

PHILADELPHIA COURT OF COMMON PLEAS
PETITION/MOTION COVER SHEET

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November Term, 2003
 Month Year
 No. 00946

NEVYAS ETAL VS MORGAN

Name of Filing Party:
ANITA NEVYAS-WALLACE-PLF
HERBERT J NEVYAS-PLF
NEVYAS EYE ASDSOCIATES-PLF

INDICATE NATURE OF DOCUMENT FILED:
 Petition (*Attach Rule to Show Cause*) Motion
 Answer to Petition Response to Motion

Has another petition/motion been decided in this case? Yes No
Is another petition/motion pending? Yes No
If the answer to either question is yes, you must identify the judge(s):

TYPE OF PETITION/MOTION (<i>see list on reverse side</i>)		PETITION/MOTION CODE (<i>see list on reverse side</i>)	
ANSWER (MOTION/PETITION) FILED		MTANS	
ANSWER / RESPONSE FILED TO (Please insert the title of the corresponding petition/motion to which you are responding): MTMIS - MISCELLANEOUS MOTION			
I. CASE PROGRAM NON JURY PROGRAM		II. PARTIES (<i>required for proof of service</i>) (Name, address and telephone number of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.) JEFFREY B ALBERT 48 OAKWOOD DRIVE , DRESHER PA 19025 CARL HANZELIK DILWORTH PAXSON LLP 3200 MELLON BANK CENTER 1735 MARKET STREET , PHILADELPHIA PA 19103 PETER J HOFFMAN ECKERT SEAMANS CHERIN MELLOTT TWO LIBERTY PLACE 50 SOUTH 16TH ST 22ND FLOOR , PHILADELPHIA PA 19102 LEON W SILVERMAN 230 S. BROAD STREET 17TH FLOOR , PHILADELPHIA PA 19102 HERBERT J NEVYAS 1528 WALNUT ST , PHILADELPHIA PA 19102	
III. OTHER			

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

 (Attorney Signature/Unrepresented Party) July 17, 2009 LEON W. SILVERMAN (Attorney I.D. No.)
 (Date) (Print Name)

The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date. No extension of the Answer/Response Date will be granted even if the parties so stipulate.

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and	:	
NEVYAS EYE ASSOCIATES, P.C.	:	NOVEMBER TERM, 2003
Plaintiffs	:	NO.: 946
vs.	:	
DOMINIC MORGAN,	:	
STEVEN FRIEDMAN	:	
Defendants.	:	

ORDER

AND NOW, this day of , 2009, upon
consideration of Defendant Steven A. Friedman, M.D., J.D., L.L.M.'s Motion to Determine
Plaintiffs' Public Figure Status and Plaintiff's Response thereto, it is hereby ORDERED that
Defendant's Motion in DENIED. It is further ORDERED that Plaintiffs are private figures for
purposes of this litigation.

J.

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STEVEN FRIEDMAN	:	
Defendants.	:	

**PLAINTIFFS' RESPONSE TO DEFENDANT'S
MOTION TO DETERMINE WHETHER PLAINTIFFS ARE
PRIVATE FIGURES OR LIMITED PURPOSE PUBLIC FIGURES**

Plaintiffs, Herbert J. Nevyas, M.D., Anita Nevyas Wallace, M.D., and Nevyas Eye Associates, P.C. (collectively "Nevyas"), by and through their undersigned counsel, hereby respond to and oppose Defendant Steven Friedman's Motion, and assert that they are private figures in this defamation action. Plaintiffs aver as follows:

1. Admitted that Herbert J. Nevyas, M.D. is a practicing ophthalmologist in Pennsylvania and New Jersey and is the 60% owner of the corporate defendants. The remainder of the allegations, which lack any citation to the record, are denied as stated. To the contrary, Dr. Nevyas has spent many years building his practice and looking for ways to improve the practice of medicine.
2. Admitted that Anita Nevyas Wallace, M.D. is a practicing ophthalmologist in Pennsylvania and New Jersey and is the 40% owner of the corporate defendants. The remainder of the allegations, which lack any citation to the record, are denied as stated.

To the contrary, Dr. Wallace has spent many years building her practice and looking for ways to improve the practice of medicine.

3. Admitted that NEA is a professional corporation. Denied that it has offices “located throughout Pennsylvania.” To the contrary, NEA has three offices in the Philadelphia area.
4. Denied in part; admitted in part. Plaintiffs admit only that defendant Dominic Morgan underwent LASIK surgery performed by Dr. Wallace in 1998. Plaintiffs deny that the outcome of the surgery was poor and further deny that Morgan is now legally blind. To the contrary, Morgan visited approximately twenty other eye doctors following his surgery, each of whom informed Morgan that the surgery had been performed correctly. Despite this overwhelming professional concurrence, Morgan hired Defendant Friedman to bring suit against Plaintiffs, bringing claims against Nevyas for medical malpractice, lack of informed consent, deceptive trade practices, violation of the Pennsylvania Trade and Consumer Protection law, and punitive damages. Included in these counts were allegations that Nevyas also violated the FDA and the Federal Anti-Kickback Act and Federal False Claims Act. All claims other than the medical malpractice claim were dismissed by the Court. The parties then submitted the medical malpractice dispute to binding arbitration, which rendered a defense verdict. The fact finder rejected Morgan’s contention that the surgery was not done properly.
5. Denied in part; admitted in part. Plaintiffs, after reasonable investigation, have insufficient information to determine whether Defendant Friedman is a practicing physician and therefore deny this allegation. The remainder of the allegations in

paragraph 5 are admitted. By ways of further answer, Plaintiffs incorporate their response to paragraph 4 above.

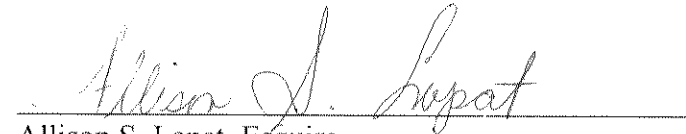
6. Denied as stated; admitted in part. Plaintiffs admit that Morgan created his website “lasiksucks4you.com” in 2003 because he was angry that a defense verdict was entered on Plaintiff’s behalf. Plaintiffs further admit that Morgan posted letters written by Friedman, and which Friedman provided to Morgan with the knowledge and expectation that Morgan would post those letters, containing false and defamatory content on his website. Plaintiffs deny that the only letters posted were those sent to the FDA and state to the contrary that Friedman sent letters containing false and defamatory statements to other organizations as well and that Morgan also posted these letters on his website. Plaintiffs deny Friedman's characterization of Morgan’s website, and state to the contrary that Morgan’s website contains numerous false and defamatory statements concerning Plaintiffs.
7. Denied as stated. Plaintiffs brought this action against Morgan and Friedman as a result of the false and defamatory statements each defendant published. Friedman's defamatory statements were published on Morgan’s website, but Friedman also published the letters by mailing them to the entities to which they were addressed.
8. Denied as a statement of law.
9. Denied that Plaintiffs are public figures. Plaintiffs are two doctors and their professional corporation who are not the focus of any public controversy and in no way injected themselves into any public controversy. This dispute concerns a purely private matter that has received absolutely no media attention and is of no interest to any person other than the participants.

10. Denied as a statement of law. Gertz v. Robert Welsh, Inc., 418 U.S. 323 (1974) set forth the “requirement that in order for [private] individuals . . . to merit public figure status, they must ‘have thrust themselves to the forefront of particular public controversies.’” Iafrate v. Hadesty, 621 A.2d 1005, 1008 (Pa. Super. 1993) citing Gertz. “Moreover, ‘those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure.’” Iafrate at 1008, citing Hutchinson v. Proximate, 443 U.S. 111, 135 (1979).
11. Denied. Plaintiffs are not public figures, and Defendant’s reliance on the fact that Plaintiffs advertise is misplaced. While access to media is one element that may be considered, the more important element is whether the Plaintiff has “thrust” itself into a public controversy. American Future Systems, Inc. v. Better Business Bureau of Eastern Pennsylvania, 923 A.2d 389, 403 (Pa 2007). Thus, despite extensive advertising and access to the media, courts have held that Hewlett-Packard is not a limited purpose public figure (Computer Aid, Inc. v. Hewlett-Packard Co., 56 F.Supp.2d 526 (E.D. Pa. 1999) and that U.S. Healthcare is not limited purpose public figures (U.S. Healthcare v. Blue Cross of Greater Philadelphia, 898 F.2d 914 (3rd Cir. 1990)
12. Denied. Plaintiffs deny that any public dispute exists over LASIK surgery in general or over Plaintiffs’ performance of LASIK surgery in particular. Moreover, no evidence exists that Plaintiffs’ have taken any action to thrust themselves into any public controversy. Rather, mere commercial speech, designed to attract business, does not constitute thrusting oneself into a public controversy. U.S. Healthcare v. Blue Cross of Greater Philadelphia, 898 F.2d 914, 939 (3rd Cir. 1990)

13. Admitted that Plaintiffs have attempted to defend themselves from the false and defamatory statements published by defendants. Denied that taking such defensive action in any way makes Plaintiffs into public figures. To the contrary, “those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure.” Iafrate at 1008, citing Hutchinson v. Proximate, 443 U.S. 111, 135 (1979).

Respectfully submitted,

Stein & Silverman, P.C.

A handwritten signature in cursive script, reading "Allison S. Lapat", is written over a horizontal line.

Allison S. Lapat, Esquire
Attorney for Plaintiffs,
Dr. Herbert Nevyas and
Dr. Anita Wallace-Nevyas

CERTIFICATE OF SERVICE

I, Florence R. Falance, hereby certify that on July 17, 2009, I have caused a true and correct copy of Plaintiffs' Response to Defendant's Motion to Determine Whether Plaintiffs are Private Figures or Limited Purpose Public Figures and Memorandum in support thereof to be served via first class mail postage prepaid to the following individual listed below:

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Law Offices of Steven Friedman
850 West Chester Pike
Havertown, PA 19083

Maureen Fitzgerald, Esquire
McKissock & Hoffman, P.C.
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Florence R. Falance

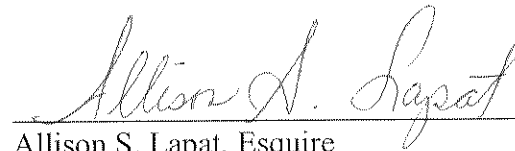
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HERBERT J. NEVYAS, M.D.	:	COURT OF COMMON PLEAS
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and	:	
NEVYAS EYE ASSOCIATES, P.C.	:	NOVEMBER TERM, 2003
Plaintiffs	:	NO.: 946
vs.	:	
DOMINIC MORGAN,	:	
STEVEN FRIEDMAN	:	
Defendants.	:	

**PLAINTIFFS' RESPONSE TO DEFENDANT'S
MOTION TO DETERMINE WHETHER PLAINTIFFS ARE
PRIVATE FIGURES OR LIMITED PURPOSE PUBLIC FIGURES**

STEIN & SILVERMAN, P.C.



Allison S. Lapat, Esquire
Attorney for Plaintiffs,
Dr. Herbert Nevyas and
Dr. Anita Wallace-Nevyas

Dated: July 17, 2009

MEMORANDUM IN SUPPORT OF PLAINTIFFS' RESPONSE
TO DEFENDANT'S MOTION TO DETERMINE WHETHER PLAINTIFFS
ARE PRIVATE FIGURES OR LIMITED PURPOSE PUBLIC FIGURES

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COUNTER-STATEMENT OF THE QUESTIONS PRESENTED:

1. Does an actual public controversy, the outcome of which affects the public or some segment of it in some appreciable way, exist in this case?
2. Suggested Answer: No.
3. Did each of the three Plaintiffs thrust him, her or itself into the public controversy?
4. Suggested Answer: No.
5. Is Herbert J. Nevyas, M.D. a public figure?
6. Suggested Answer: No.
7. Is Anita Nevyas-Wallace, M.D. a public figure?
8. Suggested Answer: No.
9. Is Nevyas Eye Associates, P.C. a public figure?
10. Suggested Answer: No.

I. INTRODUCTION:

The issue currently before the Court is whether Herbert J. Nevyas, M.D., Anita Nevyas-Wallace, M.D. and/or Nevyas Eye Associates, P.C. should be considered public figures in this defamation action which they have brought against Defendant Friedman. The law distinguishes between general purpose public figures, who are celebrities, and limited purpose public figures, who are not celebrities but who “have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved.” Gertz v. Robert Welch, Inc., 418 U.S. 323, 345 (1974.) A “public controversy” is “not simply a matter of interest to the public; it must be a real dispute, the outcome of which affects the general public or some segment of it in an appreciable way.” Joseph v. Scranton Times, L.P., 959 A.2d 322, 340 (Pa. Super. 2008.) Defendants concede that none of the Plaintiffs is a general purpose public figure.

Friedman presents no evidence that any of the Plaintiffs has thrust his, her or itself to the forefront of any public controversy. Friedman attempts to establish that a public controversy exists by pointing to eighteen newspaper articles published throughout the country during an eight year period. Significantly, not one of these newspaper articles so much as mentions the name Nevyas. It is hard to imagine how Plaintiffs can be seen as public figures, who have “thrust themselves to the forefront of a public controversy,” when they do not appear in even one of the articles which, Friedman argues, comprise that public controversy.

Friedman ignores the fact that the newspapers do not appear to even know that Nevyas exists. Rather than address this obvious evidentiary failing, he asks this Court to find that Nevyas is a public figure based solely on evidence that Nevyas advertises its ophthalmological practice.

Advertising alone is insufficient as a matter of law to turn a private figure into a public one. Pennsylvania Courts have held that neither Hewlett-Packard (Computer Aid, Inc. v. Hewlett-Packard Co., 56 F.Supp.2d 526 (E.D. Pa. 1999)) nor U.S. Healthcare (U.S. Healthcare v. Blue Cross of Greater Philadelphia, 898 F.2d 914 (3rd Cir. 1990)) were limited purpose public figures, and both of these large, publicly traded companies advertise far more extensively than Plaintiffs.

Herbert J. Nevyas, M.D., and his daughter Anita Nevyas-Wallace, M.D. are two ophthalmologists who conduct a private practice. They have sought to promote their practice. They have not become involved in any public controversy, despite Defendants' best efforts to generate such a controversy. Friedman has not come forward with even one newspaper article about LASIK which even mentions Nevyas. Plaintiffs are not public figures.

II. FACTUAL BACKGROUND:

1. The Relationship Between the Parties:

Defendant Dominic Morgan was unhappy with the result of the LASIK procedure he chose to have performed by Dr. Anita Nevyas-Wallace. The approximately twenty other ophthalmologists Morgan consulted following the procedure each told Morgan that nothing was wrong with the way in which the procedure had been performed.

Morgan was not satisfied and engaged an attorney, Defendant Steven Friedman, to represent him in a lawsuit against not only Anita Nevyas-Wallace, M.D. but also Herbert J. Nevyas, M.D. and their practice, Nevyas Eye Associates, P.C. (collectively "Nevyas") and others. Morgan and Friedman, brought claims against Nevyas for medical malpractice, lack of informed consent, deceptive trade practices, violation of the Pennsylvania Trade and Consumer Protection law, and punitive damages. Included in these counts were allegations that Nevyas also violated the FDA and the Federal Anti-Kickback Act and Federal False Claims Act.

The FDA claims were based on the fact that the laser Nevyas used in performing the LASIK on Morgan was a device that Nevyas was developing for its own use under an Investigational Device Exemption (IDE) from the FDA. Although Nevyas owned and used other lasers, Nevyas thought that a better laser was possible. When a new laser became available on the market which Nevyas found to be an improvement over the previously available lasers, he purchased this laser for his own use and discontinued his IDE with the FDA.

All Morgan's claims other than the medical malpractice claim against Anita Nevyas-Wallace, M.D. were dismissed before trial. A true and correct copy of the docket in the underlying malpractice action is attached as Exhibit 1.

The parties then agreed to high-low arbitration to decide the sole remaining claim. The arbitrator rendered a defense verdict, and Nevyas paid Morgan the agreed upon low payment of \$100,000. Morgan did not appeal, and a final judgment was entered in favor of Nevyas on all Counts of the Complaint. Exhibit 1.

2. Defendant's Campaign to Defame Nevyas:

Neither Morgan nor Friedman were satisfied with the result of their lawsuit against Nevyas, and began a campaign to punish Nevyas through publishing false and defamatory statements about Nevyas. Morgan began a web site called lasiksucks4you.com.

