

Medical Professional Liability Action

Date	Judge
3/29/2005	New Case Filed.
	No Judge
	X Filing: Civil Complaint - Medical Professional Liability Action Paid by: Homyak, Mark J. (attorney for Spacht, R. Kelly) Receipt number: 1898077 Dated: 03/29/2005 Amount: \$85.00 (Check) 2 Cert. to Sheriff.
4/18/2005	X Praeclipe For Entry of Appearance, filed on behalf of defendants. By s/ David R. Johnson, Esquire. No CC
	No Judge
4/25/2005	X Sheriff Return, April 5, 2005 Served The Within Complaint Medical Professional Liability Action On Olusola Ayodele Osundeko, M.D. April 5, 2005 Served The Within Complaint Medical Professional Liability Action On DuBois Regional Medical Center. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm.
	No Judge
6/8/2005	X Answer and New Matter filed. By s/ David R. Johnson, Esquire. No CC
	No Judge
6/29/2005	X Preliminary Objections To Answer and New Matter, filed by s/ Mark J. Homyak, Esquire. No CC
	No Judge
7/26/2005	X Order, this 25th day of July, 2005, upon consideration of Plaintiffs' Preliminary Objections to Answer and New Matter filed in the above matter, It is the Order of the Court that argument has been scheduled for the 19th day of August, 2005 at 2:30 p.m. in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, President Judge. 2CC Atty Homyak w/memo Re: service
	Fredric Joseph Ammerman
8/1/2005	X Reply To Plaintiffs' Preliminary Objections to Defendants' Answer and New Matter, filed by s/ Brad R. Korinski, Esquire. No CC
	Fredric Joseph Ammerman
	X Affidavit of Service filed, on July 29, 2005 served certified copies of the Court's July 25, 2005 Order upon David R. Johnson, Esquire. By s/Mark J. Homyak, Esquire. No CC
	Fredric Joseph Ammerman
8/22/2005	X Order, this 19th day of August, 2005, Ordered that argument on Plaintiffs' Preliminary Objections to Answer and New Matter is rescheduled to the 9th day of September, 2005 at 3:00 p.m. in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty: Homyak, D. Johnson
	Fredric Joseph Ammerman
9/6/2005	X Affidavit Of Service, certified copy of Court's August 19, 2005 Order upon David R. Johnson, Esquire. Filed by s/ Mark J. Homyak, Esquire. No CC
	Fredric Joseph Ammerman
9/9/2005	X Praeclipe for Withdrawal Of Preliminary Objections, filed by s/Mark J. Homyak, Esquire. no CC
	Fredric Joseph Ammerman
10/24/2005	X Reply to New Matter, filed by s/ Mark J. Homyak Esq.
	Fredric Joseph Ammerman
6/28/2006	X Request to Plaintiffs For Production of Expert Reports, filed by s/David R. Johnson, Esquire.
	Fredric Joseph Ammerman
1/16/2007	X Plaintiffs' Request to Defendant for Production of Expert Reports, filed by s/ Mark J. Homyak Esq. No CC.
	Fredric Joseph Ammerman
6/11/2007	X Motion To Compel Expert Report, filed by s/ Eve W. Semins, Esquire. No CC
	Fredric Joseph Ammerman
6/13/2007	X Order, NOW, this 13th day of June, 2007, it is Ordered that Plaintiffs' Motion to Compel Expert Report will be heard on the 10th day of July, 2007. Motions Judge at 1:30 p.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. E. Semins
	Fredric Joseph Ammerman
6/14/2007	X Motion to Compel, filed by s/ John R. Whipkey, Esquire. No CC
	Fredric Joseph Ammerman

Date: 3/28/2008

Clearfield County Court of Common Pleas

User: LMILLER

Time: 03:39 PM

Civil Disposition Report

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CT COMMON PLEAS,

All Case Types

From 3/24/2008 to 3/28/2008

All Judgment Types

Case	Parties	Filing date	Judgment	Disposition	Disposition Date
2008-00563-CD	Davis, Natashaia Defendant Palisades Collection, LLC Plaintiff Verizon Plaintiff Verizon Pennsylvania, Inc. Plaintiff	03/27/2008	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: \$1,623.26	Open	3/27/2008
2008-00565-CD	Sweed, William Defendant Westover, Blair M. Sr. Plaintiff	03/28/2008	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: 5130.00	Open	3/28/2008

Date: 4/4/2008
Time: 12:22 PM
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Clearfield County Court of Common Pleas

User: LMILLER

ROA Report

Case: 2005-00433-CD

Current Judge: Paul E. Cherry

R. Kelly Spacht, David Spacht vs. Olusola Ayodele Osundeko MD, Dubois Regional Medical Center

Medical Professional Liability Action

Date	Judge	
6/15/2007	<input checked="" type="checkbox"/> Order, this 15th day of June, 2007, it is Ordered that defendants' Motion to Compel is granted. Plaintiffs shall file full and complete answers to supplemental interrogatories and responses to requests for production within 20 days of this Order. Upon failure to comply with any aspect of this order, sanctions will be imposed. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Whipkey	Fredric Joseph Ammerman
6/22/2007	<input checked="" type="checkbox"/> Praeclipe for Withdrawal of Motion to Compel Expert Report, filed by s/ Mark J. Homyak Esq. No CC.	Fredric Joseph Ammerman
8/2/2007	<input checked="" type="checkbox"/> Praeclipe For Jury Trial, filed by s/ Eve W. Semins, Esquire. No CC	Fredric Joseph Ammerman
10/12/2007	<input checked="" type="checkbox"/> Order, this 12th day of Oct 2007, it is Ordered that a pre-trial conference is scheduled for Nov. 20, 2007 at 1:30 p.m. in Judges Chambers. Jury Selection in this matter will be held on Jan. 3, 2008. By The court, /s/ Paul E. Cherry, Judge. CC to Atty's; Johnson, Homyak	Paul E. Cherry
11/2/2007	<input checked="" type="checkbox"/> Consented to Motion to Continue Jury Selection to the Next Available List, filed by s/ David R. Johnson, Esquire. No CC	Paul E. Cherry
11/20/2007	<input checked="" type="checkbox"/> Order, this 20th day of Nov., 2007, it is Ordered: Jury Selection is scheduled for April 3, 2008 at 9:00 a.m. in Courtroom 2. Trial is scheduled for April 21, 22, 23, 24, 25, 2008 at 9:00 a.m. in Courtroom 2. (see original). By The court, /s/ Paul E. Cherry, Judge. 1CC Atty's: Homyak, D. Johnson	Paul E. Cherry
11/27/2007	<input checked="" type="checkbox"/> Amended Order, AND NOW, this 26th day of November 2007, it is the ORDER of this Court that this Court's Order of November 20, 2007, shall be and is hereby amended to read as follows: Jury Selection in this matter is scheduled for April 3, 2008 at 9:00 am in Courtroom No. 2 and Trial in this matter is scheduled for May 5,6,7,8,9, 2008, beginning at 9:00 o'clock am in Courtroom No. 2 (see original) BY THE COURT: /s/ Paul E. Cherry, Judge. 1CC Atty's: Homyak and Johnson.	Paul E. Cherry
3/24/2008	<input checked="" type="checkbox"/> Plaintiffs' Response to Motion in Limine, filed by s/ Mark J. Homyak Esq. No CC.	Paul E. Cherry
	<input checked="" type="checkbox"/> Plaintiffs' Motion for Leave to File Supplemental Pre-Trial Memorandum, filed by s/ Mark J. Homyak Esq. No CC.	Paul E. Cherry
3/25/2008	<input checked="" type="checkbox"/> Motion In Limine to Strike Plaintiffs' Expert Reports of James L. Cosgrove, M.D. And James L. Kenkel, PH.D., filed by s/ Brad R. Korinski, Esquire. No CC	Paul E. Cherry
	<input checked="" type="checkbox"/> Motion In Limine to Preclude Plaintiffs From Making Any Argument That Wife-Plaintiff's Injuries Caused And/Or Contributed to the Death of Her Father, filed by s/ Brad R. Korinski, Esquire. No CC	Paul E. Cherry
	<input checked="" type="checkbox"/> Motion In Limine to Preclude Plaintiffs From Contending That The Incident Caused an Exacerbation or Worsening of Wife-Plaintiff's Crohn's Disease. Filed by s/ Brad Korinski, Esquire. No CC	Paul E. Cherry
	<input checked="" type="checkbox"/> Motion In Limine to Preclude Plaintiffs From Introducing Hearsay Statements, filed by s/ Brad R. Korinski, Esquire. No CC	Paul E. Cherry
	<input checked="" type="checkbox"/> Motion For Leave of Court to File Supplemental Pre-Trial Statement, filed by s/ Brad R. Korinski, Esquire. No CC	Paul E. Cherry
4/1/2008	<input checked="" type="checkbox"/> Order, this 31st day of March, 2008, it is Ordered, argument on Motions are scheduled for April 24, 2008 at 1:30 p.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty's: Homyak, Korinski	Paul E. Cherry
4/2/2008	<input checked="" type="checkbox"/> Uncontested Motion for Trial Continuance, filed by s/Brad R. Korinski, Esq. No CC	Paul E. Cherry

3/27/2008

Civil Other

Date	Judge
3/22/2005	No Judge
3/22/2005	No Judge
3/22/2005	No Judge
4/19/2005	No Judge
4/22/2005	No Judge
4/22/2005	No Judge
5/31/2005	No Judge
7/11/2005	No Judge
8/10/2005	No Judge
9/6/2005	No Judge
10/24/2005	No Judge
3/16/2006	No Judge
7/17/2006	No Judge
9/12/2007	No Judge
9/17/2007	Fredric Joseph Ammerman
9/19/2007	Fredric Joseph Ammerman
10/31/2007	Fredric Joseph Ammerman

Date: 4/4/2008
Time: 12:22 PM
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Clearfield County Court of Common Pleas

User: LMILLER

ROA Report

Case: 2005-00433-CD

Current Judge: Paul E. Cherry

R. Kelly Spacht, David Spacht vs. Olusola Ayodele Osundeko MD, Dubois Regional Medical Center

Medical Professional Liability Action

Date	Judge
4/2/2008	Paul E. Cherry
4-11-08	<p>✓ Order, this 2nd day of April, 2008 upon consideration of Defendants' Uncontested Motion for Trial Continuance, it is Ordered that said Motion is Denied as untimely. By The Court, /s/ Paul E. Cherry, Judge. 3CC Atty. Korinski</p> <p>Motion for Leave of Court to File Second Supplemental Pre-trial memorandum</p>
4-11-08	<p>✓ Plaintiffs' Response to defendants' Motion for Leave of Court to File Supplemental Pre-trial statement</p>
4-11-08	<p>✓ Affidavit of Service of order dated April 2, 2008</p>
4-11-08	<p>✓ Plaintiffs Response to defendants' Motions in Limine</p>

Current Judge: Fredric Joseph Ammerman

Wade A. Maines, Darlene A. Maines vs. Douglas S. Perkins

Civil Other

Date	Judge	
11/21/2007	<input checked="" type="checkbox"/> Certificate of Service, filed. That a copy of Notice of Taking Deposition was served on the 21st day of November 2007 to Kevin R. O'Malley Esq. and ASAP Court Reporting by first class mail filed by s/ James A. Naddeo Esq. 2CC Atty Naddeo.	Fredric Joseph Ammerman
12/3/2007	<input checked="" type="checkbox"/> Notice of Service of Defendant's Supplemental Request for Production of Documents Directed to James A. Naddeo on this 29th day of November 2007, filed by s/ Stephen J. Magley Esq. No CC.	Fredric Joseph Ammerman
12/19/2007	<input checked="" type="checkbox"/> Certificate of Service, filed. That a copy of Plaintiff's Answers to Defendant's Supplemental Request for Production of Documents Directed to Plaintiffs were served on the 19th day of December 2007 by first class mail to Kevin R. O'Malley Esq., filed by s/ James A. Naddeo Esq. No CC. (original filed to 05-402-CD)	Fredric Joseph Ammerman
1/10/2008	<input checked="" type="checkbox"/> Certificate of Service, filed. That a copy of Notice of Taking Deposition was served on Stephen J. Magley Esq. and ASAP Court Reporting on the 10th day of January 2008 by first class mail, filed by s/ James A. Naddeo Esq. 2CC Atty Naddeo.	Fredric Joseph Ammerman
1/28/2008	<input checked="" type="checkbox"/> Certificate of Service, filed. That a copy of Notice of Taking Deposition was served on Stephen J. Magley Esq. and ASAP Court Reporting by first class mail on the 28th day of January 2008, filed by s/ James A. Naddeo Esq. 2CC Atty Naddeo.	Fredric Joseph Ammerman
2/1/2008	<input checked="" type="checkbox"/> Motion For Protective Order, Filed by s/ Stephen J. Magley, Esquire. 1CC Atty. Magley	Fredric Joseph Ammerman
2/4/2008	<input checked="" type="checkbox"/> Order NOW, this 4th day of February 2008, following, the Court being in receipt of and having reviewed the Motion for Protective Order filed by Stephen Magley, Defendant's counsel, in the above-captioned cases, it is the ORDER of this Court that argument on said Motion is scheduled for the 6th day of February 2008 at 1:30 pm in Courtroom No. 2. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Naddeo, Magley; Judge's Office faxed to attys Naddeo and Magley.	Fredric Joseph Ammerman

2-4-08 Answer to Motion for Protective Order

Date: 5/8/2008

Time: 02:38 PM

Page 1 of 1

Clearfield County Court of Common Pleas

ROA Report

User: LMILLER

Case: 2005-00433-CD

Current Judge: Paul E. Cherry

R. Kelly Spacht, David Spacht vs. Olusola Ayodele Osundeko MD, Dubois Regional Medical Center

Medical Professional Liability Action

Date	Selected Items	Judge
5/2/2008	Transcript of Proceedings, filed. Motions in Limine, held before Honorable John K. Reilly, Jr., Senior Judge, on April 24, 2008.	Paul E. Cherry
	✓ Order, AND NOW, this 24th day of April, 2008, Defendants' preliminary objections seeking to exclude hearsay testimony at trial concerning Dr. Rao and his unnamed colleague and transmissions over a police scanner shall be and is hereby granted. BY THE COURT: /s/John K. Reilly, Jr., Senior Judge, Specially Presiding Two CC Attorneys: Homyak and Johnson/Korinski	Paul E. Cherry
	✓ Order, AND NOW, this 24th day of April, 2008, upon consideration of the Defendant's Motion in Limine to preclude Plaintiffs from Making Any Argument that Plaintiff's Injuries Caused and/or Contributed to the Death of her Father, it is the Order of this Court that Motion is sustained. However, Plaintiff may testify as to her mental state resulting from her father having to enter a nursing home because she, as a result of her accident, was unable to provide care at her home. BY THE COURT: /s/John K. Reilly, Jr., Senior Judge, Specially Presiding Two CC Attorneys: Homyak, Johnson/Korinski	Paul E. Cherry
	✓ Order, AND NOW, this 24th day of April, 2008, upon consideration of the Motion in Limine to Strike Report of Dr. Kenkel, Order that Motion shall be and is hereby Denied. BY THE COURT: /s/John K. Reilly, Jr., Senior Judge, Specially Presiding Two CC Attorneys: Homyak, Johnson/Korinski	Paul E. Cherry
	✓ Order, AND NOW, this 24th day of April, 2008, upon consideration of Defendants' Motion in Limine concerning the Plaintiff suffering from Crohn's disease, and upon agreement of the parties, Order that said Motion shall be and is hereby granted to the extent that Plaintiff shall in no way introduce a claim for exacerbation of Plaintiff's Crohn's disease as a result of the accident. BY THE COURT: /s/John K. Reilly, Jr., Senior Judge, Specially Presiding Two CC Attorneys: Homyak and Johnson/Korinski	Paul E. Cherry
5/8/2008	Verdict, filed We, the jurors empanelled in the above-captioned case, find as follows: Do you find by a perponderance of the evidence that Dr. Osundeko was negligent? NO Foreman, s/ Neil Conti, May 8, 2008 Verdict in favor of Defendants.	Paul E. Cherry

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants

Civil Action – Medical
Professional Liability Action

No.: 05-433-CD

**Complaint In Civil Action –
Medical Professional Liability
Action**

Filed on Behalf of Plaintiffs

Counsel of Record for These
Parties:

Mark J. Homyak
PA ID No.: 30254

THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636

FILED *cc*
m/10/nabt *Shff*
MAR 29 2005 *Atty pd.*
85.00
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Civil Action – Medical
Professional Liability Action

Plaintiffs,

No.:

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants

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 AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY 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 OR KNOW A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

David S. Meholic, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641 ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Civil Action – Medical
Professional Liability Action

No.:

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants

Complaint in Civil Action – Medical Professional Liability Action

Plaintiffs, by their undersigned counsel, file this Complaint in civil action – medical professional liability action against Defendants upon the following grounds:

1. Plaintiffs, R. Kelly Spacht and David Spacht, are adult individuals and wife and husband who at all times pertinent to this cause of action resided at 915 Walnut Avenue, DuBois, Clearfield County, Pennsylvania 15801.

2. Defendant Olusola Ayodele Osundeko, M.D. is an adult individual who at all times pertinent to this cause of action was engaged in the licensed practice of medicine within the Commonwealth of Pennsylvania, with specialization as an endocrinologist, including diabetes management, at his

practice located at the DuBois Regional Medical Center, 145 Hospital Avenue, DuBois, Clearfield County, Pennsylvania 15801.

3. Defendant DuBois Regional Medical Center (“DRMC”) is a corporation with its principal offices located at 145 Hospital Avenue, DuBois, Clearfield County, Pennsylvania 15801, and at all times pertinent to this cause of action was engaged in the provision of hospital medical services to patients, including endocrinology services involving diabetes management.

4. At all times pertinent to this cause of action Defendant DRMC was operated by and through its authorized actual, apparent and/or ostensible agents or employees, including Defendant Osundeko, who were then and there acting upon the business of DRMC and within the course and scope of their permitted authority.

5. Wife-Plaintiff was first diagnosed with Type II Diabetes in 1997, initially treated with oral medication, and became insulin dependent in 1999.

6. Defendant Osundeko became Wife-Plaintiff’s endocrinologist with responsibility for testing, evaluation, treatment, and prescribing, monitoring and adjusting medication for Wife-Plaintiff on December 31, 2002.

7. Defendant Osundeko performed the services described in the immediately preceding paragraph for Wife-Plaintiff during the course and scope of

his agency or employment with Defendant DRMC in its Endocrinology Services department.

8. Wife-Plaintiff was also diagnosed with Crohn's Disease in July of 1999, and was treated with various steroids for that condition from time to time thereafter, with slow tapering of a Prednisone dosage between January 2003 until April 2003.

9. In January 2003, Defendant Osundeko switched Wife-Plaintiff from 70/30 insulin to NPH insulin.

10. During the period January through April 3, 2003, Wife-Plaintiff had frequent low or borderline low fasting glucose levels.

11. During the January-April 2003 time span, Wife-Plaintiff also had occasional low afternoon glucose levels.

12. On April 1 and 2, 2003, Wife-Plaintiff had numerous low and borderline low glucose levels at various times of the day.

13. Defendant Osundeko was informed of all of the above described medical history and treatment, including the Crohn's Disease, steroid treatment, tapering of the Prednisone from January through April 2003, and all glucose levels, including the low fasting and afternoon levels, and the numerous low and borderline low glucose levels on April 1 and 2, 2003.

14. Defendant Osundeko had also recommended that Wife-Plaintiff attend diabetes education classes at Defendant DRMC, which she did, beginning at the first available class in March of 2003, with the second such class occurring between 5:00 p.m. and 9:00 p.m. on April 3, 2003.

15. At DRMC's diabetes education classes, one or more of the staff with responsibility for the educational services were believed by Plaintiffs and, therefore, averred to have been non-licensed clerks, rather than any type of licensed medical professional.

16. On April 3, 2003, Wife-Plaintiff's instructor at the diabetes education class at Defendant DRMC was one of the clerks described in the immediately preceding paragraph, who observed Wife-Plaintiff measuring her blood sugar as part of the class content.

17. The results of the test taken under the supervision of the clerk were a low blood sugar of 73, when the results should have been within the 100 to 140 range, making Wife-Plaintiff at risk for a hypoglycemic event.

18. Upon reviewing the results, the clerk advised Wife-Plaintiff to go eat something in the cafeteria, which she did.

19. At 7:00 p.m., sugar free cookies were also provided to one or more of those participating in the diabetes education class, and Wife-Plaintiff ate one package of those, as well.

20. Those administering the class made no effort to redetermine Wife-Plaintiff's glucose level prior to the termination of the class at approximately 9:00 p.m.

21. On April 3, 2003 at approximately 9:15 p.m., while driving from the above described diabetes education class at DRMC, Wife-Plaintiff experienced a hypoglycemic event.

22. As a direct result of the hypoglycemic event, Wife-Plaintiff experienced a decreased level of consciousness resulting in loss of control of operation of her vehicle and a violent one vehicle automobile crash off of the traveled portion of the roadway.

23. As the direct result of the described motor vehicle accident, Wife-Plaintiff sustained numerous severe physical injuries, including:

- a. a fractured skull;
- b. a traumatic brain injury;
- c. two fractured cervical vertebrae;
- d. a left 9th rib fracture;
- e. fractures of the left superior and inferior ramus and the left sacrum;
- f. a right medial malleolons avulsion fracture;
- g. a left elbow laceration;

- h. multiple contusions and abrasions throughout her body;
- i. post-traumatic anemia;
- j. a post-traumatic pleural effusion; and,
- k. reactional depression.

24. Wife-Plaintiff experienced a long and painful convalescence, and has continued to experience ongoing physical pain and limitations as the result of the described motor vehicle accident and resultant injuries, which is anticipated to be permanent in nature.

25. As the direct result of the above described hypoglycemic event, the resultant motor vehicle accident and resultant injuries, Wife-Plaintiff has incurred the following damages:

- a. pain, suffering, emotional distress and inconvenience, past and future;
- b. loss or limitation of enjoyment of life, past and future;
- c. lost earnings and limitation of earning capacity, past and future;
- d. limitation of ambulation;
- e. medical expenses; and,
- f. the total loss of her vehicle.

26. As the direct result of the above described motor vehicle accident and resultant injuries to his wife, Husband-Plaintiff has sustained the loss of his spouse's care, companionship, comfort, support and consortium, past and future.

27. An appropriate licensed professional has supplied a written statement that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of this Complaint fell outside acceptable professional standards and that such harm was a cause in bringing about the harm.

COUNT I – DEFENDANT OSUNDEKO

28. As the direct result of the failure of Defendant Osundeko to timely and effectively monitor and adjust the insulin regimen of Wife-Plaintiff required by the appropriate standard of care, she experienced the hypoglycemic event described in paragraph 21, and the resultant decreased level of consciousness and resultant one car motor vehicle accident described in paragraph 22, above.

29. The described accident, resultant injuries to Wife-Plaintiff and the damages incurred by Plaintiffs as described in paragraphs 22 through 26, above, were the direct result of the negligence of Defendant Osundeko in failing to more quickly, effectively, appropriately and within the required standard of care, monitor and adjust Wife-Plaintiff's insulin regimen in order to reduce the risk of

hypoglycemic event, and/or failing to warn her not to drive while at elevated risk of a hypoglycemic event.

WHEREFORE, Plaintiffs demand judgment in favor of each of them in amounts in excess of the compulsory statutory arbitration limits against Defendant Osundeko individually, and jointly and severally with Defendant DRMC, plus costs of suit.

COUNT II – DEFENDANT DRMC – *RESPONDEAT SUPERIOR*

30. Defendant DRMC is liable for the negligent conduct of its actual, apparent and/or ostensible agent, Defendant Osundeko, and the resultant hypoglycemic event, accident, injuries and damages suffered by Plaintiffs, as described in paragraphs 1 through 26, above, under the theory of *respondeat superior*.

31. Additionally, Defendant DRMC is liable under the *respondeat superior* theory for the negligence of its actual, apparent and/or ostensible agents who served as the instructors in the diabetes class sponsored by Defendant DRMC's Endocrinology Services department, in the following particulars:

- a. in failing to take reasonable steps to monitor Wife-Plaintiff's glucose levels;
- b. in failing to ensure that Wife-Plaintiff was capable of self measuring her glucose levels;

- c. in failing to recommend or order appropriate changes to Wife-Plaintiff's insulin regimen before she left to drive from the DRMC facility on the evening of April 3, 2003;
- d. in failing to refer Wife-Plaintiff to a competent licensed professional to adjust her insulin regimen in order to control her glucose levels before she left to drive from the DRMC facility on the evening of April 3, 2003;
- e. in failing to inquire into her means of transportation when she was at elevated risk for the occurrence of a hypoglycemic event on that evening; and,
- f. in failing to warn her not to drive when she was at elevated risk of a hypoglycemic event that evening.

WHEREFORE, Plaintiffs demand judgment in favor of each of them in amounts in excess of the compulsory statutory arbitration limits against Defendant DRMC individually, and jointly and severally with Defendant Osundeko, plus costs of suit.

COUNT III - DRMC

32. Defendant DRMC is also liable to Plaintiffs for its own negligence in allowing unlicensed clerks to preside in the diabetes education classes it sponsored for patients of its Endocrinology Services department, as described in paragraphs 14 through 20, above, when Defendant DRMC knew or should have known that:

a. its agents or employees failed to possess the requisite knowledge, skill, education and/or training in order to recognize the likelihood and/or dangers of a hypoglycemic event occurring and/or to take appropriate steps, either personally or by prompt appropriate referral to qualified personnel, to increase the likelihood that Wife-Plaintiff's low glucose levels would be stabilized before she went to operate her vehicle, and/or to decrease the risk of a hypoglycemic event occurring, and/or to warn Wife-Plaintiff of the risks of operating a motor vehicle when she was at elevated risk of a hypoglycemic event occurring; and/or,

b. its agents or employees were legally incapable of taking appropriate corrective action to attempt to control Wife-Plaintiff's low glucose levels on the evening of April 3, 2003.

33. As a direct result of the above described negligence of DRMC in regard to the staffing of its diabetes education classes, Wife-Plaintiff sustained the hypoglycemic event, the resultant decreased level of consciousness, loss of control and the resultant motor vehicle accident, and the resultant injuries she sustained and the resultant damages she and Husband-Plaintiff sustained as described in paragraphs 21 through 26, above.

WHEREFORE, Plaintiffs demand judgment in favor of each of them in amounts in excess of the compulsory statutory arbitration limits against Defendant

DRMC individually, and jointly and severally with Defendant Osundeko, plus costs of suit.

JURY TRIAL DEMANDED

Respectfully submitted,

THE HOMYAK LAW FIRM

By:


Mark J. Homayak

Attorneys for Plaintiffs

VERIFICATION

I, David Spacht, hereby swear and affirm that the facts contained in the foregoing COMPLAINT IN CIVIL ACTION, are true and correct to the best of my information, knowledge and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

3/24/05
Date

David E. Spacht
Signature

VERIFICATION

I, R. Kelly Spacht, hereby swear and affirm that the facts contained in the foregoing COMPLAINT IN CIVIL ACTION, are true and correct to the best of my information, knowledge and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

3/24/05
Date

R. Kelly Spacht
Signature

FILED

MAR 29 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT and DAVID
SPACHT, her husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO,
M.D., an individual, and DUBOIS
REGIONAL MEDICAL CENTER, a
corporation,

Defendants.

CIVIL DIVISION

No. 05-433-CD

Issue No.

PRAECLYPE FOR APPEARANCE

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

THOMSON, RHODES & COWIE, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED ⁶⁴
NO CC
M/11/05
APR 18 2005

William A. Shaw
Prothonotary/Clerk of Courts

PRAECIPE FOR APPEARANCE

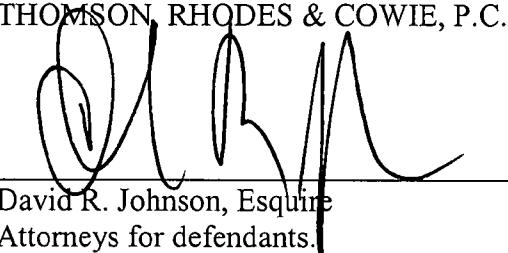
TO: PROTHONOTARY

Kindly enter our appearance on behalf of Olusola Ayodele Osundeko, M.D., an individual, and DuBois Regional Medical Center, a corporation, the defendants.

JURY TRIAL DEMANDED.

Respectfully submitted,

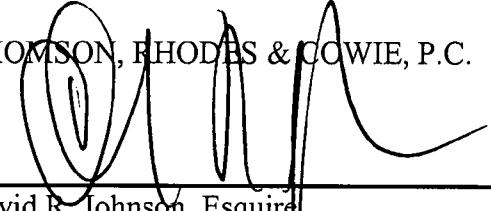
THOMSON, RHODES & COWIE, P.C.


David R. Johnson, Esquire
Attorneys for defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within PRAECIPE FOR APPEARANCE has been served upon the following counsel of record and same placed in the U.S. Mails on this 14th day of April, 2005:

Mark J. Homyak, Esquire
Homyak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100352
NO: 05-433-CD
SERVICE # 1 OF 2
COMPLAINT-MEDICAL PROFESSIONAL LIABILITY

ACTION

PLAINTIFF: R. KELLY SPACHT and DAVID SPACHT

vs.

DEFENDANT: OLUSOLA AYODELE OSUNDEKO, M.D. an Ind & DUBOIS REGIONAL MEDICAL CENTER, A Corp.

SHERIFF RETURN

NOW, April 05, 2005 AT 2:52 PM SERVED THE WITHIN COMPLAINT-MEDICAL PROFESSIONAL LIABILITY ACTION ON OLUSOLA AYODELE OSUNDEKO, M.D. An Ind. DEFENDANT AT DRMC 145 HOSPITAL AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO LISA BATSON, RISK MGMT. SEC. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT-MEDICAL PROFESSIONAL LIABILITY ACTION AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

FILED
10/10/2005
APR 25 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100352
NO: 05-433-CD
SERVICE # 2 OF 2
COMPLAINT-MEDICAL PROFESSIONAL LIABILITY

ACTION

PLAINTIFF: R. KELLY SPACHT and DAVID SPACHT

vs.

DEFENDANT: OLUSOLA AYODELE OSUNDEKO, M.D. an Ind & DUBOIS REGIONAL MEDICAL CENTER, A Corp.

SHERIFF RETURN

NOW, April 05, 2005 AT 2:52 PM SERVED THE WITHIN COMPLAINT-MEDICAL PROFESSIONAL LIABILITY ACTION ON DUBOIS REGIONAL MEDICAL CENTER, A Corp. DEFENDANT AT 145 HOSPITAL AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO LISA BATSON, RISK MGMT. SEC. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT-MEDICAL PROFESSIONAL LIABILITY ACTION AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100352
NO: 05-433-CD
SERVICES 2
COMPLAINT-MEDICAL PROFESSIONAL LIABILITY

ACTION

PLAINTIFF: R. KELLY SPACHT and DAVID SPACHT

vs.

DEFENDANT: OLUSOLA AYODELE OSUNDEKO, M.D. an Ind & DUBOIS REGIONAL MEDICAL CENTER, A Corp.

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	HOMYAK	6444	20.00
SHERIFF HAWKINS	HOMYAK	6444	39.39

Sworn to Before Me This

____ Day of _____ 2005

So Answers,



My
Marty
Hans

Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT and DAVID
SPACHT, her husband,

Plaintiffs,

vs.

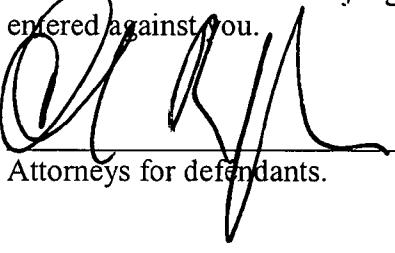
OLUSOLA AYODELE OSUNDEKO,
M.D., an individual, and DUBOIS
REGIONAL MEDICAL CENTER, a
corporation,

Defendants.

NOTICE TO PLEAD:

To: Plaintiffs

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


Attorneys for defendants.

CIVIL DIVISION

No 05-433-CD

Issue No.

