements therein are correct to the best of my personal knowledge or information and belief.

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

Date: 2/18/02



Brian M. Elias

EMPLOYMENT AGREEMENT

AGREEMENT made this 1st day of November, 1998, between RICE, MAGILL & ASSOCIATES, P.C. hereinafter ("Employer" or "Corporation"), a Pennsylvania Corporation, and BRIAN ELIAS, DPM, hereinafter called "the Employee" or "the Doctor."

WHEREAS, the Corporation is a Pennsylvania professional corporation rendering professional services through those of its employees who are duly licensed to practice Podiatry in the Commonwealth of Pennsylvania, and

WHEREAS, the Corporation desires to employ the Doctor upon the terms and conditions hereinafter set forth, and the Doctor desires to accept such employment,

NOW, THEREFORE, it is agreed as follows:

1. EMPLOYMENT. The Corporation employs the Doctor, and the Doctor accepts employment with the Corporation to render Podiatry services for the Corporation as determined by the Board of the Directors of the Corporation in the manner and to the extent permitted as by the laws of the Commonwealth of Pennsylvania and the applicable Canons of Professional Ethics as from time to time amended.

The term of this Agreement is for one (1) year ending on October 31, 1999. However, the Doctor does hereby agree and grant to RMA an option, exercisable at its sole discretion, to renew this Agreement on identical terms, solely adjusting for inflation each year, for two (2) successive one (1) year periods, ending with RMA'S option on October 31, 2000, for employment through October 31, 2001. RMA shall notify the doctor of its intent to exercise the option not sooner than ninety (90) days nor later than thirty (30) days before the expiration of the then current term of employment.

2. SCOPE OF DUTIES. The Doctor's duties shall include, besides rendering appropriate patient care, but not be limited to, the following:

a) Keeping and maintaining (or causing to be kept and maintained) appropriate records relating to all professional services rendered by him under this Agreement;

b) Preparing and attending to, in connection with such services, all reports, claims, and correspondence necessary or appropriate in the circumstances, all of which shall belong to the Corporation.

c) Promotion by entertainment or otherwise, as and to the extent permitted by law and the applicable Canons of Professional Ethics, the professional practice of the Corporation;

d) Attendance at professional conventions and post-graduate seminars and participation in professional societies so far as as reasonable and practical; and

e) Performance of all things reasonably desirable to maintain and improve his professional skills.

The Doctor's other duties shall be such as the Board of Directors may from time to time reasonably direct, including i) "on duty" and "on call" assignments at night, weekends, and holidays, rotated in a reasonable manner, and ii) normal duties as an officer of the Corporation, if elected as such.

3. COMPENSATION. As his entire compensation for all services rendered to the Corporation during the term of this Agreement, in whatever capacity rendered, the Doctor shall have and receive:

a) A salary at the rate of Fifty-two Thousand Five Hundred (\$52,500.00) Dollars per annum, payable in cash, not less frequently than semi-monthly.

b) A bonus payable in cash not later than sixty (60) days of the anniversary date of this Agreement computed as follows:

i) considering the revenues received by RMA directly as a result of the Doctor's services, the Doctor shall receive as a bonus zero (0%) percent of the first One Hundred Thousand (\$100,000.00) Dollars of annual revenues; of the next Twenty-five Thousand (\$25,000.00) Dollars, twenty (20%) percent of such additional revenues shall be paid to the Doctor; of the next additional Twenty-five Thousand (\$25,000.00) Dollars of such annual revenues, the Doctor shall receive thirty (30%); of the next additional Twenty-five Thousand (\$25,000.00) Dollars of such annual revenues, the Doctor shall receive forty (40%); and for all amounts of collections which exceed One Hundred Seventy-five Thousand (\$175,000.00) Dollars on such annual basis, the Doctor shall receive fifty (50%) percent.

For illustration purposes, it is assumed that between November 1, 1999 and October 31, 2000, RMA receives One Hundred Sixty-five Thousand (\$165,000.00) Dollars directly generated by

the Doctor's services. In such event, the Doctor, in addition to his base salary, would receive a bonus in the amount of Eighteen Thousand Five Hundred (\$18,500.00) Dollars determined as follows:

For the first One Hundred Thousand (\$100,000.00) Dollars, the Doctor would not receive any such bonus, for the first Twenty-five Thousand (\$25,000.00) Dollars above One Hundred Thousand (\$100,000.00) Dollars, he would be entitled to twenty (20%) percent of such additional revenues and for illustration purposes in this scenario would receive Five Thousand (\$5,000.00) Dollars, likewise for the next additional Twenty-five Thousand (\$25,000.00) Dollars in additional revenues, he would receive Seven Thousand Five Hundred (\$7,500.00) Dollars, being thirty (30%) of that additional Twenty-five Thousand (\$25,000.00) Dollars and would also receive for the remaining Fifteen Thousand (\$15,000.00) Dollars of such additional revenues, the Doctor would be entitled to forty (40%) percent being Six Thousand (\$6,000.00) Dollars in the example. Such sums total Eighteen Thousand Five Hundred (\$18,500.00) Dollars for the bonus earned during the illustrative year and which would be paid sometime within sixty days of November 1, 2000. The Employer shall deduct and withhold all necessary Social Security and withholding taxes and any other similar sums required by law from the Employee's salary.

c) The rate of such salary shall be reviewed by the Board of Directors of the Corporation not less often than annually and may be increased (but not decreased) from time to time and such amounts that the Board in its discretion may decide.

4. FRINGE BENEFITS. As further consideration for the performance by the Employee of services on behalf of the Corporation, the Employer shall, provide for the Employee the following benefits:

a) Automobile mileage reimbursement. The Doctor shall submit on a monthly basis, or as otherwise agreed by the Board, a listing of the mileage traveled by the Doctor from his base office to another location to perform duties on behalf of RMA as detailed in Paragraph Two hereof. For each mile so traveled, the Doctor shall be reimbursed at the rate as published by the Internal Revenue Service.

b) CME. RMA shall pay all fees, including travel, incurred by the Doctor in connection with his CME requirements. Such amounts hereunder shall not exceed One Thousand Five Hundred (\$1,500.00) Dollars per year;

c) Hospital/Association Dues. RMA shall pay all reasonable hospital and association dues of the podiatrist;

d) Cellular Phone/Beeper. RMA shall provide, and pay for, such reasonable costs associated with a cellular phone and beeper for the Doctor;

e) Insurance Premiums. RMA shall provide and pay for the Doctor and his immediate family a reasonable health, disability, and life insurance policy, as shall be determined by the Board of Directors.

5. VACATIONS. At such reasonable times as the Board of Directors shall in its discretion permit, the Doctor shall be entitled, without loss of pay, to absent himself voluntarily from the performance of his employment under this Agreement, which shall be considered vacation time. The Doctor, during this term of this Agreement, shall be entitled to two (2) weeks of such vacation per calendar year commencing with the first anniversary date of this Agreement. It is further agreed by the Doctor that during such vacation period or periods, he shall seek and comply with his CME requirements.

6. CORPORATE FACILITIES. The Corporation shall provide and maintain (or cause to be provided and maintained by any hospital or clinic, if appropriate) such facilities, equipment, and supplies as it deems necessary for the Doctor's performance of his professional duties under this Agreement. Such facilities shall also include the services of receptionist, nurses, laboratory technicians, other paraprofessional help, secretaries and bookkeepers, as needed. The Employer shall also provide and pay for suitable furniture, fixtures, and equipment.

7. DOCTOR'S RESPONSIBILITY. The Doctor shall have, maintain, and use, where appropriate, an automobile, home telephone, and other facilities and equipment (such as reference books, medical equipment and supplies) reasonably needed in connection with his employment under this Agreement, all of which shall be at the Doctor's expense except as he may from time to time be reimbursed by the Corporation, at its sole discretion. He shall also at his expense carry automobile public liability insurance protecting himself and the Corporation against claims arising out of the use of such automobile (or any other motor vehicle in the course of his employment with the Corporation) and he shall keep on deposit with the Secretary of the Corporation a certificate or other evidence that such insurance is in force. Such insurance shall be in not less than such amounts as the Board of Directors may from time to time reasonably direct and in any event shall provide coverage of at least One Hundred Thousand (\$100,000.00) Dollars for property damage, One Hundred Thousand (\$100,000.00) Dollars for the injury or death of one person and Three Hundred Thousand (\$300,000.00) Dollars for injuries and death arising from one accident.

8. EXCLUSIVE SERVICE. The Doctor shall devote his full time and best efforts to the performance of his employment under this Agreement. During the term of this Agreement, the Doctor shall not, at any time or place, either directly or indirectly, engage in the practice of podiatry to any extent whatsoever, except pursuant to this Agreement. All fees or other income attributable to his professional services during the term of this Agreement shall belong to the corporation.

9. PROFESSIONAL STANDARDS. The Doctor shall perform his duties under this Agreement in accordance with such standards of professional ethics and practice as may from time to time be applicable during the term of his employment.

10. INDEMNITY AND MALPRACTICE INSURANCE. The Doctor shall hold harmless and indemnify the Corporation, its successors and assigns, from and against any and all liabilities, costs, damages, expenses, and attorneys' fees resulting from or attributable to any and all acts or omissions of the Doctor; provided, however, that, to the extent that any such liabilities, costs, damages, expenses, and attorneys' fees are compensated for by insurance purchased by the Corporation, the Doctor shall not be required to reimburse the Corporation or insurer for the same.

11. DISABILITY. If the Doctor shall be involuntarily absent from the performance of his employment under this Agreement (or unable to perform on a full-time basis) due to illness or physical incapacity, he shall nevertheless continue to receive those benefits identified in Paragraph 4 relating to Fringe Benefits, for a period of ninety (90) days. In the event the Doctor continues to be involuntarily absent from the performance of his employment under this Agreement (or unable to perform on a full-time basis due to illness or physical incapacity) which shall exceed such ninety (90) day period, this Agreement shall terminate. In the event that the Doctor is able to return to active, full-time employment, prior to the termination of this Agreement, his full compensation shall be reinstated. However, if he is again "involuntarily absent (or unable to perform on a full-time basis due to illness or physical incapacity) he must have been engaged in active, full-time employment for at least twelve (12) consecutive months (exclusive of vacations) immediately prior to such later absence or inability in order to qualify for the full ninety (90) day disability benefit hereunder.

12. NON-COMPETITION. Upon termination of the Doctor's employment for just cause, during the initial term or any renewal thereof, unless otherwise referenced herein, he shall not, for a period of one (1) year thereafter, except with the written consent of the Corporation, engage in the practice of

Podiatry within a thirteen (13) mile radius from RMA's existing offices located in Punxsutawney and DuBois. This non-competition agreement shall not apply to any nursing or personal care home with which the Doctor had a pre-existing professional relationship prior to the execution of this Agreement, which are as follows:

Baun's PCH
600 School Bus Road
Hastings, PA 16646
743-6958

Grey's Colonial Manor
R.D. #1, Box 26
Kittanning, PA 16201
724-548-8727

Kollar's PCH
Box 210
Hastings, PA 16646

Parkside Elder Care
1200 Wood Street
~~Brookville, PA 15825~~
~~Brockway 15827~~

Sunshine Manor
1890 Marina Road
Fallen Timber, PA 16639
944-6076

St. Benedict Manor
Box 57, Rt. 219 N
St. Benedict, PA 15773
344-8981

Brookside Assisted Living
R.D. #5, Box 39A
Brookville, PA 15825
849-3924

In the event the Doctor is so employed by RMA for at least three (3) full years (being the entire term of this Agreement and its options) and further provided that he is not admitted as a shareholder to RMA, and his employment is involuntarily terminated by RMA, then in such event the Employee is not bound by this provision. Furthermore, in the event the employment relationship between the Doctor and RMA is severed under circumstances to which this provision applies, the Doctor may terminate this provision by paying to RMA the sum of Seventy seven Thousand Three Hundred (\$77,300.00) Dollars, which said sum shall also be considered as liquidated damages for any violations of this provision in the event such provision is applicable.

13. TERMINATION OF EMPLOYMENT. The Corporation may terminate this Agreement, for just cause, (except during the ninety (90) day period when the Employee is totally disabled) upon thirty (30) days written notice to the Employee, and the Corporation shall only be obligated to continue to pay the Employee the salary due him under this Agreement up to the date of termination.

14. NON-AUTHORITY TO BIND THE CORPORATION. The Doctor shall have no authority to enter into any contracts binding upon the Corporation, or to create any obligation on the part of the

Corporation, except such as shall be specifically authorized by the Board of Directors or by any executive officer of the Corporation acting pursuant to authority granted by the Board of Directors.