Friedman, following his unsuccessful lawsuit against Nevyas, wrote letters to the FDA and to the American Academy of Ophthalmology which Friedman gave to Morgan to publish on his website. These letters form the basis of Plaintiffs' claims against Friedman. A true and correct copy of Friedman's letter to the FDA is attached as Exhibit 2. A true and correct copy of Friedman's letters to the American Academy of Ophthalmology are attached as Exhibit 3.

In his letter to the FDA (Exhibit 2), Friedman wrote "I regard action as urgent, because I believe federal regulation has been flaunted and patients seriously injured." Friedman followed this statement, which is defamatory per se, with the accusation that Nevyas has participated in "outright criminal activity." Emphasis original. Later in the letter he accuses Nevyas of "criminal behavior" and "improprieties." Emphasis original. Friedman sent this letter although, as he admits in his letter, he had already been told by the FDA that Nevyas' IDE had been terminated. Exhibit 2.

Friedman also sent letters to the American Academy of Ophthalmology, in which he accuses Nevyas of unethical behavior. Exhibit 3. These letters are particularly pernicious, because they reference "thousands of pages of documents" which Friedman tells the Ethical Committee he cannot show them because Nevyas has demanded that they remain confidential. The clear implication of Friedman's letter is that the American Academy of Ophthalmology would find Nevyas' behavior unethical if they could only see the documents.

3. Friedman Offers No Evidence that a Public Controversy Exists:

No public controversy exists concerning the subject of these letters, despite Defendants attempts to create such a controversy. Defendant Friedman knew, at the time he sent his letter to the FDA, that Nevyas's laser was not going to be submitted for FDA approval. Exhibit 2. Moreover, even had Nevyas' IDE been ongoing, no public controversy existed concerning Nevyas' IDE or his laser. Friedman has not come forward with even one newspaper article or other publication not written by himself or by his co-defendant concerning Nevyas' IDE, Nevyas' laser or whether the FDA should approve Nevyas' laser.

Moreover, Friedman fails to come forward with any newspaper article discussing allegations of Nevyas' criminal conduct, Nevyas' involvement with the FDA or Nevyas' ethics. The only people this dispute concerns are the parties to this lawsuit. The issues between Nevyas and Defendants were not part of a public controversy. They were not even deemed newsworthy by any newspaper or other media outlet except internet sites authored by Defendants.

Friedman attempts to convince this Court that a "public controversy" exists by pointing to a grand total of 18 newspaper articles which mention LASIK published anywhere in the country (and one in England) during an eight (8) year period. See Friedman's brief at 15-16. Not one of these articles so much as mentions Nevyas.

Indeed, only two articles cited by Friedman in this eight year period were even published in Philadelphia. They are dated July 27, 1996 and June 4, 2002, almost six years apart. Clearly no burning debate over LASIK was filling the pages of the Philadelphia Inquirer. The second and final article was entitled: "Guidelines for Laser Surgery." The article is merely informative and not the product of or reporting on any public controversy.

Similarly, the other articles cited by Friedman basically track the popularity of LASIK, developments in LASIK and provide information to consumers interested in LASIK. A sampling of the articles cited by Friedman include "Under the Laser, Up Close and Personal," "Eyes Wide Open; Lasik Surgery; A Guide to the Marketplace," "Laser Eye Surgery's Turf War" and "Fewer People Choosing Lasers Over Lenses." Nothing in these articles evidences any public controversy over LASIK in general or over Nevyas laser in particular.

Significantly, Nevyas is not even mentioned in any of these articles. Nevyas cannot be a public figure who has thrust him, her or itself to the forefront of a controversy if the name Nevyas does not so much as appear in even one of the articles purporting to be evidence of a controversy.

Friedman has no evidence that a public controversy existed, let alone that Nevyas thrust themselves into any such controversy. The evidence which Friedman has presented to the Court is inadequate under the case law to enable this Court to hold that any of the Plaintiffs is a public figure.

III. LEGAL ARGUMENT:

Friedman fails to establish any of the elements necessary for this Court to hold that any of the Plaintiffs are public figures.

1. No Public Controversy Exists:

Friedman does not even assert that any public controversy exists specific to any of the Plaintiffs, and indeed, Friedman fails to provide even one newspaper article to the Court in which Nevyas or his laser is mentioned, let alone discussed or debated. Rather, Friedman attempts to argue to the Court that "The Topic of LASIK Surgery Was A Matter of Public Concern and Controversy that Existed Prior to Morgan's Website." Friedman's Brief at 15-16.

Friedman focuses only on LASIK generally, rather than any specific dispute, arguing that “a tremendous amount of publicity was devoted to LASIK eye surgery, its risks, complications and the use of lasers for the procedures.” Leaving aside the factual accuracy of this statement (which a quick reading of the scant number of headlines disproves), the amount of “publicity” received by LASIK is not relevant. The only issue which is relevant is whether the publications concerned an ongoing “public controversy.”

An actual public controversy “is not simply a matter of interest to the public.” Joseph v. Scranton Times, L.P., 959 A.2d 322, 340 (Pa. Super. 2008.) Rather an actual public controversy “must be a real dispute, the outcome of which affects the general public or some segment of it in some appreciable way.” Id., emphasis added.

The Superior Court instructed that, “[t]o determine whether a controversy indeed existed the judge must examine whether persons actually were discussing some specific question. A general concern or interest does not suffice.” Id., emphasis added. Thus, articles on the general topic of LASIK are not evidence of a “public controversy” because they are not focused on any “specific question” and they do not argue for any particular “outcome.” Rather, relevant evidence would include whether “the press was covering the debate, reporting what people were saying and uncovering facts and theories to help the public formulate some judgment.” “Mere newsworthiness alone does not create a public controversy.” Id. Only “[i]f the issue was being debated publicly and if it had foreseeable and substantial ramifications for non-participants” is it a “public controversy.” Id., emphasis added.

Friedman fails to identify for the Court what “specific question” was being debated, what the possible outcome of the debate might be, how any of the Plaintiffs’ were going to influence the outcome (or indeed how any of the Plaintiffs were even involved in a controversy in which their names were never mentioned), and what the foreseeable and substantial ramifications were that would impact anyone other than Plaintiffs and Defendants in this matter.

The articles cited by Defendant Friedman do not concern any one “specific question.” No issue was being debated. Rather LASIK was and continues to be an optional procedure that is available to consumers. Not one article was arguing that LASIK should be outlawed or campaigning for any other specific outcome. Friedman fails to present evidence of any debate. He simply shows that, like many products available to consumers, LASIK in general received some minor news coverage. So do cars, computers, and cell phones. The fact that articles may be written about these products is not evidence of a specific public controversy regarding these products.

Moreover, not only do the articles fail to mention, discuss or quote Nevyas, but also those articles, which generally discuss LASIK, are in no way related to the defamatory statements made by Friedman. Friedman accuses Nevyas of “outright criminal conduct” and “unethical” behavior. No public controversy or debate existed concerning whether Nevyas was a criminal or was unethical. Friedman's accusations came solely from Friedman. They were not part of or related to any public controversy. They were simply made as part of Friedman's private vendetta against Nevyas. One person's private vendetta against another does not transform a private figure into a public one.

2. Friedman Has No Evidence that Plaintiffs' Thrust Themselves into Any Particular Public Controversy:

Friedman cannot prove that Nevyas “thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved,” (Gertz, 418 U.S. at 345,) because Friedman failed to prove that any public controversy even exists. Moreover, to the extent the few newspaper articles cited by Friedman could be seen as a “public controversy,” none of the Plaintiffs’ thrust themselves to the forefront of that controversy. Indeed, not one of the Plaintiffs garners a mention in even one of the articles which Friedman claims constitute the controversy.

Friedman is asking the Court to ignore “Gertz’s requirement that in order for private individuals . . . to merit public figure status they must have ‘thrust themselves to the forefront of particular public controversies.’” Iafrate v. Hadesty, 621 A.2d 1005, 1008 (Pa. Super. 1993.) Friedman, instead, asks this Court to hold that Plaintiff doctors and their practice are public figures based solely on the fact that they advertise their practice.

This Court need only look to two decisions of other Pennsylvania Courts to understand that merely advertising products or services cannot turn a person or entity into a public figure. Pennsylvania Courts have held that neither Hewlett-Packard (Computer Aid, Inc. v. Hewlett-Packard Co., 56 F.Supp.2d 526 (E.D. Pa. 1999)) nor U.S. Healthcare (U.S. Healthcare v. Blue Cross of Greater Philadelphia, 898 F.2d 914 (3rd Cir. 1990)) were limited purpose public figures, and both of these large, publicly traded companies advertise far more extensively than Plaintiffs.

Friedman relies on Steaks Unlimited, Inc. v. Deaner, 623 F.2d 264 (3rd. Cir. 1980) and American Future Systems, Inc. v. Better Business Bureau of Eastern Pennsylvania, 923 A.2d 389 (Pa. 2007.) Neither of these cases overrules the United States Supreme Court’s decision in Gertz. Rather, these cases look to the instruction in Gertz that a court must consider the “nature and extent of an individual’s participation in the particular controversy giving rise to the defamation.” American Future, 923 A.2d at 401. In those cases, the court found that the plaintiff’s advertising was so extensive and so connected to a particular public controversy that the advertisements themselves thrust the plaintiff to the forefront of that particular controversy.

In Steaks, the plaintiff engaged in a “marketing blitz” concerning the price and quality of its meat. Steaks Unlimited spent \$16,000 of 1976 money in four days to saturate the Pittsburgh market. Consumers then instigated a public controversy over the quality of the meat by complaining to the Bureau of Consumer Affairs. Defendant, a consumer reporter, began reporting on this controversy. The Court found that Steaks Unlimited had thrust itself to the forefront of the on-going public controversy over the quality of its meat through the intensity of its advertising campaign which was focused on the same issue as the alleged defamation -- the quality of the meat.

Similarly in American Future, the Court held that the defendant must demonstrate a close “subject-matter nexus” between the advertisements, the public controversy and the defamatory statements. The Court explained that a person becomes a limited purpose public figure “based not only on the fact of extensive promotional advertising, but upon a ‘direct relationship between the promotional message and the subsequent defamation (indicating plaintiff’s pre-existing involvement in the particular matter of public concern and controversy.)’” American Future Systems, 923 A.2d 389, 403 (Pa. 2007), emphasis added.

In American Future the plaintiff “employed a force of 500 telemarketers at fifteen locations throughout the country to solicit 15,000 customers per week.” Id. at 404. These “employees made approximately 25 million phone calls per year and actually spoke with 2.2 million business executives annually.” Id. These telemarketers “touted the cancellation policy and the purported lack of any risk in ordering a subscription; the Bureau’s reports [the source of the alleged defamation] had at their core these same issues” Id. at 403, emphasis added.

Nothing in Steaks or American Future undermines the necessity of plaintiffs purposefully thrusting themselves to the forefront of a particular public controversy in order to influence the resolution of the issues involved before they may be considered public figures. Both require a “direct relationship” or close “subject-matter nexus” between the public controversy, the advertisements and the defamatory statements. Advertising which is not directly related to the defamation and is not the source of a plaintiff’s involvement in the particular public controversy in which the defamation occurred is irrelevant. See also Computer Aid, Inc. v. Hewlett-Packard Co., 56 F.Supp.2d 526 (E.D. Pa. 1999); U.S. Healthcare v. Blue Cross of Greater Philadelphia, 898 F.2d 914 (3rd Cir. 1990).

In Hemispherx Biopharma, Inc. v. Asensio, 55 Pa. D&C.4th 502 (Pa. Common Pleas 2001) (Sheppard, J.), this Court refused to hold the plaintiff as a public figure despite the fact that the plaintiff did more advertising than Nevyas and despite the greater nexus between that advertising and the defamatory statements. In Hemispherx, the defendant commented directly on Ampligen, the very drug which was the subject of plaintiff’s advertising and press-releases. The defamatory statements included that Ampligen was “toxic,” had “no medical or economic value” and that plaintiff “HBI” had made “fraudulent misrepresentations about Ampligen’s FDA filing status.” Hemispherx at *2. The court found that “HBI’s stock is traded on the AMEX, HBI promotes Ampligen in press-releases, HBI has released the results of clinical trials regarding Ampligen that has resulted in over two hundred peer-review publications and articles, and HBI has solicited research grants from the federal government.” Id. at *8. Yet despite HBI’s direct advertising of Ampligen, its status as a publicly traded company, and the close subject-matter nexus between the advertisements and the defamatory statements, this court held that HBI was not a public figure.

HBI and its drug Ampligen are much more “public” than Nevyas and its laser, even were the laser, rather than Nevyas’ alleged “outright criminal conduct” and “unethical” behavior,” the subject of Defendant Friedman’s defamation. While both Ampligen and the laser were subject to FDA regulation, Ampligen was the subject of debate within the medical community and was the subject of over two hundred peer-review articles. The laser has never been the subject of any article not authored by Friedman or his co-defendant Morgan. Nevyas has not sought public

funding for its laser, nor is Nevyas a public company traded on AMEX or any other stock exchange. Moreover, HBI was still in the process of seeking FDA approval at the time the defamatory statements were made, while Nevyas had withdrawn the laser from FDA consideration before Friedman wrote his defamatory letters.

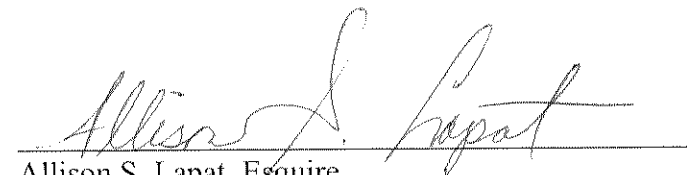
IV. CONCLUSION:

Nevyas should not be considered a public figure when companies which advertise far more heavily, are publicly traded, and are far more influential with far greater resources are not considered public figures. Moreover, without an actual public controversy (as opposed to the private controversy between the litigants, or even, in HBI's case, within the medical community) no amount of advertising can transform a private figure into a public one. The touchstone, as "required" by the United States Supreme Court in Gertz is whether plaintiffs "have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved." Gertz v. Robert Welch, Inc., 418 U.S. 323, 345 (1974.) The answer to that question is no.

No public controversy exists in this case. Not one of the newspaper articles cited by Friedman even mentions Nevyas. Friedman's defamatory statements are not related to any "public controversy," to the subject-matter of the newspaper articles or to any advertising by Plaintiffs. Friedman has accused two physicians and their private practice of "outright criminal activities" requiring "urgent action." Despite his attempts to create a public controversy, no such controversy was ever created. Herbert J. Nevyas, M.D., Anita Nevyas-Wallace, M.D. and their practice, Nevyas Eye Associates, P.C. are private figures. No evidence to the contrary exists.

Respectfully submitted,

Stein & Silverman, P.C.

A handwritten signature in cursive script, reading "Allison S. Lapat", is written over a horizontal line.

Allison S. Lapat, Esquire
Attorney for Plaintiffs,
Dr. Herbert Nevyas and
Dr. Anita Wallace-Nevyas

EXHIBIT “1”

Docket Report

Case Description

Case ID: 000402621
Case Caption: MORGAN VS HERBERT J NEVYAS MD ETAL
Filing Date: Wednesday, April 19th, 2000
Location: CH - City Hall
Case Type: 2M - MALPRACTICE - MEDICAL
Status: WSTBA - TRANSFERED BINDING ARBITRATION

Related Cases

No related cases were found.

Case Event Schedule

No case events were found.