ANSWER AND NEW MATTER

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

THOMSON, RHODES & COWIE, P.C.
Firm #720

1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED NO
m/j:si/301
JUN 08 2005 (R)

William A. Shaw
Prothonotary Clerk of Courts

ANSWER AND NEW MATTER

NOW COME defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following answer and new matter in response to plaintiffs' complaint.

ANSWER

1. Defendants are advised and therefore believe and aver that the Pennsylvania Rules of Civil Procedure do not require them to set forth their answers and defenses except as stated below.

2. If and to the extent that any factual averment in the complaint is not responded to in the paragraphs which follow, said allegation is denied for the reason that, after a reasonable investigation, these defendants lack sufficient information or knowledge upon which to form a belief as to the truth of the averments therein.

3. Each of the paragraphs of this answer should be read so as to incorporate by reference each of the other paragraphs of this answer.

4. The following paragraphs of the complaint are denied for the reason that, after a reasonable investigation, these defendants have insufficient information or knowledge to form a belief as to the truth of the averments therein: 1, 5, 12, 18, 19, 21,

22, 23 (including sub-paragraphs (a) through (k)), 24, 25 (including sub-paragraphs (a) through (f)), 26 and 27.

5. The following paragraphs of the complaint are admitted: 2 and 8.

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

7. Paragraph 4 of the complaint is admitted in part and denied in part. It is admitted that Dr. Osundeko was an employee of DuBois Regional Medical Center. All other allegations of actual, apparent and/or ostensible agency and/or employment are denied for the reason that, after a reasonable investigation, defendant has insufficient information or knowledge to form a belief as to the truth of the averments since the identity of the proposed agents, servants and employees is not disclosed.

8. Paragraphs 6 and 7 of the complaint are admitted except that the allegations are incomplete and potentially misleading because the management of diabetes also involves patient compliance, cooperation and attentiveness.

9. Paragraphs 9, 10, 11, 13, 14 and 20 of the complaint are denied for the reason that they incompletely, inaccurately and/or misleadingly describe events which occurred. While these paragraphs to some extent extract or reference words or phrases

from the medical records, and partially recount or describe events occurring or information available, or provided, they do not reflect the context in which the notes and/or statements were made and they ignore other words and phrases necessary to give fair meaning to the referenced language and other information necessary to place the statements and events in context.

10. Paragraphs 15, 16 and 17 of the complaint are denied.

11. Paragraphs 28, 29, 30, 31 (including sub-paragraphs (a) through (f)), 32 (including sub-paragraphs (a) through (b)), and 33 of the complaint constitute conclusions of law to which no further response is required. However, if any response is deemed necessary, these paragraphs and sub-paragraphs are denied. In addition, all allegations of agency and/or employment set forth in Paragraphs 31, 32 and 33 (along with their sub-paragraphs) are denied for the reason that, after a reasonable investigation, defendant has insufficient information or knowledge to form a belief as to the truth of the averments because the identity of the alleged agents, servants and/or employees is not disclosed.

WHEREFORE, plaintiffs' complaint should be dismissed and judgment should be entered in favor of these defendants.

NEW MATTER

12. In the absence of a special contract in writing, a healthcare provider is neither a warrantor nor a guarantor of a cure. This provision is pleaded as an affirmative defense insofar as there was no special contract in writing in this case.

13. These defendants plead the applicability of the Pennsylvania Comparative Negligence Statute as an affirmative defense.

14. While denying all negligence and all liability, these defendants aver that if they are found to have been negligent in any respect, any liability resulting therefrom would be diminished or barred by operation of the Pennsylvania Comparative Negligence Statute.

15. Plaintiffs' complaint fails to state any cause of action against these defendants.

24 Defendants plead the doctrines of intervening and superseding causes as affirmative defenses.

16. Defendants plead "payment" as an affirmative defense to the extent that any amount less than the amount billed for medical services to the plaintiff after the alleged incident was accepted as payment in full.

17. Defendants are not liable for any pre-existing medical conditions which caused the claimed injuries and/or damages.

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

19. These defendants raise all affirmative defenses set forth or available as a result of the provisions of House Bill 1802 which became Pennsylvania law in 2002.

20. To the extent plaintiffs base their claim in whole or in part on any act occurring more than two years prior to the filing of the lawsuit, the claims are barred by the applicable statute of limitations, which is pleaded as an affirmative defense.

21. Defendants plead all applicable statutes of limitations as affirmative defenses.

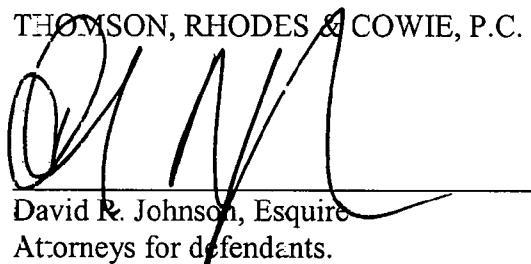
22. If and to the extent that plaintiffs' claims were not filed within the time limitations imposed by law, said lawsuit is barred by the applicable statutes of limitations.

WHEREFORE, plaintiffs' complaint should be dismissed and judgment should be entered in favor of these defendants.

JURY TRIAL DEMANDED.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.


David R. Johnson, Esquire
Attorneys for defendants.

VERIFICATION

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

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



Date: 5/31/2005

VERIFICATION

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

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



Date: 6-1-05

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within ANSWER AND NEW MATTER has been served upon the following counsel of record and same placed in the U.S. Mails on this 6 day of June, 2005:

Mark J. Homyak, Esquire
Homyak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for defendants.

CK

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT and DAVID SPACHT, her husband,) CIVIL DIVISION
Plaintiffs,)) No. 05-433-CD
v.)) **PRELIMINARY OBJECTIONS**
OLUSOLA AYODELE OSUNDEKO,) **TO ANSWER AND NEW**
M.D., and individual, and DUBOIS) **MATTER**
REGIONAL MEDICAL CENTER, a)
Corporation,) Filed on behalf of Plaintiffs
Defendants.) R. KELLY SPACHT and DAVID
SPACHT)
Counsel of Record for This Party:
Mark. J. Homyak
Pa.I.D. No. 30254
THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636

64 **FILED**
MAY 1 2005
JUN 29 2005
no cc

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT and DAVID)
SPACHT, her husband,)
Plaintiffs,) No. 05-433-CD
v.)
OLUSOLA AYODELE OSUNDEKO,)
M.D., and individual, and DUBOIS)
REGIONAL MEDICAL CENTER, a)
Corporation,)
Defendants.)

PRELIMINARY OBJECTIONS

Plaintiffs, R. Kelly Spacht and David Spacht, by their undersigned
counsel, file Preliminary Objections to Defendants' Answer and New Matter
upon the following grounds:

1. On March 24, 2005, Plaintiffs filed a Complaint against
Defendants alleging medical negligence resulting in a hypoglycemic event
which caused Wife-Plaintiff to have a motor vehicle accident resulting in
personal injuries while Plaintiff was driving on April 3, 2003.
2. On June 6, 2005, Defendants filed an Answer and New matter.

A. Preliminary Objection for Failure to Conform to Law

3. Plaintiffs incorporate by reference paragraphs 1 and 2 above as if set forth in full herein.

4. Pennsylvania Rule of Civil Procedure 1028(a)(2) provides that any party may file Preliminary Objections when facts averred in a pleading fail to conform to law or rule of court.

5. Pennsylvania Rule of Civil Procedure 1022 provides that each paragraph shall contain as far as practicable only one material allegation.

6. Pennsylvania Rule of Civil Procedure 1029(a) provides admissions or denials in a responsive pleading shall admit or deny each averment of fact in the preceding pleading or any part thereof to which it is responsive, and a responsive pleading shall refer specifically to the paragraph in which the averment admitted or denied is set forth.

7. The facts averred in Defendants' Answer fail to conform to Rule 1022 and Rule 1029(a) by averring more than one material allegation in a paragraph and failing to refer specifically to which fact in the Complaint the response applies.

8. In responding to numerous paragraphs in Plaintiffs' Complaint together in single paragraphs, Defendants' Answer is unnecessarily confusing.

WHERFORE, Plaintiffs respectfully requests this Honorable Court grant Plaintiffs' Preliminary Objections and strike Defendants' Answer for failure to conform to law and being unnecessarily confusing.

B. Preliminary Objection in the Nature of More Specific Pleadings

9. Plaintiffs incorporate by reference paragraphs 1 and 2 above as if set forth in full herein.

10. Pennsylvania Rule of Civil Procedure 1028(a) provides that any party may file Preliminary Objections where there is insufficient specificity in a pleading.

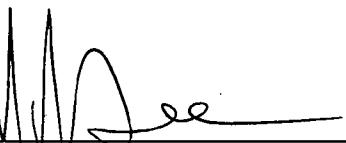
11. Defendants' New Matter lack specificity and such it is impossible for Plaintiffs to adequately respond to Defendants' New Matter.

12. Averments in Defendants' New Matter are mere suppositions without supporting factual allegations.

WHERFORE, Plaintiffs respectfully requests this Honorable Court grant Plaintiffs' Preliminary Objections and order Defendants to file a more specific pleading.

Respectfully submitted,

THE HOMYAK LAW FIRM

By: 

Mark J. Homyak

Jody J. O'Dell

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Preliminary Objection has been served upon counsel of record this 27 day of June, 2005 by United States first class mail, postage prepaid, as follows:

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



Jody J. O'Dell

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

R. KELLY SPACHT and DAVID ;
SPACHT, her husband ;
;
vs. : No. 05-433-CD
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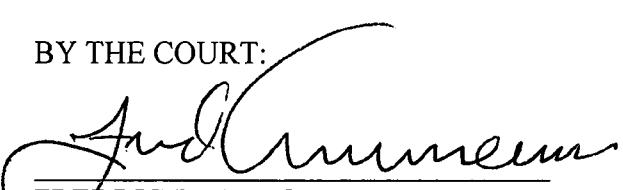
OLUSOLA AYODELE OSUNDEKO,
M.D. an individual, and DUBOIS
REGIONAL MEDICAL CENTER,
a Corporation ;

FILED @
01/10/2005 Atty Hornak
JUL 26 2005 w/memo re:
William A Shaw
Prothonotary/Clerk of Courts
Service

O R D E R

AND NOW, this 25 day of July, 2005, upon consideration of
Plaintiffs' Preliminary Objections to Answer and New Matter filed in the above
matter, it is the Order of the Court that argument has been scheduled for the 19th
day of August, 2005, at 2:30 P.M., in Courtroom No.
1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID
SPACHT, her husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO,
M.D., an individual, and DUBOIS
REGIONAL MEDICAL CENTER, a
corporation,

Defendants.

Counsel of Record:

Mark J. Homyak, Esquire
Homyak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

CIVIL DIVISION

No. 05-433-CD

Issue No.

**REPLY TO PLAINTIFFS'
PRELIMINARY OBJECTIONS TO
DEFENDANTS' ANSWER AND NEW
MATTER**

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

Brad R. Korinski, Esquire
PA I.D. #79990

THOMSON, RHODES & COWIE, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED [©]
m 12:34 01
AUG 01 2005
NOCC

William A. Shaw
Prothonotary/Clerk of Courts

REPLY TO PLAINTIFFS' PRELIMINARY
OBJECTIONS TO DEFENDANTS' ANSWER AND NEW MATTER

AND NOW, come the defendants, by and through their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following reply to plaintiffs' preliminary objections to defendants' answer and new matter, and, in support thereof, aver as follows.

1. Paragraph 1 is denied in part; admitted in part. It is admitted that the plaintiffs have made the allegations set forth in their complaint. However, any inference or implication that those claims have any merit whatsoever is denied.

2. Paragraph 2 is admitted. On June 6, 2005, defendants filed an answer and new matter to plaintiffs' complaint, a copy of which is attached hereto as Exhibit "A." This pleading is neither exceptional in its contents nor objectionable in its form. It is a standard responsive pleading for a personal injury action. It complies fully with the Pennsylvania Rules of Civil Procedures by informing plaintiffs of those averments in the complaint which defendants admit or deny and further notifies plaintiffs of the affirmative defenses intended to be raised to their claims.

Preliminary Objection for Failure to Conform to Rule of Law

3. Paragraph 3 solely incorporates by reference other paragraphs for which no separate response is required. However, to the extent that any additional response is deemed necessary, defendant incorporates by reference its answers to those paragraphs which have been incorporated by the plaintiffs.

4. Paragraph 4 is denied in part; admitted in part. It is admitted that Pa. R.C.P. 1028(a)(2) permits the filing of preliminary objections when a pleading fails to comply to rule of

court. However, any implication or suggestion that defendants' answer failed to comply with such a rule is strictly denied.

5. Paragraph 5 is admitted in part; denied in part. It is admitted that plaintiffs have quoted language from Pa. R.C.P. 1022; however, any implication or suggestion that this rule supports plaintiffs' frivolous preliminary objections, or that defendants have failed to comply with this Rule, is strictly denied.

Pa. R.C.P. 1022 provides that "each paragraph shall contain as far as practicable one material allegation." The defendants' answer does not run afoul of this instruction. For example, paragraph 10 of the answer contains the defendants' denial of specified paragraphs of the complaint. This denial is the "one material allegation" suggested by Pa. R.C.P. 1022. Nothing more is required. Nowhere in the rules is it mandated that defendants respond to each paragraph of a complaint in a corresponding, separately delineated paragraph. The following pertinent excerpt from Goodrich-Amram confirms the propriety of the defendants answer.

The Rules of Civil Procedure appear to authorize the adoption of the federal system of paragraphing an answer. The general custom under the suspended Practice Act of 1915 was to number each paragraph of an affidavit of defense to comply with the respective paragraph of the statement of claim; this was required in some counties by local rules of court. The federal system permits the lumping of answers of several paragraphs of a complaint into a single paragraph of an answer, particularly if they constitute admissions of a group of allegations in such a complaint. In the absence of local rules directing a continuance of the prior practice, the adoption of the federal system would not be in violation of these Rules.

2 Goodrich-Amram 2d § 1022:3.

Looking at plaintiffs' preliminary objections in light of Rule 1022 and the above excerpt, it is clear that those preliminary objections are meritless.

6. Paragraph 6 is admitted in part; denied in part. It is admitted that plaintiffs have quoted language from Pa. R.C.P. 1029(a); however, any suggestion or implication that this rule supports plaintiffs' frivolous preliminary objections is strictly denied.

Pa. R.C.P. 1029(a) speaks singularly to the requirement that a party either admit or deny each averment made in a pleading. That is the plain (and only) meaning which can be taken from this Rule. In no way does the Rule mandate that admissions or denials be enumerated in separate paragraphs as is stubbornly and erroneously suggested by plaintiffs'. To the contrary, the only applicable rule which pertains to the paragraphing of a pleading is Pa. R.C.P. 1022, which, as noted above, does not require that denials and admissions be parsed into corresponding paragraphs.

7. Paragraph 7 is denied for the reason that is untrue. Defendants' answer properly complies with Pa. R.C.P. 1022 by making a single averment in each of its paragraphs (i.e., each paragraph variously "admits" or "denies" specified paragraphs of the complaint), and Defendants' answer correctly adheres to Pa. R.C.P. 1029 through responding to each paragraph of the complaint and then specifying the paragraph to which that response pertains.

8. Paragraph 8 is denied. Plaintiffs have alleged that the answer is "unnecessarily confusing" to them. While the defendants apologize to plaintiffs for causing them undue intellectual exertion, this cannot serve as a basis for preliminary objections. The fact remains that the answer wholly complies with Pa. R.C.P. 1022 and Pa. R.C.P. 1029(a). Plaintiffs' preliminary objections to the answer are meritless.

Preliminary Objection in the Nature of More Specific Pleading

9. Paragraph 9 solely incorporates by reference other paragraphs for which no separate response is required. However, to the extent that any additional response is deemed necessary, defendant incorporates by reference its answers to those paragraphs which have been incorporated by the plaintiffs.

10. Paragraph 10 is admitted; denied in part. While it is admitted that Pa. R.C.P. 1028(a) does permit a party to file preliminary objections for lack of specificity of a pleading, any implication or suggestion that this rule offers any basis for plaintiffs' preliminary objections is denied.

Defendants' new matter is plead with the specificity necessary to its purpose. It properly and simply notifies plaintiffs of the affirmative defenses raised by the defendants. The touchstone of whether a pleading is sufficiently specific is whether it is adequate for the opposing party to prepare his or her responses thereto, so as to place them on notice of the claims or responses being raised against them. Com., Environmental Pollution Strike Force v. City of Jeannette, 305 A.2d 774 (Pa. Commw. 1973). Here, in basic language (and separate paragraph form so as not to cause the plaintiffs any "unnecessary confusion"), the defendants have set forth the affirmative defenses which are applicable to this case. And, in so doing, the defendants have fully complied with the rules of civil procedure. Should plaintiffs wish to inquire further into the affirmative defenses, they may do so in discovery.

11. Paragraph 11 is denied. Plaintiffs' contention that the new matter is insufficiently specific is totally absurd; as is their contention that it is impossible for them to adequately respond to it. In the new matter paragraphs, defendants have spelled out the affirmative defenses which they will raise to the plaintiffs' claims. If the plaintiffs believe that such defenses are true

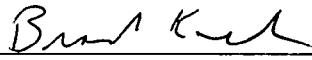
and accurate, they should respond with an admission; if, instead, they believe them to be incorrect, then they should respond with a denial. In all respects, they should refer to Pa. R.C.P. 1029. The process is beguilingly simple. The fact that plaintiffs have complicated it by filing preliminary objections only serves to highlight the fact that these preliminary objections are filed for no good purpose other than to vex and harass the defendants.

12. Paragraph 12 is denied. Defendants' new matter does not make "suppositions" properly. To the contrary, the new matter averments carry out their function under the rules of civil procedure by raising defendants' affirmative defenses and notifying plaintiffs of same. For sake of argument, even assuming that these averments are the "suppositions" that plaintiffs wish them to be, then why should plaintiffs complain, since the rules do not require a response to non-factual averments. Clearly, plaintiffs' preliminary objections are frivolous and they have no basis to seek the relief that they have requested.

WHEREFORE, the defendants respectfully ask that this Honorable Court dismiss plaintiffs' preliminary objections to defendants' answer and new manner, with prejudice, and require plaintiffs to immediately file a reply to defendants' new matter.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT and DAVID
SPACHT, her husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO,
M.D., an individual, and DUBOIS
REGIONAL MEDICAL CENTER, a
corporation,

Defendants.

NOTICE TO PLEAD:

To: Plaintiffs

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

Atorneys for defendants.

CIVIL DIVISION

No. 05-433-CD

Issue No.

ANSWER AND NEW MATTER

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

THOMSON, RHODES & COWIE, P.C.
Firm #720

1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

EXHIBIT

A

tabber

ANSWER AND NEW MATTER

NOW COME defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following answer and new matter in response to plaintiffs' complaint.

ANSWER

1. Defendants are advised and therefore believe and aver that the Pennsylvania Rules of Civil Procedure do not require them to set forth their answers and defenses except as stated below.
2. If and to the extent that any factual averment in the complaint is not responded to in the paragraphs which follow, said allegation is denied for the reason that, after a reasonable investigation, these defendants lack sufficient information or knowledge upon which to form a belief as to the truth of the averments therein.
3. Each of the paragraphs of this answer should be read so as to incorporate by reference each of the other paragraphs of this answer.
4. The following paragraphs of the complaint are denied for the reason that, after a reasonable investigation, these defendants have insufficient information or knowledge to form a belief as to the truth of the averments therein: 1, 5, 12, 18, 19, 21,

22, 23 (including sub-paragraphs (a) through (k)), 24, 25 (including sub-paragraphs (a) through (f)), 26 and 27.

5. The following paragraphs of the complaint are admitted: 2 and 8.

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

7. Paragraph 4 of the complaint is admitted in part and denied in part. It is admitted that Dr. Osundeko was an employee of DuBois Regional Medical Center. All other allegations of actual, apparent and/or ostensible agency and/or employment are denied for the reason that, after a reasonable investigation, defendant has insufficient information or knowledge to form a belief as to the truth of the averments since the identity of the proposed agents, servants and employees is not disclosed.

8. Paragraphs 6 and 7 of the complaint are admitted except that the allegations are incomplete and potentially misleading because the management of diabetes also involves patient compliance, cooperation and attentiveness.

9. Paragraphs 9, 10, 11, 13, 14 and 20 of the complaint are denied for the reason that they incompletely, inaccurately and/or misleadingly describe events which occurred. While these paragraphs to some extent extract or reference words or phrases

from the medical records, and partially recount or describe events occurring or information available, or provided, they do not reflect the context in which the notes and/or statements were made and they ignore other words and phrases necessary to give fair meaning to the referenced language and other information necessary to place the statements and events in context.

10. Paragraphs 15, 16 and 17 of the complaint are denied.

11. Paragraphs 28, 29, 30, 31 (including sub-paragraphs (a) through (f)), 32 (including sub-paragraphs (a) through (b)), and 33 of the complaint constitute conclusions of law to which no further response is required. However, if any response is deemed necessary, these paragraphs and sub-paragraphs are denied. In addition, all allegations of agency and/or employment set forth in Paragraphs 31, 32 and 33 (along with their sub-paragraphs) are denied for the reason that, after a reasonable investigation, defendant has insufficient information or knowledge to form a belief as to the truth of the averments because the identity of the alleged agents, servants and/or employees is not disclosed.

WHEREFORE, plaintiffs' complaint should be dismissed and judgment should be entered in favor of these defendants.

NEW MATTER

12. In the absence of a special contract in writing, a healthcare provider is neither a warrantor nor a guarantor of a cure. This provision is pleaded as an affirmative defense insofar as there was no special contract in writing in this case.

13. These defendants plead the applicability of the Pennsylvania Comparative Negligence Statute as an affirmative defense.

14. While denying all negligence and all liability, these defendants aver that if they are found to have been negligent in any respect, any liability resulting therefrom would be diminished or barred by operation of the Pennsylvania Comparative Negligence Statute.

15. Plaintiffs' complaint fails to state any cause of action against these defendants.

24 Defendants plead the doctrines of intervening and superseding causes as affirmative defenses.

16. Defendants plead "payment" as an affirmative defense to the extent that any amount less than the amount billed for medical services to the plaintiff after the alleged incident was accepted as payment in full.

17. Defendants are not liable for any pre-existing medical conditions which caused the claimed injuries and/or damages.

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

19. These defendants raise all affirmative defenses set forth or available as a result of the provisions of House Bill 1802 which became Pennsylvania law in 2002.

20. To the extent plaintiffs base their claim in whole or in part on any act occurring more than two years prior to the filing of the lawsuit, the claims are barred by the applicable statute of limitations, which is pleaded as an affirmative defense.

21. Defendants plead all applicable statutes of limitations as affirmative defenses.

22. If and to the extent that plaintiffs' claims were not filed within the time limitations imposed by law, said lawsuit is barred by the applicable statutes of limitations.

WHEREFORE, plaintiffs' complaint should be dismissed and judgment should be entered in favor of these defendants.

JURY TRIAL DEMANDED.

Respectfully submitted,

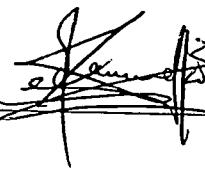
THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for defendants.

VERIFICATION

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

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



Date: 5/31/2005

VERIFICATION

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

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

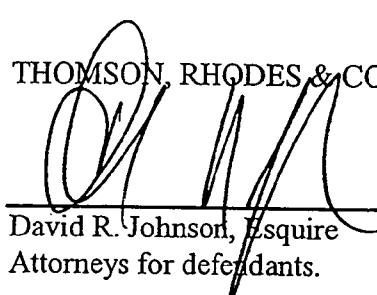


Date: 6-1-05

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within ANSWER AND NEW MATTER has been served upon the following counsel of record and same placed in the U.S. Mails on this 6 day of June, 2005:

Mark J. Homyak, Esquire
Homyak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within document has been served by
U.S. Mails on this 28th day of July, 2005 upon the following:

Mark J. Homyak, Esquire
Homyak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.

Brad Korinski
David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants

Civil Action – Medical
Professional Liability Action

No.: 05-433-CD

AFFIDAVIT OF SERVICE

Filed on Behalf of Plaintiffs
Counsel of Record for These
Parties:

Mark J. Homyak
PA ID No.: 30254

THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636

FILED

AUG 01 2005
M 012:15 PM
William A. Stratton
Prothonotary/Clerk of Courts
No. 4c

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

Civil Action – Medical
Professional Liability Action
No. 05-433-CD

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

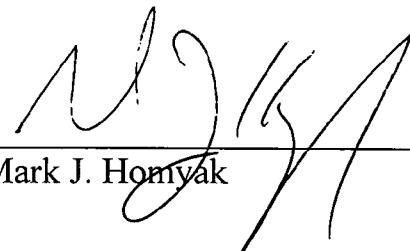
AFFIDAVIT OF SERVICE

I, the undersigned, do hereby verify and affirm that I served both of the original certified copies of the Court's July 25, 2005 Order scheduling argument on Plaintiffs' Preliminary Objections to Answer and New Matter upon David R. Johnson, Esquire at his address of Thomson, Rhodes & Cowie, P.C., Two Chatham Center, Tenth Floor, Pittsburgh, PA 15219-3499 by first class United States mail postage pre-paid on the 29th day of July, 2005. Said service is effective as to both Defendants, as Mr. Johnson is counsel for both Defendants.

I, hereby swear or affirm that the facts contained in the foregoing Affidavit of Service are true and correct to the best of my knowledge, information and belief.

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

7-29-05
Date


Mark J. Honiyak

JX

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

R. KELLY SPACHT and DAVID SPACHT, *
her husband, *
Plaintiffs *
vs. * NO. 05-433-CD
OLUSOLA AYODELE OSUNDEKO, M.D., *
and individual, and DUBOIS REGIONAL *
MEDICAL CENTER, a Corporation, *
Defendants *

ORDER

NOW, this 19th day of August, 2005, the Court having been notified by telephone this date that due to illness Plaintiffs' counsel Mark J. Homyak, Esquire, is unable to attend the hearing scheduled for this date; it is the ORDER of this Court that argument on Plaintiffs' Preliminary Objections to Answer and New Matter is rescheduled to the 9th day of September, 2005 at 3:00 p.m. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

FREDERIC J. AMMERMAN
President Judge

FILED
010-4837
AUG 22 2005
(60)

William A. Shaw
Prothonotary/Clerk of Courts
cc: Atty's: Homyak
D.Johnson

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action – Medical
Professional Liability Action
No.: 05-433-CD

AFFIDAVIT OF SERVICE

Filed on Behalf of Plaintiffs
Counsel of Record for These
Parties:

Mark J. Homyak
PA ID No.: 30254

THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636

FILED

SEP 06 2005
m 11:00 AM CR
William A. Shaw
Prothonotary/Clerk of Courts
no 411

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

Civil Action – Medical
Professional Liability Action
No. 05-433-CD

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

AFFIDAVIT OF SERVICE

I, the undersigned, do hereby verify and affirm that I served the original certified copy of the Court's August 19, 2005 Order rescheduling argument on Plaintiffs' Preliminary Objections to Answer and New Matter upon David R. Johnson, Esquire at his address of Thomson, Rhodes & Cowie, P.C., Two Chatham Center, Tenth Floor, Pittsburgh, PA 15219-3499 by first class United States mail postage pre-paid on the 24th day of August, 2005. Said service is effective as to both Defendants, as Mr. Johnson is counsel for both Defendants.

I hereby swear or affirm that the facts contained in the foregoing Affidavit of Service are true and correct to the best of my knowledge, information and belief. I

understand that the statements made herein are made subject to the penalties of 18
Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

9-1-05
Date


Mark J. Homyak

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband.

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action – Medical
Professional Liability Action
No.: 05-433-CD

**PRAECIPE FOR
WITHDRAWAL OF
PRELIMINARY
OBJECTIONS**

Filed on Behalf of Plaintiffs

Counsel of Record for These
Parties:

Mark J. Homyak
PA ID No.: 30254

THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636

FILED

SEP 09 2005
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William A. Shaw
Prothonotary/Clerk of Courts

no c/c @

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

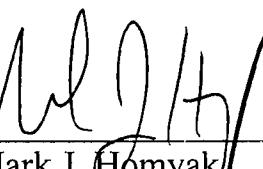
R. KELLY SPACHT and DAVID)
SPACHT, her husband,)
Plaintiffs,) No. 05-433-CD
v.)
OLUSOLA AYODELE OSUNDEKO,)
M.D., and individual, and DUBOIS)
REGIONAL MEDICAL CENTER, a)
Corporation,)
Defendants.)

**PRAECIPE FOR WITHDRAWAL OF PRELIMINARY
OBJECTIONS**

Kindly withdrawal Plaintiffs' Preliminary Objections filed in this case.

Respectfully submitted,

THE HOMYAK LAW FIRM

By: 
Mark J. Homyak
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action – Medical
Professional Liability Action
No.: 05-433-CD

REPLY TO NEW MATTER

Filed on Behalf of Plaintiffs

Counsel of Record for These
Parties:

Mark J. Homyak
PA ID No.: 30254

THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636

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OCT 24 2005
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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action – Medical
Professional Liability Action
No. 05-433-CD

REPLY TO NEW MATTER

Plaintiffs, by their undersigned counsel, Reply to Defendants' New Matter as follows:

12-16. The averments of these paragraphs constitute conclusions of law and are deemed to be denied.

17. The averments of this paragraph are conclusions of law and deemed to be denied. It is further averred that any and all injuries claimed are either new or exacerbations of pre-existing medical conditions for which Defendants are liable.

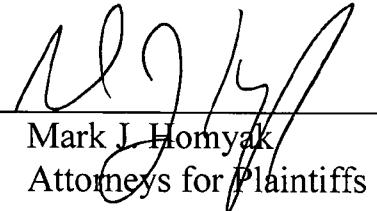
18-22. The averments of these paragraphs constitute conclusions of law and are deemed to be denied.

WHEREFORE, Plaintiffs demand judgment as originally set forth in the
Complaint filed in this action.

JURY TRIAL DEMANDED

Respectfully submitted,

THE HOMYAK LAW FIRM

By: 

Mark J. Homyak
Attorneys for Plaintiffs

VERIFICATION

I, David Spacht, hereby swear and affirm that the facts contained in the foregoing REPLY TO NEW MATTER, are true and correct to the best of my information, knowledge and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

10-18-05

Date

David E. Spacht

Signature

VERIFICATION

I, R. Kelly Spacht, hereby swear and affirm that the facts contained in the foregoing REPLY TO NEW MATTER, are true and correct to the best of my information, knowledge and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

10/19/05
Date

R. Kelly Spacht
Signature

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT and DAVID
SPACHT, her husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO,
M.D., an individual, and DUBOIS
REGIONAL MEDICAL CENTER, a
corporation,

Defendants.

CIVIL DIVISION

No. 05-433-CD

Issue No.

REQUEST TO PLAINTIFFS FOR
PRODUCTION OF EXPERT REPORTS

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

THOMSON, RHODES & COWIE, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED

JUN 28 2006
M/ 2:00 pm (CR)
William A. Shaw
Prothonotary/Clerk of Courts

REQUEST TO PLAINTIFFS FOR PRODUCTION OF EXPERT REPORTS

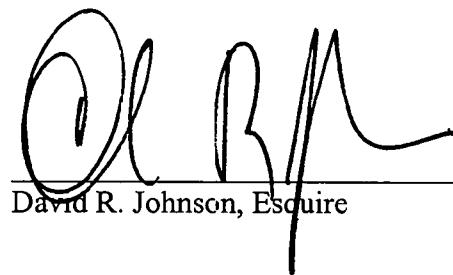
NOW COME defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following requests to plaintiffs for production of expert reports required by Rule 1042.28(a)(1) of the Pennsylvania Rules of Civil Procedure.

TO: R. KELLY SPACHT and DAVID SPACHT, her husband, plaintiffs
FROM: OLUSOLA AYODELE OSUNDEKO, M.D., an individual, and DUBOIS REGIONAL MEDICAL CENTER, a corporation, defendants

Pursuant to Pennsylvania Rule of Civil Procedure 1042.28(b) you are requested within 180 days of service of this request to furnish to me, attorney for the defendants above named, expert reports summarizing the expert testimony that you will offer to support the claims of professional negligence that you have made against the defendants above named. You are required to serve copies of all expert reports on all other parties.