15. DISCONTINUANCE OF USE OFF NAME. Upon the termination of the Doctor's employment for any reason whatsoever, the Corporation shall discontinue using his name upon its office door or letterhead or any other place or manner.

16. EMPLOYEE CONDUCT. The Employee, at all times during this Agreement, shall:

a) Observe and conform to all the laws and customs of the podiatry profession;

b) Comply with all the Employer's reasonable directions and orders in the Practice; and

c) Not disclose, except to the Employer, any professional secrets or information with respect to the Employer, the Practice, or any patients of the Practice.

17. EMPLOYEE ACCOUNTS. The Employee shall render, as often as may be necessary or appropriate, a true account of all professional visits and all patients attended in the Practice, and of all money received by him on account of the Practice and shall pay the money to the Employer for deposit in the Practice account.

18. PATIENTS AND RECORDS. The Employer and Employee agree that all patient's charts and professional records are the property of the Employer; and that upon the termination of the Agreement, the Employee shall not be entitled to receive any patient's charts or professional records, subject to the specific written instructions of any patient as to the disposition of his particular chart or records. In the event a patient does direct that his charts or professional records be so transmitted, the Doctor shall pay a reasonable fee for such service.

19. POLICY DECISIONS. It is understood that the Employer shall have the sole and exclusive right of management over the Practice, including, without limitation, the determination of the professional standards to be observed, the determination of the fees to be charged to the patients for services rendered in the Practice, and the office hours to be maintained, said decisions as may be made by the Board of Directors of the Corporation.

20. WAIVER OF BREACH. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach.

21. **NOTICES.** Any and all notices required or permitted to be given under this Agreement will be sufficient if furnished in writing, sent by registered mail to the last known address of either party.

22. **GOVERNING LAW.** This Agreement shall be interpreted and governed according to the laws of the Commonwealth of Pennsylvania.

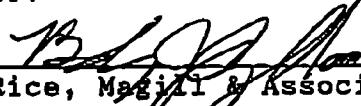
23. **AMENDMENT.** No modification, amendment, addition to, or termination of this Agreement, nor waiver of any its provisions, shall be valid or enforceable unless in writing and signed by all the parties.

24. **BINDING AGREEMENT.** This Agreement shall be binding on the parties, their heirs, distributees, legal representatives, successors, and/or assigns.

25. **ASSIGNMENT PROHIBITED.** This Agreement is personal to each of the parties hereto, and any of their party may assign or delegate any of its right or obligations without first obtaining the written consent of the other party.

IN WITNESS WHEREOF the parties have executed this Agreement this 1st day of November, 1998.

BY:


Rice, Magill & Associates, P.C.

Its:

President

BY:


Brian Elias, DPM



DEPARTMENT OF
LABOR & INDUSTRY
COMMONWEALTH OF PENNSYLVANIA

BUREAU OF LABOR LAW COMPLIANCE
1301 LABOR AND INDUSTRY BUILDING
SEVENTH AND FORSTER STREETS
HARRISBURG, PA 17120-0019

1-800-932-0665www.dli.state.pa.us

April 23, 2001

BRAIN ELIAS
90 BEAVER DR BLDG-D
DUBOIS, PA 15801

4245 1.85

RE: RMA

Dear DR ELIAS:

This follows a conversation with and letter from your employer regarding your wage claim. The Bureau of Labor Law Compliance has reviewed your claim for unpaid wages, and the Bureau is unable to prosecute this case. Accordingly, by copy of this letter, I am reassigning your wage claim to you. The decision does not preclude you from exercising your right to bring private action against the employer under the Wage Payment and Collection Law.

A copy of the Wage Payment and Collection Law and the Regulations which implement the Law are enclosed.

Sincerely,

Dick Slagle, Investigator
Bureau of Labor Law Compliance

1301 Labor & Industry Bldg.
Harrisburg, PA 17120
717-741-5674
E-mail: bllcrs@blazenet.net
www.dli.state.pa.us/PWAGE/pwmain.html

EXHIBIT "B"

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW
NO. 02 - C.D.

BRIAN M. ELLAS, DPM, Plaintiff

VS.

BRADLEY J. MAGILL, individually
and as President of MAGILL &
ASSOCIATES, and TERESA MAGILL,
individually and as Vice-President
of MAGILL & ASSOCIATES,
Defendants

C
COMPLAINT

FILED
200 MAR 06 2002 1 CC Atty Mohney
W.A. Shaw
Prothonotary

LAW OFFICES
BLAKLEY, JONES & MOHNEY

90 BEAVER DRIVE - BOX 6
DUBOIS, PA 15801

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BRIAN M. ELIAS, DPM,
Plaintiff,

v.

BRADLEY J. MAGILL, Individually
and as President of **MAGILL &**
ASSOCIATES, and
TERESA MAGILL, Individually
and as Vice-President of
MAGILL & ASSOCIATES,
Defendant,

v.

CHARLES W. RICE
Additional Defendant.

CIVIL ACTION - LAW

No. 02-340 C.D.

Type of Pleading:
COMPLAINT TO JOIN
ADDITIONAL DEFENDANT

Jury Trial Demanded

Filed on Behalf of: Defendants,
Bradley J. Magill and Teresa
Magill

Counsel of Record for This Party:
R. EDWARD FERRARO, ESQ.
Supreme Court No. 05880
ROSS F. FERRARO, ESQ.
Supreme Court No. 79218

FERRARO & YOUNG
690 Main Street
Brockway, PA 15824
(814) 268-2202

FILED

APR 19 2002

m/11/2011 (c)Shaw

William A. Shaw

Prothonotary 2cc atly Ferraro

9
10
11

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BRIAN M. ELIAS, DPM,
Plaintiff,

v.

No. 02-340 C.D.

BRADLEY J. MAGILL, Individually
and as President of **MAGILL &**
ASSOCIATES, and
TERESA MAGILL, Individually
and as Vice-President of
MAGILL & ASSOCIATES,
Defendants,

v.

CHARLES W. RICE,
Additional Defendant.

NOTICE TO DEFEND

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 to Join Additional Defendant, and Notice are served, by entering a written appearance personally or by an 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 relief or money claimed in the Complaint, or for any other claim or relief that might be requested by the Plaintiff/Defendants. 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:**

Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 Ext. 1303

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BRIAN M. ELIAS, DPM,
Plaintiff,

v.

No. 02-340 C.D.

BRADLEY J. MAGILL, Individually
and as President of **MAGILL &**
ASSOCIATES, and
TERESA MAGILL, Individually
and as Vice-President of
MAGILL & ASSOCIATES,
Defendants,

v.

CHARLES W. RICE,
Additional Defendant.

COMPLAINT TO JOIN ADDITIONAL DEFENDANT

AND NOW, come the original Defendants, **BRADLEY J. MAGILL**,
individually and as President of **MAGILL PODIATRY**, and **TERESA MAGILL**,
individually and as Vice-President of **MAGILL PODIATRY**, (hereinafter
"MAGILLS"), by and through their attorneys, **FERRARO & YOUNG**, and file the
within Complaint to Join Additional Defendant, and in support thereof aver as
follows:

1. Additional Defendant, **CHARLES W. RICE**, is an adult individual
who is a duly licensed Doctor of podiatric medicine, with his business address at
90 Beaver Drive, Building D, DuBois, Clearfield County, Pennsylvania (15801).

2. According to the Plaintiff's original Complaint in this case, the original Plaintiff, **BRIAN ELIAS** is seeking monetary damages and other claims against the Original Defendants, **BRADLEY J. MAGILL** and **TERESA MAGILL**, for certain bonus monies and other damages and claims, for which he alleges are owed to him by said Original Defendants and an alleged business which Plaintiff named as **MAGILL & ASSOCIATES**.

3. The Original Defendants, **MAGILLS**, hereby incorporate all of the Paragraphs of their Answer, New Matter and Counterclaim filed in the within Action, by their entirety by reference thereto as though fully set forth at length herein in this Complaint to Join Additional Defendant.

4. Defendants deny that they are responsible or liable for any alleged bonus monies, or any other claims or monetary damages under any theory which the Plaintiff is seeking in his original Complaint in this matter. For purposes of the within Complaint to Join Additional Defendant, Defendants **MAGILLS** hereby refer to and incorporate Plaintiff's original Complaint, making all such claims against the Additional Defendant herein, **CHARLES W. RICE**, but by making such reference, these Defendants **MAGILLS** make no admission as to the truth or falsity of any factual allegations contained therein.

5. At all times relevant hereto, Additional Defendant, **CHARLES W. RICE**, was the Treasurer/Secretary and principal decision making officer for the financial affairs and any payments to employees/associates of Rice, Magill & Associates, a Pennsylvania business corporation.

6. At all times relevant hereto, the corporation of Rice, Magill & Associates was the employer of Plaintiff, **BRIAN ELIAS**, under an Employment Contract entered into with said corporation, and the Additional Defendant, **CHARLES W. RICE**, was the primary decision making officer for the financial affairs and any payments of salaries and bonuses to associates or employees of

the corporation, including any payments due to the Plaintiff, **BRIAN ELIAS**, in the within Action.

7. On or around October 27, 2000, the Additional Defendant, **CHARLES W. RICE**, decided that he wanted to leave the corporation of Rice, Magill & Associates, and he notified the Defendant, **BRADLEY J. MAGILL**, of his intentions to leave their practice and the corporation, with it also being acknowledged at that time that Additional Defendant, **CHARLES W. RICE**, would remain responsible and need to stay involved with the payment of any associates or employees of the corporation, to properly wind up the affairs and unfinished business of said corporation.

8. On or around October 27, 2000, the Plaintiff, **BRIAN M. ELIAS**, also decided that he wanted to voluntarily resign from his employment at Rice, Magill & Associates, and that he was going to leave along with the Additional Defendant, **DR. CHARLES W. RICE**, and that Plaintiff **ELIAS** informed the Defendants that he did not want to renew his Employment Contract.

9. After Additional Defendant, **CHARLES W. RICE**, left the corporation and started his own practice, **DR. RICE** and **DR. MAGILL** had certain disputes regarding their joint business corporation of Rice, Magill & Associates, with an action eventually being filed, and said dispute was ultimately decided by a Private Arbitrator on November 16, 2001.

10. After the Plaintiff, **BRIAN M. ELIAS**, and the Additional Defendant, **CHARLES W. RICE**, had left the corporation on October 31, 2000, and during the pendency of the lawsuit and arbitration between **DR. RICE** and **DR. MAGILL**, which was not resolved until an Arbitration Decision on November 16, 2001, the Plaintiff **ELIAS** made no formal claims for any salary or other bonus amounts that he alleged to be due from the corporation or **DR. MAGILL**.

11. There were no formal demands or claims for payment made by the Plaintiff, **BRIAN M. ELIAS**, to **BRADLEY MAGILL** until the filing and service of the Complaint in the within Action on March 27, 2002.

12. Your Defendants, **BRADLEY J. MAGILL** and **TERESA MAGILL**, individually, as well as on behalf of **MAGILL PODIATRY**, aver that to the extent that the Court finds any liability for the claims of the Plaintiff, **BRIAN M. ELIAS**, in his Complaint, that the Original Defendants, **MAGILLS** herewith aver and request that the Additional Defendant, **DR. CHARLES W. RICE**, be held solely liable to the Plaintiff **ELIAS**, and the Original Defendants, **MAGILLS**, for any and all monies or damages awarded, if it is judicially determined that the Plaintiff is entitled to any monetary costs or damages in his Action.

13. To the extent that the Court finds that the Defendants **MAGILLS** are liable for any amounts or damages, or costs as claimed in the Plaintiff's Complaint, the Defendants **MAGILLS** aver that the Additional Defendant, **CHARLES W. RICE**, is solely liable and responsible to the Plaintiff for any and all costs or damages awarded, due to his direct involvement as the principal decision making financial officer of the corporation, as the Treasurer/Secretary managing the payments of salaries and bonuses to all employees and associates, including the Plaintiff, **BRIAN M. ELIAS**, and since the Additional Defendant **RICE** is and always has been in sole possession and control of the relevant documents regarding any claims for financial payments to the Plaintiff or any other employee/associates.

14. That in the alternative, to the extent that the Court might find that the Defendants, **BRADLEY J. MAGILL** or **TERESA MAGILL**, or **MAGILL PODIATRY**, are liable for any monetary damages or costs claimed by the Plaintiff **ELIAS**, to the extent that any such damages or costs are awarded, or to the extent that the corporation of Rice, Magill & Associates may be held responsible, it is averred and demanded that the Additional Defendant,

CHARLES W. RICE, be held jointly and severally liable to the Plaintiff **ELIAS** and the Original Defendants **MAGILLS** for any such damages or costs awarded in the within lawsuit and Action.