Case Parties

Seq #	Assoc	Expn Date	Type	ID	Name
1			ATTORNEY FOR PLAINTIFF	A76402	FRIEDMAN, STEVEN A
Address:		850 W CHESTER PIKE HAVERTOWN PA 19083 (610)789-9989 - FAX		Aliases: none	
2	1		PLAINTIFF	@4097748	MORGAN, DOMINIC
Address:		EIGHT CHESTNUT ST OGDEN PA 19061		Aliases: none	
3	15		DEFENDANT	@4097749	NEVYAS MD, HERBERT J
Address:		1930 CHESTNUT ST PHILADELPHIA PA		Aliases: none	

		19103			
4	15	14-SEP-2000	DEFENDANT	@4097751	NEVYAS MD, JOANN Y
Address:	1930 CHESTNUT ST PHILADELPHIA PA 19103		Aliases:	none	
5	14		DEFENDANT	@4097753	NEVYAS-WALLACE MD, ANITA
Address:	1930 CHESTNUT ST PHILADELPHIA PA 19103		Aliases:	none	
6	14	05-JAN-2001	DEFENDANT	@4097754	WALLACE MD, IRA B
Address:	1930 CHESTNUT ST PHILADELPHIA PA 19103		Aliases:	none	
7	18	24-JUN-2002	DEFENDANT	@4097755	DEGLIN MD, EDWARD A
Address:	1930 CHESTNUT ST PHILADELPHIA PA 19103		Aliases:	none	
8	15	14-SEP-2000	DEFENDANT	@4097756	STEIN MD, MITCHELL
Address:	1930 CHESTNUT ST PHILADELPHIA PA 19103		Aliases:	none	
9	16		DEFENDANT	@4097757	NEVYAS EYE ASSOCIATES PC

Address:		1930 CHESTNUT ST PHILADELPHIA PA 19103	Aliases:		<i>none</i>
10	16		DEFENDANT	@4097758	NEVYAS EYE ASSOCIATES OF NEW JERSEY PC
Address:		1930 CHESTNUT ST PHILADELPHIA PA 19103	Aliases:		<i>none</i>
11		04-MAR- 2001	TEAM LEADER	J375	QUINONES ALEJANDRO, NITZA I
Address:		1418 CRIMINAL JUSTICE CENTER 1301 FILBERT STREET PHILADELPHIA PA 19107 (215)683-7151	Aliases:		<i>none</i>
12		10-MAY- 2001	ATTORNEY FOR DEFENDANT	A40923	SELL, JAMES S
Address:		GREG PROSMUSHKIN PC 9637 BUSTLETON AVENUE PHILADELPHIA PA 19115 (215)673-7733 (215)673-7933 - FAX	Aliases:		<i>none</i>
13		12-JUN- 2000	ATTORNEY FOR DEFENDANT	A23212	FITZPATRICK III, CHARLES A
Address:		1339 CHESTNUT	Aliases:		<i>none</i>

			STREET THE WIDENER BUILDING 16TH FLOOR PHILADELPHIA PA 19107 (215)563-2583 - FAX		
14			ATTORNEY FOR DEFENDANT	A48399	NEWMAN, ABBIE R
Address:			Aliases: <i>none</i>		
			POST & SCHELL FOUR PENN CENTER PLAZA 1600 JFK BLVD., 13TH FLOOR PHILADELPHIA PA 19103 (215)587-1000 (215)587-1444 - FAX		
15			ATTORNEY FOR DEFENDANT	A41338	KRAMER, KATHLEEN M
Address:			Aliases: <i>none</i>		
			18TH FLOOR 1845 WALNUT STREET PHILADELPHIA PA 19103 (215)575-2618 (215)575-0856 - FAX		
16			ATTORNEY FOR DEFENDANT	A4244	SILVERMAN, LEON W
Address:			Aliases: <i>none</i>		
			230 S. BROAD STREET 17TH FLOOR PHILADELPHIA PA 19102 (215)985-0342 -		

		FAX			
17		05-MAY-2002	TEAM LEADER	J286	MOSS, SANDRA M
Address:	392 CITY HALL PHILADELPHIA PA 19107 (215)686-7910		Aliases:	none	
18		24-JUN-2002	ATTORNEY FOR DEFENDANT	A60875	TROY, PAUL C
Address:	510 SWEDE ST. NORRISTOWN PA 19401 (610)275-2018 - FAX		Aliases:	none	
19		03-JAN-2003	TEAM LEADER	J326	BERNSTEIN, MARK I
Address:	530 CITY HALL PHILADELPHIA PA 19107 (215)686-7335		Aliases:	none	
20			TEAM LEADER	J286	MOSS, SANDRA M
Address:	392 CITY HALL PHILADELPHIA PA 19107 (215)686-7910		Aliases:	none	

Docket Entries

<input type="checkbox"/> Check for Threaded Docket This feature will reduce the docket to motion related entries only.				
Filing Date/Time	Docket Type	Filing Party	Disposition Amount	Approval/Entry Date
19-APR-2000	CIVIL -	FRIEDMAN,		20-APR-2000

11:31 AM	COMMENCEMENT CIVIL ACTION JURY	STEVEN A		12:00 AM
Docket Entry:	<i>none.</i>			
19-APR-2000 11:31 AM	SSCG8 - SHERIFF'S SURCHARGE 8 DEFTS	FRIEDMAN, STEVEN A		20-APR-2000 12:00 AM
Docket Entry:	<i>none.</i>			
19-APR-2000 11:31 AM	JURYT - JURY TRIAL PERFECTED	FRIEDMAN, STEVEN A		20-APR-2000 12:00 AM
Docket Entry:	<i>none.</i>			
19-APR-2000 11:31 AM	CLWCM - WAITING TO LIST CASE MGMT CONF	FRIEDMAN, STEVEN A		20-APR-2000 12:00 AM
Docket Entry:	<i>none.</i>			
19-APR-2000 11:31 AM	CMPLT - COMPLAINT FILED NOTICE GIVEN	FRIEDMAN, STEVEN A		20-APR-2000 12:00 AM
Docket Entry:	COMPLAINT WITH NOTICE TO DEFEND WITHIN TWENTY (20) DAYS AFTER SERVICE IN ACCORDANCE WITH RULE 1018.1 FILED.ASSESSMENT OF DAMAGES REQUIRED.			
19-APR-2000 11:32 AM	ACTIV - ACTIVE CASE			19-APR-2000 11:32 AM
Docket Entry:	<i>none.</i>			
08-MAY-2000 01:52 PM	ENAJD - ENTRY OF APPEAR/JURY DEMAND	SELL, JAMES S		10-MAY-2000 12:00 AM
Docket Entry:	ENTRY OF APPEARANCE OF JAMES S. SELL FILED ON BEHALF OF DFT EDWARD DEGLIN M.D.			

11-MAY-2000 11:13 AM	ENAJD - ENTRY OF APPEAR/JURY DEMAND	FITZPATRICK III, CHARLES A		12-MAY-2000 12:00 AM
Docket Entry:	ENTRY OF APPEARANCE OF CHARLES A. FITZPATRICK, III FILED ON BEHALF OF DFTS HERBERT J. NEVYAS, M.D., JOANN YASKIN NEVYAS, M.D., & MITCHELL STEIN, M.D.			
18-MAY-2000 11:44 AM	ENAJD - ENTRY OF APPEAR/JURY DEMAND	NEWMAN, ABBIE R		19-MAY-2000 12:00 AM
Docket Entry:	ENTRY OF APPEARANCE OF ABBIE R. NEWMAN ESQ. FILED ON BEHALF OF DFTS ANITA NEVYAS-WALLACE M.D. AND IRA B. WALLACE M.D. FILED. FEE PAID \$102.00			
23-MAY-2000 11:45 AM	PROBJ - PRELIMINARY OBJECTIONS	NEWMAN, ABBIE R		23-MAY-2000 12:00 AM
Docket Entry:	PRELIMINARY OBJECTIONS TO PLAINTIFF(S) COMPLAINT FILED BY DEFENDANTS ANITA NEVYAS-WALLACE, M.D. AND IRA B WALLACE, M.D.			
23-MAY-2000 04:06 PM	PROBJ - PRELIMINARY OBJECTIONS			24-MAY-2000 12:00 AM
Docket Entry:	30-00051730 RESPONSE DATE 6-22-00 (FILED BY ANITA NEVYAS-WALLACE, M.D. AND IRA B. WALLACE, M.D.)			
31-MAY-2000 09:54 AM	PROBJ - PRELIMINARY OBJECTIONS	DEGLIN MD, EDWARD A		01-JUN-2000 12:00 AM
Docket Entry:	70-00052270 RESPONSE DATE 6-30-00			
31-MAY-2000 12:45 PM	PROBJ - PRELIMINARY OBJECTIONS	SELL, JAMES S		31-MAY-2000 12:00 AM
Docket Entry:	PRELIMINARY OBJECTIONS OF DEFENDANT EDWARD A. DEGLIN, M.D. TO THE PLAINTIFF'S COMPLAINT.			

08-JUN-2000 10:03 AM	CMAMD - AMENDED COMPLAINT FILED			08-JUN-2000 12:00 AM
Docket Entry:	AMENDED COMPLAINT WITH NOTICE TO DEFEND WITHIN TWENTY(20) DAYS AFTER SERVICE IN ACCORDANCE WITH RULE 1018.1 FILED.			
12-JUN-2000 04:12 PM	WTAPP - WITHDRAWAL/ENTRY OF APPEARANCE	KRAMER, KATHLEEN M		13-JUN-2000 12:00 AM
Docket Entry:	WITHDRAWAL OF APPEARANCE OF CHARLES FITZPATRICK AND ENTRY OF APPEARANCE OF KATHLEEN KRAMER ON BEHALF OF DFT.'S HERBERT NEVYAS, M.D., JOANN YASKIN NEVYAS, M.D. AND MITCHELL STEIN, M.D., FILED.			
12-JUN-2000 04:12 PM	JURYT - JURY TRIAL PERFECTED	KRAMER, KATHLEEN M		13-JUN-2000 12:00 AM
Docket Entry:	DFT.'S DEMAND A TRIAL BY 12 JURORS.			
14-JUN-2000 11:44 AM	PROBJ - PRELIMINARY OBJECTIONS	NEWMAN, ABBIE R		15-JUN-2000 12:00 AM
Docket Entry:	DEFTS' ANITA NEVYAS-WALLACE M.D. AND IRA B. WALLACE M.D. PRELIMINARY OBJECTIONS TO PLFT'S AMENDED COMPLAINT FILED.			
14-JUN-2000 01:35 PM	PROBJ - PRELIMINARY OBJECTIONS	NEVYAS- WALLACE MD, ANITA		15-JUN-2000 12:00 AM
Docket Entry:	44-00060544 RESPONSE DATE 7-14-00			
23-JUN-2000 04:02 PM	PROBJ - PRELIMINARY OBJECTIONS	SELL, JAMES S		23-JUN-2000 12:00 AM
Docket Entry:	PRELIMINARY OBJECTIONS OF DEFENDANT EDWARD A. DEGLIN, M.D. TO THE PLAINTIFF'S AMENDED COMPLAINT. NOTICE TO PLEAD. FILED.			

26-JUN-2000 02:32 PM	DPROB - MOTION TO DETERMINE P O FILED	DEGLIN MD, EDWARD A		27-JUN-2000 12:00 AM
Docket Entry:	72-00061372 RESPONSE DATE 7-26-00			
27-JUN-2000 09:27 AM	MTWAM - MOTION/PETITION WITHDRAWN MOOT			27-JUN-2000 12:00 AM
Docket Entry:	30-00051730 PRELIMINARY OBJECTIONS WITHDRAWN AS MOOT AMENDED COMPLAINT FILED			
03-JUL-2000 12:28 PM	CMAMD - AMENDED COMPLAINT FILED	FRIEDMAN, STEVEN A		05-JUL-2000 12:00 AM
Docket Entry:	SECOND AMENDED COMPLAINT WITH NOTICE TO DEFEND WITHIN TWENTY(20) DAYS AFTER SERVICE IN ACCORDANCE WITH RULE 1018.1 FILED.			
06-JUL-2000 09:18 AM	MTWAM - MOTION/PETITION WITHDRAWN MOOT			06-JUL-2000 12:00 AM
Docket Entry:	70-00052270 PRELIMINARY OBJECTIONS WITHDRAWN AS MOOT AMENDED COMPLAINT ILFED			
07-JUL-2000 12:16 PM	CLLCM - LISTED FOR CASE MGMT CONF			07-JUL-2000 12:16 PM
Docket Entry:	<i>none.</i>			
10-JUL-2000 04:03 PM	CLNGV - NOTICE GIVEN			10-JUL-2000 04:03 PM
Docket Entry:	<i>none.</i>			
11-JUL-2000 09:16 AM	CERTI - CERTIFICATION FILED			11-JUL-2000 12:00 AM

Docket Entry:	CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS PURSUANT TO RULE 4009.22 FILED.			
17-JUL-2000 04:34 PM	PROBJ - PRELIMINARY OBJECTIONS	SELL, JAMES S		18-JUL-2000 12:00 AM
Docket Entry:	PRELIMINARY OBJECTIONS TO PLAINTIFF(S) SECOND COMPLAINT FILED BY DEFENDANT EDWARD A DEGLIN, M.D.			
18-JUL-2000 08:59 AM	PROBJ - PRELIMINARY OBJECTIONS	NEWMAN, ABBIE R		19-JUL-2000 12:00 AM
Docket Entry:	PRELIMINARY OBJECTIONS FILED BY DFTS. ANITY NEVYAS-WALLACE, M.D. AND IRA B. WALLACE, M.D., PRELIMINARY OBJECTIONS TO PLF'S 2ND AMENDED COMPLAINT. FILED.			
18-JUL-2000 09:34 AM	DPROB - MOTION TO DETERMINE P O FILED	NEVYAS- WALLACE MD, ANITA		20-JUL-2000 12:00 AM
Docket Entry:	64-00071064 RESPONSE DATE 8-17-00			
18-JUL-2000 03:07 PM	DPROB - MOTION TO DETERMINE P O FILED	DEGLIN MD, EDWARD A		19-JUL-2000 12:00 AM
Docket Entry:	83-00070983 RESPONSE DATE 8-17-00			
19-JUL-2000 09:31 AM	MTWAM - MOTION/PETITION WITHDRAWN MOOT			19-JUL-2000 12:00 AM
Docket Entry:	44-00060544 PRELIMINARY OBJECTIONS WITHDRAWN AS MOOT AMENDED COMPLAINT FILED			
31-JUL-2000 09:31 AM	MTWAM - MOTION/PETITION WITHDRAWN MOOT			31-JUL-2000 12:00 AM
Docket	72-00061372 PRELIMINARY OBJECTIONS WITHDRAWN AS MOOT			

Entry:		AMENDED COMPLAINT FILED		
09-AUG-2000 11:12 AM	DPROB - MOTION TO DETERMINE P O FILED	NEVYAS MD, HERBERT J		14-AUG-2000 12:00 AM
Docket Entry:	15-00072515 RESPONSE DATE 9-8-00			
09-AUG-2000 03:41 PM	PROBJ - PRELIMINARY OBJECTIONS	KRAMER, KATHLEEN M		10-AUG-2000 12:00 AM
Docket Entry:	PRELIMINARY OBJECTIONS TO PLAINTIFF(S) SECOND AMENDED COMPLAINT FILED BY DEFENDANTS HERBERT J NEVYAS, M.D., JOANN Y NEVYAS, M.D. AND MITCHELL STEIN, M.D. FILED..			
10-AUG-2000 01:59 PM	CLCCC - CASE MGMT CONFERENCE COMPLETED	PELLETREAU, CHARLES		10-AUG-2000 01:59 PM
Docket Entry:	<i>none.</i>			
10-AUG-2000 01:59 PM	CMOIS - CASE MANAGEMENT ORDER ISSUED			10-AUG-2000 01:59 PM
	IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY FIRST JUDICIAL DISTRICT OF PENNSYLVANIA CIVIL TRIAL DIVISION MORGAN VS HERBERT J NEVYAS MD ETAL 000402621 CASE MANAGEMENT ORDER MEDICAL MALPRACTICE CASE AND NOW, 10-AUG-2000, it is Ordered that: 1. The case management and time standards adopted for Medical Malpractice cases shall be applicable to this case and are hereby incorporated into this Order. 2. All discovery on the above matter shall be completed not later than 05-NOV-2001. 3. Plaintiff shall identify and submit curriculum vitae and expert reports of all expert witnesses intended to testify at trial to all other parties not later than 03-DEC-2001. 4. Defendant and any additional defendants shall identify and submit curriculum vitae and expert reports of all expert witnesses intended to testify at trial not later than 07-JAN-2002. 5. All pretrial motions shall be filed not later than 07-JAN-2002. 6. A pretrial conference will be scheduled any time after 01-APR-2002. Ten days prior to the pretrial conference, all counsel shall serve all opposing counsel and file a pretrial memorandum containing the following: (a) A concise summary of the nature of the case if plaintiff			

