

FILED

20 JUL 2009 12:28 am

PHILADELPHIA COURT OF COMMON PLEAS
Civil Administration
PETITION/MOTION COVER SHEET
A. LEBRON

FOR COURT USE ONLY	
ASSIGNED TO JUDGE:	ANSWER/RESPONSE DATE:
<i>Do not send Judge courtesy copy of Petition/Motion/Answer/Response. Status may be obtained online at http://courts.phila.gov</i>	

CONTROL NUMBER:

(RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)

_____ Term, _____
Month Year

No. _____

Name of Filing Party: _____

(Check one) Plaintiff Defendant
(Check one) Movant Respondent

vs.

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 (see list on reverse side)	PETITION/MOTION CODE (see list on reverse side)
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ANSWER/RESPONSE FILED TO (Please insert the title of the corresponding petition/motion to which you are responding): _____

I. CASE PROGRAM

Is this case in the (answer all questions):

A. COMMERCE PROGRAM
Name of Judicial Team Leader: _____
Applicable Petition/Motion Deadline: _____
Has deadline been previously extended by the Court?
 Yes No

B. DAY FORWARD/MAJOR JURY PROGRAM — Year _____
Name of Judicial Team Leader: _____
Applicable Petition/Motion Deadline: _____
Has deadline been previously extended by the Court?
 Yes No

C. NON JURY PROGRAM
Date Listed: _____

D. ARBITRATION PROGRAM
Arbitration Date: _____

E. ARBITRATION APPEAL PROGRAM
Date Listed: _____

F. OTHER PROGRAM: _____
Date Listed: _____

II. PARTIES (required for proof of service)
(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.)

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) (Date) (Print Name) (Attorney I.D. No.)

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.

Instructions for Completing Petition/Motion Cover Sheet

A Petition/Motion Cover Sheet must be attached to all Petitions, Motions, Answers or Responses filed, except for Discovery Motions and Motions for Extraordinary Relief. Sanctions will be imposed if the Cover Sheet is inaccurately completed.

Please Note the following:

1. **ANSWER or RESPONSE DATE.** The Motion Clerk shall enter the "Answer" or "Response" Date on the Cover Sheet. All Responses to Motions and Answers to Petitions must be filed with the Prothonotary and submitted to the Motion Clerk on or before the Response Date. **Note:** Summary Judgment Motions have a 30 day Response period. Except for those Motions identified in Phila.Civ.R. *208.3(a) and (b), all other Motions have a 20 day Response period.
2. **ARGUMENT DATE.** The Motion Clerk shall enter the Argument Date and location on the Cover Sheet, as appropriate.
3. **CONTROL NUMBER.** The Motion Clerk shall assign a Control Number to all Petitions and Motions. The Responding parties must enter this Control Number on the Cover Sheet accompanying their Answer or Response.
4. **NATURE OF DOCUMENT FILED.** The filing party must check whether the document being filed is a Petition (in which case a Rule to Show Cause Order must be attached), a Motion, an Answer to a Petition, or a Response to a Motion. The parties must indicate whether another Petition or Motion is outstanding or has been decided and, if so, must identify the Judge(s) to whom such prior Petitions or Motions had been assigned.
5. **PETITION OR MOTION TYPES.** The parties must utilize the following Petition or Motion Codes and Types (and the Motion Clerk is authorized to change a filing party's designation to reflect the correct Petition or Motion Code and Type):

