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IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

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HERBERT J. NEVYAS, M.D. : November Term 2003  
ANITA NEVYAS-WALLACE, M.D. : No. 946  
NEVYAS EYE ASSOCIATES, P.C. :  
-VS- :  
DOMINIC MORGAN :  
STEVEN FRIEDMAN :

- - - - -

Room 253, City Hall  
Philadelphia, Pennsylvania

- - - - -

March 11, 2011  
MORNING SESSION

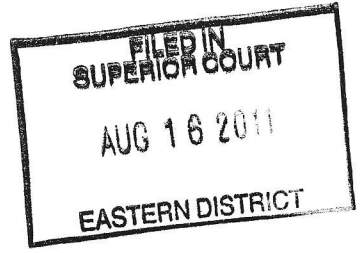
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B E F O R E:  
THE HONORABLE VICTOR J. DiNUBILE, JR.

- - - - -

BENCH TRIAL

- - - - -



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WITNESS INDEX  
PLAINTIFF'S EVIDENCE

WITNESS:	DR.	CR.	RDR.	RCR.
Dominic Morgan	--	06	--	--
Morris Waxler	53	85	105	--

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3

THE COURT: Mr. Morgan, do you mind  
resuming the stand.

5

Mr. Silverman, you may proceed.

6

MR. SILVERMAN: Thank you.

7

MR. MORGAN: Your Honor, if I may,  
before Mr. Silverman starts, I would like to  
make a few corrections with regards to  
questions Mr. Silverman asked yesterday at  
trial which I realized was in error after  
court was adjourned. He asked whether Mr.  
Friedman's letters were on the website  
lasiksucks4u.com in 2007.

15

THE COURT: Yes.

16

THE WITNESS: My response was yes.  
Those letters were not on my website or any  
other website and have not been since the  
Judge ordered to make all references --

20

THE COURT: I understand that. But  
there's no question that you published these  
letters shortly after they were given to you  
by Mr. Friedman -- by Dr. Friedman. I'm  
talking about in '03.

25

MR. MORGAN: Yes.

1

2

THE COURT: Okay.

3

4

MR. MORGAN: There was also a listing of websites. I would like to add

5

lasikliberty.com. I forgot that one.

6

THE COURT: Lasik liberty?

7

MR. MORGAN: Yes, Your Honor.

8

THE COURT: Thank you.

9

MR. MORGAN: And one other thing:

10

Mr. Silverman also said that in my

11

answer to the complaint, when I was asked

12

about exhibits to the complaint that I did not

13

deny the exhibits, in my answer I did deny it

14

and also in the amended complaint as well. I

15

just wanted to clarify that.

16

THE COURT: Very well.

17

MR. MORGAN: I don't remember all

18

the filings. This has been eight years.

19

THE COURT: Very good.

20

MR. MORGAN: I apologize.

21

THE COURT: Mr. Silverman.

22

MR. SILVERMAN: Thank you, Your

23

Honor.

24

25

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AS ON CROSS EXAMINATION

4

- - - - -

5 BY MR. SILVERMAN:

6 Q Mr. Morgan, good morning.

7 A Hi.

8 Q When you published your website in 2003, you  
9 knew that the Nevyases had an excellent reputation  
10 at that time, didn't you?

11 A Excuse me. I published my website in 2002.

12 Q I didn't hear what you said.

13 THE COURT: 2002 he said he  
14 published.

15 BY MR. SILVERMAN:

16 Q I'm talking about as of --

17 THE COURT: I do know that in  
18 November of '03 all the letters -- well, no.  
19 By February '04 all the letters were  
20 published.

21 MR. SILVERMAN: Yes.

22 BY MR. SILVERMAN:

23 Q So what I'm asking you is when you published  
24 your website in 2003, you knew that the Nevyases  
25 had an excellent reputation; didn't you?

1                   Dominic Morgan - as on cross

2     A     I believe they were reputable at the time.

3     Q     Okay.

4     A     Excuse me. At the time of my Lasik surgery.

5     Q     Okay.

6           Now, after your Lasik surgery, you became very  
7     angry at the Nevyases; didn't you?

8     A     I became?

9     Q     Angry.

10    A     I was a little angry at first, yes.

11    Q     In fact, in your July website, you state, "I  
12    carry much anger, depression, bitterness and hatred  
13    toward the Nevyases."

14           Isn't that a correct quote?

15    A     Again, that was in a letter to Thomas Rutter.  
16    That was a private letter.

17    Q     You published it on your website; didn't you?

18    A     We're getting back into where we were  
19    yesterday. I did not publish it. It was in a  
20    password-protected directory.

