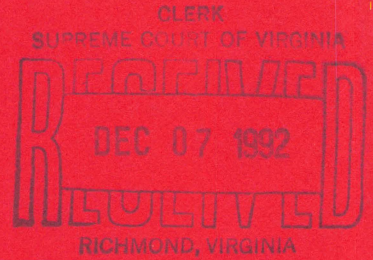


245 Va 346



IN THE  
SUPREME COURT OF VIRGINIA  
AT RICHMOND

Record No. 921106

MARGARET HOWARD,

Appellant

vs.

THE ALEXANDRIA HOSPITAL,

Appellee

APPENDIX

J. Hunt Brasfield  
ASHCRAFT & GEREL  
4900 Seminary Road, #650  
Alexandria, Virginia 22311  
(703) 931-5500

Counsel for Appellant

Fred C. Alexander, Jr.  
McGUIRE, WOODS, BATTLE  
& BOOTHE  
1199 N. Fairfax St., #1000  
Alexandria, Virginia 22314  
(703) 739-6200

Counsel for Appellee



## TABLE OF CONTENTS

1.	Plaintiff's Motion for Judgment filed February 27, 1991.....	1
2.	Defendant's Grounds of Defense dated March 18, 1991.....	4
3.	Letter from Dr. Aldo Roseblatt to Dr. Hernando Salcedo dated October 12, 1989....	6
4.	Defendant's Responses to Plaintiff's Requests for Admissions dated November 30, 1990.....	7
5.	Opinion of Medical Malpractice Review Panel dated February 4, 1991.....	14
6.	Plaintiff's Second Requests for Admission dated November 18, 1991 and Defendant's Responses dated November 20, 1991.....	16
7.	Plaintiff's Third Requests for Admission dated December 3, 1991 and Defendant's Responses.....	20
8.	Plaintiff's Memorandum in Support of Motion for New Trial dated March 11, 1991.....	22
9.	Plaintiff's proposed Order Granting Motion to Strike submitted April 17, 1992 (but not endorsed).....	31
10.	Final Judgment Order rendered by the Circuit Court for the City of Alexandria dated April 17, 1991.....	37
11.	Plaintiff's Written Statement of Facts, Testimony, and Other Incidents of the Case Submitted in Accordance with Rule 5:11(c).....	39
12.	Defendant's Additions to Plaintiff's Written Statement.....	52
13.	Plaintiff's Assignments of Error.....	54

# STATE OF TEXAS

1	Warrant for the arrest of	1
2	James Earl Ray, Jr.	2
3	for the crime of	3
4	murder of Martin Luther King, Jr.	4
5	on or about April 4, 1968	5
6	at Memphis, Tennessee	6
7	James Earl Ray, Jr.	7
8	is hereby charged with	8
9	the crime of	9
10	murder of Martin Luther King, Jr.	10
11	on or about April 4, 1968	11
12	at Memphis, Tennessee	12
13	James Earl Ray, Jr.	13
14	is hereby charged with	14
15	the crime of	15
16	murder of Martin Luther King, Jr.	16
17	on or about April 4, 1968	17
18	at Memphis, Tennessee	18
19	James Earl Ray, Jr.	19
20	is hereby charged with	20
21	the crime of	21
22	murder of Martin Luther King, Jr.	22
23	on or about April 4, 1968	23
24	at Memphis, Tennessee	24
25	James Earl Ray, Jr.	25
26	is hereby charged with	26
27	the crime of	27
28	murder of Martin Luther King, Jr.	28
29	on or about April 4, 1968	29
30	at Memphis, Tennessee	30
31	James Earl Ray, Jr.	31
32	is hereby charged with	32
33	the crime of	33
34	murder of Martin Luther King, Jr.	34
35	on or about April 4, 1968	35
36	at Memphis, Tennessee	36
37	James Earl Ray, Jr.	37
38	is hereby charged with	38
39	the crime of	39
40	murder of Martin Luther King, Jr.	40
41	on or about April 4, 1968	41
42	at Memphis, Tennessee	42
43	James Earl Ray, Jr.	43
44	is hereby charged with	44
45	the crime of	45
46	murder of Martin Luther King, Jr.	46
47	on or about April 4, 1968	47
48	at Memphis, Tennessee	48
49	James Earl Ray, Jr.	49
50	is hereby charged with	50
51	the crime of	51
52	murder of Martin Luther King, Jr.	52
53	on or about April 4, 1968	53
54	at Memphis, Tennessee	54
55	James Earl Ray, Jr.	55
56	is hereby charged with	56
57	the crime of	57
58	murder of Martin Luther King, Jr.	58
59	on or about April 4, 1968	59
60	at Memphis, Tennessee	60
61	James Earl Ray, Jr.	61
62	is hereby charged with	62
63	the crime of	63
64	murder of Martin Luther King, Jr.	64
65	on or about April 4, 1968	65
66	at Memphis, Tennessee	66
67	James Earl Ray, Jr.	67
68	is hereby charged with	68
69	the crime of	69
70	murder of Martin Luther King, Jr.	70
71	on or about April 4, 1968	71
72	at Memphis, Tennessee	72
73	James Earl Ray, Jr.	73
74	is hereby charged with	74
75	the crime of	75
76	murder of Martin Luther King, Jr.	76
77	on or about April 4, 1968	77
78	at Memphis, Tennessee	78
79	James Earl Ray, Jr.	79
80	is hereby charged with	80
81	the crime of	81
82	murder of Martin Luther King, Jr.	82
83	on or about April 4, 1968	83
84	at Memphis, Tennessee	84
85	James Earl Ray, Jr.	85
86	is hereby charged with	86
87	the crime of	87
88	murder of Martin Luther King, Jr.	88
89	on or about April 4, 1968	89
90	at Memphis, Tennessee	90
91	James Earl Ray, Jr.	91
92	is hereby charged with	92
93	the crime of	93
94	murder of Martin Luther King, Jr.	94
95	on or about April 4, 1968	95
96	at Memphis, Tennessee	96
97	James Earl Ray, Jr.	97
98	is hereby charged with	98
99	the crime of	99
100	murder of Martin Luther King, Jr.	100

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

MARGARET HOWARD  
4407 Evansdale Road  
Woodbridge, Virginia 22193

Plaintiff

vs.

AT LAW NO: CL910178

THE ALEXANDRIA HOSPITAL

Serve: Administrator  
The Alexandria Hospital  
4320 Seminary Road  
Alexandria, Virginia 22304

MOTION FOR JUDGMENT

YOUR PLAINTIFF, MARGARET HOWARD, ASSERTS AS FOLLOWS:

(1) That on October 12, 1989, she underwent right carpal tunnel syndrome surgery by Dr. Aldo M. Rosemlat at The Alexandria Hospital. During the course of this surgery, surgical instruments were used which were not adequately sterilized.

(2) This unsterile surgical environment was caused by the negligence and the reckless, indifferent, and willful disregard of the defendant hospital, its agents, servants and employees in:

(a) Failing to shut down and seal off an autoclave, which was known to have been faulty, but which was continued in use notwithstanding;

(b) Failing to properly set, inspect, discover and warn of the inadequate and improperly adjusted temperature gauge on the autoclave;

(c) Failing to inspect, discover and warn of the problem with the temperature gauge on the autoclave and also the

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 700  
2000 L STREET, N. W.  
WASHINGTON, D. C. 20036  
202-783-6400

SUITE 220  
4660 KENMORE AVENUE  
ALEXANDRIA, VA. 22304  
703-751-7400

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD. 20852  
301-770 3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD. 20785  
301-459-8400

SUITE 805  
10 EAST BALTIMORE STREET  
BALTIMORE, MD. 21202  
301-539-1122

2

warning strip concerning the surgical instruments.

(3) That these acts and omissions herein complained of constitute negligence, medical negligence, failure to adhere to the appropriate standards of care, and in addition, they warrant the imposition of punitive damages based upon the willful, wanton, reckless disregard, and the conscious disregard, of the rights of others.

(4) The defendant, Alexandria Hospital, has admitted negligence as complained of herein and the Medical Malpractice Panel, after a full and proper hearing and deliberations, concluded that "the evidence supports a conclusion that the health care provider failed to comply with the appropriate standard of care and that such failure is a proximate cause in the alleged damages".

(5) Further, the acts and omissions herein complained of have resulted in the need for plaintiff to be treated preventively for a multitude of possible consequences known or suspected to result from the use of unsterile surgical instruments, including but not limited to fatal or potentially fatal exposures to such things as Hepatitis, HIV and AIDS, and a host of other maladies too numerous to detail. These fears and concerns were or should have been well known to the defendant hospital and its agents, servants and employees.