CODE	MOTIONS	CODE	MOTIONS	CODE	MOTIONS
MTSAL	Motion for Additional Distribution of Sale Proceeds	MTJNP	Motion for Entry of Judgment of Non Pros	MTRWT	Motion to Return Writ of Possession or Execution
MTPHV	Motion for Admission Pro Hac Vice	MTSUP	Motion for Entry of Supersedeas	MTSAN	Motion for Sanctions
MTSVR	Motion for Alternative Service	MTEXP	Motion for Expungement of Record	MT229	Motion for Sanctions for Failure to Deliver Settlement Funds
MTAMJ	Motion to Amend Judgment	MTEOT	Motion for Extension of Time to file Certificate of Merit	MTSAS	Motion to Set Aside Sheriff's Sale
MTAMD	Motion to Amend Pleading	MTEXT	Motion for Extension of Time to answer/respond)	MTSAA	Motion to Set Aside Award
MTGAL	Motion to Appoint Guardian Ad Litem	PTEXR	Motion for Extraordinary Relief	MTIPP	Motion to Settle Incompetent/Incapacitated Person's Estate
MTAPC	Motion for Appointment of a Conservator	MTNPT	Motion to File Nunc Pro Tunc	MTSPR	Motion to Stay Proceedings
MTMCF	Motion for Approval and Distribution of Minor's Compromise	MTFUS	Motion to File Under Seal	MTWOE	Motion to Stay Writ of Execution
MTWRD	Motion for Approval & Distribution of Wrongful Death & Survival Action	PTFMV	Motion to Fix Fair Market Value	MTSTK	Motion to Strike Pleading
MTAPS	Motion to Approve Transfer of Structured Settlement	MTINT	Motion for Interpleader	MTSJD	Motion for Summary Judgment (30 day hold)
MTADH	Motion for Assessment of Damages Hearings	MTINV	Motion to Intervene	MTRAE	Motion for Supplementary Relief in Aid of Execution
MTAMV	Motion to Auction Motor Vehicles	MTIOP	Motion to Invalidate Opt-Outs (Class Action cases)	MTRDM	Motion to Reassess Damages
MTBIF	Motion to Bifurcate	MTJAD	Motion to Join Additional Defendant	MTRRF	Motion for Reimbursement of Fees
MTCIA	Motion to Certify Order for Interlocutory Appeal	MTJPL	Motion for Judgment on the Pleadings	MTRFL	Motion to Release Bond
MTCNM	Motion to Change Name	MTJUR	Motion for Jury Out of Time	MTRDS	Motion to Remove Case from Deferred Status
MTCLC	Motion for Class Action Certification	MTLIM	Motion in Limine	MTSRC	Motion to Seal Record
MTCMP	Motion to Compel Discovery	MTMJS	Motion to Mark Judgment Satisfied	MTSEV	Motion to Sever Cases
MTCPs	Motion to Compel Payment of Settlement	MTMVR	Motion to Obtain Motor Vehicle Records	MTSPP	Motion for Specific Performance
MTCOM	Motion to Complete Terms of Sheriff's Sale	MTOPN	Motion to Open/Strike Confessed Judgment	MTTFR	Motion to Transfer
MTCST	Motion to Confirm Settlement	MTPAR	Motion for Partition	MTTRJ	Motion to Transfer Judgment
MTCNS	Motion to Consolidate Actions	MTPIC	Motion for Payment into Court	MTFTV	Motion for Title to Vehicle
MTCON	Motion for Continuance	MTPRE	Motion to Pay Rent into Escrow Account	MTWDA	Motion to Withdraw Appearance
MTCOR	Motion for Coordination of Actions	MTSYS	Motion to Postpone Sheriff's Sale	MTWPS	Motion for Writ of Possession
MTCRT	Motion to Correct Record	PTTMF	Motion for Post Trial Relief	MTWRS	Motion for Writ of Seizure
MTCNF	Motion for Counsel Fees	MTPCD	Motion for Pre-Complaint Discovery	MTMIS	Miscellaneous Motion
PTDOM	Motion for Delay Damages	PRINJ	Motion for Preliminary Injunction		
MTDJT	Motion to Demand Jury Trial	MTPSA	Motion for Preliminary Settlement Approval (Class Action Cases)	CODE	PETITIONS
DPROB	Motion to Determine Preliminary Objections	MTPDE	Motion to Preserve Documents and Evidence	PTAAR	Petition to Appoint Common Law Arbitrator
MTDSC	Motion to Discontinue Case	MTIFP	Motion to Proceed In Forma Pauperis	PTARC	Petition to Appoint a Receiver
MTDIS	Motion to Dismiss for Forum Non Conveniens	MTPRO	Motion for Protective Order	PTCAR	Petition to Compel Arbitration
MTDCN	Motion to Disqualify Counsel	MTQSH	Motion to Quash	PTCAW	Petition to Confirm Arbitration Award
MTEMG	Emergency Motion	MTRCS	Motion for Reconsideration	PTCST	Petition to Confirm Settlement
MTEST	Motion to Enforce Settlement	MTRPR	Motion to Redeem Premises	PTFCT	Petition for Contempt
MTJDG	Motion for Entry of Default Judgment	MTREF	Motion to Release Escrow Funds	PTOJD	Petition to Open Default Judgment
		MTOPT	Motion to Remove Opt-Out of the Proposed Settlement Agreement (Class Action Cases)	PTSNP	Petition to Open Judgment of Non Pros
				PTEMG	Emergency Petition

6. **CASE PROGRAM.** The party shall check the program to which the case is assigned and provide the requested program data.
7. **PARTIES.** The filing parties shall set forth the name, address and telephone number of all counsel of record and unrepresented parties, and must attach a stamped addressed envelope for each attorney of record and unrepresented party.
8. **OTHER.** The parties shall enter other relevant important information in this box – such as request for stay, emergency designation etc. – placing the Motion Clerk on notice of special handling or request.
9. **SIGNATURE LINE.** The Cover Sheet must be signed, dated and, if applicable, the attorney ID number must be provided.
10. **SERVICE.** A copy of the file-stamped Petition, Motion, Answer, Response and attachments must be served on all parties of record immediately after filing as required by Pa.R.C.P. 206.6, and Pa.R.C.P. 440.