21    Q     Okay.

22           Whether or not you published it, that's the  
23    way you felt; isn't that true?

24    A     At the time, sure.

25    Q     Mr. Morgan, I have a printout of your July

1                   Dominic Morgan - as on cross  
2 website. It's dated 7-29-03. And it says:

3                   "I carry much anger, depression, bitterness  
4 and hatred toward the Nevyases," and it's not part  
5 of a letter. It's part of what you wrote.

6                   Do you want to see it?

7                   A     Please.

8                   Q     Let me point out exactly where it is. It  
9 starts here.

10                   - - - - -

11                   (Pause.)

12                   - - - - -

13                   MR. MORGAN: Your Honor, may I?

14                   THE COURT: If you wish to go back  
15 and look at it on your screen, you may do so.

16                   MR. MORGAN: Thank you, sir.

17                   - - - - -

18                   (Pause.)

19                   - - - - -

20                   MR. MORGAN: I'm not a hundred  
21 percent certain. This area is blacked out.  
22 This area is blacked out. I don't know what  
23 was on the headers.

24 BY MR. SILVERMAN:

25 Q     Okay.



1                   Dominic Morgan - as on cross

2                   But it's true, isn't it, Mr. Morgan, that  
3                   that's how you felt at the time. You were very  
4                   angry and had a hatred for the Nevyases?

5                   A     I stated that in a letter to Thomas Rutter,  
6                   yes.

7                   Q     And in your letter to Judge Jackson you state,  
8                   and I'm quoting: "There is certainly no  
9                   forgiveness for what they've done to me."

10                  Is that an accurate quote of what you wrote to  
11                  Judge Jackson?

12                  A     Again, that was in a password-protected  
13                  directory, yes.

14                  Q     And that's how you felt; isn't it?

15                  A     I lose patience then. That's all.

16                  Q     And you actually sent that letter to Judge  
17                  Jackson; didn't you?

18                  A     Yes, sir.

19                  Q     Am I correct, Mr. Morgan, that you wanted to  
20                  punish the Nevyases for what they did to you, what  
21                  you claim they did to you?

22                  A     Well, I believe that, as I still, do that they  
23                  were a risk to public safety. I understand that  
24                  what they did to me, yes.

25                  Q     Now, Mr. Friedman gave you a group of

1                   Dominic Morgan - as on cross

2       documents that were marked confidential,  
3       confidential documents?

4       A     That were produced as exhibits for filing,  
5       yes.

6       Q     Not as exhibits for filing, but that  
7       Mr. Friedman had gotten during the course of  
8       discovery pursuant to a confidentiality agreement.

9       A     I believe they were given to me after he was  
10      done representing me. I'm not a hundred percent  
11      certain. I am going to answer that I'm not sure.

12      Q     But am I correct that you published these  
13      documents on your website?

14      A     Yes, I did.

15      Q     And you heard Mr. Friedman testify, did you  
16      not, that he was shocked when he saw those  
17      published on your website?

18      A     Correct.

19      Q     Did he convey that shock to you?

20      A     I don't know whether he knew those letters  
21      were on the website at the time or not, but I  
22      believe he was surprised. I don't remember.

23      Q     I am talking about documents that Mr. Friedman  
24      got during the discovery process in your case.

25                   MS. FITZGERALD: Objection. I

1                   Dominic Morgan - as on cross  
2           believe Mr. Friedman's testimony about being  
3           shocked pertained to the letters.

4                   MR. MORGAN: I'm sorry.

5                   THE COURT: Ms. Fitzgerald, she said  
6           she believed the shock pertained to the  
7           letter.

8                   MS. FITZGERALD: And not the  
9           documents. I believe that's what Mr. Friedman  
10          actually testified to.

11                  THE COURT: All right. That's what  
12          she said Dr. Friedman testified to, he was  
13          shocked at the letters.

14                  MR. MORGAN: At the letters,  
15          correct.

16 BY MR. SILVERMAN:

17 Q    So Mr. Friedman wasn't surprised at all that  
18    you published these confidential documents, not the  
19    letters, documents on your website; is that  
20    accurate?

21 A    I don't remember. I really don't.

22 Q    Okay.

23                  And Mr. Friedman never told you not to publish  
24    those documents that had been marked confidential;  
25    is that correct?

1                   Dominic Morgan - as on cross

2     A     I don't remember.

3     Q     Okay.

4             And Mr. Friedman never told you to remove  
5     them; did he?

6     A     Mr. Friedman has no say as to what I post on  
7     my website.

8     Q     I understand that.

9             But he never asked you to remove them; did he?

10    A     I don't know; and even if he would have, I  
11    would not have.

12    Q     Mr. Friedman also gave you copies of his  
13    letters to the Food and Drug Administration dated  
14    December 20, 2001, January 4, 2002, and August 10,  
15    2002; isn't that correct?