Docket Entry:	<p>or the defense if defendant or additional defendant; (b) A list of all witnesses who may be called to testify at trial by name and address. Counsel should expect witnesses not listed to be precluded from testifying at trial; (c) A list of all exhibits the party intends to offer into evidence. All exhibits shall be pre-numbered and shall be exchanged among counsel prior to the conference. Counsel should expect any exhibit not listed to be precluded at trial; (d) Plaintiff shall list an itemization of injuries or damages sustained together with all special damages claimed by category and amount. This list shall include as appropriate, computations of all past lost earnings and future lost earning capacity or medical expenses together with any other unliquidated damages claimed; and (e) Defendant shall state its position regarding damages and shall identify all applicable insurance carriers, together with applicable limits of liability; (f) Each counsel shall provide an estimate of the anticipated length of trial; and, (g) Each counsel shall submit true copies of all expert reports. 7. At the pretrial conference the Team Leader (or his/her designee) shall determine whether a settlement conference prior to trial should be conducted. If a settlement conference is appropriate, a date, time and location shall be set forth at that time. 8. It is expected that the case will be ready for trial 06-MAY-2002, and counsel should anticipate trial to begin expeditiously thereafter. 9. All counsel are under a continuing obligation and are hereby ordered to serve a copy of this Order upon all unrepresented parties and upon all counsel entering an appearance subsequent to the entry of this Order. BY THE COURT: _____ NITZA QUINONES ALEJANDRO, J. TEAM LEADER</p>			
10-AUG-2000 01:59 PM	CLLPT - LISTED FOR PRE-TRIAL CONF			10-AUG-2000 01:59 PM
Docket Entry:	<i>none.</i>			
10-AUG-2000 01:59 PM	CLLTR - LISTED FOR TRIAL			10-AUG-2000 01:59 PM
Docket Entry:	<i>none.</i>			
17-AUG-2000 10:55 AM	MTANS - ANSWER (MOTION/PETITION) FILED	MORGAN, DOMINIC		18-AUG-2000 12:00 AM
Docket Entry:	83-00070983 ANS FILED TO PO'S			

17-AUG-2000 10:56 AM	MTANS - ANSWER (MOTION/PETITION) FILED	MORGAN, DOMINIC		18-AUG-2000 12:00 AM
Docket Entry:	64-00071064 ANS FILED TO PO'S			
22-AUG-2000 12:54 PM	MMUPD - MOTION ASSIGNMENT UPDATED			22-AUG-2000 12:00 AM
Docket Entry:	83-00070983 PRELIMINARY OBJECTIONS MOTION ASSIGNMENT DATE UPDATED UNTIL 9-8-00			
22-AUG-2000 12:57 PM	MMUPD - MOTION ASSIGNMENT UPDATED			22-AUG-2000 12:00 AM
Docket Entry:	64-00071064 PRELIMINARY OBJECTIONS MOTION ASSIGNMENT DATE UPDATED UNTIL 9-8-00			
29-AUG-2000 10:46 AM	MTANS - ANSWER (MOTION/PETITION) FILED	MORGAN, DOMINIC		30-AUG-2000 12:00 AM
Docket Entry:	15-00072515 ANS FILED TO PO'S			
29-AUG-2000 10:46 AM	DPROB - MOTION TO DETERMINE P O FILED	MORGAN, DOMINIC		01-SEP-2000 12:00 AM
Docket Entry:	42-00081542 RESPONSE DATE 9-28-00			
29-AUG-2000 11:51 AM	PROBJ - PRELIMINARY OBJECTIONS	FRIEDMAN, STEVEN A		29-AUG-2000 12:00 AM
Docket Entry:	PLAINTIFFS PRELIMINARY OBJECTIONS TO DEFENDANTS NEVYAS, ET AL PRELIMINARY OBJECTIONS FILED.			
12-SEP-2000 03:17 PM	MRDUD - MOTION RESPONSE DATE			12-SEP-2000 12:00 AM

	UPDATED			
Docket Entry:	15-00072815 MOTION TO DETERMINE PRELIMINARY OBJECTIONS MOTION ASSIGNMENT DATE UPDATED UNTIL 9-28-00			
12-SEP-2000 03:18 PM	MRDUD - MOTION RESPONSE DATE UPDATED			12-SEP-2000 12:00 AM
Docket Entry:	64-00071064 MOTION TO DETERMINE PRELIMINARY OBJECTIONS MOTION ASSIGNMENT DATE UPDATED UNTIL 9-28-00			
12-SEP-2000 03:19 PM	MRDUD - MOTION RESPONSE DATE UPDATED			12-SEP-2000 12:00 AM
Docket Entry:	83-00070983 MOTION TO DETERMINE PRELIMINARY OBJECTIONS MOTION ASSIGNMENT DATE UPDATED UNTIL 9-28-00			
13-SEP-2000 03:48 PM	AFNIV - AFFIDAVIT OF NON INVOLVEMENT			14-SEP-2000 12:00 AM
Docket Entry:	AFFIDAVIT OF NON INVOLVEMENT OF DEFT., JOAN Y. NEVYAS, M.D. FILED			
13-SEP-2000 03:49 PM	AFNIV - AFFIDAVIT OF NON INVOLVEMENT			14-SEP-2000 12:00 AM
Docket Entry:	AFFIDAVIT OF NON INVOLVEMENT OF DEFT., MITCHELL STEIN, M.D. FILED			
19-SEP-2000 12:34 PM	ENAPP - ENTRY OF APPEARANCE FILED	SILVERMAN, LEON W		19-SEP-2000 12:00 AM
Docket Entry:	ENTRY OF APPEARANCE OF LEON W. SILVERMAN FILED ON BEHALF OF DFTS NEVYAS EYE ASSOCIATES P.C. AND NEVYAS EYE ASSOCIATES OF NJ, PC.			
19-SEP-2000 12:34 PM	ANCOM - ANSWER TO COMPLAINT FILED	SILVERMAN, LEON W		19-SEP-2000 12:00 AM
Docket Entry:	ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT FILED BY DEFENDANTS NEVYAS EYE ASSOCIATES P.C. AND NEVYAS EYE ASSOCIATES OF NJ, PC.			

03-OCT-2000 02:37 PM	MTASN - MOTION ASSIGNED			03-OCT-2000 02:37 PM
Docket Entry:	42-00081542 MOTION TO DETERMINE PRELIMINARY OBJECTIONS ASSIGNED TO JUDGE QUINONES ALEJANDRO ON 10-4-00			
03-OCT-2000 02:37 PM	MTASN - MOTION ASSIGNED			03-OCT-2000 02:37 PM
Docket Entry:	15-00072815 MOTION TO DETERMINE PRELIMINARY OBJECTIONS ASSIGNED TO JUDGE QUINONES ALEJANDRO ON 10-4-00			
03-OCT-2000 02:37 PM	MTASN - MOTION ASSIGNED			03-OCT-2000 02:37 PM
Docket Entry:	83-00070983 MOTION TO DETERMINE PRELIMINARY OBJECTIONS ASSIGNED TO JUDGE QUINONES ALEJANDRO ON 10-4-00			
03-OCT-2000 02:37 PM	MTASN - MOTION ASSIGNED			03-OCT-2000 02:37 PM
Docket Entry:	64-00071064 MOTION TO DETERMINE PRELIMINARY OBJECTIONS ASSIGNED TO JUDGE QUINONES ALEJANDRO ON 10-4-00			
13-OCT-2000 02:15 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	QUINONES ALEJANDRO, NITZA I		13-OCT-2000 02:17 PM
Docket Entry:	15-00072815 IT IS ORDERED THAT THE PRELIMINARY OBJECTIONS ARE SUSTAINED IN PAR. PLTF'S CLAIM FOR PUNITIVE DAMAGES AND ALL ALLEGATIONS OF RECKLESS BEHAVIOR ARE HEREBY STRICKEN FROM PLTF'S COMPLAINT WITHOUT PREJUDICE. THE REMAINING PRELIMINARY OBJECTIONS ARE OVERRULED...BY THE COURT, JUDGE QUINONES ALESJANDRO, 10-12-00			
13-OCT-2000 02:56 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	QUINONES ALEJANDRO, NITZA I		13-OCT-2000 03:01 PM
	64-00071064 IT IS ORDERED THAT THE DEFTS ANITA NEVYAS- WALLACE, M.D. AND IRA B. WALLACE, M.D.'S PRELIMINARY OBJECTIONS TO PLTF'S SECOND AMENDED COMPLAINT ARE SUSTAINED IN PART AND ALL ALLEGATIONS OF " RECKLESS			

	Docket Entry:	INDIFFERENCE", "OUTRAGEOUS CONDUCT" AND "GROSS NEGLIGENCE" INCLUDING THOSE FOUND IN THE PARAGRAPHS LISTED IN THIS ORDER [SEE ORDER], AS WELL THE CLAIM FOR PUNITIVE DAMAGES ARE STRICKEN WITHOUT PREJUDIC. THE REMAINING PRELIMINARY OBJECTIONS ARE OVERRULED...BY THE COURT, JUDGE QUINONES ALEJANDRO, 10-12-00		
16-OCT-2000 10:53 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	QUINONES ALEJANDRO, NITZA I		16-OCT-2000 10:55 AM
	Docket Entry:	83-00070983 IT IS ORDERED THAT DEFT EDWARD A. DEGLIN M.D.'S PRELIMINARY OBJECTIONS TO PLTF'S SECOND AMENDED COMPLAINT ARE SUSTAINED IN PART AND THE PUNITIVE DAMAGES CLAIM IS STRICKEN WITHOUT PREJUDICE AND PARAGRAPHS 48, 49 OF THE SECOND AMENDED COMPLAINT ARE STRICKEN...BY THE COURT, JUDGE QUINONES ALEJANDRO, 10-12-00		
16-OCT-2000 10:58 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	QUINONES ALEJANDRO, NITZA I		16-OCT-2000 11:00 AM
	Docket Entry:	42-00081542 IT IS ORDERED THAT PLTF'S PRELIMINARY OBJECTIONS TO THE PRELIMINARY OBJECTIONS OF DEFTS H. NEVYAS, J. NEVYAS AND STEIN TO PLTF'S SECOND AMENDED COMPLAINT ARE OVERRULED...BY THE COURT, JUDGE QUINONES ALEJANDRO, 10-12-00		
31-OCT-2000 04:04 PM	ANCOM - ANSWER TO COMPLAINT FILED	KRAMER, KATHLEEN M		01-NOV-2000 12:00 AM
	Docket Entry:	ANSWER AND NEW MATTER OF DEFENDANTS' MITCHELL STEIN, M.D., HERBERT NEVYAS, M.D., AND JOANN Y. NEVYAS, M.D. TO PLAINTIFF'S SECOND AMENDED COMPLAINT.		
08-NOV-2000 10:25 AM	MTSJD - MOTION FOR SUMMARY JUDGMENT	NEVYAS MD, JOANN Y		10-NOV-2000 12:00 AM
	Docket Entry:	55-00110055 RESPONSE DATE 12-8-00		
08-NOV-2000 10:25 AM	MTSJD - MOTION FOR SUMMARY	STEIN MD, MITCHELL		10-NOV-2000 12:00 AM

	JUDGMENT			
Docket Entry:	56-00110056 RESPONSE DATE 12-8-00			
13-NOV-2000 02:01 PM	REPLY - REPLY FILED	FRIEDMAN, STEVEN A		13-NOV-2000 12:00 AM
Docket Entry:	PLAINTIFF'S REPLY TO THE NEW MATTER OF DEFENDANT DOCTORS H. NEVYAS, J. NEVYAS, AND STEIN.			
06-DEC-2000 10:33 AM	MTANS - ANSWER (MOTION/PETITION) FILED	MORGAN, DOMINIC		07-DEC-2000 12:00 AM
Docket Entry:	56-00110056 ANS FILED TO SJ			
06-DEC-2000 10:33 AM	MTANS - ANSWER (MOTION/PETITION) FILED	MORGAN, DOMINIC		07-DEC-2000 12:00 AM
Docket Entry:	55-00110055 ANS FILED TO SJ			
12-DEC-2000 09:48 AM	MTASN - MOTION ASSIGNED			12-DEC-2000 09:48 AM
Docket Entry:	56-00110056 MOTION FOR SUMMARY JUDGMENT ASSIGNED TO JUDGE QUINONES ALEJANDRO ON 12-13-00			
12-DEC-2000 09:48 AM	MTASN - MOTION ASSIGNED			12-DEC-2000 09:48 AM
Docket Entry:	55-00110055 MOTION FOR SUMMARY JUDGMENT ASSIGNED TO JUDGE QUINONES ALEJANDRO ON 12-13-00			
04-JAN-2001 11:18 AM	CERTI - CERTIFICATION FILED			04-JAN-2001 12:00 AM
Docket Entry:	CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS PURSUANT TO RULE 4009.22 FILED.			

04-JAN-2001 01:09 PM	AFNIV - AFFIDAVIT OF NON INVOLVEMENT			05-JAN-2001 12:00 AM
Docket Entry:	AFFIDAVIT OF NON INVOLVEMENT OF DEFT., IRA B. WALLACE, M.D. FILED			
05-JAN-2001 08:37 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	ABRAMSON, HOWLAND W		05-JAN-2001 08:39 AM
Docket Entry:	55-00110055 - AND NOW, THIS 2ND DAY OF JANUARY, 2001, UPON CONSIDERATION OF DEFENDANT, JOANN Y. NEVYAS, M.D.'S MOTION FOR SUMMARY JUDGMENT AND PLAINTIFF'S RESPONSE THERE TO, AND DEFENDANT'S SUBSEQUENT FILING OF PETITION TO WITHDRAW SAID SUMMARY JUDGMENT MOTION, DEFENDANT'S SUMMARY JUDGMENT MOTION IS DISMISSED AS MOOT.....BY THE COURT: HOWLAND W. ABRAMSON J.			
05-JAN-2001 08:39 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	ABRAMSON, HOWLAND W		05-JAN-2001 08:41 AM
Docket Entry:	56-00110056 - AND NOW, THIS 2ND DAY OF JANUARY, 2001, UPON CONSIDERATION OF DEFENDANT, MITCHELL STEIN, M.D.'S MOTION FOR SUMMARY JUDGMENT AND PLAINTIFF'S RESPONSE THERE TO, AND DEFENDANT'S SUBSEQUENT FILING OF PETITION TO WITHDRAW SAID SUMMARY JUDGMENT MOTION, DEFENDANT'S SUMMARY JUDGMENT MOTION IS DISMISSED AS MOOT.....BY THE COURT: HOWLAND W. ABRAMSON J.			
08-JAN-2001 09:56 AM	ANCOM - ANSWER TO COMPLAINT FILED	NEWMAN, ABBIE R		09-JAN-2001 12:00 AM
Docket Entry:	ANSWER TO PLAINTIFF'S AMENDED COMPLAINT WITH NEW MATTER FILED BY DEFENDANT ANITA NEVYAS-WALLACE, M.D.			
09-JAN-2001 12:21 PM	CORCT - CORRECTIVE ENTRY			09-JAN-2001 12:00 AM
Docket Entry:	ANSWER FILED ON 01 08 01 AT 09:56 IS A SECOND AMENDED COMPLAINT FILED.			
16-JAN-2001 10:43 AM	REPLY - REPLY FILED	FRIEDMAN, STEVEN A		17-JAN-2001 12:00 AM

Docket Entry:	PLFT'S REPLY TO THE NEW MATTER OF DEFT DR.ANITA NEVYAS-WALLACE			
08-MAR-2001 10:52 AM	CERTI - CERTIFICATION FILED			08-MAR-2001 12:00 AM
Docket Entry:	CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS PURSUANT TO RULE 4009.22 FILED.			
26-MAR-2001 09:46 AM	MTJPL - MOTION- JUDGMENT ON PLEADINGS	NEVYAS- WALLACE MD, ANITA		30-MAR-2001 12:00 AM
Docket Entry:	76-01031776 RESPONSE DATE 4-25-01			
11-APR-2001 09:16 AM	CERTI - CERTIFICATION FILED			11-APR-2001 12:00 AM
Docket Entry:	<i>none.</i>			
11-APR-2001 09:31 AM	CERTI - CERTIFICATION FILED			11-APR-2001 12:00 AM
Docket Entry:	CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS PURSUANT TO RULE 4009.22 FILED.			
16-APR-2001 03:12 PM	MTANS - ANSWER (MOTION/PETITION) FILED	MORGAN, DOMINIC		16-APR-2001 12:00 AM
Docket Entry:	76-01031776 ANS FILED TO MOTION FOR JUDGMENT ON PLEADINGS			
19-APR-2001 09:15 AM	REPLY - REPLY FILED	NEVYAS- WALLACE MD, ANITA		20-APR-2001 12:00 AM
Docket Entry:	76-01031776 REPLY FILED TO ANS TO MOTION FOR JUDGMENT ON PLEADINGS			
30-APR-2001	MTASN - MOTION			30-APR-2001