15. The Defendants, **BRADLEY J. MAGILL** and **TERESA MAGILL**, individually and on behalf of **MAGILL PODIATRY**, demand Jury Trial in the within matter.

WHEREFORE, your Defendants, **BRADLEY J. MAGILL** and **TERESA MAGILL**, individually and on behalf of **MAGILL PODIATRY**, respectfully request this Honorable Court to enter Judgment in their favor and order as follows:

(A) Entering Judgment in favor of the Defendants, **BRADLEY J. MAGILL** and **TERESA MAGILL**, and **MAGILL PODIATRY**, dismissing any and all claims made against them by the Plaintiff, **BRIAN M. ELIAS**;

(B) To the extent that the Court determines that the Plaintiff has proven that there were any monies or damages suffered for which he is entitled to be awarded monetary damages or other relief, that the Court or Jury enter an award or judgment that the Additional Defendant, **CHARLES W. RICE** shall be solely liable for any and all damages or costs recovered by the Plaintiff or any other parties to the within Action;

(C) In the event that there is any verdict or judgment recovered by the Plaintiff or other parties against the Defendants, **BRADLEY J. MAGILL** or **TERESA MAGILL**, or **MAGILL PODIATRY**, that the Additional Defendant, **CHARLES W. RICE**, be ordered to pay said Defendants, by way of indemnification and/or contribution, the amounts recovered by the Plaintiff or other parties, together with any costs and other amounts ordered by the Court or Jury in this matter;

(D) To the extent that the Court or Jury determines that the corporation of Rice, Magill & Associates is responsible for any amounts, that the Additional Defendant, **CHARLES W. RICE**, be ordered to pay at least fifty (50%) percent of any such costs or damages recovered by the Plaintiff, and that he be ordered to be held jointly and severally liable for any judgment in favor of Plaintiff; and

(E) Such other relief as the Court deems appropriate.

Respectfully submitted,
FERRARO & YOUNG

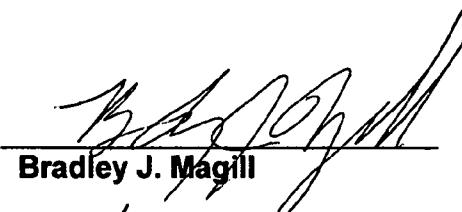


Ross F. Ferraro, Esquire
Attorney for Defendants, Bradley
J. Magill and Teresa Magill,
Individually, and Magill Podiatry

VERIFICATION

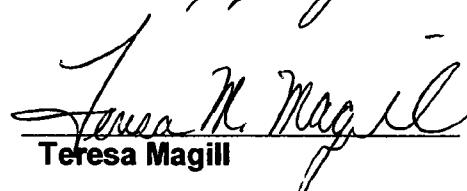
We, **BRADLEY J. MAGILL** and **TERESA MAGILL**, verify that the statements made in the within COMPLAINT TO JOIN ADDITIONAL DEFENDANT are true and correct to the best of our knowledge. We understand that false statements made herein are made subject to the penalties 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Date: 4/18/02



Bradley J. Magill

Date: 4/18/02



Teresa Magill

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BRIAN M. ELIAS, DPM,
Plaintiff,

v.

No. 02-340 C.D.

BRADLEY J. MAGILL, Individually
and as President of **MAGILL &**
ASSOCIATES, and
TERESA MAGILL, Individually
and as Vice-President of
MAGILL & ASSOCIATES,
Defendants,

v.

CHARLES W. RICE,
Additional Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the a true and correct copy of the foregoing
Complaint to Join Additional Defendant has been mailed by U.S. first class mail,
postage pre-paid to the Plaintiff, **BRIAN M. ELIAS'S** counsel of record,
Christopher E. Mohney, Esquire at the following address on this 18th day of
April, 2002:

Christopher E. Mohney, Esquire
BLAKLEY, JONES & MOHNEY
90 Beaver Drive, Box 6
DuBois, PA 15801

FERRARO & YOUNG

BY:


Ross F. Ferraro, Esquire
Counsel for Original Defendants,
Bradley J. Magill and Teresa
Magill, Individually, and
Magill Podiatry

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BRIAN M. ELIAS, DPM,
Plaintiff,

v.

BRADLEY J. MAGILL, Individually
and as President of **MAGILL &**
ASSOCIATES, and
TERESA MAGILL, Individually
and as Vice-President of
MAGILL & ASSOCIATES,
Defendant,

v.

CHARLES W. RICE,
Additional Defendant

CIVIL ACTION - LAW

No. 02-340 C.D.

Type of Pleading:

**ANSWER, NEW MATTER
AND COUNTERCLAIM**

Jury Trial Demanded

Filed on Behalf of: Defendants,
Bradley J. Magill and Teresa
Magill

Counsel of Record for This Party:

R. EDWARD FERRARO, ESQ.

Supreme Court No. 05880

ROSS F. FERRARO, ESQ.

Supreme Court No. 79218

FERRARO & YOUNG
690 Main Street
Brockway, PA 15824
(814) 268-2202

FILED

APR 19 2002

04/19/2002 cc Sherry
William A. Shaw
Prothonotary cc atty Ferraro



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BRIAN M. ELIAS, DPM,
Plaintiff,

v.

No. 02-340 C.D.

BRADLEY J. MAGILL, Individually
and as President of **MAGILL &**
ASSOCIATES, and
TERESA MAGILL, Individually
and as Vice-President of
MAGILL & ASSOCIATES,
Defendants,

v.

CHARLES W. RICE,
Additional Defendant.

NOTICE TO DEFEND

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 Answer, New Matter and Counterclaim and Notice are served by entering a written appearance personally or by an 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 relief or money claimed in the New Matter or Counterclaim, or for any other claim or relief requested by the Defendants. 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:**

Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 Ext. 1303

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BRIAN M. ELIAS, DPM,
Plaintiff,

v.

No. 02-340 C.D.

BRADLEY J. MAGILL, Individually
and as President of **MAGILL &**
ASSOCIATES, and
TERESA MAGILL, Individually
and as Vice-President of
MAGILL & ASSOCIATES,
Defendants,

v.

CHARLES W. RICE,
Additional Defendant.

ANSWER, NEW MATTER AND COUNTERCLAIM

AND NOW, come the Defendants, **BRADLEY J. MAGILL**, individually and as President of **MAGILL PODIATRY** (referred to in the Plaintiff's original Complaint as **MAGILL & ASSOCIATES**), and **TERESA MAGILL**, individually and as Vice-President of **MAGILL PODIATRY** (referred to in the Plaintiff's original Complaint as **MAGILL & ASSOCIATES**), by and through their attorneys, **FERRARO & YOUNG**, and hereby file the within Answer, New Matter and Counterclaim, and in support thereof aver as follows:

1. Admitted.
2. Admitted.

3. Admitted in part and Denied in part. It is Admitted that **BRADLEY J. MAGILL** is a licensed Doctor of podiatry, and that he has a business address located at 229 North Main Street, Punxsutawney, Pennsylvania (15767), but it is DENIED that this is **DR. MAGILL'S** only address. By way of further response, it is also set forth that **DR. MAGILL** also has a business address located at 90 Beaver Drive, Suite 105A, DuBois, Pennsylvania (15801).

4. DENIED. It is Denied that the Defendant **BRADLEY J. MAGILL**, or **TERESA MAGILL**, was the principal decision making officer of Rice, Magill & Associates, a Pennsylvania business corporation or its successor **MAGILL & ASSOCIATES**, as averred in Paragraph 4 of the Plaintiff's Complaint, and strict proof of all averments contained in Paragraph 4 of Plaintiff's Complaint are demanded at trial. To the contrary, and by way of further response, **DR. CHARLES W. RICE**, was the Treasurer/Secretary of Rice, Magill & Associates at all times relevant to the within Action, and **DR. CHARLES W. RICE** was the principal decision making officer as to financial items for said business corporation.

5. DENIED. It is Denied that the Defendant, **TERESA MAGILL**, was at any times relevant to the within Action, a decision making officer of Rice, Magill & Associates or its alleged successor **MAGILL & ASSOCIATES**, and strict proof of any allegations in Paragraph 5 of Plaintiff's Complaint are demanded at trial. To the contrary, and by way of further response, it is averred that the Defendant, **TERESA MAGILL**, was never an decision making officer of Rice, Magill & Associates or any other business at any times relevant to the within Action, and **DR. CHARLES W. RICE** and his Assistant/Officer Manager, Karen Steele, were responsible for making decisions relative to the financial affairs and payments to employees or associates.

6. DENIED. It is Denied that the Defendants were individual employers of the Plaintiff at any times relevant to the within Action as alleged in

Paragraph 6 of Plaintiff's Complaint, and strict proof of any allegations in Paragraph 6 of Plaintiff's Complaint are demanded at trial. By way of further response, the Plaintiff was employed by the business of Rice, Magill & Associates at all relevant times to the within Action.

7. Admitted in part and Denied in part. It is Admitted that the professional corporation of Rice, Magill & Associates entered into a contract of employment with the Plaintiff, **BRIAN M. ELIAS**, for the employment of Plaintiff as a Doctor of podiatric medicine. However, by way of further response, it is **DENIED** that the Defendant ever entered into any contract of employment with the Plaintiff in his individual capacity, and it would have been on behalf of the corporation of Rice, Magill & Associates, P.C., of which Defendant was a joint owner with **DR. CHARLES W. RICE** at all relevant times hereto. Strict proof of any allegations to the contrary in Paragraph 7 of Plaintiff's Complaint are demanded at trial.

8. Admitted.

9. **DENIED.** It is Denied that the Plaintiff was employed by the Defendants from November 8, 1998 through October 31, 2000 at which time his employment was terminated, as set forth in Plaintiff's Complaint, and strict proof of said allegations in Paragraph 9 of Plaintiff's Complaint are demanded at trial. To the contrary, and by way of further response, the Plaintiff was employed by Rice, Magill & Associates, a professional corporation, from November 8, 1998 through October 31, 2000, and the Plaintiff voluntarily chose to resign from his position of employment with said corporation.

10. **DENIED.** It is Denied that the employment contract with Plaintiff was ever assumed by the Defendants or any successor corporation of **MAGILL & ASSOCIATES**, as alleged in Plaintiff's Complaint, and strict proof of the allegations contained in Paragraph 10 of Plaintiff's Complaint are demanded at

trial. To the contrary, and by way of further response, there is no corporate business known as **MAGILL & ASSOCIATES**, and the Plaintiff voluntarily resigned his position as an associate with the corporation of Rice, Magill & Associates, and voluntarily choosing to go into a separate practice with **DR. CHARLES W. RICE**.

11. Neither Admitted nor Denied as Defendants are without sufficient knowledge or information to form a belief as to the averments set forth in Paragraph 11 of Plaintiff's Complaint, and strict proof of all said allegations is demanded at trial.

12. Admitted.

13. **DENIED.** It is Denied that the Plaintiff has generated monies which have been collected by the Defendants, for which he is owed any bonus payments by the Defendants, and strict proof of any said allegations contained in Paragraph 13 of Plaintiff's Complaint are demanded at trial. By way of further response, should the Plaintiff be entitled to any bonus monies under his employment contract, any relevant documentation on the same is in the custody of **DR. CHARLES RICE** or the Plaintiff himself, and the same should be reviewed through Discovery, and any liability for payment of any alleged bonuses would be payable by Rice, Magill & Associates and **DR. CHARLES W. RICE**, who was the principal decision making officer regarding financial payments to employees and associates.

14. **DENIED.** It is Denied that despite repeated requests, that the Defendants have failed or refused to pay bonuses properly owed to the Plaintiff as alleged in Plaintiff's Complaint, and strict proof of said allegations in Paragraph 14 of Plaintiff's Complaint are demanded at trial.

15. **DENIED.** It is Denied that any bonus monies are owed to the Plaintiff or that they are classified as wages under the terms of the Pennsylvania

Wage Payment and Collection Law, and strict proof of the allegations in Paragraph 15 of Plaintiff's Complaint are demanded at trial.

16. **DENIED.** It is Denied that the documentation necessary to calculate the Plaintiff's bonuses is within the sole custody and control of the Defendants, and strict proof of any allegations in Paragraph 16 of Plaintiff's Complaint are demanded at trial. By way of further response, it is averred that the documentation necessary to calculate the Plaintiff's bonuses is within the custody and possession of **DR. CHARLES W. RICE** or the Plaintiff himself, and it should be noted that the Plaintiff currently works in the same office as **DR. CHARLES W. RICE**, and he would have access to the same.