Dated:

6/26/06



David R. Johnson, Esquire

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within REQUEST TO PLAINTIFFS FOR PRODUCTION OF EXPERT REPORTS has been served upon the following counsel of record and same placed in the U.S. Mails on this 26th day of

June, 2006:

Mark J. Homyak, Esquire
Homyak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action – Medical
Professional Liability Action

No.: 05-433-CD

**PLAINTIFFS' REQUEST
TO DEFENDANTS FOR
PRODUCTION OF EXPERT
REPORTS**

Filed on Behalf of Plaintiffs

Counsel of Record for These
Parties:

Mark J. Homyak
PA ID No.: 30254

THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636

FILED *mc*
3/16/45/01
JAN 16 2007 *(S)*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

To: Olusola Ayodele Osundeko, M.D.
and Dubois Regional Medical Center
c/o David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

From: R. Kelly Spacht and David Spacht
c/o Mark J. Homyak, Esquire
THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219

Civil Action – Medical
Professional Liability Action

No. 05-433-CD

PLAINTIFFS' REQUEST TO DEFENDANTS FOR PRODUCTION OF
EXPERT REPORTS

1. We, the Plaintiffs named above, have furnished you, the Defendants named above, an expert report summarizing the expert testimony that we will offer to support the claims of professional negligence that we have made against you.

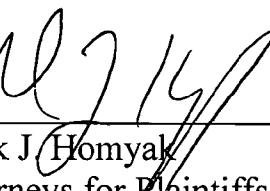
2. Pursuant to Pennsylvania Rule of Civil Procedure 1042.29(a)(2), you are requested within sixty (60) days of service of this request to furnish to us expert reports summarizing the expert testimony that you will offer to support your defenses to the claims of professional negligence that we have made against you.

Respectfully submitted,

THE HOMYAK LAW FIRM

Date: 1-12-07

By:


Mark J. Homyak
Attorneys for Plaintiffs
R. Kelly Spacht and
David Spacht, her husband

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action - Medical
Professional Liability Action

No. 05-433-CD

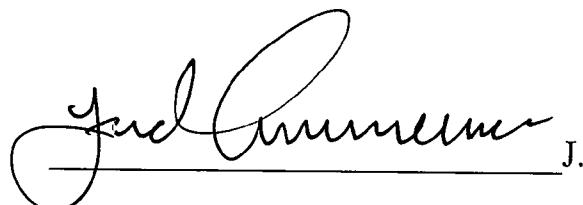
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9/3/07 E. Semins
JUN 13 2007
JK

William A. Shaw
Prothonotary/Clerk of Courts

ORDER OF COURT

AND NOW, this 13 day of June 2007, it is ORDERED that
Plaintiffs' Motion to Compel Expert Report will be heard on the 10th day of
July, 2007 before The Honorable Fredric J. Ammerman,
Motions Judge at 1:30 p.m. in Courtroom 1 of the Clearfield County
Courthouse, 230 East Market Street, Clearfield, PA 16830.

BY THE COURT,



J.

DATE: 6-13-07

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

FILED

JUN 13 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action – Medical
Professional Liability Action

No.: 05-433-CD

**MOTION TO COMPEL
EXPERT REPORT**

Filed on Behalf of Plaintiffs

Counsel of Record for These
Parties:

Mark J. Homyak
PA ID No.: 30254

Eve W. Semins
PA ID No.: 200641

THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636

FILED *10:27AM* NO. 2007-
JUN 11 2007 *(6)*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action - Medical
Professional Liability Action
No. 05-433-CD

MOTION TO COMPEL EXPERT REPORT

Plaintiffs, by their undersigned counsel, move the Court for an order compelling production of Defendants' expert report pursuant to Pa. R.C.P. 1042.3¹ upon the following grounds:

1. This is a medical professional liability case regarding an alleged failure by Defendant Osundeko to appropriately manage Wife-Plaintiff's Type II Diabetes, which resulted in a hypoglycemic event occurring while Wife-Plaintiff was driving. As a result, her car careened off of the road, and she was involved in a single car collision in which she sustained serious bodily injuries.

2. On January 12, 2007, Plaintiffs furnished Defendants the expert report of Robert M. Bernstein, M.D., summarizing the expert testimony to be offered to support Plaintiffs' claims of professional negligence against Defendants (copy of transmittal letter attached as Exhibit "A").

3. On January 12, 2007, pursuant to Pa. R.C.P. 1042.29(a)(2), Plaintiffs also filed Plaintiffs' Request to Defendants for Production of Expert Reports with the Clearfield County Prothonotary's office and sent a true and correct copy of the same to counsel for Defendants (copies of letter and document attached as Exhibits "B" and "C" respectively). Accordingly, Defendants' expert report was due on March 13, 2007.

4. On February 22, 2007, Defendants requested additional time to provide their expert report (Exhibit "D"). Plaintiffs had offered a brief extension of time for the same by Mr. Homyak's letter of January 12, acknowledging Defendants' earlier professional courtesy in briefly extending Plaintiffs' time for provision of their expert report.

5. By his letter of March 13, 2007, Mr. Homyak confirmed his then recent conversation with defense counsel in regard to setting an end date for the reasonable extension of time for receipt of Defendants' expert report (Exhibit "E"). Defense counsel had indicated that he would call back with how much time he thought he would need, never called back and precipitated the March 13 inquiry.

6. On April 23, 2007, Husband-Plaintiff's deposition was taken and inquiry was again made as to when Plaintiffs can expect to receive Defendants' expert report. Defense counsel indicated he thought he would be providing it soon.

7. Defendants have yet to produce an expert report in this case.

WHEREFORE, Plaintiffs move the Court for an order compelling Defendants to promptly produce an expert report, as set forth in the attached proposed order.

Respectfully submitted,

THE HOMYAK LAW FIRM

By: *Eve W. Semins*
Eve W. Semins
Mark J. Homyak
Attorneys for Plaintiffs

THE HOMYAK LAW FIRM

3333 GULF TOWER
PITTSBURGH, PA 15219

TEL. (412) 391-6636 FAX: (412) 391-6632

MARK J. HOMYAK
ATTORNEY AT LAW

January 12, 2007

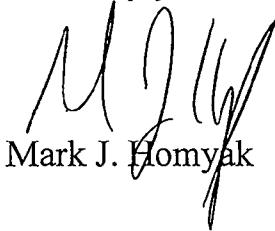
David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

Re: Spacht *et vir* v. Osundeko, M.D. *et al.*
No. 05-433-CD in the Court of Common Pleas of Clearfield County

Dear Mr. Johnson:

I enclose copies of the expert report of Robert M. Bernstein, M.D. F.A.C.E. and his *Curriculum Vitae*. Thank you for your professional courtesy in briefly extending the period for Plaintiffs to provide the enclosed expert report. I also enclose a copy of Plaintiffs' Request to Defendants for Production of Expert Reports filed with the Prothonotary today. Don't hesitate to let me know if you require a similar professional courtesy for a brief extension if your personal or professional life requires the same. Otherwise, I look forward to receipt of your report(s) within the required time frame.

Sincerely yours,



Mark J. Homyak

Enclosures

cc: Mr. and Mrs. David Spacht (w/enc.)

THE HOMYAK LAW FIRM

3333 GULF TOWER
PITTSBURGH, PA 15219

TEL. (412) 391-6636 FAX: (412) 391-6632

MARK J. HOMYAK
ATTORNEY AT LAW

January 12, 2007

William A. Shaw, Sr., Prothonotary
Clearfield County Court of Common Pleas
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

Re: Spacht *et vir* v. Osundeko, M.D. *et al.*
No. 05-433-CD in the Court of Common Pleas of Clearfield County

Dear Mr. Shaw:

Enclosed for filing please find Plaintiffs' Request to Defendants for Production of Expert Reports in this case. By his copy of this letter, a true and correct copy of the filing is being transmitted to defense counsel.

Sincerely yours,



Mark J. Homyak

MJH: ews
Enclosure

cc: David R. Johnson, Esquire (w/enc.)
Mr. and Mrs. David Spacht (w/enc.)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action – Medical
Professional Liability Action

No.: 05-433-CD

**PLAINTIFFS' REQUEST
TO DEFENDANTS FOR
PRODUCTION OF EXPERT
REPORTS**

Filed on Behalf of Plaintiffs

Counsel of Record for These
Parties:

Mark J. Homyak
PA ID No.: 30254

THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

Civil Action – Medical
Professional Liability Action
No. 05-433-CD

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

To: Olusola Ayodele Osundeko, M.D.
and Dubois Regional Medical Center
c/o David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

From: R. Kelly Spacht and David Spacht
c/o Mark J. Homyak, Esquire
THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219

**PLAINTIFFS' REQUEST TO DEFENDANTS FOR PRODUCTION OF
EXPERT REPORTS**

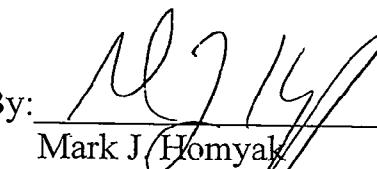
1. We, the Plaintiffs named above, have furnished you, the Defendants named above, an expert report summarizing the expert testimony that we will offer to support the claims of professional negligence that we have made against you.

2. Pursuant to Pennsylvania Rule of Civil Procedure 1042.29(a)(2), you are requested within sixty (60) days of service of this request to furnish to us expert reports summarizing the expert testimony that you will offer to support your defenses to the claims of professional negligence that we have made against you.

Respectfully submitted,

THE HOMYAK LAW FIRM

Date: 1-12-07

By: 

Mark J. Homyak
Attorneys for Plaintiffs
R. Kelly Spacht and
David Spacht, her husband

THOMSON, RHODES & COWIE, P.C.

Attorneys At Law

TWO CHATHAM CENTER, TENTH FLOOR
PITTSBURGH, PENNSYLVANIA 15219-3499

Facsimile (412) 232-3498
www.trc-law.com

Writer's Direct Dial
(412) 316-8662

David R. Johnson

E-mail: drj@trc-law.com

February 22, 2007

R. Kelly Spacht and David Spacht, her husband vs. Olusola Ayodele Osundeko, M.D., an individual, and DuBois Regional Medical Center, a corporation. In the Court of Common Pleas of Clearfield County, Pennsylvania. Civil Division No. 05-433-CD. Our File No. 14206.

Mark J. Homyak, Esquire
Homyak Law Firm
3333 Gulf Tower
Pittsburgh, PA. 15219

Dear Mr. Homyak:

It appears that I will have to take you up on your offer for some additional time to provide you with our expert report in this case. Thank you for your professional courtesy in this regard.

Meantime, however, I would like to schedule Mr. Spacht's deposition. Would you please advise me as to his availability and whether you would prefer for the deposition to be in Pittsburgh or in Clearfield County. Either location is fine with me.

Thank you.

Very truly yours,


David R. Johnson

DRJ/cah

THE HOMYAK LAW FIRM

3333 GULF TOWER
PITTSBURGH, PA 15219

TEL. (412) 391-6636 FAX: (412) 391-6632

MARK J. HOMYAK
ATTORNEY AT LAW

March 13, 2007

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

Re: *Spacht et vir v. Osundeko, M.D. et al.*
No. 05-433-CD in the Court of Common Pleas of Clearfield County

Dear Dave:

This case came up on tickler for me today, as it is the date that your expert report was initially due. As you know, you sent a letter taking me up on my offer of a reasonable extension of time for provision of the same, and we later spoke regarding putting an end date on the same, with you indicating you would be getting back to me shortly regarding how much time you thought you would need. I haven't heard from you in that regard since. Please give me a call to discuss the amount of time you feel will be necessary for you to obtain your expert report.

Sincerely yours,

Mark J. Homyak

MJH:ah

cc: Mr. and Mrs. David Spacht

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

ORDER OF COURT

AND NOW, this _____ day of _____ 2007, upon consideration of Plaintiff's Motion to Compel Expert Report, it is hereby ORDERED that the Motion is GRANTED. IT IS FURTHER ORDERED that Defendants produce an expert report within _____ days.

BY THE COURT,

J.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Compel Expert Report has been served upon counsel of record this 8th day of June, 2007 by United States first class mail, postage prepaid, as follows:

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



Eve W. Semins

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID
SPACHT, her husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO,
M.D., an individual, and DUBOIS
REGIONAL MEDICAL CENTER, a
corporation,

Defendants.

CIVIL DIVISION

No. 05-433-CD

Issue No.

MOTION TO COMPEL

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

THOMSON, RHODES & COWIE, P.C.

Firm #720

1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED No CC.
MAY 10 2007
JUN 14 2007 (GK)

William A. Shaw
Prothonotary/Clerk of Courts

MOTION TO COMPEL SUPPLEMENTAL INTERROGATORIES
AND REQUEST FOR PRODUCTION

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

1. On February 27, 2007, defendants served upon plaintiff's counsel a set of supplemental interrogatories and request for production of documents.
2. To date, plaintiffs have not provided any responses to these discovery requests.
3. Plaintiffs' responses are necessary in order for the defendants to properly defend against plaintiffs' claims.

WHEREFORE, defendants respectfully request this Honorable Court issue an order directing plaintiffs to provide full and complete responses to supplemental interrogatories and request for production within twenty (20) days or suffer such sanctions as this court may impose.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
John R. Whippley, Esquire
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within pleading has been served upon the following counsel of record via first class, U.S. mail, postage prepaid on this 12th day of June, 2007:

Mark J. Homyak, Esquire
Homyak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
John R. Whipkey, Esquire
Attorneys for defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID
SPACHT, her husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO,
M.D., an individual, and DUBOIS
REGIONAL MEDICAL CENTER, a
corporation,

CIVIL DIVISION

No. 05-433-CD

Issue No.

Defendants.

ORDER

AND NOW, this 15th day of June, 2007, it is hereby ordered that defendants' Motion to Compel is granted. Plaintiffs shall file full and complete answers to supplemental interrogatories and responses to requests for production within twenty (20) days of this order. Upon failure to comply with any aspect of this order, sanctions will be imposed.

BY THE COURT:


J.

FILED ^{3cc}
13-0260 Atty
JUN 15 2007
Whipkey
William A. Shaw
Prothonotary/Clerk of Courts
(GK)

DATE: 6/15/07

You are responsible for serving all appropriate parties.

The Probationary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

FILED
JUN 15 2007

William A. Shaw
Probationary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID
SPACHT, her husband,

CIVIL DIVISION

Plaintiffs,

No. 05-433-CD

Issue No.

vs.

OLUSOLA AYODELE OSUNDEKO,
M.D., an individual, and DUBOIS
REGIONAL MEDICAL CENTER, a
corporation,

Defendants.

ORDER OF COURT

AND NOW on this _____ day of _____, 2007, it is hereby
ORDERED, ADJUGED and DECREED that oral argument on defendants motion to compel is
scheduled for the _____ day of _____, 20____, at _____
a.m./p.m. before Judge _____ in Courtroom No. _____ of the Mercer County
Courthouse.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action – Medical
Professional Liability Action

No.: 05-433-CD

**PRAECIPE FOR
WITHDRAWAL OF
MOTION TO COMPEL
EXPERT REPORT**

Filed on Behalf of Plaintiffs

Counsel of Record for These
Parties:

Mark J. Homyak
PA ID No.: 30254

Eve W. Semins
PA ID No.: 200641

THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636

FILED No. CC.
M/10/45 LM
JUN 22 2007
LM
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
Action
her husband,

Plaintiffs,

Civil Action - Medical
Professional Liability

No. 05-433-CD

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

**PRAECIPE FOR WITHDRAWAL OF MOTION TO COMPEL
EXPERT REPORT**

Kindly withdraw Plaintiffs' Motion to Compel Expert Report filed in
this case.

Respectfully submitted,

THE HOMYAK LAW FIRM

By: Eve W. Semins
Eve W. Semins
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action – Medical
Professional Liability Action

No.: 05-433-CD

**PRAECIPE FOR TRIAL
PURSUANT TO
CLEARFIELD COUNTY
LOCAL RULE 212.2**

Filed on Behalf of Plaintiffs

Counsel of Record for These
Parties:

Mark J. Homyak
PA ID No.: 30254

Eve W. Semins
PA ID No.: 200541

THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636

FILED *no cc*
MURRAY AUG 02 2007
AUG 02 2007 *JK*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

To: Olusola Ayodele Osundeko, M.D.
and Dubois Regional Medical Center
c/o David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

From: R. Kelly Spacht and David Spacht
c/o Mark J. Homyak, Esquire
THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219

Civil Action – Medical
Professional Liability Action
No. 05-433-CD

PRAECLPICE FOR TRIAL PURSUANT TO CLEARFIELD COUNTY
LOCAL RULE 212.2

1. Pursuant to Clearfield County Local Rule 212.2, we, the Plaintiffs named above, certify that no motions are outstanding and that discovery has been completed and the case is ready for trial;
2. jury trial is demanded; and,
3. a true and correct copy of the within Praeclipe was served upon counsel for Defendants by U.S. first class mail, postage prepaid, on the 31st day of July, 2007.

Respectfully submitted,

THE HOMYAK LAW FIRM

Date: July 31, 2007

By:



Eve W. Semins
Mark J. Homyak
Attorneys for Plaintiffs
R. Kelly Spacht and
David Spacht, her husband

FILED

AUG 02 2007

**William A. Shaw
Prothonotary/Clerk of Courts**

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

R. KELLY SPACHT and DAVID
SPACHT, her husband :
:
vs. : No. 05-433-CD
:
OLUSOLA AYODELE OSUNDEKO, :
M.D. an individual, and DUBOIS :
REGIONAL MEDICAL CENTER, a :
corporation :
:

FILED

OCT 12 2007

013:00/

William A. Shaw

Prothonotary/Clerk of Courts

CERT TO ATTYS'

JOHNSTON

HOMYAK

ORDER

AND NOW, this 12th day of October, 2007, it is the Order of
the Court that a pre-trial conference in the above-captioned matter has been
scheduled for Tuesday, November 20, 2007 at 1:30 P.M. in Judges Chambers,
Clearfield County Courthouse, Clearfield, PA. Additionally, Jury Selection in this
matter will be held on January 3, 2008.

BY THE COURT:


PAUL E. CHERRY
Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT and DAVID
SPACHT, her husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO,
M.E., an individual, and DUBOIS
REGIONAL MEDICAL CENTER, a
corporation,

Defendants.

CIVIL DIVISION

No. 05-433-CD

Issue No.

CONSENTED TO MOTION TO CONTINUE
JURY SELECTION TO THE NEXT
AVAILABLE LIST

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

THOMSON, RHODES & COWIE, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED NOV 10 2007
NOV 12 2007
WCC
60

William A. Shaw
Prothonotary/Clerk of Courts

CONSENTED TO MOTION TO CONTINUE JURY SELECTION TO THE NEXT
AVAILABLE LIST

NOW COME the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following consented to motion to have the above-captioned case stricken from the jury selection list for January 3, 2008 and moved to the next available jury selection list, averring in support of the motion the following:

1. This is a medical malpractice case in which the parties request from the court a date certain for trial.
2. A pretrial conference has been scheduled in this case for November 20, 2007. The parties would like to maintain the date of this pretrial conference for scheduling purposes and other reasons.
3. The case had been placed on the trial list for January 3. Counsel is unavailable for jury selection at that time and, additionally, for scheduling reasons, it is requested that the case be taken off this list and placed on the next available list for jury selection.
4. The foregoing motion is consented to by counsel for the plaintiffs

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

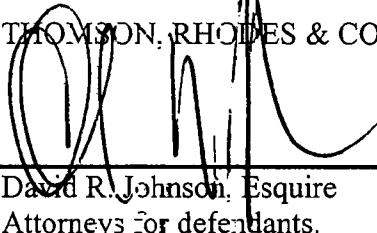
A handwritten signature in black ink, appearing to read "David R. Johnson, Esquire".

David R. Johnson, Esquire
Attorneys for defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within CONSENTED TO MOTION TO CONTINUE JURY SELECTION TO THE NEXT AVAILABLE LIST has been served upon the following counsel of record and same placed in the U.S. Mails on this 31st day of Oct, 2007:

Mark J. Homyak, Esquire
Homyak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

THOMSON, RHOADES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT and DAVID) CIVIL DIVISION
SPACHT, her husband,)
Plaintiffs,) No. 05-433-CD
vs.)
OLUSOLA AYODELE OSUNDEKO,)
M.D., an individual, and DUBOIS)
REGIONAL MEDICAL CENTER, a)
corporation,)
Defendants.)

ORDER OF COURT

AND NOW, this _____ day of _____, 2007, it is hereby
ordered that jury selection in the matter above captioned is continued to the next available
list.

BY THE COURT:

J.

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

R. KELLY SPACHT and : NO. 05-433-CD
DAVID SPACHT :
: :
V. :
: :
OLUSOLA AYODELE OSUNDEKO, MD :
and DUBOIS REGIONAL MEDICAL :
CENTER :
:

FILED ^{ICC Atty:}
01/4/00 BJD ^{Honyak}
NOV 20 2007 ^{D. Johnson}
⁽⁶⁴⁾

William A. Shaw
Prothonotary/Clerk of Courts

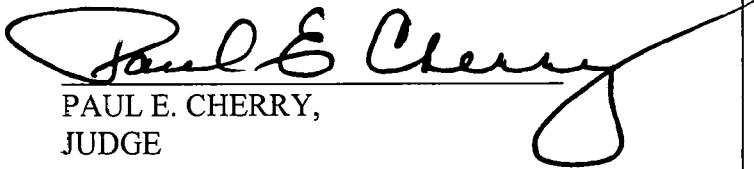
ORDER

AND NOW, this 20th day of November, 2007, following Pre-Trial Conference, it
is the ORDER of this Court as follows:

1. Jury Selection in this matter is scheduled for April 3, 2008, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Trial in this matter is scheduled for April 21, 22, 23, 24, 25, 2008, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania before the Honorable John K. Reilly, Jr., Senior Judge, specially presiding.
3. The deadline for providing any and all outstanding discovery shall be by and no later than forty-five (45) days prior to the commencement of trial.
4. The deadline for submitting any and all Motions shall be by and no later than forty-five (45) days prior to the commencement of trial.
5. Points for Charge shall be submitted to the Court by and no later than thirty (30) days prior to the commencement of trial.

6. Proposed Verdict Slip shall be submitted to the Court by and no later than thirty (30) days prior to the commencement of trial.
7. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

NOV 20 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/20/07

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)

Plaintiff(s) Attorney

Other

Defendant(s)

Defendant(s) Attorney

Special Instructions:

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

R. KELLY SPACHT and : NO. 05-433-CD
DAVID SPACHT : .

V.
OLUSOLA AYODELE OSUNDEKO, MD
and DUBOIS REGIONAL MEDICAL
CENTER

FILED 1CC
09/10/01 Attns:
NOV 27 2001 (5) Homyak
Johnson

William A. Shaw
Prothonotary/Clerk of Courts

AMENDED ORDER

AND NOW, this 26th day of November, 2007, it is the ORDER of this Court that this Court's Order of November 20, 2007, shall be and is hereby amended to read as follows:

ORDER

1. Jury Selection in this matter is scheduled for April 3, 2008, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Trial in this matter is scheduled for May 5, 6, 7, 8, 9, 2008, beginning at 9:00 c'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania, before the Honorable John K. Reilly, Jr., Senior Judge, specially presiding.
3. The deadline for providing any and all outstanding discovery shall be by and no later than forty-five (45) days prior to the commencement of trial.
4. The deadline for submitting any and all Motions shall be by and no later than forty-five (45) days prior to the commencement of trial.

5. Points for Charge shall be submitted to the Court by and no later than thirty (30) days prior to the commencement of trial.
6. Proposed Verdict Slip shall be submitted to the Court by and no later than thirty (30) days prior to the commencement of trial.
7. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

BY THE COURT,



PAUL E. CHERRY,

JUDGE

FILED

NOV 27 2007

William A. Shaw
Prothonotary/Clerk of Courts

12-11627107

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action – Medical
Professional Liability Action

No.: 05-433-CD

FILED
M/ 12:10pm (M)
MAR 24 2008
William A. Shaw
Prothonotary/Clerk of Courts
Note

**PLAINTIFFS' RESPONSE
TO MOTION IN LIMINE**

Filed on Behalf of Plaintiffs

Counsel of Record for These
Parties:

Mark J. Homyak
PA ID No.: 30254

Eve W. Semins
PA ID No.: 200641

THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT and DAVID)
SPACHT, her husband,)
Plaintiffs,) No. 05-433-CD
v.)
OLUSOLA AYODELE OSUNDEKO,)
M.D., an individual, and DUBOIS)
REGIONAL MEDICAL CENTER, a)
Corporation,)
Defendants.)

PLAINTIFFS' RESPONSE TO MOTION IN LIMINE

Plaintiffs, by their undersigned counsel, respond to Defendants' Motion *in Limine* as follows:

- 1-3. Admitted.
4. Admitted, but Plaintiffs also set forth in Section 7 of their Pre-Trial Memorandum that it was anticipated that the parties would stipulate that Plaintiffs' testifying standard of care and causation expert, Dr. Bernstein, would also be able to summarize the injuries sustained by Mrs. Spacht as the result of the auto accident as set forth in the reports of the various treating physicians that were attached to the Memorandum. Further, Section 7 of that Memorandum also set forth that it was anticipated that the parties would be able to stipulate to the resulting economic loss from Wife-Plaintiff's injuries.

When neither of those stipulations were able to be reached at the pre-trial conference, or as the result of a subsequent telephone conversation between counsel for the parties, Plaintiffs spent the money and took the time to obtain an Independent Medical Examination by a physician trained in evaluating records and patients in order to summarize injuries and disability caused by injuries, psychiatrist James L. Cosgrove, M.D. When Dr. Cosgrove confirmed Wife-Plaintiff's period of disability, there was, for the first time, a foundation to obtain and provide a lifetime economic loss report, thereby resulting in the obtaining of Dr. Kenkel's report in that regard. Additionally, a deposition of Defendant Medical Center's employee occurred on March 3, 2008, at which time Plaintiffs' counsel advised defense counsel that he anticipated these reports would shortly be forthcoming, with no objection being raised by defense counsel at that time.

5. Admitted.

6. Admitted in part. Plaintiffs deny that the submission of the Supplemental Pre-Trial Memorandum is in "patent" contravention of LR212.4(f), and the same does not include the underlining that was set forth in Defendants' Motion.

Moreover, LR212.4(g) provides that the presiding member of the Court "shall enter an order at the conclusion of the pre-trial conference setting forth the time of the selection of the jury, the day certain for the commencement of the trial,

and any stipulations or any special agreements as to the case agreed upon by the parties." In this case, Judge Cherry's Order specifically provided that "The deadline for providing any and all outstanding discovery shall be by and no later than forty-five (45) days prior to the commencement of trial.", as per the attached Exhibit A (the Order is an Amended Order of the original Pre-Trial Conference Order of November 20, in that the initial Order had scheduled trial to take place during the week of Holy Week for Orthodox Christians, of which the undersigned is a participating member; In all other respects, the Amended Order is identical to the original Order). Accordingly, discovery did not close in this case until March 21. The Supplemental Pre-Trial Memorandum was filed on March 10, well within the discovery period set forth by the Amended Order.

Based upon the lack of the requested stipulations, the lack of objection voiced by defense counsel to Plaintiffs' counsel's stated intent to provide the reports, and the fact that discovery had not yet closed, Plaintiffs' counsel provided the reports, as soon as they were obtained, within the allowable discovery period attached to the Supplemental Pre-Trial Memorandum, believing that it was not necessary to obtain leave of court under those circumstances. A Motion for Leave to File an Amended Pre-Trial Memorandum is simultaneously being filed with this Response.

Additionally, all Motions were required to be filed by the Amended Pre-Trial Conference Order no later than forty-five days prior to trial, and the subject Motion *in Limine* was not filed until March 20, ten days after the Supplemental Pre-Trial Memorandum was filed, and six days after the date Motions were due.

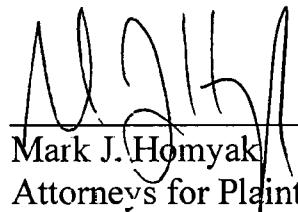
7. Admitted, but Plaintiffs have now done so, and did not believe that they were previously required to do so in light of the facts set forth above.
8. Denied for the reasons set forth in paragraph 6.
9. Admitted and denied in part. It is denied that Defendants will suffer severe prejudice, as they are and have been perfectly able to obtain an examination of Wife-Plaintiff at any time, but chose not to do so, could still do so, without objection from Plaintiffs, and could obtain a contrary economic loss report if they so wished, without delay of the trial. If Defendants contend they require additional time, Plaintiffs have no objection to a continuance of the case until Defendants are able to do so.

WHEREFORE, Plaintiffs ask that the Motion *in Limine* be denied.

Respectfully submitted,

THE HOMYAK LAW FIRM

By:


Mark J. Homyak
Attorneys for Plaintiffs

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

R. KELLY SPACHT and : NO. 05-433-CD
DAVID SPACHT :
: :
V. :
: :
OLJSOLA AYODELE OSUNDEKO, MD :
and DUBOIS REGIONAL MEDICAL :
CENTER :
:

AMENDED ORDER

AND NOW, this 26th day of November, 2007, it is the ORDER of this Court that this Court's Order of November 20, 2007, shall be and is hereby amended to read as follows:

ORDER

1. Jury Selection in this matter is scheduled for April 3, 2008, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Trial in this matter is scheduled for May 5, 6, 7, 8, 9, 2008, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania, before the Honorable John K. Reilly, Jr., Senior Judge, specially presiding.
3. The deadline for providing any and all outstanding discovery shall be by and no later than forty-five (45) days prior to the commencement of trial.
4. The deadline for submitting any and all Motions shall be by and no later than forty-five (45) days prior to the commencement of trial.

5. Points for Charge shall be submitted to the Court by and no later than thirty (30) days prior to the commencement of trial.
6. Proposed Verdict Slip shall be submitted to the Court by and no later than thirty (30) days prior to the commencement of trial.
7. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

BY THE COURT,

/s/ Paul E. Cherry

PAUL E. CHERRY,
JUDGE

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 27 2007

Attest.

William E. Cherry
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

Civil Action - Medical
Professional Liability Action
No. 05-433-CD

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

ORDER OF COURT

AND NOW, this _____ day of _____ 2008, upon consideration of
Defendants' Motion *in Limine* to Strike Plaintiffs' Expert Reports of James L.
Cosgrove, M.D. and James L. Kenkel, Ph.D., and the Response of Plaintiffs
thereto, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is
DENIED.

BY THE COURT,

_____, P. J.

UW

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action – Medical
Professional Liability Action

No.: 05-433-CD

FILED *vo cc.*
m 12:10pm
MAR 24 2008

William A. Shaw
Prothonotary/Clerk of Courts

**PLAINTIFFS' MOTION
FOR LEAVE TO FILE
SUPPLEMENTAL PRE-
TRIAL MEMORANDUM**

Filed on Behalf of Plaintiffs

Counsel of Record for These
Parties:

Mark J. Homyak
PA ID No.: 30254

Eve W. Semins
PA ID No.: 200641

THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636

IN THE COURT OF COMMON FLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT and DAVID)
SPACHT, her husband,)
Plaintiffs,) No. 05-433-CD
v.)
OLUSOLA AYODELE OSUNDEKO,)
M.D., an individual, and DUBOIS)
REGIONAL MEDICAL CENTER, a)
Corporation,)
Defendants.)

**PLAINTIFFS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL
PRE-TRIAL MEMORANDUM**

Plaintiffs, by their undersigned counsel, move the Court for Leave to File a Supplemental Pre-Trial Memorandum for the following reasons:

1. A Pre-Trial Conference was held in this case on November 20, 2007 before the Honorable Paul E. Cherry.
2. Judge Cherry issued an Order and Amended Order following the same, which, *inter alia*, provided that the trial of the case would take place beginning May 5, 2008, and that discovery would be completed no later than forty-five days prior to the date of trial, or, by March 14, 2008.
3. At the pre-trial conference, in accordance with the Pre-Trial Memorandum Plaintiffs had filed, defense counsel was asked to stipulate to the

ability of Plaintiffs' liability expert to also testify to the injuries sustained by Wife-Plaintiff in this case, for which she had been provided treatment by several physicians, as well as a stipulation to economic damages in the form of past wage loss. Defense counsel declined to stipulate to either, both at that time and during a subsequent telephone conversation with Plaintiffs' counsel.