(6) That as a result of the disclosures that have been made to plaintiff, she has suffered pain, suffering, anguish, inconvenience, and discomfort. She has undergone medical procedures that have been unpleasant, distasteful, painful,

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 700  
2036 L STREET, N. W.  
WASHINGTON, D. C. 20036

202-783-6400

SUITE 220  
4660 KENMORE AVENUE  
ALEXANDRIA, VA. 22304

703-751-7400

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD. 20852

301-770 3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD. 20785

301-459-8400

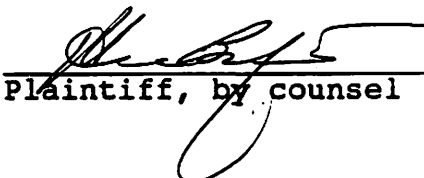
SUITE 605  
10 EAST BALTIMORE STREET  
BALTIMORE, MD. 21202

301-539-1122

2

debilitating, and worrisome, and which have caused increased anxiety in the extreme; her life has not been the same since, and she has been deprived of the ability to enjoy many of life's pleasures and has been otherwise subjected to emotional distress inflicted upon her by the acts and omissions herein complained of.

WHEREFORE, your plaintiff requests the entry of a verdict and judgment in her behalf in the just amount of ONE HUNDRED-FIFTY THOUSAND DOLLARS, as compensatory damages, plus interest and costs as allowed by law, and such other amounts as may be just and proper for punitive damages up to the amount of an additional ONE HUNDRED THOUSAND DOLLARS, plus interest and costs as allowed by law.

  
Plaintiff, by counsel

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 700  
2000 L STREET, N. W.  
WASHINGTON, D. C. 20036

202-783-6400

SUITE 220  
4660 KENMORE AVENUE  
ALEXANDRIA, VA. 22304

703-751-7400

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD. 20852

301-770 3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD. 20785

301-459-8400

SUITE 605  
10 EAST BALTIMORE STREET  
BALTIMORE, MD. 21202

301-539-1122

ASHCRAFT & GEREL  
4660 Kenmore Avenue, Suite 220  
Alexandria, Virginia 22304

By   
J. Hunt Brasfield  
Counsel for Plaintiff

File

V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

MARGARET HOWARD,  
  
Plaintiff,  
  
v.  
  
THE ALEXANDRIA HOSPITAL,  
  
Defendant.

---

At Law No. CL 910178

GROUND S OF DEFENSE

Defendant The Alexandria Hospital, by counsel, states its grounds of defense to the Motion for Judgment heretofore filed against it in this action as follows:

1. Defendant denies the allegations as phrased in the second sentence of paragraph 1 of the Motion for Judgment.
2. Defendant denies the allegations contained in paragraphs 2 and 3 of the Motion for Judgment.
3. Defendant denies so much of paragraph 4 as alleges "as complained of herein".
4. Defendant denies that plaintiff was injured or damaged in the matter or to the extent alleged in paragraphs 5 and 6 of the Motion for Judgment and demands strict proof of each and every item of injury and damages complained of.
5. Defendant states that the Motion for Judgment alleges no proper claim for punitive damages.

WHEREFORE, defendant moves that the Motion for Judgment  
be dismissed together with its costs in this behalf expended.

THE ALEXANDRIA HOSPITAL  
By Counsel

McGUIRE, WOODS, BATTLE & BOOTHE  
1199 North Fairfax Street, Suite 1000  
P. O. Box 25047  
Alexandria, Virginia 22313-5047  
(703) 739-6200

By: *Fred C. Alexander, Jr.*  
Fred C. Alexander, Jr.  
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was  
mailed, postage prepaid, this 18<sup>th</sup> day of March, 1991 to J. Hunt  
Brasfield, Esquire, ASHCRAFT & GEREL, 4660 Kenmore Avenue, Suite  
220, Alexandria, Virginia 22304

*Fred C. Alexander, Jr.*  
Fred C. Alexander, Jr.



ALDO M. ROSEMBLAT, M.D., P.C.  
NEUROLOGICAL SURGERY

DOCTOR'S BUILDING  
4316 CASTLE PLACE  
FAIRFAX, VA 22031

PHONE (703) 241-8189

October 13, 1989

Dr. Hernando Salcedo  
Chief of Surgery  
Medical Affairs Office  
Alexandria Hospital  
4320 Seminary Road  
Alexandria, VA 22304

Dear Dr. Salcedo:

This is to confirm our personal conversation held in the Medical Affairs office at the Alexandria Hospital on October 12, 1989. As you know at the end of the surgery on patient # 201111 I was informed by the circulatory nurse in the operating room that the examination of the paper strip indicators on the surgical instruments I used had not turned colors and that I had to assume that the instruments were either partially sterilized or non-sterilized. I had to call the attention to the fact that this was not noticed in the beginning of surgery. This is a serious breach of safety in the operating room and I can only fear its consequences. An overnight admission for a fully elective surgery for a carpal tunnel has been turned into a waiting period to see if the patient is going to get an infection.

I hope the situation is corrected and it never happens again.

Sincerely,

  
Aldo M. Rosemblat, M.D., P.C.

AMR:lb

PLAINTIFF'S  
EXHIBIT

6

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

MEDICAL MALPRACTICE REVIEW PANEL

MARGARET HOWARD,  
Plaintiff

vs.

HONORABLE ALFRED D. SWERSKY,  
CHAIRMAN

THE ALEXANDRIA HOSPITAL,  
Defendant

PLAINTIFF'S REQUESTS FOR ADMISSIONS

COMES NOW the plaintiff, by counsel, and submits the following Requests for Admissions to be answered by the Defendant:

(1) Do you admit that the autoclave temperature was not properly set?

ANSWER:

Admitted.

(2) Do you admit that Alexandria Hospital owed a duty to Margaret Howard, which it breached:

(a) To set the temperature gauge properly on the autoclave in question?

(b) To set the temperature gauge properly so as to achieve a temperature over a sufficient period of time to sterilize the instruments in accordance with accepted medical practice?

(c) To carefully inspect the gauge for the proper setting?

(d) To carefully check the gauge for the proper setting?

(e) To carefully adjust the gauge to the proper setting?

(f) To discover any incorrect or inadequate setting?

(g) To warn if the gauge is not properly set?

(h) To assure the sterilization of instruments which it provides in the operating room to be used in surgery?

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 700  
2030 L STREET N. W.  
WASHINGTON, D. C. 20036  
202-783-6400

SUITE 220  
4660 KENMORE AVENUE  
ALEXANDRIA, VA. 22304  
703-751-7400

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD. 20852  
301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD. 20785  
301-439-8400

SUITE 805  
11 EAST BALTIMORE STREET  
BALTIMORE, MD. 21202  
301-539-1122

(i) To assure that nothing but properly and completely sterilized instruments are used on surgical patients of Alexandria Hospital?

(j) To warn her surgeon and, if necessary herself, when instruments are not certain to be properly sterilized?

(k) To warn her surgeon and, if necessary herself, that it cannot be determined with certainty that instruments have been properly sterilized?

**ANSWER:**

Admitted.

(3) Do you admit that it was a violation of the applicable standard of care for Alexandria Hospital to fail to:

(a) Set the temperature gauge properly on the autoclave in question?

(b) Set the temperature gauge properly so as to achieve a temperature over a sufficient period of time to sterilize the instruments in accordance with accepted medical practice?

(c) Carefully inspect the gauge for the proper setting?

(d) Carefully check the gauge for the proper setting?

(e) Carefully adjust the gauge to the proper setting?

(f) Discover any incorrect or inadequate setting?

(g) Warn if the gauge is not properly set?

(h) Assure the sterilization of instruments which it provides in the operating room to be used in surgery?

(i) Assure that nothing but properly and completely sterilized instruments are used on surgical patients of Alexandria Hospital?

(j) Warn her surgeon and, if necessary herself, when instruments are not certain to be properly sterilized?

(k) Warn her surgeon and, if necessary herself, that it cannot be determined with certainty that instruments have been properly sterilized?

**ANSWER:**

Admitted.

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 700  
2000 L STREET, N. W.  
WASHINGTON, D. C. 20036

202-783-6400

SUITE 220  
4660 KENMORE AVENUE  
ALEXANDRIA, VA. 22304

703-781-7400

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD. 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD. 20785

301-489-8400

SUITE 608  
17 EAST BALTIMORE STREET  
BALTIMORE, MD. 21202  
301-538-1122

(4) Do you admit that it was negligent for Alexandria Hospital to fail to:

(a) Set the temperature gauge properly on the autoclave in question?

(b) Set the temperature gauge properly so as to achieve a temperature over a sufficient period of time to sterilize the instruments in accordance with accepted medical practice?

(c) Carefully inspect the gauge for the proper setting?

(d) Carefully check the gauge for the proper setting?

(e) Carefully adjust the gauge to the proper setting?

(f) Discover any incorrect or inadequate setting?

(g) Warn if the gauge is not properly set?

(h) Assure the sterilization of instruments which it provides in the operating room to be used in surgery?

(i) Assure that nothing but properly and completely sterilized instruments are used on surgical patients of Alexandria Hospital?

(j) Warn her surgeon and, if necessary herself, when instruments are not certain to be properly sterilized?

(k) Warn her surgeon and, if necessary herself, that it cannot be determined with certainty that instruments have been properly sterilized?

ANSWER:

Admitted.