17. **DENIED.** It is Denied that the Plaintiff is owed any bonuses in the amount of approximately \$12,500.00, and strict proof of the allegations in Paragraph 17 of Plaintiff's Complaint are demanded at trial, for the reasons previously stated.

18. No answer is required as this is a conclusion of law, for which no answer is required, but to the extent that any answer is required by the Court, the allegations of Paragraph 18 of Plaintiff's Complaint are Denied, and strict proof of the same is demanded at trial.

19. **DENIED.** It is Denied that the Defendants were the employer of the Plaintiff as defined in the Pennsylvania Wage Payment and Collection Law §260.2(a), at any times relevant to the within Action, and strict proof of the allegations of Paragraph 19 of Plaintiff's Complaint are demanded at trial. By way of further response, the corporation of Rice, Magill & Associates would have been the employer of the Plaintiff at any relevant times hereto, and **DR. CHARLES W. RICE** would have been the principal decision making officer regarding financial payments to associates or employees in the Plaintiff's position.

20. **DENIED.** It is Denied that the Defendants are personally liable for any wages due or owing under the terms of the Wage Payment and Collection Law, and strict proof of the allegations of Paragraph 20 of Plaintiff's Complaint are demanded at trial.

21. Neither Admitted nor Denied, as Defendants are without sufficient information or knowledge to form a belief as to the averments contained in Paragraph 21 of Plaintiff's Complaint, and strict proof of said averments are demanded at trial.

22. **DENIED.** It is Denied that the Defendants are liable for any penalty of 10% of any wages as set forth in the Wage Payment and Collection Law at 43 P.S. §260.9(a)(c), or any other wages, and strict proof of the allegations of Paragraph 22 of Plaintiff's Complaint are demanded at trial.

23. **DENIED.** It is Denied that the Defendants are liable to Plaintiff for their attorney's fees in accordance with the Wage Payment and Collection Law at 43 P.S. §260.9(a)(f), in addition to any wages or penalties, and strict proof of any such averments in Paragraph 23 of Plaintiff's Complaint are demanded at trial.

24. **DENIED.** It is Denied that the Defendants are liable to Plaintiff for any liquidated damages in the amount of 25% of any total wages due of \$500.00, or any other wages or penalty claims, under 43 P.S. §260.10, and strict proof of all such averments in Paragraph 24 of Plaintiff's Complaint are demanded at trial.

WHEREFORE, Defendants respectfully request this Honorable Court to deny and dismiss any and all claims filed against them by the Plaintiff or any other parties in the within Action, and that the Court deny or dismiss any claims for any monetary amounts, costs or any other relief requested in the Plaintiff's Complaint.

NEW MATTER

By way of further and more particular answer, the Defendants, **BRADLEY J. MAGILL**, individually and as President of **MAGILL PODIATRY** (named **MAGILL & ASSOCIATES** in Plaintiff's Complaint), and **TERESA MAGILL**, individually and as Vice-President of **MAGILL PODIATRY**, set forth the following New Matter:

25. Paragraphs 1 through 24 of the within Answer are incorporated herein by their entirety by reference thereto as though set forth fully at length herein.

26. That on or about October 27, 2000, Defendant, **BRADLEY J. MAGILL**, was informed by the Plaintiff, **BRIAN M. ELIAS**, that **DR. ELIAS** had decided to leave the corporation of Rice, Magill & Associates, and that his resignation would be effective as of October 31, 2000, at the same time that **DR. CHARLES W. RICE** was leaving the business.

27. That **DR. CHARLES W. RICE** was still the primary decision making officer regarding the payment of financial items, as he was the Treasurer/Secretary until he left on October 31, 2000 and he was still involved in winding up the affairs of the corporation until at least November 2001, when a separation Arbitration matter between **MAGILL** and **RICE**, regarding the corporation was resolved.

28. Than under Paragraph 25 of the Employment Agreement, it is specifically entitled that "**ASSIGNMENT PROHIBITED.**"

29. That the Doctrines of Equitable Estoppel, failure of consideration, impossibility of performance, justification, and immunity from suit all apply as affirmative defenses against the filing of the within Compliant and related claims by the Plaintiff against the Defendants, due to the fact that **BRIAN M. ELIAS** had

given notification that he was voluntarily resigning from his employment with the corporation and/or **BRADLEY MAGILL**, and due to the fact that **ELIAS** also intended on leaving to start a new practice in the DuBois area with **DR. CHARLES W. RICE**, in addition to the fact that the Employment Agreement with the corporation specifically stated that assignment was prohibited to any other corporation other than Rice, Magill & Associates.

30. That in addition, the Defendant, **TERESA MAGILL**, was never Vice-President or any other officer and never held such a position within the corporation of Rice, Magill & Associates, during the relevant times to the within Action, as she was not an officer from the period from November 8, 1998 through November 2001, and it was **DR. CHARLES W. RICE** and Karen Steele who were the officer and manager who made the decisions regarding financial affairs of the corporation during the relevant times to the within Action.

31. For the reasons set forth above, the Defendant, **TERESA MAGILL**, is not liable or responsible for any of the claims set forth by Plaintiff, and thus, Plaintiff has no Standing to bring the within Action against her or **BRADLEY MAGILL**, and all claims against the Defendants, **TERESA MAGILL** and **BRADLEY MAGILL**, should be denied and dismissed, due to the applicable affirmative defenses to Plaintiff's Complaint.

WHEREFORE, Defendants respectfully request this Honorable Court to deny and dismiss any and all claims filed against them by the Plaintiff or any other parties in the within Action, and that the Court deny or dismiss any claims for any monetary amounts, costs or any other relief requested in the Plaintiff's Complaint.

COUNTERCLAIM

COUNT I - CLAIM FOR WRONGFUL ACTION, ATTORNEY'S FEES AND COSTS

32. Paragraphs 1 through 31 of the within Answer and New Matter are incorporated herein by their entirety by reference thereto as though fully set forth at length herein.

33. At all times relevant hereto, Additional Defendant, **CHARLES W. RICE**, was the Treasurer/Secretary and the primary decision making officer for the financial affairs of the corporation, and **DR. CHARLES W. RICE** was responsible for payments of the employees and associates of Rice, Magill & Associates, a Pennsylvania business corporation.

34. At all times relevant hereto, the corporation of Rice, Magill & Associates was the employer of the Plaintiff, **BRIAN ELIAS**, under his Employment Contract, and the Additional Defendant, **CHARLES W. RICE**, was the primary decision making officer for the financial affairs and payments of salaries and bonuses to associates or employees, and the Plaintiff, **BRIAN ELIAS**, was aware that **DR. CHARLES W. RICE** and his Office Manager, Karen Steele, were in charge of the payments of salaries and bonuses.

35. On or around October 27, 2000, the Additional Defendant, **CHARLES W. RICE**, decided that he wanted to leave the corporation of Rice, Magill & Associates, and he notified the Defendant, **BRADLEY J. MAGILL**, of his intentions to leave their practice and the corporation, with it also being acknowledged at that time that Additional Defendant, **CHARLES W. RICE**, would remain responsible and need to stay involved with the payment of any associates or employees of the corporation, to properly wind up the affairs and unfinished business of said corporation.

36. On or around October 27, 2000, the Plaintiff, **BRIAN M. ELIAS**, chose to voluntarily resign from his employment at Rice, Magill & Associates, and that he was going to leave along with the Additional Defendant, **DR. CHARLES W. RICE**, and that Plaintiff **ELIAS** informed the Defendants that he did not want to renew his Employment Contract.

37. After Additional Defendant, **CHARLES W. RICE**, left the corporation and started his own practice, **DR. RICE** and **DR. MAGILL** had certain disputes regarding their joint business corporation of Rice, Magill & Associates, with an action eventually being filed, and said dispute was ultimately decided by a Private Arbitrator on November 16, 2001.

38. After the Plaintiff, **BRIAN M. ELIAS**, and the Additional Defendant, **CHARLES W. RICE**, had left the corporation on October 31, 2000, and during the pendency of the lawsuit and arbitration between **DR. RICE** and **DR. MAGILL**, which was not resolved until an Arbitration Decision on November 16, 2001, the Plaintiff **ELIAS** made no claims for any salary or other bonus amounts that he alleged to be due from the corporation or **DR. MAGILL**.

39. There were no formal demands or claims for payment made by the Plaintiff, **BRIAN M. ELIAS**, to **BRADLEY MAGILL** until the filing and service of the Complaint in the within Action on March 27, 2002.

40. The Plaintiff, **BRIAN M. ELIAS**, filed the within matter against **BRADLEY J. MAGILL** and **TERESA MAGILL** individually, as well as officers of an entity that he called **MAGILL & ASSOCIATES**, which does not even exist, even though Plaintiff was directly aware that **DR. CHARLES W. RICE** was in charge of the financial affairs and payment of any employees or associates of Rice, Magill & Associates, and that **DR. CHARLES W. RICE** should be held personally liable for any claims under the Wage and Collection Law or any other legal claims.

41. That the Plaintiff should have also named **CHARLES W. RICE** individually as a Defendant in his original Complaint and claims in the within case, since he was the primary officer in charge of the financial affairs, and would be responsible for making the decisions as to any required payments of salary and bonus monies to him as an associate, at all times relevant to the within Action, prior to Plaintiff leaving the corporation.

42. As a result of having to defend this Action and Complaint, your Defendants, **MAGILLS**, have been forced to pay attorney's fees in an amount in excess of \$3,000.00, as well as costs of suit, filing fees, lost profits, and other costs, for which the Plaintiff, **BRIAN M. ELIAS**, should be responsible, as a result of his arbitrary, vexatious and capricious claims made in the within Action, in bad faith, and for the Plaintiff's failure to name an indispensable party, in his failure to name the Additional Defendant, **CHARLES W. RICE**, or the corporation of Rice, Magill & Associates.

WHEREFORE, your Defendants, **BRADLEY J. MAGILL** and **TERESA MAGILL**, individually and **MAGILL PODIATRY**, respectfully request this Honorable Court to enter Judgment in their favor and order as follows:

- (A) Enter Judgment in favor of the Defendants, **BRADLEY J. MAGILL** and **TERESA MAGILL**, and **MAGILL PODIATRY**, dismissing any and all claims filed against them by the Plaintiff, **BRIAN M. ELIAS**;
- (B) That the Court also enter Judgment in favor of the Defendants and against the Plaintiff, **BRIAN M. ELIAS**, ordering the Plaintiff pay the Defendants attorney's fees, costs of suit, filing fees, lost profits, and any other costs incurred in having to defend the within Action; and
- (C) Such other relief as the Court deems appropriate.

COUNT II – BREACH OF CONTRACT/VIOLATION OF NON-COMPETITION CLAUSE

43. Paragraphs 1 through 42 of the within Answer, New Matter and Counterclaim are incorporated herein by their entirety by reference thereto as though fully set forth at length herein.

44. That the Plaintiff, **BRIAN M. ELIAS**, has been operating as a doctor of podiatric medicine at a business address at 90 Beaver Drive, Building D, DuBois, Pennsylvania (15801), after he voluntarily resigned from his position at Rice, Magill & Associates in or around October 31, 2000.

45. That pursuant to an Employment Contract entered into by Plaintiff with the corporation of Rice, Magill & Associates, of which the Defendant, **BRADLEY J. MAGILL**, is a partial owner, the contract specifically provided under Paragraph 12 a Non-Competition Clause which stated as follows:

"Upon termination of the Doctor's employment for just cause, during the initial term or any renewal thereof, unless otherwise referenced herein, he shall not, for a period of one (1) year thereafter, except with the written consent of the Corporation, engage in the practice of Podiatry within a thirteen (13) mile radius from RMA's existing offices located in Punxsutawney and DuBois."

46. That Paragraph 12 of the Non-Competition Clause in the Plaintiff's Employment Contract with the corporation provided that if there was any violation of the Non-Competition provision, or if the Plaintiff **ELIAS** decided to start his own office or go into practice with anyone else, then the Plaintiff **ELIAS** would be responsible to pay a liquidated damages sum of Seventy seven Thousand Three Hundred (\$77,300.00) Dollars, if he choose to terminate this provision and enter into a practice in competition within a thirteen (13) mile radius of Rice, Magill & Associates' existing offices.

47. That the Plaintiff, **BRIAN M. ELIAS**, never paid any amount to the Defendants **MAGILLS**, or the corporation of Rice, Magill & Associates, to the knowledge of the Defendants **MAGILLS**.