4. Accordingly, Plaintiffs' counsel arranged for an Independent Medical Examination of Wife-Plaintiff and all of her relevant medical records by psychiatrist James L. Cosgrove, M.D., who thereafter promptly issued his report documenting the same.

5. As the result of Dr. Cosgrove's conclusions regarding the extent of Wife-Plaintiffs' resultant disability, Plaintiffs' counsel also obtained an economic loss report setting forth her lifetime wage and benefit loss and lost household services from economist James L. Kenkel, Ph.D.

6. Plaintiffs' counsel advised defense counsel at a deposition in this case that occurred on March 3, 2008 that the reports had been requested and were expected to be forthcoming in the near future, with no objection voiced by defense counsel in response.

7. Since defense counsel had refused the proffered stipulations, thereby requiring the obtaining of the two expert opinions, since pre-trial statements or memoranda are generally not filed until after discovery is closed, since defense

counsel had indicated no objection to being provided with the additional reports, and since discovery had been set to expire on March 15, Plaintiffs' counsel did not believe that it was necessary to obtain leave of court to file the Supplemental Pre-Trial Memorandum containing the reports of Drs. Cosgrove and Kenkel under these circumstances, and filed the same on March 10, 2008, four days before the discovery period closed.

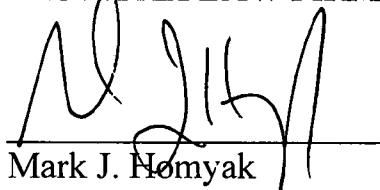
8. Plaintiffs have no objection to Defendants obtaining their own Independent Medical Examination or to the filing of expert reports in opposition to the reports of Drs. Cosgrove and/or Kenkel if Defendants wish to do so at any reasonable time prior to trial, and, if defense counsel requires, Plaintiffs have no objection to a continuance of the trial date in order for Defendants to obtain any such reports they may deem necessary or desirable.

9. Plaintiffs' Response to Defendants' Motion *in Limine* is being simultaneously filed this date and is incorporated herein by reference in its entirety, as is Plaintiffs' Supplemental Pre-Trial Memorandum filed on March 10, 2008, containing the subject reports.

Respectfully submitted,

THE HOMYAK LAW FIRM

By:


Mark J. Homyak
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

ORDER OF COURT

AND NOW, this _____ day of _____ 2008, upon consideration of
the Motion of Plaintiffs for Leave to File a Supplemental Pre-Trial Memorandum,
the same is hereby GRANTED, and the Supplemental Pre-Trial Memorandum
filed on March 10 is ACCEPTED.

BY THE COURT,

_____, P. J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID SPACHT, her
husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO, M.D., an
individual, and L'UBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

CIVIL DIVISION

No. 05-433-CD

Issue No.

**MOTION IN LIMINE TO STRIKE
PLAINTIFFS' EXPERT REPORTS OF JAMES
L. COSGROVE, M.D. AND JAMES L.
KENKEL, PH.D.**

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

Brad R. Korinski, Esquire
PA I.D. #86831

THOMSON, RHODES & COWIE, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED NO
010761 cc
MAR 25 2008
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William A. Shaw
Prothonotary/Clerk of Courts

**MOTION IN LIMINE TO STRIKE PLAINTIFFS' EXPERT
REPORTS OF JAMES L. COSGROVE, M.D. AND JAMES L. KENKEL, PH.D.**

NOW COME the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following Motion in Limine to Strike Plaintiffs' Expert Reports of James L. Cosgrove and James L. Kenkel, Ph.D., for the reasons that said reports have been untimely and improperly filed pursuant to the Local Rule and their filing at this late date without any prior notice to defendants inflicts severe and undue prejudice on the rights of defendants.

1. Trial in this case is scheduled to commence before the Hon. John Reilly on May 5, 2008.

2. This case involves claims of professional liability/medical malpractice against the above named defendants surrounding their management of wife-plaintiff's underlying condition of Diabetes. On April 3, 2003, while in the process of returning in her automobile from a Diabetes Education Class held at DRMC, wife-plaintiff, then age 58, suffered what has been contended to be a hypoglycemic event (i.e., low blood sugar), causing her to temporarily lose consciousness, and consequently to lose control of her motor vehicle. Wife-plaintiff thus became involved in a single-car crash in which she suffered a myriad of injuries. It is plaintiffs' allegation that defendants collective negligence permitted the hypoglycemic event to occur, thereby precipitating the crash.

3. A Pre-Trial Conference occurred on November 26, 2007 presided over by the Hon. Paul Cherry. Prior to the Pre-Trial Conference, consistent with Local Rule 212.4(e), plaintiffs' submitted a Pre-Trial Memorandum, which, *inter alia*, identified the witnesses, experts, records and exhibits plaintiffs would rely upon at trial. A copy of plaintiffs' Pre-Trial Memorandum is attached hereto as Exhibit "A."

4. As is relevant to this instant Motion, plaintiffs' Pre-Trial Memorandum identified on p. 3 the "injury treatment physicians Laun R. Hallstrom, M.D., Shelia Burk, PA, and Thomas Bradley, M.D.," and the

Pre-Trial Memorandum attached reports/records from those individuals. Moreover, on p. 9, sec. 5(d) under the heading "Summary of Special Monetary Damages," plaintiffs identify wife-plaintiff as having sustained "total wage loss in the amount of \$21,300.00. Finally, on p. 10, sec. 7 captioned "Stipulations Reasonably Expected," plaintiffs' averred that "It is also believed that the parties will be able to stipulate that plaintiffs' lost earnings were in the amount of \$21,300.00

(a) Importantly, neither Dr. Cosgrove nor Dr. Kenkel are identified as witnesses (expert or otherwise) in plaintiff's Pre-Trial Memorandum. Further, does not allude to or claim any special monetary damages beyond the \$21,300.00 in lost wages referenced in the above paragraph.

5. On March 12, 2008, plaintiffs filed, without any leave of Court, a Supplemental Pre-Trial Memorandum. In relevant part, that Supplemental Memorandum is attached hereto as Exhibit "B." In it plaintiffs attach the reports of their new experts James L. Cosgrove, M.D., a physical medicine/rehabilitation physician, and James L. Kenkel, Ph.D., an economist.

(a) The report of Dr. Cosgrove is attached as Exhibit "C." It is a 13-page comprehensive report prepared for purposes of litigation pursuant to an Independent Medical Examination of wife-plaintiff conducted by Dr. Cosgrove. Through his report, Dr. Cosgrove offers a myriad of opinions on damage issues, including opinions concerning wife-plaintiff's ability to work, restrictions on her activities, her current range of function, and an opinion that the auto accident aggravated several pre-existing medical conditions. The nature, scope and extent of the opinions offered by Dr. Cosgrove are dramatically different from those opinions contained within the reports attached to plaintiffs' initial Pre-Trial Memorandum.

(b) Relevant portions of the report of Dr. Kenkel are attached as Exhibit "D." The purpose of Dr. Kenkel's opinion is to provide a calculation of plaintiffs' special monetary damages,

an amount initially represented in Exhibit "A" (the Pre-Trial Memorandum) as \$21,300.00. According to the report of Dr. Kenkel, wife-plaintiff's: (i) total potential income loss is projected at between \$637,674.52 and \$670,743.11; (ii) total potential fringe benefits loss is projected at between \$119,882.81 and \$126,099.70; and (iii) value of lost household services is projected at between \$347,096.75 and \$1,282,292.81. Thus, at even the most conservative of calculations, plaintiffs are employing Dr. Kenkel to add \$1,000,000.00 worth of special damages to this case less than two months before trial.

6. The Supplemental Memorandum and accompanying expert reports filed by plaintiffs are in patent contravention of Local Rule 212.4(f), which provides, in salient part.

"Once a pre-trial conference has been held, a party shall not have the right to call any witness where the witness was not listed in the pre-trial statement, to call an expert witness where the report was not appended to the pre-trial statement ... unless application is made to the Court setting forth the reasons the witness, report or exhibit ... was not listed ... to the pre-trial statement and, after argument, the Court, in the exercise of its discretion, permits the use of the said witness, report, exhibit ... "

7. Here, it is undisputed that plaintiffs never made application to this Honorable Court for leave to file any expert reports that were not attached to their original Pre-Trial Memorandum.

8. All of the information contained within the new reports of Dr. Cosgrove and Kenkel has been within the possession and knowledge of plaintiffs since the inception of this lawsuit. There is no legitimate reason or need why plaintiffs waited to this late date to file reports which so dramatically alter the damages landscape.

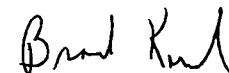
9. Moreover, the defendants will suffer severe prejudice if plaintiffs' tardy expert reports are admitted. (In determining whether to permit the filing of late expert reports, courts must consider the

prejudice that will accrue to any opposing parties and the ability to subsequently cure that prejudice. Feingold v. Southeastern Pa. Transp. Auth., 517 A.2d 1270 (Pa. 1986)). Here, in reliance upon the statements enunciated in plaintiffs' original Pre-Trial Memorandum, defendants did not retain any economist or physical medicine physician to rebut the damage claims now brought by plaintiffs; nor did defendants seek to conduct their own Independent Medical Examination of wife-plaintiff. Therefore, with trial to begin on May 5, 2008, plaintiffs' unilateral submission of expert reports without any prior leave of Court requires defendants to obtain two new expert witnesses, acquire reports from those witnesses, and prepare to defend itself against multi-million dollar special damage claims. Such a situation is highly prejudicial to the interests of defendants and to the smooth and orderly operation of this Court.

WHEREFORE, for the reasons set forth above, defendants respectfully request that this Honorable Court issue an Order: (a) striking the reports of plaintiffs' damage experts, James L. Cosgrove, M.D. and James L. Kenkel, Ph.D.; and (b) precluding reference to the contents of any of the at-issue reports by plaintiffs, their counsel or their witnesses at trial.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for plaintiffs

Ex. A

11-9-07
P) dwd/copy to
Trib/Sab
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action – Medical
Professional Liability Action

No.: 05-433-CD

**PLAINTIFFS' PRE-TRIAL
MEMORANDUM**

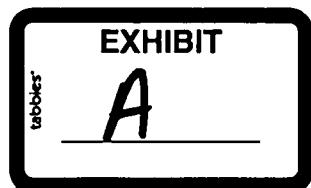
Filed on Behalf of Plaintiffs

Counsel of Record for These
Parties:

Mark J. Homyak
PA ID No.: 30254

Eve W. Semins
PA ID No.: 200641

THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
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OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

PLAINTIFFS' PRE-TRIAL MEMORANDUM

1. Factual Statement of the Claim

Wife-Plaintiff, R. Kelly Spacht, was diagnosed with Type II Diabetes in 1997, initially treated with oral medication, and became insulin dependent in 1999. She was eventually referred to and became the patient of Defendant Olusola Ayodele Osundeko, M.D., a licensed medical doctor with specialization as an endocrinologist, including diabetes management, on December 31, 2002. As a result, Defendant Osundeko became Mrs. Spacht's treating endocrinologist, with responsibility for testing, evaluation, treatment, prescribing, monitoring and adjusting her medication for effective control of her diabetes.

Mrs. Spacht reported all of her pre-existing and developing conditions to Dr. Osundeko that were relevant to his treatment, including her Crohn's Disease diagnosis in 1999, steroids for treatment of that condition, and numerous low and borderline low fasting glucose levels.

In addition to his own treatment, Dr. Osundeko also recommended that Mrs. Spacht attend diabetes education classes at Defendant Dubois Regional Medical Center ("DRMC"), which she did. On April 3, 2003, Mrs. Spacht attended such a class, when it was observed that her low blood sugar placed her at risk for a hypoglycemic event. It was recommended that Mrs. Spacht eat some food, which she did, but no efforts were made to redetermine her glucose level prior to the termination of the class at approximately 9:00 p.m.

At approximately 9:15 p.m. on that evening, while driving from the above described diabetes education class, Mrs. Spacht experienced a hypoglycemic event. This included a decreased level of consciousness that resulted in loss of control of her operation of the vehicle she was driving, and a resultant violent, one-vehicle, off of the traveled portion of the roadway collision. She sustained multiple serious personal injuries as the result of the accident, itemized below.

2. Exhibits

1. DRMC records involving Dr. Osundeko's care from December 31, 2002 through April 3, 2003;

2. Trip reports from Amserve Ltd. for incident #0300505;
3. STAT Medevac helicopter trip sheet records;
4. 4/03-07/03 Altoona Regional Medical Center records;
5. DRMC West medical records from April 2003;
6. Records of Thomas J. Bradley, M.D.;
7. Altoona Regional Medical Center records;
8. DRMC Diabetes Education Center records;
9. Medical records of R. Harsha Rao, M.D.;
10. Medical records of Dr. Osundeko;
11. Medical records of the Inflammatory Bowel Disease Center;
12. All medical records of Mrs. Spacht prior to and subsequent to the incident;
13. Radiographic films;
14. Illustrative Medical Exhibits.

2(a) and (b). Reports

See attached reports of Robert M. Bernstein, M.D. (standard of care and causation) and injury treatment physicians Laun R. Hallstrom, M.D., Sheila Burk (physician's assistant for Dr. McGovern) and Thomas Bradley, M.D.

3. Witnesses

Liability

R. Kelly Spacht
12012 East Middle Road
North East, PA 16428

Olusola Ayodele Osundeko, M.D.
145 Hospital Avenue
DuBois, PA 15801

Elizabeth Kosiba
c/o DRMC
145 Hospital Avenue
DuBois, PA 15801

David Spacht
12012 East Middle Road
North East, PA 16428

Jeril Goss
c/o DRMC
145 Hospital Avenue
DuBois, PA 15801

Robert M. Bernstein, M.D.
1533 St. Francis Dr. Suite B
Santa Fe, NM 87505

Medical

Leo Pernesky
c/o Amserve Ltd.
P.O. Box 253
DuBois, PA 15801

Elizabeth Senior
c/o Amserve Ltd.
P.O. Box 253
DuBois, PA 15801

Dr. Thomas Bradley
701 Sunflower Drive
Suite 1
DuBois, PA 15801

Dr. Robert Schoen
UPMC Digestive Disorder Center
200 Lothrop Street
Pittsburgh, PA 15213

Janet D. Anderson
c/o Amserve Ltd.
P.O. Box 253
DuBois, PA 15801

Dawn Kessler
c/o Amserve Ltd.
P.O. Box 253
DuBois, PA 15801

Dr. Mary Chester Wasto
Arthritis & Autoimmunity Center
Falk Medical Building, Suite 313
3601 5th Avenue
Pittsburgh, PA 15213

Dr. Miguel Regueiro
UPMC Digestive Disorder Center
200 Lothrop Street
Pittsburgh, PA 15213

Dr. Carroll Osgood
501 Howard Avenue
Building F-2
Altoona, PA 16601

Dr. Angelo Illuzzi
Pulmonary Medicine
145 Hospital Avenue
DuBois, PA 15801

Dr. Mark Piasio
145 Hospital Avenue
Suite 311
DuBois, PA 15801

Dr. Harsha Rao
Center for Diabetes & Endocrinology
UPMC
Falk Building, Suite 213
Pittsburgh, PA 15213

Damages

R. Kelly Spacht
12012 East Middle Road
North East, PA 16428

David Spacht
12012 East Middle Road
North East, PA 16428

Leo Pernesky
c/o Amserve Ltd.
P.O. Box 253
DuBois, PA 15801

Janet D. Anderson
c/o Amserve Ltd.
P.O. Box 253
DuBois, PA 15801

Elizabeth Senior
c/o Amserve Ltd.
P.O. Box 253
DuBois, PA 15801

Dawn Kessler
c/o Amserve Ltd.
P.O. Box 253
DuBois, PA 15801

Medical records representative of
Altoona Regional Medical Center
620 Howard Avenue
Altoona, PA 16601

Medical records representative of
Amserve, Ltd.
P.O. Box 253
DuBois, PA 15801

Medical records representative of
DRMC
145 Hospital Avenue
DuBois, PA 15801

Medical records representative of
Dr. Thomas Bradley
701 Sunflower Drive, Suite 1
DuBois, PA 15801

Medical records representative of
Dr. Carroll Osgood
501 Howard Avenue
Building F-3
Altoona, PA 16601

Medical records representative of
Dr. Mary Chester Wasto
Arthritis & Autoimmunity Center
Falk Medical Building, Suite 313
3601 5th Avenue
Pittsburgh, PA 15213

Medical records representative of
Dr. Carmine Marchioli
DRMC Hahne Corner Center
DuBois, PA 15801

Medical records representative of
Dr. Edward McVay
Occupational Health Center
DRMC
DuBois, PA 15801

Medical records representative of
Dr. Mark Piasic
145 Hospital Avenue, Suite 311
DuBois, PA 15801

Harriet Leitzel
106 Wilson Avenue
DuBois, PA 15801

Kimberly Blenk
29 Maple Street
Westbrook, Maine

Medical records representative of
Dr. Robert Schoen
UPMC Digestive Disorder Center
200 Lothrop Street
Pittsburgh, PA 15213

Medical records representative of
Dr. Miguel Regueiro
UPMC Digestive Disorder Center
200 Lothrop Street
Pittsburgh, PA 15213

Medical records representative of
Dr. Richard Johnson
90 Beaver Drive, Suite 122D
DuBois, PA 15801

Medical records representative of
Dr. Harsha Rao
Center for Diabetes & Endocrinology
UPMC Falk Medical Bldg., Suite 213
Pittsburgh, PA 15213

Medical records representative of
Dr. Angelo Illuzzi
145 Hospital Avenue
DuBois, PA 15801

Mary Jo Lambert
2589 Mill Street
Punxsutawney, PA

Kurt Goldsberry
817 Castillo Street
Santa Barbara, CA

Medical records representative of
STAT Medevac
Allegheny County Airport
West Mifflin, PA 15122

Daniel Hollar
c/o STAT Medevac
Allegheny County Airport
West Mifflin, PA 15122

Scott Sherry
c/o STAT Medevac
Allegheny County Airport
West Mifflin, PA 15122

Kelly Pflugh
c/o STAT Medevac
Allegheny County Airport
West Mifflin, PA 15122

4. Legal theory upon which recovery predicated

The accident, Mrs. Spacht's resultant injuries and damages described below were the direct result of the negligence of Dr. Osundeko in failing to more quickly, effectively, appropriately and within the required standard of care, monitor and adjust her insulin regimen in order to reduce the risk of a hypoglycemic event, and/or failing to warn her not to drive while at elevated risk of a hypoglycemic event.

Dr. Osundeko was also operating as the actual, apparent and/or ostensible agent of DRMC while negligently providing the care to Mrs. Spacht, so that DRMC is liable to Plaintiffs under the theory of *respondeat superior*.

Additionally, the staff at DRMC failed to appropriately monitor and recommend appropriate steps to decrease the risk of a hypoglycemic event and/or warn Mrs. Spacht not to drive when she was at an elevated risk for a hypoglycemic event on the evening of the incident.

5. Damages

(a) principal injuries sustained

As the result of the accident, Mrs. Spacht sustained a fractured skull, a traumatic brain injury, two fractured cervical vertebrae, a left ninth rib fracture, a post-traumatic pleural effusion, fractures of the left superior and inferior ramus and left sacrum, a right medial malleolous avulsion fracture, a left elbow laceration, multiple contusions and abrasions throughout her body, post-traumatic anemia and reactional depression.

(b) hospitalization and convalescence

She was evaluated at the scene by emergency personnel, determined to have life threatening injuries, was life flighted to Altoona Regional Medical Center, where she was treated as an inpatient for four days, before transfer by ambulance to DRMC West for inpatient rehabilitation for several weeks. She was discharged to home, but returned to DRMC West emergently by ambulance as the result of a pleural effusion, which was effectively treated after a few more days of inpatient care.

Mrs. Spacht remained walker dependent and had to wear a cervical collar until the end of June, 2003. She returned to work as a Clinical Manager at the DRMC Behavioral Health In-Patient Unit in mid July, 2003, but found that her ongoing debilitation from the accident made it difficult for her to perform her

duties. She was then forced to "resign" and "retire" from DRMC as of April 5, 2004, due to her inability to handle the physical requirements of the job as the result of the lingering effects of her auto accident caused injuries. Had she not done so, she believes she would have been involuntarily terminated.

(c) present disability

Mrs. Spacht continues to have limitations of ambulation caused by her ongoing pain.

(d) summary of special monetary damages

Mrs. Spacht made \$35.28 per hour in her position as a Clinical Manager at the DRMC Behavioral Health In-Patient Unit, being paid for 40 hour work weeks, for a total of \$1,411.20 per week. She was required to miss work as a result of the accident caused injuries from April 4 through July 16, 2003, incurring a total wage loss in the amount of \$20,600.00 during that period. She then worked half days for approximately one week, incurring another \$705.60 in wage loss, for total wage loss in the amount of \$21,300.00. She had no first party auto insurance wage loss benefits.

Her medical bills were all paid by her first party auto and medical insurers, and the latter has confirmed it is not asserting a lien.

6. Extraordinary evidentiary problems

None.

7. Stipulations reasonably expected

It is expected that the parties will stipulate to admission of all of Mrs. Spacht's medical records relevant to the case as described in the Exhibits, above, as well as her own blood sugar testing diary, her medication list, her Certificate of Diabetes Education Sessions, and photographs of the accident site and the post-accident condition of Mrs. Spacht and her vehicle.

It is also expected that the parties will stipulate that Plaintiffs' testifying standard of care and causation expert, Dr. Bernstein, will also be able to summarize the injuries sustained by Mrs. Spacht as the result of the auto accident. If such stipulation is not reached, Plaintiffs request leave to supplement this memorandum by updated reports from Drs. Burk, Hallstrom and/or Bradley confirming that the orthopedic and lung injuries were caused by the motor vehicle accident.

It is also believed that the parties will be able to stipulate that Plaintiffs lost earnings were in the amount of \$21,300.00.

8. Special points for charge

Plaintiffs are simultaneously filing their Proposed Points for Charge, all of which are based on Pennsylvania Standard Suggested Jury Instructions (Civil), and are incorporated herein by reference.

9. Estimated time for trial

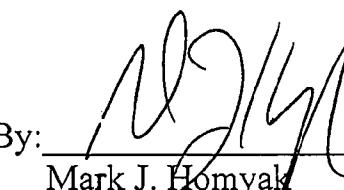
Four days.

Respectfully submitted,

THE HOMYAK LAW FIRM

11-9-07

By:


Mark J. Homyak
Attorneys for Plaintiffs

January 9, 2007

Eve Semins, Attorney at Law
3333 Gulf Tower
Pittsburgh, PA 15219

Re: R. Kelly Spacht

Dear Ms. Semins:

Thank you for asking me to review the medical records regarding Ms. Spacht. I am a board-certified endocrinologist, currently in private practice, with 30 years of clinical experience since my fellowship.

Records I have reviewed include records of:

1. R. Harsha Rao, MD (Falk Endocrine Division)
2. Olusola Osundeko, MD
3. Altoona Regional Medical Center (April 2003)
4. Thomas J. Bradley MD
5. Inflammatory Bowel Disease Center
6. Dubois Regional Medical Center (April 2003, February 2004)
7. Deposition of Olusola Osundeko, MD
8. Deposition of R. Kelly Spacht
9. DuBois Regional Medical Center (admission April 7, 2003)
10. DuBois Regional Medical Center (admission April 22, 2003)
11. Diabetes Education Clinic, Bates stamped numbers 21000217-21000300.
12. Various blood sugar testing diaries

In summary, Ms. Spacht has Type 2 Diabetes which was diagnosed in approximately 1997. She was initially treated with oral medication, and insulin was begun in 1999. Ms. Spacht also has Crohn's disease, which was treated with prednisone for a period of time in 2002 and 2003. In addition, medical records and/or medications listed in the records indicate that Ms. Spacht also had the diagnoses of hypertension, hypothyroidism, asthma, hypercholesterolemia, glaucoma, menopause, inflammatory polyarthritis, elevated liver function studies, and osteopenia of the lumbar spine.

Ms. Spacht was involved in a single car motor vehicle accident on April 3, 2003, and suffered multiple injuries.

The description of the motor vehicle accident by first responders included the following: "Medic 4354 dispatched at 21:28 on 4-3-03, arrived at 21:36. 'Patient was a 57 year old female with chief complaint of disorientation. Patient condition on scene was life-threatening. Blood glucose abnormal (either below 80 or greater than 250). It appears that patient drove straight off road through road sign and into woods. Person who was in car behind her stated that he had been following her since Morningside Cemetery and that between there and Fire Company she was going approximately 15 mph and driving very erratically, but once she reached that point vehicle sped up to approximately 70 mph. (Patient was found by first responders) slumped at wheel coming in and out of consciousness. Patient kept repeating same questions over and over.' " At 21:45, immediately after the accident, Ms. Spacht's glucose was found to be 65 mg/dl, by glucose meter. (In the discharge summary, the note was made that Ms. Spacht's glucose was 68 mg/dl, but I can find no independent documentation of this.) Approximately 1 hour after the motor vehicle accident, glucose determination was 84 mg/dl, according to the above discharge summary.

Ms. Spacht was transported to Altoona Regional Medical Center on April 3, 2003, immediately after the accident. On April 7, 2003, she was transferred to DuBois Regional Medical Center. During the hospitalization at Altoona Regional Medical Center Ms. Spacht was seen in consultation by Dr. Humphrey, who noted "Apparently, her accident occurred in association with a hypoglycemic reaction... Has been experiencing hypoglycemic reactions early morning hours, manifested by shakes and sweats that awaken her, resolve when she eats."

Included in the medical records provided to me were copies of Ms. Spacht's glucose log and insulin regimen prior to her motor vehicle accident on April 3, 2003. During the time from January 2003 through April 3, 2003, Ms. Spacht had frequent low or borderline low fasting glucoses, and these low glucoses persisted despite various changes in medication. From March 30, 2003, through April 2, 2003, fasting glucoses were as follows: 50, 85, 61, and 64 mg/dl, and 49 mg/dl on April 3, the day of the accident. Also, in the several days prior to the motor vehicle accident, Ms. Spacht also had intermittent borderline low late afternoon glucoses. Specifically, on March 31, 2003, her afternoon glucose was 65 mg/dl; on April 1, 2003, 75 mg/dl; on April 3, 2003, at 6:40 p.m., 73 mg/dl.

Both the medical records and Ms. Spacht's testimony indicate that Ms. Spacht was in contact frequently with Dr. Osundeko's office from January 2003 through April 2, 2003, and Dr. Osundeko was aware of Ms. Spacht's glucoses, and also aware that she was tapering her prednisone.

From January 17, 2003 (possibly earlier), Ms. Spacht was taking NPH insulin in the morning, in various doses under Dr. Osundeko's direction. She was also taking Glucovance in various doses, also under Dr. Osundeko's direction. During this time, fasting glucoses were frequently low or borderline low, and Ms. Spacht also reported that she was frequently awakening at 2-3 a.m. with hypoglycemic symptoms. Also during this time, Ms. Spacht was routinely checking her glucoses before each meal and at bedtime, and she had intermittent low or borderline low glucoses intermittently at other times of the day.

Glucovance is a combination medication, containing glyburide and metformin. Glyburide increases insulin secretion from the pancreas, and thereby lowers blood sugar. The effective duration of action of glyburide is from approximately 12 to 24 hours. The glucose-lowering effect of NPH insulin can last up to 24 hours.

Ms. Spacht's pattern of nighttime hypoglycemia and low fasting glucoses clearly indicates that she was receiving too much NPH insulin for at least several weeks prior to her accident. Dr. Osundeko had numerous opportunities, based on Ms. Spacht's glucose record and Ms. Spacht's contact with his office, to lower Ms. Spacht's NPH insulin dose, and he should have done this. It appears Dr. Osundeko was concerned with Ms. Spacht's elevated glucoses at other times of the day. It is possible that these would have improved spontaneously had Dr. Osundeko appropriately adjusted Ms. Spacht's insulin; otherwise, these high glucoses could have been treated with rapid acting insulin on a sliding scale. In any case, the primary concern should have been Ms. Spacht's frequent low blood sugars, and the NPH insulin should have been reduced.

Regarding the motor vehicle accident itself, Ms. Spacht's glucose was reported at 65 mg/dl shortly after the accident. It is my opinion, with a reasonable degree of medical certainty, that her glucose prior to the automobile accident and at the time of the automobile accident was lower. I base this opinion on the following: First, the description of Ms. Spacht's erratic driving immediately prior to the accident is consistent with alteration in consciousness due to hypoglycemia. Second, Ms. Spacht recorded a borderline low glucose of 73 mg/dl at 6:40 p.m. the evening of the accident. Third, glucose meters have an acceptable range of imprecision of approximately 10%, and occasional errors of even higher percentage. Fourth, the human body is able to defend quickly against a low glucose, and raise the blood glucose even in the presence of excess insulin. The mechanism for this is counter-regulatory hormones, specifically cortisol, catecholamines, and growth hormone. All of these are secreted in response to stress, including hypoglycemia. When these hormones are secreted, blood glucose increases. The two specific stresses applicable in this situation are the automobile accident itself, and the likely hypoglycemia preceding the accident. Either of these stresses are adequate to cause release of the above counter-regulatory hormones, thereby increasing blood glucose.

My opinion, with a reasonable degree of medical certainty, as a practicing Endocrinologist, is that the care provided to Ms. Spacht by Dr. Olusola Osundeko fell outside acceptable professional standards for an Endocrinologist managing a patient with diabetes. It is also my opinion that Dr. Osundeko's failure to appropriately adjust Ms. Spacht's insulin precipitated a hypoglycemic event, which was the likely cause of Ms. Spacht's motor vehicle accident and her resulting injuries.

The above summary and opinions are subject to elaboration and/or modification if new evidence becomes available to me.

Thank you for asking me to review these medical records. If I can be of further assistance, please let me know.

Sincerely yours,



Robert M. Bernstein, MD

DISCHARGE SUMMARY
DUBOIS REGIONAL MEDICAL CENTER
DUBOIS, PENNSYLVANIA

03/16/1946

PATIENT NAME: SPACHT, R KELLY

0309700967 - 000379851

ADMISSION DATE: 04/07/2003

DISCHARGE DATE: 04/17/2003

DISCHARGE DIAGNOSES:

1. Multiple trauma status post motor vehicle accident.
2. Traumatic head injury/closed head injury.
3. Fracture right and left lateral massive C2.
4. Fracture anterior tubercle C7.
5. Fracture superior and inferior pubic rami on the left.
6. Left basil occiput skull fracture.
7. Multiple posterior rib fractures.
8. Right malleolar chip fracture.
9. Left pulmonary contusion with effusion.
10. Left corneal abrasion.
11. Insulin requiring diabetes mellitus.
12. Crohn disease.
13. Hypertension.
14. Asthma.
15. Hypothyroidism.
16. Glaucoma.

FUNCTIONAL STATUS AT THE TIME OF DISCHARGE: She was transferring independently. She is ambulating 150 feet with a wheeled modified independent partial weightbearing on the right. She is on four stairs with a rail and crutch at supervision to modified independent level. She did require assistant ADLs, specifically dressing and aspects of grooming relating to the wearing of the cervical collar.

HISTORY OF PRESENT ILLNESS: The patient is a 57-year-old female admitted to DRMC as a transfer from Altoona Hospital. She was admitted there on 04/03/03 after having sustained a motor vehicle accident in which she was restrained driver. There is presumption of a hypoglycemic event with a blood sugar of 68 at the scene. From the scene of the accident, she was Life Flighted to Altoona Hospital where she had a Glasgow coma scale of 14. She was noted to be confused. She had multiple injuries as noted in the discharge diagnoses list above. She was seen by Neurosurgery, Orthopedic Surgery, Trauma Surgery, Ophthalmology, and Internal Medicine for her care. She was placed in a rigid cervical collar. She was placed on partial weightbearing status of the right lower extremity. She did not undergo any surgical care. She was started on an increased dose of Hydrocortisone as a stress dose of steroids based on her chronic use of steroids for Crohn disease. There was significant pain and she was started on an analgesic regimen as well. As she had significant functional deficits, she was therefore transferred to our facility.

HOSPITAL COURSE: The patient was admitted for a comprehensive rehabilitation program to include physical therapy and occupational therapy. Her functional status did improve during her stay and her functional status at the time of discharge was noted above.