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 700  
2000 L STREET N. W.  
WASHINGTON, D. C. 20036  
202-783-6400

SUITE 220  
4660 KENMORE AVENUE  
ALEXANDRIA, VA. 22304  
703-751-7400

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD. 20852  
301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD. 20785  
301-459-8400

SUITE 805  
13 EAST BALTIMORE STREET  
BALTIMORE, MD. 21202  
301-538-1122

(5) Do you admit that it was medical malpractice for Alexandria Hospital to fail to:

(a) Set the temperature gauge properly on the autoclave in question?

(b) Set the temperature gauge properly so as to achieve a temperature over a sufficient period of time to sterilize the instruments in accordance with accepted medical practice?

(c) Carefully inspect the gauge for the proper setting?

(d) Carefully check the gauge for the proper setting?

(e) Carefully adjust the gauge to the proper setting?

(f) Discover any incorrect or inadequate setting?

(g) Warn if the gauge is not properly set?

(h) Assure the sterilization of instruments which

it provides in the operating room to be used in surgery?

(i) Assure that nothing but properly and completely sterilized instruments are used on surgical patients of Alexandria Hospital?

(j) Warn her surgeon and, if necessary herself, when instruments are not certain to be properly sterilized?

(k) Warn her surgeon and, if necessary herself, that it cannot be determined with certainty that instruments have been properly sterilized?

**ANSWER:**

Admitted.

(6) Do you admit that Alexandria Hospital owed a duty to Margaret Howard which it breached:

(a) To inspect the colored warning strip on the package containing the instruments used in her surgery?

(b) To recognize that the colored warning strip failed to indicate that the instruments were completely sterilized?

(c) To warn her surgeon or herself that the colored warning strip failed to indicate adequate sterilization of the instrument package to assure safe use of the instruments?

(d) To warn her surgeon or herself that the colored warning strip indicated inadequate sterilization on the instrument package?

(e) To warn her surgeon or herself that the colored warning strip indicated incomplete sterilization of the instrument package?

(f) By using or allowing the use of the instruments in question in the surgery on Margaret Howard?

**ANSWER:**

Admitted.

(7) Do you admit that it was a violation of the applicable standard of care for Alexandria Hospital to fail:

(a) To inspect the colored warning strip on the package containing the instruments used in her surgery?

(b) To recognize that the colored warning strip failed to indicate that the instruments were completely sterilized?

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 700  
2020 L STREET, N. W.  
WASHINGTON, D. C. 20036

202-783-6400

SUITE 220  
4660 KENMORE AVENUE  
ALEXANDRIA, VA. 22304

703-781-7400

SUITE 1002  
ONE CENTRAL PLAZA  
11303 ROCKVILLE PIKE  
ROCKVILLE, MD. 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD. 20785

301-439-8400

SUITE 808  
12 EAST BALTIMORE STREET  
BALTIMORE, MD. 21202

301-539-1122



(c) To warn her surgeon or herself that the colored warning strip failed to indicate adequate sterilization of the instrument package to assure safe use of the instruments?

(d) To warn her surgeon or herself that the colored warning strip indicated inadequate sterilization on the instrument package?

(e) To warn her surgeon or herself that the colored warning strip indicated incomplete sterilization of the instrument package?

(f) By using or allowing the use of the instruments in question in the surgery on Margaret Howard?

**ANSWER:**

Admitted.

(8) Do you admit that it was negligent for Alexandria Hospital to fail:

(a) To inspect the colored warning strip on the package containing the instruments used in her surgery?

(b) To recognize that the colored warning strip failed to indicate that the instruments were completely sterilized?

(c) To warn her surgeon or herself that the colored warning strip failed to indicate adequate sterilization of the instrument package to assure safe use of the instruments?

(d) To warn her surgeon or herself that the colored warning strip indicated inadequate sterilization on the instrument package?

(e) To warn her surgeon or herself that the colored warning strip indicated incomplete sterilization of the instrument package?

(f) By using or allowing the use of the instruments in question in the surgery on Margaret Howard?

**ANSWER:**

Admitted.

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 700  
2000 L STREET, N. W.  
WASHINGTON, D. C. 20036  
202-783-8400

SUITE 220  
4660 KENMORE AVENUE  
ALEXANDRIA, VA. 22304  
703-781-7400

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD. 20852  
301-770 3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD. 20785  
301-458-8400

SUITE 808  
13 EAST BALTIMORE STREET  
BALTIMORE, MD. 21202  
301-538-1122

11

(9) Do you admit that it was medical malpractice for Alexandria Hospital to fail:

(a) To inspect the colored warning strip on the package containing the instruments used in her surgery?

(b) To recognize that the colored warning strip failed to indicate that the instruments were completely sterilized?

(c) To warn her surgeon or herself that the colored warning strip failed to indicate adequate sterilization of the instrument package to assure safe use of the instruments?

(d) To warn her surgeon or herself that the colored warning strip indicated inadequate sterilization on the instrument package?

(e) To warn her surgeon or herself that the colored warning strip indicated incomplete sterilization of the instrument package?

(f) By using or allowing the use of the instruments in question in the surgery on Margaret Howard?

**ANSWER:**

Admitted.

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 700  
2000 L STREET, N. W.  
WASHINGTON, D. C. 20036

202-783-6400

SUITE 220  
1860 KENMORE AVENUE  
ALEXANDRIA, VA. 22304

703-751-7400

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD. 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD. 20785

301-459-8400

SUITE 805  
10 EAST BALTIMORE STREET  
BALTIMORE, MD. 21202

301-528-1122

(10) Do you admit that it was foreseeable that Margaret Howard would suffer injury or legal damage as a result of the acts and omissions inquired of in the preceding Requests for Admissions?

**ANSWER:**

Admitted.

(11) Do you admit that the setting of the temperature gauge on the autoclave in question, at the temperature upon which it was set or adjusted, was not appropriate to assure the sterilization of the surgical instruments?

**ANSWER:**

Admitted.

(12) Do you admit that this improper temperature setting was not discovered due to the negligence of Alexandria Hospital?

**ANSWER:**

Admitted.

(13) Do you admit that this improper temperature setting was not corrected due to the negligence of Alexandria Hospital?

ANSWER:

Admitted.

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 700  
2020 L STREET, N. W.  
WASHINGTON, D. C. 20036  
202-783-8400

SUITE 220  
4660 KENMORE AVENUE  
ALEXANDRIA, VA. 22304  
703-751-7400

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD. 20852  
301-770 3737

SUITE 101  
METRO 430 BUILDING  
LANDOVER, MD. 20785  
301-459-8400

SUITE 808  
10 EAST BALTIMORE STREET  
BALTIMORE, MD. 21202  
301-539-1122

ASHCRAFT & GEREL  
4660 Kenmore Avenue, Suite 220  
Alexandria, Virginia • 22304

By:   
J. Hunt Brasfield  
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have electronically transmitted ("FAX'D") plus mailed a true copy of the foregoing to Fred C. Alexander, Jr., Esquire, P. O. Box 25047, Alexandria, Virginia, 22313, counsel for defendant, on this 30th day of November, 1990.

  
J. Hunt Brasfield

V I R G I N I A:

MEDICAL MALPRACTICE REVIEW PANEL

IN RE: MARGARET HOWARD v. ALEXANDRIA HOSPITAL

O P I N I O N

After receiving all the evidence and after joint deliberation, the panel unanimously concludes:

- ( ) 1. The evidence does not support a conclusion that the health care provider failed to comply with the appropriate standard of care.
- ✕ 2. The evidence supports a conclusion that the health care provider failed to comply with the appropriate standard of care and that such failure is a proximate cause in the alleged damages.
- ( ) 3. The evidence supports a conclusion that the health care provider failed to comply with the appropriate standard of care and that such failure is not a proximate cause in the alleged damages.
- ( ) 4. The evidence indicates that there is a material issue of fact, not requiring an expert opinion, bearing on liability for consideration by a court or jury.
- ( ) 5. The panel, having determined that the evidence supports a conclusion that the health care provider failed to comply with the appropriate standard of care and that such failure is a proximate cause in the alleged damages, further finds that the claimant suffered disability or impairment to the degree and extent as follows:

PLAINTIFF'S  
EXHIBIT

4

Date: February 1, 1991

Kenneth L. Geoly

Kenneth L. Geoly

Richard L. Gaertner

Richard L. Gaertner

Morris A. Nunes

Morris A. Nunes

Garland L. Stith

Garland L. Stith

Certified as Opinion of Panel:

Alfred D. Swersky

Alfred D. Swersky, Chairman



V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

MARGARET HOWARD,

Plaintiff,

vs.

AT LAW NO. CL910178

THE ALEXANDRIA HOSPITAL,

Defendant.

PLAINTIFF'S SECOND REQUESTS FOR ADMISSION

COMES NOW, the plaintiff, by counsel, and pursuant to Rule 4:11 of the Rules of the Virginia Supreme Court, requests the defendant to admit the truth and accuracy of the following for purposes of this action only:

1. On February 4, 1991, the plaintiff's claim of medical malpractice against the defendant arising out of surgery performed on October 12, 1989, came before the Medical Malpractice Review Panel and, upon considering the submissions and presentations of both parties, the panel reached a unanimous decision as follows:

The evidence supports a conclusion that the health care provider failed to comply with the appropriate standard of care and that such failure is a proximate cause in the alleged damages.