48. That the Plaintiff, **BRIAN M. ELIAS**, did in fact go in the practice of podiatry in a separate office in DuBois, as well as an office in Punxsutawney, both in competition with the Defendant **MAGILLS**' offices, within less than thirteen (13) miles of the office of the Defendant **BRADLEY J. MAGILL**, and **MAGILL PODIATRY**, and the corporation of Rice, Magill & Associates.

49. That the actions of the Plaintiff, **BRIAN M. ELIAS**, in going into a separate practice of podiatry with an office within thirteen (13) miles of the Defendant **MAGILLS**' offices and that of the corporation is a direct and material breach of the Employment Agreement and specifically the Non-Competition Clause, for which the Defendant, **BRADLEY J. MAGILL**, and Rice, Magill & Associates, are entitled to be paid liquidated damages in the amount of Seventy Seven Thousand Three Hundred (\$77,300.00) Dollars, in addition to lost profits or any other damages suffered as a result of said breach.

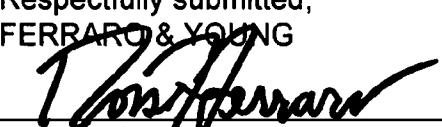
50. That the Defendant **MAGILL** paid Podiatry License Fees in the amount of One Hundred Seventy Five (\$175.00) Dollars, as well as Malpractice Insurance in the amount of Eight Hundred Fifty (\$850.00) Dollars, for the Plaintiff, **BRIAN M. ELIAS**, after Plaintiff had left the corporation and any practice with the Defendant, **BRADLEY J. MAGILL**, for which they have never been reimbursed by the Plaintiff **ELIAS**, and have also suffered those additional damages in the amount of One Thousand Twenty Five (\$1,025.00) Dollars for said Licenses Fees and Malpractice Insurance, for which the Plaintiff **ELIAS** is responsible.

51. The Defendants, **BRADLEY J. MAGILL** and **TERESA MAGILL**, individually and on behalf of **MAGILL PRODIATRY**, demand Jury Trial in the within matter.

WHEREFORE, your Defendants, **BRADLEY J. MAGILL** and **MAGILL PODIATRY**, respectfully request this Honorable Court to enter Judgment in their favor and order as follows:

- (A) Enter Judgment in favor of the Defendants, **BRADLEY J. MAGILL** and **MAGILL PODIATRY**, against the Plaintiff, **BRIAN M. ELIAS**, ordering that the said Plaintiff **ELIAS** pay the Defendants' the liquidated damages in the amount of Seventy Seven Thousand Three Hundred (\$77,300.00) Dollars as a result of the breach of the Non-Competition Clause of the Employment Contract, in addition to attorney's fees, costs of suit, filing fees, lost profits, and any other costs or damages incurred in the within Action;
- (B) In the alternative, enter Judgment in favor of the Defendant, **BRADLEY J. MAGILL**, as an authorized representative of the corporation of Rice, Magill & Associates, ordering that the Plaintiff **ELIAS** pay the liquidated damages in the amount of Seventy Seven Thousand Three Hundred (\$77,300.00) Dollars, in addition to attorney's fees, costs of suit, filing fees, lost profits, and any other costs or damages incurred;
- (C) Also ordering that the Plaintiff **ELIAS** pay to the Defendants **BRADLEY J. MAGILL** and **MAGILL PODIATRY**, the sum of One Thousand Twenty Five (\$1,025.00) Dollars, for the License Fees and Malpractice Insurance, and any other fees or costs incurred by **MAGILL** on behalf of the Plaintiff **ELIAS**; and
- (D) Such other relief as the Court deems appropriate.

Respectfully submitted,
FERRARO & YOUNG



Ross F. Ferraro, Esquire
Attorney for Defendants, Bradley
J. Magill and Teresa Magill,
Individually, and Magill Podiatry

VERIFICATION

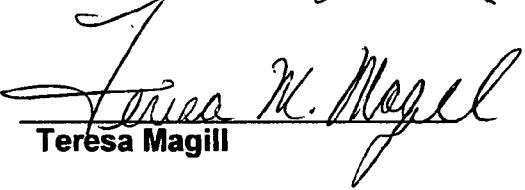
We, **BRADLEY J. MAGILL** and **TERESA MAGILL**, verify that the statements made in the within Answer, New Matter and Counterclaim are true and correct to the best of our knowledge. We understand that false statements made herein are made subject to the penalties 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Date: 4/18/02



Bradley J. Magill

Date: 4/18/02



Teresa Magill

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BRIAN M. ELIAS, DPM,
Plaintiff,

v.

No. 02-340 C.D.

BRADLEY J. MAGILL, Individually
and as President of **MAGILL &**
ASSOCIATES, and
TERESA MAGILL, Individually
and as Vice-President of
MAGILL & ASSOCIATES,
Defendants,

v.

CHARLES W. RICE,
Additional Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the a true and correct copy of the foregoing Answer, New Matter and Counterclaim has been mailed by U.S. first class mail, postage pre-paid to the Plaintiff, **BRIAN M. ELIAS'S** counsel of record, Christopher E. Mohney, Esquire at the following address on this 18th day of April, 2002:

Christopher E. Mohney, Esquire
BLAKLEY, JONES & MOHNEY
90 Beaver Drive, Box 6
DuBois, PA 15801

FERRARO & YOUNG

BY:


Ross F. Ferraro, Esquire
Counsel for Original Defendants,
Bradley J. Magill and Teresa
Magill, Individually, and
Magill Podiatry

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12213

ELIAS, BRIAN M., DPM

02-340-CD

VS.

MAGILL, BRADLEY J., ind & as President of MAGILL & ASSOC.

COMPLAINT

SHERIFF RETURNS

**NOW MARCH 14, 2002, THOMAS DEMKO, SHERIFF OF JEFFERSON COUNTY
WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY
TO SERVE THE WITHIN COMPLAINT ON BRADLEY J. MAGILL ind. And as Pres.
OF MAGILL & ASSOCIATES AND TERESA MAGILL, ind And as V.P. OF MAGILL &
ASSOCIATES, DEFENDANT.**

**NOW MARCH 27, 2002 SERVED THE WITHIN COMPLAINT ON BRADLEY J. MAGILL
ind & as Pres. Of Magill & Associates and TERESA MAGILL ind & as V.P.
OF MAGILL & ASSOCIATES, DEFENDANT BY DEPUTIZING THE SHERIFF OF
JEFFERSON COUNTY. THE RETURN OF SHERIFF DEMKO IS HERETO ATTACHED
AND MADE A PART OF THIS RETURN STATING THAT HE SERVED BOTH COPIES
ON PAT LONG, SECRETARY.**

Return Costs

Cost	Description
45.69	SHFF. HAWKINS PAID BY: ATTY.
41.50	SHFF. DEMKO PAID BY: ATTY.
20.00	SURCHARGE PAID BY: ATTY.
<u>\$ 107.19</u>	

FILED

MAY 02 2002
04:00

William A. Shaw
Prothonotary

Sworn to Before Me This

2nd Day Of May 2002
William A. Shaw

So Answers,

Chester A. Hawkins

**Chester A. Hawkins
Sheriff**

WILLIAM A. SHAW
Prothonotary
M. Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

No. 02-340-CD

Personally appeared before me, Terry Fedigan, Deputy for Thomas A. Demko, Sheriff of Jefferson County, Pennsylvania, who according to law deposes and says that on March 27, 2002 at 9:15 o'clock A.M. served the Notice and Complaint upon BRADLEY J. MAGILL, individually and as President of MAGILL & ASSOCIATES, and TERESA MAGILL, individually and as Vice-President of MAGILL & ASSOCIATES, Defendants, at their place of business, North Main Street, Borough of Punxsutawney, County of Jefferson, State of Pennsylvania by handing to Pat Long, Secretary and adult person in charge at time of service, two true copies of the Notice and Complaint, and by making known to her the contents thereof.

Advance Costs Received: \$125.00
 My Costs: \$ 39.50 Paid
 Prothy: \$ 2.00
 Total Costs: \$ 41.50
 Refunded: \$ 83.50

Sworn and subscribed
 to before me this 27
 day of MARCH 2002
 By RICHARD D. BECK

RICHARD D. BECK, DISTRICT JUSTICE
 Magisterial District Court 54-3-03
 Jefferson County Courthouse
 Brookville, PA 15825
 My Commission Expires First Mon. Jan. 2006

So Answers,

Terry Fedigan Deputy Sheriff
Thomas A. Demko
 JEFFERSON COUNTY, PENNSYLVANIA

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12412

ELIAS, BRIAN M., DPM

02-340-CD

VS.
MAGILL, BRADLEY J. ind & as Pres. Of MAGILL & ASSOC.

COMPLAINT TO JOIN ADDITIONAL DEFENDANT; ANSWER, NEW MATTER & COUNTERCLAIM

SHERIFF RETURNS

NOW APRIL 26, 2002 AT 10:29 AM DST SERVED THE WITHIN COMPLAINT TO JOIN ADDITIONAL DEFENDANT; ANSWER, NEW MATTER & COUNTERCLAIM ON CHARLES W. RICE, DEFENDANT AT EMPLOYMENT, 90 BEAVER DRIVE, BLDG. D, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CHARLES W. RICE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT TO JOIN ADDITIONAL DEFENDANT; ANSWER, NEW MATTER & COUNTERCLAIM AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: COUDRIET

Return Costs

Cost	Description
30.69	SHFF. HAWKINS PAID BY: ATTY
10.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

9th Day Of May 2002
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
by Mandy Harr
Chester A. Hawkins
Sheriff

FILED
01/21/2
MAY 09 2002
b7d
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIAN M. ELIAS, DPM

Plaintiff

vs.

BRADLEY J. MAGILL, Individually
and as President of MAGILL &
ASSOCIATES, and TERESA MAGILL,
Individually and as Vice-
President of MAGILL & ASSOCIATES

Defendants

vs.

CHARLES W. RICE,

Additional Defendant

CIVIL DIVISION

No. 02 - 340 - CD

ANSWER AND NEW MATTER

Filed on Behalf of:

Additional Defendant,
CHARLES W. RICE

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI, RYAN & COLAVECCHI
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

FILED

MAY 13 2002

William A. Shaw
Prothonotary

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

BRIAN M. ELIAS, DPM :
Plaintiff :
:
vs. : No. 02 - 340 - CD
:
BRADLEY J. MAGILL, Individually, :
and as President of MAGILL & :
ASSOCIATES, and TERESA MAGILL, :
Individually and as Vice-President:
of MAGILL & ASSOCIATES, :
Defendants :
:
vs. :
:
CHARLES W. RICE, :
Additional Defendant :
:

N O T I C E

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 New Matter 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 New Matter or for any other claim or relief requested by the Additional Defendant. 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.

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 North Second Street
Clearfield, PA 16830

Phone 814/765-2641, Ext. 5982

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

BRIAN M. ELIAS, DPM :
Plaintiff :
:
vs. : No. 02 - 340 - CD
:
BRADLEY J. MAGILL, Individually, :
and as President of MAGILL & :
ASSOCIATES, and TERESA MAGILL, :
Individually and as Vice-President: :
of MAGILL & ASSOCIATES, :
Defendants :
:
vs. :
:
CHARLES W. RICE, :
Additional Defendant :
:

ANSWER AND NEW MATTER
OF CHARLES W. RICE, ADDITIONAL DEFENDANT

Charles W. Rice, through his Attorney, Joseph Colavecchi,
Esquire, files his Answer to the Complaint to join him as an
Additional Defendant, and respectfully avers as follows:

1. Admitted.
2. Admitted.
3. This does not require an answer.
4. This does not require an answer.
5. It is admitted that Charles W. Rice was the
Treasurer/Secretary of Rice, Magill & Associates. However, all

decisions were made jointly by Charles W. Rice and Bradley J. Magill. Charles W. Rice elected to withdraw from the corporation on or about November, 2000.

6. It is admitted that Brian M. Elias had an Employment Contract with Rice, Magill & Associates. It is denied, however, that Charles W. Rice was the primary decision making officer. The decisions were jointly made by Charles W. Rice and Bradley J. Magill.

7. It is admitted that Charles W. Rice decided he wanted to leave the corporation and notified Bradley J. Magill of his intentions. He further stated that he would pay his share of any expenses for which he was legally responsible to properly wind up the affairs of the corporation.

8. Denied. On the contrary, it is alleged on information and belief that Brian M. Elias approached Bradley J. Magill about renewing his contract which was terminating on or about November 1, 2000 and Bradley J. Magill either refused or neglected to renew the contract of Brian M. Elias.