02:47 PM	ASSIGNED			02:47 PM
Docket Entry:	76-01031776 MOTION FOR JUDGMENT ON PLEADINGS ASSIGNED TO JUDGE MOSS ON 5-1-01			
10-MAY-2001 02:23 PM	WTAPP - WITHDRAWAL/ENTRY OF APPEARANCE	TROY, PAUL C		11-MAY-2001 12:00 AM
Docket Entry:	WITHDRAWAL OF APPEARANCE OF JAMES S. SELL AND ENTRY OF APPEARANCE OF PAUL C. TROY ON BEHALF OF EDWARD DEGLIN M.D., FILED.			
18-JUN-2001 01:53 PM	ANCOM - ANSWER TO COMPLAINT FILED	TROY, PAUL C		19-JUN-2001 12:00 AM
Docket Entry:	ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT WITH NEW MATTER FILED BY DEFENDANT EDWARD A DEGLIN, M.D.			
27-JUN-2001 09:40 AM	CERTI - CERTIFICATION FILED			27-JUN-2001 12:00 AM
Docket Entry:	CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS PURSUANT TO RULE 4009.22 FILED.			
27-JUN-2001 11:45 AM	REPLY - REPLY FILED			28-JUN-2001 12:00 AM
Docket Entry:	PLAINTIFF'S REPLY TO THE NEW MATER OF DEFENDANT DR.DEGLIN			
28-JUN-2001 01:08 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN			28-JUN-2001 12:00 AM
Docket Entry:	ORDERED THAT THE PLAINTIFF'S MOTION TO COMPEL DISCOVERY IS GRANTED. SEE ORDER FOR ADDITIONAL DETAILS. MOSS, J 6/28/01			
29-JUN-2001 08:23 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	PAPALINI, JOSEPH I		29-JUN-2001 08:24 AM
	76-01031776 - AND NOW, THIS 28TH DAY OF JUNE, 2001, UPON			

	Docket Entry: CONSIDERATION OF THE MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS OF DEFENDANT, ANITA NEVYAS-WALLACE, M.D., IT IS HEREBY ORDERED AND DECREED THAT SAID MOTION IS GRANTED. PARAGRAPH FORTY (40) OF PLAINTIFF'S SECOND AMENDED COMPLAINT IS HEREBY STRICKEN WITH PREJUDICE AS TO ALL DEFENDANTS.....BY THE COURT: JOSEPH I. PAPALINI J.		
19-JUL-2001 09:27 AM	CERTI - CERTIFICATION FILED		19-JUL-2001 12:00 AM
Docket Entry:	CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS PURSUANT TO RULE 4009.22 FILED.		
02-AUG-2001 02:42 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN		02-AUG-2001 12:00 AM
Docket Entry:	ORDERED THAT PLAINTIFFS MOTION FOR SANCTIONS IS DENIED. MOSS J. 08 02 01		
23-AUG-2001 11:45 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN		23-AUG-2001 12:00 AM
Docket Entry:	ORDERED THAT PLAINTIFFS MOTION TO STRIKE OBJECTIONS AND COMPEL DISCOVERY IS GRANTED. SEE ORDER FOR ADDITIONAL DETAILS. MOSS J. 08 23 01		
13-SEP-2001 10:32 AM	CERTI - CERTIFICATION FILED		13-SEP-2001 12:00 AM
Docket Entry:	CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS PURSUANT TO RULE 4009.22 FILED.		
27-SEP-2001 02:31 PM	PTEXR - PET FOR EXTRAORDINARY RELIEF	MORGAN, DOMINIC	28-SEP-2001 12:00 AM
Docket Entry:	98-01091898 RESPONSE DATE 10-9-01		
04-OCT-2001 02:52 PM	ORDER - ORDER ENTERED/236 NOTICE		04-OCT-2001 12:00 AM

	GIVEN			
Docket Entry:	ORDERED THAT DEFENDANTS MOTION BY AGREEMENT AS TO DEPOSITION AND DISCOVERY IS GRANTED. SEE ORDER FOR ADDITIONAL DETAILS. MOSS J. 10 03 01			
04-OCT-2001 03:21 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN			04-OCT-2001 12:00 AM
Docket Entry:	ORDERED THAT DEFENDANTS MOTION TO COMPEL IS WITHDRAWN WITHOUT PREJUDICE AND SUBMIT AN AMENDED RESPONSE TO DEFENDANTS REQUEST FOR PRODUCTION. SEE ORDER FOR ADDITIONAL DETAILS. MOSS J. 10 04 01			
09-OCT-2001 10:58 AM	MTANS - ANSWER (MOTION/PETITION) FILED	NEVYAS MD, HERBERT J		10-OCT-2001 12:00 AM
Docket Entry:	98-01091898 ANS FILED TO X-RELIEF			
11-OCT-2001 09:58 AM	MTANS - ANSWER (MOTION/PETITION) FILED	NEVYAS MD, HERBERT J		12-OCT-2001 12:00 AM
Docket Entry:	98-01091898 ANS FILED TO X-RELIEF			
11-OCT-2001 11:18 AM	MTASN - MOTION ASSIGNED			11-OCT-2001 11:18 AM
Docket Entry:	98-01091898 PETITION FOR EXTRAORDINARY RELIEF ASSIGNED TO JUDGE MOSS ON 10-12-01			
15-OCT-2001 02:10 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	MOSS, SANDRA M		15-OCT-2001 02:11 PM
Docket Entry:	98-01091897 IT IS HEREBY ORDERED AND DECREED THAT PLTFS' PETITION FOR EXTRAORDINARY RELIEF IS GRANTED AS FOLLOWS: DISCOVERY ENDS FEBRUARY 7, 2002; PLTFS' EXPERT REPORTS DUE NOT LATER THAN MARCH 7, 2002; DEFTS' EXPERT REPORTS DUE NOT LATER THAN APRIL 8, 2002; ALL PRETRIAL MOTIONS FILED BY APRIL 8, 2002; PRETRIAL CONFERENCE ANY			

TIME AFTER JULY 8, 2002; READY FOR TRIAL BY AUGUST 8, 2002.....MOSS,J. 10/15/01				
15-OCT-2001 02:11 PM	CLOEC - OTHER EVENT CANCELLED	MOSS, SANDRA M		15-OCT-2001 02:12 PM
Docket Entry:	<i>none.</i>			
15-OCT-2001 02:12 PM	CLWPR - WAITING TO LIST PRE-TRIAL CONF	MOSS, SANDRA M		15-OCT-2001 02:12 PM
Docket Entry:	<i>none.</i>			
15-OCT-2001 02:12 PM	RVCMO - REVISED CASE MGMT ORDER ISSUED			15-OCT-2001 12:00 AM
Docket Entry:	<p>IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY FIRST JUDICIAL DISTRICT OF PENNSYLVANIA CIVIL TRIAL DIVISION MORGAN VS HERBERT J NEVYAS MD ETAL 000402621 REVISED CASE MANAGEMENT ORDER MEDICAL MALPRACTICE CASE Be advised that the Case Management Order issued for the above-captioned action has been revised as follows: All discovery shall be completed not later than 07-FEB-2002. Plaintiff shall submit expert reports not later than 07-MAR-2002. Defendant shall submit expert reports not later than 08-APR-2002. All pre-trial motions shall be filed not later than 08-APR-2002. A pre-trial conference will be scheduled at any time after 08-JUL-2002. It is expected that this case shall be ready for trial by 08-AUG-2002. All other terms and conditions on the original Case Management Order will remain in full force and effect. BY THE COURT: _____ DATE SANDRA MOSS, J. TEAM LEADER</p>			
15-OCT-2001 02:13 PM	CLLPT - LISTED FOR PRE-TRIAL CONF			15-OCT-2001 02:13 PM
Docket Entry:	<i>none.</i>			
15-OCT-2001 02:13 PM	CLLTR - LISTED FOR TRIAL			15-OCT-2001 02:13 PM
Docket				

Entry: <i>none.</i>				
15-NOV-2001 12:10 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN			15-NOV-2001 12:00 AM
Docket Entry:	ORDERED THAT PLAINTIFFS MOTION TO COMPEL DISCOVERY AND DEPOSITION IS GRANTED. SEE ORDER FOR ADDITIONAL DETAILS. MOSS J. 11 15 01			
27-DEC-2001 03:01 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN			27-DEC-2001 12:00 AM
Docket Entry:	ORDERED THAT PLAINTIFFS MOTION TO COMPEL DISCOVERY, DEPOSITION, STRIKE OBJECTIONS AND SANCTIONS IS GRANTED. SEE ORDER FOR ADDITIONAL DETAILS. MOSS J. 12 27 01			
04-JAN-2002 04:01 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN			04-JAN-2002 12:00 AM
Docket Entry:	ORDERED THAT DEFENDANTS MOTION TO QUASH IS DENIED. MOSS J. 12 27 01			
04-JAN-2002 04:04 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN			04-JAN-2002 12:00 AM
Docket Entry:	ORDERED THAT DEFENDANTS MOTION FOR A PROTECTIVE ORDER IS DENIED. MOSS J. 12 27 01			
10-JAN-2002 01:43 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN			10-JAN-2002 12:00 AM
Docket Entry:	ORDERED THAT DEFENDANTS MOTION TO STRIKE OBJECTION AND COMPEL DISCOVERY IS GRANTED IN PART. SEE ORDER FOR ADDITIONAL DETAILS. MOSS J. 01 10 02			
14-JAN-2002 10:17 AM	STENO - STENOGRAPHER'S NOTES FILED			14-JAN-2002 12:00 AM

Docket Entry:	ONE VOLUME(S) OF NOTES TAKEN ON 8/23/01 BEFORE JUDGE S. MOSS.		
14-JAN-2002 01:52 PM	STENO - STENOGRAPHER'S NOTES FILED		14-JAN-2002 12:00 AM
Docket Entry:	ONE VOLUME(S) OF NOTES TAKEN ON 11/15/01 BEFORE JUDGE S. MOSS.		
17-JAN-2002 01:46 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN		17-JAN-2002 12:00 AM
Docket Entry:	ORDERED THAT DEFENDANTS MOTION FOR A PROTECTIVE ORDER IS GRANTED. SEE ORDER FOR ADDITIONAL DETAILS. MOSS J. 01 17 02		
17-JAN-2002 01:47 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN		17-JAN-2002 12:00 AM
Docket Entry:	ORDERED THAT PLAINTIFFS MOTION FOR A PROTECTIVE ORDER IS GRANTED. SEE ORDER FOR ADDITIONAL DETAILS. MOSS J. 01 17 02		
24-JAN-2002 11:59 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN		24-JAN-2002 12:00 AM
Docket Entry:	ORDERED THAT DEFENDANTS MOTION TO COMPEL AN INDEPENDENT MEDICAL EXAMINATION IS GRANTED. SEE ORDER FOR ADDITIONAL DETAILS. MOSS J. 01 24 02		
24-JAN-2002 12:17 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN		24-JAN-2002 12:00 AM
Docket Entry:	ORDERED THAT PLAINITFFS MOTION FOR A PROTECTIVE ORDER IS DENIED. MOSS J. 01 24 02		
14-FEB-2002 03:50 PM	CLDPO - DEFERRED - PHICO		14-FEB-2002 12:00 AM

Docket Entry:	IN RE: DEFERMENT OF PHICO INSURANCE CO. CASES BY REASON OF ORDER OF LIQUIDATION ADMINSTRATIVE DOCKET ORDER NO. 2 OF 2002...HERRON, A.J. 2-6-02			
03-MAY-2002 09:50 AM	PTEXR - PET FOR EXTRAORDINARY RELIEF	MORGAN, DOMINIC		07-MAY-2002 12:00 AM
Docket Entry:	31-02043131 RESPONSE DATE 05-13-2002.			
14-MAY-2002 04:39 PM	CLRDS - REMOVED FROM DEFERRED STATUS			14-MAY-2002 04:39 PM
Docket Entry:	<i>none.</i>			
20-MAY-2002 11:44 AM	MTASN - MOTION ASSIGNED			20-MAY-2002 11:44 AM
Docket Entry:	31-02043131 PETITION FOR EXTRAORDINARY RELIEF ASSIGNED TO JUDGE BERNSTEIN ON 5-21-02			
21-MAY-2002 01:13 PM	CLLST - LISTED FOR STATUS CONFERENCE			21-MAY-2002 01:13 PM
Docket Entry:	<i>none.</i>			
22-MAY-2002 11:21 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	BERNSTEIN, MARK I		22-MAY-2002 11:22 AM
Docket Entry:	31-02043131 IT IS HEREBY ORDERED AND DECREED THAT MOTION FOR EXTRAORDINARY RELIEF IS GRANTED AS FOLLOWS: DISCOVERY ENDS MAY 7, 2002; PLTFS' EXPERT REPORT DUE BY JUNE 7, 2002; DEFTS' EXPERT REPORTS DUE BY JULY 8, 2002; MOTIONS FILED BY JULY 8, 2002; PRETRIAL CONFERENCE ANY TIME AFTER OCTOBER 7, 2002; READY FOR TRIAL BY NOVEMBER 4, 2002.....BERNSTEIN,J. 5/21/02			
22-MAY-2002	CLOEC - OTHER	BERNSTEIN,		22-MAY-2002

11:22 AM	EVENT CANCELLED	MARK I		11:23 AM
Docket Entry:	SEE ORDER OF MAY 21, 2002. THE STATUS CONFERENCE LISTED FOR JUNE 10., 2002 AT 3:00 IS CANCELLED.			
22-MAY-2002 11:23 AM	CLOEC - OTHER EVENT CANCELLED	BERNSTEIN, MARK I		22-MAY-2002 11:23 AM
Docket Entry:	<i>none.</i>			
22-MAY-2002 11:23 AM	CLWPR - WAITING TO LIST PRE-TRIAL CONF	BERNSTEIN, MARK I		22-MAY-2002 11:23 AM
Docket Entry:	<i>none.</i>			
22-MAY-2002 11:28 AM	RVCMO - REVISED CASE MGMT ORDER ISSUED			22-MAY-2002 12:00 AM
Docket Entry:	<p>IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY FIRST JUDICIAL DISTRICT OF PENNSYLVANIA CIVIL TRIAL DIVISION MORGAN VS HERBERT J NEVYAS MD ETAL 000402621 REVISED CASE MANAGEMENT ORDER MEDICAL MALPRACTICE CASE Be advised that the Case Management Order issued for the above-captioned action has been revised as follows: All discovery shall be completed not later than 07-MAY-2002. Plaintiff shall submit expert reports not later than 07-JUN-2002. Defendant shall submit expert reports not later than 08-JUL-2002. All pre-trial motions shall be filed not later than 08-JUL-2002. A pre-trial conference will be scheduled at any time after 07-OCT-2002. It is expected that this case shall be ready for trial by 04-NOV-2002. All other terms and conditions on the original Case Management Order will remain in full force and effect. BY THE COURT: _____ DATE MARK BERNSTEIN, J. TEAM LEADER</p>			
22-MAY-2002 11:32 AM	CLLPT - LISTED FOR PRE-TRIAL CONF			22-MAY-2002 11:32 AM
Docket Entry:	<i>none.</i>			
22-MAY-2002 11:32 AM	CLLTR - LISTED FOR TRIAL			22-MAY-2002 11:32 AM

Docket Entry:	none.			
22-MAY-2002 12:24 PM	STAMM - STIPULATION TO AMEND			23-MAY-2002 12:00 AM
Docket Entry:	STIPULATION ALLOWING DEFTS., NEVYAS' AND STEIN TO FILE AMENDED NEW MATTER FILED			
23-MAY-2002 12:04 PM	NMTRF - NEW MATTER FILED	KRAMER, KATHLEEN M		24-MAY-2002 12:00 AM
Docket Entry:	AMENDED NEW MATTER OF DEFTS HERBERT J. NEVYAS M.D. JOANN Y. NEVYAS M.D. AND MITCHELL STEIN M.D. TO PLFT'S COMPLAINT FILED.			
24-MAY-2002 02:52 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN			24-MAY-2002 12:00 AM
Docket Entry:	ORDERED THAT THE DFTS' MOTION FOR PROTECTIVE ORDER IS GRANTED. PLF SHALL NOT BE ALLOWED TO DEPOSE DR. JAMES SALZ ON THUR, MAY 30, 2002. BERNSTEIN, J 5/23/02			
31-MAY-2002 09:28 AM	ANCOM - ANSWER TO COMPLAINT FILED	FRIEDMAN, STEVEN A		06-JUN-2002 12:00 AM
Docket Entry:	PLAINTIFF ANSWERS TO MAY 23, 2002 AMENDED NEW MATTER OF DEFENDANT HERBERT J. NEVYAS. FILED.			
06-JUN-2002 12:50 PM	OBJCT - OBJECTIONS FILED	FRIEDMAN, STEVEN A		07-JUN-2002 12:00 AM
Docket Entry:	PLAINTIFF'S OBJECTIONS TO SUPOENA PURSUANT TO RULE 4009.21			
06-JUN-2002 04:28 PM	CERTI - CERTIFICATION FILED			07-JUN-2002 12:00 AM
Docket Entry:	CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS PURSUANT TO RULE 4009.22 FILED.			