FILED

Civil Administration

A. LEBRON
Dominic J. Morgan
1038 E. 18th St.
Chester, PA 19013

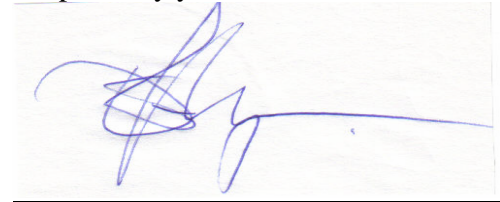
July 20, 2009

Honorable Peter F. Rogers
Court of Common Pleas of Philadelphia County
Criminal Justice Center - Room 1408
1301 Filbert Street
Philadelphia, PA 19107

Dear Judge Rogers:

I attach a courtesy "hard" copy of my Reply submitted electronically today, to "Plaintiffs' Response to Defendant's Motion to Determine Whether Plaintiffs are Private Figures or Limited Purpose Public Figures."

Respectfully yours,



Dominic Morgan, *pro se*

cc: Leon Silverman, Esq.
Maureen Fitzgerald, Esq.

Dominic J. Morgan, *pro se*
1038 East 18th Street
Chester, PA 19013
(610) 364-3367

HERBERT J. NEVYAS, M.D., and	:	COURT OF COMMON PLEAS
ANITA NEVYAS-WALLACE, M.D., and	:	TRIAL DIVISION
NEVYAS EYE ASSOCIATES, P.C.,	:	Philadelphia County
Plaintiffs	:	NOVEMBER TERM, 2003
	:	NO. 946
vs.	:	
DOMINIC MORGAN, and	:	Control Number <u>01-09062101</u>
STEVEN A FRIEDMAN	:	Jury Trial demanded on Counterclaim
Defendants	:	

PRO SE DEFENDANT MORGAN’S REPLY TO ‘PLAINTIFFS’ RESPONSE TO DEFENDANT’S MOTION TO DETERMINE WHETHER PLAINTIFFS ARE PRIVATE FIGURES OR LIMITED PURPOSE PUBLIC FIGURES’

The Nevyas plaintiffs’ Response shows them again trying to have it both ways, saying one thing to this court and a different thing outside this court. Examples include:

1. At paragraph 4 plaintiffs tell this court: “Plaintiffs deny that the outcome of the surgery was poor and further deny that Morgan is now legally blind.”

Outside this court, plaintiff Herbert Nevyas states: “...he reported vision as low as 20/200 in each eye when I last saw him. I know he has been judged legally blind....and that he is presently receiving Social Security Disability payments because of his legal blindness.” Exhibit D.

2. At paragraph 5 plaintiffs tell this court: “Plaintiffs, after reasonable investigation, have insufficient information to determine whether Defendant Friedman is a practicing physician....”

Outside this court, plaintiffs file a federal lawsuit against Morgan and Friedman, stating that Friedman is a practicing physician in competition with Nevyas and in violation of the Lanham Act. *Nevyas v. Morgan*, 309 F. Supp.2d 673 (E.D. Pa. 2004).

3. At paragraph 12 plaintiffs tell this court: “Plaintiffs deny that any public dispute exists over LASIK surgery in general or over plaintiffs’ performance of LASIK surgery in particular.”

Outside this court, plaintiffs actively participate in the ongoing public controversy about LASIK by listing their websites (including <http://www.nevyas.com/>) among the over 316,000 website listings that discuss “LASIK controversy.”¹ At

¹ Under the topic “LASIK controversy” the internet lists over 316,000 websites. The first ten are:

1. LASIK: Advances, Controversies, and Custom fulfills all of your needs and ... Section Two-LASIK Controversies. Chapter 26A The Pros of Pediatric LASIK ... www.slackbooks.com/view.asp?SlackCode=66542 - Cached
2. Information about Lasik - LASIK Controversy
LASIK Controversy A debate rages among ophthalmologists the world over. ... LASIK Controversy. LASIK Evaluating Your Opthamologist. LASIK Eye Surgery Afterwards ... www.info-about-lasik.com/LASIK_Controversy.html - Cached
3. Lasik controversy hits ophthalmic practice - Cover Story - Healthcare ... India's Only Business Fortnightly for the Healthcare Industry ... Lasik controversy hits ophthalmic practice ... recent controversy surrounding Laser In Situ ... www.expresshealthcaremgmt.com/20020915/cover1.shtml - Cached
4. LASIK - The Indian eye controversy Shah S - Indian J Ophthalmol
Indian J Ophthalmol, Official scientific journal of the All India Ophthalmological Society (AIOS) ... Shah S. LASIK - The Indian eye controversy. ... ijo.in/article.asp?issn=0301-4738;year=2002;volume=50;issue=4;page... - Cached
5. Optimized vs. Wavefront-Guided LASIK: Today's Refractive Controversies ... Optimized vs. Wavefront-Guided LASIK: Today's Refractive Controversies - Ophthalmology Technology Spotlight - Medcompare. Medcompare - The Buyer's Guide for Medical ... www.medcompare.com/spotlight.asp?spotlightid=218 - Cached
6. LASIK Eye Surgery Controversies: It Can Help You More Than Hurt You ... Media reports saying LASIK harms people's eyes should be put in context--especially with my own ... LASIK Eye Surgery Controversies: It Can Help You More ... associatedcontent.com/.../lasik_eye_surgery_controversies_it.html - 56k - Cached
7. Is LASIK Elective Surgery Safe For The Long-Term?
News Release Because there is still much controversy over whether or not LASIK is safe or imposes any long-term damages since its introduction into the USA in 1997, ...

<http://www.nevyas.com/> the Nevyases advertise their services, purport having the best type of LASIK device, purport having done LASIK longer than anyone else in Philadelphia, purport having the best results, and purport being “doctor’s doctors.”

Outside this court, among the over 316,000 website listings that discuss “LASIK controversy” are official minutes of the 110th meeting of the FDA’s Ophthalmic Devices Panel/ Medical Devices Advisory Committee, where defendant Morgan addresses the committee as an invited guest, at

<http://www.fda.gov/ohrms/dockets/ac/08/minutes/2008-4353m1.htm>. Videotaped addresses by all speakers including defendant Morgan (#6 of 32) are at http://www.lasikdecision.com/index.php?option=com_content&task=view&id=629&Itemid=30, which also links to coverage by CBS, NBC, MSNBC, ABC, CNN, Associated Press, Morning Star, New York Times, and Wall Street Journal.

Outside this court, if plaintiffs do not wish to acknowledge the over 316,000 website listings that discuss “LASIK controversy,” there are literally dozens of “hard

-
8. emediawire.com/releases/.../7LASIK_Moratorium/emw2612464.htm - Cached
YouTube - LASIK Consumer Alert
With today's controversy over LASIK surgery, Dr. Mark Doubrava, Medical Director of Eye Care For Nevada discusses what consumers should look for in a doctor,
www.youtube.com/watch?v=gqLz3OzcMOW - 105k - Cached
Video.Play Video
 9. Eyesight Associates - Medical Info
There has been a lot of controversy in the media concerning LASIK refractive eye surgery. ... The recent LASIK controversy has created a lot of confusion in ...
www.eyesightassociates.com/info-LasekVsLasik.html - Cached
 10. Can You Justify the Cost of San Francisco IntraLASIK (InterLASIK or all ...
Is There a Controversy Growing over IntraLASIK in San Francisco? What does InterLASIK or all-laser LASIK cost vs wavefront LASIK? ... SAN FRANCISCO LASIK ...
www.scotthyver.com/lasik/sanfrancisco/intralasik.shtml - Cached

copy” textbooks dealing with Lasik controversy.²

Outside this court, as plaintiffs surely know, there are also hundreds of magazine and journal articles that discuss “LASIK controversy.”

4. At *The Relationship Between the Parties* section of their instant “Factual History,” plaintiffs tell this court: “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.”

Outside this court, the FDA shut down Nevyas’ IDE “for reasons of public safety,” forcing Nevyas to purchase an FDA-approved LASIK device. Among the 3500 pages of documents produced by Nevyas in the instant case, and the 900 pages produced in the earlier *Morgan v. Nevyas et al*, there is no document showing Nevyas voluntarily ended his IDE. Instead, after repeatedly citing problems with Nevyas and his IDE, and after repeatedly warning Nevyas about violations of law, regulation, and protocol, the FDA shut down Nevyas' IDE. See section 12 of Defendant Morgan’s instant Memorandum of Law in Response.