9. It is admitted that there was a dispute and the matter between Bradley J. Magill and Charles W. Rice was decided by a

private Arbitrator on November 16, 2001. This subject of this dispute was primarily involving the receivables of Charles W. Rice which were withheld by Bradley J. Magill.

10. Denied. On information and belief, Charles W. Rice believes that Brian M. Elias did make a claim on the corporation through Bradley J. Magill for unpaid bonus amounts that he alleged to be due from Bradley J. Magill. Brian M. Elias related this to Charles W. Rice.

11. Denied. It is alleged on information and belief that Brian M. Elias made at least weekly calls to Bradley J. Magill for his unpaid bonus money.

12. Denied. On the contrary, if there is any responsibility or liability, it is owed by Bradley J. Magill.

13. Denied. On the contrary, if there is liability to Brian M. Elias, it is owed by Bradley J. Magill.

14. Denied. On the contrary, the liability would be to Brian M. Elias from Bradley J. Magill. It is alleged on information and belief that Bradley J. Magill collected on all of the receivables of Brian M. Elias. Charles W. Rice saw none of the money from the Brian M. Elias receivables. This is the money out of which the bonus funds, if any, would be paid, to Brian M. Elias.

15. Charles W. Rice is also demanding a jury trial in the within matter.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

WHEREFORE, Charles W. Rice demands that the Complaint to join him as an Additional Defendant be dismissed and that judgment be entered in his favor, together with costs.

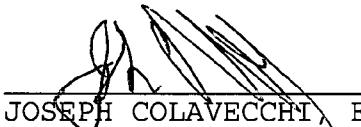
NEW MATTER

Charles W. Rice files his New Matter in the above-captioned Complaint against him as an Additional Defendant, and respectfully avers as follows an affirmative defense:

1. Any obligations owed from Charles W. Rice to Bradley J. Magill have been satisfied in full through an Award from the American Arbitration Association dated November 16, 2001, a copy of which is attached to this Answer and New Matter, marked Exhibit "A".
2. The said Arbitration Award sets out that the Award is full settlement of all claims and counterclaims submitted to this Arbitration.
3. This Arbitration Award is a full satisfaction of all claims of Bradley J. Magill against Charles W. Rice.
4. Said Arbitration Award also amounts to an accord and satisfaction of all claims.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

WHEREFORE, it is demanded that judgment be entered in favor of Charles W. Rice against Bradley J. Magill.


JOSEPH COLAVECCHI, ESQUIRE
Attorney for Charles W. Rice

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

VERIFICATION

I verify that the statements made in this Answer and New Matter are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. 4904, relating to unsworn falsification to authorities.



CHARLES W. RICE

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION
No. 02 - 340 - CD

BRIAN M. ELLAS, DPM
Plaintiff

vs.

BRADLEY J. MAGILL, Individually
and as President of MAGILL &
ASSOCIATES, and TERESA MAGILL,
Individually and as Vice-
President of MAGILL & ASSOCIATES,
Defendants

CHARLES W. RICE,
Additional Defendant

ANSWER AND NEW MATTER

NOTICE:

YOU are hereby notified that
you are required to file an
Answer to the within New Matter
within twenty (20) days after
service upon you or judgment may
be entered against you.

John Colavecchi
JOSEPH COLAVECCHI, ESQUIRE
Attorney for Charles W. Rice

COLAVECCHI
RYAN & COLAVECCHI

ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

FILED

MAY 13 2002 3:00 PM
Atty Glancich

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BRIAN M. ELIAS, DPM, Plaintiff,	:	CIVIL ACTION - LAW
v.	:	No. 02-340 C.D.
BRADLEY J. MAGILL , Individually and as President of MAGILL & ASSOCIATES , and TERESA MAGILL , Individually and as Vice-President of MAGILL & ASSOCIATES , Defendant,	:	Type of Pleading: REPLY TO NEW MATTER
v.	:	Jury Trial Demanded
CHARLES W. RICE , Additional Defendant	:	Filed on Behalf of: Defendants, Bradley J. Magill, et al.
	:	Counsel of Record for This Party: R. EDWARD FERRARO, ESQUIRE Supreme Court No. 05880
	:	ROSS F. FERRARO, ESQUIRE Supreme Court No. 79218
	:	FERRARO & YOUNG 690 Main Street Brockway, PA 15824 (814) 268-2202

FILED

MAY 21 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BRIAN M. ELIAS, DPM,
Plaintiff,

v.

No. 02-340 C.D.

BRADLEY J. MAGILL, Individually
and as President of **MAGILL &**
ASSOCIATES, and
TERESA MAGILL, Individually
and as Vice-President of
MAGILL & ASSOCIATES,
Defendants,

v.

CHARLES W. RICE,
Additional Defendant.

REPLY TO NEW MATTER

AND NOW, come the Defendants, **BRADLEY J. MAGILL**, individually and as President of **MAGILL PODIATRY**, and **TERESA MAGILL**, individually and as Vice-President of **MAGILL PODIATRY** (hereinafter collectively "**MAGILLS**"), by and through their Attorneys, **FERRARO & YOUNG**, and file the within Reply to Additional Defendant **CHARLES W. RICE'S** New Matter, and in support thereof respectfully aver as follows:

1. **DENIED.** It is Denied that the obligations in the within matter have been satisfied by Additional Defendant, **CHARLES W. RICE**, through any Award by the American Arbitration Association dated November 16, 2001, as alleged in

Paragraph 1 of Additional Defendant's New Matter, and strict proof of all said allegations is demanded at trial. To the contrary, there was never a formal claim made by **DR. BRIAN M. ELIAS** or the Defendants **MAGILLS** in the previous Arbitration matter, and thus the current Action involves separate and new claims involving said Additional Defendant, **CHARLES W. RICE**.

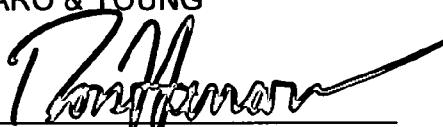
2. **DENIED.** It is Denied that any previous Arbitration Award indicates that the Award is in full settlement of any and all claims or counterclaims of other parties, including the claims set forth in the Complaint of **DR. BRIAN M. ELIAS** or the Defendants **MAGILLS**' Complaint to Join Additional Defendant in the claims in the within matter, and strict proof of any allegations in Paragraph 2 of the Additional Defendant's New Matter are demanded at trial. To the contrary, there was never a resolution as to any claims of **BRIAN M. ELIAS**, as no formal claim was made by **DR. ELIAS** at the time of the Arbitration Award, and thus, any claims related thereto are appropriately before this Honorable Court and require resolution by the Court.

3. **DENIED.** It is Denied that any Arbitration Award previously entered is in full satisfaction of the current claims of **BRADLEY J. MAGILL** against **CHARLES W. RICE**, or the claims of **BRIAN M. ELIAS**, and strict proof of the allegations contained in Paragraph 3 of Additional Defendant's New Matter are demanded at trial. To the contrary, any claims presently before the Court on behalf of **BRADLEY J. MAGILL** or **BRIAN M. ELIAS**, are appropriately made against the Additional Defendant, **CHARLES W. RICE**, for which Defendant **MAGILLS** are entitled to resolution as a separate matter.

4. **DENIED.** It is Denied that any previous Arbitration Award amounts to an accord and satisfaction of all claims in the within Action, and strict proof of any said allegations in Paragraph 4 of Additional Defendant's New Matter are demanded at trial.

WHEREFORE, it is respectfully requested and demanded that the Court deny any and all affirmative defenses or other claims set forth in the Additional Defendant's New Matter, and further request that this Honorable Court enter judgment in favor of the Defendants **MAGILLS**, as requested in their Complaint to Join Additional Defendant, and Defendants **MAGILLS**' New Matter and Counterclaim in the within Action.

Respectfully submitted,
FERRARO & YOUNG

BY: 

Ross F. Ferraro, Esquire
Attorney for Defendants, Magills

VERIFIED STATEMENT

I, ROSS F. FERRARO, ESQUIRE, on behalf of the Law Firm of FERRARO & YOUNG, being the attorneys for the Defendants, BRADLEY J. MAGILL and TERESA MAGILL, in the within Action, am duly authorized to make this Verified Statement on the Defendants' behalf. I hereby verify that the statements set forth in the foregoing Reply to New Matter are true and correct to the best of my information and belief, based upon knowledge obtained from representatives of the Defendants.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.



Ross F. Ferraro, Esquire
Attorney for Defendants, Magills

Dated: 5/20/02

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BRIAN M. ELIAS, DPM,
Plaintiff,

v.

No. 02-340 C.D.

BRADLEY J. MAGILL, Individually
and as President of **MAGILL &**
ASSOCIATES, and
TERESA MAGILL, Individually
and as Vice-President of
MAGILL & ASSOCIATES,
Defendants,

v.

CHARLES W. RICE,
Additional Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the a true and correct copy of the foregoing Reply to
New Matter has been mailed by U.S. first class mail, postage pre-paid to the Plaintiff,
BRIAN M. ELIAS'S counsel of record, Christopher E. Mohney, Esquire, and to the
Additional Defendant, **CHARLES W. RICE'S** counsel of record, Joseph Colavecchi,
Esquire, at the following addresses on this 20th day of May, 2002:

Christopher E. Mohney, Esquire
BLAKLEY, JONES & MOHNEY
90 Beaver Drive, Box 6
DuBois, PA 15801

Joseph Colavecchi, Esquire
COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

FERRARO & YOUNG

BY: 

Ross F. Ferraro, Esquire
Counsel for Original Defendants,
Bradley J. Magill and Teresa
Magill, Individually, and Magill
Podiatry

FILED

1cc
MAY 21 2002
Atty Ferraro



William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BRIAN M. ELIAS, DPM,	:	NO. 02-340-C.D.
	:	
PLAINTIFFS	:	
VS.	:	TYPE OF PLEADING: REPLY TO NEW MATTER
	:	
BRADLEY J. MAGILL, individually and as President of MAGILL & ASSOCIATES and	:	FILED ON BEHALF OF: PLAINTIFF BRIAN M. ELIAS, DPM
TERESA MAGILL, individually and as Vice-President of MAGILL & ASSOCIATES	:	COUNSEL OF RECORD: CHRISTOPHER E. MOHNEY, ESQUIRE
	:	
DEFENDANTS	:	SUPREME COURT NO.: 63494
	:	
VS.	:	BLAKLEY, JONES & MOHNEY 90 BEAVER DRIVE, BOX 6
CHARLES W. RICE,	:	DU BOIS, PA 15801 (814) 371-2730
ADDITIONAL DEFENDANT	:	

JURY TRIAL DEMANDED

FILED

MAY 29 2002
0115811 C. E. Mohney
William A. Shaw
Prothonotary

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

BRIAN M. ELIAS, DPM,	:	NO. 02 - 340 - C.D.
Plaintiff	:	
	:	
VS.	:	
	:	
BRADLEY J. MAGILL, individually	:	
and as President of MAGILL &	:	
ASSOCIATES, and TERESA MAGILL,	:	
individually and as Vice-President of	:	
MAGILL & ASSOCIATES,	:	
Defendants	:	
	:	
VS.	:	
	:	
CHARLES W. RICE,	:	
Additional Defendant	:	

PLAINTIFF'S REPLY TO NEW MATTER OF DEFENDANTS

AND NOW, comes Plaintiff BRIAN M. ELIAS, DPM, by and through his attorneys and files the following Reply to Matter of Defendants:

25. No answer required.
26. Denied. To the contrary, Plaintiff BRIAN M. ELIAS, DPM, (hereinafter referred to as "ELIAS") fulfilled all terms of his employment agreement with Rice, Magill & Associates, P.C. (hereinafter referred to as "RMA"), and at no time offered to resign, or resigned, his employment. To the contrary, Defendant BRADLEY J. MAGILL, the President of RMA, failed to exercise the second option to renew the employment agreement pursuant to the terms of paragraph 1 of the employment agreement and further failed to re-negotiate an employment contract.

27. Denied. To the contrary, on information and belief, Dr. CHARLES W. RICE was

never the primary decision making officer regarding the payment of financial items of RMA, rather, decisions for RMA were jointly made by CHARLES W. RICE , the Treasurer/Secretary, and Defendant BRADLEY J. MAGILL, President. By way of further response, after reasonable investigation, ELIAS is without knowledge or information sufficient to form a belief as to the truth of averments concerning particulars of RICE and MAGILLS in the winding up of the affairs of the corporation after RICE elected to withdraw from RMA.