16    A     Yes, sir.

17    Q     And you published those letters on your  
18    website; didn't you?

19    A     I published those -- excuse me. I published  
20    those letters because I believed at the time, as I  
21    still do, that those letters support what was on my  
22    website and my website supported those letters.

23    Q     And did Mr. Friedman ever ask you not to  
24    publish those letters?

25    A     Not that I remember, no.

1                   Dominic Morgan - as on cross

2     Q     Did he ever ask you to remove those letters  
3     from the website?

4     A     I don't remember. I don't think he did. I'm  
5     not sure.

6     Q     Now, Mr. Friedman also gave you a copy of his  
7     letter to the Director of the Office of Criminal  
8     Investigation dated December 4, 2003; didn't he?

9     A     Yes.

10    Q     And you published that letter on your website;  
11    didn't you?

12    A     Yes, I did.

13    Q     And Mr. Friedman never told you not to publish  
14    it; did he?

15    A     I honestly don't remember.

16    Q     And he never asked you to remove it; did he?

17    A     Whether or not he may have asked me to remove  
18    it, I still, again, affirm that those letters  
19    support my website; my website supports those  
20    letters. It's my website. If he asked me to  
21    remove something, that's my choice, not his.

22    Q     I'm not disagreeing with that.

23           I'm just asking you whether or not he asked  
24    you to remove the letter after you published it on  
25    your website.

1                    Dominic Morgan - as on cross

2        A        I don't remember.

3        Q        Did Mr. Friedman ever ask you to remove  
4        anything that was on your website?

5        A        In November of '03 when Judge Sylvester  
6        ordered, you know, to go through the website.

7        Q        After that three days that he spent with you  
8        discussing your website, you removed certain items  
9        that Mr. Friedman suggested you remove; is that  
10       correct?

11       A        Before Mr. Friedman even -- and I even went  
12       through the website I removed all  
13       password-protected directories from the website.  
14       I'm not exactly sure what was on the website. I do  
15       remember after I removed the directories was when I  
16       reviewed the website.

17       Q        Mr. Friedman testified that he spent three  
18       days going over the content of your website.

19                    MS. FITZGERALD: Objection.

20                    Misstates the testimony.

21                    THE COURT: It's my recollection or  
22                    the jury's recollection. I will allow it.

23                    Overruled.

24        BY MR. SILVERMAN:

25        Q        Isn't it true that Mr. Friedman testified that

1                   Dominic Morgan - as on cross  
2     he spent three days, not full days, but three days  
3     going over the content of your website to discuss  
4     with you what items should be removed?

5     A     He stated that I believe -- and I'm not a  
6     hundred percent certain as far as you know what  
7     transpired -- that was back in '03. I don't  
8     remember everything.

9     Q     Okay. None of us do.

10            Did he ask you as a result of his going over  
11     your website during that three-day period to remove  
12     certain things?

13     A     I made changes. I'm not sure whether it was  
14     Mr. Friedman's suggestions or not. I'm not a  
15     hundred percent certain, Mr. Silverman.

16     Q     If he had asked you to remove certain items  
17     because he felt that that would be what Judge  
18     Sylvester wanted, would you have removed them?

19     A     That's hard to say. I may have, if that's  
20     what the Judge requested. I'm not certain. But it  
21     is my website, you know. I went through and I  
22     removed what I kind of thought was, you know -- I  
23     changed stuff. I changed a lot of stuff. I'm not  
24     sure.

25     Q     Okay.

1                   Dominic Morgan - as on cross

2                   Was any of -- were any of those changes made  
3 because Mr. Friedman suggested that you make those  
4 changes?

5           A     I'm not sure whether it was because of  
6 Mr. Friedman or whether it was Judge Sylvester.

7           Q     Okay.

8                   Now, after you published this letter of  
9 December 4, 2003, on your website, did Mr. Friedman  
10 call you or communicate with you somehow to say  
11 take that letter off your website?

12          A     Even if he had, I would not have.

13          Q     Do you recall --

14          A     No. I do not Mr. Silverman. I do not recall  
15 him ever asking me to remove it.

16          Q     Okay.

17                   At the time that he gave it to you, did he  
18 tell you not to publish it?

19          A     I don't remember. I don't believe so.

20          Q     Am I correct, Mr. Morgan, that you wrote to  
21 the American Academy of Ophthalmology in 2005?

22          A     Yes, sir.

23          Q     Okay.

24                   And you were seeking to have the Nevyases  
25 sanctioned for ethics violations; would that be



1                   Dominic Morgan - as on cross

2     correct?