ANSWER:

*Admitted*

2. The Opinion of the Medical Malpractice Review Panel, attached herewith as Attachment A, is a true copy of the original

PLAINTIFF'S  
EXHIBIT

7

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 220  
4660 KENMORE AVENUE  
ALEXANDRIA, VA 22304

703-751-7400

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 605  
EAST BALTIMORE STREET  
BALTIMORE, MD 21202

301-539-1122

76

opinion and is admissible in evidence at the scheduled trial of this action.

ANSWER:

*Admitted*

3. The Quality Care Control Report, attached hereto as Attachment B, is a true copy of the original report and is admissible in evidence at the trial of this case.

ANSWER:

*authenticity admitted;  
admissibility denied*

4. The letter dated October 13, 1989 from Aldo M. Rosenblatt, M.D. to Dr. Hernando Salcedo, attached herewith as Attachment C, is a true copy of the original letter and is admissible in evidence at the trial of this case.

ANSWER:

*authenticity admitted;  
admissibility denied*

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036  
202-783-6400

SUITE 220  
1660 KENMORE AVENUE  
ALEXANDRIA, VA 22304

703-751-7400

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-6400

SUITE 805  
EAST BALTIMORE STREET  
TIMORE, MD 21202

1-539-1122

ASHCRAFT & GEREL  
4660 Kenmore Avenue, Suite 220  
Alexandria, Virginia 22304

By

J. Hunt Brasfield  
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true copy of the foregoing to Fred C. Alexander, Esq., P.O. Box 25047, Alexandria, Virginia 22313, counsel for defendant, on this 18th day of November, 1991.

J. Hunt Brasfield

V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

MARGARET HOWARD,

Plaintiff,

v.

THE ALEXANDRIA HOSPITAL,

Defendant.

At Law No. CL 910178

DEFENDANT'S RESPONSE TO PLAINTIFF'S  
SECOND REQUESTS FOR ADMISSION

Defendant responds to Plaintiff's Second Request for Admissions as follows:

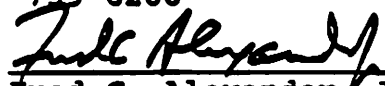
3. Authenticity is admitted; admissibility in evidence at the trial of the case is denied.

4. Authenticity is admitted; admissibility in evidence at the trial of the case is denied.

THE ALEXANDRIA HOSPITAL  
By Counsel

McGUIRE, WOODS, BATTLE & BOOTHE  
1199 North Fairfax Street, Suite 1000  
P. O. Box 25047  
Alexandria, Virginia 22313-5047  
(703) 739-6200

By:

  
Fred C. Alexander Jr.  
Virginia Bar No. 4495  
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, postage prepaid, this 20<sup>th</sup> day of November, 1991 to J. Hunt Brasfield, Esquire, ASHCRAFT & GEREL, 4660 Kenmore Avenue, Suite 220, Alexandria, Virginia 22304.

Fred C. Alexander, Jr.  
Fred C. Alexander, Jr.

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

MARGARET HOWARD,  
Plaintiff

vs.

AT LAW NO: CL910178

THE ALEXANDRIA HOSPITAL,  
Defendant

PLAINTIFF'S THIRD REQUESTS FOR ADMISSIONS

COMES NOW the plaintiff, by counsel, and pursuant to Rule 4:11 of the Rules of the Virginia Supreme Court, requests the defendant to admit the truth and accuracy of the following for purposes of this action only:

(1) That the facts and circumstances admitted by The Alexandria Hospital in plaintiff's Requests for Admissions No. #1 through #13 (attached and incorporated by reference) constitute negligence.

ANSWER:

Admitted

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036  
202-783-6400  
SUITE 220

PLAINTIFF'S  
EXHIBIT

8

20



SUITE 220  
4660 KENMORE AVENUE  
ALEXANDRIA, VA 22304

703-781-7400

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

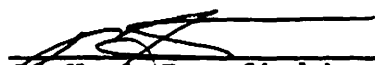
301-458-8400

SUITE 805  
EAST BALTIMORE STREET  
BALTIMORE, MD 21202

301-538-1122

ASHCRAFT & GEREL  
4660 Kenmore Avenue, #220  
Alexandria, VA. 22304

By

  
J. Hunt Brasfield  
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true copy of the foregoing to Fred C. Alexander, Jr., Esquire, P. O. Box 25047, Alexandria, Virginia, 22313, counsel for defendant, on this 13th day of December, 1991.

  
J. Hunt Brasfield

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

MARGARET HOWARD,  
Plaintiff

vs.

AT LAW NO: CL 910178

THE ALEXANDRIA HOSPITAL,  
Defendant

PLAINTIFF'S MEMORANDUM IN SUPPORT OF  
MOTION FOR NEW TRIAL

I. FACTS

On October 12, 1989, the plaintiff Margaret Howard underwent surgery on her right wrist at Alexandria Hospital. During the course of the surgery, surgical instruments were used which were not adequately sterilized. As a result, and because of his concern that Ms. Howard might have been exposed to some fatal or potentially fatal disease or condition, her physician ordered her to remain hospitalized and to be injected with significant doses of antibiotics and subjected her to an anti-hepatitis vaccine and other <sup>INVASIVE</sup> medical tests and procedures. As a result of these injections and procedures, which were painful in and of themselves, Ms. Howard experienced severe nausea and vomiting. She developed painful mouth sores and a vaginal yeast infection. She was required to extend her hospital stay. Further, because of what she was told of the consequences of the inadequately sterilized instruments, Ms. Howard experienced extreme distress, fear and anxiety.

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 805  
10 EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

At the trial of this matter, the plaintiff presented evidence tending to prove each of the facts outlined above. Following the close of the plaintiff's case, the Court entertained the defendant's Motion to Strike the plaintiff's evidence. The Court granted the Motion on the ground that the plaintiff failed to provide clear and convincing proof of a physical injury. It is to this ruling that the plaintiff takes exception.

### ARGUMENT

When the sufficiency of a plaintiff's evidence is challenged by a Motion to Strike, the trial court should resolve any reasonable doubt as to the sufficiency of the evidence in the plaintiff's favor. Leath v. Richmond, F & P.R.P. 162 Va. 705, 710, 174 S.E. 678, 680 (1934). Questions of negligence should, if at all appropriate, be left to the determination of the jury. Meador v. Lawson, 214 Va. 759, 204 S.E.2d 285 (1974). Of course, in this case, the negligence was admitted by the defendant Hospital.

In urging that the plaintiff's evidence be struck, the defendant relied on the decision of Hughes v. Moore, 214 Va. 27 (1973). A careful reading of that case reveals that it does not dictate the result argued by defense counsel. In Hughes, a woman was standing inside her home looking through a picture window when she saw the defendant's car crash into her front porch. She was not physically injured or touched by the collision in any way. Instead, she became unsteady and nervous and was unable to nurse her infant child.

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 805  
10 EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

23

The court, after a careful review of legal precedents, upheld the jury verdict for the plaintiff:

"... believing the reasons for the existence of the impact rule are not logical, we today clarify our rule. We adhere to the view that where conduct is merely negligent, not willful, wanton, or vindictive, and physical impact is lacking, there can be no recovery for emotional disturbance alone. We hold, however, that where the claim is for emotional disturbance and physical injury resulting therefrom, there may be recovery for negligent conduct, notwithstanding the lack of physical impact, provided the injured party properly pleads and proves by clear and convincing evidence that his physical injury was the natural result of fright or shock proximately caused by the defendant's negligence. In other words, there may be recovery in such a case if, but only if, there is shown a clear and unbroken chain of causal connection between the negligent act, the emotional disturbance, and the physical injury."

Thus, the court swept away the "physical impact" rule, requiring only that a plaintiff alleging emotional distress prove also that she sustained a physical injury resulting from the defendant's negligence.

The question then arises as to what is an injury? In Burlington Mills. v. Hagood, 177 Va. 204, 13 S.E.2d 291 (1941), the court quoted this definition with approval:

"In common speech the word 'injury' as applied to a personal injury to a human being, includes whatever lesion or charge in any part of the system produces harm or pain or a lessened facility of the natural use of any bodily activity or capability." Wasmuth-Endicott Co. v. Karst, 77 Ind. App. 279, 133 N.E. 609 (1922)

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 805  
10 EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

In the case at hand, there is clearly evidence of physical injury. The touching of the inadequately sterilized surgical instruments to Ms. Howard's tissues constitutes an injury. The pain and discomfort of the multiple injections and insertions of antibiotics, vaccines and I.V.'s are an injury. That, taking the evidence in the light most favorable to the plaintiff, certainly would not have resulted but for the hospital's negligence in failing to provide assuredly sterile surgical instruments. So, too, are the nausea, vomiting, yeast infections and mouth sores that all resulted.