28. Admitted.

29. Paragraph 29 of MAGILLS' New Matter contains legal conclusions to which no responsive pleading is required, the same being denied and strict proof is demanded at trial. By way of further response, it is denied that ELIAS voluntarily resigned from his employment with RMA and/or Defendant BRADLEY MAGILL, and contents of Paragraph 26 of this Reply to New Matter incorporated herein by reference and as if set forth at length herein. It is further denied by ELIAS that he intended on leaving RMA to start a new practice in the DuBois area with RICE, and to the contrary, even now, RICE and ELIAS are not in business together, and never were. The terms of the written employment agreement between ELIAS and RMA, including Paragraph 25 entitled "Assignment Prohibited", speak for themselves, and it is denied by ELIAS that the terms of the agreement in any way prohibit MAGILLS from being named as Defendants herein, due to, but not necessarily limited to, the Pennsylvania Wage Payment and Collection Law.

30. Denied. To the contrary, ELIAS believes, and therefore avers, that Defendant TERESA MAGILL was, at one time at least, Vice-President of RMA. By way of further response, it is further denied by ELIAS that RICE and Karen Steele were the individuals responsible for making decisions regarding financial affairs of RMA during relevant times through this lawsuit, and to the contrary, Paragraph 27 of ELIAS' Reply to New Matter is incorporated herein by reference

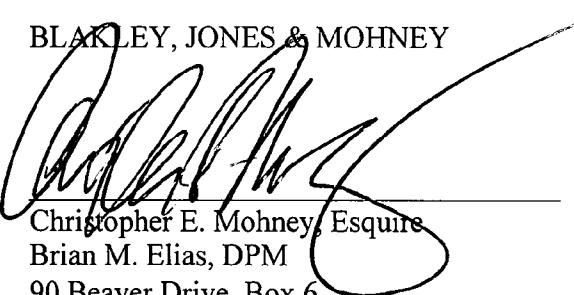
and as if set forth herein at length.

31. Denied. Paragraph 31 of MAGILLS' New Matter contains legal conclusions to which no response is necessary, the same being denied and strict proof thereof being demanded at trial. To the extent an answer is deemed necessary, ELIAS' reply to Paragraph 30 of MAGILLS' New Matter, and to the Pennsylvania Wage Payment and Collection Law, 43 P.S. §260.1, et seq., are incorporated herein by reference and as if set forth herein at length.

WHEREFORE, Plaintiff prays this Honorable Court to dismiss New Matter of Defendants.

Respectfully submitted,

BLAKLEY, JONES & MOHNEY

BY: 

Christopher E. Mohney, Esquire
Brian M. Elias, DPM
90 Beaver Drive, Box 6
Du Bois, PA 15801
(814) 371-2730

VERIFICATION

I, **BRIAN M. ELIAS, DPM**, have read the foregoing Plaintiff's Reply to New Matter. The statements therein are correct to the best of our personal knowledge or information and belief.

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

Date: 5/22/02


BRIAN M. ELIAS, DPM

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

BRIAN M. ELIAS, DPM,	:	NO. 02 - 340 - C.D.
Plaintiff	:	
VS.	:	
BRADLEY J. MAGILL, individually	:	
and as President of MAGILL &	:	
ASSOCIATES, and TERESA MAGILL,	:	
individually and as Vice-President of	:	
MAGILL & ASSOCIATES,	:	
Defendants	:	
VS.	:	
CHARLES W. RICE,	:	
Additional Defendant	:	

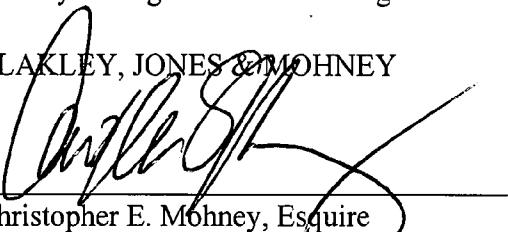
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff's Reply to New Matter has been served upon the following individual by regular United States mail, postage prepaid, on this 23 day of May, 2002:

Joseph Colavecchi, Esquire
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
Attorney for Defendant
Charles W. Rice

Ross F. Ferraro, Esquire
Ferraro & Young
690 Main Street
Brockway, PA 15824
Attorney for Defendants
Bradley J. Magill and Teresa Magill

BY:

BLAKLEY, JONES & MOHNEY

Christopher E. Mohney, Esquire
Plaintiff Brian M. Elias, DPM
90 Beaver Drive, Box 6
Du Bois, PA 15801
(814) 371-2730

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
NO. 02 - 340 - C.D.

BRIAN M. ELIAS, DPM,

PLAINTIFF

VS.

BRADLEY J. MAGILL, individually
and as President of MAGILL &
ASSOCIATES and TERESA MAGILL,
individually and as Vice-President
of MAGILL & ASSOCIATES,

DEFENDANTS

VS.
CHARLES W. RICE,

ADDITIONAL DEFENDANT

REPLY TO NEW MATTER

LAW OFFICES
BLAKLEY, JONES & MOHNEY

90 BEAVER DRIVE - BOX 6
DUBOIS, PA 15801

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BRIAN M. ELIAS, DPM, Plaintiff,	:	No. 02-340 C.D.
v.	:	
BRADLEY J. MAGILL , Individually and as President of MAGILL & ASSOCIATES , and TERESA MAGILL , Individually and as Vice-President of MAGILL & ASSOCIATES , Defendants,	:	Type of Pleading: REPLY TO PRELIMINARY OBJECTIONS
v.	:	Jury Trial Demanded
CHARLES W. RICE , Additional Defendant	:	Filed on Behalf of: Defendants, Bradley J. Magill and Teresa Magill
	:	Counsel of Record for this Party: R. EDWARD FERRARO, ESQUIRE Supreme Court No. 05880 ROSS F. FERRARO, ESQUIRE Supreme Court No. 79218
	:	FERRARO & YOUNG 690 Main Street Brockway, PA 15824 (814) 268-2202

FILED

MAY 30 2002
011-3811cc att Ferraro
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BRIAN M. ELIAS, DPM,
Plaintiff,

v.

No. 02-340 C.D.

BRADLEY J. MAGILL, Individually
and as President of **MAGILL &**
ASSOCIATES, and
TERESA MAGILL, Individually
and as Vice-President of
MAGILL & ASSOCIATES,
Defendants,

v.

CHARLES W. RICE,
Additional Defendant.

REPLY TO PRELIMINARY OBJECTIONS

AND NOW, come the Defendants, **BRADLEY J. MAGILL**, individually and as President of **MAGILL PODIATRY**, and **TERESA MAGILL**, individually and as Vice-President of **MAGILL PODIATRY** (hereinafter collectively "**MAGILLS**"), by and through their Attorneys, **FERRARO & YOUNG**, and file the within Reply to Plaintiff **BRIAN M. ELIAS'** Preliminary Objections, of which the following is a concise statement:

1. Admitted.

2. **DENIED.** It is Denied that the proper nature of **ELIAS'** claim and Complaint is for bonus money due to him during his employment by the **MAGILLS**, and all averments in Paragraph 2 of Plaintiff's Preliminary Objections are denied in

their entirety, and strict proof of the same are demanded at trial. To the contrary, and by way of further response, any claims for bonus monies due to **ELIAS** should also include **DR. CHARLES W. RICE**, as set forth in the Defendant **MAGILLS'** New Matter and Counterclaim, as well as the Complaint to Join Additional Defendant.

3. Admitted.
4. Admitted.

COUNT I – REPLY TO PRELIMINARY OBJECTION PURSUANT TO
PA R.C.P. 1028(a)(4) – DEMURRER

5. No answer required, but to the extent that any reply is required, the within Reply Paragraphs 1 through 4 are incorporated herein by reference thereto as though set forth at length herein.

6. This is a conclusion of law to which no reply is required, but to the extent that any reply is required, all said allegations are Denied in their entirety, and strict proof of the same is demanded at trial.

7. This is a conclusion of law to which no reply is required, but to the extent that any reply is required, all said allegations are Denied in their entirety, and strict proof of the same is demanded at trial.

8. This is a conclusion of law to which no reply is required, but to the extent that any reply is required, all said allegations are Denied in their entirety, and strict proof of the same is demanded at trial.

9. This is a conclusion of law to which no reply is required, but to the extent that any reply is required, all said allegations are Denied in their entirety, and strict proof of the same is demanded at trial.

10. Admitted in part and Denied in part. It is Admitted that the Defendant **BRADLEY J. MAGILL** was President of Rice, Magill & Associates, P.C., but it is DENIED that **BRADLEY J. MAGILL** is responsible for any claims by **DR. BRIAN ELIAS** or that he was ever President of a business known as Magill & Associates, and all averments set forth in Paragraph 10 of the Plaintiff's Preliminary Objections are denied in their entirety, and strict proof of the same are demanded at trial.

11. DENIED. It is Denied that the Defendant **TERESA MAGILL** failed to specifically deny that she was Vice-President of Rice, Magill & Associates, P.C., or that the same should be deemed admitted, as averred in Paragraph 11 of Plaintiff's Preliminary Objections, and all averments in Paragraph 11 of Plaintiff's Preliminary Objections are denied in their entirety, and strict proof of all said allegations are demanded at trial. To the contrary, in previous Pleadings, the Defendant, **TERESA MAGILL**, did in fact specifically deny that she was ever an officer of Rice, Magill & Associates, P.C. or its alleged successor Magill & Associates, as already denied and set forth in Paragraph 5 of Defendant **MAGILLS**' original Answer, and also as specifically set forth in Paragraph 30 of the Defendant **MAGILLS**' New Matter, where she clearly stated that she was never Vice-President or any other officer or held any such position within the corporation of Rice, Magill & Associates, P.C. or Magill & Associates.

12. DENIED. It is Denied that as officers of the alleged corporation, that the **MAGILLS** are properly named Defendants in this lawsuit by **ELIAS**, and all averments in Paragraph 12 of Plaintiff's Preliminary Objections are denied in their entirety, and strict proof of the same are demanded at trial.

13. DENIED. All averments set forth in Paragraph 13 of Plaintiff's Preliminary Objections averring that Count I of **MAGILLS**' Counterclaim has no basis are denied in their entirety, and strict proof of the same is demanded at trial.

WHEREFORE, Defendants **MAGILLS** respectfully pray that this Honorable Court **DENY** the Plaintiff's Preliminary Objections and order that the Plaintiff **BRIAN M. ELIAS, DPM**, file an Answer to said Counterclaim.

COUNT II – REPLY TO PRELIMINARY OBJECTION PURSUANT TO PA R.C.P. 1028(4) – DEMURRER, OR ALTERNATIVELY, PRELIMINARY OBJECTION PURSUANT TO PA R.C.P. 1028(a)(3)

14. No answer required, but to the extent that any reply is required, the within Reply Paragraphs 1 through 13 are incorporated herein by reference thereto as though set forth at length herein.

15. **DENIED.** It is Denied that Count I of **MAGILLS'** Counterclaim entitled "Claim for Wrongful Action, Attorneys Fees and Costs," fails to state a cognizable cause of action under Pennsylvania law, and all averments of Paragraph 15 of Plaintiff's Preliminary Objections are denied in their entirety, and strict proof of the same are demanded at trial.

16. **DENIED.** It is Denied that Count I of the **MAGILLS'** Counterclaim lacks the required specificity so as to notify the parties of the specific cause of action raised against **ELIAS**, and all averments in Paragraph 16 of Plaintiff's Preliminary Objections are denied in their entirety, and strict proof of the same are demanded at trial. To the contrary, and by way of further response, Count I of Defendant **MAGILLS'** Counterclaim does properly set forth a claim for which relief can be granted as a cause of action under Pennsylvania Law, as the said Counterclaim has been brought against **BRIAN M. ELIAS**, for his arbitrary, vexatious and capricious claims in failing to name **CHARLES W. RICE** as an indispensable party/additional defendant, or the corporation of Rice, Magill & Associates, and such a claim is recognized under Pennsylvania Law, and Defendants **MAGILLS** are entitled to a trial before the Court on the same.

WHEREFORE, Defendants **MAGILLS** pray this Honorable Court to **DENY** Plaintiff's Preliminary Objections in their entirety, and ask the Court to order that the Plaintiff, **BRIAN M. ELIAS, DPM**, file an Answer to said Counterclaim within the time normally allotted for an Answer to a Counterclaim/Complaint.

Respectfully submitted,
FERRARO & YOUNG

BY: 

Ross F. Ferraro, Esquire
Attorney for Defendants, Magills

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BRIAN M. ELIAS, DPM,
Plaintiff,

v.