3     A     That's correct.

4     Q     Did Mr. Friedman assist you in making that  
5     claim?

6     A     No. I based that letter on all the documents  
7     that were secured and all my medical records and  
8     everything -- it's a collaboration of everything.

9            I have documents to support what I had in that  
10    letter; and, you know, I believe they violated  
11    federal protocols, regulations, and, you know, I  
12    thought it was unethical. I thought their practice  
13    was unethical as far as I was concerned.

14    Q     Did you discuss that letter with Mr. Friedman,  
15    your complaint, before you made it to the American  
16    Academy of Ophthalmology?

17    A     I don't remember whether I did.

18    Q     But in that complaint that you made to the  
19    American Academy, isn't it correct that you stated  
20    that the Nevyases operated on you with a Lasik  
21    procedure before they had an IDE in place?

22    A     That's already been discussed. I received  
23    information stating that their approval was in  
24    August of 1998. That was the information from the  
25    Freedom of Information Act that was given to me.

1                   Dominic Morgan - as on cross

2       And I did not know that it was either a  
3       typographical error -- but that's what I based that  
4       letter on, yes.

5       Q     Okay.

6               And did you confirm that with Mr. Friedman?

7       A     No, I did not.

8       Q     Did Mr. Friedman know that you claimed that  
9       you had been operated on before the Nevyases had an  
10      IDE?

11      A     One more time, please.

12      Q     Did you tell Mr. Friedman or did Mr. Friedman  
13      tell you that the Nevyases had operated on you  
14      before they had an IDE?

15      A     I based all that information on documents  
16      received from the FDA.

17      Q     And it had -- you didn't discuss it with  
18      Mr. Friedman at all?

19      A     I don't remember all the discussions that I  
20      had with Mr. Friedman.

21      Q     Okay.

22             And did you also make a complaint against the  
23      Nevyases to the State of New Jersey requesting that  
24      their license to practice medicine be revoked?

25      A     I believe I did, yes.

1                   Dominic Morgan - as on cross

2     Q     Did you make a similar claim to the  
3     Commonwealth of Pennsylvania asking that the  
4     Nevyases' license to practice medicine be revoked  
5     in Pennsylvania?

6     A     Yes, I did.

7     Q     Did you make a complaint to the Philadelphia  
8     Medical -- the Philadelphia County Medical Society  
9     asking that they be sanctioned?

10    A     Yes, I did.

11    Q     And am I correct, Mr. Morgan, that not any one  
12    of these entities found in your favor, and your  
13    complaints were all dismissed?

14    A     Yes, sir.

15    Q     You started a series of websites; did you not?  
16    Recently?

17    A     Yes, I did.

18    Q     And these websites were designed by you; were  
19    they not?

20    A     Do you want to name the websites?

21    Q     I will. I just want to confirm that they were  
22    designed by you.

23    A     Do you want to name the websites?

24    Q     Okay.

25           Lasikdecision.com?

1                                    Dominic Morgan - as on cross

2     A     Yes.

3     Q     Flawedlasik.com?

4     A     Yes.

5     Q     LasikFDA.com?

6     A     Yes.

7     Q     Nevyasmorgan.com?

8     A     NevyasVmorgan.com.

9     Q     Lasiksucks4u2.com.

10    A     Yes.

11    Q     Lasikliberty.com.

12    A     That was acquired in May of 2008. That was

13    from another Lasik causality. It was given to me.

14    Q     And you also created websites called

15    Nevyaslasik.com did you not?

16    A     I did.

17    Q     Anitanevyaslasik.com.

18    A     Yes.

19    Q     Herbertnevyaslasik.com?

20    A     Yes.

21    Q     Now, those last three websites were designed,

22    were they not, to get the reader to believe that

23    these were official websites of the Nevyases?

24    A     No, they were not.

25    Q     They weren't?

1                                   Dominic Morgan - as on cross

2     A     No, sir.

3     Q     But you knew that there could be a confusion;  
4     didn't you?

5     A     No.

6     Q     You thought that when you created the website,  
7     NevyasLasik.com that they wouldn't think that that  
8     was a -- an official website of the Nevyas,  
9     Drs. Nevyas?