She continued to wear the cervical collar throughout her stay. She was having discomfort from the collar that had been dispensed, a smaller collar was obtained for her and this seemed to offer better control of the cervical spine as well as improved comfort. She did have an ankle wrap/support that she wore both in and out of bed for stabilization.

Chart Copy

01000005

DISCHARGE SUMMARY
DUBOIS REGIONAL MEDICAL CENTER
DUBOIS, PENNSYLVANIA
SPACHT, R KELLY
PAGE 2

0309700967 - 000379851

There is a history of diabetes mellitus as noted above. It was felt that she was hypoglycemic at the time of the accident. We monitored medications and blood sugars throughout her stay. She eventually with the regimen achieved excellent control.

There is a history of Crohn disease. We did begin titration of her Hydrocortisone dose. There was one day that she did have a complaint of blood per rectum. She had no abdominal symptoms otherwise. At that time, she was also on Naproxen and aspirin. The Naproxen was discontinued. She had no further gastrointestinal bleeding. Her blood pressure was noted to be elevated. She had been on Hyzaar and the dose was maximized. As her blood pressure remained elevated, she was also started on an Ace inhibitor. This will need to be monitored closely as an outpatient.

She did have significant pain throughout her stay. She was started on a long acting analgesic regimen with OxyContin and this seemed to offer her much better control and ability to participate fully with the therapy program. The OxyContin was continued at the time of discharge.

The remainder of her hospital course was uncomplicated. She was discharged to home without incident.

DISCHARGE MEDICATIONS:

1. Lantus 32 units subq. q. a.m.
2. NovoLog 12 units subq. before meals
3. Altace 2.5 mg p.o. q. day
4. Hydrocortisone 20 mg daily: The dose will be decreased to 15 mg three days after discharge and then we will reduce 5 mg per week. She will communicate with her Gastroenterologist regarding the lower limit of steroid dosage.
5. OxyContin 10 mg p.o. q. 12 hours
6. Iron sulfate 325 mg p.o. b.i.d.
7. Pepcid 20 mg p.o. b.i.d.
8. MetroGel 0.75% to rash daily
9. Hyzaar 100/25 mg p.o. q. day
10. Aspirin 81 mg p.o. q. day
11. Vitamin E 1000 units p.o. daily
12. Singulair 10 mg p.o. q. day
13. Lipitor 20 mg p.o. q.h.s.
14. Synthroid 0.125 mg p.o. q. day
15. Cosopt ophthalmic, one drop, both eyes b.i.d.
16. Alphagan ophthalmic, one drop, both eyes b.i.d.
17. Asacol 1600 mg p.o. t.i.d.
18. Humalog sliding scale

Follow up appointments have been arranged with Dr. Bradley for 05/13/03, Dr. Osgood in DuBois 05/21/03, and Dr. Piasio has agreed to follow the pelvic fractures and she will be on 05/02/03. She will follow up on her own with her gastroenterologist.

D: 04/18/2003 4:58 P
T: 04/23/2003 9:06 P LRH/dll
DOCUMENT NO: 337838
Job/Tape ID: 000379330

cc: Thomas Bradley, M.D.
Laun R. Hallstrom, M.D.


Laun R. Hallstrom, M.D.

Chart Copy

21000000

SPACHT, ROSALEEN KELLY.
2911238 000000360458

ALTOONA HOSPITAL

1255 B

R MAGEE, MD 3/16/1946

DISCHARGE SUMMARY

ADMISSION DATE: 4/4/2003

DISCHARGE DATE: 4/7/2003

TRA

DISCHARGE DIAGNOSES

1. Status post motor vehicle crash.
 - a. Mild traumatic brain injury.
 - b. Left 9th rib fracture.
 - c. C2 and C7 fractures.
 - d. Left superior and inferior ramus fractures.
 - e. Left sacral fracture.
 - f. Left elbow laceration.
 - g. Right medial malleolus avulsion fracture.
 - h. Multiple contusions and abrasions.
 - i. Left eye conjunctivitis.
 - j. Posttraumatic anemia.

CONSULTS: Dr. Fulchiero, orthopedics. Dr. Sponsler of neurology. Dr. Osgood, neurosurgery. Dr. Humphrey, endocrinology. Dr. Dimapilis, medical management.

PROCEDURES: None.

HPI: The patient is a 56-year-old female who was a driver involved in motor vehicle crash. She is an insulin-dependent diabetic and recently adjusted her insulin. She is amnestic to the event. EMTs report positive loss of consciousness. Her glucose on the scene was 68. For further details regarding history and physical, medications, allergies, medical, surgical and social history, review of systems and initial labs and studies, please refer to H&P on the chart.

HOSPITAL COURSE: The patient was seen and evaluated in the resuscitation bay. She was noted to have a CT with fracture of the left lateral Mars with minimal separation and right lateral Mars undisplaced fracture and a C7 anterior tubercle on the right fracture. Consulted Dr. Osgood and no surgical intervention was needed. She is to wear her Aspen collar for 3 months.

The patient was also noted to have left inferior/superior ramus fractures as well as a left sacral fracture. Consulted Dr. Fulchiero. No surgery was needed. Weightbearing as tolerated.

SPACHT, ROSALEEN KELLY.
2911238 000000360458
1255 B
R MAGEE, MD 3/16/1946
ADMISSION DATE: 4/4/2003
DISCHARGE DATE: 4/7/2003
TRA

ALTOONA HOSPITAL

DISCHARGE SUMMARY

Also noted was a right medial malleolus avulsion fracture, and a left ankle brace was placed.

She was evaluated by physical therapy and occupational therapy who felt that inpatient rehab was needed.

A left 9th rib fracture was also noted. No pneumothorax on followup chest x-rays. Pain was well controlled with oral pain medications.

The patient complained of left eye irritation. Consulted Dr. Sponsler who evaluated her. No corneal abrasion was noted but felt the patient had a conjunctivitis. She was treated with Voltaren and Saltex eyedrops.

The patient is a known insulin-dependent diabetic. Because of recent adjustments in her insulin and a hypoglycemic episode, Dr. Humphrey was consulted to manage her diabetes and Dr. Dimapilis for her medical management.

CT scan of the head was initially negative. Neurologically the patient improved throughout the course.

DISPOSITION: The patient is discharged to Health South in DuBois in satisfactory condition. She is to follow with Dr. Osgood as scheduled and her own family doctor and endocrinologist.

Dictated by Sheila Burk, PAC, for Dr. McGovern

Dictated By SHEILA BURK, PAC/glj
Dict: 04/29/2003 1144 PST
13093001

Tran: 05/02/03 0222 EST

cc: DR. THOMAS BRADLEY
cc: SIMON D LAMPARD, MD
cc: DENISE GDULA

DISCHARGE SUMMARY
DUBOIS REGIONAL MEDICAL CENTER
DUBOIS, PENNSYLVANIA

03/16/1946

PATIENT NAME: SPACHT, R KELLY

0311100599 - 000379851

ADMISSION DATE: 04/22/2003

DISCHARGE DATE: 04/24/2003

DIAGNOSES:

1. Intractable right rib pain.
2. Post multiple left rib fractures.
3. Insulin dependent diabetes mellitus.
4. Pleural effusion.
5. Previous multiple pelvic fractures.
6. Previous basilar skull fracture.
7. Crohn's disease.

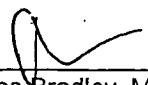
HOSPITAL COURSE: Kelly, who is 57, and had the above injuries on 4/3/03 when she had gotten hypoglycemia, had an addition to those injuries, a couple fractures around her cervical spinal column, none critical and minor left ankle fracture. She was flighted to Altoona and although she was on some Oxycontin in low doses with Hydrocodone rescue, she was having intractable pain in her right toe. Rib area is seemingly spasmotic and there is no doubt that there would have been soft tissues injuries to that area on the left.

Dr. Illuzzi was consulted because of the pain and felt that she could have a hemothorax and plus she might have a thick pleural and possibly some trapped lung. He did a thoracentesis. He didn't feel that any further procedures were necessary.

We managed her sugar with coverage, made her OxyContin routine. Had her on telemetry were there were no problems. Had Dilaudid available for pain and some antibiotics based on the fact that she was splinting and a risk for pneumonia. PT and OT were consulted. We d/c'd the tele after a few days. Dr. Valigorsky did an intracostal pain block which was very helpful, and she was sent home on her same meds as usual on 4/24 to be followed up by me as per previous appointment and follow up also with specialist in Altoona.

D: 06/18/2003 8:33 A
T: 06/23/2003 4:05 P TB/src
DOCUMENT NO: 350744
Job/Tape ID: 000406702

cc: Thomas Bradley, M.D.


Thomas Bradley, M.D.

Ex. B

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

PLAINTIFFS' SUPPLEMENTAL PRE-TRIAL MEMORANDUM

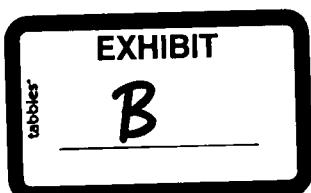
Plaintiffs' original Pre-Trial Memorandum is incorporated herein by reference as if set forth in full, with the following additions and changes.

2. Exhibits

15. That portion of Plaintiffs' economic loss expert's report documenting Plaintiffs' lifetime lost wages and benefits, limitation of earning capacity and lost household services.

2(a) and (b). Reports

The reports of Drs. Halstrom and Bradley and Physician's Assistant Sheila Burk, for Dr. McGovern, are deleted and the report of the independent medical



examining board certified physiatrist James L. Cosgrove, M.D. is substituted therefor, and attached. See also the attached report of James L. Kenkel, Ph.D.

3. Witnesses

Medical

James L. Cosgrove, M.D.
9104 Babcock Boulevard
Suite 2120
Pittsburgh, PA 15237

Damages

James L. Kenkel, Ph.D.
807 Academy Place
Pittsburgh, PA 15243

5. Damages

(c) present disability

Mrs. Spacht has been disabled, except for a brief post accident work attempt, from the time of the accident through the present and shall be for the remainder of her anticipated work life.

(d) summary of special monetary damages

Plaintiffs' total projected economic losses, including past lost income and benefits, limitation of lifetime earning capacity, and lost household services are projected to range from a minimum of \$1,104,654.08, to a maximum of \$1,282,292.81, as per the attached report of Dr. Kenkel.



Tri Rivers

CONSULTING SERVICES

UPMC Passavant
Professional Building
9104 Bobcock Boulevard
Suite 2120
Pittsburgh, PA 15237
Phone: 412.369.9988
FAX: 412.367.1572
ime@tririversconsulting.com
www.tririversconsulting.com

Orthopedic Surgery
Michael W. Weiss, M.D.
D. Kelly Agnew, M.D.
William D. Abrahain, M.D.
Trenton M. Gause, M.D.
Thomas S. Muzzonigro, M.D.
Robert L. Waltrip, M.D.
S. Joshua Szabo, M.D.
H. James Pfaffle, M.D., Ph.D.

**Physical Medicine
and Rehabilitation**
James L. Cosgrave, M.D.
Judith H. Esman, M.D.
Edward D. Reidy, M.D.

Neurosurgery
J. William Bookwala, III, M.D.
Francis T. Ferraro, M.D.
Donald M. Whiting, M.D.

Neurology
David M. Lobos, M.D.

General Surgery
Randall R. Draper, M.D.

Oral and Maxillofacial Surgery
R. Kent Galey, D.M.D.

Urological Surgery
Daniel J. Cole, M.D.

Podiatry
Steven A. Conner, D.P.M., J.D.

Chiropractic
Roy H. Schmitt, D.C.

Cardiology
Kenneth C. Huber, M.D.

Medical Legal Manager
LuAnn Dugan

Chief Executive Officer
Robyn L. Beckwith, M.B.A.

February 19, 2008

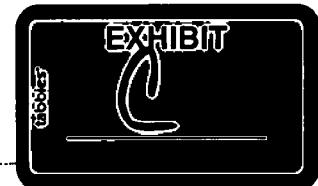
Mark J. Homyak, Esquire
THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219

RE: R. Kelly Spacht

Dear Mr. Homyak:

DOCUMENTS REVIEWED:

1. Diagnostic study reports:
 - A. Head MRI dated November 8, 2002.
 - B. Cervical spine, pelvis, abdomen, head, and maxillofacial CT scans dated April 3, 2003.
 - C. Chest, pelvis, and cervical spine x-rays dated April 3, 2003.
 - D. Chest CT scan dated April 3, 2003.
 - E. Chest, left hip, right ribs, bilateral feet, left ribs, left tibia/fibula, right and left ankle, right and left knee, thoracic spine, and lumbosacral spine x-rays dated April 4, 2003.
 - F. Right lower extremity venous duplex dated April 15, 2003.
 - G. Chest x-ray and lung scan dated April 21, 2003.
 - H. Chest x-ray and left rib x-rays dated April 22, 2003.
 - I. Chest sonogram dated April 23, 2003.
 - J. Cervical spine x-ray dated May 2, 2003.
 - K. Lumbosacral spine x-ray dated January 23, 2004.
 - L. Chest x-ray dated February 2, 2004.
 - M. Abdominal x-ray series dated March 14, 2004.
 - N. Abdominal x-rays dated March 15, 2004.
 - O. There were also additional diagnostic studies including mammograms and DEXA scan.



Mark Homyak
RE: R. Kelly Spacht
February 19, 2008
Page 2

2. Geisinger Medical Group dated August 10, 1990 through August 25, 1995.
3. Thomas Bradley, M.D. dated October 10, 1995 through February 15, 2005.
4. DuBois Regional Medical Center emergency department visits dated August 12, 1997 through March 14, 2004.
5. Robert Schoen, M.D. dated February 24, 1999 through January 9, 2002.
6. Carmine Marchioli, M.D. dated March 17, 1999 through August 18, 1999.
7. Mary Chester Morgan-Wasko, M.D. dated September 22, 1999 through March 28, 2001.
8. Miguel Regueiro, M.D. dated April 8, 2002 and April 2, 2004.
9. Sola Osundeko, M.D. dated December 31, 2002 and February 3, 2003.
10. Presbyterian University Hospital admission records dated January 9, 2003 through January 14, 2003.
11. EMS/STAT MedEvac Trip Sheets dated April 3, 2003 through April 21, 2003.
12. Altoona Regional Hospital admission records dated April 4, 2003 through April 7, 2003.
13. DuBois Regional Medical Center admission records dated April 7, 2003 through April 17, 2003 and April 22, 2003 through April 24, 2003.
14. Thomas Smith, M.D., ophthalmology, dated October 20, 2003.

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February 19, 2008
Page 3

15. Krista Gray, CRNP dated April 26, 2004.
16. Mercy Hospital emergency room dated December 31, 2004.
17. Various laboratory reports.

Please be advised that Ms. Spacht brought with her to the examination a large packet of information including documents relating to her successful application for Social Security Disability. She also brought with her current records from her primary care physician, Dr. Laukaitas, which include a current medical problem list and active medication list.

CHIEF COMPLAINT:

1. Back pain.
2. Neck pain.

HISTORY OF PRESENT ILLNESS:

Ms. Spacht is a 61-year-old female who has a fairly complex medical history as well as a severe motor vehicle accident resulting in multiple traumas.

Ms. Spacht was involved in a multiple trauma motor vehicle accident on April 3, 2003. Emergency Medical Services were at the scene. Ms. Spacht was noted to have an altered state of consciousness as well as evidence of hypoglycemia-glucometer reading of 65. She was noted to be amnestic to the events and confused during transport.

Following the accident, Ms. Spacht was stabilized and taken to Altoona Regional Hospital. She underwent multiple diagnostic studies, which revealed fractures of the superior and inferior pubic ramus on the left side and sacral fractures seen on the left with some comminution. A CT scan

Mark Homyak
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Page 4

of the cervical spine showed a C2 lateral mass fracture and apparent fracture of the C7 anterior tubercle without displacement. There was also a fracture at the basal occipital area on the left. Underlying degenerative changes were seen in the cervical spine. A head CT scan revealed no intracranial hemorrhage and there were no facial fractures identified. Additional chest x-rays were read as unremarkable; however, a follow up CT scan of the chest revealed multiple fractures of the left-sided ribcage as well as a small hematoma and left pleural effusion.

Additional studies done the following day on April 4, 2003 revealed left rib fractures of the left 8th and 9th ribs. There was also a small avulsion chip fracture over the right medial malleolus. The left ankle and the knees appeared to be normal. No vertebral fracture was noted in the thoracic or lumbar area.

A consultation was obtained with Dr. Osgood who recommended no surgery, but treatment with an Aspen collar for three months. Dr. Fulchiero of orthopedics noted the sacral and pubic fractures and recommended weightbearing as tolerated. An ankle brace was prescribed for the medial malleolus fracture. Physical therapy and occupational therapy were initiated.

As of April 7, 2003, Ms. Spacht was deemed appropriate for transfer to DuBois Regional Medical Center for a comprehensive rehabilitation program. She continued to wear her cervical collar. An ankle brace continued to be used. During this timeframe, her blood sugars were continuously monitored and her diabetic control appeared to be excellent. There was some episode of rectal bleeding, therefore the Naprosyn was discontinued. Her blood pressure was elevated and Ms. Spacht was placed on an Ace inhibitor. She had significant pain during this

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timeframe and was placed on OxyContin, which has subsequently been discontinued. At the time of discharge, Ms. Spacht was transferring independently and ambulating 100 feet with a wheeled walker and partial weightbearing on the right leg. Assistance was required for activities of daily living, grooming. Because of some leg swelling, a venous Doppler of the right lower extremity was obtained, but this was normal on April 15, 2003. Ms. Spacht discharged on April 17, 2003.

Emergency Medical Services were summoned to Ms. Spacht's home on April 21, 2003 because of left-sided pain. This was felt to be muscle spasm. She was transported to the emergency room. She was seen at DuBois Regional Medical Center and admitted under the care of Dr. Bradley, her primary care physician. Rib pain was noted. There was a minimal left-sided pleural effusion noted. A lung scan was normal; no evidence of pulmonary emboli. There was some question of possible hemothorax. On further evaluation, it was noted that she had left-sided rib fractures from #s 8-11. An additional sonogram was done, which only showed a small amount of fluid in the pleural cavity; therefore, a thoracentesis was canceled. Pain was managed with narcotic analgesics, OxyContin and Dilaudid. An intracostal pain block was performed by Dr. Valigorsky, which Ms. Spacht found to be very helpful. She was discharged on April 24, 2003.

In my discussions with her, Ms. Spacht informs me that the rib and lung problems are not problematic at this time.

Subsequently, Ms. Spacht has been followed by Dr. Bradley on a regular basis. She has also been seen by Dr. Thomas Smith, an ophthalmologist. She is seen regularly because of the medication she is taking-Plaquenil. There was also a question of a corneal abrasion. Currently, she is experiencing no eye problems.

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A follow up x-ray of the lumbar spine was done on January 23, 2004, which by report was normal.

On February 2, 2004, Ms. Spacht returned to DuBois Regional Medical Center emergency department with shortness of breath and abdominal pain. A chest x-ray revealed small bilateral effusions with atelectasis. The diagnosis was that of pneumonitis and pleural effusions as well as regional enteritis. Oxygen saturation was only 93 on O2. IV therapy was initiated. There was some concern that this may be related to the medication she was taking for her Crohn's disease-Leukine, which subsequently was discontinued.

On December 31, 2004, Ms. Spacht sought care at Mercy Hospital of Maine. The diagnosis was that of pelvic pain of uncertain etiology and known history of arthritis and Crohn's disease. Percocet and a Lidoderm patch were advised.

No records are available, but Ms. Spacht informs me that she has been seen by Dr. Piazio, an orthopedic surgeon, who noted her back pain was likely coming from her pelvic/sacral fractures. Again, no specific treatment has been recommended. Primary care is provided by Dr. Laukaitas as she has moved to the area of Northeast, Pennsylvania. She still returns to Pittsburgh and is followed by Dr. Regueiro concerning her Crohn's disease. She is also seen by a specialist, Dr. Rao, an endocrinologist in the Pittsburgh area, concerning her diabetes mellitus and Dr. Wasko, a rheumatologist, for her arthritic complaints.

Ms. Spacht's current Crohn's disease is under good control with the Remicade and Imuran as well as routine use of Asacol. She is receiving Remicade infusions on a regular basis, which are associated with a tapering dose of steroids. She is on regular use of Imuran and Asacol. She still has some joint

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related problems; Dr. Wasko evaluates her for the joints, but her overall complaints are arthritic pain-those unrelated to the motor vehicle accident appear to be doing fairly well. She has had previous episodes of right knee swelling, but none recently. Her diabetes mellitus is under good control with a combination of Lantus and Humalog. Dr. Rao has also started Ms. Spacht on Catapres for hypertension and kidney protection.

As noted above, Ms. Spacht is no longer complaining of any significant rib or pulmonary problem; there is no ongoing treatment for that, or disability caused by this condition.

Following the motor vehicle accident and subsequent significant change in lifestyle-see below-and there was some depression of chronic illness. Ms. Spacht was treated with Lexapro, but has not taken this for greater than one year. She feels that she is doing better in that regard.

Insofar as her ongoing pain of a musculoskeletal nature, Ms. Spacht complains primarily of back and pelvis pain, but also is complaining of neck pain. Ms. Spacht informs me that pain is there constantly and significantly alters her lifestyle.

Ms. Spacht remains independent in activities of daily living and self-care. She does not use any sort of ambulatory aid such as a neck brace, an ankle brace, or cane/walker. She has arranged her house to live essentially on one floor. She has dramatically altered her work and recreational endeavors. She finds it difficult to sit and drive for any length of time. She does primarily sedentary recreational endeavors such as reading and computer work. She does not belong to a health spa. She has looked into a YMCA program, but apparently

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the water is much colder than she feels comfortable in and does not engage in any specific regimen in that regard. Ms. Spacht denies any recent trips, falls, or additional injuries.

Ms. Spacht's everyday use of pain medication is extremely limited because of her other medical problems and because of possible drug interactions.

Ms. Spacht denies any significant numbness, tingling, or loss of sensation. There has been no significant residual cognitive or intellectual impairment as a result of her motor vehicle accident.

PAST MEDICAL HISTORY:

She has been followed by multiple physicians since the late 1990s referable to her Crohn's disease. She has also been followed by Dr. Morgan-Wasko, a rheumatologist, because of underlying inflammatory polyarthritis associated with Crohn's disease (autoimmune disorder).

Ms. Spacht has received treatment for heel pain, right hip pain, and knee pain in the past.

Ms. Spacht has a known history of diabetes mellitus and records are available dating back to 2002 from Dr. Osundeko as well as the diagnosis of hypothyroidism.

CURRENT MEDICATIONS:

1. Vytone 1% cream daily.
2. Cleocin pledget 1% daily.
3. Diltiazem XT, 180 mg b.i.d.
4. Hyzaar 100/25 q. day.
5. Synthroid 0.125 mg q. day.
6. Singulair 10 mg q. day.
7. Potassium supplementations 10 mEq q. day.
8. Asacol 400, four tablets t.i.d.

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9. Azathioprine (Imuran) 50 mg q. day.
10. Plaquenil 200 mg PO b.i.d.
11. Remicade infusions q. 8 weeks associated with a four-day prednisone taper.
12. Miralax 1 cap q. day.
13. Lantus 11 units b.i.d. with a sliding scale of Humalog insulin.
14. Catapres-TTS patch.

By report of Ms. Spacht and in review of the records, all preexisting conditions appear to be under good control at this time and do not impart any significant ongoing vocational impairment.

SOCIAL/VOCATIONAL HISTORY:

Ms. Spacht is a 61-year-old female who is a registered nurse who also has a master's degree. At the time of her motor vehicle accident, she was the clinical director of two psychiatric units at DuBois Magnetic Imaging Center. There was both an adult/geriatric and a child/adolescent unit. She managed a staff of 50 paraprofessionals and professionals and was on-call essentially 24/7 for administrative emergencies. She had been doing this job for many years. Because of the configuration of the work environment, she had to travel between two centers—the psychiatric center was separate and distinct from the emergency department where she would have to do clinical intakes (approximately two miles). There was also a significant amount of walking and physical endeavors in order to do her job effectively.

Following the motor vehicle accident in April of 2003, Ms. Spacht remained in rehabilitation and off work through July 14, 2003 at which point in time she returned to work part-time through August 4, 2003. During this timeframe, Ms. Spacht was ambulating with a cane or a walker. She returned to work full-time as of August 4, 2003. As noted

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above, she had some medical problems during this timeframe including pneumonia and then had a significant flare of her Crohn's disease in March of 2004. She last worked on March 8, 2004 and has not returned to work since that time. She has applied for and received Social Security Disability. Currently, Ms. Spacht is not working outside the home. She is not gainfully employed.

Ms. Spacht indicates that her primary limitation is that of pain.

Because of her significant medical problems and medical complications, Ms. Spacht is able to take only Tylenol for pain complaints. Narcotic analgesics cause significant gastrointestinal upset/constipation as well as some cognitive slowing. Nonsteroidal anti-inflammatory medications are contraindicated based upon her presence of Crohn's disease and previous gastrointestinal bleeding associated with that. Throughout the day, Ms. Spacht finds that she must rest. She gets some relief by lying in a recliner with heat.

Of note is that one time when Ms. Spacht did return to work in January of 2004 there was a slip on some ice where she had some aggravation of her right sacroiliac joint pain, but she states quite clearly that this pain was present before and after this slip-and-fall to a significant degree.

Ms. Spacht informs me that it was her intention to continue to work through age 66-full benefits from Social Security on retirement. The early retirement from work has caused significant financial hardship.

PHYSICAL EXAMINATION:

Ms. Spacht is a short-stature pleasant well-developed, well-nourished female. She is in no acute distress.

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Head is normocephalic and atraumatic. TMJs appear to be well located. No facial asymmetry or acute trauma is identified.

Neck is supple. Ms. Spacht has decreased range of motion primarily noted in left rotation and left lateral bending. There is pain at end-range of motion. No instability or neurologic signs or symptoms are elicited with neck range of motion.

Thoracic spine reveals a mild postural kyphosis. There is no pain on palpation along the thoracic spine or along the ribs. There is normal chest inspiration and expiration.

Lumbar spine-No scoliosis or deformity. There is increased pain on forced extension, primarily in the right lower lumbar and sacroiliac area. Ms. Spacht has full flexion and rotation. Straight leg raising test is normal. There are no radicular type symptoms. There is tenderness over the left trochanteric area and also distinct tenderness over the right sacroiliac joint area. There is no tenderness over the sciatic notch area bilaterally.

Upper extremities exhibit normal tone and normal range of motion throughout. Ms. Spacht complains of some mild stiffness and soreness referable to her hands. No acute joint deformity is noted throughout the upper extremity. She has normal opposition of her thumb to her little finger. No ulnar intrinsic or thenar wasting is appreciated. No active synovitis or arthritis.

Lower extremity-Normal range of motion of the hip, knee, and ankle. No active synovitis or arthritis. There is point tenderness over the right medial malleolus. There is some pain on forced dorsiflexion of the right ankle. Again, no joint inflammation or deformity is appreciated.

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Neurologically, Ms. Spacht is intact. Cranial nerves III-XII appear to be intact. Speech and language appear to be appropriate.

Ms. Spacht goes from sit to stand independently. Overall balance appears to be normal. Gait pattern reveals a very slow gait with slightly broad-based support. She takes somewhat small step length. She can go up on her heels and her toes with adequate strength and balance. On forward flexion, there is some increased pain in the right sacroiliac area. There is more pain notable on forced extension. Reflexes are +1 throughout the lower extremities. Peripheral pulsations are intact. No signs of pedal edema or impairment of circulation.

ASSESSMENT:

Various musculoskeletal injuries including cervical fracture with resultant decrement in range of motion and mild persistent pain; pelvic fracture with resultant pain in the sacroiliac area made worse by weightbearing and ambulation; right ankle fracture with persistent pain on palpation and weightbearing.

No significant residual impairment referable to left corneal abrasion, left rib fractures, and left pulmonary contusion-per Ms. Spacht's description. Please be advised that ophthalmologic and pulmonary impairment is beyond the scope of this evaluation.

Ms. Spacht informs me that she was intending to continue working through her full Social Security retirement age of 66. She has not worked since March of 2004. She is currently receiving Social Security Disability. She is not gainfully employed at this time.

Presently, Ms. Spacht has moved to a home which has configured to for one-story living. She lives a fairly sedentary and restricted lifestyle.

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It is my opinion that the restrictions in lifestyle and employment are reasonable. Furthermore, it is my opinion that the restrictions are a direct result of the residuals from the multiple trauma of the motor vehicle accident on April 3, 2003 superimposed upon her underlying medical condition.

Sincerely,

James L. Cosgrove, M.D.

JLC/bm

Enclosure

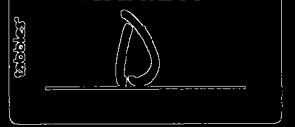
Ex. D

SUMMARY AND CONCLUSIONS

1. There are two projections of potential income. In Projection 1, it is projected that, absent her injury, R. Kelly Spacht had the potential to work for 8.6 additional years. In Projection 2, it is projected that, absent her injury, R. Kelly Spacht had the potential to work for 9.0 additional years until eventual retirement at age 66.
2. Total potential income is projected to be \$637,674.52 under Projection 1 and \$670,743.11 under Projection 2.
3. Potential fringe benefits are projected to be \$119,882.81 under Projection 1 and \$126,099.70 under Projection 2.
4. If household services are valued at \$7.15 per hour, the total value of lost household services is projected to be \$347,096.75.
5. If household services are valued at \$10.00 per hour, the total value of lost household services is projected to be \$485,450.00.
6. Under Income Projection 1, if household services are valued at \$7.15 per hour, the net economic loss is \$1,104,654.08.
7. Under Income Projection 1, if household services are valued at \$10.00 per hour, the net economic loss is \$1,243,007.33.
8. Under Income Projection 2, if household services are valued at \$7.15 per hour, the net economic loss is \$1,143,939.56.
9. Under Income Projection 2, if household services are valued at \$10.00 per hour, the net economic loss is \$1,282,292.81.
10. These calculations do not include any consideration for the issues of pain and suffering and loss of any of the pleasures of life. Such intangibles have not been added to the calculations of economic loss. If estimates of pain and suffering and loss of quality of life are considered, they would increase the economic losses.
11. The net economic losses are summarized in the following tables.

The opinions in this report are expressed with a reasonable degree of economic certainty.

EXHIBIT



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TABLE 1

R. KELLY SPACHT

NET ECONOMIC LOSS

EMPLOYMENT FOR 8.6 YEARS

HOUSEHOLD SERVICES VALUED AT \$7.15 PER HOUR

Lost Income	\$637,674.52
Lost Fringe Benefits	\$119,882.81
Lost Household Services	\$347,096.75
Net Economic Loss	\$1,104,654.08

TABLE 2	
R. KELLY SPACHT	
NET ECONOMIC LOSS	
EMPLOYMENT FOR 8.6 YEARS	
HOUSEHOLD SERVICES VALUED AT \$10.00 PER HOUR	
Lost Income	\$637,674.52
Lost Fringe Benefits	\$19,882.81
Lost Household Services	\$485,450.00
Net Economic Loss	\$1,243,007.33

TABLE 3	
R. KELLY SPACHT	
NET ECONOMIC LOSS	
EMPLOYMENT FOR 9.0 YEARS TO AGE 66	
HOUSEHOLD SERVICES VALUED AT \$7.15 PER HOUR	
Lost Income	\$670,743.11
Lost Fringe Benefits	\$126,099.70
Lost Household Services	\$347,096.75
Net Economic Loss	\$1,143,939.56

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TABLE 4

R. KELLY SPACHT

NET ECONOMIC LOSS

EMPLOYMENT FOR 9.0 YEARS TO AGE 66

HOUSEHOLD SERVICES VALUED AT \$10.00 PER HOUR

Lost Income	\$670,743.11
Lost Fringe Benefits	\$126,099.70
Lost Household Services	\$485,450.00
Net Economic Loss	\$1,282,292.81

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APPENDIX TABLE A1
INFLATION RATES AND INTEREST RATES²⁴

YEAR	INFLATION RATE	INTEREST RATE ON TREASURY SECURITIES		
		3 MONTH	3 YEAR	10 YEAR
1970	5.7	6.46	7.29	7.35
1971	4.4	4.35	5.65	6.16
1972	3.2	4.07	5.72	6.21
1973	6.2	7.04	6.95	6.84
1974	11.0	7.89	7.82	7.56
1975	9.1	5.83	7.49	7.99
1976	5.8	4.99	6.77	7.61
1977	6.5	5.27	6.69	7.42
1978	7.6	7.22	8.29	8.41
1979	11.3	10.04	9.71	9.44
1980	13.5	11.51	11.55	11.46
1981	10.3	14.03	14.44	13.91
1982	6.2	10.69	12.92	13.00
1983	3.2	8.63	10.45	11.10
1984	4.3	9.58	11.89	12.44
1985	3.6	7.48	9.64	10.62
1986	1.9	5.98	7.06	7.68
1987	3.6	5.82	7.58	8.39
1988	4.1	6.69	8.26	8.85
1989	4.8	8.12	8.55	8.49
1990	5.4	7.51	8.26	8.55
1991	4.2	5.42	6.82	7.86
1992	3.0	3.45	5.30	7.01
1993	3.0	3.02	4.44	5.87
1994	2.6	4.29	6.27	7.09
1995	2.8	5.51	6.25	6.57
1996	3.0	5.02	5.99	6.44
1997	2.3	5.07	6.0	6.35
1998	1.6	4.81	5.14	5.26
1999	2.2	4.66	5.49	5.65
2000	3.4	5.85	6.22	6.03
2001	2.8	3.45	4.09	5.02
2002	1.6	1.62	3.10	4.61
2003	2.3	1.02	2.10	4.01
2004	2.7	1.38	2.78	4.27
2005	3.4	3.16	3.93	4.29
2006	3.2	4.73	4.77	4.80
2007	2.8	4.41	4.35	4.63

²⁴Source: Economic Report of the President, United States
Government Printing Office.