No. 02-340 C.D.

BRADLEY J. MAGILL, Individually
and as President of **MAGILL &**
ASSOCIATES, and
TERESA MAGILL, Individually
and as Vice-President of
MAGILL & ASSOCIATES,
Defendants,

v.

CHARLES W. RICE,
Additional Defendant.

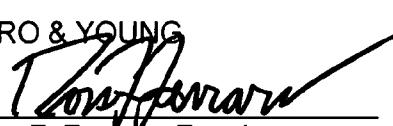
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of May, 2002, a true
and correct copy of the foregoing Reply to Preliminary Objections has been mailed by
U.S. first class mail, postage pre-paid to the Plaintiff, **BRIAN M. ELIAS'S** counsel of
record, Christopher E. Mohney, Esquire, and to the Additional Defendant, **CHARLES
W. RICE'S** counsel of record, Joseph Colavecchi, Esquire, at the following addresses:

Christopher E. Mohney, Esquire
BLAKLEY, JONES & MOHNEY
90 Beaver Drive, Box 6
DuBois, PA 15801

Joseph Colavecchi, Esquire
COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

FERRARO & YOUNG

BY: 

Ross F. Ferraro, Esquire
Counsel for Original Defendants,
Bradley J. Magill and Teresa
Magill, Individually, and Magill
Podiatry

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BRIAN M. ELIAS, DPM, : NO. 02-340-C.D.
PLAINTIFFS :
VS. : TYPE OF PLEADING:
BRADLEY J. MAGILL, individually : PRELIMINARY OBJECTIONS
and as President of MAGILL & :
ASSOCIATES and :
TERESA MAGILL, individually : FILED ON BEHALF OF: PLAINTIFF
and as Vice-President of : BRIAN M. ELIAS, DPM
MAGILL & ASSOCIATES :
DEFENDANTS : COUNSEL OF RECORD:
VS. : CHRISTOPHER E. MOHNEY, ESQUIRE
CHARLES W. RICE, : SUPREME COURT NO.: 63494
ADDITIONAL DEFENDANT :
BLAKLEY, JONES & MOHNEY
90 BEAVER DRIVE, BOX 6
DU BOIS, PA 15801
(814) 371-2730

FILED

MAY 21 2002
01/10/2002
William A. Shaw
Prothonotary

3 cent to Atty

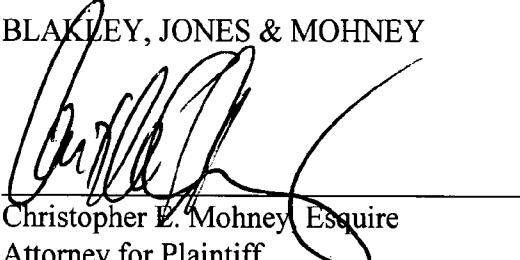
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

BRIAN M. ELIAS, DPM,	:	NO. 02 - 340 - C.D.
Plaintiff	:	
	:	
VS.	:	
	:	
BRADLEY J. MAGILL, individually	:	
and as President of MAGILL &	:	
ASSOCIATES, and TERESA MAGILL,	:	
individually and as Vice-President of	:	
MAGILL & ASSOCIATES,	:	
Defendants	:	
	:	
VS.	:	
	:	
CHARLES W. RICE,	:	
Additional Defendant	:	

TO: BRADLEY J. MAGILL and TERESA MAGILL
c/o ROSS F. FERRARO, Esquire
Ferraro & Young
690 Main Street
Brockway, PA 15824

NOTICE TO PLEAD

In accordance with Rules 1026 and 1361 of the Pennsylvania Rules of Civil Procedure, you are notified to file a written response to the within PRELIMINARY OBJECTIONS within twenty (20) days from service hereof or a default judgment may be entered against you.

BY: 
BLAKLEY, JONES & MOHNEY
Christopher E. Mohney, Esquire
Attorney for Plaintiff
Brian M. Elias, DPM
90 Beaver Drive, Box 6
Du Bois, PA 15801
(814) 371-2730

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

BRIAN M. ELIAS, DPM,	:	NO. 02 - 340 - C.D.
Plaintiff	:	
	:	
VS.	:	
	:	
BRADLEY J. MAGILL, individually	:	
and as President of MAGILL &	:	
ASSOCIATES, and TERESA MAGILL,	:	
individually and as Vice-President of	:	
MAGILL & ASSOCIATES,	:	
Defendants	:	
	:	
VS.	:	
	:	
CHARLES W. RICE,	:	
Additional Defendant	:	

PRELIMINARY OBJECTIONS

AND NOW, comes Plaintiff **BRIAN M. ELIAS, DPM**, by and through his attorneys **BLAKLEY, JONES & MOHNEY**, and files the following Preliminary Objections to Defendants' Counterclaim:

BRIEF BACKGROUND

1. Plaintiff BRIAN M. ELIAS, DPM (hereinafter referred to as "ELIAS") filed a Complaint against BRADLEY J. MAGILL and TERESA MAGILL, individually and as President and Vice-President of MAGILL & ASSOCIATES (hereinafter referred to as "MAGILLS") on or about March 6, 2002.
2. The nature of ELIAS' Complaint against the is claim for bonus money due him during his employment by MAGILLS.
3. MAGILLS have filed an Answer, New Matter and Counterclaim against ELIAS, and

also have filed a Complaint to join an additional Defendant, CHARLES W. RICE.

4. Count I of MAGILLS' Counterclaim as to ELIAS is entitled "Claim for Wrongful Action, Attorneys Fees and Costs."

**COUNT I - PRELIMINARY OBJECTION PURSUANT
TO PA. R.C.P. 1028(a)(4) - DEMURRER**

5. Paragraphs 1 through 4 of these Preliminary Objections are incorporated herein by reference and as if set forth at length.

6. ELIAS' Complaint against MAGILLS is brought pursuant to the Pennsylvania Wage Payment and Collection Law, 43 PS Section 260.1, et seq.

7. Pursuant to 43 PS Section 260.2(a), an "employer" includes any officer of a corporation.

8. Pursuant to Pennsylvania Wage Payment and Collection Law, Section 260.9(a), officers of a corporation are personally liable for unpaid wages.

9. Pursuant to the terms of the Pennsylvania Wage Payment and Collection Law, 43 PS Section 260.2(a), a bonus of an employee is considered a "wage."

10. Defendant BRADLEY J. MAGILL admits that he was President of Rice, Magill & Associates, P.C., or its successor, Magill & Associates, and in fact, BRADLEY J. MAGILL signed ELIAS' Employment Agreement as President of Rice, Magill & Associates, P.C.

11. Defendant TERESA MAGILL does not specifically deny that she was Vice-President of Rice, Magill & Associates, P.C., and therefore, accordingly to Pennsylvania Rules of Civil Procedure, the same is deemed admitted.

12. As officers of the corporation that was a former employer of ELIAS, MAGILLS are

proper named Defendants in this lawsuit initiated by a former employee of the corporation for which they were officers.

13. Count I - Claim for Wrongful Action, Attorneys Fees and Costs of MAGILLS' Counterclaim has no basis.

WHEREFORE, Plaintiff BRIAN M. ELIAS, DPM, respectfully prays this Honorable Court grant his Preliminary Objection and strike Count I of Defendant MAGILLS' Counterclaim.

**COUNT II - PRELIMINARY OBJECTION PURSUANT
TO PA R.C.P. 1028(4) - DEMURRER, OR ALTERNATIVELY,
PRELIMINARY OBJECTION PURSUANT TO PA R.C.P. 1028(a)(3)**

14. Paragraphs 1 through 13 of these Preliminary Objections are incorporated herein by reference and as if set forth at length.

15. Count I of MAGILLS' Counterclaim entitled "Claim for Wrongful Action, Attorneys Fees and Costs" states no cognizable cause of action under Pennsylvania.

16. Count I of MAGILLS' Counterclaim lacks required specificity so as to notify the specific cause of action raised against ELIAS other than MAGILLS are complaining that they have been sued as officers of ELIAS' former employee (as allowed under the Pennsylvania Wage Payment and Collection Law), and another officer of the corporation was not named by ELIAS (that being Charles W. Rice), of whom has been joined as an additional Defendant by MAGILLS.

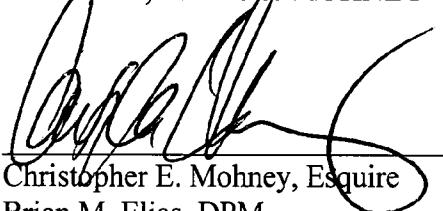
WHEREFORE, Plaintiff BRIAN M. ELIAS, DPM, prays this Honorable Court to strike Count I of Defendant MAGILLS' Counterclaim for failing to state grounds upon which legal relief can be granted, or, in the alternative, to issue an Order compelling MAGILLS to more specifically plead the cause of action sought to be put forth in Count I of their Counterclaim.

Respectfully submitted,

BLAKLEY, JONES & MOHNEY

BY:

Christopher E. Mohney, Esquire
Brian M. Elias, DPM
90 Beaver Drive, Box 6
Du Bois, PA 15801
(814) 371-2730



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

BRIAN M. ELIAS, DPM,	:	NO. 02 - 340 - C.D.
Plaintiff	:	
	:	
VS.	:	
	:	
BRADLEY J. MAGILL, individually	:	
and as President of MAGILL &	:	
ASSOCIATES, and TERESA MAGILL,	:	
individually and as Vice-President of	:	
MAGILL & ASSOCIATES,	:	
Defendants	:	
	:	
VS.	:	
	:	
CHARLES W. RICE,	:	
Additional Defendant	:	

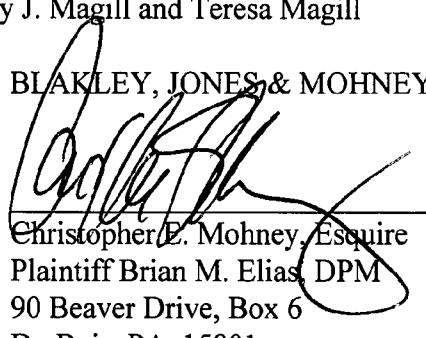
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff's Preliminary Objections has been served upon the following individual by regular United States mail, postage prepaid, on this 21 day of May, 2002:

Joseph Colavecchi, Esquire
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
Attorney for Defendant
Charles W. Rice

Ross F. Ferraro, Esquire
Ferraro & Young
690 Main Street
Brockway, PA 15824
Attorney for Defendants
Bradley J. Magill and Teresa Magill

BY:

BLAKLEY, JONES & MOHNEY

Christopher E. Mohney, Esquire
Plaintiff Brian M. Elias, DPM
90 Beaver Drive, Box 6
Du Bois, PA 15801
(814) 371-2730

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY,
PENNSYLVANIA

No. 02-340-C.D.

BRIAN M. ELIAS, DPM,

Plaintiff

vs.

BRADLEY J. MAGILL, et al.

Defendants

vs.

CHARLES W. RICE,

Additional Defendant

PRELIMINARY OBJECTIONS

FILED

MAY 21 2002

William A. Shaw
Prothonotary

LAW OFFICES
BLAKLEY, JONES & MOHNEY
90 BEAVER DRIVE - BOX 6
DUBOIS, PA 15801

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIAN M. ELIAS, DPM,
Plaintiff

vs.

BRADLEY J. MAGILL, Individually
and as President of Magill &
Associates, and Teresa Magill,
Individually and as Vice-
President of Magill &
Associates, and Charles W. Rice
Defendants

CIVIL DIVISION

No. 02 - 0340 - CD

PRAECIPE TO DISCONTINUE

Filed on Behalf of:

Defendant, CHARLES W. RICE

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

FILED ^{WCC}
06/28/2007 16 Certificate
JUN 28 2007 Requested
William A. Shaw
Prothonotary/Clerk of Courts

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

BRIAN M. ELIAS, DPM

Plaintiff

*

Case No. 02-0340-CD

*

*

*

Vs.

BRADLEY J. MAGILL, Indiv. and as
President of Magill & Associates,
and Teresa Magill, Indiv. and as
Vice President of Magill & Asso.

*

*

*

Charles W. Rice Defendant

*

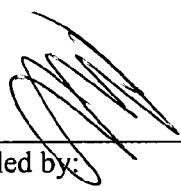
Praecipe to Discontinue

To the Prothonotary:

Please mark the above-referenced case Settled, Discontinued, and Ended.

06/28/07

Date


Filed by:

JOSEPH COLAVECCHI, ESQUIRE
Attorney for Charles W. Rice
221 East Market Street
Clearfield, PA 16830