10    A     No.

11    Q     And when you wrote and when you created the  
12    website Anitanevyaslasik.com, you don't -- you  
13    didn't think that people would confuse --

14    A     No.

15    Q     -- that with an official website of Dr. Anita  
16    Nevyas-Wallace?

17    A     Mr. Silverman, my first paragraph in all three  
18    of those websites -- and excuse me if I may have  
19    taken it out of context -- but my refractive  
20    experience with Drs. Nevyses and their efforts  
21    to -- sorry. I don't remember the specifically  
22    what's on there as far as that, but they state,  
23    okay, that they are criticism sites.

24    Q     And you refer people who go to those sites to  
25    other doctors that perform Lasik surgery; don't

1                   Dominic Morgan - as on cross

2     you? Yes or no?

3     A     Lasik -- if you're referring to the Lasik Info  
4     Center Website.

5     Q     I'm referring to --

6     A     Is that the one you are referring to?

7     Q     I am referring to Herbertnevyaslasik.com.

8     A     Okay.

9             Then you are taking it out of context.

10    Q     Is it true or not, Mr. Morgan, that there is a  
11    link on that website to another doctor that  
12    performs Lasik surgery?

13    A     Again, are you talking about the Lasik Info  
14    Center Link on that website?

15    Q     Well, you tell me about the Lasik Center.

16    A     Lasik Info Center was previously owned by  
17    Mr. Perchanski (ph), a lawyer in New York who was  
18    also a Lasik causality. Okay. I don't know  
19    whether he sold or gave the website up. Okay.

20             His website listed a lot of information that I  
21    thought was useful to Lasik causalities. It listed  
22    civil matters regarding other doctors and what have  
23    you. That link has been on my website since pretty  
24    much began talking to Mr. Perchanski. Excuse me.

25             I was unaware that the website was sold. I

1                   Dominic Morgan - as on cross  
2           was unaware that the content of the website had  
3           changed. I didn't know that it listed all that  
4           until previously, several months ago.

5           Q     But you were putting up these websites, were  
6           you, in order to criticize the Nevyases?

7           A     I was putting up these websites to warn other  
8           perspective Lasik patients what could happen to  
9           them.

10          Q     And you wanted particularly to criticize the  
11          Nevyases who had operated on you; isn't that --

12          A     No. I wanted to put my experience up, and I  
13          wanted basically to prove everything, all  
14          allegations in my medical malpractice lawsuit.

15          Q     Because on each of these websites you state  
16          that the Nevyases damaged your eyes; isn't that  
17          correct?

18          A     And I still do, yes.

19          Q     Mr. Morgan, in this lawsuit, there were  
20          requests for admissions that were sent to you, and  
21          you -- if you look at Tab No. 43.

22                         MR. MORGAN: Your Honor, may I?

23                         THE COURT: Yes.

24                         MR. SILVERMAN: Do you want to take  
25                         the book with you?

1 Dominic Morgan - as on cross

2 MR. MORGAN: Which book?

3 MR. SILVERMAN: It's Book No. 1.

4 MS. FITZGERALD: Your

5 Honor -- excuse me one second.

6 - - - - -

7 (Pause.)

8 - - - - -

9 MS. FITZGERALD: It's my

10 understanding that there's a series of  
11 requests for admissions directed to Mr. Morgan  
12 that were unanswered.

13 At the time that they were served on  
14 him, Dr. Friedman had been sued and he had  
15 been representing Mr. Morgan. I wasn't  
16 involved in the case yet, but it's my  
17 understanding there was a conference with  
18 Judge Rizzo.

19 Because Mr. Morgan no longer had  
20 counsel, there was a directive that these  
21 discovery requests did not have to be answered  
22 and that the information should be obtained in  
23 another format. That's my understanding.

24 THE COURT: In other words,  
25 Dr. Friedman was sued in this case after



1                   Dominic Morgan - as on cross

2                   Mr. Morgan.

3                   MS. FITZGERALD: Oh, six -- almost  
4                   eight months after. And at the time that  
5                   they -- he was sued, that's when all of these  
6                   requests were served.

7                   THE COURT: I will note that --

8                   MS. LAPAT: Your Honor, I would like  
9                   to make it clear for the record that despite  
10                  Mr. Friedman taking action to get permission  
11                  to withdraw as counsel, he did not withdraw as  
12                  counsel. He continued to represent  
13                  Mr. Morgan, represented him at the trial in  
14                  front of Judge Maier, and that other sets of  
15                  the requests for admissions were admitted into  
16                  the record by Judge Maier at the earlier  
17                  trial.

18                  THE COURT: You're saying that as  
19                  recently as -- when was the trial before Judge  
20                  Maier?

21                  MS. LAPAT: 2005.

22                  THE COURT: As recently as 2005,  
23                  Mr. Friedman represented not only -- he  
24                  represented Mr. Morgan?

25                  MS. LAPAT: Correct.