14-JUN-2002 10:10 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN			14-JUN-2002 12:00 AM
Docket Entry:	ORDERED THAT THE PLAINTIFF'S MOTION TO STRIKE OBJECTIONS AND COMPEL DISCOVERY IS GRANTED. SEE ORDER FOR TERMS & CONDITIONS. MOSS, J 6/13/02			
21-JUN-2002 03:33 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN			21-JUN-2002 12:00 AM
Docket Entry:	ORDERED THAT THE DFTS, ANITA NEVYAS-WALLACE, M.D., AND IRA B. WALLACE, M.D.'S MOTION TO OVERRULE OBJECTIONS AND ALLOW DISCOVERY OF RECORDS OF DRS. HARLAN & SUNNESS IS GRANTED. SEE ORDER FOR TERMS & CONDITIONS. MOSS, J 6/20/02			
24-JUN-2002 09:18 AM	CERTI - CERTIFICATION FILED			25-JUN-2002 12:00 AM
Docket Entry:	CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS PURSUANT TO RULE 4009.22 FILED.			
24-JUN-2002 11:32 AM	STPLT - STIPULATION FILED	MOSS, SANDRA M		24-JUN-2002 12:00 AM
Docket Entry:	IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO, AS EVIDENCED BY THE SIGNATURES OF THEIR ATTORNEYS SET FORTH HEREIN BELOW, THAT PLAINTIFF'S COMPLAINT IS DISMISSED AS TO DEFENDANT EDWARD A. DEGLIN, M.D. ONLY. THE COMPLAINT REMAINS VIABLE AS AGAINST ALL OTHER DEFENDANTS UNLESS DISMISSED BY STIPULATION OR ORDER OF COURT.....BY THE COURT: SANDRA MAZER MOSS J.			
25-JUN-2002 09:20 AM	CERTI - CERTIFICATION FILED			25-JUN-2002 12:00 AM
Docket Entry:	CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS PURSUANT TO RULE 4009.22 FILED.			
03-JUL-2002 09:16 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN			03-JUL-2002 12:00 AM

Docket Entry:	ORDERED THAT THE PLAINTIFF'S MOTION TO COMPEL DISCOVERY IS GRANTED. SEE ORDER FOR ADDITIONAL DETAILS. BERNSTEIN, J 7/1/02			
08-JUL-2002 09:22 AM	MTSJD - MOTION FOR SUMMARY JUDGMENT	MORGAN, DOMINIC		16-JUL-2002 12:00 AM
Docket Entry:	90-02070590 RESPONSE DATE 08-07-2002. PARTIAL SUMMARY JUDGEMENT AS TO DECEPTIVE TRADE PRACTICES.			
08-JUL-2002 09:23 AM	MTSJD - MOTION FOR SUMMARY JUDGMENT	MORGAN, DOMINIC		16-JUL-2002 12:00 AM
Docket Entry:	91-02070591 RESPONSE DATE 08-07-2002. PARTIAL SUMMARY JUDGEMENT -AS INFORMED CONSENT.			
08-JUL-2002 02:54 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN			08-JUL-2002 12:00 AM
Docket Entry:	ORDERED THAT THE PLF'S MOTION TO STRIKE OBJECTIONS, COMPEL DISCOVERY AND AWARD SANCTIONS DIRECTED TO DFTS, NEVYAS EYE ASSOC., P.C., & NEVYAS EYE ASSOC OF NEW JERSEY, P.C., IS GRANTED. SEE ORDER FOR TERMS & CONDITIONS. BERNSTEIN, J 7/8/02			
08-JUL-2002 03:11 PM	MTSJD - MOTION FOR SUMMARY JUDGMENT	NEVYAS MD, HERBERT J		15-JUL-2002 12:00 AM
Docket Entry:	44-02070644 RESPONSE DATE 8-7-02.			
08-JUL-2002 03:17 PM	MTSJD - MOTION FOR SUMMARY JUDGMENT	NEVYAS-WALLACE MD, ANITA		15-JUL-2002 12:00 AM
Docket Entry:	48-02070648 RESPONSE DATE 08-07-2002. DFT.'S MOTION FOR PARTIAL SUMMARY JUDGEMENT-UNFAIR TRADE PRATICES.			
08-JUL-2002 03:21 PM	MTSJD - MOTION FOR SUMMARY	NEVYAS-WALLACE MD,		15-JUL-2002 12:00 AM

	JUDGMENT	ANITA		
Docket Entry:	49-02070649 RESPONSE DATE 08-07-2002. DFT.'S MOTION FOR PARTIAL SUMMARY JUDGEMENT-INFORMED CONSENT.			
08-JUL-2002 03:23 PM	MTSJD - MOTION FOR SUMMARY JUDGMENT	NEVYAS-WALLACE MD, ANITA		15-JUL-2002 12:00 AM
Docket Entry:	50-02070650 RESPONSE DATE 08-07-2002. DFT.'S MOTION FOR PARTIAL SUMMARY JUDGEMENT- APPROVAL OF LASER BY FDA.			
07-AUG-2002 10:58 AM	MTANS - ANSWER (MOTION/PETITION) FILED	MORGAN, DOMINIC		09-AUG-2002 12:00 AM
Docket Entry:	49-02070649 ANS FILED TO SJ			
07-AUG-2002 10:59 AM	MTANS - ANSWER (MOTION/PETITION) FILED	MORGAN, DOMINIC		09-AUG-2002 12:00 AM
Docket Entry:	44-02070644 ANS FILED TO SJ			
07-AUG-2002 02:33 PM	MEMOR - MEMORANDUM FILED	MORGAN, DOMINIC		07-AUG-2002 12:00 AM
Docket Entry:	50-02070650 MEMORANDUM FILED IN OPPOSITION TO SJ			
07-AUG-2002 02:36 PM	MTANS - ANSWER (MOTION/PETITION) FILED	MORGAN, DOMINIC		07-AUG-2002 12:00 AM
Docket Entry:	48-02070648, 44-02070644 & 49-02070649 MEMORANDUM FILED IN OPPOSITION TO SJ			
07-AUG-2002 03:03 PM	MTANS - ANSWER (MOTION/PETITION) FILED	NEVYAS EYE ASSOCIATES PC,		07-AUG-2002 12:00 AM
Docket	91-02070591 ANS FILED TO SJ			

Entry:				
07-AUG-2002 03:09 PM	MTANS - ANSWER (MOTION/PETITION) FILED	NEVYAS EYE ASSOCIATES PC,		07-AUG-2002 12:00 AM
Docket Entry:	90-02070590 ANS FILED TO SJ			
08-AUG-2002 12:20 PM	MTANS - ANSWER (MOTION/PETITION) FILED	NEVYAS- WALLACE MD, ANITA		09-AUG-2002 12:00 AM
Docket Entry:	90-02070590 ANS FILED TO SJ			
08-AUG-2002 12:21 PM	MTANS - ANSWER (MOTION/PETITION) FILED	NEVYAS- WALLACE MD, ANITA		09-AUG-2002 12:00 AM
Docket Entry:	91-02070591 ANS FILED TO SJ			
08-AUG-2002 04:32 PM	MTANS - ANSWER (MOTION/PETITION) FILED	NEVYAS MD, HERBERT J		08-AUG-2002 12:00 AM
Docket Entry:	91-02070591 & 90-02070590 ANS FILED JOINING IN ANS TO SJ			
09-AUG-2002 11:10 AM	MTASN - MOTION ASSIGNED			09-AUG-2002 11:10 AM
Docket Entry:	90-02070590 MOTION FOR SUMMARY JUDGMENT ASSIGNED TO JUDGE BERNSTEIN ON 8-12-02			
09-AUG-2002 11:10 AM	MTASN - MOTION ASSIGNED			09-AUG-2002 11:10 AM
Docket Entry:	49-02070649 MOTION FOR SUMMARY JUDGMENT ASSIGNED TO JUDGE BERNSTEIN ON 8-12-02			
09-AUG-2002	MTASN - MOTION			09-AUG-2002

11:10 AM	ASSIGNED			11:10 AM
Docket Entry:	44-02070644 MOTION FOR SUMMARY JUDGMENT ASSIGNED TO JUDGE BERNSTEIN ON 8-12-02			
09-AUG-2002 11:10 AM	MTASN - MOTION ASSIGNED			09-AUG-2002 11:10 AM
Docket Entry:	91-02070591 MOTION FOR SUMMARY JUDGMENT ASSIGNED TO JUDGE BERNSTEIN ON 8-12-02			
09-AUG-2002 11:10 AM	MTASN - MOTION ASSIGNED			09-AUG-2002 11:10 AM
Docket Entry:	48-02070648 MOTION FOR SUMMARY JUDGMENT ASSIGNED TO JUDGE BERNSTEIN ON 8-12-02			
09-AUG-2002 11:10 AM	MTASN - MOTION ASSIGNED			09-AUG-2002 11:10 AM
Docket Entry:	50-02070650 MOTION FOR SUMMARY JUDGMENT ASSIGNED TO JUDGE BERNSTEIN ON 8-12-02			
12-AUG-2002 02:08 PM	MMUPD - MOTION ASSIGNMENT UPDATED	PAPALINI, JOSEPH I		12-AUG-2002 12:00 AM
Docket Entry:	90-02070590 SUMMARY JUDGMENT OF MORAGAN REASSIGNED TO JUDGE PAPALINI ON 8/9/02			
12-AUG-2002 02:09 PM	MMUPD - MOTION ASSIGNMENT UPDATED	PAPALINI, JOSEPH I		12-AUG-2002 12:00 AM
Docket Entry:	49-02070649 SUMMARY JUDGMENT OF NEVYAS-WALLACE, M.D. REASSIGNED TO JUDGE PAPALINI ON 8/12/02			
12-AUG-2002 02:10 PM	MMUPD - MOTION ASSIGNMENT UPDATED	PAPALINI, JOSEPH I		12-AUG-2002 12:00 AM
Docket Entry:	44-02070644 SUMMARY JUDGMENT OF DEFT. NEVYAS, M.D. REASSIGNED TO JUDGE PAPALINI ON 8/12/02			

12-AUG-2002 02:12 PM	MMUPD - MOTION ASSIGNMENT UPDATED	PAPALINI, JOSEPH I		12-AUG-2002 12:00 AM
Docket Entry:	48-02070648 SUMMARY JUDGMENT OF WALLACE, M.D. REASSIGNED TO JUDGE PAPALINI ON 8/12/02			
12-AUG-2002 02:13 PM	MMUPD - MOTION ASSIGNMENT UPDATED	PAPALINI, JOSEPH I		12-AUG-2002 12:00 AM
Docket Entry:	50-02070650 SUMMARY JUDGMENT OF DEFT. WALLACE, M.D. REASSIGNED TO JUDGE PAPALINI ON 8/12/02			
12-AUG-2002 02:14 PM	MMUPD - MOTION ASSIGNMENT UPDATED	PAPALINI, JOSEPH I		12-AUG-2002 12:00 AM
Docket Entry:	91-02070591 SUMMARY JUDGMENT OF MORAGAN REASSIGNED TO JUDGE PAPALINI ON 8/12/02			
13-AUG-2002 12:07 PM	REPLY - REPLY FILED	NEVYAS- WALLACE MD, ANITA		14-AUG-2002 12:00 AM
Docket Entry:	48-02070648 REPLY FILED IN SUPPORT OF SJ			
19-AUG-2002 10:00 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	PAPALINI, JOSEPH I		19-AUG-2002 10:01 AM
Docket Entry:	91-02070591 - AND NOW, ON THIS 16TH DAY OF AUGUST, 2002, UPON CONSIDERATION OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DEFENDANTS' OPPOSITION THERE TO, IT IS HEREBY ORDERED AND DECREED THAT PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON CLAIMS OF LACK OF INFORMED CONSENT IS DENIED.....BY THE COURT: JOSEPH I. PAPALINI J.			
19-AUG-2002 10:04 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	PAPALINI, JOSEPH I		19-AUG-2002 10:06 AM
	49-02070649 - AND NOW, THIS 16TH DAY OF AUGUST, 2002, UPON			

	Docket Entry: CONSIDERATION OF DEFENDANT'S, ANITA NEVYAS-WALLACE, M.D., MOTION FOR PARTIAL SUMMARY JUDGMENT, AND ANY RESPONSE THERETO, IT IS HEREBY ORDERED AND DECREED THAT DEFENANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT IS GRANTED, AND ALL CLAIMS FOR LACK OF INFORMED CONSENT, INCLUDING THE FDA STATUS OF THE LASER USED, ARE DISMISSED WITH PREJUDICE.....BY THE COURT: JOSEPH I. PAPALINI J.		
19-AUG-2002 10:11 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	PAPALINI, JOSEPH I	19-AUG-2002 10:12 AM
	Docket Entry: 44-02070644 - AND NOW, THIS 16TH DAY OF AUGUST, 2002, UPON CONSIDERATION OF DEFENDANT HERBERT NEVYAS'S MOTION FOR SUMMARY JUDGMENT, AND PLAINTIFF DOMINIC MORGAN'S RESPONSE THERETO, IT IS HEREBY ORDERED AND DECREED THAT DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED.....BY THE COURT: JOSEPH I. PAPALINI J.		
19-AUG-2002 10:12 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	PAPALINI, JOSEPH I	19-AUG-2002 10:13 AM
	Docket Entry: 90-02070590 - AND NOW, THIS 16TH DAY OF AUGUST, 2002, UPON CONSIDERATION OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE ISSUE OF DECEPTIVE TRADE PRACTICES, AND DEFENDANTS' RESPONSES, IT IS HEREBY ORDERED AND DECREED THAT PLAINTIFF'S MOTION IS DENIED.....BY THE COURT: JOSEPH I. PAPALINI J.		
19-AUG-2002 10:16 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	PAPALINI, JOSEPH I	19-AUG-2002 10:17 AM
	Docket Entry: 50-02070650 - AND NOW, THIS 16TH DAY OF AUGUST, 2002, UPON CONSIDERATION OF DEFENANT'S, ANITA NEVYAS-WALLACE, M.D., MOTION FOR PARTIAL SUMMARY JUDGMENT, AND ANY RESPONSE THERETO, IT IS HEREBY ORDERED AND DECREED THAT DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT IS GRANTED, AND ALL ALLEGATIONS REGARDING FDA APPROVAL OR CLASSIFICATION OF THE LASER USED FOR PLAINTIFF'S SURGERIES, IN PLAINTIFF'S SECOND AMENDED COMPLAINT ARE DISMISSED, WITH PREJUDICE.....BY THE COURT: JOSEPH I. PAPALINI J.		