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APPENDIX TABLE A2
AVERAGE ANNUAL INFLATION RATES AND INTEREST RATES²⁵

Years	Average Annual Inflation Rate	Average Annual Treasury 10 Year Rate	Difference
1950 - 1959	2.03%	3.22%	1.19%
1960 - 1969	2.36%	4.67%	2.31%
1970 - 1979	7.08%	7.50%	0.42%
1980 - 1989	5.55%	10.59%	5.04%
1990 - 1999	3.01%	6.67%	3.66%
2000 - 2004	2.56%	4.79%	2.23%
1950 - 2004	3.87%	6.37%	2.50%

²⁵Various issues of Economic Report of the President.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record and same placed in the U.S. Mails on this 19th day of March, 2008:

Mark J. Homayak, Esquire
Homayak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID SPACHT, her
husband,

CIVIL DIVISION

No. 05-433-CD

Plaintiffs,

Issue No.

vs.

OLUSOLA AYODELE OSUNDEKO, M.D., an
individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

ORDER OF COURT

AND NOW, on this _____ day of _____, 2008, upon
consideration of the defendants' Motion in Limine to Strike Plaintiffs' Expert Reports of James L. Cosgrove
and James L. Kenkel, Ph.D., it is hereby ORDERED, ADJUDGED and DECREED that said Motion is
GRANTED. The reports of plaintiffs' damage experts, James L. Cosgrove, M.D. and James L. Kenkel,
Ph.D. are hereby stricken for failure of plaintiffs to conform to Local Rule of Court. Plaintiffs are hereby
also precluded from making reference to the contents of any of the at-issue reports by plaintiffs themselves,
their counsel or their witnesses at trial.

_____, P.J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID SPACHT, her
husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO, M.D., an
individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

CIVIL DIVISION

No. 05-433-CD

Issue No.

**MOTION IN LIMINE TO PRECLUDE
PLAINTIFFS FROM MAKING ANY
ARGUMENT THAT WIFE-PLAINTIFF'S
INJURIES CAUSED AND/OR
CONTRIBUTED TO THE DEATH OF HER
FATHER**

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

Brad R. Korinski, Esquire
PA I.D. #86831

THOMSON, RHODES & COWIE, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED NOCC
M 10:07 AM
MAR 25 2008
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William A. Shaw
Prothonotary/Clerk of Courts

MOTION IN LIMINE
TO PRECLUDE PLAINTIFFS FROM MAKING ANY ARGUMENT THAT WIFE-PLAINTIFF'S
INJURIES CAUSED AND/OR CONTRIBUTED TO THE DEATH OF HER FATHER

NOW COME the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following Motion in Limine, averring in support thereof, the following:

I. INTRODUCTION

1. The purpose of this motion in limine is to preclude plaintiffs, particularly the wife-plaintiff, from making prejudicial, irrelevant and totally unsubstantiated allegations that the injuries she sustained as a result of defendants' contended negligence, in turn resulted in the untimely death of her father. As reflected in plaintiffs' answers to defendants' written discovery, plaintiffs may, via the testimony of wife-plaintiff, attempt to introduce into this case issues surrounding the death of wife-plaintiff's late father. Pertinent portions of plaintiffs' discovery answers are set forth below.

"Q: Specify by item and amount all special, monetary, actual or other damages incurred by you to date as a result of the events alleged by you to date as a result of the events alleged in the complaint in this case."

"A: ... Kelly [wife-plaintiff] also believes that her father's life was shortened and his death hastened as a result of her inability to continue to care for him at home, due to her prolonged hospitalization and rehabilitation period and David's [husband-plaintiff] required absences on business." [Plaintiffs' Answer to Interrogatory # 32].

2. Such allegations have absolutely no place in this professional liability action and any reference to the death of wife-plaintiff's father should be precluded from argument to the jury for the reasons that: (1) matters concerning the status of the health of wife-plaintiff's father are irrelevant to the claims made in this professional liability action; (2) even if possessive of any relevance, such matters in this case are of scant probative value and, when weighed against any relevance that they may possess, are incredibly prejudicial and inflammatory to the defendants; and (3) plaintiffs have submitted no expert opinion that the death of wife-plaintiff's father was hastened or caused by anything other than natural processes. In other words, wife-plaintiff's allegations are little more than improper layperson opinion about an irrelevant issue for which plaintiffs may not be awarded damages.

II. LEGAL ARGUMENT

A. All Evidence or Testimony Concerning the Death of Wife-Plaintiff's Is Irrelevant to this Professional Liability Action

3. The fundamental consideration in determining the admissibility of evidence is whether the proffered evidence is relevant to facts sought to be proved. Evidence is relevant if it tends to make a fact at issue more or less probable. Gregg v. Fisher, 377 Pa. 445, 105 A.2d 105 (1954); Martin v. Soblotney, 502 Pa. 418, 466 A.2d 1022 (1983).

4. Thought of another way, relevance has two aspects: materiality and probative value. "It must be determined first, if the inference sought to be raised by the evidence bears upon a matter in issue in the case and, second, whether the evidence renders the desired inference more probable than it would without the evidence." Commonwealth v. Stewart, 461 Pa. 274, 278, 336 A.2d 282, 284 (1975).

5. This is a medical malpractice action. To sustain a case of medical malpractice, a plaintiff must establish the following five elements: (1) the physician owed a duty to the patient; (2) the physician breached that duty to the patient; (3) the breach of the duty was the proximate cause of the harm suffered by the patient; and (4) the damages suffered by that patient were a direct result of that harm. Rauch v. Mike-Mayer, 783 A.2d 815 (Pa. Super. 2001).

6. Any evidence bearing upon the health and well being of the father of wife-plaintiff is completely irrelevant to the requisite elements of plaintiffs' cause of action. The death of wife-plaintiff's father is not a compensable component of any damage claim.

7. Additionally, "allegations" that defendants' negligence in this case caused or contributed to the death of the father of wife-plaintiff are just that: allegations. They are not based upon any concrete facts or expert analysis. Thus, for all of the above reasons, such allegations should be excluded for their lack of relevance.

B. Any Argument Concerning the Cause of the Death of
Wife-Plaintiff's Father Should be Excluded Pursuant to Rule of Evidence 403
Because It Is Inherently Prejudicial and Misleading

8. There is perhaps no more inflammatory or prejudicial allegation that one can levy against a physician or health care professional than that its treatment decisions not only resulted in injuries to the plaintiff, but then precipitated a chain of events resulting, too, in the death of a beloved family member.

9. Pennsylvania Rule of Evidence 403 provides that relevant evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues or potential for misleading the jury. Prejudicial evidence is that which has the undue tendency to suggest to the jury a decision on an improper basis, far removed from the particular facts of the case. Mahan v. Am-Guard, 841 A.2d 1052 (Pa. Super. 2004). If the weight of the evidence is very slight, even a small risk of unfair prejudice or waste of time will justify its exclusion. Commonwealth v. Klick, 272 Pa. Super. 61, 414 A.2d 669 (1972).

10. Here, any possible relevance presented by the allegations made by plaintiffs pales in comparison to the inherent prejudicial effect which will arise if they are allowed to be argued to the jury. Without any supportive and credible facts to support their allegations, such an argument to the jury that the death of wife-plaintiff's father was caused and/or hastened by the negligence of defendants, would tend to inflame the emotions of the jury and potentially cause it to render a verdict for reasons and considerations far divorced from the facts of the case.

11. The potential prejudice of plaintiffs' allegations to these defendants is extraordinary. The evidentiary weight of such allegations is extremely light, if at all extant. Accordingly, plaintiffs must be estopped from offering such arguments to the jury pursuant to Rule of Evidence 403.

C. There Are Simply No Facts to Support Plaintiffs'
Scurrilous Allegations that Defendants' Negligence Contributed to the
Death of Wife-Plaintiff's Father

12. Plaintiffs do not have any facts, other than their own subjective belief and feelings to establish that anything that these defendants did resulted in the untimely death of wife-plaintiff's father. Moreover, the issue of how or why an individual died is squarely a matter of expert testimony, as it calls for

special qualifications and knowledge beyond the ken of the average juror. Under Pa. R.E. 701 it is improper for plaintiffs to offer such opinions at trial.

13. Therefore, without any facts or expert testimony to substantiate these very serious allegations, plaintiffs should be barred and precluded from making a purely demagogic harangue to the jury that these defendants injured not only plaintiffs, but also, derivatively, their family members.

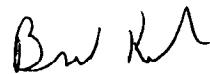
III. CONCLUSION

14. For all of the reasons stated above, plaintiffs cannot be permitted to argue to the jury that these defendants caused and/or contributed to the death of the father of wife-plaintiff. Such arguments are irrelevant, inflammatory and prejudicial, legally improper and without any factual basis whatsoever. Allowing plaintiffs to offer such arguments constitutes reversible error.

WHEREFORE, defendants respectfully request that this Honorable Court grant its motion in limine and preclude plaintiffs from making any argument to the jury, whether by the evidence, testimony or via counsel, concerning, in any way, the allegation that the injuries suffered by wife-plaintiff, in turn, resulted and/or contributed to the death of her father..

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



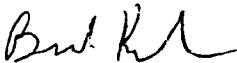
David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record and same placed in the U.S. Mails on this 26th day of March, 2008:

Mark J. Homyak, Esquire
Homyak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID SPACHT, her
husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO, M.D., an
individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

ORDER OF COURT

AND NOW, on this _____ day of _____, 2008, upon
consideration of the defendants' MOTION IN LIMINE TO PRECLUDE PLAINTIFFS FROM MAKING
ANY ARGUMENT THAT WIFE-PLAINTIFF'S INJURIES CAUSED AND/OR CONTRIBUTED TO
THE DEATH OF HER FATHER, it is hereby ORDERED, ADJUDGED and DECREED that said
Motion is GRANTED. Plaintiffs are hereby precluded from making any argument to the jury, whether by
the evidence, testimony or via counsel, concerning, in any way, the allegation that the injuries suffered by
wife-plaintiff, in turn, resulted and/or contributed to the death of her father.

_____, P.J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID SPACHT, her
husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO, M.D., an
individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

CIVIL DIVISION

No. 05-433-CD

Issue No.

**MOTION IN LIMINE TO PRECLUDE
PLAINTIFFS FROM CONTENDING THAT
THE INCIDENT CAUSED AN
EXACERBATION OR WORSENING OF
WIFE-PLAINTIFF'S CROHN'S DISEASE**

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

Brad R. Korinssi, Esquire
PA I.D. #86831

THOMSON, RHODES & COWIE, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED NO
m/10/07 B&P cc
MAR 25 2008
⑥
William A. Shaw
Prothonotary/Clerk of Courts

**MOTION IN LIMINE TO PRECLUDE PLAINTIFFS FROM
CONTENDING THAT THE INCIDENT CAUSED AN
EXACERBATION OR WORSENING OF WIFE-PLAINTIFF'S CROHN'S DISEASE**

NOW COME the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the within Motion In Limine to Preclude Plaintiffs from Contending that the Incident Caused an Exacerbation or Worsening of Wife-Plaintiff's Crohn's Disease, and, in support of which Motion, defendants aver as follows.

1. On August 3, 2003 at approximately 9:15 p.m., wife-plaintiff, Kelly Spacht, was involved in a serious single-car, motor vehicle crash. Plaintiffs' allege in the complaint that this incident was caused and precipitated by the collective negligence of the defendants in failing to properly manage wife-plaintiff's diabetes condition. Plaintiffs allege that the cause-in-fact of the crash was wife-plaintiff's loss of consciousness caused by a hypoglycemic event related to her diabetes. Immediately prior to the crash, wife-plaintiff had been attending a Diabetes Education Course sponsored by the defendant hospital at its facilities.
2. As a result of incident, plaintiffs' complaint, at ¶ 23, contends that wife-plaintiff sustained the following injuries: fractured skull, traumatic brain injury, two fractured cervical vertebrae, a left 9th rib fracture, fractures of the left superior and inferior ramus and the left sacrum, right medial malleons avulsion fracture, left elbow laceration, post-traumatic pleural effusion, and reactive depression.
3. Therefore, a major issue in this litigation, and one that will be decided by the jury if it finds defendants to be negligent, will be the degree and extent of wife-plaintiff's injuries as well as her current impairment from those injuries.
4. It is undisputed that, as early as 1999, wife-plaintiff began to experience symptoms associated with Crohn's Disease, an inflammatory condition affecting the functioning of the digestive system.

5. Despite the fact that Crohn's Disease is not one of the injuries identified in plaintiffs' complaint as having been caused by the incident, testimony in wife-plaintiff's deposition indicates that plaintiffs may attempt to claim at trial that the pre-existing condition of Crohn's Disease was either worsened or exacerbated by the incident.

6. None of the reports attached to plaintiffs' initial Pre-Trial Memorandum offer any connection between the incident and wife-plaintiff's Crohn's Disease. Moreover, in recent days, plaintiffs have improperly attempted to supplement their Pre-Trial Memorandum with an exhaustive report pertaining to damages authored by James L. Cosgrove, M.D. (Dr. Cosgrove's report is attached hereto as Exhibit "A"). While Dr. Cosgrove's reports makes mention of the fact that wife-plaintiff suffers from Crohn's Disease, Dr. Cosgrove does not attempt offer any causation opinion attributing any worsening of this condition to the incident.

7. According to the Pennsylvania Rules of Civil Procedure, plaintiffs would be prohibited at trial from eliciting such an opinion from Dr. Cosgrove because such opinions would be outside the scope and parameters of his report. Moreover, neither plaintiffs (as laypersons) nor any of their other experts are qualified to offer any opinion about the alleged exacerbation of wife-plaintiff's Crohn's Disease. In order to offer an expert opinion on causation, as an evidentiary predicate, plaintiffs must demonstrate that their experts have some qualification to do so, i.e., that they possess more qualification to opine on the given subject than is within the ordinary range of training, knowledge, intelligence or experience of other individuals. Flanagan v. Labe, 690 A.2d 183 (Pa. 1997). "The test to be applied when qualifying expert testimony is whether the witness has any reasonable pretension to specialized knowledge on the subject matter under investigation." Whittington v. Episcopal Hospital, 768 A.2d 1144 (Pa. Super. 2001) (quoting Miller v. Brass Rail Tavern, Inc., 664 A.2d 525 (Pa. 1995)). If a witness possess neither experience nor education in the subject matter under investigation, the witness should be held to not to qualify as an expert witness on that subject. Dierholf v. Slade, 581 A.2d 649, 651 (Pa. Super. 1990).

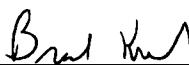
8. Here, none of the expert witnesses on damage issues whom plaintiffs have identified in their Pre-Trial Memorandums have any especial knowledge or expertise in diagnosing and treating Crohn's Disease. Thus, any opinions from these witnesses should be inadmissible on this basis as well.

9. Finally, the issue of Crohn's Disease and its exacerbation was not one of the damages claimed by plaintiffs in the litany of injury claims recited in their complaint. Accordingly, at trial, it would be error for wife-plaintiff to baldly proclaim that she has sustained injuries which were: (1) not claimed in the complaint; and (2) not supported by any medical opinion/expert report.

WHEREFORE, the defendants, respectfully request that this Honorable Court enter the attached Order and grant their Motion In Limine to Preclude Plaintiffs from Contending that the Incident Caused an Exacerbation or Worsening of Wife-Plaintiff's Crohn's Disease.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendants



Tri Rivers

CONSULTING SERVICES

UPMC Passavant
Professional Building
9104 Bobcock Boulevard
Suite 2120
Pittsburgh, PA 15237
Phone: 412.369.9988
FAX: 412.367.1572
ime@tririversconsulting.com
www.tririversconsulting.com

Orthopedic Surgery
Michael W. Weiss, M.D.
D. Kelly Agnew, M.D.
William D. Abraham, M.D.
Trenton M. Gause, M.D.
Thomas S. Muzzoni, M.D.
Robert L. Waltrip, M.D.
S. Joshua Szabo, M.D.
H. James Pfeiffle, M.D., Ph.D.

Physical Medicine
and Rehabilitation
James L. Cosgrove, M.D.
Judith H. Esman, M.D.
Edward D. Reidy, M.D.

Neurosurgery
J. William Bookwalter, III, M.D.
Francis T. Ferraro, M.D.
Donald M. Whiting, M.D.

Neurology
David M. Lobos, M.D.

General Surgery
Randall R. Draper, M.D.

Oral and Maxillofacial Surgery
R. Kent Galey, D.M.D.

Urological Surgery
Daniel J. Cole, M.D.

Podiatry
Steven A. Conner, D.P.M., J.D.

Chiropractic
Roy H. Schmitt, D.C.

Cardiology
Kenneth C. Huber, M.D.

Medical Legal Manager
LuAnn Dugan

Chief Executive Officer
Robyn L. Beckwith, M.B.A.

February 19, 2008

Mark J. Homyak, Esquire
THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219

RE: R. Kelly Spacht

Dear Mr. Homyak:

DOCUMENTS REVIEWED:

1. Diagnostic study reports:
 - A. Head MRI dated November 8, 2002.
 - B. Cervical spine, pelvis, abdomen, head, and maxillofacial CT scans dated April 3, 2003.
 - C. Chest, pelvis, and cervical spine x-rays dated April 3, 2003.
 - D. Chest CT scan dated April 3, 2003.
 - E. Chest, left hip, right ribs, bilateral feet, left ribs, left tibia/fibula, right and left ankle, right and left knee, thoracic spine, and lumbosacral spine x-rays dated April 4, 2003.
 - F. Right lower extremity venous duplex dated April 15, 2003.
 - G. Chest x-ray and lung scan dated April 21, 2003.
 - H. Chest x-ray and left rib x-rays dated April 22, 2003.
 - I. Chest sonogram dated April 23, 2003.
 - J. Cervical spine x-ray dated May 2, 2003.
 - K. Lumbosacral spine x-ray dated January 23, 2004.
 - L. Chest x-ray dated February 2, 2004.
 - M. Abdominal x-ray series dated March 14, 2004.
 - N. Abdominal x-rays dated March 15, 2004.
 - O. There were also additional diagnostic studies including mammograms and DEXA scan.



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2. Geisinger Medical Group dated August 10, 1990 through August 25, 1995.
3. Thomas Bradley, M.D. dated October 10, 1995 through February 15, 2005.
4. DuBois Regional Medical Center emergency department visits dated August 12, 1997 through March 14, 2004.
5. Robert Schoen, M.D. dated February 24, 1999 through January 9, 2002.
6. Carmine Marchioli, M.D. dated March 17, 1999 through August 18, 1999.
7. Mary Chester Morgan-Wasko, M.D. dated September 22, 1999 through March 28, 2001.
8. Miguel Regueiro, M.D. dated April 8, 2002 and April 2, 2004.
9. Sola Osundeko, M.D. dated December 31, 2002 and February 3, 2003.
10. Presbyterian University Hospital admission records dated January 9, 2003 through January 14, 2003.
11. EMS/STAT MedEvac Trip Sheets dated April 3, 2003 through April 21, 2003.
12. Altoona Regional Hospital admission records dated April 4, 2003 through April 7, 2003.
13. DuBois Regional Medical Center admission records dated April 7, 2003 through April 17, 2003 and April 22, 2003 through April 24, 2003.
14. Thomas Smith, M.D., ophthalmology, dated October 20, 2003.

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15. Krista Gray, CRNP dated April 26, 2004.
16. Mercy Hospital emergency room dated December 31, 2004.
17. Various laboratory reports.

Please be advised that Ms. Spacht brought with her to the examination a large packet of information including documents relating to her successful application for Social Security Disability. She also brought with her current records from her primary care physician, Dr. Laukaitas, which include a current medical problem list and active medication list.

CHIEF COMPLAINT:

1. Back pain.
2. Neck pain.

HISTORY OF PRESENT ILLNESS:

Ms. Spacht is a 61-year-old female who has a fairly complex medical history as well as a severe motor vehicle accident resulting in multiple traumas.

Ms. Spacht was involved in a multiple trauma motor vehicle accident on April 3, 2003. Emergency Medical Services were at the scene. Ms. Spacht was noted to have an altered state of consciousness as well as evidence of hypoglycemia-glucometer reading of 65. She was noted to be amnestic to the events and confused during transport.

Following the accident, Ms. Spacht was stabilized and taken to Altoona Regional Hospital. She underwent multiple diagnostic studies, which revealed fractures of the superior and inferior pubic ramus on the left side and sacral fractures seen on the left with some comminution. A CT scan

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of the cervical spine showed a C2 lateral mass fracture and apparent fracture of the C7 anterior tubercle without displacement. There was also a fracture at the basal occipital area on the left. Underlying degenerative changes were seen in the cervical spine. A head CT scan revealed no intracranial hemorrhage and there were no facial fractures identified. Additional chest x-rays were read as unremarkable; however, a follow up CT scan of the chest revealed multiple fractures of the left-sided ribcage as well as a small hematoma and left pleural effusion.

Additional studies done the following day on April 4, 2003 revealed left rib fractures of the left 8th and 9th ribs. There was also a small avulsion chip fracture over the right medial malleolus. The left ankle and the knees appeared to be normal. No vertebral fracture was noted in the thoracic or lumbar area.

A consultation was obtained with Dr. Osgood who recommended no surgery, but treatment with an Aspen collar for three months. Dr. Fulchiero of orthopedics noted the sacral and pubic fractures and recommended weightbearing as tolerated. An ankle brace was prescribed for the medial malleolus fracture. Physical therapy and occupational therapy were initiated.

As of April 7, 2003, Ms. Spacht was deemed appropriate for transfer to DuBois Regional Medical Center for a comprehensive rehabilitation program. She continued to wear her cervical collar. An ankle brace continued to be used. During this timeframe, her blood sugars were continuously monitored and her diabetic control appeared to be excellent. There was some episode of rectal bleeding, therefore the Naprosyn was discontinued. Her blood pressure was elevated and Ms. Spacht was placed on an Ace inhibitor. She had significant pain during this

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timeframe and was placed on OxyContin, which has subsequently been discontinued. At the time of discharge, Ms. Spacht was transferring independently and ambulating 100 feet with a wheeled walker and partial weightbearing on the right leg. Assistance was required for activities of daily living, grooming. Because of some leg swelling, a venous Doppler of the right lower extremity was obtained, but this was normal on April 15, 2003. Ms. Spacht discharged on April 17, 2003.

Emergency Medical Services were summoned to Ms. Spacht's home on April 21, 2003 because of left-sided pain. This was felt to be muscle spasm. She was transported to the emergency room. She was seen at DuBois Regional Medical Center and admitted under the care of Dr. Bradley, her primary care physician. Rib pain was noted. There was a minimal left-sided pleural effusion noted. A lung scan was normal; no evidence of pulmonary emboli. There was some question of possible hemothorax. On further evaluation, it was noted that she had left-sided rib fractures from #s 8-11. An additional sonogram was done, which only showed a small amount of fluid in the pleural cavity; therefore, a thoracentesis was canceled. Pain was managed with narcotic analgesics, OxyContin and Dilaudid. An intracostal pain block was performed by Dr. Valigorsky, which Ms. Spacht found to be very helpful. She was discharged on April 24, 2003.

In my discussions with her, Ms. Spacht informs me that the rib and lung problems are not problematic at this time.

Subsequently, Ms. Spacht has been followed by Dr. Bradley on a regular basis. She has also been seen by Dr. Thomas Smith, an ophthalmologist. She is seen regularly because of the medication she is taking-Plaquenil. There was also a question of a corneal abrasion. Currently, she is experiencing no eye problems.

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A follow up x-ray of the lumbar spine was done on January 23, 2004, which by report was normal.

On February 2, 2004, Ms. Spacht returned to DuBois Regional Medical Center emergency department with shortness of breath and abdominal pain. A chest x-ray revealed small bilateral effusions with atelectasis. The diagnosis was that of pneumonitis and pleural effusions as well as regional enteritis. Oxygen saturation was only 93 on O2. IV therapy was initiated. There was some concern that this may be related to the medication she was taking for her Crohn's disease-Leukine, which subsequently was discontinued.

On December 31, 2004, Ms. Spacht sought care at Mercy Hospital of Maine. The diagnosis was that of pelvic pain of uncertain etiology and known history of arthritis and Crohn's disease. Percocet and a Lidoderm patch were advised.

No records are available, but Ms. Spacht informs me that she has been seen by Dr. Piazio, an orthopedic surgeon, who noted her back pain was likely coming from her pelvic/sacral fractures. Again, no specific treatment has been recommended. Primary care is provided by Dr. Laukaitas as she has moved to the area of Northeast, Pennsylvania. She still returns to Pittsburgh and is followed by Dr. Regueiro concerning her Crohn's disease. She is also seen by a specialist, Dr. Rao, an endocrinologist in the Pittsburgh area, concerning her diabetes mellitus and Dr. Wasko, a rheumatologist, for her arthritic complaints.

Ms. Spacht's current Crohn's disease is under good control with the Remicade and Imuran as well as routine use of Asacol. She is receiving Remicade infusions on a regular basis, which are associated with a tapering dose of steroids. She is on regular use of Imuran and Asacol. She still has some joint

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related problems; Dr. Wasko evaluates her for the joints, but her overall complaints are arthritic pain-those unrelated to the motor vehicle accident appear to be doing fairly well. She has had previous episodes of right knee swelling, but none recently. Her diabetes mellitus is under good control with a combination of Lantus and Humalog. Dr. Rao has also started Ms. Spacht on Catapres for hypertension and kidney protection.

As noted above, Ms. Spacht is no longer complaining of any significant rib or pulmonary problem; there is no ongoing treatment for that, or disability caused by this condition.

Following the motor vehicle accident and subsequent significant change in lifestyle-see below-and there was some depression of chronic illness. Ms. Spacht was treated with Lexapro, but has not taken this for greater than one year. She feels that she is doing better in that regard.

Insofar as her ongoing pain of a musculoskeletal nature, Ms. Spacht complains primarily of back and pelvis pain, but also is complaining of neck pain. Ms. Spacht informs me that pain is there constantly and significantly alters her lifestyle.

Ms. Spacht remains independent in activities of daily living and self-care. She does not use any sort of ambulatory aid such as a neck brace, an ankle brace, or cane/walker. She has arranged her house to live essentially on one floor. She has dramatically altered her work and recreational endeavors. She finds it difficult to sit and drive for any length of time. She does primarily sedentary recreational endeavors such as reading and computer work. She does not belong to a health spa. She has looked into a YMCA program, but apparently

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the water is much colder than she feels comfortable in and does not engage in any specific regimen in that regard. Ms. Spacht denies any recent trips, falls, or additional injuries.

Ms. Spacht's everyday use of pain medication is extremely limited because of her other medical problems and because of possible drug interactions.

Ms. Spacht denies any significant numbness, tingling, or loss of sensation. There has been no significant residual cognitive or intellectual impairment as a result of her motor vehicle accident.

PAST MEDICAL HISTORY:

She has been followed by multiple physicians since the late 1990s referable to her Crohn's disease. She has also been followed by Dr. Morgan-Wasko, a rheumatologist, because of underlying inflammatory polyarthritis associated with Crohn's disease (autoimmune disorder).

Ms. Spacht has received treatment for heel pain, right hip pain, and knee pain in the past.

Ms. Spacht has a known history of diabetes mellitus and records are available dating back to 2002 from Dr. Osundeko as well as the diagnosis of hypothyroidism.

CURRENT MEDICATIONS:

1. Vytone 1% cream daily.
2. Cleocin pledget 1% daily.
3. Diltiazem XT 180 mg b.i.d.
4. Hyzaar 100/25 q. day.
5. Synthroid 0.125 mg q. day.
6. Singulair 10 mg q. day.
7. Potassium supplementations 10 mEq q. day.
8. Asacol 400, four tablets t.i.d.

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9. Azathioprine (Imuran) 50 mg q. day.
10. Plaquenil 200 mg PO b.i.d.
11. Remicade infusions q. 8 weeks associated with a four-day prednisone taper.
12. MiraLax 1 cap q. day.
13. Lantus 11 units b.i.d. with a sliding scale of Humalog insulin.
14. Catapres-TTS patch.

By report of Ms. Spacht and in review of the records, all preexisting conditions appear to be under good control at this time and do not impart any significant ongoing vocational impairment.

SOCIAL/VOCATIONAL HISTORY:

Ms. Spacht is a 61-year-old female who is a registered nurse who also has a master's degree. At the time of her motor vehicle accident, she was the clinical director of two psychiatric units at DuBois Magnetic Imaging Center. There was both an adult/geriatric and a child/adolescent unit. She managed a staff of 50 paraprofessionals and professionals and was on-call essentially 24/7 for administrative emergencies. She had been doing this job for many years. Because of the configuration of the work environment, she had to travel between two centers—the psychiatric center was separate and distinct from the emergency department where she would have to do clinical intakes (approximately two miles). There was also a significant amount of walking and physical endeavors in order to do her job effectively.

Following the motor vehicle accident in April of 2003, Ms. Spacht remained in rehabilitation and off work through July 14, 2003 at which point in time she returned to work part-time through August 4, 2003. During this timeframe, Ms. Spacht was ambulating with a cane or a walker. She returned to work full-time as of August 4, 2003. As noted

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above, she had some medical problems during this timeframe including pneumonia and then had a significant flare of her Crohn's disease in March of 2004. She last worked on March 8, 2004 and has not returned to work since that time. She has applied for and received Social Security Disability. Currently, Ms. Spacht is not working outside the home. She is not gainfully employed.

Ms. Spacht indicates that her primary limitation is that of pain.

Because of her significant medical problems and medical complications, Ms. Spacht is able to take only Tylenol for pain complaints. Narcotic analgesics cause significant gastrointestinal upset/constipation as well as some cognitive slowing. Nonsteroidal anti-inflammatory medications are contraindicated based upon her presence of Crohn's disease and previous gastrointestinal bleeding associated with that. Throughout the day, Ms. Spacht finds that she must rest. She gets some relief by lying in a recliner with heat.

Of note is that one time when Ms. Spacht did return to work in January of 2004 there was a slip on some ice where she had some aggravation of her right sacroiliac joint pain, but she states quite clearly that this pain was present before and after this slip-and-fall to a significant degree.

Ms. Spacht informs me that it was her intention to continue to work through age 66-full benefits from Social Security on retirement. The early retirement from work has caused significant financial hardship.

PHYSICAL EXAMINATION:

Ms. Spacht is a short-stature pleasant well-developed, well-nourished female. She is in no acute distress.

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Head is normocephalic and atraumatic. TMJs appear to be well located. No facial asymmetry or acute trauma is identified.