It has been alleged that this case involves a "non-<sup>TACTILE</sup>~~tackle~~" tort and thus falls within the rule of Womack v. Eldridge, 215 Va. 338, 210 S.E.2d 145 (1974). In that case, the defendant fraudulently obtained a photograph of the plaintiff and then misused it in a criminal trial, causing the plaintiff to fear that he would come under suspicion of some crime. Here, there was no physical injury at all, and no symptoms of injury other than lack of sleep. The court held that four elements are required for a claim of emotional distress unaccompanied by physical injury: (1) intentional or reckless conduct by the wrongdoer; (2) outrageous and intolerable conduct; (3) causal connection between the wrongdoer's conduct and the emotional distress; (4) that the emotional distress be severe. Womack v. Eldridge, Id, at 342, 210 S.E.2d at 148.

Womack is clearly distinguishable from the present case. Ms. Howard's injuries did not result from a "non-<sup>TACTILE</sup>~~tackle~~" tort.

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036  
202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311  
703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852  
301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785  
301-459-8400

SUITE 805  
111 ST BALTIMORE STREET  
BALTIMORE, MD 21202  
410-539-1122



Surgery was performed on her with inadequately sterilized instruments. The touching of those inadequately sterilized instruments is the gravamen of her complaint and was the obvious, and we say <sup>CONVINCINGLY</sup> <sub>^</sub>believable, cause of all her other physical pains and discomforts. If not for the touching of those instruments, Ms. <sup>Howard</sup> Hoard would not have suffered as she plainly did; her hospitalization would have lasted only one night and as she had suffered no ill effects whatever from the prior identical surgery performed on her left wrist only three months earlier, there is every reason to believe that her medical course and treatment in this case would have been similarly uncomplicated.

The case of Naccash v. Burger, 223 Va. 406, 290 S.E.2d 825 (1982) created an exception to the general rule requiring physical injury. There a father underwent a Tay-Sachs Test in a laboratory to determine whether he was a carrier of the disease. An error was made with his blood sample and he was incorrectly told that he was free of the disease. His wife had a child who was found to have Tay-Sachs. The child died from the disease before age two. The parents sought to recover damages for their mental anguish, saying that the child would never have been carried to term had the parents known of the fatal defect.

In allowing the parents to recover from the doctor who ran the laboratory, the court held that the circumstances justified another exception to the general rule that damages for emotional distress must result directly from tortiously caused physical injury. The parents were not mere witnesses to the consequences of

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 805  
10 EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

tortious conduct. The court found an unbroken chain of causal connection directly linking the erroneous Tay-Sachs report, the deprivation of the parents' opportunity to accept or reject the continuance of the pregnancy, and the emotional distress the parents suffered following the discovery of the defect in their child.

The court listed four elements essential to the parents' cause of action: (1) existence of a legal duty owed to them. The laboratory owed the duty of reasonable care in the handling of the blood and also was required to provide reasonable information; (2) a breach of the duty; (3) a showing of a causal connection between the breach of duty and the claimed injury or damage. Here the court said that because of the negative Tay-Sachs report, the parents decided to continue the pregnancy; (4) lastly, the existence of actionable injury, meaning direct rather than indirect injury. The court identified this direct injury as the deprivation of the parents' opportunity to accept or reject the continuance of the pregnancy and the birth of the fatally defective child. Naccash v. Burger, Id. at 406. Clearly, therefore, there was no physical injury to the plaintiff parents, and yet our Virginia Supreme Court allowed a recovery.

In the case at hand, the plaintiff's cause of action is even more compelling. Following the court's analysis in Naccash, it is clear that Alexandria Hospital owed a duty to Margaret Howard to use reasonable care in the handling of the surgical instruments. The breach of that duty is clear, as made evident by the finding of

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 805  
10 EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

the Medical Malpractice Review Panel and by the defendant's admissions prior to and during trial that it was guilty of negligence. Thirdly, there is an obvious causal connection between the negligent failure to provide sterile instruments, and the treatments to which the plaintiff was subjected and her resulting fear and distress. Lastly, there is an injury that is even more direct than that of the Naccash case. Because the instruments were mishandled, Ms. Howard was subjected to painful and distressful medical treatments and was further subjected to at least six months of mental torture.

The jury was also entitled to consider the conclusions of the Medical Malpractice Panel <sup>THAT</sup> and the Hospital's negligence was a proximate cause of the plaintiff's damage.

The defendant has cited several cases on this issue which are not on point. The case of Russo v. White, 241 Va. 23 (1991), involved a defendant who made repeated and unwelcome telephone calls to the plaintiff. The court upheld the trial court's granting of a demurrer on the ground that the plaintiff did not claim any objective physical injury and did not allege that she sought medical attention, that she was confined at home or in a hospital or that she lost income. Alternatively, Margaret Howard has alleged and proven significant and distressful physical injuries directly caused by and related to the misuse of the

surgical instruments, *including 2 days of extra hospitalization, intralies,*  
*Add: plus the proof of IV's, injections, incisions and other physical manipulation of her*  
In Myseros v. Sissler, 239 Va. 8 (1990), a truck driver was involved in a traffic collision in which his truck was struck

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 805  
10 EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

but he suffered no injury, no "bumps or bruises". He then developed post-traumatic stress disorder. A jury verdict in his favor was reversed where there was no evidence presented of any physical injury. The plaintiff's experts had testified to an underlying emotional disturbance which did not amount to an injury.

Once again, there is a clear distinction between this case and the one involving Margaret Howard. The improper handling of the surgical instruments resulted in very real physical pain and discomfort. Her emotional distress accompanied the pain and discomfort, all resulting from the same cause.

Lastly, the defendant relies on the case of Sypert v. United States, 559 F.Supp. 546 (1983), involving the prison inmate who was allegedly exposed to the tuberculosis of a fellow inmate. The Federal District Court held that the inmate had experienced no pain and suffering and thus no physical injury. In actual fact, a careful reading of the case reveals that the court might have found that an injury existed under Naccash but for the unwritten public policy arguments which often work against prison inmates. Nevertheless, the case is not applicable to our discussion as Ms. Howard very definitely experienced <sup>ACTUAL</sup> physical pain and suffering as a result of the hospital's negligence.

Pursuant to Naccash, it is clear that the plaintiff has made out a cause of action against the defendant. Even if this Court were to follow Hughes, <sup>and 2 add'l days of hospital</sup> it is clear that it is not a case for emotional distress alone, but encompasses a claim for damages for the physical pain and discomfort to which the plaintiff was

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785


301-459-8400

SUITE 805  
10 EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

subjected. Therefore, the plaintiff respectfully submits that she is entitled to a new trial of this matter.

Respectfully Submitted,

  
\_\_\_\_\_  
J. Hunt Brasfield  
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have hand-delivered a true copy of the foregoing to Fred C. Alexander, Jr., Esquire, counsel for defendant, on this 11th day of March, 1992.

ASHCRAFT & GEREL  
4900 Seminary Road, #650  
Alexandria, VA. 22311

By

  
\_\_\_\_\_  
J. Hunt Brasfield  
Counsel for Plaintiff

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 805  
10 EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

30

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

MARGARET HOWARD,  
Plaintiff

vs.

AT LAW NO: CL 910178

THE ALEXANDRIA HOSPITAL,  
Defendant

ORDER GRANTING MOTION TO STRIKE

This matter came on for trial on February 14, 1992 and after voir dire, counsel exercised their strikes and a jury of seven was selected and empaneled. Opening statements were made by counsel for the respective parties and evidence was adduced. At the close of the plaintiff's case, the defendant made a Motion to Strike and because such Motion to Strike was granted and the case was dismissed, the facts and evidence narrated in this Order are viewed in the light taken most favorable to the plaintiff.

Margaret Howard is a Virginia native who was born April 19, 1947. Her prior medical history included an anterior cervical discectomy and fusion by Dr. Aldo Rosemblat in 1987 and also left carpal tunnel release in July of 1989. This case asserted negligence on the part of Alexandria Hospital, which was admitted by Alexandria Hospital. The negligence asserted and admitted is set forth in the attached Request for Admissions which are attached as Attachment #A to this Order. A Medical Malpractice Panel had been convened and after receiving all the evidence and after joint deliberation, the Panel had unanimously concluded: "The evidence supports a conclusion that the health care provider failed to

LAW OFFICES  
ASHCRAFT & GEREL

SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 805  
10 EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

*P's proposal.  
Court will I  
would not  
enter an  
order.*

*34*

comply with the appropriate standard of care and that such failure is a proximate cause in the alleged damages." (Emphasis added)

See Attachment #B. The malpractice/negligence complained of and admitted by the Hospital occurred during the plaintiff's hospitalization that began October 12, 1989, when she was admitted under the care of Dr. Aldo Rosemlat for a right carpal tunnel release.