19-AUG-2002 10:24 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	PAPALINI, JOSEPH I		19-AUG-2002 10:28 AM
Docket Entry:	48-02070648 - AND NOW, THIS 16TH DAY OF AUGUST, 2002, UPON CONSIDERATION OF DEFENDANT, ANITA NEVYAS-WALLACE'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE ISSUE POF DECEPTIVE TRADE PRACTICES, AND FALSE ADVERTISING AND PLAINTIFF DOMINIC MORGAN'S RESPONSE THERETO, IT IS HEREBY ORDERED AND DECREED THAT DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT IS DENIED. THE MOTION FOR PARTIAL SUMMARY JUDGMENT IS GRANTED AS TO CLAIMS REGARDING FDA APPROVAL OR CLASSIFICATION OF THE LASER USED IN PLAINTIFFS' SURGERIES.....BY THE COURT: JOSEPH I. PAPALINI J.			
26-AUG-2002 10:00 AM	PTRCS - PETITION FOR RECONSIDERATION	MORGAN, DOMINIC		26-AUG-2002 12:00 AM
Docket Entry:	70-02081770 PETITION FOR RECONSIDERATION FILED			
26-AUG-2002 10:02 AM	MTASN - MOTION ASSIGNED			26-AUG-2002 10:02 AM
Docket Entry:	70-02081770 PETITION FOR RECONSIDERATION ASSIGNED TO JUDGE PAPALINI ON 8-27-02.			
26-AUG-2002 10:02 AM	PTRCS - PETITION FOR RECONSIDERATION	NEVYAS MD, HERBERT J		27-AUG-2002 12:00 AM
Docket Entry:	69-02081869 PETITION FOR RECONSIDERATION FILED			
27-AUG-2002 10:08 AM	MTASN - MOTION ASSIGNED			27-AUG-2002 10:08 AM
Docket Entry:	69-02081869 PETITION FOR RECONSIDERATION ASSIGNED TO JUDGE PAPALINI ON 8-28-02.			
28-AUG-2002 09:59 AM	CERTI - CERTIFICATION FILED			28-AUG-2002 12:00 AM

Docket Entry:	CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS PURSUANT TO RULE 4009.22 FILED.			
03-SEP-2002 12:21 PM	MTANS - ANSWER (MOTION/PETITION) FILED	MORGAN, DOMINIC		04-SEP-2002 12:00 AM
Docket Entry:	69-02081869 ANS FILED TO RECONSIDERATION			
10-SEP-2002 03:07 PM	CLLPT - LISTED FOR PRE-TRIAL CONF			10-SEP-2002 03:07 PM
Docket Entry:	<i>none.</i>			
10-SEP-2002 03:07 PM	CLCDS - CONFERENCE DATE SET			10-SEP-2002 03:07 PM
Docket Entry:	<i>none.</i>			
11-SEP-2002 04:14 PM	CLNGV - NOTICE GIVEN			11-SEP-2002 04:14 PM
Docket Entry:	<i>none.</i>			
19-SEP-2002 10:25 AM	MTM00 - MOTION/PETITION FILED	NEVYAS-WALLACE MD, ANITA		01-OCT-2002 12:00 AM
Docket Entry:	87-02091587 MOTION FOR ISSUANCE OF BENCH WARRANT.			
24-SEP-2002 04:45 PM	MTANS - ANSWER (MOTION/PETITION) FILED	NEVYAS-WALLACE MD, ANITA		24-SEP-2002 12:00 AM
Docket Entry:	70-02081770 ANS FILED TO RECONSIDERATION			

30-SEP-2002 11:07 AM	REPLY - REPLY FILED	MORGAN, DOMINIC		30-SEP-2002 12:00 AM
Docket Entry:	70-02081770 REPLY FILED TO DFT'S NEW MATTER IN RESPONSE TO PLF'S MOTION FOR RECONSIDERATION			
01-OCT-2002 10:28 AM	MTASN - MOTION ASSIGNED			01-OCT-2002 10:28 AM
Docket Entry:	87-02091587 MOTION FOR ISSUANCE OF BENCH WARRANT. ASSIGNED TO JUDGE BERNSTEIN ON, 10-2-02.			
01-OCT-2002 11:06 AM	MTWTD - MOTION/PETITION WITHDRAWN	HOLDEN, PATRICIA W		01-OCT-2002 11:07 AM
Docket Entry:	87-02091587 MOTION FOR ISSUANCE OF A BENCH WARRANT WITHDRAW BY PRAECIPE			
04-OCT-2002 10:46 AM	MTWAM - MOTION/PETITION WITHDRAWN MOOT	BERNSTEIN, MARK I		04-OCT-2002 12:00 AM
Docket Entry:	87-02091587 PETITION FOR ISSUANCE OF BENCH WARRANT IS RENDERED MOOT; MOTION WITHDRAWN.....BERNSTEIN,J. 10/02/02			
09-OCT-2002 10:41 AM	CLPCC - PRETRIAL CONFERENCE COMPLETED	MOSS, SANDRA M		09-OCT-2002 10:41 AM
Docket Entry:	<i>none.</i>			
09-OCT-2002 10:41 AM	CLWSC - WAITING TO LIST SETTLMNT CONF	MOSS, SANDRA M		09-OCT-2002 10:41 AM
Docket Entry:	<i>none.</i>			
09-OCT-2002 10:42 AM	CLLSC - LISTED FOR SETTLEMENT CONF			09-OCT-2002 10:42 AM
Docket Entry:	<i>none.</i>			

Entry:				
09-OCT-2002 10:42 AM	CLLTR - LISTED FOR TRIAL			09-OCT-2002 10:42 AM
Docket Entry:	<i>none.</i>			
10-OCT-2002 03:39 PM	CLNGV - NOTICE GIVEN			10-OCT-2002 03:39 PM
Docket Entry:	<i>none.</i>			
10-OCT-2002 03:39 PM	CLNGV - NOTICE GIVEN			10-OCT-2002 03:39 PM
Docket Entry:	<i>none.</i>			
21-OCT-2002 04:04 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	MOSS, SANDRA M		21-OCT-2002 12:00 AM
Docket Entry:	ORDERED THAT DEFENDANT, ANITA NEVYAS-WALLACE, M.D., TO ENFORCE A SUBPOOENA TO DR. HARLAN IN ACCORDANCE WITH ITS PREVIOUS ORDER ALLOWING DISCOVERY OF HIS RECORDS AND THE COURT HAVING CONSIDERED SAME AND ANY OPPOSITION THERETO, IT IS HEREBY ORDERED AND ADJUDGED THAT SAID MOTION IS GRANTED. SEE ORDER FOR ADDITIONAL DETAILS....MOSS, J. 21-OCT-2002.			
22-OCT-2002 01:44 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	PAPALINI, JOSEPH I		22-OCT-2002 01:45 PM
Docket Entry:	69-02081869 IT IS HEREBY ORDERED AND DECREED THAT PETITION FOR RECONSIDERATION OF DEFT. HERBERT J. NEVYAS, M.D. OF THIS COURT'S ORDER OF AUGUST 16, 2002 OVERRULING DEFTS' MOTION FOR SUMMARY JUDGMENT, CONTROL #070644, IT IS HEREBY ORDERED THAT SAID ORDER IS VACATED IN PART; JUDGMENT IS HEREBY ENTERED IN FAVOR OF DEFT. HERBERT J. NEVYAS, M.D. ON THE ISSUE OF INFORMED CONSENT ONLY.....PAPALINI,J. 10/22/02			

22-OCT-2002 02:29 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	PAPALINI, JOSEPH I		22-OCT-2002 02:30 PM
Docket Entry:	70-02081770 IT IS HEREBY ORDERED AND DECREED THAT PLTF'S MOTION FOR RECONSIDERATION OR CERTIFICATION OF THE PRIOR ORDERS OF THIS COURT DATED AUGUST 16, 2002 FOR IMMEDIATE APPEL, AND RESPONSES THERETO, SAID MOTION FOR RECONSIDERATION IS DENIED AND THE MOTION FOR CERTIFICATION IS DENIED.....PAPALINI,J. 10/22/02			
24-DEC-2002 11:06 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	BERNSTEIN, MARK I		24-DEC-2002 12:00 AM
Docket Entry:	ORDERED THAT DEFENDANT ANITA NEVYAS-WALLACE M.D.'S MOTION TO COMPEL DISCOVERY OF EMPLOYMENT RECORDS IS DENIED...BERNSTEIN, J. DECEMBER 23, 2002.			
26-DEC-2002 02:50 PM	MTAMD - MOTION TO AMEND			31-DEC-2002 12:00 AM
Docket Entry:	68-02122168 RESPONSE DATE 01-27-03 FILED BY DEFTS NEVYAS EYE ASSOCIATES,P.C. AND NEVYAS EYE ASSOCIATES OF NEW JERSEY P.C..			
02-JAN-2003 10:52 AM	MTANS - ANSWER (MOTION/PETITION) FILED	NEVYAS- WALLACE MD, ANITA		03-JAN-2003 12:00 AM
Docket Entry:	68-02122168 ANS FILED TO MOTION TO AMEND			
10-JAN-2003 09:50 AM	MTLIM - MOTION IN LIMINE	NEVYAS- WALLACE MD, ANITA		13-JAN-2003 12:00 AM
Docket Entry:	04-03010704 DFT.'S MOTION IN LIMINE TO PRECLUDE TESTIMONY OF PLF.'S EXPERT(FRYE HEARING). THIS MOTION IS ASSIGNED TO JUDGE MOSS ON 01-14-2003			
10-JAN-2003 09:55 AM	MTLIM - MOTION IN LIMINE	NEVYAS- WALLACE MD,		13-JAN-2003 12:00 AM

		ANITA		
Docket Entry:	97-03010697 DFT.'S MOTION IN LIMINE TO PRECLUDE PRESENTING FACT WITNESSES NOT PREVIOUSLY MENTIONED. THIS MOTION IS ASSIGNED TO JUDGE MOSS ON 01-14-2003.			
10-JAN-2003 09:55 AM	MTLIM - MOTION IN LIMINE	NEVYAS-WALLACE MD, ANITA		13-JAN-2003 12:00 AM
Docket Entry:	98-03010698 DFT.'S MOTION IN LIMINE TO PRECLUDE TESTIMONY OF PLF.'S EXPERTS BASED ON CAUSATION OPINION. THIS MOTION IS ASSIGNED TO JUDGE MOSS ON 01-14-2003			
10-JAN-2003 09:55 AM	MTLIM - MOTION IN LIMINE	NEVYAS-WALLACE MD, ANITA		13-JAN-2003 12:00 AM
Docket Entry:	99-03010699 DFT.'S MOTION IN LIMINE TO PRECLUDE PLF.'S FROM INTRODUCING THE 1999 INFORMATIONAL LASKIK VIDEO. THIS MOTION IS ASSIGNED TO JUDGE MOSS ON 01-14-2003.			
10-JAN-2003 10:03 AM	MTLIM - MOTION IN LIMINE	NEVYAS-WALLACE MD, ANITA		13-JAN-2003 12:00 AM
Docket Entry:	00-03010700 DFT.'S MOTION IN LIMINE TO PRECLUDE PLF.'S FROM INTRODUCING CUMULATIVE EVIDENCE. THIS MOTION IS ASSIGNED TO JUDGE MOSS ON 01-14-2003.			
10-JAN-2003 10:03 AM	MTLIM - MOTION IN LIMINE	NEVYAS-WALLACE MD, ANITA		13-JAN-2003 12:00 AM
Docket Entry:	01-03010701 DFT.'S MOTION IN LIMINE TO PRECLUDE PLF.'S FROM INTRO DUCING ANY EVIDENCE REGARDING THE STATUS OF THE FDA'S APPROVAL OR CLASS. OF THE LASER INVOLVED IN PLF.'S SURGERY. THIS MOTION IS ASSIGNED TO JUDGE MOSS ON 01-14-2003.			
10-JAN-2003 10:03 AM	MTLIM - MOTION IN LIMINE	NEVYAS-WALLACE MD, ANITA		13-JAN-2003 12:00 AM
	02-03010702 DFT.'S MOTION IN LIMINE TO PRECLUDE PLF.'S			

Docket Entry:	FROM INTRODUCING KYW DOUCUMENTS REGARDING ADVERTISEMENTS WHICH TOOK PLACE AFTER APRIL,1998 THIS MOTION IS ASSIGNED TO JUDGE MOSS ON 01-14-2003.			
10-JAN-2003 11:43 AM	MTLIM - MOTION IN LIMINE	NEVYAS MD, HERBERT J		14-JAN-2003 12:00 AM
Docket Entry:	20-03010720 DFT.'S MOTION IN LIMINE TO RE: EXPERT SALTZ TO LIMIT TESTIMONY. THIS MOTION IS ASSIGNED TO JUDGE MOSS ON 1-15-2003.			
10-JAN-2003 11:43 AM	MTLIM - MOTION IN LIMINE	NEVYAS MD, HERBERT J		14-JAN-2003 12:00 AM
Docket Entry:	21-03010721 DFT.'S MOTION IN LIMINE RE: ADVERTISING. THIS MOTION IS ASSIGNED TO JUDGE MOSS ON 1-15-2003.			
13-JAN-2003 10:52 AM	MTLIM - MOTION IN LIMINE	MORGAN, DOMINIC		14-JAN-2003 12:00 AM
Docket Entry:	39-03010739 PLF,'S MOTION IN LIMINE TO PRECLUDE DR. LIABSON THIS MOTION IS ASSIGNED TO JUDGE MOSS ON 1-15-2003.			
13-JAN-2003 11:14 AM	MTLIM - MOTION IN LIMINE	MORGAN, DOMINIC		14-JAN-2003 12:00 AM
Docket Entry:	40-03010740 PLF.'S MOTION IN LIMINE TO PRECLUDE SURVIELANCE THIS MOTION IS ASSIGNED TO JUDGE MOSS ON 1-15-2003.			
13-JAN-2003 11:14 AM	MTLIM - MOTION IN LIMINE	MORGAN, DOMINIC		14-JAN-2003 12:00 AM
Docket Entry:	41-03010741 PLF.'S MOTION IN LIMINE TO PRECLUDE RE: TO CITATION . THIS MOTION IS ASSIGNED TO JUDGE MOSS ON 1-15-2003.			
16-JAN-2003 10:33 AM	CERTI - CERTIFICATION FILED			16-JAN-2003 12:00 AM
Docket Entry:	CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS PURSUANT TO RULE 4009.22 FILED.			

16-JAN-2003 02:10 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	MOSS, SANDRA M		16-JAN-2003 12:00 AM
Docket Entry:	ORDERED THAT DEFENDANT'S MOTION FOR A PROTECTIVE ORDER REGARDING THE DEPOSITION OF DR. O'BRIEN FOR TRIAL, AND THE COURT HAVING CONSIDERED ANY OPPOSITION THERETO, IT IS HEREBY ORDERED THAT THE MOTION IS GRANTED AND THAT THE VIDEO DEPOSITION OF DR. O'BRIEN FOR TRIAL SHALL TAKE PLACE IN BALTIMORE MARYLAND AND PLAINTIFF IS TO REIMBURSE DEFENSE COUNSEL FOR TRAVEL EXPENSES TO AND FROM BALTIMORE AND THE DEPOSITION WILL BEGIN AT 7:00 PM ON JANUARY 28, 2003... MOSS, J. JANUARY 15, 2003.			
21-JAN-2003 02:19 PM	MTANS - ANSWER (MOTION/PETITION) FILED	MORGAN, DOMINIC		22-JAN-2003 12:00 AM
Docket Entry:	04-03010704, 02-03010702, 97-03010697, 01-03010701, 00-03010700, 98-03010698 & 99-03010699 ANS FILED TO LIMINE			
21-JAN-2003 04:30 PM	MTANS - ANSWER (MOTION/PETITION) FILED	NEVYAS- WALLACE MD, ANITA		22-JAN-2003 12:00 AM
Docket Entry:	41-03010741, 40-03010740 & 39-03010739 ANS FILED TO LIMINE			
23-JAN-2003 07:44 AM	CLSCC - SETTLEMENT CONF COMPLETED	MOSS, SANDRA M		23-JAN-2003 07:45 AM
Docket Entry:	<i>none.</i>			
24-JAN-2003 02:35 PM	WSTBA - TRANSFERED BINDING ARBITRATION	MOSS, SANDRA M		24-JAN-2003 02:37 PM
Docket Entry:	THIS CASE IS BEING SUBMITTED TO BINDING ADR. NOTIFIED BY LETTER FROM F. MICHAEL FRIEDMAN, ESQ., 24-JAN-03			

24-JAN-2003 02:35 PM	ZR236 - NOTICE GIVEN UNDER RULE 236			24-JAN-2003 02:37 PM
Docket Entry:	<i>none.</i>			
14-FEB-2003 11:50 AM	MTDAM - MOTION/PETITION MARKED MOOT			14-FEB-2003 12:00 AM
Docket Entry:	68-02122168 MOTION TO AMEND MARKED MOOT, TRANSFERRED TO BINDING ARBITRATION, CASE DISPOSED, 1-24-03.			
20-AUG-2003 09:52 AM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	MOSS, SANDRA M		20-AUG-2003 12:00 AM
Docket Entry:	AND NOW, THIS 19TH DAY OF AUGUST, 2003, IT IS HEREBY ORDERED THAT THE MATTER IS DISCONTINUED AND ENDED, THE CASE HAVING BEEN TRIED AT BINDING ARBITRATION AND A DEFENSE VERDICT ENTERED IN FAVOR OF DEFENDANT, ANITA NEVYAS-WALLACE, M.D.....BY THE COURT: SANDRA MAZER MOSS, J.			

EXHIBIT “2”

850 WEST CHESTER PIKE, 1ST FLOOR
HAVERTOWN, PA 19083

TEL: 610.789.0568
E-MAIL: md-jd@mindspring.com

Steven A. Friedman, M.D., J.D., LL.M.
Physician and Attorney at Law

INTERNAL MEDICINE AND CHEST DISEASE ☞ HEALTH AND CORPORATE MEDICAL LAW

December 4, 2003

Mr. Terry Vermillion
Director, Office of Criminal Investigation
Food and Drug Administration
7500 Standish Place - Room 250 N
Rockville, Md 20855

Re: Nevyas Excimer Laser
IDE: G970088
Protocol NEV-97-001, -002, et seq.

Dear Mr. Vermillion:

I represent Mr. Dominic Morgan, and I request an investigation by the FDA Office of Criminal Investigation, and that this letter be made part of the permanent file re the above.