Neck is supple. Ms. Spacht has decreased range of motion primarily noted in left rotation and left lateral bending. There is pain at end-range of motion. No instability or neurologic signs or symptoms are elicited with neck range of motion.

Thoracic spine reveals a mild postural kyphosis. There is no pain on palpation along the thoracic spine or along the ribs. There is normal chest inspiration and expiration.

Lumbar spine-No scoliosis or deformity. There is increased pain on forced extension, primarily in the right lower lumbar and sacroiliac area. Ms. Spacht has full flexion and rotation. Straight leg raising test is normal. There are no radicular type symptoms. There is tenderness over the left trochanteric area and also distinct tenderness over the right sacroiliac joint area. There is no tenderness over the sciatic notch area bilaterally.

Upper extremities exhibit normal tone and normal range of motion throughout. Ms. Spacht complains of some mild stiffness and soreness referable to her hands. No acute joint deformity is noted throughout the upper extremity. She has normal opposition of her thumb to her little finger. No ulnar intrinsic or thenar wasting is appreciated. No active synovitis or arthritis.

Lower extremity-Normal range of motion of the hip, knee, and ankle. No active synovitis or arthritis. There is point tenderness over the right medial malleolus. There is some pain on forced dorsiflexion of the right ankle. Again, no joint inflammation or deformity is appreciated.

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Neurologically, Ms. Spacht is intact. Cranial nerves III-XII appear to be intact. Speech and language appear to be appropriate.

Ms. Spacht goes from sit to stand independently. Overall balance appears to be normal. Gait pattern reveals a very slow gait with slightly broad-based support. She takes somewhat small step length. She can go up on her heels and her toes with adequate strength and balance. On forward flexion, there is some increased pain in the right sacroiliac area. There is more pain notable on forced extension. Reflexes are +1 throughout the lower extremities. Peripheral pulsations are intact. No signs of pedal edema or impairment of circulation.

ASSESSMENT:

Various musculoskeletal injuries including cervical fracture with resultant decrement in range of motion and mild persistent pain; pelvic fracture with resultant pain in the sacroiliac area made worse by weightbearing and ambulation; right ankle fracture with persistent pain on palpation and weightbearing.

No significant residual impairment referable to left corneal abrasion, left rib fractures, and left pulmonary contusion-per Ms. Spacht's description. Please be advised that ophthalmologic and pulmonary impairment is beyond the scope of this evaluation.

Ms. Spacht informs me that she was intending to continue working through her full Social Security retirement age of 66. She has not worked since March of 2004. She is currently receiving Social Security Disability. She is not gainfully employed at this time.

Presently, Ms. Spacht has moved to a home which has configured to for one-story living. She lives a fairly sedentary and restricted lifestyle.

Mark Hcmyak
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It is my opinion that the restrictions in lifestyle and employment are reasonable. Furthermore, it is my opinion that the restrictions are a direct result of the residuals from the multiple trauma of the motor vehicle accident on April 3, 2003 superimposed upon her underlying medical condition.

Sincerely,

James L. Cosgrove, M.D.

JLC/bm

Enclosure

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record and same placed in the U.S. Mails on this 20th day of March, 2008:

Mark J. Homyak, Esquire
Homyak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

THOMSON, RHODES & CCWIE, P.C.

Brad R.
David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID SPACHT, her
husband,

Plaintiffs,

vs.

OLUSCLA AYODELE OSUNDEKO, M.D., an
individual, and LUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

ORDER OF COURT

AND NOW, on this _____ day of _____, 2008, upon
consideration of the defendants' Motion In Limine to Preclude Plaintiffs from Contending that the Incident
Caused an Exacerbation or Worsening of Wife-Plaintiff's Crohn's Disease, it is hereby ORDERED,
ADJUDGED and DECREED that said Motion is GRANTED. Plaintiffs are hereby precluded from making
any argument to the jury, whether by the evidence, testimony or via counsel, concerning, in any way, the
allegation that wife-plaintiff suffered an exacerbation or worsening of her pre-existing Crohn's Disease as a
result of the incident.

_____, P.J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID SPACHT, her
husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO, M.D., an
individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

CIVIL DIVISION

No. 05-433-CD

Issue No.

**MOTION IN LIMINE TO PRECLUDE
PLAINTIFFS FROM INTRODUCING
HEARSAY STATEMENTS**

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

Brad R. Korinski, Esquire
PA I.D. #86831

THOMSON, RHODES & COWIE, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED NO
10/10/07 BY CC
OCT 25 2007
(GK)

William A. Shaw
Prothonotary/Clerk of Courts

**MOTION IN LIMINE TO PRECLUDE PLAINTIFFS FROM
INTRODUCING HEARSAY STATEMENTS**

NOW COME the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the within Motion In Limine to Preclude Plaintiffs from Introducing Hearsay Statements and, in support of which Motion, defendants aver as follows.

1. The salient facts of this case are as follows. On August 3, 2003 at approximately 9:15 p.m., wife-plaintiff, Kelly Spacht, was involved in a serious single-car, motor vehicle crash. Plaintiffs allege in the complaint that this incident was caused and precipitated by the collective negligence of the defendants in failing to properly manage wife-plaintiff's diabetes condition. Specifically, plaintiffs allege that the cause-in-fact of the crash was wife-plaintiff's loss of consciousness caused by a hypoglycemic event related to her diabetes. Immediately prior to the crash, wife-plaintiff had been attending a Diabetes Education Course sponsored by the defendant hospital at its facilities. Prior to this time, wife-plaintiff had been the patient of defendant Dr. Osundeko, who, among other things, provided her with medication (principally the well known drug Insulin) to treat her diabetes.

2. For purposes of this Motion, the liability allegations of the plaintiffs raise two issues. First, it raises the question of wife-plaintiff's physical condition/mental state during and immediately after her attendance at the Diabetes Education Course, and begets the question of whether wife-plaintiff's loss of consciousness was a sudden event, or something of a more lengthy onset. Second, it raises the question of whether Dr. Osundeko was providing plaintiff with an Insulin regimen consistent with the standard of care so as to manage her diabetes condition in the hopes of preventing hypoglycemic such as the one allegedly experienced by wife-plaintiff.

3. Wife-plaintiff's deposition has been taken in this case. Per her testimony, defendants believed plaintiffs intend to present for the consideration of the jury out of court statements that go to the

heart of the liability issues in this case. These impermissible out of court statements consist of the following:

(a) statements attributable to Dr. Rao, wife-plaintiff's treating endocrinologist, which may be fairly interpreted as critical of the care of Dr. Osundeko; and (b) statements attributable to various individuals relating to plaintiffs what they heard over the (police) scanner concerning the motor vehicle accident and wife-plaintiff's operation of the vehicle immediately preceding the crash.

A. The Statements of Dr. Rao Should Not Be Introduced at Trial on the Basis that They Constitute Impermissible Hearsay Precluded Under Pa. R.E. 802

4. At pp. 141-142 of her deposition transcript, wife-plaintiff related her experience in treating with physicians for her diabetes subsequent to the ending of her relationship with Dr. Osundeko. To that end, she testified as follows.

"When I went to another doctor, another endocrinologist and he was reviewing my history, he brought in a colleague and said: 'How many patients do we give thus much insulin to when they are telling us that they can't eat enough to keep up with it.' . . . [p. 142]. He commented to this person and asked that question and she [the other person said: 'I don't even think we give half that much, especially if somebody was telling us that they were not able to eat enough or was having low blood sugar.'])"

5. The information testified to by wife-plaintiff is not contained in any medical record or report of Dr. Rao or any other healthcare provider. Such information constitutes an out of court statement which can be introduced at trial for no reason other than its truth, i.e., to show that other doctors in a similar specialty disagree with Dr. Osundeko's treatment decisions. Thus, plaintiffs' introduction of this testimony amounts to a surreptitious standard of care opinion against Dr. Osundeko, and one which he cannot refute/rebut since the declarants (his accusers) will not be available to be cross-examined on these statements.

6. Accordingly, pursuant to Pa. R.E. 803, plaintiffs should be barred and prohibited from offering any testimony or argument to the jury based upon the conversations which wife-plaintiff reports to

have overheard between Dr. Rao and an unnamed colleague, or any other comments made to wife-plaintiff by Dr. Rao.

B. Any and All Statements Concerning Matters Overheard By Other Individuals Over the Police Scanner Should be Precluded from Trial on the Basis that Such Statements Are Hearsay

7. Wife-plaintiff's recollection of the accident is primarily based upon what others have told her. Regarding the scope of her knowledge, wife-plaintiff testified in her deposition to the following.

"I was told because our neighbors had a scanner and people were saying that there was someone driving very erratically. It is a small town. We ended up at a church dinner ... I don't know if they were EMTs or what but they had heard that too. I don't have any reason to doubt it, but I don't have any personal knowledge. I am just happy that I did not hit a van with a family in it or something." (pp. 61-62, wife-plaintiff's deposition).

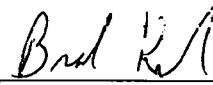
"... Our friends said that there was a woman who was driving probably under the influence; and when the scanner picked up again, it said that, oh, no, she is a diabetic and she had a low blood sugar and she passed out." (p. 108).

8. As with the statements of Dr. Rao, the above testimony from wife-plaintiff's deposition concern out of court statements told to wife-plaintiff by third parties. These statements have no other relevance at trial other than to be introduced for their truth, i.e., that wife-plaintiff has been driving erratically for some time, that wife-plaintiff was first thought to be an inebriated driver, and that wife-plaintiff's accident was caused by low blood sugar. Such statements are hearsay properly excluded under Pa. R.E. 803. What is more, these statements are in themselves reiterations of what the declarants reportedly heard over "the scanner" and are thus doubly excluded as hearsay within hearsay.

WHEREFORE, the defendants, respectfully request that this Honorable Court enter the attached Order and grant their Motion In Limine to Preclude Plaintiffs from Introducing Hearsay Statements.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Kozinski, Esquire
Attorneys for defendants

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record and same placed in the U.S. Mails on this 20th day of March, 2008:

Mark J. Homyak, Esquire
Homyak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire

Brad R. Korinski, Esquire
Attorneys for defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID SPACHT, her
husband

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO, M.D., an
individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

CIVIL DIVISION

No. 05-433-CD

Issue No.

ORDER OF COURT

AND NOW, on this _____ day of _____, 2008, upon
consideration of the defendants' Motion In Limine to Preclude Plaintiffs Motion In Limine to Preclude
Plaintiffs from Introducing Hearsay Statements , it is hereby ORDERED, ADJUDGED and DECREED
that said Motion is GRANTED. Plaintiffs are hereby precluded from making any argument to the jury,
whether by the evidence, testimony or via counsel, concerning, in any way: (a) out of court statements made
by wife-plaintiff's physicians, specifically Dr. Rao and his unnamed colleague; (b) statements made over "the
scanner ; and (c) statements made by wife-plaintiff's friends and acquaintances concerning what they reported
to have heard over "the scanner; and (d) any other out of court statements which is introduced for its truth
and which does not meet any of enumerated hearsay exception under the Pennsylvania Rules of Evidence.

_____, P.J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID SPACHT, her
husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO, M.D., an
individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

CIVIL DIVISION

No. 05-433-CD

Issue No.

**MOTION FOR LEAVE OF COURT TO FILE
SUPPLEMENTAL PRE-TRIAL STATEMENT**

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

Brad R. Korinski, Esquire
PA I.D. #86831

THOMSON, RHODES & COWIE, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED
M 1153604 NO CC
MAR 27 2008
GP
William A. Shaw
Prothonotary/Clerk of Courts

**MOTION FOR LEAVE OF COURT TO FILE SUPPLEMENTAL
PRE-TRIAL STATEMENT**

NOW COME the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the within Motion for Leave of Court to File Supplemental Pre-Trial Statement, in accordance with Clearfield County Local Rule 212(4)(e), and aver as follows.

1. This is a professional liability action whose facts are well known to this Honorable Court. As is relevant to this motion, wife-plaintiff claims that the collective negligence of the defendants caused her to sustain permanent physical and economic injuries.

2. On March 13, 2008, plaintiffs filed a Supplemental Pre-Trial Statement (unilaterally and without leave of court) which attached, *inter alia*, the report of economist James Kenkel, Ph.D. According to the report of Dr. Kenkel, he projected wife-plaintiff's total potential income loss at between \$637,674.52 and \$670,743.11. Overall, the report of Dr. Kenkel added approximately \$1,000,000 worth of special monetary damages to plaintiffs' claims.

3. Plaintiffs have also filed an expert report on physical damages from James Cosgrove, a physical medicine doctor, who performed an Independent Medical Examination of wife-plaintiff.

4. Before the submission of plaintiffs' above expert reports, defendants were unaware of the scope and extent of the damage claims plaintiffs intended to make at trial as reflected in each of the reports.

5. Defendants have filed a Motion in Limine to preclude the report and opinions of Dr. Kenkel and Dr. Cosgrove, which is presently pending before this Honorable Court. However, if this Honorable Court determines that the reports and opinions are admissible, then, to alleviate the prejudice visited upon them, defendants should be permitted to develop testimony and evidence at trial to rebut plaintiffs' recently expressed damage claims.

6. At the time of her injury, wife-plaintiff held employment in a managerial capacity at DRMC. She left that employment by way of a detailed Separation Agreement and Release entered into on May 6, 2004, which provided her with a lucrative severance package and indicated that wife-plaintiff had decided to

retire from employment. Accordingly, defendants wish to identify this Separation Agreement and Release as potential exhibit in a Supplemental Pre-Trial Statement.

7. Along these same lines, defendants wish to call upon John Crawford and Robert McKee of DRMC, both of whom are knowledgeable of wife-plaintiff's employment history and the circumstances of her separation from employment.

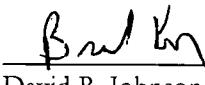
8. Finally, defendants are considering obtaining an economist to rebut the opinions offered by plaintiffs' witness, Dr. Kenkel, as well as a physical medicine specialist to comment upon the issues raised in the report of Dr. Cosgrove.

9. A copy of defendants' proposed Supplement Pre-Trial Statement is attached hereto as Exhibit "A."

WHEREFORE, for the reasons set forth above, defendants respectfully request that this Honorable Court issue an Order permitting them to file a Supplement Pre-Trial Statement in conformance with Exhibit "A" of this Motion.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Koranski, Esquire
Attorneys for defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID SPACHT, her
husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO, M.D., an
individual, and DUBOIS REGIONAL MEDICAL
CENTER, a corporation,

Defendants.

CIVIL DIVISION

No. 05-433-CD

Issue No.

SUPPLEMENTAL PRETRIAL STATEMENT

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

Brad R. Korinski, Esquire
PA I.D. #85831

THOMSON, RHODES & COWIE, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

EXHIBIT

tabbles®

A

SUPPLEMENTAL PRETRIAL STATEMENT

NOW COME defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following supplemental pretrial statement.

II. EXHIBITS

33. Separation Agreement and Release (signed between wife-plaintiff and DuBois Regional Medical Center on May 6, 2004).

III WITNESSES

A. Liability and Damages

23. John Crawford, Director of Ambulatory Care and Behavioral Health
c/o DuBois Regional Medical Center
24. Robert McKee, Vice-President of Human Resources
c/o DuBois Regional Medical Center

B. Expert Witnesses

2. An expert in the appropriate specialty to respond to the expert report and opinions of James Cosgrove, M.D.
3. An expert in the appropriate specialty to respond to the expert report and opinions of James Kenkel, Ph.D.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within SUPPLEMENTAL PRETRIAL STATEMENT has been served upon the following counsel of record and same placed in the U.S. Mails on this _____ day of _____, 2008:

Mark J. Homyak, Esquire
Homyak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record and same placed in the U.S. Mails on this 26th day of March, 2008:

Mark J. Homyak, Esquire
Homyak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.

Brad R. Korinski
David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID SPACHT, her
husband,

CIVIL DIVISION

No. 05-433-CD

Plaintiffs,

Issue No.

vs.

OLUSOLA AYODELE OSUNDEKO, M.D., an
individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

ORDER OF COURT

AND NOW, on this _____ day of _____, 2008, upon
consideration of the defendants' Motion for Leave to File Supplemental Pre-Trial Statement, it is hereby
ORDERED, ADJUDGED and DECREED that said Motion is GRANTED. Defendants are permitted to
file a Supplemental Pre-Trial Statement in conformity with Exhibit "A" attached to their Motion.

_____, P.J.

SEPARATION AGREEMENT AND RELEASE

WHEREAS, Dubois Regional Medical Center ("DRMC") employs R. Kelly Spacht ("Employee"); and

WHEREAS, DRMC and Employee wish to resolve any and all matters between them relating to Employee's employment and cessation of her employment;

NOW, THEREFORE: in consideration of the mutual undertakings set forth below, this Separation Agreement and Release ("SAR") will govern Employee's termination from and cessation of employment with DRMC and will resolve, finally and completely, any and all possible claims and disputes between DRMC and Employee arising from such employment and cessation of employment:

1. This SAR will supersede and replace any and all other written and unwritten agreements and understandings between DRMC and Employee.
2. DRMC's employment records will reflect that Employee's employment with DRMC terminated, effective at the close of business on April 5, 2004 by her retirement.
3. Following the eighth (8th) day after receipt of a fully signed and dated copy of this SAR from Employee, as promptly as possible:
 - a. DRMC will release Employee from her active employment but, despite cessation of her active employment, will begin to pay to Employee \$56,448.00, less legally required deductions, in twenty (20) equal payments, payable on the Medical Center's usual pay days.
 - b. DRMC will pay to Employee the lump sum of \$15,523.20 in recognition of her past years of service, based on one week of salary for each full year of service.
 - c. Employee will remain a participant under DRMC's COBRA group medical, through October 31, 2005, with DRMC to pay for this coverage.
 - d. Employee's accrual of and entitlement to benefits and her participation in all of DRMC's salary, retirement, and other benefit plans will terminate as of Employee's last day of active employment, except as stated in this SAR.

- e. DRMC will pay to Employee all earned but unused PTO days through her last day of active employment.
- f. Employee will be eligible for all existing rights of DRMC retirement, including, as she exits, the right to purchase medications through the DRMC pharmacy.

The payments and benefits outlined in (a), (b) and (c) exceed anything to which Employee is otherwise entitled to receive from DRMC.

- 4. DRMC will provide Employee with a letter of reference and will respond to all inquiries from prospective employers in a manner consistent with the letter of reference.
- 5. Employee will not be eligible to receive unemployment compensation benefits at the cessation of payments under this SAR.
- 6. Employee understands and agrees that neither DRMC, including any successor or affiliate of DRMC, will be obligated in any way to provide her with future employment, compensation, or benefits in any amount or for any reason, except for COBRA group health coverage continuation rights, any vested balance in any applicable retirement plan, and her option to convert to individual insurance coverage for benefits to the extent required by law, and Employee agrees not to seek any such employment, reemployment, compensation, or benefits.
- 7. By entering into this SAR, DRMC and Employee expressly deny any unlawful or unfair conduct.
- 8.
 - a. Except as otherwise required by law, Employee and DRMC agree to refrain from directly or indirectly engaging in publicity or any other action or activity which reflects adversely upon Employee or her work performance with DRMC, or adversely affects or reflects upon DRMC, its Board, officers, employees, and business, including any successor or affiliate.
 - b. Employee agrees to keep confidential any proprietary information and other knowledge acquired or otherwise learned from or on behalf of DRMC during her employment to the extent such information or knowledge has not been published, has not been disseminated, or is not otherwise a matter of general public knowledge.

- c. Except as otherwise required by law, Employee and DRMC agree to keep confidential and not disclose the terms of this SAR to any person, with the exception of attorneys or other individuals consulted by Employee and DRMC to understand the interpretation, application, or legal or financial effect of this SAR or to implement any portion of it, and to obtain from any such individual or entity his, her, or its pledge to strictly and continuously maintain such confidentiality.
- d. Employee expressly warrants and agrees that a breach of any pledge in this Paragraph will cause substantial harm to DRMC, and damage resulting from any such breach would be difficult to quantify. Therefore DRMC and Employee agree that, in the event of a breach of this confidentiality pledge, Employee will pay to DRMC the sum of ten thousand dollars (\$10,000.00) as liquidated damages, with the understanding and agreement that this amount is not a penalty, but, rather, a reasonable forecast and estimate of just compensation for the harm that would be caused to DRMC.

9. On or immediately following her last day of active employment, Employee agrees to return any and all DRMC documents or other materials, including, without limitation, electronic or "hard" data, software, policy manuals, office supplies, keys, and any information considered and kept confidential by DRMC.

10. Employee and DRMC understand and agree that the terms and conditions of this SAR constitute the full and complete understandings, agreements, and promises of the parties, and that there are no oral or written understandings, agreements, promises, or inducements made or offered other than those in this SAR.

11. In exchange for DRMC's promises in this SAR, and other good and sufficient consideration, Employee has executed the Release form attached as "Appendix A."

12. Employee acknowledges receipt of DRMC's letter outlining possible legal rights under the federal Older Workers Benefit Protection Act ("OWBPA") and urging her to consult with an attorney, that she has had at least a twenty-one (21) day opportunity to consider the terms of this SAR, and that she has agreed to and signed this SAR voluntarily after such twenty-one (21) day opportunity. Attached as "Appendix B" is a true and correct copy of that letter.

13. Employee and DRMC swear that they have read this SAR carefully, understand it fully, and intend to be legally bound by its terms. Employee further swears that she has had a full and fair opportunity to consult with an attorney to help her fully understand and appreciate the interpretation, application, and legal effect of this SAR and that she has agreed to and signed this Separation Agreement and Release voluntarily following good faith bargaining over its terms.

14. This SAR will become legally effective and enforceable on the eighth (8th) calendar day following Employee's execution of this SAR unless, during such seven (7) day intervening period, Employee has revoked her agreement to this SAR in writing and delivered such writing to DRMC.

15. Employee is solely responsible for all tax liabilities and other consequences beyond the deductions made by DRMC from amounts payable under this SAR. Employee agrees that DRMC has no further responsibility, and Employee will indemnify and hold DRMC harmless from any such tax liabilities or other consequences, with no requirement to pay any further sum to her for any reason, including, without limitation, unanticipated tax liabilities or other consequences.

16. Employee expressly agrees that this SAR will be governed by Pennsylvania law, except as preempted by federal law.

17. Employee and DRMC waive any right to a court (including jury) proceeding and instead agree to submit any dispute over the application, interpretation, validity, or any other aspect of this SAR to final and binding arbitration consistent with the application of the Federal Arbitration Act and the employment discrimination or comparable procedural rules of the American Arbitration Association ("AAA") before an arbitrator who is a member of the National Academy of Arbitrators ("NAA") out of an NAA panel of eleven arbitrators to be supplied by the AAA. Only true neutrals will be eligible for consideration as arbitrators, and under no circumstances will AAA furnish the names of individuals who represent employees, unions, or companies.

18. If any court, arbitrator, or other authority determines that any term, condition, clause, or other provision of this SAR is void or invalid, it, he, or she will have discretion to modify such term, condition, clause, or other provision to make it valid, or, alternatively, if the invalidity is left unmodified, the remaining portions of this SAR will remain in full force and effect.

19. Unless accepted in writing and returned by Employee on or before April 26, 2004, twenty-one (21) days after delivery of this SAR to her, this SAR will expire and be of no further force and effect.

This SEPARATION AGREEMENT AND RELEASE is signed this 1st day of January,
2004.

DUBOIS REGIONAL MEDICAL CENTER

By: Raymond Weare

Susan M Grady
WITNESS

AGREED:

R. Kelly Spacht

R. Kelly Spacht
For Myself, My Heirs, Personal
Representatives and Assigns

Jillian Senior
WITNESS

COPY

APPENDIX A

RELEASE

I, R. Kelly Spacht in exchange for the promises contained in the attached Separation Agreement, hereby unconditionally release Dubois Regional Medical Center ("DRMC"), its subsidiaries and affiliates, their officers, directors, employees, shareholders, agents, successors and/or assigns (collectively referred to as "Hospital"), from any and all claims, issues, or causes of action, known or unknown, arising out of my employment with the Hospital, my interaction with DRMC employees as an employee, and cessation of my Hospital employment, including, without limitation, the federal Age Discrimination in Employment Act, Employee Retirement Income Security Act of 1974, Civil Rights Act of 1964, Civil Rights Act of 1991, Rehabilitation Act of 1973, Americans with Disabilities Act, Family and Medical Leave Act of 1993, Older Workers Benefit Protection Act, Equal Pay Act; the Pennsylvania Human Relations Act; federal, state and local wrongful discharge laws; and any and all other federal, state, and/or local employment and other legal claims, such as whistleblower claims and claims for possible attorneys' fees and costs. This will include my withdrawal, with prejudice, of any previously filed charges, complaints, and other claims. To the extent, however, that any entity or person sues on my behalf concerning any possible claim, I agree that this Separation Agreement and Release ("SAR") has fully and finally satisfied any and all possible claims, and I agree to waive and otherwise relinquish eligibility for any recovery beyond what I received in this SAR, even if I participate or otherwise assist in such litigation.

I have read this Release.

I understand this Release.

I execute this Release voluntarily and without coercion.

I understand I have the right to consult with an attorney.

I intend to be legally bound by this Release.

R. Kelly Spacht
Signature

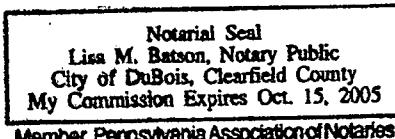
R. Kelly Spacht
Print Name

SWORN TO and subscribed before me this

10 day of May, 2004.

Lisa M. Batson
Notary Public

My Commission Expires: (Seal)



Member, Pennsylvania Association of Notaries

APPENDIX B

April 5, 2004

VIA HAND DELIVERY

R. Kelly Spacht
915 Walnut Ave.
DuBois, PA 15801

RE: Your Rights Under The Older Workers Benefit Protection Act

Dear Ms. Spacht:

Before you agree to resolve your separation from employment and execute a separation agreement and release, we direct your attention to a federal law called the Older Workers Benefit Protection Act ("OWBPA").

Among other rights, you have the right to consult with an attorney prior to executing any agreement which resolves your separation from employment, including, without limitation, an agreement in which you release all possible legal claims against DRMC, including its subsidiaries and affiliates.

Under OWBPA, for instance, you have 21 days after receipt of a proposed separation agreement and release to decide whether to release your possible legal claims against the DRMC. Whether you use all or part of the 21 day opportunity is your choice and your choice alone. In addition, under OWBPA, you have seven days following the execution of any such agreement to revoke it so that it has no continuing or past legal effects. Only upon expiration of seven days following the signing of any such agreement would the agreement become effective and otherwise enforceable.

This letter does not contain all of the rights for which you may be eligible under OWBPA. That is why the DRMC and I strongly advise you to consult with an attorney. In that way, you can understand your full legal rights under OWBPA and other laws, you can proceed with a clearer understanding of your rights and responsibilities and the Hospital's rights and responsibilities, and together we can reach a fair, equitable, binding resolution of your separation from employment.

We look forward to hearing from you either directly or through your attorney.

Yours very truly,



Dubois Regional Medical Center
Robert J. McKee, Director, Human Resources

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

R. KELLY SPACHT and :
DAVID SPACHT, her husband :
:
vs. : No. 05-433-CD
:
OLUSOLA AYODELE OSUNDEKO, :
M.D., an individual, and DUBOIS :
REGIONAL MEDICAL CENTER, :
a corporation :
:

FILED
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APR 01 2008

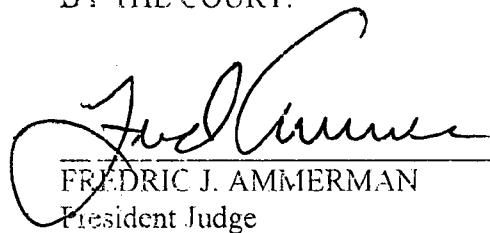
Homyak
Johnson
Korninski
C.R.

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 31st day of March, 2008, it is the ORDER of the Court that argument on Defendants Motion in Limine to Preclude Plaintiffs from Introducing Hearsay Statements, Motion in Limine to preclude Plaintiffs from contending that the Incident caused an exacerbation of Plaintiff's Crohn's Disease, Motion in Limine to Preclude Plaintiffs from making any argument that wife-Plaintiff's injuries caused and/or Contributed to the Death of her Father, and Defendants' Motion in Limine to Strike Plaintiffs' Expert Reports of James L. Cosgrove, M.D. and James L. Kenkel, Ph.D., and Plaintiffs Motion for Leave to File Supplemental Pre-Trial Memorandum and Plaintiff's Response to Motion in Limine, and any other outstanding Motions in the above captioned matter shall be and are hereby scheduled for Thursday, April 24, 2008 at 1:30 P.M., before the Honorable John K. Reilly, Senior Judge, Specially Presiding, in Hearing Room No. 3, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILE

APR 01 2008

William A. Shad
Prothonotary/Clerk

DATE: 4-1-08

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID SPACHT, her
husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO, M.D., an
individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

CIVIL DIVISION

No. 05-433-CD

Issue No.

**UNCONTESTED MOTION FOR TRIAL
CONTINUANCE**

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

Brad R. Korinski, Esquire
PA I.D. #86831

THOMSON, RHODES & COWIE, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED NOCC
01/23/04
APR 12 2004

WAS
BDA

William A. Shaw
Prothonotary/Clerk of Courts

UNCONTESTED MOTION FOR TRIAL CONTINUANCE

NOW COME the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following Uncontested Motion for Trial Continuance, for the reasons that these defendants are in need of additional time to develop defenses and responses to plaintiffs' recently filed expert reports on the issues of wife-plaintiff's significant permanent damages.

1. Trial in this case is scheduled to commence before the Hon. John Reilly on May 5, 2008. Jury selection is scheduled to occur on April 3, 2008.
2. This case involves claims of professional liability/medical malpractice against the above named defendants surrounding their management of wife-plaintiff's underlying condition of Diabetes. On April 3, 2003, while in the process of returning in her automobile from a Diabetes Education Class held at DRMC, wife-plaintiff, then age 58, suffered what has been contended to be a hypoglycemic event (i.e., low blood sugar), causing her to temporarily lose consciousness, and consequently to lose control of her motor vehicle. Wife-plaintiff thus became involved in a single-car crash in which she suffered a myriad of injuries. It is plaintiffs' allegation that defendants collective negligence permitted the hypoglycemic event to occur, thereby precipitating the crash.
3. On March 12, 2008, plaintiffs filed a Supplemental Pre-Trial Memorandum attaching the reports of experts, James L. Cosgrove, M.D., a physical medicine/rehabilitation physician, and James L. Kenkel, Ph.D., an economist.
 - (a) The report of Dr. Cosgrove is a 13-page comprehensive document, in which Dr. Cosgrove opines on the permanency and extent of wife-plaintiff's damages, including opinions

concerning wife-plaintiff's ability to work, restrictions on her activities and her current and future level of function.

(b) The report of Dr. Kenkel calculates plaintiffs' special monetary damages. According to the report of Dr. Kenkel, wife-plaintiff's: (i) total potential income loss is projected at between \$637,674.52 and \$670,743.11; (ii) total potential fringe benefits loss is projected at between \$119,882.81 and \$126,099.70; and (iii) value of lost household services is projected at between \$347,096.75 and \$1,282,292.81.

4. Defendants filed a Motion in Limine to Strike Plaintiffs' Expert Reports of James L. Cosgrove and James L. Kenkel, Ph.D, which is currently pending before the Court. Plaintiffs have filed a response in opposition to the aforementioned Motion in which, *inter alia*, plaintiffs represented that they would not contest the granting of a continuance so as to enable plaintiffs to respond the reports of Dr. Cosgrove and Dr. Kenkel.

5. If this Honorable Court grants defendants' requests for trial continuance, defendants will withdraw the Motion in Limine to Strike Plaintiffs' Expert Reports of James L. Cosgrove and James L. Kenkel, Ph.D.

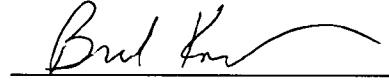
6. It is imperative for defendants to attempt to secure expert review to respond to the expert opinions now being offered on behalf of plaintiffs to support the multi-million dollar damage claims that have been asserted, and to develop additional facts to rebut plaintiffs' allegations as to damages and causation. Accordingly, defendants request leave of this Honorable Court and continuance of the trial scheduled for May 5, 2008 in order to more appropriately prepare a defense to these very serious matters. If a continuance is not granted, defendants may sustain grave prejudice in the presentation of their defense.