The evidence showed that during the left carpal tunnel surgery done at the same hospital by the same physician in July of 1989, three months prior to the events herein complained of, that there had been no unsterile or suspectedly unsterile instruments used, there had been no post-operative illness, infection, nausea, vomiting, headache or any other reactions; contrariwise, following the right sided carpal tunnel release done in October of 1989 during which the events herein complained of occurred, during or at the end of surgery it was discovered that the color indicator strip on the wrapped surgical instruments had not turned color and it was therefore suspected that the instruments were not adequately sterilized. When the patient awoke in the recovery room, she was told by Dr. Rosemlat that it appeared that unsterile instruments had been used and that she would be kept in the hospital as a result for an extra couple of days, that she would be "loaded up" with antibiotics "in order to kill everything in sight" and that while the "risk factors were low", there was still a risk of infection from diseases such as HIV AIDS, tetanus, Hepatitis-B and a number of other contagious, transmissible diseases. The July

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 805  
10 EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

32

1989 and the October 1989 surgery were both scheduled for "in and out surgery", with the patient to be kept overnight only; the patient was in fact discharged on the morning following her July 1989 surgery, but as indicated above, in the October 1989 events here in issue the patient was required to be kept in the hospital for an extra two days as a result of the use of suspectedly unsterile instruments in order to allow a course of antibiotic therapy to be instituted and completed.

As a result of the antibiotic therapy, either alone or in combination with the patient's preexisting personality, the plaintiff suffered the renewed onset of migraine headaches which had previously been under good control; she suffered the onset of frequent nausea and vomiting, she received numerous shots, pain medications and other <sup>INVASIVE</sup> treatments which would not have been required but for the negligence complained of and admitted by Alexandria Hospital and she was tested for the Hepatitis-B virus and was in addition given a shot of anti-hepatitis vaccine. When she was discharged, she suffered ongoing nausea and vomiting, and a condition which her doctor described as pseudomembranous enterocolitis. Dr. Rosemlat testified that all of these occurrences were required or occurred as a result of the hospital's negligence in failing to provide sterile instruments.

The plaintiff, Margaret Howard, also testified that she was in great fear, and terrified, and thought that she would die. She had chills, sweats, nausea, vomiting, inability to eat or hold anything down; her testimony included a recitation of suffering

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 805  
10 EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122



"hamburger mouth", in which all of the mucus membranes in her nose and mouth were apparently sloughed and became raw and exquisitely tender. Dr. Roseblat also testified that she developed a vaginal yeast infection as a result of the antibiotic therapy which required medication (gynelotrimin) over an eight or nine day period.

Dr. Juan Jammes further testified that the appearance of the post-surgical scar on Ms. Howard's right wrist following the events herein complained of, was consistent with "foreign body involvement" and that he suspected dust; Dr. Jammes also testified that the symptoms of pain in the hand and in the scar itself was also consistent with foreign body involvement and the use of unsterile instruments. Dr. Jammes also discussed the diagnosis of reflex sympathetic dystrophy as a result of the use of the unsterile instruments in question.

Ms. Howard also testified that she put herself into a kind of enforced isolation from her loved ones and family, that she tried to follow all of her doctors' advice and recommendations and that her fear, terror and anxiety continued over a six month period ~~and thereafter~~, at which time she received the results of the "AIDS test" which indicated that she was negative for the HIV virus. It had been explained to her that such tests were not definitive until approximately six months, but that at the six month level they were believed to be highly accurate and thus, since she was negative that she did not have, and in all probability would not get, AIDS from the suspectedly unsterile surgical instruments.

LAW OFFICES  
ASHCRAFT & GEREL

SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036  
202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311  
703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852  
301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785  
301-459-8400

SUITE 805  
1 ST BALTIMORE STREET  
BALTIMORE, MD 21202  
410-539-1122

34

Dr. Margaret Eng further testified that no one could provide 100% certainty that Ms. Howard would not become infected with HIV AIDS or Hepatitis as a result of the exposure to suspectedly unsterile instruments, but again, that her risk factors were low.

The hospital bill, which is attached as Attachment C, was redacted and corrected to eliminate the amounts charged but the stricken items were understood to constitute those items which were either used or ~~committed~~ <sup>done</sup> as a result of exposure to the surgical instruments in question.

The Trial Court concluded that the plaintiff, Margaret Howard, had in fact suffered real fear and anxiety and terror as a result of the negligence of the hospital, but that in the absence of a "physical impact", that no recovery was allowed under Virginia law. For this reason, the Trial Court granted the defendant hospital's Motion to Strike the plaintiff's evidence and dismiss the action. It is, therefore,

ORDERED that the Motion to Strike is granted and that this action is dismissed.

ENTERED: \_\_\_\_\_

\_\_\_\_\_  
JUDGE DONALD H. KENT

SEEN: \_\_\_\_\_

\_\_\_\_\_  
Fred C. Alexander, Jr.  
Counsel for Defendant,  
The Alexandria Hospital

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

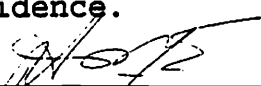
SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 805  
10 EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

SEEN AND OBJECTED TO;  
sufficiency of the evidence;  
a jury question was presented;  
Naccash v. Burger, 223 Va. 406,  
290 S.E. 2d 825 (1982);  
evidence to be reviewed in a light  
most favorable to the plaintiff;  
such other reasons as may appear  
from a reconstruction of the  
record and/or review of the  
evidence.

  
\_\_\_\_\_  
J. Hunt Brasfield  
Counsel for Plaintiff

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 805  
1. 3T BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

MARGARET HOWARD,

Plaintiff,

v.

THE ALEXANDRIA HOSPITAL,

Defendant.

At Law No. CL 910178

FINAL JUDGMENT ORDER

This case came on to be heard on the merits the 14th day of February, 1992, whereupon plaintiff appeared in person and by counsel and the Hospital appeared by its counsel; whereupon, from a panel of thirteen, seven jurors were chosen and duly sworn to try the issues joined between the parties; whereupon plaintiff did put on her evidence and did rest and defendant did move to strike plaintiff's evidence on the grounds that plaintiff's evidence, as a matter of law, failed to establish any physical injury to plaintiff sufficient to support a claim of emotional distress which said motion was argued by counsel for the parties.


And it appearing to the Court upon consideration of the arguments of counsel and the authorities cited that the motion should be granted and plaintiff's motion for reconsideration argued on April 17, 1992, should be denied, it is

ORDERED that plaintiff's evidence be stricken and summary judgment entered in favor of the defendant and, the jury discharged, and the case finally dismissed to which said rulings plaintiff has duly noted her objections and exceptions.

This Order is final and the Clerk is authorized and directed to deliver a certified copy of the same to counsel for the parties forthwith.

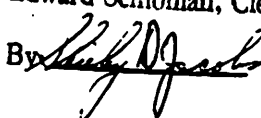
Enter this 17<sup>th</sup> day of April, 1992.

  
Donald H. Kent, Judge

SEEN and objected to for the reasons noted - Plt's proposed order and brief and  
manipulation in supporting motion for a new trial and for the reasons argued  
at hearing on 4-17-92 and for such other good and proper reasons as may result  
  
Counsel for Plaintiff

I ASK FOR THIS:

  
Counsel for Defendant

A COPY TESTE:  
Edward Semonian, Clerk  
By  Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

MARGARET HOWARD,

PLAINTIFF

V.

AT LAW NO.: CL 910178

THE ALEXANDRIA HOSPITAL,

DEFENDANT.

PLAINTIFFS WRITTEN STATEMENT OF FACTS,  
TESTIMONY, AND OTHER INCIDENTS OF THE CASE SUBMITTED IN  
ACCORDANCE WITH RULE 5:11(c)

This matter came on for trial on February 14, 1992 and after voir dire, counsel exercised their strikes and a jury of seven was selected and empaneled. Opening statements were made by counsel for the respective parties and evidence was adduced. At the close of the plaintiff's case, the defendant by counsel, made a Motion to Strike plaintiff's evidence on the grounds that plaintiff's evidence, as a matter of law, failed to establish any physical injury to plaintiff sufficient to support a claim of emotional distress which said motion was argued by counsel for the parties. After consideration of the arguments of counsel and the authorities cited the court being of the opinion that the Motion to Strike the plaintiff's evidence should be granted. It was ordered that plaintiff's evidence be stricken and summary judgement entered in the favor of the defendant Alexandria Hospital. The jury was

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-6400

SUITE 805  
EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

discharged and the case finally dismissed to which ruling plaintiff has duly noted her objections and exceptions.

The final judgment order was dated April 17, 1992 and signed by the trial Judge, Donald H. Kent, Judge. The plaintiff's counsel objected to the entry of the order for the reasons noted in plaintiff's proposed Order and Brief and Memorandum in Support of her Motion for new trial which papers are included in the court file.

The following is the statement of facts concerning the case itself:

Alexandria Hospital admitted negligence in its failure to provide sterile instruments during the opening statement by its counsel. During the course of pretrial discovery and/or during the pendency of the Medical Malpractice Review Panel proceedings, plaintiff had propounded certain requests for admissions number 1-13 which were admitted by the defendant Alexandria Hospital, copies of which are included in the court file. Alexandria Hospital had also admitted pursuant to plaintiff's Third Request for Admissions that the facts and circumstances admitted by the Alexandria Hospital in Plaintiff's Request for Admissions number 1-13, (attached and incorporated by reference) constitute negligence.