² Textbooks published prior to December 2003 include:

1. *Lasik: Fundamentals, Surgical Techniques, and Complications* by Akers, MJ.; Azar, DT.; Koch, DD.; published January 2003 by Informa Healthcare.
2. *Lasik: Advances, Controversies, and Customs* by Probst, L.; published November 2003 by Slack Inc.
3. *Lasik Complications: Trends and Techniques* by Gimbel, HV; Anderson-Penno, EE; published November 1998 and October 2000 by Slack Inc
4. *Lasik Techniques: Pearls and Pitfalls* by Belville, K; Smith, RJ; published November 2003 by Slack Inc.
5. *Lasik: Principles and Techniques* by Buratto, L; Brint, SF; published April 1998 by Slack Inc.
6. *Wavefront Customized Visual Corrections: The Quest for Super Vision II* by Macrae, SM; Krueger, RR; Applegate, RA published November 2003 by Slack Inc.

Verification:

I, Dominic J. Morgan, defendant pro se verify these statements to be true, and understand that these statements are made subject to penalties of 18 Pa.C.S. Sec. 4904 relating to unsworn falsification to authorities.

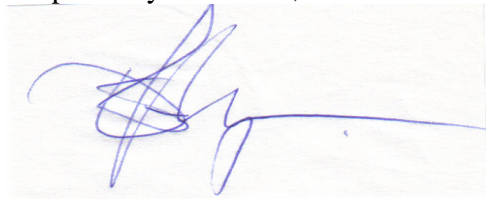
Certificate of Service:

I certify that a true and correct copy of the attached document has been e-mailed or mailed first class prepaid to the persons listed below on the date listed below:

Leon Silverman, Esquire
Stein & Silverman, P.C.
230 South Broad Street, 18th Floor
Philadelphia, PA. 19102

Maureen Fitzgerald, Esquire
Eckert Seamans Cherin & Mellott, LLC
2 Liberty Place
50 South 16th Street - 22nd Floor
Philadelphia, PA 19102
mfitzgerald@eckertseamans.com

Respectfully submitted,



Dated July 20, 2009

Dominic J. Morgan, pro se

Exhibit D



Herbert J. Nevyas, M.D.
*Refractive, Cataract, and
 Corneal Surgery*

Joana Y. Nevyas, M.D.
*Cataract and Glaucoma Surgery
 and Therapy*

Anita Nevyas-Wallace, M.D.
*Refractive, Cataract and
 Corneal Surgery*

Mitchell E. Stein, M.D.
*Retinal Disease, Glaucoma
 Medical and Surgical Ophthalmology*

Vipin K. Goyal, M.D.
*Corneal Surgery, Glaucoma and
 Refractive Surgery*

Edward A. Deglin, M.D.
Vitreo-retinal Disease and Surgery

Joshua M. Greene, M.D.
Vitreo-retinal Disease and Surgery

Amiram Shapiro, M.D., M.S.
*Ophthalmic Plastic Surgery
 Ocular Motility*

Kenneth Morgenstern, M.D.
*Cosmetic Oculoplastic Surgery
 Facial and Reconstructive Surgery*

July 31, 2007

Medical Review Unit
 NJMVC
 P. O. Box 173
 Trenton, NJ 08666-0173

RE: Mr. Dominic Morgan
 Pennsylvania Driver's License [REDACTED]

To Whom It May Concern:

I have serious concerns about the driving skills of Mr. Dominic Morgan (DOB 8/8/1960) of [REDACTED]

It is my understanding that Mr. Morgan maintains a valid New Jersey driver's license, even though he is no longer licensed in Pennsylvania. I examined Mr. Morgan from an ophthalmologic standpoint several years ago, and he reported vision as low as 20/200 in each eye when I last saw him. I know that he has been judged legally blind after an examination by Dr. John D. Dugan, Jr. in Voorhees, NJ, and that he is presently receiving Social Security Disability payments because of his legal blindness.

I think that Mr. Morgan should be re-evaluated by your impartial examiner and his license revoked if he does not measure up to the appropriate visual standard. I would not want to be responsible for allowing a legally blind driver to be on the highway.

Sincerely,

Herbert J. Nevyas, M.D.

To Whom it May Concern:

I hereby certify that this HJN/ljs
 is a TRUE COPY.

Chief Administrator

e-mail address:
 nevyas@aol.com

☐ Two Bala Plaza
 333 City Avenue
 Bala Cynwyd, PA 19004
 610-668-2777
 Fax 610-668-1509

☐ 1528 Walnut Street
 Suite 1501
 Philadelphia, PA 19102
 215-790-0661
 Fax 215-790-0652

☐ Central Square
 2465 Grant Avenue
 Philadelphia, PA 19114
 215-673-2020
 Fax 215-969-6375

☐ 1001-E Lincoln Drive West
 Greentree Executive Campus
 Marlton, NJ 08053
 856-985-9797
 Fax 856-985-1191