7. Counsel for defendants has conferred with counsel for plaintiffs concerning this trial continuance. Counsel for plaintiffs agrees with the granting of a continuance for the reasons set forth above.

WHEREFORE, for the reasons set forth above, defendants respectfully request that this Honorable Court issue an Order continuing trial in this case to another date to be scheduled at the convenience of this Honorable Court.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record and same placed in the U.S. Mails on this 15th day of April, 2008:

Mark J. Homjak, Esquire
Homjak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.

Brad R. Korinski
David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID SPACHT, her
husband, CIVIL DIVISION

Plaintiffs,

No. 05-433-CD

Issue No.

VS.

OLUSOLA AYODELE OSUNDEKO, M.D., an individual, and DUBOIS REGIONAL MEDICAL CENTER, a corporation,

Defendants.

ORDER OF COURT

AND NOW, on this _____ day of _____, 2008, upon consideration of the defendants' Uncontested Motion for Trial Continuance, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is GRANTED.

The trial scheduled for May 5, 2008 is hereby CONTINUED.

_____, P.J.

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

R. KELLY SPACHT and DAVID
SPACHT, her husband :
vs. : No. 05-433-CD
OLUSOLA AYODELE OSUNDEKO,
M.D., an individual, and DUBOIS
REGIONAL MEDICAL CENTER,
a corporation :

ORDER

AND NOW, this 2nd day of April, 2008 upon consideration of
Defendants' Uncontested Motion for Trial Continuance, it is the ORDER of the Court
that said Motion shall be and is hereby DENIED as untimely.

BY THE COURT:


Paul E. Cherry
Judge

FILED
03/27/08
APR 02 2008
SCC
Amy Korinski
William A. Shaw
Clerk of Courts
Clerk of Courts

DATE: 4/20/08

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action – Medical
Professional Liability Action

No.: 05-433-CD

**MOTION FOR LEAVE OF
COURT TO FILE SECOND
SUPPLEMENTAL
PRE-TRIAL
MEMORANDUM**

Filed on Behalf of Plaintiffs

Counsel of Record for These
Parties:

Mark J. Homyak
PA ID No.: 30254

Eve W. Semins
PA ID No.: 200641

THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636

FILED *noc*
(2) 4/15/08
APR 11 2008 (GP)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

**MOTION FOR LEAVE OF COURT TO FILE SECOND SUPPLEMENTAL
PRE-TRIAL MEMORANDUM**

Plaintiffs, by their undersigned counsel, file this motion in accordance with Local Rule 212(4)(e) upon the following bases:

1. Defendants recently filed a motion *in limine* in which they asked the Court to exclude argument or evidence regarding certain inadmissible hearsay statements about the incident that is the subject of this lawsuit, which Plaintiffs had no intention of introducing.

2. In that same motion, however, Defendants also asked the Court to exclude other, unspecified hearsay statements.

3. Part of the relevant medical records reviewed by both of the liability expert witnesses in this case are those of the medics who responded to the scene of the accident.

4. As set forth in the report of Plaintiffs' expert, Dr. Bernstein, the medic report contains the statement, "Person who was in car behind her stated that he had been following her since Morningside Cemetery and that between there and Fire Company she was going approximately 15 mph and driving very erratically, but once she reached that point vehicle sped up to approximately 70 mph."

5. That statement was part of the medical history relied upon by Mrs. Spacht's post-accident treating physicians in order for them to make their diagnosis of a hypoglycemic event that caused her to lose consciousness and drive off of the roadway, causing her injuries.

6. That statement, while hearsay, is the sort of evidence which is customarily relied upon by experts in the practice of their profession, and is admissible as an exception to the hearsay rule. *Pa.R.E. 803(4); Wexler v. Hecht, 847 A.2d 95 (Pa. Super. 2004), appeal granted on other grounds, affirmed, 847 A.2d 95 (Pa. 2007); Boucher v. Pennsylvania Hospital, 831 A.2d 623 (Pa. Super. 2003), reargument denied, appeal denied, 847 A.2d 1276 (Pa. 2004); Maravich v. Aetna Life and Casualty Co., 504 A.2d 896 (Pa. 1986).*

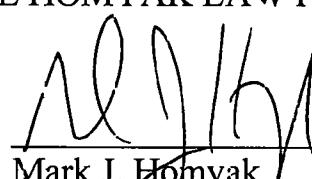
7. Because Defendants have moved to strike certain hearsay statements regarding Mrs. Spacht's erratic operation of the vehicle that Plaintiffs agree are clearly inadmissible hearsay, and have also asked that other unspecified hearsay be stricken, Plaintiffs' counsel is concerned that Defendants may object to the admissible hearsay statement that is contained within the medic's report.

8. The individual who made the statement contained within the report was identified within the police report regarding the incident and is Timothy Black of 1215 Harmony Road, Punxsutawney, PA 15767, who is prepared to testify to his observations at trial.

WHEREFORE, in order to avoid potential prejudice by a ruling that would exclude the admissible hearsay statement of Mr. Black from being admitted into evidence through the medic's report record, Plaintiffs request that the Court allow the filing of a Second Supplemental Pre-Trial Memorandum as per the attached Exhibit "A".

Respectfully submitted,

THE HOMYAK LAW FIRM

By: 
Mark J. Homyak
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Civil Action – Medical
Professional Liability Action
No. 05-433-CD

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

PLAINTIFFS' SECOND SUPPLEMENTAL PRE-TRIAL MEMORANDUM

Plaintiffs' original Pre-Trial Memorandum and Supplemental Pre-Trial
Memorandum are incorporated herein by reference as if set forth in full, with the
following addition:

3. Witnesses

Liability

Timothy Black
1215 Harmony Road
Punxsutawney, PA 15767

Respectfully submitted,

THE HOMYAK LAW FIRM

By:

Mark J. Homyak
Attorneys for Plaintiffs

Exhibit A

IN THE COURT OF COMMON FLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action – Medical
Professional Liability Action

No.: 05-433-CD

**PLAINTIFFS' RESPONSE
TO DEFENDANTS'
MOTION FOR LEAVE OF
COURT TO FILE
SUPPLEMENTAL
PRE-TRIAL STATEMENT**

Filed on Behalf of Plaintiffs

Counsel of Record for These
Parties:

Mark J. Homyak
PA ID No.: 30254

Eve W. Semins
PA ID No.: 200641

THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636

FILED
mjh:15/5/08
APR 11 2008
NOCC
GD

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

Civil Action - Medical
Professional Liability Action
No. 05-433-CD

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR LEAVE OF
COURT TO FILE SUPPLEMENTAL PRE-TRIAL STATEMENT**

Plaintiffs, by their undersigned counsel, respond to Defendants' Motion for
Leave of Court to File Supplemental Pre-Trial Statement as follows:

1. As previously expressed to the Court, Plaintiffs have no objection to
Defendants supplementing their Pre-Trial Statement by adding their own experts in
order to counter the opinions of Drs. Cosgrove and Kenkel.

2. Plaintiffs similarly have no objection to the addition of the lay
witnesses, Crawford and McKee, or their testimony regarding their belief of the
reasons and circumstances of Mrs. Spacht's employment history and separation
from employment.

3. However, Plaintiffs do object to those lay witnesses testifying regarding Mrs. Spacht's Separation Agreement and Release, and object to admission of that document into evidence.

4. As it is titled, the document is a compromise agreement in which valuable consideration was offered and accepted in order to compromise a disputed claim, and such agreements are not admissible to prove the invalidity of a claim or its amount under Pennsylvania Rule of Evidence 408.

5. Additionally, although the agreement was between Wife-Plaintiff and one of the Defendants, the agreement was reached in regard to Mrs. Spacht's claims against DRMC as her employer in regard to her salary, benefits, severance and separation, and compromise of her potential discrimination or other improper work practice claims, and not with DRMC in regard to its negligent provision of medical services to her as a patient.

6. As such, any payments made under and pursuant to that compromise agreement constituted collateral source payments, and are not admissible.

Simmons v. Cobb, 906 A.2d 582 (Pa. Super. 2006); Beechwoods Flying Service, Inc. v. Al Hamilton Contracting Corp., 476 A.2d 350 (Pa. 1984); Massman v. City of Philadelphia, 241 A.2d 921 (Pa. 1968).

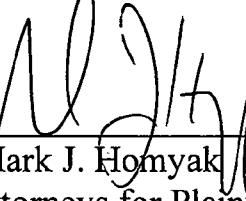
WHEREFORE, Plaintiffs ask that the Court disallow admission of the compromise agreement and release into evidence, and prohibit discussion of the

same and any payments made pursuant to it by the prospective witnesses.

Plaintiffs have no opposition to the remainder of the motion and proposed
Supplemental Pre-Trial Statement.

Respectfully submitted,

THE HOMYAK LAW FIRM

By: 

Mark J. Homyak
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT and DAVID
SPACHT, her husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO,
M.D., an individual, and DUBOIS
REGIONAL MEDICAL CENTER, a
corporation,

Defendants.

CIVIL DIVISION

No. 05-433-CD

Issue No.

AFFIDAVIT OF SERVICE OF ORDER
DATED APRIL 2, 2008

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

THOMSON, RHODES & COWIE, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

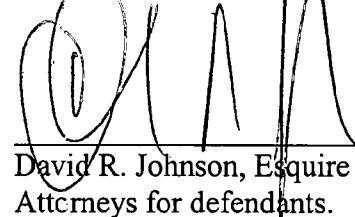
FILED
APR 11 2008
NO CC
WAS
William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE

We hereby certify that we have served on plaintiffs' attorney the court's order
dated April 2, 2008.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.


David R. Johnson, Esquire
Attorneys for defendants.

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

R. KELLY SPACHT and DAVID :
SPACHT, her husband :
vs. : No. 05-433-CD
: :
OLUSOLA AYODELE OSUNDEKO, :
M.D., an individual, and DUBOIS :
REGIONAL MEDICAL CENTER, :
a corporation :
:

ORDER

AND NOW, this 2nd day of April, 2008 upon consideration of Defendants' Uncontested Motion for Trial Continuance, it is the ORDER of the Court that said Motion shall be and is hereby DENIED as untimely.

BY THE COURT:

/s/ Paul E. Cherry

Paul E. Cherry
Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

APR 02 2008

Attest.

William E. Cherry
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT
and DAVID SPACHT,
her husband,

Plaintiffs,

v.

OLUSOLA AYODELE OSUNDEKO, M.D.
an individual, and DUBOIS REGIONAL
MEDICAL CENTER, a corporation,

Defendants.

Civil Action – Medical
Professional Liability Action

No.: 05-433-CD

**PLAINTIFFS' RESPONSE
TO DEFENDANTS'
MOTIONS *IN LIMINE***

Filed on Behalf of Plaintiffs

Counsel of Record for These
Parties:

Mark J. Homyak
PA ID No.: 30254

Eve W. Semins
PA ID No.: 200641

THE HOMYAK LAW FIRM
3333 Gulf Tower
Pittsburgh, PA 15219
(412) 391-6636

FILED NOV 11 2008
APR 11 2008
WAS
APR 11 2008
GK

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

R. KELLY SPACHT and DAVID)
SPACHT, her husband,)
Plaintiffs,) No. 05-433-CD
v.)
OLUSOLA AYODELE OSUNDEKO,)
M.D., an individual, and DUBOIS)
REGIONAL MEDICAL CENTER, a)
Corporation,)
Defendants.)

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTIONS IN LIMINE

The parties are in agreement on all but one of the issues raised by these motions, which could have, and should have been resolved by a simple phone call between counsel.

HEARSAY

Dr. Rao and his Unnamed Colleague

Mrs. Spacht was simply responding to a question posed to her in deposition by defense counsel as to whether any other physician had told her ". . . that they believe that Dr. Osundeko treated you improperly or did anything wrong in the treatment and care for you", *Deposition of R. Kelly Spacht p. 141*, when she testified to the comments of Dr. Rao and his colleague. Plaintiffs' counsel will not be asking Mrs. Spacht that question at trial, or mention those comments, because

the response is clearly inadmissible hearsay, and this portion of the proposed order should be denied as moot.

• **Police Scanner Hearsay**

Plaintiffs also agree that out of court statements made to Mrs. Spacht by her friends, and the comments of unknown individuals broadcasting over the scanner contained within those statements, are all inadmissible hearsay. Again, Mrs. Spacht was simply answering defense counsel's questions at deposition regarding what she understood had occurred, and the sources of her knowledge. This portion of the proposed order should also be denied as moot.

Unspecified "Other Hearsay"

As to subpart (d) of the proposed order, which asks the Court to prohibit "any other out of court statements which is introduced for its truth and which does not meet any of (*sic*) enumerated hearsay exception under the Pennsylvania Rules of Evidence", there is no description in the motion of what other statements to which defense counsel might be referring. That portion of the proposed order lacks the requisite specificity for a response and ruling, and should be denied on that basis.

• **CROHN'S DISEASE**

Defendants' motion on this issue claims that Mrs. Spacht's deposition testimony is again the source of their concern, but fails to cite to any specific place

in the record. Rather than looking through the deposition transcript to determine whether any of her testimony could arguably support that contention, Plaintiffs will simply state that they agree that Plaintiffs' experts do not contend that Mrs. Spacht's Crohn's Disease was exacerbated by her injuries. Neither they nor any other witness, including Mrs. Spacht, will so testify at trial; nor will Plaintiffs' counsel make such argument. That motion should also be denied as moot.

WIFE-PLAINTIFF'S FATHER'S DEATH

This is the one issue raised by Defendants upon which the parties disagree. Part of the damages personal injury plaintiffs are entitled to recover under Pennsylvania law is their mental anguish flowing from the injuries caused by a defendant's negligence. *Carpinet v. Mitchell*, 853 A.2d 366, 372-374 (Pa. Super 2004).

As provided in the standard jury instructions, the Court should instruct the jury that, "You are instructed that the plaintiff is entitled to be fairly and adequately compensated for all physical pain, mental anguish, discomfort, inconvenience, and distress you find that she has endured from the time of the injury until today and that the plaintiff is also entitled to be fairly and adequately compensated for all physical pain, mental anguish, discomfort, inconvenience and distress that you find she will endure in the future as a result of her injuries." *Pennsylvania Suggested Standard Civil Jury Instructions 11.11A MEDICAL MALPRACTICE – DAMAGES*

(UNDER THE MCARE ACT, EFFECTIVE FOR ALL CLAIMS ARISING

SUBSEQUENT TO MARCH 20, 2002).

Contrary to defense counsel's argument, Plaintiffs are not arguing that Mrs.

Spacht's injuries caused and/or contributed to the death of her Father. Rather, Plaintiffs intend to present evidence of Mrs. Spacht's mental anguish over the fact that her own injuries caused her Father to be removed from her home and placed into a nursing home, preventing her from being with, comforting and supporting her Father during his last illness and death, which is a fair aspect of Mrs. Spacht's mental anguish damages.

It is a universally recognized fact of human life that emotions play a big part in peoples' physical wellbeing, including the emotional support provided by close family members. Evidence of Mrs. Spacht's belief that her enforced inability to continue to care for her Father hastened his death is relevant and, therefore ² admissible to show one of the ways that her debilitation resulting from the accident caused her mental anguish.

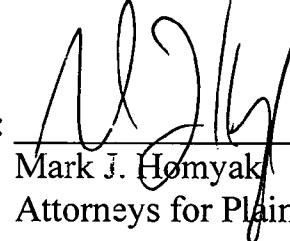
Nor is the evidence of Mrs. Spacht's mental upset more prejudicial than probative. Despite defense counsel's overheated language (*i.e.*, "no more inflammatory or prejudicial allegations that one can levy against a physician"; "Plaintiffs' Scurrilous Allegations"), there is simply nothing inflammatory and certainly nothing scurrilous about Kelly Spacht's feelings and beliefs.

It is simply a natural fact of the human condition that when a child with a close relationship with a parent is prevented from being present during the parent's last illness and death, the child will feel sorrow, sometimes guilt, and sometimes that his/her absence may have brought on a quicker demise. This is particularly so in this case, where the parent had to be moved from the nurturing surrounding of his daughter's home to a nursing home, and he died not long thereafter. Plaintiffs believe it silly to suggest that the jurors have led such sheltered lives that hearing Mrs. Spacht describe those feelings and beliefs would cause them to lose their impartiality. The motion should be denied.

Respectfully submitted,

THE HOMYAK LAW FIRM

By:



Mark J. Homyak
Attorneys for Plaintiffs

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

KELLY SPACHT and DAVID
SPACHT

-vs-

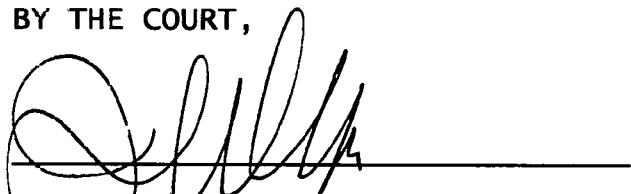
No. 05-433-CD

OLUSOLA AYODELE OSUNDEKO,
MD, and DUBOIS REGIONAL
MEDICAL CENTER

O R D E R

AND NOW, this 24th day of April, 2008, upon
agreement of the parties, it is the ORDER of this Court that
Defendants' preliminary objections seeking to exclude hearsay
testimony at trial concerning Dr. Rao and his unnamed
colleague and transmissions over a police scanner shall be
and is hereby granted and Plaintiff shall introduce no
evidence or testimony concerning these. Any hearsay
objections to medical records on behalf of either party shall
be resolved in accordance with the attached letters of April
22 and 23, 2008.

BY THE COURT,



THE HONORABLE JOHN K. REILLY, JR.
Senior Judge, Specially Presiding

FILED
MAY 02 2008

2CC Attns.
O/3/25/08
Homyak
Johnson/Korinski

William A. Shaw
Prothonotary/Clerk of Courts

THE HOMYAK LAW FIRM

3333 GULF TOWER
PITTSBURGH, PA 15219

TEL. (412) 391-6636 FAX: (412) 391-6632

MARK J. HOMYAK
ATTORNEY AT LAW
MARK@HOMYAKLAW.COM

April 22, 2008

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

Re: *Spacht et vir v. Osundeko, M.D. et al.*
No. 05-433-CD in the Court of Common Pleas of Clearfield County

Dear David:

This is to confirm the agreements we reached today regarding this case. I am setting them down not out of any indication of distrust of you, but simply to remind myself, and so that Brad Korinski, who will be handling the argument this Thursday, will have something to take with him. We agreed as follows:

1. Brad will inform the Court that you have withdrawn your objection to Dr. Cosgrove's testimony.

2. He and I will confirm to the Court that we have agreed that all of Ms. Spacht's medical records will be admitted into evidence without identification or authentication. We have also agreed that we will not be making any hearsay objections to any comments contained within those records. Based upon that representation, I will inform Mr. Black that he need not testify, as his description of Ms. Spacht's driving and the accident will be entered into evidence in the first responders' report.

3. Brad will continue to argue the attempt to exclude Dr. Kenkel's testimony.

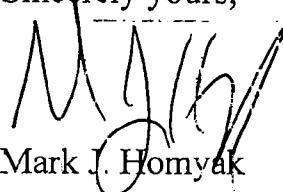
4. Brad will continue to argue that Ms. Spacht may not testify regarding her feelings about her Father's death.

5. Brad will continue to argue that the Release Ms. Spacht entered into at the time of her separation from her employment with DRMC will be admissible.

Regarding the conduct of the trial itself, we agreed that unless a witness makes specific reference to a portion of Ms. Spacht's medical records, neither of us will use any non-referenced portion of the records as illustrative of our arguments in closing (neither of us will be using documents in our openings).

If I have inadvertently misstated any of our agreements or understandings, please promptly let me know. Otherwise, I would appreciate it if you could confirm for me that I have accurately set them forth, so that I will be certain of our understandings before the argument takes place this Thursday.

Sincerely yours,



Mark J. Homayak

MJH: kly
Enclosure
cc: Mr. and Mrs. David Spacht

* * * Memory TX Result Report (Apr. 22, 2008 3:00PM) * * *

1) Homyak Law Firm
2)

Date/Time: Apr. 22, 2008 2:54PM

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Reason for error

E. 1) Hang up or line fail
E. 3) No answer
E. 5) Exceeded max. E-mail sizeE. 2) Busy
E. 4) No facsimile connectionMARK J. HOMYAK
ATTORNEY AT LAW

THE HOMYAK LAW FIRM
3333 GULF TOWER
PITTSBURGH, PA 15219
TEL. (412) 391-6636 FAX: (412) 391-6632

FAX COVER SHEET

Date: Tuesday, 22 April 2008
 To: David R. Johnson, Esquire
 Company: Thomson, Rhodes & Cowie, PC
 From: Mark J. Homyak
 Fax Number: 412-232-3498
 RE: Spacht

Number of Pages (including this cover sheet): 3

Comments:

.....
 IF YOU DO NOT RECEIVE ALL PAGES,
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NOTICE: This message is intended for the exclusive use of the addressee named above. It may contain information which is confidential and protected from disclosure by law. If you have received this transmission in error, you must not copy or disseminate it in any form. In such case, please notify us immediately at the above listed telephone number, and return this message to us via mail. Telephone charges and postage will be reimbursed to you by this firm. Thank you for your anticipated cooperation.

BY facsimile
and
regular
mail.

THOMSON, RHODES & COWIE, P.C.

Attorneys At Law

**TWO CHATHAM CENTER, TENTH FLOOR
PITTSBURGH, PENNSYLVANIA 15219-3499**

Facsimile (412) 232-3498
www.trc-law.com

Writer's Direct Dial
(412) 316-8662
E-mail: dri@trc-law.com

David R. Johnson

April 23, 2008

R. Kelly Spacht and David Spacht, her husband vs. Olusola Ayodele Osundeko, M.D., an individual, and DuBois Regional Medical Center, a corporation. In the Court of Common Pleas of Clearfield County, Pennsylvania. Civil Division No. 05-433-CD. Our File No. 14206.

Mark J. Homyak, Esquire
Homyak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

(via facsimile to 412-391-6632)

Dear Mark:

Thank you for your confirmation letter dated April 22, 2008. I believe you have accurately summarized our conversation. I think this is just a technical distinction, but it was my understanding that if you or I were to reference a record during trial in examining a witness, it would be fair game for utilization in either party's closing argument.

Thank you.

Very truly yours,


David R. Johnson

DRJ/pko
cc: Brad R. Korinski, Esquire

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

KELLY SPACHT and DAVID
SPACHT

-VS-

No. 05-433-CD

OLUSOLA AYODELE OSUNDEKC,
MD, and DUBOIS REGIONAL
MEDICAL CENTER

O R D E R

AND NOW, this 24th day of April, 2008, upon
consideration of the Defendant's Motion in Limine to preclude
Plaintiffs From Making Any Argument that Plaintiff's Injuries
Caused and/or Contributed to the Death of her Father, it is
the ORDER of this Court that said Motion shall be and is
hereby sustained. However, Plaintiff may testify as to her
mental state resulting from her father having to enter a
nursing home because she, as a result of her accident, was
unable to provide care at her home.

BY THE COURT.

THE HONORABLE JOHN K. REILLY, JR.
Senior Judge, Specially Presiding

FILED *cc: Atlys:*

0/30/2008 Homyak
MAY 02 2008 Johnson, Korinski

✓ William A. Shaw
Prothonotary/Clerk of Courts

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

KELLY SPACHT and DAVID
SPACHT

-vs-

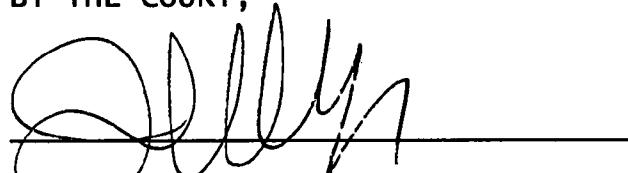
No. 05-433-CD

OLUSOLA AYODELE OSUNDEKO,
MD, and DUBOIS REGIONAL
MEDICAL CENTER

O R D E R

AND NOW, this 24th day of April, 2008, upon
consideration of the Motion in Limine to Strike Report of Dr.
Kenkel, it is the ORDER of this Court that said Motion shall
be and is hereby denied.

BY THE COURT,



THE HONORABLE JOHN K. REILLY, JR.
Senior Judge, Specially Presiding

FILED 200 Atlys:

05/02/2008 Homyak

Johnson/Koranski

W.A. Shaw
Prothonotary/Clerk of Courts

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

KELLY SPACHT and DAVID
SPACHT

-vs-

No. 05-433-CD

OLUSOLA AYODELE OSUNDEKO,
MD, and DUBOIS REGIONAL
MEDICAL CENTER

O R D E R

AND NOW, this 24th day of April, 2008, upon
consideration of Defendants' Motion in Limine concerning the
Plaintiff suffering from Crohn's disease, and upon agreement
of the parties, it is the ORDER of this Court that said
Motion shall be and is hereby granted to the extent that
Plaintiff shall in no way introduce a claim for exacerbation
of Plaintiff's Crohn's disease as a result of the accident.

BY THE COURT,

THE HONORABLE JOHN K. REILLY, JR.
Senior Judge, Specially Presiding

FILED

03/20/08
MAY 02 2008

2CC
Attnys:
Homyak
Johnson/Korinski

Blod
Box
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

R. KELLY SPACHT AND DAVID
SPACHT, HER HUSBAND

PLAINTIFFS

VS

OLUSOLA AYODELE OSUNDEKO, M.D.,
AN INDIVIDUAL, AND DUBOIS
REGIONAL MEDICAL CENTER, A
CORPORATION,

DEFENDANTS

NO. 05-433-CD

FILED

MAY 08 2008

William A. Shaw
Prothonotary/Clerk of Courts

VERDICT SLIP

We, the jurors empanelled in the above-captioned case,
find as follows:

1. Do you find by a preponderance of the evidence
that Dr. Osundeko was negligent?

Yes _____ No X

If you answered Question 1 "yes", proceed to
Question 2. If you answered Question 1 "no", return to the
courtroom as you would have found in favor of the Defendants.

2. Do you find by a preponderance of the evidence
that any negligence by Dr. Osundeko was a substantial factor in
causing harm to the plaintiff?

Yes _____ No _____

If you answered Question 2 "no", return to the
courtroom as you would have found in favor of the Defendants.

3. Do you find by a preponderance of the evidence that Kelly Spacht was negligent?

Yes _____ No _____

Answer Question 4 only if you answered Question 3 "yes", otherwise go on to Question 6.

4. Do you find by a preponderance of the evidence that any negligence by Kelly Spacht was a substantial factor in causing her own harm.

Yes _____
If yes, go to question 5
If no, go to question 6
No _____

5. Set forth the percentage of liability for each party who you have found to be negligent and where negligence was a substantial factor. The total should be 100 percent.

Dr. Osundeko _____ %

~~DuBois Regional Medical Center~~ _____ %

Kelly Spacht _____ %.

TOTAL: 100% *greater than*

If Kelly Spacht's causal negligence is ~~50 percent or~~ greater, she cannot recover. The foreperson should sign the verdict form and advise the Court that a verdict has been reached. If her causal negligence is ^{equal to or} less than 50 percent, go on to Question 6.

6. State the amount of damages sustained by Mrs. Spacht as a result of the negligence of the healthcare providers.

~~Past medical and related expenses in a lump sum~~ \$ _____

Past loss of earnings in a lump sum \$ _____

Past noneconomic loss in a lump sum \$ _____

(Such as physical pain, mental anguish, discomfort, inconvenience and distress)

~~Future medical and related expenses in a lump sum~~ \$ _____

Future loss of earnings in a lump sum \$ _____

Future noneconomic loss in a lump sum \$ _____

(Such as physical pain, mental anguish, discomfort, inconvenience, and distress)

Mr. Spacht's loss of consortium \$ _____

Jury Foreperson

Neil C. Gant

Date

May 8, 2008

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

CASE NO. 05-433-CD

Date of Jury Selection: April 3, 2008

Presiding Judge: John K. Reilly Jr., SJSP

R. Kelly Spacht and David Spacht

VS

Court Reporter: Cathy Peovost

**Olusola Ayodele Osundeko MD and
DuBois Regional Medical Center**

Date of Trial: May 5-9, 2008

Date Trial Ended: May 8, 2008

MEMBERS OF THE JURY

**1. Ronald Bunnell
2. John McMahon
3. Deborah Nelson
4. Trisha Rothrock
5. Joan Olson
6. Shelva Strible
ALT #1 Sally Round**

**7. Neil Conti
8. Paul Weaver
9. Deborah Pegher
10. Delores Sudik
11. Jackie Yeubernetsky
12. Dominick Suplizio
ALT #2 Shirley Teats**

PLAINTIFF'S WITNESSES:

**1. Dr. Robert Bernstein
2. Dr. James Cosgrove
3. R. Kelly Spacht
4. Dr. Janice Kendall
5. David Spacht
6.**

DEFENDANT'S WITNESSES:

**1. Merrill Ross
2. Elizabeth Krysiak
3. Dr. Olusola A. Osundeko
4. Dr. Andrew Eason Everson
5.
6.**

**PLAINTIFF'S ATTY: Mark Homyak Esq
Eve Semins, Esq.**

ADDRESS TO JURY: 10:00 AM.

DEFENDANT'S ATTY: David R. Johnson Esq

ADDRESS TO JURY: 9:04 AM.

JUDGE'S ADDRESS TO JURY: 10:53 AM.

JURY OUT: 11:42 AM JURY IN: 12:40 PM

VERDICT: Defendants

FOREPERSON: Neil Conti

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID
SPACHT, her husband,

Plaintiffs,

vs.

OLUSOLA AYODELE OSUNDEKO,
M.D., an individual, and DUBOIS
REGIONAL MEDICAL CENTER, a
corporation,

Defendants.

CIVIL DIVISION

No. 05-433-CD

Issue No.

PRAECIPE TO ENTER JUDGMENT ON
THE VERDICT

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

THOMSON, RHODES & COWIE, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED Atty Johnson pd.
MAY 10 2008 \$20.00
MAY 23 2008 Notice to Atty Homayak
William A. Shaw
Prothonotary/Clerk of Courts No CC

PRAECIPE TO ENTER JUDGMENT ON THE VERDICT

TO: PROTHONOTARY

Please enter judgment against plaintiff/s and in favor of defendants in the matter above captioned pursuant to jury verdict of May 8, 2008.

Respectfully submitted,

THOMSON, RHODES & COWE, P.C.



David R. Johnson, Esquire
Attorneys for the defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **PRAECIPE TO ENTER JUDGMENT ON THE VERDICT** has been served upon the plaintiff by both Regular U.S. Mails and Certified Mail Return Receipt Requested on this 21st day of May, 2008:

Mark J. Homyak, Esquire
Homyak Law Firm
3333 Gulf Tower
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire

Attorneys for the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

R. KELLY SPACHT and DAVID SPACHT, her) CIVIL DIVISION
husband,)
Plaintiffs,)) No. 05-433-CD
vs.)
)
OLUSOLA AYODELE OSUNDEKO, M.D., an)
individual, and DUBOIS REGIONAL)
MEDICAL CENTER, a corporation,)
Defendants.)
)

NOTICE OF ORDER, DECREE OR JUDGMENT

TO: Plaintiff Defendant Garnishee Additional Defendant

You are hereby notified that the following Order, Decree, or Judgment has been entered
against you on May 23, 2008.

Decree Nisi in Equity.

Final Decree in Equity.

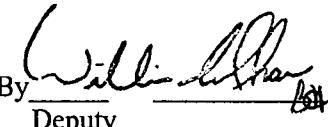
Judgment of Confession Verdict
 Default Non-Suit
 Non-Pros Arbitration Award

Judgment is in the amount of \$ _____ PLUS COSTS.

District Justice Transcript of Judgment in (Assumpsit/Trespass) in the amount of
\$ _____ PLUS COSTS.

If not satisfied within sixty (60) days, your motor vehicle operator's license will be
suspended by the Pennsylvania Department of Transportation.

PROTHONOTARY

By 
Deputy _____

If you have any questions concerning the above, please contact:

David R. Johnson, Esquire PHONE: (412) 232-3400
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219