It was also admitted by the Alexandria Hospital that the Medical Malpractice Review Panel, after receiving all of the evidence and after joint deliberation, had unanimously concluded that "the evidence supports a conclusion that the health care provider failed to comply with the appropriate standard of care, and that such failure is a proximate cause in the alleged damages."

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036  
202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311  
703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852  
301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785  
301-459-8400

SUITE 805  
EAST BALTIMORE STREET  
BALTIMORE, MD 21202  
410-539-1122

A copy of that Medical Malpractice Review Panel opinion was offered in evidence and is contained in the court papers.

The testimony of the witness relied upon by the plaintiff in support of her Motion for a new trial and/or in opposition to the Defendant's Motion to Strike the plaintiff's evidence is summarized as follows:

The exhibits offered by the plaintiff and accepted as evidence by the court include the following certain of the Plaintiff's Request's for Admission's, the opinion of the Medical Malpractice Review Panel, and the Alexandria Hospital bill (redacted in order to omit amounts).

## II. TESTIMONY

### A. Margaret Howard

#### 1. DIRECT

Ms. Howard was 44 years old. She dropped out of Washington Lee High School in tenth grade. She subsequently obtained her GED when she was 33 years old. Her prior employment history included work as a cosmetician and a deputy sheriff.

In July of 1989 she underwent left Carpal Tunnel Surgery. She stayed overnight at Alexandria Hospital and was discharged the day after surgery. She was not given any pre or post operative antibiotic medication. She experienced no headaches or medication reactions.

In October of 1989, she was admitted to Alexandria Hospital. Her physician was Dr. Aldo Rosemlat. Her hospital stay was supposed to be "just overnight." She ate nothing by mouth the night before the surgery, except that she took one Tagamet pill to

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-6400

SUITE 605  
EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

41



keep her stomach calm. She had a medical history which included hiatal hernia and ulcer.

After the surgery in October of 1989 she experienced significantly different symptoms than she had after her surgery in July of 1989.

Immediately after the October surgery, on October 12, 1989, Dr. Roseblat told her there was a "possibility she had been operated on with unsterile instruments." She believes she was told this in the recovery room. Dr. Roseblat was wearing a scrub uniform when he told her.

She experienced an immediate fear of several diseases, and was told that infectious disease and administrative personnel had been notified.

She was next visited by Dr. Reines of infectious disease who told her she was receiving and would receive antibiotics through her IV. "They weren't gonna wait till I got anything; they were just gonna kill everything they could." The doctors referred to blanket coverage, to get any germ she might come in contact with.

She asked for an HIV test. She feared "infection, dying, and not being able to be around (her) family or touch them." She felt "a great deal of fear." She began to experience a migraine headache. She had a medical history of having migraine headaches.

The doctors first mentioned to her the possibility of getting Hepatitis. She asked about the possibility of getting AIDS.

She later began to experience nausea and vomiting. The nausea and vomiting were constant.

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 808  
EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

When asked to describe her hospital stay, she stated, "It was a nightmare." She told her friends and family to stay away from the hospital for fear of contaminating them.

Nurses on the floor of her hospital room came to her room and asked her, "Are you the one who had contaminated instruments?" This made her feel "really lousy." Nurses used gloves when drawing her blood.

She frequently had blood taken from her. She had had her intravenous line removed and replaced when it began to burn. She received pain shots every four to six hours.

On the thirteenth of October she started vomiting.

She was told she would have to have an HIV test in 6 months, "before she was out of the woods" in reference to having the HIV virus. She had this test after 6 months and it was negative. In the interim, she stated, "I was scared to death; I didn't want to contaminate people or be a burden on anybody."

She was discharged from the hospital on the fifteenth of October and given prescriptions for Ceftin, Dilaudid and Gyne-Lotrimin for the vaginal yeast infection.

She was nauseous the entire time she was in the hospital and the only thing she was able to eat were some crackers the morning she was discharged.

After leaving the hospital on the fifteenth she filled her prescriptions for Dilaudid and Gyne Lotrimin, but the pharmacy was out of Ceftin. Her boyfriend drove her home. On the way, they stopped at Kentucky Fried Chicken. Upon entering the store, she felt extremely nauseous. She waited in the truck. When her

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5800

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-6400

SUITE 805  
EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

boyfriend got in the truck and drove her home, the smell of the chicken made her sick. As soon as she got in the door of her house she headed for the bathroom, vomiting.

She stayed in her bathroom, all night the night of the fifteenth through the sixteenth, nauseous and vomiting continuously. She could not keep medication down. Her mouth, nose, and sinuses were raw. She could not tolerate water or coca cola or ice chips when she tried.

She called Dr. Reines office and spoke with a nurse who told her not to take the Ceftin. She left a message at Dr. Rosemblat's office. She called the emergency room of Alexandria Hospital who stated they had no record of her having been a patient there.

She continued to be nauseous and to vomit through the seventeenth of October. Her mouth was "raw" for 9 to 10 days after she was discharged. Her nose ran constantly, and she experienced fever, sweating and chills. She also began to have a lot of vaginal discharge. Dr. Rosemblat later explained this as a vaginal yeast infection caused by the strong antibiotic he prescribed, and which altered the normally existing biological balance in the body.

When asked what was "going through her head" at this time she stated, "Is this how I am going to die, I wondered; I was scared to death; I was sore all over."

Late on the seventeenth she began to keep fluids down.

When asked if she was making any claim for lost earnings, wages or economic damages she said, "no."

She was afraid to have contact with her daughter or her

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 808  
EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

fourteen month old grandchild, and with other members of her family. She would not see them because she "worried about infecting them." She was afraid to have sex with her boyfriend. She "walked the floors at night." She tried to keep her dishes separate from her boyfriend's. She had nightmares. She stated, "It was just devastating - that 6 months."

The scar from this surgery has been more painful than the scar from her previous surgery. She showed the jury both wrists and each scar.

## 2. CROSS EXAMINATION

She saw Drs. Jammes, Solano, Molchon and Rosemblat in reference to this incident. She did not know if she had received the antibiotic Rocephin previously. She had preoperative blood tests. She did not have a second shot of Anti-Hepatitis vaccine because it would have been too dangerous. The doctor did not want to put her through "that experience again." She was told by the doctors there was "only a possibility of infection." Dr. Reines told her the risk of getting a disease was only a possibility; a low or minimal risk. In fact she developed "nothing" in the way of disease from the procedure.

## B. Michael McKessick

### 1. DIRECT

He is friends with Margaret Howard. They lived together in October 1989. Margaret Howard is the type of person who is "always there for everyone." She was active and friendly before this surgery. She enjoyed crafts and hobbies before this surgery. After this surgery, she "got very distant from everyone." She

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 605  
EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

45

became like a hermit." She appeared "scared and confused." She lost interest in everything and the littlest things would set her off.

C. Dr. Aldo Rosemblat

1. DIRECT. Dr. Rosenblat was qualified as an expert in the field of neurosurgery.

He had previously operated on Margaret Howard's left wrist.

In October of 1989, he operated on her right wrist at Alexandria Hospital with "poorly sterilized or unsterilized instruments," due to the autoclave that had been used to sterilize the instruments. He had referred Margaret Howard to Dr. Reines, an infectious disease specialist, because of this incident.

It was nurse Arnold's function to see that the instruments used in Margaret Howard's surgery were sterilized.

There was "very little risk" of some viral infectious occurring. His "big concerns" were Hepatitis B, HIV, Staph virus and Tetanus. He was not sure if he told her about the 20-25 diseases she might get. He stated, "you never know who was operated on before with these instruments."

Margaret Howard "certainly was not pleased," about what had occurred. She was "scared, very anxious and very concerned." Her fears were "not unusual and not unjustified." She asked what her life was going to be like for the next 6 months. Most of the incubation of diseases occurs within 6 months of exposure.

After surgery, Margaret Howard was given one dose of Hepatitis vaccine. She was also given Zantac intravenously to avoid gastric secretions and Reglan for the same purpose. Ceftin and Rocephin

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 605  
EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

are "pretty much the same drug," which she was also given.

Originally, Margaret Howard's hospital admission was only anticipated to last 23 hours (before the use of the surgical instruments in question occurred).

Dr. Rosenblat testified that within a reasonable degree of medical certainty, Margaret Howard's symptom complex was attributable to Pseudomembranous Enterocolitis which in her case was a side effect of the antibiotics, which were prescribed for her as a consequence of the use of the unsterile instruments. The symptoms included nausea, vomiting, diarrhea, burning of the mouth, vaginal discharge and low grade fever. She also had the renewed onset of migraine headaches which up to that time had been under good control. Within a reasonable degree of certainty these symptoms and problems were the result of the antibiotic therapy which was necessarily prescribed for Margaret Howard as a result of the hospital's negligence.

Yes, there was reason for Margaret Howard to have fear. The period of incubation of disease is variable. It was "completely reasonable for her to isolate herself." Within reasonable medical certainty in Dr. Rosenblat's opinion, Margaret Howard had real fear which was reasonable under the circumstances and which was not feigned or put on.