I have written before, to other branches or sections of FDA, regarding Dr. Anita Nevyas-Wallace and Dr. Herbert Nevyas. I regard action as urgent, because I believe federal regulation has been flaunted and patients seriously injured. I have talked on multiple occasions with multiple FDA officials, and was told words to the effect, "The FDA staff has no intention of ever presenting Nevyas' application for FDA approval of their LASIK to the FDA Ophthalmic Devices Panel (the panel that has to decide on the Nevyas' application for FDA approval)." I believe, however, that emphasis need be placed upon investigation of possible outright *criminal* activity.

I ask the FDA to exercise its regulatory authority. Since the problem was never presented to the FDA Ophthalmic Devices Panel, my client, Mr. Dominic Morgan, did not get an opportunity to address the panel. Of much more concern to Mr. Morgan, however, the Nevyases continue performing LASIK.

I now call for an investigation by the Office of Criminal Investigation, for action which would:

1. Terminate all IDEs and stop Nevyas from performing LASIK.
2. Fine and otherwise sanction Nevyas for past improprieties.

It is my sincere belief that only the FDA, or an equivalent governmental agency with power to investigate criminal behavior can properly evaluate and understand what these improprieties are. The civil justice system is not adequate to the task.

Let me explain why the civil justice system is not adequate by using the lawsuit Mr. Morgan brought, for which I was his attorney, *Morgan v. Nevyas et al*, Philadelphia County Court of

Common Pleas. April 2000 term. number 2621.

Mr. Morgan complained of three improprieties by Nevyas

1. Deceptive trade practices.
2. Failure to obtain informed consent.
3. Medical malpractice.

I will discuss these three, and then two other reasons why the civil justice system failed.

1. DECEPTIVE TRADE PRACTICES.

In 1998 plaintiff Mr. Morgan heard advertisements broadcast on radio station KYW promoting laser eye surgery (and without saying that it was investigational). Responding to those promotions, Mr. Morgan, then age 37, went to Nevyas and paid \$5000.00 to undergo LASIK in both eyes. Dr. Nevyas-Wallace told Mr. Morgan, and twice wrote in his medical record, that he was a "good candidate" for LASIK. After LASIK plaintiff Mr. Morgan's vision worsened and he became legally blind.

The Nevyas Excimer Laser is a research instrument. As such, it was operated by Nevyas under an Investigation Device Exemption (IDE) from the Food and Drug Administration (FDA). It was not approved by the FDA. The Nevyases signed agreements to comply with the Code of Federal Regulations (C.F.R.). Section 812.7 of chapter 21 of the C.F.R. (21 C.F.R. §812.7) strictly forbids **any** advertising of **any** device operated under an IDE from the FDA.

The advertisements broadcast by the Nevyases on KYW implied FDA approval since **only** FDA-approved devices are allowed to advertise. That certainly seemed to be both an unfair method of competition and an unfair or deceptive act or practice, as defined by the Pennsylvania Unfair Trade and Consumer Protection Law (73 P.S. § 201).

Before trial took place, the Nevyases filed a motion for summary judgment, claiming that no jury should ever hear that the Nevyas LASIK was experimental or operated under an IDE, because a jury would be confused by the terms "experimental" or "investigational," and might hold it against the Nevyases. The motion was assigned to Judge Papalini, who agreed with the Nevyases, so I was not allowed to say that the Nevyas LASIK was experimental or operated under an IDE. Since I could not say that the Nevyas LASIK was experimental or operated under an IDE, I had no way of proving that the KYW advertising was illegal. As I will explain below, the claim of deceptive trade practices never was acted upon by either trial or arbitration.

I disagree with Judge Papalini's ruling, because I believe juries are smarter than that, and don't confuse so easily. *However, Judge Papalini's ruling was acknowledgment of the shortcomings of trial by jury (civil justice system), and the reason we must depend upon governmental agencies like the FDA to protect the public.*

2. FAILURE TO OBTAIN INFORMED CONSENT.

The Nevyas Excimer Laser was operated by Nevyas under an Investigation Device Exemption (IDE) from the Food and Drug Administration (FDA). The FDA required the

Nevyases follow certain protocol in order to operate their LASIK. Those protocol listed, in writing, specific required **Inclusion Criteria** and **Exclusion Criteria**. The purpose of the Inclusion and Exclusion Criteria was to state what type patient was safe or appropriate, and what type patient was not safe or appropriate, to have LASIK. Mr. Morgan was not a safe or appropriate subject for LASIK because he did not meet the **Inclusion Criteria** and he did meet the **Exclusion Criteria**.

To evaluate Mr. Morgan and the Inclusion and Exclusion Criteria, I contacted James J. Salz, M.D. of Cedars-Sinai Medical Center in Los Angeles and Terrence O'Brien, M.D. of Johns Hopkins Medical Center in Baltimore. Both are nationally and internationally known experts about LASIK. Dr. Salz is Chair and Dr. O'Brien is Secretary of the International Society of Refractive Surgery/American Academy of Ophthalmology Executive Committee for 2003. Both agreed that, either with or without the written Inclusion and Exclusion Criteria, Mr. Morgan was **not** a safe or appropriate subject for LASIK. *Please read their reports, copies of which I attach.* Instead of telling Mr. Morgan that he was **not** a safe or appropriate subject for LASIK, Dr. Nevyas-Wallace told Mr. Morgan, and twice wrote in the medical record, that he was a "good candidate" for LASIK. The Nevyases then gave Mr. Morgan a "consent form" to sign. Nowhere in that "consent form" did it mention anything about Inclusion and Exclusion Criteria, and nowhere did give any information by which Mr. Morgan could have determined that he was not a "good candidate," or that FDA-approved Inclusion and Exclusion Criteria were violated. He trusted Dr. Nevyas-Wallace. He had LASIK in both eyes and, since this was neither safe nor appropriate, he became legally blind.

Before trial took place, the Nevyases filed another motion for summary judgment, claiming that no jury should ever hear Mr. Morgan's claim that he was denied informed consent, because he had signed the "consent form" and it would confuse the jury. The motion was assigned to Judge Papalini, who agreed with the Nevyases, so I was not allowed to say that Mr. Morgan was operated upon without informed consent. As I will explain below, the claim of lack of informed consent never was acted upon by either trial or arbitration.

I disagree with Judge Papalini's ruling, because I believe juries are smarter than that, and that Mr. Morgan was not given information necessary to make an informed decision. *However, Judge Papalini's ruling was acknowledgment of the shortcomings of trial by jury (civil justice system), and the reason we must depend upon governmental agencies like the FDA to protect the public.*

3. MEDICAL MALPRACTICE.

Dr. Salz and Dr. O'Brien both agreed that the Nevyases committed medical malpractice when they did LASIK on Mr. Morgan. Both Dr. Salz and Dr. O'Brien explained that the medical malpractice was violating the **standard of care** for performing LASIK, and that **part of the standard of care consisted of the written Inclusion and Exclusion Criteria** (i.e. the IDE protocol required by the FDA). *Please read their reports, copies of which I attach.*

Before trial took place, the Nevyases filed yet another motion for summary judgment, claiming that no jury should ever hear any reference to LASIK being operated by the Nevyases under an IDE from the FDA, because a jury would be confused by terms of the IDE and hold it against the Nevyases. The motion was assigned to Judge Papalini, who agreed with the Nevyases,

so I was not allowed to say that the written Inclusion and Exclusion Criteria represented part of the standard of care breached by the Nevyases, and responsible for Mr. Morgan becoming legally blind.

I disagree with Judge Papalini's ruling, because I believe juries are smarter than that, and don't confuse so easily. *However, Judge Papalini's ruling was acknowledgment of the shortcomings of trial by jury (civil justice system), and the reason we must depend upon governmental agencies like the FDA to protect the public.*

Of course, I asked Judge Papalini to reconsider his decisions, but he refused and said his decisions were made "with prejudice," which meant that I could not raise them again until after trial, because his decisions were "prejudged" as lasting until after trial was finished.

So, feeling that I was fighting with my legs legally amputated, I agreed to binding arbitration with a high-low and no confidentiality, limited to Dr. Nevyas-Wallace and the Medical Malpractice case, emasculated as it was. The deceptive trade practices and failure to obtain informed consent cases were never arbitrated, and no decision was ever made on them because I was not allowed to speak of them. The high-low meant that if we lost we still got \$100,000 and, if we won, it could not be for more than \$1,200,000. The no confidentiality meant that nothing was confidential. The arbitrator was not allowed to go over any of the material that Judge Papalini ruled a jury should not hear, but at least there were no more judicial rulings about what a jury should not be allowed to hear. The arbitrator was only allowed to hear a very limited part of our case, as explained above. We lost but did get \$100,000.

4. NOT REPORTING DATA TO THE FDA.

In my previous letters to the FDA, I detailed how Nevyas had not reported Mr. Morgan as either a complication or adverse event to the FDA, as required by law, and stated that I was concerned that other Nevyas patients also were not reported to the FDA as either a complication or adverse event. I now know the names of two other Nevyas patients not reported to the FDA as either a complication or adverse event. Both patients sued when their vision was ruined, and I have talked with their attorneys. Even though sued, the Nevyases still did not report Mr. Morgan or the other two patients to the FDA as either a complication or adverse event. The FDA should be interested in this - the Nevyases claim that these patients merely had "post-operative symptoms," and that when Nevyas examined the patients, Nevyas was able to determine that the "post-operative symptoms" were neither complications nor adverse events. (This certainly seems to violate the FDA requirement that, whether or not a complication or adverse event seems or does not seem to be caused by LASIK, it must be reported.)

As the FDA is aware, the only people submitting data to the FDA about the Nevyas doing LASIK are the Nevyases themselves. If they are submitting their data after "editing" it of unfavorable results, which appears to be the case, then the FDA has been misled for years about what the Nevyases are doing to the public. I believe that *any investigation so far done by the FDA has been handicapped by lack of truthful data.*

As I'm sure the FDA knows, each lawsuit against the Nevyases must stand on its own - each lawsuit is limited to discussing only the particular patient involved. Thus, it is forbidden for any

patient to present an overall picture (i.e. discuss Nevyas' other lawsuits) to a jury. *This is another shortcoming of trial by jury (civil justice system), and another reason we must depend upon governmental agencies like the FDA to get the overall picture and protect the public.*

5. THE FDA HAS MEDICAL SCIENTIFIC EXPERTISE THAT JUDGES AND ARBITRATORS DO NOT.

Lawsuits against doctors involve both sides getting medical experts to evaluate the case, both for the plaintiff and for the defendant. In Mr. Morgan's case, reports of medical experts for both sides were presented to the arbitrator. In my discussion with the arbitrator after he made his decision, I learned that he felt the experts effectively cancelled out each other. Frankly, the arbitrator did not have the medical and scientific expertise that the FDA has, and which was needed for Mr. Morgan's case.

For example, the Nevyas' defense expert publishes a brochure which he hands out to patients considering LASIK. In his brochure there are a series of question and answers. For the question, "How do I know if I am a good candidate for Laser Vision Correction?" his answer is, "Patients who are 21 years of age or older, and have **healthy eyes which are free of retinal problems**, corneal scars, and any eye disease are suitable." In his report, the Nevyas' expert admitted that Mr. Morgan's, "past ophthalmic history was **complicated and significant** for retinopathy of prematurity." Retinopathy of prematurity is a retinal problem associated with premature birth (Mr. Morgan was born about three months early). When the above was pointed out, the Nevyas' expert stated in a sworn affidavit, "The statement made in that brochure does not apply to stable retinas, such as the retina of the plaintiff at the time that he underwent LASIK surgery by Dr. Anita Nevyas-Wallace." Dr. Salz and Dr. O'Brien disagreed with this double-talk (please read their reports, copies of which I attach), but Nevyas' expert, at least in the arbitrator's mind, effectively cancelled out Dr. Salz and Dr. O'Brien. *This is another shortcoming of the trial system (civil justice system) - the lack of scientific medical expertise by arbitrators and judges - and another reason we must depend upon governmental agencies like the FDA to use their scientific medical expertise and protect the public.*

Did the Nevyases pay their expert? Yes. Did I pay Mr. Morgan's experts? Yes, but Dr. Salz and Dr. O'Brien were so outraged by the unfairness of what occurred that Dr. Salz did not charge for the last half of his service, and Dr. O'Brien did not charge anything.

Mr. Morgan created a website, Lasiksucks4u.com, to talk about his personal experiences as a LASIK victim. The Nevyases, who advertise their services in the mass media (including their own website), sued him for libel, defamation, and slander, and have threatened to sue his website carriers. The Nevyas' attorney told me they intend to confiscate the social security disability checks Mr. Morgan gets for his legal blindness.

The public needs protection. The FDA can give that protection, through criminal investigation and regulation. Please contact me if you need information or have questions.

Sincerely yours,



Steven A. Friedman

EXHIBIT “3”

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Steven A. Friedman, M.D., J.D., LL.M.
Physician and Attorney at Law

INTERNAL MEDICINE AND CHEST DISEASE ☿ HEALTH AND CORPORATE MEDICAL LAW

June 17, 2005

Mara Pearse Burke
Ethics Program Manager 04-129
American Academy of Ophthalmology
P. O. Box 7424
San Francisco, CA 94120-7424
FAX 415-561-8595

Re: Mr. Morgan's Complaint re Nevyas

Dear Mrs. Burke:

I represent Mr. Dominic Morgan and am responding to your telephone message of today. (I do not have your Iowa address.)

As you know, Mr. Morgan filed an ethics complaint against Dr. Herbert Nevyas and Dr. Anita Nevyas-Wallace ("Nevyas"). I presume you also know that Nevyas is currently suing Mr. Morgan for purported defamation.

In conjunction with that defamation action, there have been documents produced and depositions taken. Three of the depositions with their exhibits (one taken May 6, 2005 and two taken June 10, 2005), and thousands of pages of documents (produced on May 5 and 6, 2005) have been ordered "Confidential-Attorney Eyes Only" by the Court. At this stage of the legal proceedings, the Court has not yet seen these documents or depositions, nor even given a description of their contents. Nevyas requested these designations before the documents were produced or depositions taken. In addition, 604 pages of documents produced April 29, 2005, while not designated "Confidential-Attorney Eyes Only," have been ordered not to be publicized. At this stage of the legal proceedings, the Court has also not yet seen these documents nor been given a description of their contents. That designation was also requested by Nevyas.

Mr. Morgan has not seen the three depositions nor the thousands of pages, and cannot reveal them to you. Mr. Morgan has seen the 604 pages, but cannot reveal them to you. I have seen all of these, but cannot reveal them to you.

These depositions and documents are extremely important to Mr. Morgan's charges of unethical conduct by Nevyas.

Unfortunately, at present I do not know if or when Mr. Morgan will be allowed access, or be permitted to share these with you.

It is neither fair to Mr. Morgan nor to Nevyas to have the Ethics Committee work in the dark. There is an applicable passage in St. Luke about those who work in the dark.

I am sure the Ethics Committee wants to be fair to Mr. Morgan and to Nevyas.

Therefore:

On behalf of my client, Mr. Dominic Morgan, the ethics charges against Nevyas are hereby withdrawn. Mr. Morgan thanks the Ethic Committee of the American Academy of Ophthalmology for its time and effort.

Sincerely yours,



Steven A. Friedman
Counsel for Dominic Morgan

cc: Mr. Dominic Morgan

CERTIFICATION OF SERVICE

I, Eidy Severino, Legal Assistant, hereby certify that I have caused a true and correct copy of the Praeipce to Attach Exhibit "77" to the Pretrial Memorandum, to be served via U.S. Mail postage prepaid to counsel listed below:

Jeffrey B. Albert, Esquire
McCossick & Hoffman, P.C.
1818 Market Street, 13th Floor
Philadelphia, PA 19103

Steven A. Friedman, Esquire
850 West Chester Pike
Havertown, PA 19083

Date: July 18, 2005

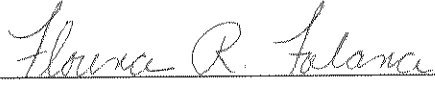

Eidy Severino

CERTIFICATE OF SERVICE

I, Florence R. Falance, hereby certify that on July 17, 2009, I have caused a true and correct copy of Plaintiffs' Response to Defendant's Motion to Determine Whether Plaintiffs are Private Figures or Limited Purpose Public Figures and Memorandum in support thereof to be served via first class mail postage prepaid to the following individual listed below:

Steven A. Friedman
Law Offices of Steven Friedman
850 West Chester Pike
Havertown, PA 19083

Maureen Fitzgerald, Esquire
McKissock & Hoffman, P.C.
1818 Market Street, Suite 13th floor
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Florence R. Falance