## 2. CROSS - EXAMINATION

During Margaret Howard's first surgery in July of 1989 for Carpal Tunnel Syndrome she did not receive preoperative or intraoperative antibiotics. Dr. Rosenblat stated, when asked why, "I forgot." Before this October 1989 operation, Margaret Howard

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-793-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 805  
EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

received 2 grams of Rocephin intravenously. After her first surgery, Margaret Howard had no unusual reaction to the anesthesia. Margaret Howard did not receive intravenous Reglan or Zantac after her first surgery.

Dr. Roseblat was anxious about telling Margaret Howard about the use of these instruments because if someone was not going to take it (ie. such news) well, "it would be her."

Dr. Roseblat agreed that Margaret Howard should be hospitalized an extra 48 hours, because of the risk of contamination.

Ms. Howard had migraine headaches before her October surgery. She had a history of having migraine headaches. Nauseousness is a symptom of a migraine headache. Margaret Howard's migraine headaches were under "good control" until this surgical incident with the unsterile instruments.

The results of the surgery to Ms. Howard's right arm, "could have been better." Margaret Howard was given Dilaudid due to her complaints of burning at her right arm surgical site.

Before Margaret Howard was released, blood was drawn from her and tested for Hepatitis B virus and for HIV. He agreed the tests should be done.

### 3. RE-DIRECT

The Hepatitis virus lives longer than that of HIV outside the body. Rocephin or Ceftin can not control and do not treat viruses.

The occurrence of migraine headaches is "completely involuntary."

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-6400

SUITE 608  
EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

48

D. Dr. Juan Jammes

1. DIRECT

Dr. Jammes has been board certified in neurology and electroencephalography since 1974. He has known Margaret Howard since he began to treat her for headaches in 1986. In 1987 she had an injury to her neck which caused her right arm pain and low back pain. He later referred Margaret Howard to Dr. Aldo Rosemblat in reference to her right arm pain. As of October 1989 before the surgery in question, Margaret Howard's migraine headache problems were under good control.

After her surgery in October of 1989, Margaret Howard "was a totally different person." All of the symptoms Dr. Jammes had treated Margaret Howard for in the past were "made worse." Margaret Howard was nervous and crying all the time after the October surgery. Her fear accentuated all of her previous problems.

Margaret Howard's fears were quite reasonable and appropriate. Operating with unsterilized instruments can bring dust into the surgical site. There is medical evidence to suggest contamination of a surgical site with dust can cause Reflex Sympathetic Dystrophy.

Reflex sympathetic Dystrophy is characterized by; persistent, chronic pain at the surgical site; wasting of hand muscle; and sweating and coolness of the hand.

2. CROSS-EXAMINATION

Dr. Jammes' office notes of July 19, 1989 do not relate to Margaret Howard. They relate to another patient on October 4,

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 605  
EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122



1989. Dr. Jammes saw Margaret Howard for epigastric pain and headache. In January of 1990 he saw Margaret Howard for bilateral wrist pain which was greater in the right wrist. Margaret Howard has had pain in both wrists since October 1989.

Margaret Howard's complaints of right wrist pain were consistent with dust getting into her wound. Dust would be on the instruments because they were not sterilized.

Dr. Jammes could not say for certain whether instruments were washed before surgery.

Dr. Jammes did not feel Margaret Howard had imagined her pain.

E. Dr. Catherine Eng

1. DIRECT

Dr. Eng is board certified and testified to a reasonable degree of medical certainty. Margaret Howard did call our office after she became sick.

Dr. Eng saw Margaret Howard once in the hospital before she was discharged and discussed with Margaret Howard the chances she would incur an infection. Margaret Howard had a low risk. The instruments may not have been sterilized, but were "not grossly contaminated."

Dr. Eng stated the main risks being considered were Hepatitis, HIV and viral illnesses. These diseases can not be treated with antibiotics.

The chance that Margaret Howard would get sick was a low risk. The risk of HIV infection declines with each negative HIV test. Dr. Eng "couldn't say with 100 percent accuracy that she wouldn't get sick" with one of the illnesses discussed.

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-3500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 805  
EAST BALTIMORE STREET  
BALTIMORE, MD 21202

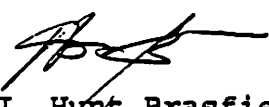
410-539-1122

Dr. Eng stated it was reasonable for Margaret Howard to be in some fear of infection for six months.

2. CROSS-EXAMINATION

The risk of Margaret Howard becoming infected from these instruments was "low."

Respectfully submitted

  
J. Hunt Brasfield  
Counsel for Plaintiff  
Margaret Howard

Ashcraft and Gerel  
4900 Seminary Road  
Suite 650  
Alexandria, Virginia 22311  
(703) 931-5500

LAW OFFICES  
ASHCRAFT & GEREL  
SUITE 400  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650  
4900 SEMINARY ROAD  
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002  
ONE CENTRAL PLAZA  
11300 ROCKVILLE PIKE  
ROCKVILLE, MD 20852

301-770-3737

SUITE 101  
METRO 400 BUILDING  
LANDOVER, MD 20785

301-459-8400

SUITE 605  
EAST BALTIMORE STREET  
BALTIMORE, MD 21202

410-539-1122

REVISED CERTIFICATE OF SERVICE

The original copy of this corrected, supplemented Rule 5:11 (c) written statement has been filed this 24<sup>th</sup> day of April 1992 in the office of the Clerk of the Court, and that a copy was sent to the opposing counsel; I further certify that this statement will be presented to the Trial Judge no earlier than 15 days nor later than 20 days from this date.

  
J. HUNT BRASFIELD

51

V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

MARGARET HOWARD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	At Law No. CL 910178
	)	
THE ALEXANDRIA HOSPITAL,	)	
	)	
Defendant.	)	

---

DEFENDANT'S ADDITIONS  
TO PLAINTIFF'S WRITTEN STATEMENT

Dr. Rosemblat - Add to third paragraph of DIRECT:

"At the conclusion of the procedure, I was told by a nurse that an indicator had not turned completely and that the instruments were possibly not fully sterilized."

- Add to first paragraph of CROSS-EXAMINATION:

"Rocephin causes gastrointestinal side effects in less than 1% of cases. Reglan was prescribed for prevention of post operative nausea and vomiting. Zantac was for control of ulcer symptoms. Ceftin was an antibiotic to be taken at home."

Dr. Jammes - Add to CROSS-EXAMINATION:

He further testified on cross-examination that hers would be the first recorded case in medical history that pain complaints in her wrists were due to "dust" contamination.

THE ALEXANDRIA HOSPITAL  
By Counsel

McGUIRE, WOODS, BATTLE & BOOTHE  
1199 North Fairfax Street, Suite 1000  
P. O. BOX 25047  
Alexandria, Virginia 22313-5047  
(703) 739-6200

By:

Fred C. Alexander, Jr.  
Fred C. Alexander, Jr.  
Virginia Bar No. 4495  
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent by facsimile and mailed, postage prepaid, this 11<sup>th</sup> day of May, 1992 to J. Hunt Brasfield, Esquire, ASHCRAFT & GEREL, 4900 Seminary Road, Suite 650, Alexandria, Virginia 22311.

Fred C. Alexander, Jr.  
Fred C. Alexander, Jr.

ASSIGNMENTS OF ERROR

(1) The trial court erred in holding that a physical injury was required under the circumstances of this case to support a claim for negligent infliction of emotional distress.

(2) The trial court erred in striking the plaintiff's evidence as there was uncontroverted evidence of the physical injuries sustained by the plaintiff.


(3) The trial court erred in striking the plaintiff's evidence as the existence of a physical injury was one for the jury to resolve.

C E R T I F I C A T E

I, J. Hunt Brasfield, counsel for Appellant, Margaret Howard, and duly qualified to practice in the Surpeme Court of Virginia, hereby certify that, in compliance with Rule 5:26(d) of the Rules of the Supreme Court of Virginia, twenty (20) copies of the APPENDIX, were filed with the Clerk of this Court by mailing Registered Mail--Return Receipt Requested, and three (3) copies were mailed to Fred C. Alexander, Jr., 1199 North Fairfax Street, Suite 1000, Alexandria, Virginia, 22314, counsel of record for Appellee, this 3rd day of December, 1992.

ASHCRAFT & GEREL  
4900 Seminary Road, #650  
Alexandria, VA. 22311

By

  
J. Hunt Brasfield  
Counsel for Appellant

# CLINT A. ALLEN

1. The defendant, known as "Pallant", was born on [redacted] and was admitted to the [redacted] of Virginia, having been [redacted] in compliance with Rule 5:33(a) of the Rules of the Supreme Court of Virginia, twenty (20) copies of the [redacted] were filed with the Clerk of the Court by [redacted] registered with the [redacted] and [redacted] (3) copies were mailed to [redacted] of [redacted] 1999, [redacted] Virginia, [redacted] of record for [redacted] this day of December, 1999.

CLINT A. ALLEN

CLINT A. ALLEN  
300 [redacted] Road, [redacted]  
[redacted] VA 22011

[redacted]  
[redacted]  
[redacted]